

FUNDING 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

**CITIZENS BANK, N.A.
as Initial Funding Lender**

Relating to

**The Flynn
220 Blackstone Street, Providence, Rhode Island**

Maximum Funding Loan Principal Amount: \$[AMOUNT]

Dated as of [MONTH OF CLOSING] 1, 20__

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

Section 1.01 Definitions 3
Section 1.02 Interpretation..... 14

ARTICLE II

THE FUNDING LOAN

Section 2.01 Terms 15
Section 2.02 Pledged Security 18
Section 2.03 Limited Obligations. 19
Section 2.04 Funding Loan Agreement Constitutes Contract..... 19
Section 2.05 Form and Execution..... 19
Section 2.06 Authentication..... 19
Section 2.07 Mutilated, Lost, Stolen or Destroyed Governmental Note 19
Section 2.08 Registration; Transfer of Funding Loan; Transferee Representations Letter 20
Section 2.09 TEL Securitization; Allocation of Funding Loan Interest 20
Section 2.10 Funding Loan Closing Conditions; Delivery of Governmental Note 21
Section 2.11 Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money 22
Section 2.12 Loan Payments to Servicer; Servicer Disbursement of Fees 23
Section 2.13 Conversion..... 23

ARTICLE III

PREPAYMENT OF THE FUNDING LOAN

Section 3.01 Prepayment of the Funding Loan Prior to Maturity..... 23
Section 3.02 Notice of Prepayment 24

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 Pledge of Revenues and Assets; Establishment of Funds 24
Section 4.02 Project Loan Fund..... 25
Section 4.03 Application of Revenues..... 28
Section 4.04 Application of Loan Payment Fund..... 29
Section 4.05 Application of Loan Prepayment Fund..... 29
Section 4.06 Administration Fund..... 29
Section 4.07 Investment of Funds..... 30
Section 4.08 Accounting Records..... 31
Section 4.09 Amounts Remaining in Funds 31
Section 4.10 Rebate Fund; Compliance with Tax Certificate..... 31
Section 4.11 Costs of Issuance Fund 33
Section 4.12 Reports From Fiscal Agent..... 33

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

| | | |
|--------------|---|----|
| Section 5.01 | Payment of Principal and Interest | 34 |
| Section 5.02 | Performance of Covenants..... | 34 |
| Section 5.03 | Instruments of Further Assurance..... | 34 |
| Section 5.04 | Inspection of Project Books..... | 35 |
| Section 5.05 | No Modification of Security; Additional Indebtedness | 35 |
| Section 5.06 | Damage, Destruction or Condemnation..... | 35 |
| Section 5.07 | Tax Covenants | 35 |
| Section 5.08 | Representations and Warranties of Governmental Lender | 37 |

ARTICLE VI

**DEFAULT PROVISIONS AND
REMEDIES OF FISCAL AGENT AND FUNDING LENDER**

| | | |
|--------------|---|----|
| Section 6.01 | Events of Default | 37 |
| Section 6.02 | Acceleration; Other Remedies Upon Event of Default..... | 38 |
| Section 6.03 | Funding Lender Representative Control of Proceedings | 39 |
| Section 6.04 | Waiver by Governmental Lender..... | 39 |
| Section 6.05 | Application of Money After Default..... | 39 |
| Section 6.06 | Remedies Not Exclusive | 40 |
| Section 6.07 | Fiscal Agent May Enforce Rights Without Governmental Note | 40 |
| Section 6.08 | Termination of Proceedings..... | 41 |
| Section 6.09 | Waivers of Events of Default..... | 41 |
| Section 6.10 | Interest on Unpaid Amounts and Default Rate for Nonpayment..... | 41 |
| Section 6.11 | Assignment of Project Loan; Remedies Under the Project Loan | 41 |
| Section 6.12 | Substitution | 42 |

ARTICLE VII

CONCERNING FISCAL AGENT

| | | |
|--------------|---|----|
| Section 7.01 | Standard of Care | 42 |
| Section 7.02 | Reliance Upon Documents | 43 |
| Section 7.03 | Use of Proceeds and Other Moneys..... | 46 |
| Section 7.04 | Trust Imposed | 46 |
| Section 7.05 | Compensation of Fiscal Agent..... | 46 |
| Section 7.06 | Qualifications of Fiscal Agent | 47 |
| Section 7.07 | Merger of Fiscal Agent | 47 |
| Section 7.08 | Resignation by Fiscal Agent..... | 47 |
| Section 7.09 | Removal of Fiscal Agent | 48 |
| Section 7.10 | Appointment of Successor Fiscal Agent..... | 48 |
| Section 7.11 | Concerning Any Successor Fiscal Agent..... | 48 |
| Section 7.12 | Successor Fiscal Agent | 49 |
| Section 7.13 | Appointment of Co-Fiscal Agent or Separate Fiscal Agent | 49 |
| Section 7.14 | Notice of Certain Events..... | 51 |
| Section 7.15 | Filing of Financing Statements | 51 |
| Section 7.16 | USA Patriot Act Requirements of Fiscal Agent | 51 |

ARTICLE VIII

AMENDMENTS OF CERTAIN DOCUMENTS

| | | |
|--------------|---|----|
| Section 8.01 | Amendments to this Funding Loan Agreement | 51 |
| Section 8.02 | Amendments to Financing Documents Require Consent of Funding Lender Representative..... | 51 |
| Section 8.03 | Opinion of Bond Counsel Required..... | 52 |

ARTICLE IX

SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

| | | |
|--------------|--|----|
| Section 9.01 | Discharge of Lien..... | 52 |
| Section 9.02 | Discharge of Liability on Funding Loan..... | 54 |
| Section 9.03 | Payment of Funding Loan After Discharge of Funding Loan Agreement..... | 54 |

ARTICLE X

INTENTIONALLY OMITTED

ARTICLE XI

MISCELLANEOUS

| | | |
|---------------|---|----|
| Section 11.01 | Servicing of the Loans | 54 |
| Section 11.02 | Limitation of Rights..... | 54 |
| Section 11.03 | Construction of Conflicts; Severability | 55 |
| Section 11.04 | Notices | 55 |
| Section 11.05 | Funding Lender Representative | 57 |
| Section 11.06 | Payments Due on Non-Business Days..... | 58 |
| Section 11.07 | Counterparts..... | 58 |
| Section 11.08 | Laws Governing Funding Loan Agreement | 58 |
| Section 11.09 | No Recourse..... | 58 |
| Section 11.10 | Successors and Assigns | 58 |

| | |
|------------------|---|
| EXHIBIT A | FORM OF GOVERNMENTAL NOTE |
| EXHIBIT B | FORM OF NOTICE OF APPOINTMENT OF FUNDING LENDER REPRESENTATIVE |
| EXHIBIT C | FORM OF TRANSFEREE REPRESENTATIONS LETTER |
| EXHIBIT D | COSTS OF ISSUANCE REQUISITION |
| EXHIBIT E | PROJECT LOAN FUND REQUISITION |
| EXHIBIT F | CONSTRUCTION PHASE INTEREST RATE |

FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this “*Funding Loan Agreement*”), dated as of [MONTH OF CLOSING] 1, 20__, is made by and among **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, organized and operating under the laws of the United States of America, having a corporate trust office in Jacksonville, Florida, as fiscal agent (the “*Fiscal Agent*”), and **CITIZENS BANK, N.A.**, a national banking association, in its capacity as initial Funding Lender (the “*Initial Funding Lender*”). 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 the Project Loan Agreement dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “*Project Loan Agreement*”), among Governmental Lender, Fiscal Agent and The Flynn I LLC, a Rhode Island limited liability company duly organized and existing under the laws of the State (the “*Borrower*”), Governmental Lender is agreeing to make a mortgage loan to Borrower in the maximum aggregate principal amount of \$[AMOUNT] (the “*Project Loan*”) to provide for the financing of a multifamily rental housing development located at 220 Blackstone Street in Providence, Rhode Island and known as The Flynn (formerly Copley Centre). The Land, Improvements, and Fixtures (each as defined in the Security Instrument) are collectively referred to herein as the “*Project*”.
- B. Governmental Lender is making the Project Loan with the proceeds received from the separate loan being made to Governmental Lender pursuant to this Funding Loan Agreement in the maximum aggregate principal amount of \$[AMOUNT] (the “*Funding Loan*” and together with the Project Loan, the “*Loans*”). The Funding Loan is evidenced by the Multifamily Mortgage Revenue Note with the sub-designation (The Flynn Project), Series 202_, dated [CLOSING DATE] (the “*Delivery Date*”) executed by Governmental Lender and authenticated by Fiscal Agent in favor of Initial Funding Lender, in the form attached hereto as Exhibit A (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, and together with all addenda thereto, the “*Governmental Note*”).
- C. Pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, Initial Funding Lender has agreed to originate and fund the Funding Loan to Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by Governmental Lender to fund the Project Loan to Borrower in corresponding installments pursuant to the Project Loan Agreement. Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Financing Documents.
- D. Borrower has agreed to use the proceeds of the Project Loan to finance the construction of the Project [and to pay certain costs incurred in connection with the Loans].
- E. Borrower’s payment obligations in respect of the Project Loan will be evidenced by a Project Note dated the Delivery Date (as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, and as the same may be further 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, and together with all riders and addenda thereto, the “**Project Note**”) delivered to Governmental Lender, which Project Note will be endorsed by Governmental Lender to Fiscal Agent as security for the Funding Loan.

- F. To secure Borrower’s obligations under the Project Note, Borrower will execute and deliver to Governmental Lender an [Open-End Mortgage, Assignment of Leases and Rents Security Agreement and Fixture Filing (Open-End Mortgage To Secure Present and Future Loans Under Chapter 25 of Title 34 of The Rhode Island General Laws)], dated as of the Delivery Date (as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, and as the same may be further amended, restated, supplemented or otherwise modified from time to time, the “**Security Instrument**”), granting a first priority mortgage and security interest in the Project in favor of Governmental Lender. Pursuant to the Assignment, the Security Instrument will be assigned by Governmental Lender to Fiscal Agent as security for the Funding Loan.
- G. Freddie Mac has entered into a commitment with Berkeley Point Capital LLC, d/b/a NEWMARK (the “**Seller/Servicer**”) dated [] (as the same may be amended, modified or supplemented from time to time, the “**Freddie Mac Commitment**”) whereby Freddie Mac has agreed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from Seller/Servicer following the Conversion Date.
- H. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, Initial Funding Lender will deliver, and Seller/Servicer will purchase, the Funding Loan as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, (i) the Project Loan will not convert from the Construction Phase to the Permanent Phase, (ii) neither Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan, and (iii) Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.
- I. As Conditions to Conversion, the Project Note and the Security Instrument are required to be amended and restated and Borrower is required to enter into a Continuing Covenant Agreement with Seller/Servicer (as the same may be amended, restated, supplemented or otherwise modified from time to time, and together with all addenda thereto, the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement.
- J. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by Seller/Servicer on the Conversion Date as set forth above, Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).
- K. Upon the occurrence of the Freddie Mac Purchase Date, Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, this Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans and Berkeley Point Capital LLC, d/b/a NEWMARK will act as Loan Servicer for the Loans on behalf of Funding Lender Representative.

- L. Governmental Lender has determined that all things necessary to incur the Funding Loan and to make the Governmental Note, when executed by Governmental Lender and authenticated by Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of 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, Prepayment 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 Governmental Lender.
- M. 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 Initial 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; INTERPRETATION

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 (including when used in the Recitals) not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement and the Continuing Covenant Agreement.

“**Act**” is as defined in the Recitals of this Funding Loan Agreement.

“**Actual Project Loan Amount**” is as defined in the Construction Phase Financing Agreement.

“**Additional Servicing Fee**” is as defined in Section 2.09 hereof.

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

“**Advance Request**” means a request by Borrower to Initial Funding Lender that Initial Funding Lender disburse proceeds of the Funding Loan to Fiscal Agent as provided hereunder, which request shall be in the form prescribed by the Construction Continuing Covenant Agreement.

“**Advance Termination Date**” means the earliest to occur of (a) the date when the sum of the aggregate advances of the Funding Loan made by Initial Funding Lender equals the Authorized Amount, (b) the date that is three (3) years after the Delivery Date, (c) the Conversion Date, (d) the date of a Determination of Taxability or (e) the occurrence of an Event of Default hereunder.

“**Assignment**” means the Assignment of Mortgage and Project Loan Documents dated as of the Delivery Date by Governmental Lender assigning its interest in the Security Instrument and the Project Loan Documents (except for Unassigned Rights) to Fiscal Agent.

“Authorized Amount” means \$[AMOUNT], the maximum aggregate principal amount of the Funding Loan authorized under this Funding Loan Agreement.

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

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

“Bond Counsel” means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Note, or (b) any other firm of attorneys selected by 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 Funding Lender Representative.

“Bond Counsel Approving Opinion” shall mean an opinion of Bond Counsel substantially to the effect that the Governmental Note constitutes a valid and binding obligation of Governmental Lender and that, under existing statutes and court decisions, the interest on the Governmental Note is excluded from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Borrower” means the entity identified as “Borrower” in the Recitals of this Funding Loan Agreement, together with any of its permitted successors and assigns, as owner of the Project.

“Borrower Equity Account” means the Borrower Equity Account of the Project Loan Fund established by Fiscal Agent pursuant to Section 2.11 hereof.

“Borrower Equity Deposit” means [_____] [, initially \$[_____] , and thereafter, such amounts as may be deposited in Borrower Equity Account from time to time], which shall be comprised of sources other than the proceeds of the Project Loan.

“Borrower Tax Certification” means the tax certification of Borrower delivered to Governmental Lender, Bond Counsel and Funding Lender in connection with the closing of the Project Loan.

“Business Day” means any day other than a Saturday, a Sunday, or any other day on which Fiscal Agent, Funding Lender or the national banking associations are not open for business.

“Certificate of Governmental Lender” and **“Request of Governmental Lender”** mean, respectively, a written certificate or request signed in the name of Governmental Lender by an Authorized Officer of Governmental Lender or such other Person as may be designated and authorized to sign for 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.

“**Conditions to Conversion**” is as defined in the Construction Phase Financing Agreement.

“**Construction Continuing Covenant Agreement**” means the [Construction Disbursement Agreement] dated as of [CLOSING DATE], by and between Borrower and Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“**Construction Loan Documents**” means the Construction Phase Financing Agreement, the Construction Continuing Covenant Agreement, and all other documents to be executed and delivered by Borrower to Initial Funding Lender in connection with the Project.

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

“**Construction Phase Financing Agreement**” means the Construction Phase Financing Agreement dated as of the date hereof by and among Initial Funding Lender, Freddie Mac, and Seller/Servicer, and acknowledged and agreed to by Borrower, as the same may be amended, modified or supplemented from time to time.

“**Construction Phase Interest Rate**” means the interest rate set forth in Exhibit F hereto[, provided during the continuance of any Event of Default hereunder, the Construction Phase Interest Rate shall be the Default Rate, and upon the occurrence of a Determination of Taxability, the Construction Phase Interest Rate shall be the Taxable Rate, in each case computed on the basis of a 360-day year and the actual number of days elapsed].

“**Continuing Covenant Agreement**” means (a) prior to the Conversion Date, the Construction Continuing Covenant Agreement, and (b) from and after the Conversion Date, the Freddie Mac Continuing Covenant Agreement.

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

“**Conversion Date**” means the date that Seller/Servicer purchases the Funding Loan from Initial Funding Lender upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by Seller/Servicer in the Conversion Notice, which date shall be at least two (2) days following the date on which the Conversion Notice is delivered.

“**Conversion Notice**” means a written notice to be delivered via electronic mail not less than two (2) days prior to the Conversion Date by Seller/Servicer to Governmental Lender, Fiscal Agent, Borrower, Initial Funding Lender and Freddie Mac pursuant to the Construction Phase Financing Agreement:

- (a) Stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing by Freddie Mac (if a waiver is permitted and is granted by Freddie Mac, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date,

- (b) Confirming the Conversion Date and
- (c) Providing a revised Funding Loan Amortization Schedule and Project Loan Amortization Schedule, as described in Section 2.01(e) hereof.

“Cost,” “Costs” or “Costs of the Project” means costs paid with respect to the Project that:

- (a) Are properly chargeable to capital account (or would be so chargeable with a proper election by Borrower or but for a proper election by Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with United States Treasury Regulations Section 1.103-8(a)(1),
- (b) Are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code,
- (c) Are paid after the earlier of (i) 60 days prior to the date of a resolution of Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (ii) the Delivery Date, and
- (d) If previously paid and to be reimbursed with proceeds of the Loans, were:
 - (i) Costs of Issuance of the Governmental Note,
 - (ii) Preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of construction of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in Section 1.148-1 of the Treasury Regulations), or
 - (iii) Capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid);

provided however, that if any portion of the Project is being constructed or developed by Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), “Cost,” “Costs” or “Costs of the Project” shall include only (A) the actual out-of-pocket costs incurred by Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by Borrower or such affiliate (but excluding any profit component) and (C) any overhead expenses incurred by Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

“Costs of Issuance Fund” means the Costs of Issuance Fund established by Fiscal Agent pursuant to Section 4.01 hereof.

“Costs of Issuance” means, as applicable, (a) the fees (excluding ongoing fees), costs and expenses of (i) Governmental Lender, Governmental Lender’s counsel and Governmental Lender’s financial advisor, (ii) Bond Counsel, (iii) Fiscal Agent and Fiscal Agent’s counsel, (iv) Initial Funding Lender

and Initial Funding Lender's counsel (v) Seller/Servicer and Seller/Servicer's counsel, (vi) Freddie Mac and Freddie Mac's counsel, and (vii) Borrower's counsel attributable to the funding of the Loans and Borrower's financial advisor, if any, and (b) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

"Costs of Issuance Deposit" means the deposit to be made by Borrower with Fiscal Agent on the Delivery Date, which deposit shall equal \$[] and shall be comprised of sources other than the proceeds of the Project Loan.

"Cure Amount" is as defined in Section 6.02 hereof.

"Default Rate" means the lower of (a) the Construction Phase Interest Rate or Permanent Phase Interest Rate, as applicable, otherwise in effect notwithstanding the default plus four percent (4%) per annum or (b) the Maximum Interest Rate.

"Delivery Date" means the date identified as "Delivery Date" in the Recitals of this Funding Loan Agreement, which is the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Note by Governmental Lender to 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 the gross income for federal income tax purposes of Funding Lender or any former Funding Lender other than a Funding Lender who 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 Governmental Lender (at the sole expense of Borrower) or 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 Governmental Lender or 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 10.04 hereof (if any); *provided*, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 10.04 hereof.

"Event of Default" means the occurrence of any event listed in Section 6.01 hereof.

"Extraordinary Services" means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by 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 Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

“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 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.

“Fee Component” is as defined in the Project Loan Agreement.

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

“Fiscal Agent” means the entity identified as “Fiscal Agent” in the introductory paragraph of this Funding Loan Agreement, together with any successor Fiscal Agent(s) appointed hereunder.

“Fiscal Agent’s Extraordinary Fees and Expenses” means all those fees, expenses and reimbursements earned or incurred by Fiscal Agent as described in Section 7.05 hereof for Extraordinary Services, as set forth in a detailed invoice to Borrower, Loan Servicer and Funding Lender Representative.

“Fiscal Agent’s Ordinary Fees and Expenses” means the annual administration fee for 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 (together with its acceptance fee of \$[_____]) and each anniversary date of the Delivery Date thereafter.

“Forward Commitment Maturity Date” means [_____] , subject to extension by Freddie Mac as provided in the Construction Phase Financing Agreement.

“Freddie Mac” means the Federal Home Loan Mortgage Corporation, a shareholder owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

“Freddie Mac Commitment” is as defined in the Recitals of this Funding Loan Agreement.

“Freddie Mac Continuing Covenant Agreement” is as defined in the Recitals of this Funding Loan Agreement.

“**Freddie Mac Purchase Date**” is as defined in the Recitals of this Funding Loan Agreement.

“**Funding Lender**” means any Person who is the holder of the Governmental Note.

“**Funding Lender Representative**” means Funding Lender or any Person designated by Funding Lender to act on behalf of Funding Lender as provided in Section 10.05, or an assignee of such Person as provided in Section 10.05. The initial Funding Lender Representative shall be Initial Funding Lender. Seller/Servicer shall become Funding Lender Representative upon the occurrence of the Conversion Date, and Freddie Mac shall become Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

“**Funding Loan**” is as defined in the Recitals of this Funding Loan Agreement.

“**Funding Loan Agreement**” means this Funding Loan Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

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

“**Funding Loan Payment Date**” means (a) the first day of each calendar month, commencing [FIRST DAY OF THE MONTH IMMEDIATELY FOLLOWING CLOSING], (b) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, (c) the Conversion Date, with respect to the payment of accrued interest at the Construction Phase Interest Rate to but not including the Conversion Date, and (d) the Maturity Date.

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

“**Governmental Lender**” means the entity identified as “Governmental Lender” in the introductory paragraph of this Funding Loan Agreement.

“**Governmental Lender Fee**” means the ongoing annual administrative fee of 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**” is as defined in the Recitals of this Funding Loan Agreement.

“**Guide**” means the Freddie Mac Multifamily Seller/Servicer Guide, as the same may be amended, modified or supplemented from time to time.

“**Initial Funding Lender**” means the entity identified as “Initial Funding Lender” in the introductory paragraph of this Funding Loan Agreement.

“**Investment Income**” means the earnings and profits derived from the investment of money pursuant to Section 4.07 hereof.

“**Investor Member**” means [_____], and [_____] not-for-profit corporation, and its permitted successors or assigns.

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

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

“Loan Servicer” means any entity appointed by Funding Lender Representative to service the Loans and any successor in such capacity as appointed by Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. During the Construction Phase, there will not be a Loan Servicer. During the Permanent Phase, Loan Servicer shall be Seller/Servicer.

“Loans” is as defined in the Recitals of this Funding Loan Agreement.

“Maturity Date” means [MATURITY DATE], which is the same as the Scheduled Maturity Date as defined in the Project Note.

“Maximum Interest Rate” means the rate of interest which results in the maximum amount of interest allowed by applicable law.

“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.

“New Borrower” is as defined in Section 6.12 hereof.

“New Project Loan” is as defined in Section 6.12 hereof

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

“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.

“Permanent Phase Interest Rate” means, during the Permanent Phase, the interest rate of [_____] % per annum; provided during the continuance of any Event of Default hereunder, the Permanent Phase Interest Rate shall be the Default Rate, in each case computed on the basis of a 360-day year [consisting of twelve 30-day months][and the actual number of days elapsed].

“Person” means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

“Pledged Security” is as defined in Section 2.02 hereof.

“Pre-Conversion Loan Equalization Payment” means a mandatory prepayment of the Project Loan by Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to Conversion in order to reduce the principal amount of the Project Loan and the Funding Loan to the Actual Project Loan Amount.

“Prepayment Premium” means any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (a) during the Construction Phase, the amount, if any, payable by Borrower as may be specified in the Project Note, and (b) during the Permanent Phase, the amount payable by Borrower under Section 4(d) of the Project Note, in each case in connection with a prepayment of the Project Loan.

“Principal Office of Fiscal Agent” means the office of Fiscal Agent referenced in Section 10.04(a) hereof, or such other office or offices as 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” is as defined in the Recitals of this Funding Loan Agreement.

“Project Account” means the Project Account of the Project Loan Fund established by Fiscal Agent pursuant to Section 2.11 hereof.

“Project Loan” is as defined in the Recitals of this Funding Loan Agreement.

“Project Loan Agreement” is as defined in the Recitals of this Funding Loan Agreement.

“Project Loan Amortization Schedule” is as defined in the Project Loan Agreement

“Project Loan Documents” means the Security Instrument, the Project Note, the Project Loan Agreement, the Regulatory Agreement, the Assignment, the Continuing Covenant 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 Loan Fund” means the Project Loan Fund established by Fiscal Agent pursuant to Section 2.11 hereof.

“Project Note” is as defined in the Recitals of this Funding Loan Agreement.

“Property Jurisdiction” means the State of Rhode Island.

“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 the Federal National Mortgage Association (i.e., Fannie Mae).
- (e) Demand deposits or time deposits with, or certificates of deposit issued by, 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 Fiscal Agent or such other institution has been rated at least “VMIG 1” / “A 1+” by one of the Rating Agencies 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 one of the Rating Agencies to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by one of the Rating Agencies, and which are approved by Funding Lender Representative.
- (g) Shares or units in any money market mutual fund rated “Aaa” / ”AAA” by one of the Rating Agencies (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 Fiscal Agent or its affiliates or for which 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 (i) direct obligations of the government of the United States of America, or (ii) tax-exempt obligations.
- (h)
 - (i) Tax-exempt obligations rated in the highest short term rating category by one of the Rating Agencies, 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 Securities Act, having assets of at least \$100,000,000, and having a rating of “Aaa” / “AAA” by one of the Rating Agencies (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 Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund.
- (i) Any other investments approved in writing by 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.

“Qualified Transferee” is as defined in Section 2.08 hereof.

“Rating Agencies” means Fitch, Inc., Moody’s Ratings, or S&P Global Ratings, or any successor entity of the foregoing, or any other nationally recognized statistical rating organization.

“Rebatable Arbitrage” is as defined in Section 4.10 hereof.

“Rebate Analyst” means a certified public accountant, financial analyst or Bond Counsel, or any firm of the foregoing, or financial institution (which may include Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by Borrower at the expense of Borrower, with the prior written consent of 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 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.

“Record of Advances” is as defined in Section 2.01(c) hereof.

“Regulatory Agreement” means, collectively, (i) that certain Regulatory Agreement, dated as of [CLOSING DATE], by and between Governmental Lender and 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 Governmental Lender and Borrower.

“Requisition” means, with respect to the Project Loan Fund, the requisition in the form of **Exhibit E** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or Borrower Equity Account of the Project Loan Fund, and with respect to the Costs of Issuance Fund, the requisition in the form of **Exhibit D** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Costs of Issuance Fund.

“Resolution” means the resolution adopted by 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 Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of Fiscal Agent and the trusts created hereunder.

“Revenue Fund” means the Revenue Fund established by 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 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 Costs of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

“Security Instrument” is as defined in the Recitals of this Funding Loan Agreement.

“Securities Act” means the Securities Act of 1933, as amended.

“**Seller/Service**” is as defined in the Recitals of this Funding Loan Agreement.

“**Servicing Fee**” is as defined in the Project Loan Agreement.

“**Settlement Statement**” means the settlement statement prepared by the Title Company and executed by Borrower setting forth the various funds to be collected and disbursed by the Title Company on the Delivery Date.

“**Stub Payment Amount**” means an amount equal to the sum of (a) the interest payable on the Funding Loan and (b) the ongoing fees and expenses payable with respect to the Project Loan (as provided in Section 4.02 of the Project Loan Agreement), in each case for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

“**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, dated [CLOSING DATE], executed and delivered by Governmental Lender and Borrower, together with Borrower Tax Certification, dated [CLOSING DATE], executed and delivered by Borrower.

“**Taxable Rate**” means the lower of (i) the Construction Phase Interest Rate otherwise in effect notwithstanding the Determination of Taxability plus [_____] percent ([_____]%) per annum or (ii) the Maximum Interest Rate.

“**Title Company**” means [_____].

“**Transferee Representations Letter**” is as defined in Section 2.08 hereof.

“**Treasury Regulations**” is as defined in Section 5.07 hereof.

“**Unassigned Rights**” means all of the rights of 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/or paid its fees and expenses, to payment to Fiscal Agent by 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 5.10 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.

“**Uniform Commercial Code**” means the Uniform Commercial Code as promulgated in the applicable jurisdiction.

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

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. 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. 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. 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. 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

2.01. *Terms.*

- (a) The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount. Subject to Section 2.10 hereof, the Funding Loan shall be originated and funded by Initial Funding Lender to Governmental Lender in accordance with Section 2.01(b) below. 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 be originated by Initial Funding Lender on a draw-down basis. The proceeds of the Funding Loan shall be advanced by Initial Funding Lender in installments directly to Fiscal Agent for deposit into the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement, in the form of Requisition attached as Exhibit E hereto and the certificate described below. Notwithstanding anything in the Financing Documents to the contrary, each Advance Request must be accompanied by a Certificate of an Authorized Officer of Borrower (which may be included in the Requisition described above) that, as of the date of such Certificate (A) Borrower has not been advised that the Bond Counsel Approving Opinion may no longer be relied upon, (B) to the knowledge of Borrower, there has been no adverse change in pertinent existing law or regulations or interpretations thereof, including, but not limited to, regulations, rulings and interpretations of the Internal Revenue Service, subsequent to the date of issuance of the Bond Counsel Approving Opinion, (C) the representations, covenants, certifications and statements contained in Borrower Tax Certification are true and accurate and are being complied with, and (D) to the knowledge of Borrower, no litigation is pending affecting the issuance, legality or validity of the Governmental Note or the exclusion of interest on the Governmental Note from gross income for federal income tax purposes.

Upon the advancement of the proceeds of the Funding Loan in accordance with the terms hereof, the principal amount of the Governmental Note in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of Governmental Lender or Fiscal Agent. The initial installment of the Funding Loan shall be in the amount of \$[LESSER OF 5% OR \$50,100], which amount shall be advanced by Initial Funding Lender and [credited to][deposited into] the Project Loan Fund on the Delivery Date for application as provided in Section 2.11 hereof [and, notwithstanding the provisions of the immediately succeeding paragraph of this subsection (b), no Advance Request, Requisition or Certificate shall be necessary in connection with such initial advance]. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional

amounts of the Funding Loan may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to receipt by Fiscal Agent of (i) the prior written consent of Initial Funding Lender and Freddie Mac and (ii) an opinion of Bond Counsel (which shall also be addressed to Funding Lender Representative) to the effect that such extension will not adversely affect the tax-exempt status of the Governmental Note.

In the event that Initial Funding Lender, Governmental Lender or Borrower determines that legislative, judicial or other developments have occurred or other circumstances have emerged which could result in interest on installments of the Funding Loan not yet advanced in accordance with this Section 2.01(b) (referred to herein as the “*Remaining Available Amount*”) not being excluded from gross income for federal income tax purposes, or otherwise determines in good faith that it is in its best interest to convert the Funding Loan into a fully funded obligation of Governmental Lender in order to assure that interest on the Governmental Note will remain excluded from gross income for federal income tax purposes, and, in the case of such determination by Borrower, such action will resolve the uncertainty with respect to the exclusion of interest on the Governmental Note from gross income for federal income tax purposes and will not jeopardize receipt of previously committed unfunded debt or equity funding for the Project, then such party may provide a written letter of direction (a “*Draw-Down Notice*”) to the other two parties and to Fiscal Agent to cause the Remaining Available Amount of the Funding Loan to be funded. The Draw-Down Notice, if given, shall take effect on the fifth (5th) Business Day following the date on which written notification from Initial Funding Lender, Governmental Lender or Borrower has been given to the other two parties and to Fiscal Agent (or such lesser or greater number of Business Days to which Initial Funding Lender, Governmental Lender and Borrower may agree in writing, with written notice to Fiscal Agent), referencing the Draw-Down Notice and containing substantially the following words: “The [Borrower/Initial Funding Lender/Governmental Lender] elects to [draw/fund] the Remaining Available Amount of the Funding Loan (\$ _____) effective _____ (the “*Draw-Down Date*”).” Notwithstanding the foregoing, any Draw-Down Notice received after 10:00 a.m. on any Business Day, or on day that is not a Business Day, will be treated as if given on the next succeeding Business Day, unless otherwise agreed to by Initial Funding Lender, Governmental Lender and Borrower. The Draw-Down Notice will be delivered in the manner provided for notices under the Funding Loan Agreement and the Project Loan Agreement.

- (c) Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of the Funding Loan advanced by Initial Funding Lender from time to time in accordance with the provisions of Section 2.01(b) above (the “*Record of Advances*”). The principal amount due on the Governmental Note shall be only such amount as has been advanced by Initial Funding Lender as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by Fiscal Agent in such regard will be conclusive evidence of the outstanding principal amount of the Funding Loan (absent manifest error). Fiscal Agent shall notify Governmental Lender, Seller/Service, Freddie Mac and Borrower if any advance of the proceeds of the Funding Loan is not made by Initial Funding Lender when due hereunder.
- (d) The Funding Loan shall bear interest payable on each Funding Loan Payment Date at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Funding Loan which has been advanced hereunder and is outstanding as reflected in the Record of Advances.

- (e) The Funding Loan shall mature on the Maturity Date, subject to scheduled monthly principal payments and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. If the Conversion Date occurs on or prior to the initial Forward Commitment Maturity Date, then the unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the initial Funding Loan Amortization Schedule provided on the Delivery Date and attached as Schedule 1 to the Governmental Note, provided that, at Funding Lender's discretion, a new Funding Loan Amortization Schedule may be provided on the Conversion Date that reflects the Conversion Date and the term of the Permanent Phase. If the Forward Commitment Maturity Date is changed by Freddie Mac in accordance with the Freddie Mac Commitment and the Construction Phase Financing Agreement, the first principal payment date under the Funding Loan Amortization Schedule may be changed consistent with the terms thereof, *provided, however*, if the Forward Commitment Maturity Date is extended, the Funding Loan Amortization Schedule shall automatically be extended to (i) the first day of the month immediately succeeding the Conversion Date if the Conversion Date occurs on the first calendar day of a month, or (ii) the first day of the second month immediately succeeding the Conversion Date if the Conversion Date occurs on a day other than the first calendar day of the month (in either case with the succeeding principal installments remaining consistent with the original schedule but for them occurring on later dates), and any change of amortization shall be subject to the receipt by Fiscal Agent, Initial Funding Lender and Governmental Lender of an opinion of Bond Counsel (which shall also be addressed to Seller/Servicer and Freddie Mac) on or prior to the Conversion Date to the effect that such change of the Funding Loan Amortization Schedule will not adversely affect the exclusion of interest on the Governmental Note from the gross income of the holders thereof for federal income tax purposes. Additionally, in the event the outstanding amount of the Funding Loan on the Conversion Date is greater than or 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 greater or lesser outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment, subject to receipt of an opinion of Bond Counsel as aforesaid. In the event the initial Funding Loan Amortization Schedule is modified in accordance with this Section 2.01(e), a replacement Funding Loan Amortization Schedule will be provided by Seller/Servicer which will be attached to the Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.
- (f) Payment of principal of, Prepayment 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 Funding Lender (unless otherwise directed by Funding Lender).
- (g) Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited with Fiscal Agent to pay, and 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.
- (h) 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 Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, Funding Lender shall apply, in its sole discretion, and set off such excess interest received by 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.

2.02. Pledged Security. To secure the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by 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 Continuing Covenant Agreement, Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto 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 Funding Lender:

- (a) All right, title and interest of Governmental Lender in and to all Revenues;
- (b) All right, title and interest of 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 proceeds or condemnation awards, payments, settlements or other compensation to be paid in connection therewith), 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 Governmental Lender or any other Person is or may become entitled to do under said documents.
- (c) Except for funds, money or securities in the Costs of Issuance Fund, 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 Governmental Lender or by anyone on its behalf or with its written consent to 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 Governmental Lender or its successors or assigns shall pay or cause to be paid to Funding Lender in full the principal, interest and Prepayment 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 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 Governmental Lender, cease, terminate and be void, and thereupon Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.09 and 4.10 hereof and Article IX hereof, reconvey to Governmental Lender the estate hereby conveyed, and assign and deliver to 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 Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement is to be and shall remain in full force and effect.

- 2.03 Limited Obligations.** The Funding Loan and the Governmental Note are special, limited obligations of Governmental Lender, payable solely from the Revenues and other funds and moneys and Pledged Security pledged and assigned hereunder. None of Governmental Lender, the State, or any political subdivision thereof (except 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 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 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. 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 Borrower under the Project Loan Agreement. Governmental Lender has no taxing power.
- 2.04 Funding Loan Agreement Constitutes Contract.** In consideration of the origination and funding of the Funding Loan by Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of Governmental Lender with Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.
- 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 Governmental Lender by the manual or facsimile signature of an Authorized Officer of Governmental Lender, and attested by the manual or facsimile signature of another Authorized Officer of Governmental Lender, sealed with an impression or a facsimile of the seal of 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 Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of Governmental Lender had been impressed on the Governmental Note.
- 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 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.
- 2.07 Mutilated, Lost, Stolen or Destroyed Governmental Note.** In the event the Governmental Note is mutilated, lost, stolen or destroyed, Governmental Lender shall execute and 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 Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of Governmental Lender and Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing Governmental Lender and 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, Governmental Lender may pay the same without surrender thereof.

2.08 Registration; Transfer of Funding Loan; 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 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 Fiscal Agent. 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 (i) initially be registered to Initial Funding Lender, (ii) upon the Conversion Date shall be registered to Seller/Service, and (iii) upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac. 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 Governmental Lender.
- (b) Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “**Qualified Transferee**”) that delivers a letter to 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**”). Fiscal Agent may rely upon the Transferee Representations Letter delivered pursuant to this Section 2.08 and shall have no duty to investigate the facts set forth therein. Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for Funding Lender to:
 - (i) Transfer the Funding Loan to any affiliate or other party related to Funding Lender that is a Qualified Transferee.
 - (ii) Sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (A) owners or beneficial owners thereof that are Qualified Transferees or (B) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better.

In connection with any sale, assignment or transfer of the Funding Loan, Funding Lender shall give notice of such sale, assignment or transfer to Fiscal Agent and Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loan. It shall not be necessary to present, exchange, or re-authenticate the Governmental Note, in connection with any sale, assignment or transfer of the Funding Loan, provided that Funding Lender shall provide Fiscal Agent with the name and date of registration, address, and employer identification number of the assignee or transferee so that Fiscal Agent may maintain the registration records, together with any information necessary to allow Fiscal Agent to comply with any applicable tax reporting obligations.

2.09 TEL Securitization; Allocation of Funding Loan Interest. In accordance with the provisions of Section 2.08 hereof, Funding Lender may transfer the Funding Loan to a Qualified Transferee in connection with the securitization of the Funding Loan, in which event Funding Lender Representative

may direct Fiscal Agent to make all future payments with respect to the Funding Loan to the appointed master servicer for that securitization (or an account designated by such master servicer), and Fiscal Agent shall accept such direction from Funding Lender Representative. In the event that Funding Lender transfers the Funding Loan to a Qualified Transferee in accordance with the provisions of Section 2.08 hereof, Funding Lender Representative may also give notice to Fiscal Agent that Funding Lender has agreed to allow Loan Servicer to retain a portion of the monthly interest payable on the Funding Loan as additional compensation for the servicing of the Funding Loan (an “**Additional Servicing Fee**”), which Additional Servicing Fee will equal no more than an annual 2 basis points with respect to the unpaid principal balance of the Governmental Note, in which event Fiscal Agent shall accept and pay to Funding Lender such lesser amount of interest received from Loan Servicer and shall consider such payment to be in full compliance with the terms of the Governmental Note, the Project Note and all other Financing Documents with regard to the interest owed on the Funding Loan.

2.10 Funding Loan Closing Conditions; Delivery of Governmental Note. Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and Governmental Lender shall only execute and deliver to Fiscal Agent, and Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to Initial Funding Lender upon, receipt by Fiscal Agent of all 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 Governmental Lender to the effect that Governmental Lender is duly organized and existing under the laws of the Property Jurisdiction 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 Governmental Lender enforceable in accordance with their terms subject to customary exceptions.
- (c) The initial advance of the proceeds of the Funding Loan by Initial Funding Lender in the amount set forth in Section 2.01(b) hereof.
- (d) The executed Project Note and an endorsement of the Project Note by Governmental Lender in favor of Fiscal Agent.
- (e) A copy of the executed Security Instrument, the Assignment, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement.
- (f) An opinion of counsel to Borrower to the effect that 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 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 Borrower, and are legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.
- (g) A customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Governmental Note, under laws in effect on the date of such opinion, is excluded from the gross income of the holders thereof for federal income tax purposes and, where applicable, for state income tax purposes in the Property Jurisdiction.

- (h) An opinion of Bond Counsel to the effect that the Governmental Note is exempt from registration under the Securities Act, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended.
- (i) A certified copy of the Resolution.
- (j) The written request and authorization to Fiscal Agent by Governmental Lender to authenticate and deliver the Governmental Note to Initial Funding Lender upon funding to Fiscal Agent of the initial advance of proceeds of the Funding Loan.
- (k) Amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement.
- (l) A Transferee Representations Letter from Initial Funding Lender substantially in the form attached hereto as *Exhibit C*.
- (m) Confirmation that all conditions stated in Section 3.01 of the Project Loan Agreement have been satisfied.

2.11 *Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.*

- (a) Fiscal Agent shall establish, maintain and hold in trust and there is hereby established with Fiscal Agent a Project Loan Fund and therein a Project Account and a Borrower Equity Account. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.
- (b) The proceeds of the Funding Loan shall be delivered by Initial Funding Lender to Fiscal Agent on behalf of Governmental Lender in the initial installment on the Delivery Date and thereafter on a draw-down basis as provided in Section 2.01(b) hereof. Upon receipt, Fiscal Agent shall deposit such proceeds to the credit of the Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement.
- (c) [Governmental Lender shall cause Borrower to deliver from sources other than the Loans: (i) to Fiscal Agent, on or prior to the Delivery Date, the Costs of Issuance Deposit for deposit to the credit of the Costs of Issuance Fund and the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account; and (ii) to Loan Servicer, on or prior to the Delivery Date, the Stub Payment Amount.] Fiscal Agent shall [also] deposit in the Costs of Issuance Fund and the Borrower Equity Account any additional amounts delivered from time to time to Fiscal Agent and directed by Borrower or Loan Servicer to be deposited therein, excluding any proceeds of the Loans.
- (d) Upon the making of the initial deposits described above in this Section 2.11, Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and Fiscal Agent shall make disbursements of amounts in the Project Loan Fund to Borrower or otherwise as provided in Section 4.02 hereof; provided that, prior to making any such disbursements, \$[] of proceeds of the Project Loan shall be transferred by Fiscal Agent to the Costs of Issuance Fund without need of a Requisition therefor].

2.12 *Loan Payments to Loan Servicer; Loan Servicer Disbursement of Fees.*

- (a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Loan Servicer is engaged with respect to the Loans, Governmental Lender and 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 Borrower to Loan Servicer. Loan Servicer shall be entitled to retain its Servicing Fee collected from Borrower and shall remit (i) to Fiscal Agent, (A) all payments collected from Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, (B) Fiscal Agent's Ordinary Fees and Expenses, together with any other amounts due to Fiscal Agent collected by Loan Servicer from Borrower, and (C) Governmental Lender Fee, together with any other amounts due to Governmental Lender collected by Loan Servicer from Borrower, in each case in accordance with their respective instructions (provided Borrower may pay Governmental Lender Fee directly to Fiscal Agent), and (ii) to Funding Lender, any fees or other amounts that may be due to Funding Lender pursuant to the instructions of Funding Lender Representative. Any payment made in accordance with the provisions of this Section 2.12 shall be accompanied by sufficient information to identify the source and proper application of such payment. Loan Servicer shall promptly notify Fiscal Agent, Funding Lender Representative and Governmental Lender in writing of any failure of 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 Fiscal Agent and 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, Funding Lender Representative shall notify Fiscal Agent and Borrower in writing of the name and address of the transferee.

2.13 *Conversion.* If the Conversion Notice is issued in compliance with the terms of the Construction Phase Financing Agreement, Conversion will occur on the Conversion Date indicated in such Conversion Notice. If the Conversion Notice is not so issued, Conversion will not occur and neither Seller/Servicer nor Freddie Mac will have any obligations with respect to the purchase of the Funding Loan or otherwise with respect to the Loans or the Project.

ARTICLE III

PREPAYMENT OF THE FUNDING LOAN

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

- (a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon and any Prepayment Premium, 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 any Prepayment Premium, 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 any of the following:

- (i) In whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to the Project Note and receipt by Fiscal Agent of a written direction by Funding Lender Representative that the Funding Loan shall be subject to mandatory prepayment as a result thereof.
- (ii) In part, on the Funding Loan Payment Date next following the completion of the construction of the Project, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof.
- (iii) In part, in the event Borrower makes a Pre-Conversion Loan Equalization Payment.
- (iv) In whole, on or after the Forward Commitment Maturity Date [upon the occurrence of a mandatory prepayment of the Project Loan pursuant to Section 4.04(b)(ii) of the Project Loan Agreement,] at the written direction of Initial Funding Lender if the Conversion Notice is not issued by Seller/Servicer prior to the Forward Commitment Maturity Date.

3.02 Notice of Prepayment. Notice of the intended prepayment of the Funding Loan shall be given by Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to 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 all of the following:

- (a) The prepayment date,
- (b) The prepayment amount.
- (c) 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 Loan Servicer and Governmental Lender, 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

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 Fiscal Agent or by any Person authorized by Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by 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 Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.11 hereof, 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;
- (e) Costs of Issuance Fund; and
- (f) Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by Fiscal Agent. Fiscal Agent shall, at the written direction of an Authorized Officer of Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as Governmental Lender or 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.

4.02 Project Loan Fund.

- (a) Deposit. Fiscal Agent shall deposit the proceeds of the Funding Loan delivered by Initial Funding Lender into the Project Account of the Project Loan Fund[, including amounts to pay capitalized interest on the Loans during the Construction Phase, if any,] upon receipt of each advance thereof as provided in Section 2.11(b) hereof. Fiscal Agent shall deposit [the Borrower Equity Deposit] into the Borrower Equity Account of the Project Loan Fund [and any additional] [any] amounts delivered from time to time to Fiscal Agent as a Borrower Equity Deposit and directed by Borrower or Loan Servicer to be deposited therein (excluding any proceeds of the Loans), as provided in Section 2.11(c) hereof.
- (b) Disbursements. Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by Fiscal Agent for the purpose of [(i) paying interest on the Funding Loan [and the Fee Component, in each case] when due during the Construction Phase, and (ii)] paying Costs of the Project. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.
- (c) Transfers and Requisitions. Fiscal Agent shall automatically transfer amounts, if any, on deposit in Borrower Equity Account of the Project Loan Fund to the Administration Fund to pay to the appropriate party its accrued fees that are included in the Fee Component that are due and payable as set forth herein or upon receipt of an invoice, without any need for a Requisition or other written direction. Unless Fiscal Agent is instructed otherwise by Initial

Funding Lender, Fiscal Agent shall automatically transfer amounts in the [Project Loan Account of the] Project Loan Fund received from Initial Funding Lender as advances on the Funding Loan and designated as capitalized interest up to an aggregate amount of \$[] and thereafter, from funds, if any, in the Borrower Equity Account of the Project Loan Fund to the Loan Payment Fund to pay interest on the Project Loan and the Funding Loan, in each case without any need for a Requisition or other written direction. Fiscal Agent shall make disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b)[(ii)] of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of Borrower and countersigned by an Authorized Officer of Governmental Lender and an Authorized Officer of Loan Servicer or, if there is no Loan Servicer, Funding Lender Representative (signifying the consent to the Requisition by such parties); *provided, however*, a Requisition shall not be required for the transfer of funds on the Delivery Date into escrow with the Title Company for disbursement of funds in accordance with the Settlement Statement. Notwithstanding the foregoing, Governmental Lender agrees that if Governmental Lender has not signed a Requisition or otherwise objected in writing to any disbursement from the Project Account or Borrower Equity Account 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 Fiscal Agent by electronic means), Governmental Lender shall be deemed to have approved such disbursement. Furthermore, if Governmental Lender and Funding Lender disagree as to whether a particular disbursement from the Project Account or Borrower Equity Account 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 but in any event, within ten (10) days of receipt of the disbursement request, Funding Lender can approve the disbursement and Fiscal Agent shall pay it from the Project Account or Borrower Equity Account, as applicable.

Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions and provisions of the Construction Continuing Covenant Agreement. The countersignature of the Authorized Officer of Loan Servicer or, if no Loan Servicer, Funding Lender Representative, on a Requisition shall be deemed a certification and, insofar as Fiscal Agent and Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of Borrower and countersigned by an Authorized Officer of Governmental Lender and an Authorized Officer of Loan Servicer or, if no Loan Servicer, Funding Lender Representative, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, during any period in which an Event of Default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by Funding Lender Representative or Loan Servicer to Fiscal Agent and Governmental Lender, and Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default), no signature of an Authorized Officer of Borrower shall be required for any Requisition duly signed by an Authorized Officer of Governmental Lender and an Authorized Officer of Loan Servicer.

- (d) If a Requisition signed by an Authorized Officer of Borrower and countersigned by an Authorized Officer of Governmental Lender (as applicable) and an Authorized Officer of Loan Servicer or Funding Lender Representative or, as permitted hereunder, without the signature of an Authorized Officer of Borrower, is received by Fiscal Agent, the requested disbursement shall be paid by Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, Fiscal Agent shall close the Project Loan Fund.

Notwithstanding anything in this Funding Loan Agreement or in the other Financing Documents to the contrary, prior to the payment of:

- (i) A Requisition of any portion of the final 10% of proceeds of the Funding Loan deposited in the Project Loan Fund, Governmental Lender and Bond Counsel shall have received (which receipt shall be confirmed in writing by Governmental Lender at Fiscal Agent's request) a Certificate of an Authorized Officer of Borrower satisfactory to them that (i) Borrower has complied with Borrower Tax Certification delivered on or prior to the Delivery Date, and (ii) Borrower will be able to deliver or cause delivery of the Accountant's and Architect's Certificate for Final Draw-Down of Funds and Borrower's Certificate as to Use of Loan Proceeds (each as set forth in Borrower Tax Certification) at the time of final draw-down in form and substance substantially the same as the certificates specified in Borrower Tax Certification delivered on or prior to the Delivery Date.
- (ii) The final Requisition of proceeds of the Funding Loan on deposit in the Project Loan Fund, and provided the Funding Loan has been advanced in full, Governmental Lender and Bond Counsel shall have received (which receipt shall be confirmed in writing by Governmental Lender at Fiscal Agent's request), the Accountant's and Architect's Certificate for Final Draw-Down of Funds and Borrower's Certificate as to Use of Loan Proceeds (each as set forth in Borrower Tax Certification) in form and substance satisfactory to Governmental Lender and Bond Counsel.
- (e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Project Loan Fund following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement, evidenced by an instrument signed by Funding Lender Representative or Loan Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the exclusion of interest on the Governmental Note from the gross income of the holders thereof for federal income tax purposes; provided, that any amounts in the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event that (i) there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement (as evidenced by an instrument signed by Funding Lender Representative), (ii) the Conversion Date has occurred, and (iii) no default by Borrower exists under this Funding Loan Agreement or any of the

Project Loan Documents, such funds shall be paid by Fiscal Agent to Borrower at the written direction of Funding Lender Representative or Loan Servicer.

- (f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.07 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

4.03 Application of Revenues.

- (a) All Revenues received by Fiscal Agent shall be deposited by Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except for each of the following:
 - (i) Proceeds of the Funding Loan received by Fiscal Agent pursuant to Section 2.01(b), which shall be applied in accordance with the provisions of Section 2.11 hereof.
 - (ii) Deposits into the Loan Prepayment Fund as required under subsection (c) of this Section 4.03.
 - (iii) Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable.
 - (iv) Amounts required to be transferred between funds and accounts as provided in this Article IV.
- (b) Subject to Section 2.12 hereof, on each Funding Loan Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, 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 than any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).
- (c) Promptly upon receipt, Fiscal Agent shall deposit each of the following directly into 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
 - (ii) Funds paid to Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a)

- (iii) Amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.
- (d) Subject to Section 2.12 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Funding Loan Payment Date, 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: (i) the Revenue Fund and (ii) 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.

4.04 Application of Loan Payment Fund. Subject to Section 2.12 hereof, Fiscal Agent shall charge the Loan Payment Fund, on each Funding Loan Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Funding Loan 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 Funding Loan 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 Funding Loan 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 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.

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 Funding Loan 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 Funding Loan Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by 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.

4.06 Administration Fund. Subject to Section 2.12 hereof, Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from Loan Servicer (or Borrower if no Loan Servicer exists for the Loans) designated for deposit into such fund, together with amounts, if any, transferred by Fiscal Agent from the Project Loan Fund for deposit into the Administration Fund pursuant to Section 4.02(c). Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by Fiscal Agent and used:

FIRST, to pay to Fiscal Agent when due the Fiscal Agent's Ordinary Fees and Expenses;

SECOND, to pay to 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 Rebate Analyst;

FOURTH, to pay to Fiscal Agent any Fiscal Agent's Extraordinary Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to Borrower and Loan Servicer;

FIFTH, to pay to 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 Fiscal Agent and Loan Servicer;

SIXTH, to pay to Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by Funding Lender Representative to 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, Fiscal Agent shall give notice to Borrower and Loan Servicer, if any, of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to Fiscal Agent of the amount of such deficiency. Upon payment by Borrower or Loan Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by Fiscal Agent.

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

4.07 *Investment of Funds.* The money held by 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 Fiscal Agent, at the written direction of 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 (a) six (6) months from the date of investment and (b) the date such money is needed; provided, that if 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. Such investments may be made through the investment or securities department of Fiscal Agent. Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized and, in such capacity, Fiscal Agent or such affiliate may charge its ordinary and customary fees for such trades, including account maintenance fees, which fees, for purposes of this Funding Loan Agreement, shall be treated as Fiscal Agent's Extraordinary Fees and Expenses. Fiscal Agent shall be entitled to assume, absent receipt by 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. In no event shall Fiscal Agent be required to provide supervision, recommendations, or advice with respect to any investment. In the absence of written direction from Borrower, Fiscal Agent shall hold amounts on deposit in the funds and accounts established under this Funding Loan Agreement uninvested.

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 current market price obtainable (but not less than par) whenever it shall be necessary to do so 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. Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

Governmental Lender acknowledges that to the extent that regulations of the Office of the Comptroller of the Currency or other applicable regulatory agency grant Governmental Lender the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, Governmental Lender specifically waives compliance with 12 C.F.R. 12 and hereby notifies Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur. Fiscal Agent shall furnish Borrower, Funding Lender and 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 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.

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

4.09 *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 Governmental Lender, Fiscal Agent, Rebate Analyst, Funding Lender and Loan Servicer and other amounts required to be paid hereunder or under any of the Project Loan Documents, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to Fiscal Agent by Governmental Lender with respect to amounts due to Governmental Lender and by Funding Lender Representative or Loan Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by Rebate Analyst with respect to amounts due to Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to Borrower.

4.10 *Rebate Fund; Compliance with Tax Certificate.* The Rebate Fund shall be established by Fiscal Agent and held and applied as provided in this Section 4.10. 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 Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by Rebate Analyst, for payment to the government of the United States of America, and none of Governmental Lender, Borrower or

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. Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of Borrower, Governmental Lender or 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 Borrower, Governmental Lender or Rebate Analyst.

Within 55 days of the end of each fifth Rebate Year, Borrower shall cause 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, Borrower shall cause Rebate Analyst to provide such calculations to Fiscal Agent and Governmental Lender. In the event that Borrower fails to provide such information to Fiscal Agent and Governmental Lender within 55 days of the end of each fifth Rebate Year, Fiscal Agent, at the expense of Borrower, shall select Rebate Analyst, with the prior written approval of Governmental Lender, and shall cause 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 Borrower, Governmental Lender or Rebate Analyst, an amount shall be deposited to the Rebate Fund by Fiscal Agent from amounts provided by 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.

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

- (a) Not later than 60 days after the end of (i) the fifth Rebate Year, and (ii) 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
- (b) 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 4.10 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 Rebate Analyst and provided to Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable 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 4.10, 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 Fiscal Agent, shall be withdrawn and remitted to Borrower.

Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.10 as are required under Section 148(f) of the Code to the extent furnished to Fiscal Agent. Borrower shall or shall cause Rebate Analyst to provide to Governmental Lender and Fiscal Agent copies of all rebate computations made pursuant to this Section 4.10. Fiscal Agent shall keep and make available to Borrower such records concerning the investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by Fiscal Agent as may be requested by Borrower in order to enable Borrower to cause 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 Governmental Lender nor 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 of interest on the Governmental Note from the gross income of the holders thereof for federal income tax purposes, a copy of which shall be provided to Fiscal Agent and Funding Lender Representative, at the expense of Borrower.

4.11 *Costs of Issuance Fund.* [IF PROCEEDS TO BE USED FOR COI AND PAID BY TITLE: The Fiscal Agent shall transfer all money credited to the Cost of Issuance Fund to the Title Company for disbursement in accordance with the Settlement Sheet without any need for a Requisition therefor.] **[IF ONLY EQUITY TO BE USED FOR COI AND BEING PAID DIRECTLY TO TITLE COMPANY:** No moneys shall be deposited in the Costs of Issuance Fund, all Costs of Issuance being separately provided for by the Borrower from the Borrower Equity deposited directly with the Title Company on or prior to the Delivery Date,] **[IF COI TO BE PAID BY THE FISCAL AGENT:** The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of Exhibit D to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.]

4.12 *Reports from Fiscal Agent.* Fiscal Agent shall, on or before the fifteenth (15th) day of each month, file with Funding Lender Representative, Loan Servicer, Governmental Lender and Borrower a statement setting forth in respect of the preceding calendar month all of the following:

- (a) 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.
- (b) The amount on deposit with it at the end of such month to the credit of each fund and account.
- (c) A brief description of all obligations held by it as an investment of money in each such fund and account.

- (d) Any other information which Funding Lender Representative or Governmental Lender may reasonably request and to which Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of Funding Lender, Fiscal Agent, at the cost of 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 Governmental Lender and Funding Lender Representative or Loan Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

- 5.01 *Payment of Principal and Interest.*** 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, Prepayment 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.
- 5.02 *Performance of Covenants.*** 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.
- 5.03 *Instruments of Further Assurance.*** 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 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, Prepayment 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 Governmental Lender or 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 shall be deemed to modify or change the obligations of Governmental Lender under this Section 5.03. 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.

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

- (a) The submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against Governmental Lender with respect to the Loans.
- (b) Any change in the location of Governmental Lender's principal office or any change in the location of Governmental Lender's books and records relating to the transactions contemplated hereby.
- (c) The occurrence of any default or Event of Default of which Governmental Lender has actual knowledge.

- (d) The commencement of any proceedings or any proceedings instituted by or against 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.
- (e) The commencement of any proceedings by or against 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 Governmental Lender or any of its assets relating to the Loans.

5.04 Inspection of Project Books. 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 Fiscal Agent or Funding Lender Representative may from time to time reasonably designate.

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

- (a) Alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which Governmental Lender is a party, or which has been assigned to 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
- (b) 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.

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

5.07 Tax Covenants.

- (a) Governmental Lender's Covenants. Governmental Lender covenants to and for the benefit of 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 "*Treasury Regulations*") or which would otherwise cause the interest payable on the Governmental Note to be includable in the gross income of the holders thereof for federal income tax purposes;
 - (ii) Enforce or cause to be enforced all obligations of Borrower under the Regulatory Agreement in accordance with its terms and seek to cause 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 the gross income of the holders thereof 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 Governmental Lender on the Funding Loan will be excluded from the gross income of the holders thereof for federal income tax purposes pursuant to the Code, except in the event where 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 issued under Section 149 of the Code.

In furtherance of the covenants in this Section 5.07, Governmental Lender and 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. By its acceptance of this Funding Loan Agreement 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.

- (b) Fiscal Agent’s Covenants. 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). Fiscal Agent covenants to and for the benefit of 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 Treasury Regulations thereunder or would cause the interest on the Governmental Note to be includable in the gross income of the holders thereof for federal income tax purposes; provided that 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 Borrower, Governmental Lender, Funding Lender Representative or 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, 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 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 Borrower, Governmental Lender or Rebate Analyst. Fiscal Agent further covenants that should Governmental Lender or Borrower file with Fiscal Agent (it being understood that neither Governmental Lender nor Borrower has an obligation to so file), or should 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 Fiscal Agent will comply with any written instructions of

Governmental Lender, Borrower or Funding Lender Representative 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 Fiscal Agent will bear no liability to Governmental Lender, Borrower, Funding Lender or Funding Lender Representative for investments made in accordance with such instructions.

5.08 Representations and Warranties of Governmental Lender. Governmental Lender hereby represents and warrants as follows:

- (a) Governmental Lender is a public corporation and instrumentality of the Property Jurisdiction, duly organized and validly existing under the laws of the State.
- (b) 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 Governmental Lender to that end has been duly and validly taken.
- (d) The Financing Documents to which Governmental Lender is a party have been validly authorized, executed and delivered by Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of Governmental Lender, enforceable against 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.

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

6.01 Events of Default. The occurrence of any one or more of the following will constitute an Event of Default with respect to the Funding Loan under this Funding Loan Agreement:

- (a) Failure to pay the principal of, Prepayment Premium, if any, or interest on the Funding Loan when due, whether on a Funding Loan Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise.
- (b) Failure to observe the covenants set forth in Section 5.05 hereof.
- (c) Failure to observe or perform any of the covenants, agreements or conditions on the part of 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 Governmental Lender from Fiscal Agent or 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 Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure.

- (d) Receipt by Fiscal Agent of written notice from Funding Lender Representative of the acceleration of the Project Loan by Funding Lender or Funding Lender Representative with respect to an “Event of Default” under the Project Loan Agreement or the Continuing Covenant Agreement.

Fiscal Agent will promptly notify Governmental Lender, Loan Servicer and 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.

- 6.02 Acceleration; Other Remedies Upon Event of Default.** Upon the occurrence of an Event of Default, Fiscal Agent shall, upon the written request of Funding Lender Representative, by notice in writing delivered to 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, Fiscal Agent may, but only if directed in writing by Funding Lender Representative, by written notice to Governmental Lender and Fiscal Agent, rescind and annul such declaration and its consequences if Governmental Lender or Borrower shall pay to or deposit with 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 all of Fiscal Agent’s Extraordinary Fees and Expenses incurred to date 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 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, Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of Funding Lender, may also proceed to protect and enforce any rights of Fiscal Agent and, to the full extent that Funding Lender itself might do, the rights of Funding Lender under the laws of the Property Jurisdiction or under this Funding Loan Agreement by such of the following remedies as Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of Funding Lender Representative (which consent may be given in the sole discretion of Funding Lender Representative):

- (a) By mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loan and to require Governmental Lender to carry out any covenants or agreements with or for the benefit of 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.

- (b) By pursuing any available remedies under the Project Loan Agreement, the Regulatory Agreement or any other Financing Document.
- (c) By realizing or causing to be realized through sale or otherwise upon the Pledged Security.
- (d) By action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of 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 Fiscal Agent in order to have the claim of Funding Lender against Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to Fiscal Agent or to 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 Fiscal Agent or Funding Lender hereunder or under the Project Loan Agreement, the Regulatory Agreement, the Continuing Covenant 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 Fiscal Agent or Funding Lender, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

6.03 *Funding Lender Representative Control of Proceedings.* Notwithstanding anything to the contrary herein, 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, 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 Fiscal Agent or Governmental Lender (and in connection therewith Fiscal Agent shall transfer or assign to Funding Lender Representative all of its interest in the Pledged Security at the request of 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 Funding Lender Representative.

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 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. 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 Property Jurisdiction and the United States of America.

6.05 *Application of Money After Default.* All money collected by Fiscal Agent at any time pursuant to this Article VI shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by 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 Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all of Fiscal Agent's Extraordinary Fees and Expenses incurred in exercising any remedies under this Funding Loan Agreement.
- (b) To the extent directed in writing by Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of Funding Lender pursuant to the Continuing Covenant 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 Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

SECOND, to Funding Lender, unpaid principal of and Prepayment 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 Funding Lender for the payment of the principal of, Prepayment 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.

6.06 Remedies Not Exclusive. No right or remedy conferred upon or reserved to Fiscal Agent, Funding Lender or 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 Fiscal Agent, Funding Lender or Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

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 Fiscal Agent at the written direction of 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 Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by 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 Funding Lender.

6.08 Termination of Proceedings. In case Fiscal Agent (at the direction of Funding Lender Representative) or 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 Governmental Lender, Fiscal Agent, Funding Lender Representative, Borrower and 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 Fiscal Agent and Funding Lender Representative shall continue as if no such proceedings had been taken. **Waivers of Events of Default.** 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 Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by 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 Governmental Lender, Fiscal Agent, Borrower, Loan Servicer, Funding Lender Representative and 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.

6.10 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 Funding Loan 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.

6.11 Assignment of Project Loan; Remedies Under the Project Loan.

- (a) Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing Fiscal Agent to effect an acceleration of the Funding Loan, to instruct Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other Project Loan Documents to Funding Lender Representative, in which event Fiscal Agent shall do all of the following:
 - (i) Endorse and deliver the Project Note to Funding Lender Representative and assign (in recordable form) the Security Instrument.
 - (ii) Execute and deliver to Funding Lender Representative all documents prepared by Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to Funding Lender Representative.
 - (iii) Execute all such documents prepared by Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (i) and (ii).
- (b) Fiscal Agent's assignments to Funding Lender Representative pursuant to this Section 6.11 shall be without recourse or warranty except that Fiscal Agent shall represent and warrant in connection therewith:
 - (i) That Fiscal Agent has not previously endorsed or assigned any such documents or instruments and

(ii) That Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(c) Funding Lender Representative shall have the right, in its own name or on behalf of Governmental Lender or 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.

6.12 Substitution. Upon receipt of written notice from Funding Lender Representative and the approval of Governmental Lender as and to the extent permitted under the Regulatory Agreement, 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 Borrower (the “*New Borrower*”), provided that if Fiscal Agent, Funding Lender or a nominee of Fiscal Agent or 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 Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Regulatory Agreement (or executed and recorded an assumption of all of 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, will not adversely affect the exclusion of interest on the Governmental Note from the gross income of the holders thereof for federal income tax purposes.

ARTICLE VII

CONCERNING FISCAL AGENT

7.01 Standard of Care. 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 Fiscal Agent. 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 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 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 Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and 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 Fiscal Agent, 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 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) Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of Fiscal Agent except for willful misconduct or negligence by the officer or employee of Fiscal Agent as the case may be; and
 - (ii) 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 Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to Fiscal Agent, or exercising any trust or power conferred upon Fiscal Agent under this Funding Loan Agreement.

When Fiscal Agent incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

7.02 *Reliance Upon Documents.* Except as otherwise provided in Section 7.01 hereof:

- (a) 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 in good faith deemed by it to be genuine and correct and to have been signed or sent by 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 Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of Governmental Lender by an Authorized Officer of Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of Governmental Lender may be evidenced to Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of Governmental Lender.
- (c) Any notice, request, certificate, statement, requisition, direction, election, order or demand of Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of Borrower by any Authorized Officer of Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of Borrower may be evidenced to Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of Borrower.
- (d) Any notice, request, certificate, statement, requisition, direction, election, order or demand of Loan Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the

name of Loan Servicer by an Authorized Officer of Loan Servicer (unless other evidence in respect thereof be herein specifically prescribed).

- (e) Any notice, request, direction, election, order or demand of Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of Funding Lender Representative by any Authorized Officer of Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed).
- (f) In the administration of the trusts of this Funding Loan Agreement:
 - (i) Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, custodians, nominees, receivers or attorneys appointed with due care, and
 - (ii) Fiscal Agent may consult with counsel (who may be counsel for Governmental Lender, Loan Servicer or 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, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel.
- (g) Whenever in the administration of the trusts of this Funding Loan Agreement, 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 Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of Governmental Lender or Borrower and such certificate shall in the absence of bad faith on the part of Fiscal Agent be full warrant to Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion 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.
- (h) The recitals herein and in the Governmental Note (except Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon Fiscal Agent. 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 Governmental Lender or Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and Fiscal Agent shall incur no liability or responsibility in respect of any of such matters.
- (i) 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 Fiscal Agent shall be subject to the provisions of this Section 7.02(i).
- (j) 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 Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. 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 Fiscal Agent shall receive from Governmental Lender or 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 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 Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(j).

- (k) 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 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 Funding Lender.
- (l) 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 Funding Lender Representative pursuant to Section 6.03 hereof, unless Funding Lender Representative shall have offered to Fiscal Agent security or indemnity satisfactory to Fiscal Agent 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 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.

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 and no responsibility for compliance with any state or federal securities laws in connection with the Governmental Note. In acting or omitting to act pursuant to the Project Loan Agreement or any other documents executed in connection herewith, 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.

Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

Any resolution, certification, notice, request, direction, election, order or demand delivered to Fiscal Agent pursuant to this Section 7.02 shall remain in effect until Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

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 7.15 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 Fiscal Agent to liability under any environmental law, statute, regulation or similar requirement relating to the environment, 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. 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.

7.03 Use of Proceeds and Other Moneys. 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 or any other moneys paid over by Fiscal Agent in accordance with the provisions of this Funding Loan Agreement except as provided herein.

7.04 Trust Imposed. All money received by Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

7.05 Compensation of Fiscal Agent. Fiscal Agent shall be entitled to its Fiscal Agent's Ordinary 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 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. Fiscal Agent shall be entitled to Fiscal Agent's Extraordinary Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided Fiscal Agent shall not perform any Extraordinary Services or incur any Fiscal Agent's Extraordinary Fees and Expenses without the consent of Funding Lender Representative. If any property, other than cash, shall at any time be held by Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, 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 Fiscal Agent for its services and reimbursement to 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, 4.09 and 6.05 hereof. Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.08 hereof, 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 Borrower fails to pay the Fiscal Agent's Ordinary Fees and Expenses or, if applicable, the Fiscal Agent's Extraordinary Fees and Expenses as required by the Project Loan Agreement.

Borrower shall indemnify and hold harmless Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against all of the following:

- (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 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.
- (c) All costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that 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 Borrower ceases to own the Project.

In the event that any action or proceeding is brought or claim made against 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, 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 Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.05 shall survive the termination of this Funding Loan Agreement.

7.06 *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 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 7.10 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 7.06, 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 Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.06 and another association or corporation is eligible, Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.08 hereof.

7.07 *Merger of Fiscal Agent.* Any association or corporation into which 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 Fiscal Agent in the Loans.

7.08 *Resignation by Fiscal Agent.* Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to Governmental Lender, Borrower, Loan Servicer and Funding Lender Representative. Such notice to Governmental Lender, Borrower, Loan Servicer and Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of 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 Fiscal Agent hereunder; provided, however, that after giving notice of resignation, Fiscal Agent may petition any court of competent jurisdiction for appointment of a temporary Fiscal Agent until a successor Fiscal Agent is appointed. The rights of Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive Fiscal Agent's resignation as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

7.09 *Removal of Fiscal Agent.* Fiscal Agent may be removed at any time either with or without cause with the consent of Funding Lender Representative (which consent of Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by Governmental Lender and delivered to Fiscal Agent, Loan Servicer and Borrower. Fiscal Agent may also be removed by a written instrument signed by Funding Lender Representative and delivered to Fiscal Agent, Loan Servicer, Governmental Lender and Borrower. In each case written notice of such removal shall be given to Loan Servicer, Borrower and to Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but 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 Fiscal Agent hereunder. The rights of Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive Fiscal Agent's removal as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

7.10 *Appointment of Successor Fiscal Agent.*

- (a) In case at any time Fiscal Agent shall resign or be removed, or be dissolved, or shall be in the 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 Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of 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 Governmental Lender, with the written consent of 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 Governmental Lender. If Governmental Lender fails to appoint a successor Fiscal Agent within thirty (30) days following receipt of notice of the resignation or removal of Fiscal Agent pursuant to Section 7.08 or Section 7.09 hereunder, as applicable, 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 7.10 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.08 hereof or of removal of Fiscal Agent pursuant to Section 7.09 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.

7.11 *Concerning Any Successor Fiscal Agent.* Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to 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 Governmental Lender, Borrower or 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 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 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 VII, 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 Funding Lender.

7.12 *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.

7.13 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.* It is the intent of Governmental Lender and Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the Property Jurisdiction) 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 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 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 Fiscal Agent, with the consent of Governmental Lender and Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that 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 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 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 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 7.13. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to Governmental Lender and Fiscal Agent.

Should any instrument in writing from Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by 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 Governmental Lender, Fiscal Agent and Borrower. If Governmental Lender shall fail to deliver the same within thirty (30) days of such request, Fiscal Agent is hereby appointed attorney-in-fact for Governmental Lender to execute, acknowledge and deliver such instruments in 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 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 Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by Fiscal Agent.
- (b) All rights, powers, trusts, duties and obligations conferred or imposed upon Fiscal Agent shall be conferred or imposed upon or exercised or performed by Fiscal Agent, or by 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 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 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 Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.
- (e) Fiscal Agent at any time by an instrument in writing with the concurrence of 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 7.13 and in case an Event of Default shall have occurred and be continuing, 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 Governmental Lender, and upon the request of Fiscal Agent, Governmental Lender shall join with 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 7.13.
- (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 Funding Lender Representative and delivered to Fiscal Agent shall be deemed to have been delivered to each such co-fiscal agent or separate fiscal agent.
- (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 Fiscal Agent.

The total compensation of Fiscal Agent and any co-fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.05 hereof.

- 7.14 *Notice of Certain Events.*** Fiscal Agent shall give written notice to Governmental Lender, Loan Servicer and Funding Lender Representative of any failure by Borrower to comply with the terms of the Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.
- 7.15 *Filing of Financing Statements.*** Fiscal Agent shall, at the expense of Borrower, file or record or cause to be filed or recorded all continuation statements for financing statements that have been delivered to Fiscal Agent on which Fiscal Agent is named as a secured party or additional secured party for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Funding Loan pursuant to the authority of the Uniform Commercial Code. Upon the filing of any such continuation statement Fiscal Agent shall immediately notify Governmental Lender, Borrower, Funding Lender Representative and Loan Servicer that the same has been done. If direction is given by Loan Servicer or Funding Lender Representative, Fiscal Agent shall file all continuation statements in accordance with such directions.

Notwithstanding anything to the contrary contained herein, 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 Fiscal Agent shall have been notified by Funding Lender that any such initial filing or description of collateral was or has become defective, 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 7.15 and in filing any continuation statements in the same filing offices as the initial filings were made.

- 7.16 *USA Patriot Act Requirements of 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, Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. 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

- 8.01 *Amendments to 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 Fiscal Agent and Governmental Lender, and with the prior written consent of Funding Lender Representative.
- 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.*** Neither Governmental Lender nor Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of Funding Lender

Representative. Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by Funding Lender Representative, including entering into the amendments attached as exhibits to the Construction Phase Financing Agreement on the Conversion Date.

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 all of the following have occurred:

- (a) Funding Lender Representative shall have consented to the same in writing in its sole discretion.
- (b) Funding Lender Representative, Governmental Lender and Fiscal Agent shall have received, at the expense of Borrower:
 - (i) 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 the gross income of the holders thereof for federal income tax purposes, and
 - (ii) An opinion of counsel acceptable to 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

9.01 *Discharge of Lien.*

- (a) These presents and the estates and rights hereby granted shall cease, determine and be void if Governmental Lender shall:
 - (i) Pay or cause to be paid to Funding Lender the principal, interest and Prepayment 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,
 - (B) After the Conversion Date and prior to the Window Period (or, if the Conversion Date does not occur, after the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement), by the deposit to the account of 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 Funding Lender to Fiscal Agent for cancellation; and
 - (ii) Have paid all amounts due and owing under the other Financing Documents:
 - (iii) Have paid all fees and expenses of and any other amounts due to Fiscal Agent, Loan Servicer and Rebate Analyst; and
 - (iv) 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.
- (b) Upon satisfaction of each of the requirements of Section 9.01(a), Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to Governmental Lender the estate hereby conveyed, and assign and deliver to 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 Fiscal Agent for the payment of principal of, interest and Prepayment Premium, if any, on the Governmental Note, and the payment of any amounts owed to the United States of America pursuant to Section 4.10 hereof.
- (c) After the Conversion Date and prior to the Window Period (or, if the Conversion Date does not occur, after the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) 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 Section 9.01(a) based on a deposit of moneys or securities with Fiscal Agent pursuant to Section 9.01(a)(i)(B) if, under circumstances which do not cause interest on the Governmental Note to become includable in the gross income of the holders thereof for federal income tax purposes, each of the following conditions shall have been fulfilled:
 - (i) There shall be on deposit with 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 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.
 - (ii) Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to Fiscal Agent and Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan.
 - (iii) Fiscal Agent and Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if Borrower, any general partner, member or guarantor of Borrower, or Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code:

- (A) Payment of such money to Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and
- (B) 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.
- (iv) Fiscal Agent and 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 this Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from the gross income of the holders thereof for federal income tax purposes.
- (v) Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to Funding Lender and Loan Servicer under the Financing Documents have been fully paid.

9.02 Discharge of Liability on Funding Loan. Upon the deposit with Fiscal Agent, in trust, on or before the Maturity Date, 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 the Maturity Date 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 provided in Article III or provision satisfactory to Fiscal Agent shall have been made for the giving of such notice, all liability of Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter Funding Lender shall be entitled to payment by Governmental Lender, and Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

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 Property Jurisdiction, any money deposited with Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or Prepayment Premium on the Governmental Note remaining unclaimed for three (3) years after the maturity or earlier payment date shall, to the extent permitted by applicable law, be paid to Borrower, whereupon all liability of Governmental Lender and Fiscal Agent with respect to such money shall cease, and Funding Lender shall thereafter look solely to Borrower for payment of any amounts then due. All money held by Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

ARTICLE X

MISCELLANEOUS

10.01 Servicing of the Loans. Funding Lender Representative may appoint a Loan Servicer (which may be Funding Lender Representative if Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement.

10.02 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, Funding Lender, Funding Lender

Representative, Loan Servicer and 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.

10.03 Construction of Conflicts; Severability.

- (a) Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by Borrower or any other arrangements agreed to by Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from the gross income of the holders thereof 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.
- (b) 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.

10.04 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 Governmental Lender, Fiscal Agent, Funding Lender Representative, Borrower or Loan 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. Governmental Lender, Fiscal Agent, Funding Lender Representative, Borrower or Loan 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.

Governmental Lender:

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

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

Borrower: The Flynn I LLC
c/o The Flynn I MM, LLC
500 Harrison Avenue, Suite 4RB
Boston, Massachusetts 02118
Attention: Harry Angevine
Email: hangevine@marathon-dev.com
Telephone: 1-617-535-3389

with a copy to: Chace Ruttenberg & Freedman, LLP
(which copy shall not constitute notice to
Borrower)
One Park Row, Suite 300
Providence, RI 02903
Attention: Samuel A. Budway, Esq.
Email: sbudway@crflp.com
Telephone: 401-453-6400

Investor Member: NEF Assignment Corporation, as nominee
10 South Riverside Plaza, Suite 1700
Chicago, Illinois 60606
Attention: General Counsel

with a copy to: Holland & Knight LLP
10 Saint James Ave., 11th Floor
Boston, Massachusetts 02116
Attention: Sean Leonard

Funding Lender (Construction Phase) Citizens Bank, National Association
28 State Street, MS 1270
Boston, Massachusetts 02109
Attention: Michael Comiskey
Email: michael.comiskey@citizensbank.com
Telephone: 617 725-5586

with a copy to: Klein Hornig LLP
101 Arch Street, Suite 1101
Boston, MA 02110
Attention: M. Chrysa Long
Email: clong@kleinhornig.com
Telephone: 617 224-0600

Funding Lender (from Conversion Date to Freddie Mac Purchase Date) and Loan Servicer: Berkeley Point Capital LLC
One Beacon Street, 14th Floor
Boston, Massachusetts 02108
Attention: Director, Loan Servicing

Funding Lender (as of Freddie Mac Purchase Date): Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations - Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

with a copy to: Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive
McLean, Virginia 22102
Attention: Managing Associate General Counsel – Multifamily Legal Division
Email: guy_nelson@freddiemac.com
Telephone: (703) 903-2000

A duplicate copy of each notice or other communication given hereunder by any party to Loan Servicer shall also be given to Funding Lender Representative and by any party to Funding Lender Representative to Loan Servicer.

Fiscal Agent agrees to accept and act upon Electronic Instruction and Notice pursuant to this Funding Loan Agreement.

- (b) Fiscal Agent shall provide to Funding Lender Representative and Loan 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 Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from Funding Lender Representative and Loan Servicer for any such information or other communication.

10.05 Funding Lender Representative.

- (a) Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Conversion Date, Seller/Servicer shall become Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become Funding Lender Representative. Funding Lender Representative shall be entitled to all the rights and privileges of Funding Lender hereunder and under the other Financing Documents.
- (b) Funding Lender Representative may provide written notice to Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of Funding Lender Representative, and such notice may be amended or rescinded by Funding Lender Representative at any time by subsequent written notice. Funding Lender Representative may be removed and a successor appointed by a written notice in the form of Exhibit B hereto given by Funding Lender to Fiscal Agent, Governmental Lender, Loan Servicer and Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by Fiscal Agent. Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation,

Loan Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to Fiscal Agent, Funding Lender, Governmental Lender, Loan Servicer and Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to Funding Lender until a successor Funding Lender Representative is appointed by Funding Lender.

- (c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of 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 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 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.

10.06 *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.

10.07 *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.

10.08 *Laws Governing This Funding Loan Agreement .* The effect and meaning 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 Property Jurisdiction without regard to conflicts of laws principles.

10.09 *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 Governmental Lender, either directly or through Governmental Lender or its governing body or otherwise, for the payment for or to Governmental Lender or any receiver thereof, or for or to Funding Lender, or otherwise, of any sum that may be due and unpaid by 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 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.

10.10 *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.

IN WITNESS WHEREOF, Governmental Lender, Initial Funding Lender and 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.

GOVERNMENTAL LENDER:

**RHODE ISLAND HOUSING MORTGAGE
AND FINANCE CORPORATION**

By _____

Name: Kara L Lachapelle

Title: Chief Financial Officer

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO
THE FLYNN FUNDING LOAN AGREEMENT]

INITIAL FUNDING LENDER:

CITIZENS BANK, NATIONAL ASSOCIATION

By _____
Name: Michael Comisky
Title: Vice President

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO
THE FLYNN FUNDING LOAN AGREEMENT]

FISCAL AGENT:

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

By _____
Authorized Signatory

[FISCAL AGENT'S SIGNATURE PAGE TO
THE FLYNN FUNDING LOAN AGREEMENT]

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

**MULTIFAMILY MORTGAGE REVENUE NOTE
(THE FLYNN PROJECT), SERIES 2024_**

US \$[AMOUNT]

[DATE OF CLOSING]

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 CITIZENS BANK, N.A. (the “**Funding Lender**”), and its assigns, such portion of the maximum principal sum of [_____ MILLION DOLLARS] (US \$[AMOUNT]) as shall have been advanced by Funding Lender pursuant to the Funding Loan Agreement, plus Prepayment 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 “**Governmental Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of [CLOSING MONTH] 1, 2023 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), among 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 maximum aggregate principal amount of \$[AMOUNT] (the “**Funding Loan**”), and this Governmental 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 The Flynn I LLC (the “**Borrower**”) pursuant to the Project Loan Agreement dated as of [CLOSING MONTH] 1, 2023 (the “**Project Loan Agreement**”), among the Obligor, Borrower and Fiscal Agent. **The outstanding principal balance of this Governmental Note at any time shall be an amount equal to the proceeds of the Funding Loan advanced by Funding Lender under the Funding Loan Agreement and not otherwise prepaid.**

1. **Defined Terms.** As used in this Governmental Note, (i) the term “Funding Lender” means the holder of this Governmental Note, and (ii) the term “Indebtedness” means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under this Governmental Note or the Funding Loan Agreement. “Event of Default” and other capitalized terms used but not defined in this Governmental 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 [_____] 1, 2025, interest on this Governmental Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Governmental Note at the foregoing rates on the date of any 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 Governmental Note subject to prepayment. Interest shall accrue on the principal amount of the Funding Loan which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

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 Governmental Note in full on [SCHEDULED 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 (as such Schedule 1 may be replaced by a new Funding Loan Amortization Schedule provided by Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) 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 Governmental 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 Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Funding Lender, in Funding Lender's discretion. Neither Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor 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 Governmental Note shall at once become due and payable, at the option of Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Governmental 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 Funding Lender in exercising any right or remedy under this Governmental 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 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 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 Funding Lender of any security for the obligations under this Governmental Note shall not constitute an election by Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to 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 Governmental Note and all other third-party obligors.

10. **Loan Charges.** Neither this Governmental 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 Governmental 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 Governmental 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 Governmental Note.

11. **Governing Law.** This Governmental 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 Governmental Note are for convenience only and shall be disregarded in construing this Governmental Note.

13. **Address for Payment.** All payments due under this Governmental Note shall be payable at the principal office of Funding Lender as designated by Funding Lender in writing to Fiscal Agent and Loan Servicer.

14. **Default Rate; Taxable Rate.** So long as (a) any monthly installment under this Governmental Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Governmental 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 Construction Phase Interest Rate or Permanent Phase Interest Rate, as applicable, 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.

During the Construction Phase, upon the occurrence of a Determination of Taxability, interest under this Governmental Note shall accrue on the unpaid balance at a rate (the “**Taxable Rate**”) equal to the lesser of (i) the Construction Phase Interest Rate otherwise in effect notwithstanding the Determination of Taxability plus [] percent ([]%) per annum or (ii) the Maximum Interest 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. NONE OF GOVERNMENTAL LENDER, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT 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, PREPAYMENT 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 GOVERNMENTAL LENDER'S AGREEMENTS OR OBLIGATIONS WITH RESPECT TO THE FUNDING LOAN OR THIS GOVERNMENTAL NOTE 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. GOVERNMENTAL LENDER HAS NO TAXING POWER.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Governmental Note to be duly executed by the manual or facsimile signature of its Chief Financial Officer and attested by the manual or facsimile signature of its Manager of Treasury and Capital Planning.

**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

CERTIFICATE OF AUTHENTICATION

This Governmental 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
[For Permanent Phase]

EXHIBIT B

**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

The Flynn I LLC
[BORROWER'S ADDRESS]

Rhode Island Housing and Mortgage
Finance Corporation
44 Washington Street
Providence, Rhode Island 02903

**[LOAN SERVICER]
[SERVICER ADDRESS]**

Re: The Flynn Project

Ladies and Gentlemen:

The undersigned is the holder (the "**Funding Lender**") of the Multifamily Mortgage Revenue Note (The Flynn Project), Series 2024_ dated [MONTH OF CLOSING] 1, 202_ (the "**Governmental Note**") delivered pursuant to the Funding Loan Agreement dated as of [MONTH OF CLOSING] 1, 202_ (the "**Funding Loan Agreement**"), among Citizens Bank, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), 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 10.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by Fiscal Agent, Funding Lender Representative appointed under Section 10.05 of the Funding Loan Agreement shall be _____ . The Person previously appointed as Funding Lender Representative, if any, 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 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 Funding Lender Representative or from Funding Lender.

This notice is dated as of the _____ day of _____, 20__.

[FUNDING LENDER SIGNATURE BLOCK]

By: _____

EXHIBIT C

FORM OF TRANSFEREE REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

The Bank of New York Mellon
Trust Company, N.A.,
Corporate Trust Department
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256

Rhode Island Housing and Mortgage
Finance Corporation
44 Washington Street
Providence, Rhode Island 02903

The Flynn I LLC
[BORROWER'S ADDRESS]

[LOAN SERVICER]
[SERVICER ADDRESS]

Re: The Flynn I Project

Ladies and Gentlemen:

The undersigned (the "**Funding Lender**") hereby acknowledges receipt of the Multifamily Note (Copley Chambers II & III Apartments Project), Series 2024_ dated [MONTH OF CLOSING] 1, 202_ (the "**Governmental Note**") delivered pursuant to the Funding Loan Agreement dated as of [MONTH OF CLOSING] 1, 202_ (the "**Funding Loan Agreement**"), among Citizens Bank, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), Rhode Island Housing and Mortgage Finance Corporation (the "**Governmental Lender**") and The Bank of New York Mellon Trust Company, N.A. (the "**Fiscal Agent**"). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by Funding Lender, Funding Lender hereby makes the following representations upon which you may rely:

1. Funding Lender has authority to [originate][purchase] the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by Funding Lender in connection with the [origination][purchase] of the Funding Loan.

2. Funding Lender is an "accredited investor" under Regulation D of the Securities Act of 1933 (the "**Act**") or a "qualified institutional buyer" under Rule 144(a) of said Act (such "accredited investor" or "qualified institutional buyer", a "**Qualified Transferee**"), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. Funding Lender acknowledges that it is [originating][purchasing] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan (except as set forth below); *provided, however*, that Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (a) transfer the Funding Loan to any affiliate or other party related to Funding Lender that is a Qualified Transferee or (b) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold except to (i) owners or beneficial owners thereof that are Qualified Transferees or (ii) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better [INSERT FOR INITIAL FUNDING LENDER TRANSFEREE REPRESENTATION LETTER; provided, further, however, Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to [NAME OF SELLER/SERVICER] on the Conversion Date and thereafter delivered to the Federal Home Loan Mortgage Corporation (“*Freddie Mac*”) pursuant to the forward commitment dated [] (the “*Freddie Mac Commitment*”)] [INSERT FOR SELLER/SERVICER TRANSFEREE REPRESENTATION LETTER; provided, further, however, Funding Lender is purchasing the Funding Loan with the expectation that the Funding Loan will be sold to the Federal Home Loan Mortgage Corporation (“*Freddie Mac*”) pursuant to the forward commitment dated _____, 20__ (the “*Freddie Mac Commitment*”).

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, Funding Lender further acknowledges its right to sell or transfer the Funding Loan, subject, as required under the Funding Loan Agreement, to the delivery to Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by Governmental Lender.

5. Funding Lender understands that the Governmental Note is not registered under the 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.

6. Funding Lender understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the State of Rhode Island or any political subdivision thereof and that Governmental Lender has no taxing power, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of Governmental Lender, the State of Rhode Island or any political subdivision thereof; and (c) the liability of Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination][purchase] of the Funding Loan. Funding Lender has not relied upon Governmental Lender for any information in connection with its purchase of the Funding Loan.

8. Funding Lender has made 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. Funding Lender is aware that the business of Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

[SIGNATURE BLOCK]

By: _____
Name: _____
Title: _____

EXHIBIT D

Costs of Issuance Fund Requisition

The Bank of New York Mellon
Trust Company, N.A., as Fiscal Agent
Corporate Trust Department
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256

Re: The Flynn I Project

Fiscal Agent:

You are requested to disburse funds from the **Costs of Issuance Fund** pursuant to Section 4.11 of the Funding Loan Agreement in the amount(s), to the Person(s) and for the purpose(s) set forth in this requisition (“**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of [MONTH OF CLOSING] 1, 202_, among Citizens Bank, N.A. (the “**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, securing the Multifamily Mortgage Revenue Note dated [CLOSING DATE] (the “**Governmental Note**”).

| | |
|--------------------------------|--|
| Requisition No.: | |
| Payment Due To: | |
| Amount To Be Disbursed: | |

The undersigned, on behalf of The Flynn I LLC, a limited liability company duly organized and existing under the laws of the State of Rhode Island (the “**Borrower**”), 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.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: _____

BORROWER:

[ADD BORROWER SIGNATURE BLOCK]

By: _____

Name:

Title:

EXHIBIT E

**PROJECT LOAN FUND REQUISITION
(Project Loan Fund)**

The Bank of New York Mellon
Trust Company, N.A., as Fiscal Agent
Corporate Trust Department
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256

Re: The Flynn I Project

Fiscal Agent:

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement 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 Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of [MONTH OF CLOSING] 1, 202_, by and among Citizens Bank, N.A., in its capacity as Initial Funding Lender (the “**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**”), securing the Multifamily Mortgage Revenue Note (Copley Chambers II & III Apartments Project), Series 2024_ dated **September 1, 2023** (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ _____ from the Project Account
\$ _____ from Borrower Equity Account

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Loan Servicer to submit this Requisition to Fiscal Agent on behalf of Borrower:

1. The purpose(s) for which disbursement is requested and the party or parties to whom the disbursements shall be made are specified in the **Schedule 1** attached hereto (and may include the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned; provided, however, that no reimbursement shall be made for advances and payments made prior to _____, 20__).
2. Attached hereto as **Schedule 2** is a report setting out the progress of the construction and all other reports or information relating to the completion of the construction requested by Initial Funding Lender or Governmental Lender, if any.
3. Attached hereto as **Schedule 3** are copies of any applicable invoices, bills, and appropriate lien waivers for the prior period for which disbursement was made, executed by all contractors and suppliers supplying labor or materials for the construction.

4. Attached hereto as Schedule 4 is a report prepared by the professional engineer employed by Initial Funding Lender as to the status of the construction unless Initial Funding Lender has waived this requirement in writing.
5. The undersigned certifies as follows:
 - (a) The conditions precedent to disbursement set forth in the Construction Continuing Covenant Agreement have been satisfied.
 - (b) The disbursement requested pursuant to this Requisition: (i) will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and the Construction Continuing Covenant Agreement and (ii) is substantially in accordance with the proforma draw schedules previously delivered to and accepted by Initial Funding Lender.
 - (c) None of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on Schedule 1, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items.
 - (d) All labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project.
 - (e) The materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest.
 - (f) All of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Project Loan Agreement, the Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan (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) With respect to amounts from the Project Account of the Project Loan Fund, not less than 95% of the sum of (i) the amounts requisitioned by this Requisition, plus (ii) all amounts previously requisitioned and disbursed from the Project Account of the Project Loan Fund, have been or will be applied by Borrower to pay the Costs of the Project.
 - (h) Borrower is not in default under the Project Loan Agreement, the Construction Continuing Covenant Agreement or any of the other Project Loan Documents to

which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents.

- (i) No amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Note or to pay debt service with respect to the Loans.
- (j) Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five (5) Business Days of such deposit.
- (k) Borrower has not requested any disbursement pursuant to this Requisition for stored items.

[The following items may not be required for Initial Disbursement]

- 6. Estimated costs of completing the uncompleted construction (as defined in the Construction Continuing Covenant Agreement) as of the date of this Requisition: _____.
- 7. Percent of the construction completed as of the date this request: _____%.
- 8. Borrower certifies that monthly occupancy for the month preceding this Requisition was _____, as indicated by the rent roll attached as Schedule 5 hereto, which is true, correct and complete.
- 9. Borrower certifies that net operating income for the month preceding this Requisition was _____, as indicated by the operating statement attached hereto as Schedule 6.

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

Date: _____

BORROWER:

[ADD BORROWER SIGNATURE BLOCK]

By: _____
Name:
Title:

APPROVED:

CITIZENS BANK, N.A.

By: _____
Title: _____
Date: _____

**RHODE ISLAND HOUSING AND MORTGAGE
FINANCE CORPORATION**

By: _____
Title: _____
Date: _____

EXHIBIT F

CONSTRUCTION PHASE INTEREST RATE

[TO BE UPDATED TO TRACK PROVISIONS OF CITIZENS PROJECT NOTE]

During the Construction Phase, interest on the Governmental Note shall be computed as provided below in this Exhibit F. Capitalized terms used but not otherwise defined in this Exhibit F, shall have the meanings given such terms in the Funding Loan Agreement to which is attached and made a part.

(a) Interest Rate Generally. Unless otherwise provided below with respect to ABR Loans, the Governmental Note (the “Note”) and each advance of the Funding Loan made pursuant to the Funding Loan Agreement and the Construction Continuing Covenant Agreement shall bear interest as a SOFR Loan (as hereinafter defined), in each case at a rate per annum equal to the sum of Daily Simple SOFR as in effect from time to time plus the Applicable SOFR Margin. Any ABR Loans shall bear interest at a rate per annum equal to the sum of the Alternate Base Rate as in effect from time to time plus the Applicable ABR Margin.

(b) Daily Simple SOFR Conforming Changes. In connection with the use or administration of Daily Simple SOFR, Funding Lender will have the right to make Conforming Changes (or to direct Governmental Lender to make Conforming Changes) from time to time and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to the Note or any other Financing Document. Funding Lender will promptly notify Borrower, Fiscal Agent and Governmental Lender of the effectiveness of any Conforming Changes in connection with the use or administration of Daily Simple SOFR.

(c) Computation of Interest. All interest shall be computed on the basis of a year of 360 days (or in the case of interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate, such interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year)), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest shall be computed on a daily basis based upon the outstanding principal amount of the Funding Loan as of the applicable date of determination, and the amount of each interest payment will be provided by Funding Lender via monthly invoice to Borrower, Governmental Lender, and Fiscal Agent for each interest period, in accordance with Funding Lender’s policies and procedures. The applicable Alternate Base Rate and Daily Simple SOFR shall be determined by Funding Lender, and such determination shall be conclusive and binding on Governmental Lender, Fiscal Agent and Borrower absent manifest error.

(d) Benchmark Replacement Setting.

i. Benchmark Replacement. Notwithstanding anything to the contrary in this Exhibit F or in any other Financing Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then the Benchmark Replacement will replace such Benchmark for all purposes hereunder, or under any other Financing Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to Borrower and Governmental Lender by Funding Lender, without any amendment to, or further action or consent of any other party to, the Note or any other Financing Document, but subject to receipt of a Favorable Opinion of Bond Counsel as provided in the definition of “Benchmark Replacement” below. No replacement of a Benchmark with a

Benchmark Replacement pursuant to paragraph (c) above will occur prior to the applicable Benchmark Transition Start Date.

ii. Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Funding Lender will have the right to make Conforming Changes (or to direct Governmental Lender to make Conforming Changes) from time to time and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to the Note or any other Financing Document.

iii. Notices; Standards for Decisions and Determinations. Funding Lender will promptly notify Borrower, Governmental Lender and Fiscal Agent of (A) the implementation of any Benchmark Replacement, and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Funding Lender will promptly notify Borrower, Governmental Lender and Fiscal Agent of the removal or reinstatement of any tenor of a Benchmark pursuant to this Exhibit F. Any determination, decision or election that may be made by Funding Lender pursuant to this Exhibit F, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding upon Borrower, Governmental Lender and Fiscal Agent absent manifest error and may be made in its sole discretion and without consent from any other party to the Note or any other Financing Document, except, in each case, as expressly required pursuant to this Exhibit F.

iv. Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Financing Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Funding Lender in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Funding Lender may modify (or cause Governmental Lender to modify) the definition of “interest period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Funding Lender may modify (or direct Governmental Lender to modify) the definition of “interest period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

v. Benchmark Unavailability Period. Upon Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, Borrower may revoke any pending request for a Borrowing of SOFR Loans to be made or converted during any Benchmark Unavailability Period and, failing that, (i) Borrower will be deemed to have converted any such request into a request for a borrowing of ABR Loans and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans immediately. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current

Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

(e) Illegality. If Funding Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for Funding Lender or its Applicable Lending Office to make, maintain or fund loans the interest on which is determined by reference to SOFR or Daily Simple SOFR, or to determine or charge interest rates based upon SOFR or Daily Simple SOFR, then, upon notice thereof by Funding Lender to Borrower, Governmental Lender and Fiscal Agent, (i) any obligation of Funding Lender to maintain the Funding Loan or the Project Loan as a SOFR Loan or make any SOFR Loans shall be suspended, and (ii) the interest rate on which Loans (and the ABR Loans) shall, if necessary to avoid such illegality, be determined by Funding Lender without reference to clause (c) of the definition of “Alternate Base Rate”, in each case until Funding Lender notifies Borrower, Governmental Lender and Fiscal Agent that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (A) Borrower (and correspondingly, Funding Lender) shall, if necessary to avoid such illegality, upon demand from Funding Lender, convert all SOFR Loans to ABR Loans (the interest rate on which ABR Loans of Funding Lender shall, if necessary to avoid such illegality, be determined by Funding Lender without reference to clause (c) of the definition of “Alternate Base Rate”), on the last day of the interest period therefor, if Funding Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if Funding Lender may not lawfully continue to maintain such SOFR Loans to such day, and (B) if necessary to avoid such illegality, Funding Lender shall during the period of such suspension compute the Alternate Base Rate without reference to clause (c) of the definition of “Alternate Base Rate” in each case until Funding Lender has determined that it is no longer illegal for Funding Lender to determine or charge interest rates based upon SOFR or Daily Simple SOFR. Upon any such conversion, Governmental Lender shall also pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) accrued interest on the amount so converted.

(f) Inability to Determine Rate. If Funding Lender determines (which determination shall be conclusive and binding absent manifest error) that “Daily Simple SOFR” cannot be determined pursuant to the definition thereof, Funding Lender will promptly so notify Borrower, Governmental Lender and Fiscal Agent. Upon notice thereof by Funding Lender to Borrower, Governmental Lender and Fiscal Agent, any obligation of Funding Lender to maintain or make SOFR Loans shall be suspended (to the extent of the affected SOFR Loans) until Funding Lender revokes such notice. Upon receipt of such notice, (i) Borrower may revoke any pending request for a borrowing of SOFR Loans (to the extent of the affected SOFR Loans) or, failing that, Borrower will be deemed to have converted any such request into a request for a Borrowing of ABR Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans immediately. Upon any such conversion, Governmental Lender shall also pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) accrued interest on the amount so converted, together with any additional amounts required under the Note. If Funding Lender determines (which determination shall be conclusive and binding absent manifest error) that “Daily Simple SOFR” cannot be determined pursuant to the definition thereof on any given day, the interest rate on ABR Loans shall be determined by Funding Lender without reference to clause (c) of the definition of “Alternate Base Rate” until Funding Lender revokes such determination.

For purposes of this Exhibit F:

“ABR Borrowing” means each advance of the Loan when bearing interest based on the Alternate Base Rate.

“ABR Loan” means a Loan bearing interest based on the Alternate Base Rate.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 0.50% per annum and (c) Daily Simple SOFR in effect (taking into account any floor set forth in the definition of “Daily Simple SOFR”) on such date plus the Applicable SOFR Margin, provided that the Alternate Base Rate shall at no time be less than 2.75% per annum. If Funding Lender shall have determined (which determination shall be conclusive absent clearly manifest error) that it is unable to ascertain the Federal Funds Rate or Daily Simple SOFR for any reason, including the inability or failure of Funding Lender to obtain sufficient quotations in accordance with the terms of the definition of the term Federal Funds Rate, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate or Daily Simple SOFR, as applicable, shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or Daily Simple SOFR, as applicable, respectively.

“Applicable ABR Margin” means a margin corresponding to the Alternate Base Rate to accompany it so to the extent practicable, the all-in interest rate on the Loan based on the Alternate Base Rate plus Applicable ABR Margin will be substantially equivalent to the Daily Simple SOFR Rate plus 1.58% in effect prior to its replacement.

“Applicable Lending Office” means for Funding Lender, Funding Lender’s office, branch, or affiliate designated for SOFR Loans or ABR Loans, as applicable, as notified to Initial Funding, any of which offices may be changed by Funding Lender.

“Applicable SOFR Margin” means one and 58/100 of one percent (1.58%).

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period (or a similar or analogous period) pursuant to the Note or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “interest period” (or a similar or analogous term).

“Benchmark” means, initially, Daily Simple SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date has occurred with respect to Daily Simple SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate.

“Benchmark Replacement” means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Funding Lender giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided, however, such alternate benchmark rate selected by Funding Lender shall be a “qualified rate” as described in the federal tax regulations (currently, 26 CFR § 1.1001-6(h)(3)), as may be amended from time to time, and in connection with any conversion to the Benchmark Replacement contemplated herein, Borrower will deliver, at its sole cost and expense, to Governmental Lender, Fiscal Agent and Funding Lender a Favorable Opinion of Bond Counsel with respect to the Project Note and the Governmental Note. In no event shall the Benchmark Replacement replace the then-current Benchmark prior to receipt by Governmental Lender, Fiscal Agent, and Funding Lender of such Favorable Opinion of Bond Counsel. If

such Favorable Opinion of Bond Counsel has not been delivered before the Benchmark Replacement Date, then interest on the Note shall accrue at a rate per annum equal to the Alternate Base Rate beginning on the date of the first Benchmark setting following the Benchmark Replacement Date and ending on the first Business Day following the receipt of the Favorable Opinion of Bond Counsel by Governmental Lender, Fiscal Agent, and Funding Lender. After such date, interest on the Note will accrue at a rate per annum calculated using the Benchmark Replacement. Notwithstanding the foregoing, if any such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of the Note and the other Financing Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Funding Lender and Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance herewith, and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance herewith.

“Borrowing” means an advance of proceeds of the Funding Loan made by Funding Lender.

“Conforming Changes” means, with respect to either the use or administration of the Benchmark, or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including, for example and not by way of limitation or prescription, changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the addition of a concept of “interest period” or any similar or analogous definition, or the modification of the definition of “interest period” or any similar or analogous definition, the definition of “U.S. Government Securities Business Day,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment or conversion notices, the applicability and length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Funding Lender decides may be appropriate in connection with the use or administration of the Benchmark or to reflect the adoption and implementation of any Benchmark Replacement or to permit the use and administration thereof by Funding Lender in a manner substantially consistent with market practice (or, if Funding Lender decides that adoption of any portion of such market practice is not administratively feasible or if Funding Lender determines that no market practice for the

administration of any such rate exists, in such other manner of administration as Funding Lender decides is reasonably necessary in connection with the administration of the Note and the other Financing Documents).

“Daily Simple SOFR” means, for any calendar day (a “SOFR Rate Day”), a rate per annum equal to the greater of (a) SOFR for the day (such day, the “SOFR Determination Date”) that is five U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website, and (b) the Floor. If by 5:00 p.m. (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Date, SOFR in respect of such SOFR Determination Date has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Date will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to Borrower, Governmental Lender, Fiscal Agent or any other Person.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Federal Funds Rate” means, for any day, a rate per annum (expressed as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average of the quotations for such day on such transactions received by Governmental Lender from three federal funds brokers of recognized standing selected by it and (c) if the Federal Funds Rate shall be less than zero percent (0.00%), such rate shall be deemed to be zero percent (0.00%) for purposes of the Note.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States.

“Floor” means 0.75%.

“Law” or “law” means, individually and collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law. With respect to Borrower and the Property, “Law” or “law” includes all Laws pertaining to the construction, sale, leasing

or use of the Improvements and to access and facilities for handicapped or disabled persons, including without limitation and to the extent applicable, any building codes, the Civil Asset Forfeiture Reform Act, the Controlled Substances Act, the Flood Insurance Laws, the Federal Architectural Barriers Act (42 U.S.C. § 4151 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.), the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), each as amended to date and further amended from time to time.

“Prime Rate” means a rate per annum equal to the prime rate of interest announced from time to time by Citizens Bank or its parent company (which is not necessarily the lowest rate charged to any customer), changing when and as said prime rate changes.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Borrowing” means, as to any Borrowing, the SOFR Loans comprising such Borrowing.

“SOFR Loan” means each advance of the Loan that bears interest at a rate based on Daily Simple SOFR, other than pursuant to clause (c) of the definition of “Alternate Base Rate.”

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to (i) Daily Simple SOFR, or (ii) the Alternate Base Rate.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association (or any successor thereto) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.