

**REQUEST FOR ACTION  
BY  
BOARD OF COMMISSIONERS**

*Authorization to Issue Tax-Exempt Loan to Support  
Construction of Copley Chambers II & III  
\$23,000,000*

**1. Summary of Issues**

As part of the process of financing the construction of Copley Chambers II & III in Providence, staff has requested the Board of Commissioners to approve the issuance by Rhode Island Housing and Mortgage Finance Corporation (“RIHousing”) of a tax-exempt note not to exceed \$23,000,000. Copley Chambers II & III will provide 124 units of housing, of which 100% will be affordable to households with incomes at or below 80% of area median income. The developer, Marathon Development, LLC (“Marathon”), has formed a limited liability company, Copley Chambers II & III LLC (the “Borrower”), which will be the owner of the project and the recipient of the loan.

This Request for Action is for authorization to enter into a tax-exempt private placement back-to-back loan structure with Citizens Bank, N.A. (“Citizens”) to fund the loan for Copley Chambers II & III.

Citizens will make a direct loan to RIHousing and RIHousing will issue a tax-exempt note to Citizens evidencing the loan. RIHousing, in turn, will advance the loan proceeds to the Borrower under the agency’s tax-exempt bond volume cap that will otherwise go unused. The back-to-back loan proceeds will be deemed tax-exempt. RIHousing and the Borrower will undertake all of the standard obligations related to a tax-exempt facility. Upon construction completion, Freddie Mac will step in as the Permanent Loan funder. Because the loan is considered to be a tax-exempt financing, the Development will be eligible to receive 4% low-income housing tax credits and generate approximately \$27 million in equity to fund development costs.

The loan will be non-recourse to RIHousing. RIHousing will only need to provide an assignment of its rights under the loan to Citizens. The Borrower note and mortgage will also be assigned to Citizens and, subsequently, Freddie Mac. Berkeley Point Capital LLC d/b/a Newmark Capital (“Newmark”) will act as the DUS lender and will service the permanent loan for Freddie Mac. During construction and prior to conversion to the permanent loan, Citizens will bear the financial risk. Freddie Mac will bear the financial risk on the permanent loan.

This structure provides a number of advantages to the participants. The Borrower receives a better interest rate, reduced transaction fees and a more expedited closing process. Citizens is able to record this transaction as a loan for purposes of its evaluation under the Community Reinvestment Act. RIHousing will receive a one-time origination fee of 1.0% of the principal amount of the loan, plus an annual issuer fee equal to 25 basis points of the outstanding loan, without having to service the loan to the Borrower or bearing any financial risk from the Borrower’s default. Marathon will pay all costs associated with the transaction.

Attachment B sets forth the terms of the loan agreement between RIHousing and Citizens and Attachment C sets forth the terms of the loan agreement between RIHousing and the Borrower.

**2. Recommendation**

RIHousing staff recommends approval of the attached resolutions authorizing a loan from Citizens in an amount up to \$23,000,000 to finance a tax-exempt loan to the Borrower for the acquisition and rehabilitation of Copley Chambers II & III, and the execution of the loan agreements in substantially the form set forth in Attachments B and C.

**3. Attachment**

- A. Authorizing Resolution
- B. Form of Funding Loan Agreement with Citizens
- C. Form of Borrower Loan Agreement

Attachment A

RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION

Resolution Authorizing Issuance of the  
Multifamily Revenue Notes  
(Copley Chambers II & III Apartments Project), Series 2023  
and approving the execution and delivery of a Funding Loan Agreement and  
Certain Other Documents and Matters in Connection Therewith

Adopted May 18, 2023

---

WHEREAS, Rhode Island Housing and Mortgage Finance Corporation (“*RIHousing*”) wishes to enter into an agreement with Citizens Bank (“*Citizens*”) to provide for the issuance of its Multifamily Note (Copley Chambers II & III Apartments Project), Series 2023 in one or more series (the “*Notes*”) to Citizens for the purpose of obtaining funds from Citizens to finance the acquisition, rehabilitation and equipping of phases II and III of a new mixed use, multi-family rental housing development in Providence, Rhode Island, such phases consisting of approximately 124 units of mixed income residential housing known as Copley Chambers II & III Apartments (the “*Project*”) by Copley Chambers II & III LLC (herein referred to as the “*Borrower*”), a Rhode Island limited liability company whose managing member is Marathon Development, LLC; and

WHEREAS, Citizens will provide the financing during the construction period and thereafter, it is expected that, subject to satisfaction of certain conditions, permanent financing will be undertaken by the purchase of the Notes at a reduced principal amount by Berkeley Point Capital LLC, d/b/a NEWMARK (a Freddie Mac seller/servicer), who in turn will deliver the Notes to Freddie Mac for purchase pursuant to its Multifamily Direct Purchase of Tax-Exempt Loan Program.

WHEREAS, RIHousing has determined that the Notes should be issued pursuant to a Funding Loan Agreement with Citizens, as the initial Funding Lender (with Freddie Mac becoming the Funding Lender upon conversion and purchase), a copy of the form of which has been presented to this meeting (the “*Funding Loan Agreement*”), and wishes to authorize the execution and delivery of such Funding Loan Agreement and related financing documents and the issuance of the Notes in accordance therewith;

NOW THEREFORE, BE IT RESOLVED by the Commissioners of RIHousing as follows:

1. The Commissioners of RIHousing find, determine and declare as follows: (1) there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons and families of low or moderate income can afford within the general housing market area to be served by the proposed Project; (2) private enterprise and investment have been unable, without

assistance, to provide an adequate supply of decent, safe, and sanitary housing in the general housing market area at prices which persons or families of low and moderate income can afford or to provide sufficient mortgage financing for residential housing for occupancy by those persons or families; (3) the Borrower undertaking the proposed Project in the State of Rhode Island will supply well-planned, well designed housing for persons or families of low and moderate income and the Borrower is a financially responsible institution; (4) the Project to be assisted pursuant to the provisions of Chapter 55 of Title 42 of the Rhode Island General Laws (1956), as amended (the “Act”), will be of public use and will provide a public benefit; and (5) the Project will be undertaken and the Borrower regulated pursuant to the authority and within the restrictions provided for by the Act.

2. The issuance, sale and delivery of the Notes upon the terms and conditions and for the purposes described in this resolution and the Funding Loan Agreement are hereby authorized. The Chairman of the Board of Commissioners, Executive Director, Deputy Executive Director, Chief Financial Officer, Director of Finance, General Counsel or Manager of Treasury and Capital Planning of RIHousing, or any person serving in any of the foregoing positions in an “Interim” or “Acting” capacity under the Bylaws of RIHousing or at the direction of the Commissioners (each an “Authorized Officer”), are each hereby authorized to determine (a) the principal amount of each Note, provided that the aggregate principal amount of the Notes shall not exceed Twenty-Three Million Dollars (\$23,000,000); (b) the dated date of the Notes; (c) the interest rate or rates with respect to the Notes during the construction phase and the permanent phase, provided that any such interest rate (or initial interest rate if a variable rate note) shall not exceed fifteen percent (15%) per annum; (d) the date or dates on which the Notes will mature, provided that no such maturity date shall not exceed thirty-five (35) years from its date of issuance; (e) provisions regarding prepayment of the Notes, if any, and the prepayment prices; (f) the interest payment dates for the Notes; (g) the form of the Notes; (h) any restrictions on transfer of the Notes; and (i) any other provisions deemed advisable by an Authorized Officer of RIHousing not in conflict with the provisions this resolution.

3. Any Authorized Officer is hereby further authorized to execute and deliver, in the name and on behalf of RIHousing, the Funding Loan Agreement in substantially the form presented at this meeting, with such changes, additions and deletions thereto as may be approved by said Authorized Officer and not contrary to the terms of this resolution.

4. Any Authorized Officer is hereby authorized to execute and deliver, in the name and on behalf of RIHousing, a Loan Agreement with the Borrower providing for the loan of the proceeds of the Notes to the Borrower for the purpose of financing the Project (the “Project Loan Agreement”), in substantially the form presented at this meeting, with such changes, additions and deletions thereto as may be approved by said Authorized Officer and not contrary to the terms of this resolution and the Funding Loan Agreement.

5. The Commissioners hereby ratify and confirm the official intent of RIHousing to issue the Notes to finance up to \$23,000,000 of Project costs and any related reserves and costs of issuance of the Notes, and to reimburse qualified expenditures incurred by the Borrower and RIHousing in advance of the issuance of the Notes, pursuant to the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations promulgated thereunder. The intent to reimburse the aforementioned Note-funded costs is intended to satisfy the

requirements of Section 1.150-2 of the United States Treasury Regulations. Any Authorized Officer is hereby authorized to execute and deliver a certification as to its reasonable expectations regarding the amount and use of the proceeds of the Notes to evidence compliance with Section 148 and other related provisions of the Code, and any Treasury regulations relating thereto.

6. Any Authorized Officer is hereby authorized to execute and deliver, in the name and on behalf of RIHousing, a Regulatory Agreement with the Borrower and such other agreements, documents, certificates, and instruments required to be executed and delivered in connection with the financing of the proposed loan to the Borrower, including any extensions and modifications thereof, with such provisions as said Authorized Officer shall deem advisable and not contrary to the terms of this resolution and the Funding Loan Agreement.

7. Any Authorized Officer is hereby authorized, at any time after the receipt of all necessary consents, proceedings and approvals, to have the Notes prepared and to execute and authorize the delivery of the Notes to Citizens upon receipt of the proceeds thereof and to do and perform all acts and things and execute and deliver any and all documents in the name of RIHousing necessary, useful or convenient to the issuance and sale of the Notes by RIHousing to Citizens. Each authorization conferred upon Authorized Officers by this resolution shall be deemed to be an authorization of each Authorized Officer to act singly and independently with respect to such authorization. Execution and delivery of any document authorized by this resolution by an Authorized Officer shall constitute conclusive evidence of RIHousing's due authorization and approval of said document.

8. Limitations (whether expressed as a dollar amount or percentage) on: (i) the amount of the Borrower's equity in the Project that the Borrower may distribute in any one year to its members from the income or earnings derived from its ownership and operation of the Project or (ii) the return on any such member's investment in the Project, shall be determined by Citizens and then Freddie Mac, as the Funding Lenders and the purchasers of the Notes, its successors or, in the case of a transfer of a majority in principal amount of the outstanding Notes in accordance with the provisions of the Funding Loan Agreement, such transferee.

9. This resolution shall take effect immediately.

**Attachment B**

**FUNDING LOAN AGREEMENT**

**among**

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

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

**and**

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

**Relating to**

**Copley Chambers II & III  
220-228 Broad Street, Providence, Rhode Island**

**Maximum Funding Loan Principal Amount: \$[AMOUNT]**

**Dated as of [February] 1, 2023**

## TABLE OF CONTENTS

Page

### ARTICLE I

#### DEFINITIONS

Section 1.01	Definitions.....	3
Section 1.02	Interpretation.....	15

### 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.....	20
Section 2.07	Mutilated, Lost, Stolen or Destroyed Governmental Note .....	20
Section 2.08	Registration; Transfer of Funding Loan; Transferee Representations Letter .....	20
Section 2.09	TEL Securitization; Allocation of Funding Loan Interest .....	21
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 .....	24

### ARTICLE III

#### PREPAYMENT OF THE FUNDING LOAN

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

### ARTICLE IV

#### REVENUES AND FUNDS

Section 4.01	Pledge of Revenues and Assets; Establishment of Funds.....	25
Section 4.02	Project Loan Fund.....	26
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 .....	30
Section 4.07	[Reserved] .....	30
Section 4.08	Investment of Funds.....	31
Section 4.09	[Reserved].....	32
Section 4.10	Accounting Records.....	32

Section 4.11	Amounts Remaining in Funds .....	32
Section 4.12	Rebate Fund; Compliance with Tax Certificate.....	32
Section 4.13	Cost of Issuance Fund.....	34
Section 4.14	Reports From the Fiscal Agent .....	34

**ARTICLE V**

**GENERAL COVENANTS AND REPRESENTATIONS**

Section 5.01	Payment of Principal and Interest .....	35
Section 5.02	Performance of Covenants.....	35
Section 5.03	Instruments of Further Assurance.....	35
Section 5.04	Inspection of Project Books .....	36
Section 5.05	No Modification of Security; Additional Indebtedness .....	36
Section 5.06	Damage, Destruction or Condemnation.....	36
Section 5.07	Tax Covenants .....	36
Section 5.08	Representations and Warranties of the Governmental Lender .....	38

**ARTICLE VI**

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

Section 6.01	Events of Default .....	38
Section 6.02	Acceleration; Other Remedies Upon Event of Default.....	39
Section 6.03	Funding Lender Representative Control of Proceedings .....	40
Section 6.04	Waiver by Governmental Lender.....	41
Section 6.05	Application of Money After Default.....	41
Section 6.06	Remedies Not Exclusive .....	41
Section 6.07	Fiscal Agent May Enforce Rights Without Governmental Note .....	42
Section 6.08	[Reserved].....	42
Section 6.09	Termination of Proceedings.....	42
Section 6.10	Waivers of Events of Default.....	42
Section 6.11	Interest on Unpaid Amounts and Default Rate for Nonpayment.....	42
Section 6.12	Assignment of Project Loan; Remedies Under the Project Loan .....	42
Section 6.13	Substitution .....	43

**ARTICLE VII**

**CONCERNING THE FISCAL AGENT**

Section 7.01	Standard of Care .....	43
Section 7.02	Reliance Upon Documents.....	44
Section 7.03	Use of Proceeds and Other Moneys.....	47
Section 7.04	[Reserved].....	47
Section 7.05	Trust Imposed .....	48
Section 7.06	Compensation of Fiscal Agent.....	48
Section 7.07	Qualifications of Fiscal Agent .....	49
Section 7.08	Merger of Fiscal Agent .....	49
Section 7.09	Resignation by the Fiscal Agent .....	49



Section 7.10	Removal of the Fiscal Agent.....	49
Section 7.11	Appointment of Successor Fiscal Agent.....	50
Section 7.12	Concerning Any Successor Fiscal Agent.....	50
Section 7.13	Successor Fiscal Agent .....	51
Section 7.14	Appointment of Co-Fiscal Agent or Separate Fiscal Agent .....	51
Section 7.15	Notice of Certain Events.....	53
Section 7.16	[Reserved].....	53
Section 7.17	Filing of Financing Statements .....	53
Section 7.18	USA Patriot Act Requirements of the Fiscal Agent .....	53

**ARTICLE VIII**

**AMENDMENTS OF CERTAIN DOCUMENTS**

Section 8.01	Amendments to this Funding Loan Agreement.....	53
Section 8.02	Amendments to Financing Documents Require Consent of Funding Lender Representative .....	54
Section 8.03	Opinion of Bond Counsel Required.....	54

**ARTICLE IX**

**SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT**

Section 9.01	Discharge of Lien.....	54
Section 9.02	Discharge of Liability on Funding Loan.....	55
Section 9.03	Payment of Funding Loan After Discharge of Funding Loan Agreement.....	56

**ARTICLE X**

**INTENTIONALLY OMITTED**

**ARTICLE XI**

**MISCELLANEOUS**

Section 11.01	Servicing of the Loans .....	56
Section 11.02	Limitation of Rights .....	56
Section 11.03	Construction of Conflicts; Severability.....	56
Section 11.04	Notices .....	57
Section 11.05	Funding Lender Representative .....	59
Section 11.06	Payments Due on Non-Business Days.....	60
Section 11.07	Counterparts.....	60
Section 11.08	Laws Governing Funding Loan Agreement.....	60
Section 11.09	No Recourse.....	60
Section 11.10	Successors and Assigns.....	60

<b>EXHIBIT A</b>	<b>FORM OF GOVERNMENTAL NOTE</b>
<b>EXHIBIT B</b>	<b>FORM OF NOTICE OF APPOINTMENT OF FUNDING LENDER REPRESENTATIVE</b>
<b>EXHIBIT C</b>	<b>FORM OF TRANSFEREE REPRESENTATIONS LETTER</b>
<b>EXHIBIT D</b>	<b>COST OF ISSUANCE REQUISITION</b>
<b>EXHIBIT E</b>	<b>PROJECT LOAN FUND REQUISITION</b>
<b>EXHIBIT F</b>	<b>CONSTRUCTION PHASE INTEREST RATE</b>

## FUNDING LOAN AGREEMENT

**THIS FUNDING LOAN AGREEMENT** (this “*Funding Loan Agreement*”), is made and entered into as of [February] 1, 2023, by and among **CITIZENS BANK, N.A.**, a national banking association, in its capacity as Initial Funding Lender (the “*Initial Funding Lender*”), **RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION** (the “*Governmental Lender*”), a public corporation and instrumentality of the State of Rhode Island (the “*State*”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, 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*”). 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 [February] 1, 2023 (the “*Project Loan Agreement*”) by and among the Governmental Lender, the Fiscal Agent and Copley Chambers II & III LLC, a Rhode Island limited liability company duly organized and existing under the laws of the State (the “*Borrower*”), the Governmental Lender is agreeing to make a mortgage loan to the 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 220-228 Broad Street in Providence, Rhode Island known as Copley Chambers II & III (the “*Project*”).

**B.** The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the separate loan made to the 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 Note with the sub-designation (Copley Chambers I & III Apartments Project), Series 2023, dated [CLOSING DATE] in the form attached hereto as Exhibit A (together with all riders and addenda thereto, the “*Governmental Note*”) delivered by the Governmental Lender to the Initial Funding Lender.

**C.** The Initial Funding Lender, 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, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to the Project Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Construction Phase Financing Agreement and the other Financing Documents.

**D.** The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition and construction of the Project [and to pay certain closing costs with respect to the Loans].

**E.** The Borrower’s repayment obligations in respect of the Project Loan will be evidenced by a Project Note dated [CLOSING DATE] (together with all riders and modifications

thereto, the “**Project Note**”) delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

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

G. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”) has entered into a commitment with Berkeley Point Capital LLC, d/b/a NEWMARK (the “**Freddie Mac Seller/Servicer**”) dated [\_\_\_\_\_, 20\_\_] (the “**Freddie Mac Commitment**”) whereby Freddie Mac has committed, 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 the Freddie Mac 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, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall 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, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

I. As a Condition to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (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 the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac 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, the Freddie Mac 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. Berkeley Point Capital LLC, d/b/a NEWMARK will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

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

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

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

## **ARTICLE I**

### **DEFINITIONS**

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

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

“**Actual Project Loan Amount**” has the meaning set forth in the Construction Phase Financing Agreement.

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

“**Advance Request**” shall mean a request by the Borrower to the Initial Funding Lender that the Initial Funding Lender disburse proceeds of the Funding Loan to the 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 (i) the date when the sum of the aggregate advances of the Funding Loan made by the Initial Funding Lender equals the Authorized Amount, (ii) [insert date that is 3 years after the Delivery Date], (iii) the Conversion Date, (iii) the date of a Determination of Taxability or (iv) the occurrence of an Event of Default hereunder.

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

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

“**Authorized Officer**” means (a) when used with respect to the 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 the Governmental Lender, and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any [Manager] of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

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

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

“**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 the 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 Copley Chambers II & III LLC, a limited liability company duly organized and existing under the laws of the State of Rhode Island, or any of its permitted successors or assigns, as owner of the Project.

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

“**Borrower Equity Deposit**” means [IF INITIAL EQUITY FUNDS TO GO DIRECTLY TO TITLE ESCROW: , initially \$0.00, and thereafter, such amounts as may be deposited in the Borrower Equity Account from time to time] [IF BEING DEPOSITED WITH FISCAL AGENT: \$[\_\_\_\_\_], which shall be comprised of sources other than the proceeds of the Project Loan.]

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

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

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

**“Code”** means the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

**“Conditions to Conversion”** has the meaning given to that term in the Construction Phase Financing Agreement.

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

**“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 the 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 the Initial Funding Lender, Freddie Mac, and the Freddie Mac Seller/Service, and acknowledged and agreed to by the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Construction Phase Interest Rate”** has the meaning set forth on Exhibit F.

**“Continuing Covenant Agreement”** means (i) prior to the Conversion Date, the Construction Continuing Covenant Agreement, and (ii) 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 the Freddie Mac Seller/Service purchases the Funding Loan from the Initial Funding Lender upon the satisfaction of the Conditions to Conversion, as such

Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered.

**“Conversion Notice”** or **“Notice of Conversion”** means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Freddie Mac Seller/Servicer to the Governmental Lender, the Fiscal Agent, the Borrower, the Initial Funding Lender and Freddie Mac (i) 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, (ii) confirming the Conversion Date and (iii) providing for updated amortization schedules for the Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

**“Cost,” “Costs”** or **“Costs of the Project”** means costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the 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), (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Note, (B) 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 acquisition or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in United States Treasury Regulations Section 1.148-1), or (C) were 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 the 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 the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the 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 acquisition, rehabilitation or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

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

**“Costs of Issuance”** means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s financial advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel,



(d) the Initial Funding Lender and the Initial Funding Lender's counsel (e) the Freddie Mac Seller/Servicer and the Freddie Mac Seller/Servicer's counsel, (f) Freddie Mac and Freddie Mac's counsel, and (g) the Borrower's counsel attributable to the funding of the Loans and the Borrower's financial advisor, if any, and (ii) 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.

[IF COI TO BE DEPOSITED WITH FISCAL AGENT: "*Costs of Issuance Deposit*" means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal \$[\_\_\_\_\_] and shall be comprised of sources other than the proceeds of the Project Loan.]

"*Default Rate*" means the lower 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.

"*Delivery Date*" means [CLOSING DATE], the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

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

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

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

"*Extraordinary Fiscal Agent's Fees and Expenses*" means all those fees, expenses and reimbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof during

any Rebate Year for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

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

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

**“Fee Component”** has the meaning set forth 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 Bank of New York Mellon Trust Company, N.A. and its successors hereunder.

**“Forward Commitment Maturity Date”** means [March 1, 2025 IF CLOSE IN FEBRUARY], 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”** means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to purchase the Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

**“Freddie Mac Continuing Covenant Agreement”** means the Continuing Covenant Agreement to be delivered on the Conversion Date in the form attached to the Construction Phase Financing Agreement by and between the Borrower and the Freddie Mac Seller/Servicer, as the same may be amended, modified or supplemented from time to time.

**“Freddie Mac Purchase Date”** means the date on which Freddie Mac purchases the Funding Loan from the Initial Funding Lender upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Freddie Mac Commitment.

**“Freddie Mac Seller/Servicer”** means Berkeley Point Capital LLC, d/b/a NEWMARK, as Freddie Mac’s seller/servicer under the Freddie Mac Commitment, or any of its successors or assigns under the Freddie Mac Commitment.

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

**“Funding Lender Representative”** means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender. The Freddie Mac Seller/Servicer shall become the Funding Lender Representative upon the occurrence of the Conversion Date, and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

**“Funding Loan”** means the loan in the maximum aggregate principal amount of \$[AMOUNT] made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

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

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

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

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

**“Governmental Note”** means the Multifamily Note dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

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

**[CONFIRM INITIAL DS DEPOSIT REQUIRED BY CITIZENS: “Initial Debt Service Deposit”** means an amount equal to the sum of (i) the interest payable on the Funding Loan, and (ii) the ongoing fees 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.]

**“Initial Funding Lender”** means Citizens Bank, N.A., as initial holder of the Governmental Note.

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

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

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

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

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

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

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

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

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

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

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

**“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 fixed 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 and the actual number of days elapsed.

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

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

**“Pre-Conversion Loan Equalization Payment”** means a prepayment of the Project Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Project Loan and the Funding Loan to the Actual Project Loan Amount.

**“Prepayment Premium”** shall mean any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, the amount of premium payable by the Borrower under Section [ ] of the Project Note, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under Section 10 of the Project Note, in each case in connection with a prepayment of the Project Loan.

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

**“Project”** means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Copley Chambers II & III located at 220-228 Broad Street in Providence, Rhode Island, including the real estate described in the Security Instrument.

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

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

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

**“Project Loan Documents”** means the Security Instrument, the Project Note, the Project Loan Agreement, the Regulatory Agreement, the 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 the Fiscal Agent pursuant to Section 2.11 hereof.

**“Project Note”** means the Project Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Project Loan, which Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, 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.

**“Qualified Investments”** means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/”A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody’s or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the “highest rating”

shall mean a rating of at least “VMIG-1”/”A-1+” for obligations with less than one year maturity; at least “Aaa”/”VMIG-1”/”AAA”/”A-1+” for obligations with a maturity of one year or greater but less than three years; and at least “Aaa”/”AAA” for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index. Ratings of Qualified Investments shall be determined only at the time of purchase of such Qualified Investments and without regard to ratings subcategories.

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

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

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

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

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

“**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 the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost 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 Cost of Issuance Fund.

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

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

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

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

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

**“Security Instrument”** means the [Open-End Mortgage, Assignment of 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 Law)] dated as of the date hereof, by the Borrower, granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Project Loan and related obligations, which Security Instrument has been assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, supplemented or restated.

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

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

**“State”** means the State of Rhode Island.

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

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

**“Title Company”** means [\_\_\_\_\_].

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



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

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

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

## ARTICLE II

### THE FUNDING LOAN

#### Section 2.01 Terms.

(a) The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount. The Funding Loan shall be originated and funded by the Initial Funding Lender to the Governmental Lender in accordance with Section 2.01(b) below. The proceeds of the Funding Loan shall be deposited with Fiscal Agent and disbursed in accordance with this Funding Loan Agreement. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

(b) The Funding Loan shall be originated by the Initial Funding Lender on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Initial Funding Lender in installments directly to the Fiscal Agent for deposit to the Project Account upon receipt of an Advance Request, the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement and in the Requisition (the form of which is 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 the Borrower (which may be included in the Requisition described above) that, as of the date of such Certificate (A) the Borrower has not been advised that the Bond Counsel Approving Opinion may no longer be relied upon, (B) to the knowledge of the 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 the Borrower Tax Certification are true and accurate and are being complied with, and (D) to the knowledge of the 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 the Governmental Lender or the Fiscal Agent. The initial installment of the Funding Loan shall be in the amount of **[LESSOR OF 5% OR \$50,000: \$[\_\_\_\_\_]]**, which amount shall be advanced by the Initial Funding Lender and deposited in the Project Loan Fund on the Delivery Date for application as provided in Section 2.11. 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 the receipt by the Fiscal Agent of (i) the prior written consent of the Initial Funding Lender and Freddie Mac and (ii) an opinion of Bond Counsel (which shall also be addressed to the 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 the Initial Funding Lender, the Governmental Lender or the 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 the 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 the 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 the 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 (5<sup>th</sup>) Business Day following the date on which written notification from the Initial Funding Lender, the Governmental Lender or the Borrower has been given to the other two parties and to the Fiscal Agent (or such lesser or greater number of Business Days to which the Initial Funding Lender, the Governmental Lender and the Borrower may agree in writing, with written notice to the Fiscal Agent), referencing the Draw-Down Notice and containing substantially the following words: “The [Borrower/Initial Funding Lender/the 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 the Initial Funding Lender, the Governmental Lender and the 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) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of the Funding Loan advanced by the 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 the 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 the Fiscal Agent in such regard will be conclusive evidence of the principal amount of the Funding Loan (absent manifest error). The Fiscal Agent shall notify the Governmental Lender, the Freddie Mac Seller/Servicer, Freddie Mac and the Borrower if any advance of the proceeds of the Funding Loan is not made by the Initial Funding Lender when due hereunder.

(d) The Funding Loan shall bear interest payable on each Interest 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 on the Record of Advances.

(e) The Funding Loan shall mature on [**March 1, 2040 IF CLOSE IN FEBRUARY**], subject to scheduled monthly principal payments, and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. 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 if the Conversion Date occurs on or prior to the initial Forward Commitment Maturity Date. 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 (i) to the first day of the month immediately succeeding the Conversion Date if the Conversion Date occurs on the first day of a month, or (ii) to 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 receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender of an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative, the Freddie Mac 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 gross income for purposes of 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 the aforesaid opinion of Bond Counsel. 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 the Freddie Mac 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, premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Funding Lender (unless otherwise directed by the Funding Lender).

(g) Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(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 the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

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

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

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

(c) Except for funds, money or securities in the Cost 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 the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof,

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

**Section 2.03 *Limited Obligations.*** The Funding Loan and the Governmental Note are special, limited obligations of the Governmental Lender, payable solely from the Revenues and other funds and moneys and Pledged Security pledged and assigned hereunder. None of the Governmental Lender, the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Funding Loan or the Governmental Note or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein, and none of the Funding Loan or the Governmental Note or any of the Governmental Lender's agreements or obligations with respect to the Funding Loan, the Governmental Note, or hereunder, shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Project Loan Agreement, the Funding Loan or this Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under the Project Loan Agreement. The Governmental Lender has n taxing power.

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

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

**Section 2.06 Authentication.** The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in *Exhibit A*, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

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

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

(a) The Funding Loan shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loan and any transfers of the Funding Loan as provided herein. The Funding Loan shall initially be registered to the Initial Funding Lender, upon the Conversion Date shall be registered to the Freddie Mac Seller/Service, and 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 the Governmental Lender.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan 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 the Fiscal Agent substantially in the form attached hereto as *Exhibit C* setting forth certain representations with respect to such Qualified Transferee (the “*Transferee Representations Letter*”). The 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 the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (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 (x) owners or beneficial owners thereof that are Qualified Transferees or (y) 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, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the 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. In connection with any such sale, assignment or transfer of the Funding Loan, it shall not be necessary to present, exchange, or re-authenticate the Governmental Note, provided that the Funding Lender shall provide the Fiscal Agent with the name and date of registration, address, and employer identification number of the assignee or transferee, together with a copy of the endorsement to the Governmental Note or assignment of the Governmental Loan, so that the Fiscal Agent may maintain the registration records.

**Section 2.09 *TEL Securitization; Allocation of Funding Loan Interest.*** In accordance with the provisions of Section 2.08 hereof, the Funding Lender may transfer the Funding Loan to a Qualified Transferee in connection with the securitization of the Funding Loan, in which event the Funding Lender Representative may direct the 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 the Fiscal Agent shall accept such direction from the Funding Lender Representative. In the event that the Funding Lender transfers the Funding Loan to a Qualified Transferee in accordance with the provisions of Section 2.08 hereof, the Funding Lender Representative may also give notice to the Fiscal Agent that the Funding Lender has agreed to allow the Servicer to retain a portion of the monthly interest payable on the Funding Loan as additional compensation for the servicing of the Funding Loan (“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 the Fiscal Agent shall accept and pay to the Funding Lender such lesser amount of interest received from the Servicer and all parties hereto 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.

**Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Note.*** Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, receipt by the Fiscal Agent of the following:

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

(b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the initial advance of the proceeds of the Funding Loan by the 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 the Governmental Lender in favor of the 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 the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(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 gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) a certified copy of the Resolution;

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

(j) receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement.

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

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

(a) The Fiscal Agent shall establish, maintain and hold in trust and there is hereby established with the 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 the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender in the initial installment on the Delivery Date and thereafter on a drawdown basis as provided for in Section 2.01(b) hereof. Upon receipt, the 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. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) **[WILL THERE BE AN EQUITY DEPOSIT AT CLOSING OR WILL ALL GO TO TITLE ESCROW? WILL ANY PROCEEDS OF THE FUNDING LOAN BE USED FOR COI? WILL THERE BE AN INITIAL DEBT SERVICE DEPOSIT?** – On or prior to the Delivery Date, the Governmental Lender shall cause the Borrower to deliver to the Fiscal Agent from sources other than the Loans, the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund, the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account and the Initial Debt Service Deposit [for deposit in the Revenue Fund.] The Fiscal Agent shall **[also]** deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or 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, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the Fiscal Agent shall make the initial disbursements of amounts in the Project Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof**[IF APPLICABLE: ; provided that, prior to making any such disbursements, \$[ ] of proceeds of the Funding Loan shall be transferred by the Fiscal Agent to the Cost of Issuance Fund without any need of a Requisition therefor].**

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

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

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

**Section 2.13 Conversion.** If the Conversion Notice is issued in the timeframe required under 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 the Freddie Mac 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

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

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

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

(ii) in part, on the Interest 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 the Borrower elects to make a Pre-Conversion Loan Equalization Payment; or

(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, as directed in writing by the Initial Funding Lender in the event the Conversion Notice is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date.

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

prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer and the 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

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

In addition to the Project Loan Fund established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund;
- (e) Cost 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 the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements

of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

#### **Section 4.02 Project Loan Fund.**

(a) Deposit. The Fiscal Agent shall deposit the proceeds of the Funding Loan into the Project Account of the Project Loan Fund **[IF APPLICABLE:** , including amounts to pay capitalized interest on the Loans during the Construction Phase,] upon receipt of each advance thereof as provided in Section 2.11(b) hereof. The Fiscal Agent shall deposit into the Borrower Equity Account of the Project Loan Fund **[IF APPLICABLE:** the Borrower Equity Deposit and] any amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Note), 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 the Fiscal Agent for the purpose of **[IF APPLICABLE:** (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 the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. **[IF APPLICABLE:** The Fiscal Agent shall automatically transfer amounts, if any, from [the Project Account] [the 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. During the Construction Phase, the Fiscal Agent shall automatically transfer funds in the [Project Account of the Project Loan Fund received from the 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 monthly interest on the Project Loan and Funding Loan, in each case without any need for a Requisition or other written direction.] The 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 the Borrower and countersigned by an Authorized Officer of the Governmental Lender and an Authorized Officer of the Servicer or, if there is no Servicer, the 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 in escrow on the Delivery Date to the Title Company for disbursement of funds in accordance with the Settlement Sheet]. Notwithstanding the foregoing, the Governmental Lender agrees that if the 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 the Fiscal Agent by electronic means), the Governmental Lender shall be deemed to have approved such disbursement. Furthermore, if the Governmental Lender and the 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, the Funding Lender can approve the disbursement and the Fiscal Agent shall pay it from the Project Account or Borrower Equity Account, as applicable.

The 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 the Servicer or, if no Servicer, the Funding Lender Representative, on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the 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. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Governmental Lender and an Authorized Officer of the Servicer or, if no Servicer, the 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, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Governmental Lender (as applicable) and an Authorized Officer of the Servicer or the Funding Lender Representative or, as permitted hereunder, without the signature of an Authorized Officer of the Borrower, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, the 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, the Governmental Lender and Bond Counsel shall have received (which receipt shall be confirmed in writing by the Governmental Lender at the Fiscal Agent's request) a Certificate of an Authorized Officer of the Borrower satisfactory to them that (i) the Borrower has complied with the Borrower Tax Certification delivered on or prior to the Delivery Date, and (ii) the Borrower will be able to deliver or cause delivery of the Accountant's and Architect's Certificate for Final Draw-Down of Funds and the Borrower's Certificate as to Use of Loan Proceeds (each as set forth in the Borrower Tax Certification) at the time of final draw-down in form and substance substantially the same as the certificates specified in the Borrower Tax Certification delivered on or prior to the Delivery Date; and

(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, the

Governmental Lender and Bond Counsel shall have received (which receipt shall be confirmed in writing by the Governmental Lender at the Fiscal Agent's request), the Accountant's and Architect's Certificate for Final Draw-Down of Funds and the Borrower's Certificate as to Use of Loan Proceeds (each as set forth in the Borrower Tax Certification) in form and substance satisfactory to the 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 the 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 rehabilitation of the Project in accordance with the Construction Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative or the 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 the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect exclusion from gross income for federal income tax purposes of interest on the Governmental Note; 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 there are funds remaining in the Borrower Equity Account following completion of the rehabilitation of the Project in accordance with the Construction Continuing Covenant Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower upon the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 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.

#### **Section 4.03 *Application of Revenues.***

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent pursuant to Section 2.01(b), which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.12 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

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

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

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a); and (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 Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04 Application of Loan Payment Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

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

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

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

for which a notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

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

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

**Section 4.06 Administration Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund **[IF APPLICABLE: , together with amounts transferred by the Fiscal Agent from the Project Loan Fund for deposit to the Administration Fund pursuant to Section 4.02]**. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Project Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

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

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

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

**Section 4.07 [Reserved].**



**Section 4.08 *Investment of Funds.*** The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized and, in such capacity, the 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 Agreement, shall be treated as Extraordinary Fiscal Agent's Fees and Expenses. . The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter. In no event shall the Fiscal Agent be required to provide supervision, recommendations, or advice with respect to any investment. In the absence of written direction from the Borrower, the 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 so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

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

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

**Section 4.09 [Reserved].**

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

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

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

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

Within 55 days of the end of each fifth Rebate Year, upon the written direction of the Borrower, Governmental Lender or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so

that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

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

(i) Not later than 60 days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and

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

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

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the 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 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

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

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

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

**Section 4.13 Cost of Issuance Fund.** *[IF PROCEEDS TO BE USED FOR COI:* 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.] **[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.]

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

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

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

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

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

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

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

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

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Project Books.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

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

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

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

**Section 5.07 *Tax Covenants.***

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

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an "arbitrage bond" under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the "**Regulations**") or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Funding Loan will be excluded from the gross income for federal income tax purposes, of the Funding Lender pursuant to the Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

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

Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

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

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

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

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

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

## ARTICLE VI

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

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

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

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

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



commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) the acceleration of the Project Loan by the Funding Lender or the Funding Lender Representative with respect to an “Event of Default” thereunder and the receipt by the Fiscal Agent of written notice from the Funding Lender or the Funding Lender Representative that such event shall be an Event of Default hereunder.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

**Section 6.02 Acceleration; Other Remedies Upon Event of Default.**

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

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

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

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

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

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

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Regulatory Agreement, the 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 the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

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

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

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

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

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

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the 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 the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

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

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

**Section 6.06 *Remedies Not Exclusive.*** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and

every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

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

**Section 6.08 *[Reserved]*.**

**Section 6.09 *Termination of Proceedings.*** In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.10 *Waivers of Events of Default.*** The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.***

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other Project Loan Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Project Note to the Funding Lender

Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 *Substitution.*** Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Regulatory Agreement, the Fiscal Agent shall exchange the Project Note and the Security Instrument for a new Project Note and Security Instrument, evidencing and securing a new loan (the "New Project Loan"), which may be executed by a person other than the Borrower (the "New Borrower"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

## ARTICLE VII

### CONCERNING THE FISCAL AGENT

**Section 7.01 *Standard of Care.*** The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement and no implied covenants or obligations should be read into this Funding Loan Agreement against the Fiscal Agent. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs. For the avoidance of doubt, the permissive right of the Fiscal Agent to do things

enumerated in this Funding Loan Agreement or the Project Loan Agreement shall not be construed as a duty.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

When the 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.

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

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document 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 the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, (i) the 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) the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) concerning all matters of trusts hereof and duties hereunder, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu

thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 7.02(k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Fiscal Agent shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Fiscal Agent shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of acting as Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent security or indemnity satisfactory to the 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 the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and the Regulatory 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, the Regulatory Agreement or any other documents executed in connection herewith, the Fiscal Agent shall be entitled to all of the rights, immunities and indemnities accorded to it under this Funding Loan Agreement, including, but not limited to, this Article VII.

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

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

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

Notwithstanding anything contained herein or in the Security Instrument to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Fiscal Agent to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Fiscal Agent may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The Fiscal Agent shall not be required to take any action to foreclose or otherwise enforce the Security Instrument unless indemnified to its satisfaction and will not be required to foreclose if doing so will subject it to environmental liability or will require the approval of a governmental regulator that cannot be obtained.

**Section 7.03 *Use of Proceeds and Other Moneys.*** The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan or any other moneys paid over by the Fiscal Agent in accordance with the provisions of this Funding Loan Agreement except as provided herein.

**Section 7.04 *[Reserved]*.**

**Section 7.05 *Trust Imposed.*** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 *Compensation of Fiscal Agent.*** The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not perform any Extraordinary Services or incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Fiscal Agent's Fees and Expenses or, if applicable, the Extraordinary Fiscal Agent's Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Note or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Note or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses (except for matters attributable to the negligence or willful misconduct of such person). The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

**Section 7.07 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws of the State to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, *ipso facto*, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

**Section 7.09 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder; provided, however, that after giving notice of resignation, the 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 the Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive the Fiscal Agent's resignation as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

**Section 7.10 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time either with or without cause with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a

successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder. The rights of the Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive the Fiscal Agent's removal as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

**Section 7.11 *Appointment of Successor Fiscal Agent.***

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following receipt of notice of the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.12 *Concerning Any Successor Fiscal Agent.*** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within thirty (30) days of such appointment, to the Funding Lender.

**Section 7.13 *Successor Fiscal Agent*** . In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

**Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent***. It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co-fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co-fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co-fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-fiscal agent or separate fiscal agent;

(d) any co-fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co-fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co-fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co-fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co-fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co-fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co-fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Notice of Certain Events.*** The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16 *[Reserved].***

**Section 7.17 *Filing of Financing Statements.*** The Fiscal Agent shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for financing statements that have been delivered to the Fiscal Agent on which the 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 UCC. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions.

Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code and unless the Fiscal Agent shall have been notified by the Funding Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 7.17 and in filing any continuation statements in the same filing offices as the initial filings were made.

**Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01 *Amendments to this Funding Loan Agreement.*** Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.*** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative, including entering into the amendments attached as exhibits to the Construction Phase Financing Agreement on the Conversion Date.

**Section 8.03 *Opinion of Bond Counsel Required.*** No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note, the Security Instrument or the Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.01 *Discharge of Lien.*** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

- (a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or
- (b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or
- (c) by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and



discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest and premium, if any, on the Governmental Note, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

**Section 9.02 *Discharge of Liability on Funding Loan.*** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article III provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but

only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

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

## ARTICLE X

### INTENTIONALLY OMITTED

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement.

**Section 11.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 11.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

**Section 11.04 Notices.** (a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Instruction and Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender:

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

The 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](mailto:caroline.cowart@bnymellon.com)  
Telephone: (904) 645-7979

The Borrower:

Copley Chambers II & III LLC  
c/o [\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
Attention: [\_\_\_\_\_] ]  
Email: [\_\_\_\_\_] ]  
Telephone: [\_\_\_\_\_] ]

with a copy to:

[Borrower's Counsel]  
(which copy shall not constitute notice to  
Borrower)

[\_\_\_\_\_  
\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Email: [\_\_\_\_\_  
Telephone: [\_\_\_\_\_]

Funding Lender (Construction Phase)

Citizens Bank, N.A.  
28 State Street, MS 1270  
Boston, Massachusetts 02109  
Attention:  
Email: \_\_\_\_\_@citizensbank.com  
Telephone: (617) \_\_\_\_\_

with a copy to:

Klein Hornig LLP  
101 Arch Street, Suite 1101  
Boston, MA 02110  
Attention:  
Email: \_\_\_\_\_@kleinhornig.com  
Telephone: (617) 224-0600

Funding Lender (from Conversion Date to  
Freddie Mac Purchase Date) and Servicer:

Berkeley Point Capital LLC  
One Beacon Street, 14<sup>th</sup> Floor  
Boston, Massachusetts 02108  
Attention: Director, Loan Servicing  
Email: [\_\_\_\_\_  
Telephone: [\_\_\_\_\_]

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](mailto: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](mailto:guy_nelson@freddiemac.com)  
Telephone: (703) 903-2000

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

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

(a) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

**Section 11.05 *Funding Lender Representative.***

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Conversion Date, the Freddie Mac Seller/Servicer shall become the Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of Exhibit B hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

**Section 11.06 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.07 *Counterparts.*** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.08 *Laws Governing Funding Loan Agreement .*** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

**Section 11.09 *No Recourse.*** No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

**Section 11.10 *Successors and Assigns.*** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**GOVERNMENTAL LENDER:**

**RHODE ISLAND HOUSING MORT  
GAGE AND FINANCE CORPORATION**

By \_\_\_\_\_

Name: Kara L Lachapelle

Title: Chief Financial Officer

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO  
COPLEY CHAMBERS II & III FUNDING LOAN AGREEMENT]

**INITIAL FUNDING LENDER:**

**CITIZENS BANK, N.A.**

By \_\_\_\_\_  
Name:  
Title: Vice President

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO  
COPLEY CHAMBERS II & III FUNDING LOAN AGREEMENT]



**FISCAL AGENT:**

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

By \_\_\_\_\_  
Name:  
Title: Vice President

[FISCAL AGENT'S SIGNATURE PAGE TO COPLEY CHAMBERS II & III FUNDING LOAN AGREEMENT]

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

MULTIFAMILY NOTE

(COPLEY CHAMBERS I & III APARTMENTS PROJECT), SERIES 2023

US \$[AMOUNT]

[CLOSING DATE]

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 [\_\_\_\_\_] DOLLARS (US \$[AMOUNT]) as shall have been advanced by the Funding Lender pursuant to the Funding Loan Agreement, plus premium, if any, and interest thereon, and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Note (this “*Note*”) is being delivered pursuant to that certain Funding Loan Agreement dated as of [February] 1, 2023 (together with any and all amendments, modifications, supplements and restatements, the “*Funding Loan Agreement*”), among the Funding Lender, the Obligor and The Bank of New York Mellon Trust Company, N.A. (the “*Fiscal Agent*”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$[AMOUNT] (the “*Funding Loan*”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Copley Chambers II & III LLC (the “*Borrower*”) pursuant to the Project Loan Agreement dated as of [February] 1, 2023 (the “*Project Loan Agreement*”), among the Obligor, the Borrower and the Fiscal Agent. **The outstanding principal balance of this Note at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender under the Funding Loan Agreement and not otherwise prepaid.**

1. **Defined Terms.** As used in this Note, (i) the term “Funding Lender” means the holder of this Note, and (ii) the term “Indebtedness” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note or the Funding Loan Agreement. “Event of Default” and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing [FIRST IPD] interest on this 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 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 Note subject to prepayment (each such date for payment an “*Interest Payment Date*”). 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 Note in full on [March 1, 2040 – IF CLOSE IN FEBRUARY] (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 the Freddie Mac 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 Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender’s discretion. Neither the Funding Lender’s acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender’s right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the “*Maximum Interest Rate*”). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Rhode Island (the “*Property Jurisdiction*”).

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

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

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the “*Default Rate*”) equal to the lesser of (i) the 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.

15. **Limited Obligation.** THIS GOVERNMENTAL NOTE IS A LIMITED OBLIGATION 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 THE GOVERNMENTAL LENDER, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE GOVERNMENTAL LENDER, TO THE LIMITED EXTENT SET FORTH

HEREIN) NOR ANY PUBLIC AGENCY SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE FUNDING LOAN OR 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 THE GOVERNMENTAL NOTE OR ANY OF THE 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. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

*[Signature page follows]*

IN WITNESS WHEREOF, the Obligor has caused this Multifamily Note to be duly executed by the manual or facsimile signature of its 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 Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

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

By: \_\_\_\_\_  
Authorized Signer

**SCHEDULE 1**  
**FUNDING LOAN AMORTIZATION SCHEDULE**



**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

Copley Chambers II & III LLC  
[**BORROWER'S ADDRESS**]

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

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

Re: Copley Chambers II & III Apartments

Ladies and Gentlemen:

The undersigned is the holder (the "**Funding Lender**") of the Multifamily Note (Copley Chambers II & III Apartments Project), Series 2023 dated [CLOSING DATE] (the "**Governmental Note**") delivered pursuant to the Funding Loan Agreement dated as of [February] 1, 2023 (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 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be \_\_\_\_\_ . [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNATURE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

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]

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

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

Re: Copley Chambers II & III Apartments

Ladies and Gentlemen:

The undersigned (the “*Funding Lender*”) hereby acknowledges receipt of the Multifamily Note (Copley Chambers I & III Apartments Project), Series 2023 dated [CLOSING DATE] (the “*Governmental Note*”) delivered pursuant to the Funding Loan Agreement dated as of [February] 1, 2023 (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 the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The 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 the Funding Lender in connection with the [origination/purchase] of the Funding Loan.

2. The 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. The 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

the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (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 except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) 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, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to [NAME OF FREDDIE MAC 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 FREDDIE MAC SELLER/SERVICER TRANSFEREE REPRESENTATION LETTER:; provided, further, however, the 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, the 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 the 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 the Governmental Lender.

5. The 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. The 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 and Providence Plantations or any political subdivision thereof and that the 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 the Governmental Lender, the State of Rhode Island or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The 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. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan.

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

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 REQUISITION  
(Cost of Issuance 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: Copley Chambers II & III Apartments

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 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 [February] 1, 2023, 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 and The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent, securing the Multifamily Note (Copley Chambers I & III Apartments Project), Series 2023 dated [CLOSING DATE] (the “**Governmental Note**”).

REQUISITION NO.:  
PAYMENT DUE TO:  
AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of Copley Chambers II & III LLC, a Rhode Island 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 Cost 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: \_\_\_\_\_

**COPLEY CHAMBERS II & III LLC,**  
a Rhode Island limited liability company, as Borrower

By:

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: Copley Chambers II & III Apartments

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 [February] 1, 2023, 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 Note (Copley Chambers I & III Apartments Project), Series 2023 dated [CLOSING DATE] (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ \_\_\_\_\_ from the Project Account  
\$ \_\_\_\_\_ from the 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 Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to \_\_\_\_\_, 20\_\_).
3. The undersigned certifies that:
  - 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 will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and the Construction Continuing Covenant Agreement;
- 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 the Schedule attached hereto, 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 (or adequately stored for incorporation 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:
  - (A) the amounts requisitioned by this Requisition; plus
  - (B) 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 other Project Loan Document 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 pay debt service with respect to the Loans; and
- 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 Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

- 4. Estimated costs of completing the uncompleted construction as of the date of this Requisition: \_\_\_\_\_.
- 5. Percent of construction completed as of the date this request: \_\_\_\_\_ %

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

Date: \_\_\_\_\_

**COPLEY CHAMBERS II & III LLC,**  
a Rhode Island limited liability company, as Borrower

By:

,  
its

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 COME - RATE AND APPLICABLE PROVISIONS FOR DETERMINING RATE  
AND APPLICABLE DEFINED TERMS TO BE PROVIDED BY INITIAL FUNDING  
LENDER]**

**Attachment C**

**PROJECT LOAN AGREEMENT**

**among**

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

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

**and**

**COPLEY CHAMBERS II & III LLC,  
as Borrower**

**Relating to**

**Copley Chambers II & III Apartments  
220-228 Broad Street, Providence, Rhode Island**

**Maximum Project Loan Principal Amount: \$[AMOUNT]**

**Dated as of [February 1], 2023**

**All of the right, title and interest of the Rhode Island Housing and Mortgage Finance Corporation (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of [February 1], 2023 by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.**

## TABLE OF CONTENTS

Page

### ARTICLE I DEFINITIONS

Section 1.01	Definitions.....	3
Section 1.02	Interpretation .....	4

### ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01	Representations, Warranties and Covenants of the Governmental Lender.....	4
Section 2.02	Representations, Warranties and Covenants of the Borrower.....	6
Section 2.03	Representations and Warranties of the Fiscal Agent.....	11
Section 2.04	Arbitrage and Rebate Fund Calculations .....	12
Section 2.05	Tax Covenants of the Borrower .....	13

### ARTICLE III THE PROJECT LOAN

Section 3.01	Conditions to Funding the Project Loan .....	14
Section 3.02	Terms of the Project Loan; Servicing .....	15
Section 3.03	Deposits.....	16
Section 3.04	Pledge and Assignment to Fiscal Agent.....	16
Section 3.05	Investment of Funds .....	17
Section 3.06	Damage; Destruction and Eminent Domain.....	17
Section 3.07	Enforcement of Financing Documents.....	17

### ARTICLE IV LOAN PAYMENTS

Section 4.01	Payments Under the Project Note; Independent Obligation of Borrower.....	17
Section 4.02	Additional Payments Under the Project Note and this Project Loan Agreement .....	18
Section 4.03	Payments to Rebate Fund.....	20
Section 4.04	Prepayment.....	20
Section 4.05	Borrower's Obligations Upon Prepayment.....	21
Section 4.06	Limits on Personal Liability.....	21

### ARTICLE V SPECIAL COVENANTS OF BORROWER

Section 5.01	Performance of Obligations .....	22
Section 5.02	Compliance With Applicable Laws .....	22
Section 5.03	Funding Loan Agreement Provisions.....	22
Section 5.04	Reserved.....	22
Section 5.05	Borrower to Maintain Its Existence; Certification of No Default.....	22
Section 5.06	Borrower to Remain Qualified in State and Appoint Agent .....	22
Section 5.07	Sale or Other Transfer of Project .....	23

Section 5.08	Right to Perform Borrower’s Obligations.....	23
Section 5.09	Notice of Defaults and of Certain Other Events .....	23
Section 5.10	Survival of Covenants .....	23
Section 5.11	Access to Project; Records.....	23
Section 5.12	Regulatory Agreement .....	24
Section 5.13	Damage, Destruction and Condemnation.....	24
Section 5.14	Obligation of the Borrower To Construct the Project.....	24
Section 5.15	Filing of Financing Statements .....	25
Section 5.16	Taxes and Other Charges .....	25
Section 5.17	Reports, Maintenance and Physical Condition .....	25
Section 5.18	Environmental Matters.....	26
Section 5.19	Litigation.....	26
Section 5.20	Performance of Other Agreements.....	26
Section 5.21	Cooperate in Legal Proceedings.....	26

ARTICLE VI  
INDEMNIFICATION

Section 6.01	Indemnification .....	26
Section 6.02	Limitation With Respect to the Funding Lender.....	28

ARTICLE VII  
EVENTS OF DEFAULT AND REMEDIES

Section 7.01	Events of Default.....	29
Section 7.02	Remedies on Default .....	30
Section 7.03	No Remedy Exclusive.....	30
Section 7.04	Agreement to Pay Attorneys’ Fees and Expenses.....	31
Section 7.05	No Additional Waiver Implied by One Waiver .....	31
Section 7.06	Control of Proceedings.....	31
Section 7.07	Assumption of Obligations.....	32

ARTICLE VIII  
MISCELLANEOUS

Section 8.01	Notices .....	33
Section 8.02	Concerning Successors and Assigns .....	34
Section 8.03	Governing Law.....	34
Section 8.04	Modifications in Writing.....	34
Section 8.05	Further Assurances and Corrective Instruments .....	34
Section 8.06	Captions.....	34
Section 8.07	Severability .....	34
Section 8.08	Counterparts .....	34
Section 8.09	Amounts Remaining in Loan Payment Fund or Other Funds.....	34
Section 8.10	Effective Date and Term .....	34
Section 8.11	Cross References .....	34
Section 8.12	Funding Lender Representative and Servicer as Third-Party Beneficiaries .....	35
Section 8.13	Sopplemental Financings .....	35
Section 8.14	Non-Liability of Governmental Lender .....	35

Section 8.15	No Liability of Officers.....	35
Section 8.16	Capacity of the Fiscal Agent.....	36
Section 8.17	Reliance.....	36
Section 8.18	Delivery of Reports .....	37

## PROJECT LOAN AGREEMENT

**THIS PROJECT LOAN AGREEMENT** (this “*Project Loan Agreement*”) is made and entered into as of [February 1], 2023, by and among the **RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION** (the “*Governmental Lender*”), a public corporation and instrumentality of the State of Rhode Island (the “*State*”), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, duly organized and existing under the laws of the United States of America (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “*Fiscal Agent*”), and **COPLEY CHAMBERS II & III LLC**, a Rhode Island limited liability company duly organized and existing under the laws of the State (together with its successors and assigns permitted hereunder, the “*Borrower*”).

### RECITALS

**A.** Pursuant to Chapter 55 of Title 42 of the General Laws of Rhode Island, 1956 (1998 Reenactment), as amended and supplemented (the “*Act*”) and this Project Loan Agreement, the Governmental Lender is agreeing to make a mortgage loan to the 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 220-228 Broad Street in Providence, Rhode Island to be known as Copley Chambers II & III Apartments (the “*Project*”).

**B.** The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the loan in the maximum aggregate principal amount of \$[AMOUNT] (the “*Funding Loan*” and together with the Project Loan, the “*Loans*”) made to the Governmental Lender pursuant to the Funding Loan Agreement (the “*Funding Loan Agreement*”), by and among Citizens Bank, N.A., in its capacity as Initial Funding Lender (the “*Initial Funding Lender*”), the Governmental Lender and the Fiscal Agent. The Funding Loan is evidenced by the Governmental Lender's Multifamily Note with the sub-designation (Copley Chambers II & III Apartments Project), Series 2023, dated [CLOSING DATE] (together with all riders and addenda thereto, the “*Governmental Note*”) delivered by the Governmental Lender to the Initial Funding Lender.

**C.** The Initial Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to this Project Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Financing Documents.

**D.** The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition and construction of the Project [and to pay certain closing costs with respect to the Loans].

**E.** The Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Project Note dated [CLOSING DATE] (together with all riders and modifications thereto, the “*Project Note*”) delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.



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

G. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("**Freddie Mac**") has entered into a commitment with Berkeley Point Capital LLC, d/b/a NEWMARK (the "**Freddie Mac Seller/Servicer**") dated \_\_\_\_\_, 20\_\_ (the "**Freddie Mac Commitment**") whereby Freddie Mac has committed, 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 the Freddie Mac 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, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall 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, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

I. As a Condition to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the "**Freddie Mac Continuing Covenant Agreement**"), in each case pursuant to the forms attached the Construction Phase Financing Agreement.

J. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac 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, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. Berkeley Point Capital LLC, d/b/a NEWMARK will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

**“Additional Loans”** is defined in Section 8.13 of this Project Loan Agreement.

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

**“Fee Component”** means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis, and includes the Governmental Lender Fee, the Ordinary Fiscal Agent’s Fees and Expenses and the Servicing Fee.

**“Project Loan Agreement”** means this Project Loan Agreement, together with any amendments hereto.

**“Project Loan Amortization Schedule”** means the Project Loan Amortization Schedule to be attached as Schedule 1 to the Project Note on the Conversion Date.

**“Project Loan Payment”** means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Note and this Project Loan Agreement.

**“Project Loan Payment Date”** means (A) the first day of each calendar month, commencing [ ] 1, 2023, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; *provided, however*, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

**“Servicing Fee”** means, [confirm no outside servicer of Project Loan during the Construction Phase, fees for which should be included in definition] during the Permanent Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to one twelfth of [0.12]% of the outstanding principal balance of the Project Loan, computed on the basis of a 360-day year [consisting of twelve 30-day months][and the actual number of days elapsed].

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

**“Taxes”** means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax

liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

“*Transfer*” means (i) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (ii) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of a direct or indirect ownership interest; or (iv) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Project Loan Agreement; the term “heretofore” means before the date of execution of this Project Loan Agreement; and the term “hereafter” means after the date of execution of this Project Loan Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01 Representations, Warranties and Covenants of the Governmental Lender.** The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

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

(b) Power and Authority. The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) All Action Taken. The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Authorization; Enforceability. Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and

delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) Compliance and No Conflicts or Breach. The Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. The execution and delivery of the Governmental Note and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) Consents; Approvals. No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) Litigation. There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document; (iv) adversely affects the exclusion from gross income for federal income tax purposes of interest on the Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents.

(h) No Interest in Project or Borrower. No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Notice of Noncompliance; Actions. Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificate or the Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance

and at the Borrower's expense will, subject to the Funding Lender Representative's rights upon the occurrence and continuance of an Event of Default pursuant to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Project Loan Agreement, the Tax Certificate and the Regulatory Agreement.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Note, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 Representations, Warranties and Covenants of the Borrower.** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) Organization. The Borrower is a Rhode Island limited liability company duly organized, validly existing and in good standing under the laws of the State and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents to which it is a party, and to carry out and consummate all transactions contemplated hereby and by such other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents. All corporate members, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All members, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) Power and Authority. The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Authorization, Enforceability. Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency,

reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) Consents and Approvals. No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained and as are in full force and effect or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) No Violations, Conflicts, Defaults or Liens. None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) Litigation. There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note.

(g) Compliance. The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(h) Filing and Payment of Taxes. The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid, or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(i) No Default. To the Borrower's knowledge, the Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Financing Document to which it is a party or by which it or the Project is bound. The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any other agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) Payment of Maintenance, Repairs and Taxes With Respect to the Project. The Borrower agrees to pay or cause to be paid all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) Ownership Interests in Borrower. All of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional ownership interests if such units are issued in accordance with the provisions of the Financing Documents and all applicable securities laws.

(l) Transfers of Interests in Borrower or Project. The Borrower will not make, suffer or permit the occurrence of any Transfer of any interest in the Borrower or the Project other than as permitted in the Financing Documents or a transfer expressly approved in writing by the Governmental Lender and the Funding Lender, nor transfer any material license required for the operation of the Project. The Borrower understands that any Transfer of any interest in the Borrower or the Project and any approvals of the same by the Governmental Lender shall be subject to the TPA Regulations.

(m) Representations and Warranties. The representations and warranties of the Borrower contained in the Tax Certificate, the Regulatory Agreement and the other Financing Documents are true and accurate in all material respects.

(n) Full and Accurate Disclosure; Financial Information. The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement and the other Financing Documents or the consummation of the transactions contemplated hereby and thereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, and there is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Funding Lender Representative or the Governmental Lender which materially and adversely affects the Project or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party in a timely manner. The

representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects as of the respective dates of such reports, and (ii) accurately represent the financial condition of the Project as of the date of such reports. Other than pursuant to or permitted by the Financing Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

(o) No Interest of Governmental Lender. To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(p) Intention to Hold the Project. The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project, and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Project Loan Agreement in compliance with the terms of this Project Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

(q) Location of Project. The Project is located wholly within the boundaries of the City of Providence, Rhode Island.

(r) Changes to and Operation of the Project. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or adversely affects the exclusion from gross income for federal income tax purposes of the interest on the Governmental Note. The Borrower shall operate the Project as required by the Regulatory Agreement.

(s) Approval of Funding Loan Agreement. The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of,



covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(t) Title. The Borrower will have a fee simple interest in the land and improvements on the Project, subject only to liens and other encumbrances and exceptions permitted under the Security Instrument (“*Permitted Encumbrances*”). The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the fee simple interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project (including the Leases (as defined in the Security Instrument)), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower’s knowledge, there are no delinquent Taxes with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a lien prior to, or of equal priority with, the liens created by the Financing Documents.

(u) Acknowledgement of Transactions and Risks. The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

(v) Survey. To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

(w) No Bankruptcy Filing. The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a “*Bankruptcy Proceeding*”), and has no knowledge of any Person contemplating the filing of any such petition against it. As of the Delivery Date, the Borrower has the ability to pay its debts as they become due.

(x) Insurance. The Borrower has obtained the insurance required by the Continuing Covenant Agreement and has delivered to the Funding Lender Representative copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth therein and in the Security Instrument.

(y) Environmental Matters.

(i) Except as disclosed [ \_\_\_\_\_ ] [to **RIHousing and the Funding Lender**], the Project and the use and operation thereof during and after construction thereof will be in compliance with each zoning, subdivision, land

use, environmental and other law, ordinance, order, permits, license, rule, regulation and approval applicable thereto.

(ii) The Borrower has received no written notice that either the Borrower or the land comprising the Project are in violation of or subject to any existing, pending or, to Borrower's knowledge, threatened investigation or inquiry by any governmental authority pertaining to any applicable environmental law.

(z) State Law Requirements. The Borrower will comply with the provisions of all applicable State laws relating to the Project Loan and the Project.

(aa) Compliance with Regulatory Agreements. The Project is, as of the date of issuance of the Governmental Note, in compliance with all requirements of the all regulatory agreements (including the Regulatory Agreement) to the extent such requirements are applicable, and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of such regulatory agreements, including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws. The Borrower shall at all times comply with the requirements of the regulatory agreements, including the Regulatory Agreement.

**Section 2.03 *Representations and Warranties of the Fiscal Agent.*** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) Organization; Authority. The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States of America. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) Compliance. The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) Due Authorization. The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Execution and Delivery; Enforceability. Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal

Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) Qualified to Act. The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) Compliance. The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) Consents and Approvals. No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 *Arbitrage and Rebate Fund Calculations.*** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 *Tax Covenants of the Borrower.*** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Note to be included in gross income of the Funding Lender, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Governmental Note;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Governmental Note to be “arbitrage bonds” within the meaning of Section 148 of the Code; and

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer.

(f) The full amount of each disbursement of proceeds of the Project Loan will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Governmental Note (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Governmental Note (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement or the Regulatory Agreement;

(j) No proceeds of the Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; *provided, however*, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Funding Loan, will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

### ARTICLE III

#### THE PROJECT LOAN

**Section 3.01 *Conditions to Funding the Project Loan.*** On the Delivery Date and thereafter, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance with Sections 2.02 and 2.11 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to make the Project Loan, provided that no initial disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Project Note and the Governmental Lender shall have endorsed the Project Note to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to

the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “*Recorder’s Office*”);

(c) The Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the Recorder’s Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent; and

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Servicer.

### **Section 3.02 *Terms of the Project Loan; Servicing.***

(a) The Project Loan shall (i) be evidenced by the Project Note; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of \$[AMOUNT]; (iv) bear interest as provided in the Project Note; (v) provide for principal and interest payments in accordance with the Project Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Note. The outstanding principal balance of Project Loan at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender and deposited by the Fiscal Agent into the Project Loan Fund under the Funding Loan Agreement minus any amounts prepaid with respect to principal in accordance with the terms hereof and the Project Note.

The Borrower acknowledges and agrees that upon the happening of certain events or circumstances, each of the Borrower, the Governmental Lender and the Initial Funding Lender may request that the Funding Loan be fully advanced and deposited in the Project Loan Fund, all as described and in accordance with Section 2.01(b) of the Funding Loan Agreement. In such event, a like amount of the Project Loan shall be deemed concurrently and simultaneously advanced hereunder and available for disbursement to the Borrower as provided in the Funding Loan Agreement.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. **[Confirm: There will not be a Servicer during the Construction Phase.]** On the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer shall become the Servicer and shall service the Loans as required by the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Servicer services the Loans, the Borrower shall make all payments in connection with the Project Loan to the Servicer, and the Servicer will (i) retain the allocable portion of the monthly Servicing Fee (if any) for its own account, (ii) remit to the Fiscal Agent (A) all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, and (B) the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent, (iii) remit to the Governmental Lender, the Governmental Lender Fee, together with any other amounts due to the Governmental Lender, and (iv) remit to the Funding Lender, any fees or other amounts that may be due to the Funding Lender. During a period in which there is no Servicer, all notices to be sent to the Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan. The Governmental Lender, the Fiscal Agent and the Borrower further hereby acknowledge and agree with respect to the Servicer during the Permanent Phase that: (i) the Guide is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (ii) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the Guide.

**Section 3.03 Deposits.** On the Delivery Date and each date of an advance of the proceeds of the Funding Loan, such proceeds shall be deposited in the Project Account of the Project Loan Fund, including the initial deposit in the amount of \$[\_\_\_\_\_] [, of which \$[\_\_\_\_\_] shall be transferred from the Project Account for deposit to the Cost of Issuance Fund]. On the Delivery Date, the Borrower will deposit with the Fiscal Agent the sum of (i) \$[\_\_\_\_\_] for the credit of the Cost of Issuance Fund, and (ii) \$[\_\_\_\_\_] for the credit of the Borrower Equity Account of the Project Loan Fund. Subject to the conditions listed in Section 3.1 hereof, amounts on deposit in the Project Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 2.11(d) of the Funding Loan Agreement. **[DISCUSS EXPECTED SOURCES OF COI AND FLOW OF FUNDS AT CLOSING. WILL BORROWER EQUITY FOR COI FLOW THROUGH THE FISCAL AGENT OR DIRECTLY TO TITLE ESCROW AGENT?]**

To the extent that amounts in the Cost of Issuance Fund from the ad sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

**Section 3.04 Pledge and Assignment to Fiscal Agent.** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

**Section 3.05 *Investment of Funds.*** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

**Section 3.06 *Damage; Destruction and Eminent Domain.*** If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

**Section 3.07 *Enforcement of Financing Documents.*** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

## ARTICLE IV

### LOAN PAYMENTS

**Section 4.01 *Payments Under the Project Note; Independent Obligation of Borrower.***

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Permanent Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Note, provided that in all events payments made by the Borrower under and pursuant to the Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Project Note or any provision of the Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Project Note or such provision of the Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Note.



(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Project Note shall be made in immediately available funds to the Servicer on each Project Loan Payment Date or such other date when such payment is due; *provided, however,* such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 *Additional Payments Under the Project Note and this Project Loan Agreement.***

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Note include certain money to be paid in respect of, among others, the Fee Component and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as

applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans: **[IF DELIVERY DATE COI FUNDS ARE TO BE PAID FROM EQUITY, SHOULD GO DIRECTLY TO ESCROW]**

(i) On the Delivery Date, from money **[on deposit in the Cost of Issuance Fund][deposited in escrow with the Title Company]** or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Initial Funding Lender, its origination fees, together with all third party and out-of-pocket expenses of the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Initial Funding Lender) in connection with the Loans.

(ii) On the Delivery Date, from money **[on deposit in the Cost of Issuance Fund][deposited in escrow with the Title Company]** or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(iii) On the Delivery Date, from money **[on deposit in the Cost of Issuance Fund][deposited in escrow with the Title Company]** or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, an initial financing fee in an amount equal to \$[\_\_\_\_\_] and the Governmental Lender's tax credit allocation fee in the amount of \$[\_\_\_\_\_] , together with all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the \$[\_\_\_\_\_]for the Rhode Island Public Finance Management Board and fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(iv) On the Delivery Date, from money **[on deposit in the Cost of Issuance Fund][deposited in escrow with the Title Company]** or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Freddie Mac Seller/Servicer, its commitment fees and application fees, together with all third party and out of pocket expenses of the Freddie Mac Seller/Servicer (including but not limited to the fees and expenses of counsel to the Freddie Mac Seller/Servicer, if any) in connection with the Loans.

(v) On the Delivery Date, from money **[on deposit in the Cost of Issuance Fund][deposited in escrow with the Title Company]** or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$[\_\_\_\_\_] and the Fiscal Agent's first annual administration fee in the amount of \$[\_\_\_\_\_] , together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Note.

(vi) To the Fiscal Agent, the Ordinary Fiscal Agent's Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(vii) To the Governmental Lender, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender Fee the Governmental

Lender may incur in connection with the Financing Documents or the Project from time to time.

(viii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(ix) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(x) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(xi) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

**Section 4.04 *Prepayment.***

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Project Note.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, as provided in the Project Note. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, in connection with the following:

(i) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment; and

(ii) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Conversion Notice is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date.

(c) **Defeasance of the Funding Loan.** In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “*Defeasance Notice*”) to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “*Defeasance Date*”). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 Borrower’s Obligations Upon Prepayment.** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

**Section 4.06 Limits on Personal Liability.**

(a) Except as otherwise set forth in the Project Note and subsection 4.06(b) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any member of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys’ fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower’s managing member: (i) the Borrower’s obligations to the Governmental Lender and the Fiscal Agent under subsections (b)(iii), (b)(v), (b)(vi), and (b)(vii) of Section 4.02 hereof; (ii) the Borrower’s obligations under Sections 2.05 and 6.01 of this Project Loan Agreement; (iii) the Borrower’s obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Project Loan Agreement and the Tax Certificate; and (iv) the Borrower’s obligation to pay legal fees and expenses under Section 7.04 hereof.

## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Funding Loan Agreement Provisions.*** The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 *Reserved.***

**Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.***

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the Fiscal Agent (at the address set forth in Section 11.04 of the Funding Loan Agreement) a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

**Section 5.08 *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the

Fiscal Agent, the Servicer, if any and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

**Section 5.09 *Notice of Event of Default and of Certain Other Events.*** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer, if any, in writing of the occurrence of (i) any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto, and (ii) any other fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Financing Documents to which it is a party.

The Borrower shall also promptly advise the Governmental Lender and the Funding Lender Representative in writing of (i) any lien affecting the Project, or any part thereof, other than liens expressly permitted by the Project Loan Documents, (ii), upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to Borrower or managing members naming the Governmental Lender and/or the Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of Borrower to perform its obligations under the Financing Documents, and (iii) any notice of default, alleged default or potential default on the part of Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by Borrower with respect to, or alleging, the same default, alleged default or potential default.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer, if any, and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer, if any, and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the

Servicer, if any, and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.12 *Regulatory Agreement.*** The covenants of the Borrower in the Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Regulatory Agreement. The Borrower covenants to file of record the Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Regulatory Agreement will, subject to the terms of the Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Regulatory Agreement. Subject to the provisions of Section 7.06 of this Project Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Regulatory Agreement.

**Section 5.13 *Damage, Destruction and Condemnation.*** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

**Section 5.14 *Obligation of the Borrower To Construct the Project.*** The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the acquisition, construction, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower or any other person if for any reason the Project is not completed.

**Section 5.15 *Filing of Financing Statements.*** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in

connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements; provided, however, that the Fiscal Agent shall only file or record, or cause to be filed or recorded, those UCC continuation statements on which the Fiscal Agent is named as a secured party or additional secured party for financing statements that have been delivered to the Fiscal Agent, at the Borrower's expense.

**Section 5.16 *Taxes and Other Charges.*** The Borrower shall pay all Taxes and other similar charges, interest or penalties ("Other Charges") as the same become due and payable in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all taxes and other charges of any type or character charged to the Governmental Lender or to the Fiscal Agent affecting the amount available to the Governmental Lender or the Fiscal Agent from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and other charges assessed having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Fiscal Agent or the Governmental Lender and taxes based upon or measured by the net income of the Fiscal Agent or the Governmental Lender; *provided, however*, that the Borrower shall have the right to protest any such taxes or other charges and to require the Governmental Lender or the Fiscal Agent, at the Borrower's expense, to protest and contest any such taxes or other charges levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or other charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Governmental Lender or the Fiscal Agent. This obligation shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Project Loan Agreement or the Funding Loan Agreement.

**Section 5.17 *Repairs, Maintenance and Physical Condition.*** The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the improvements or equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.



**Section 5.18 *Environmental Matters.*** So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all environmental laws, (b) promptly notify the Funding Lender, the Governmental Lender and the Servicer, if any, if the Borrower shall become aware that any hazardous materials are on or near the Project in violation of applicable laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any such laws, in each case as set forth in the Security Instrument or the Continuing Covenant Agreement.

**Section 5.19 *Litigation.*** The Borrower shall give prompt written notice to the Governmental Lender, the Servicer, if any, the Fiscal Agent and the Funding Lender Representative of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a legal requirement pending or, to the Borrower's knowledge, threatened against the Borrower or the Project which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

**Section 5.20 *Performance of Other Agreements.*** The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project.

**Section 5.21 *Cooperate in Legal Proceedings.*** The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, if any, with respect to, and permit the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and/or the Servicer under any Project Loan Document or Funding Loan Document.

## ARTICLE VI

### INDEMNIFICATION

#### **Section 6.01 *Indemnification.***

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the "***Indemnified Parties***"), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, "***Losses***"), solely to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Note or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Note necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Governmental Note or allegations (or regulatory inquiry) that interest on the Governmental Note is includable in gross income for federal income tax purposes;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Note to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors,

officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) **Procedures.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; *provided, however*, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Security Instrument and the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

**Section 6.02 Limitation With Respect to the Funding Lender.** Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 *Events of Default.*** The following shall be “*Events of Default*” under this Project Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Project Loan Agreement, the Project Note or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Note and the Security Instrument, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative’s sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); *provided, however*, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative’s judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

**Section 7.03 No Remedy Exclusive.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

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

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or

(iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Sections 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;

(ii) specifically enforce the Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Regulatory Agreement or are otherwise

inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a "Related Indemnified Party") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent's right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 Assumption of Obligations.** In the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Note, the Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

## ARTICLE VIII

### MISCELLANEOUS

#### **Section 8.01** *Notices.*

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

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

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

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

**Section 8.02** *Concerning Successors and Assigns.* All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.



**Section 8.03 *Governing Law.*** This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

**Section 8.06 *Captions.*** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

**Section 8.07 *Severability.*** The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 *Counterparts.*** This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 *Amounts Remaining in Loan Payment Fund or Other Funds.*** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 *Effective Date and Term.*** This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

**Section 8.11 *Cross References.*** Any reference in this Project Loan Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement, an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

**Section 8.12 *Funding Lender Representative and Servicer as Third-Party Beneficiaries.***

The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Project Loan Agreement.

**Section 8.13 *Supplemental Financings.*** The Governmental Lender and the Fiscal Agent each acknowledges that the Funding Lender or, if Freddie Mac is not the Funding Lender, Freddie Mac, may make additional loans to the Borrower secured by additional mortgages on the Project (“*Additional Loans*”), *provided, however*, that no such Additional Loans may be made without the prior written consent of the Governmental Lender as set forth in [Section \_\_\_] of the Regulatory Agreement. Additional Loans must be subordinate to the repayment of the Project Loan by the Borrower.

**Section 8.14 *Non-Liability of Governmental Lender.*** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or prepayment premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof,

or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Note.

**Section 8.16 *Capacity of the Fiscal Agent.*** The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

**Section 8.17 *Reliance.*** The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

**Section 8.18 *Delivery of Reports.*** The delivery of reports, information and documents to the Governmental Lender as provided herein is for informational purposes only and the Governmental Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender shall have no duties or responsibilities except those that are specifically set

forth herein, and no other duties or obligations shall be implied in this Project Loan Agreement against the Governmental Lender.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Project Loan Agreement as of the date first set forth above.

**RHODE ISLAND HOUSING MORTGAGE  
AND FINANCE CORPORATION**

By \_\_\_\_\_

Name: Kara L Lachapelle

Title: Chief Financial Officer

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO  
COPLEY CHAMBERS II & III PROJECT LOAN AGREEMENT]

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

By \_\_\_\_\_  
Name:  
Title:

[FISCAL AGENT'S SIGNATURE PAGE TO COPLEY CHAMBERS II & III PROJECT LOAN AGREEMENT]

**COPLEY CHAMBERS II & III LLC,**  
a Rhode Island limited liability company, as Borrower

By: ,  
,

By: \_\_\_\_\_  
Name:  
Title:

[BORROWER’S SIGNATURE PAGE TO COPLEY CHAMBERS II & III PROJECT LOAN AGREEMENT]