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**LOAN AGREEMENT**

between

**CITY OF COLORADO SPRINGS, COLORADO,  
AS ISSUER**

and

**BRADLEY RIDGE APARTMENTS LP,  
AS BORROWER**

Relating to:

    \$[PAR]  
    City of Colorado Springs, Colorado  
    Multifamily Housing Revenue Bonds  
    (Bradley Ridge Apartments Project)  
    Series 2025

Dated as of [\_\_\_\_\_] 1, 2025

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The interest of the City of Colorado Springs, Colorado (the “Issuer”) in this Loan Agreement has been assigned (except for the “Reserved Rights” defined in the Indenture) pursuant to the Trust Indenture, dated as of the date hereof (the “Indenture”), between the Issuer and Zions Bancorporation, National Association, a national banking association, as trustee (the “Trustee”), and is subject to the security interest of the Trustee thereunder.

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## LOAN AGREEMENT

**THIS LOAN AGREEMENT** made and entered into as of [\_\_\_\_\_] 1, 2025 (this “Loan Agreement”) is between the **CITY OF COLORADO SPRINGS, COLORADO** (together with any successors and assigns, the “Issuer”), a municipal corporation duly organized and existing as a home-rule city under Article XX of the Constitution of the State of Colorado (the “State”) and the home rule charter of the City of Colorado Springs, Colorado (the “Charter”), and **BRADLEY RIDGE APARTMENTS LP**, a Colorado limited partnership (the “Borrower”), under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

A. The County and Municipality Development Revenue Bond Act, constituting Article 3, Title 29, Colorado Revised Statutes, as amended (the “*Act*”); the Colorado Supplemental Public Securities Act, constituting Part 2, Article 57, Title 11, Colorado Revised Statutes, as amended (the “*Supplemental Act*”); and the Charter authorize the Issuer to finance one or more projects, including any land, buildings or other improvements and all real and personal properties, whether or not in existence, which shall be suitable for residential facilities for low- and middle-income families or persons and intended for use as the sole place of residence by the owners or intended occupants to the end that more adequate residential housing facilities for low- and middle-income families and persons may be provided, which promote the public health, welfare, safety, convenience and prosperity.

B. The Issuer is further authorized by the Act, the Supplemental Act, and the Charter to issue revenue bonds for the purpose of defraying the cost of financing any project, including the payment of principal and interest on such revenue bonds for not exceeding three years, the funding of any reserve funds which the Issuer may deem advisable to establish in connection with the retirement of such revenue bonds or the maintenance of the project and all incidental expenses incurred in issuing such revenue bonds, and to secure payment of such revenue bonds as provided in the Act.

C. Pursuant to the Act, the Supplemental Act, the Charter, and the below-defined Indenture, the Borrower has requested, and the Issuer has determined to issue, sell and deliver its Bonds under the terms of the Indenture, and to finance a loan with the proceeds derived from the sale thereof to the Borrower to assist in the financing of the acquisition, rehabilitation, renovation, construction, development and equipping of an approximately 336-unit multifamily rental housing development known or to be known as Bradley Ridge Apartments, together with any functionally related and subordinate facilities, located at the [southwest corner of Bradley Ridge Drive and Bradley Landing Boulevard, Colorado Springs, Colorado 80925] (the “Project”) to be undertaken by the Borrower.

D. To provide and secure amounts to repay the Loan of the Bond proceeds and to obtain disbursements thereof, the Borrower will cause Collateral Payments to be made available to the Zions Bancorporation, National Association (the “Trustee”) from funds provided by the Construction Lender.

E. JPMorgan Chase Bank, N.A., a national banking association organized and existing under the laws of the United States of America, as purchaser (the “Permanent Period Holder”) has

entered into a Forward Bond Purchase Agreement whereby the Permanent Period Holder has agreed, subject to the satisfaction of the terms and conditions set forth therein, to facilitate the financing of the Project in the permanent phase.

F. If the Conversion Conditions are satisfied on or before the Initial Mandatory Tender Date, Conversion will occur on the Conversion Date and, on such Conversion Date, (i) the Bonds shall be subject to Mandatory Tender in accordance with Section 3.02 of the Indenture, (ii) the Purchase Price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and other Eligible Funds hereunder), (iii) a portion of the principal amount of the Bonds shall be cancelled in order that the principal amount outstanding thereafter equals the Permanent Loan Amount (as determined by the Permanent Period Holder at such time), (iv) the Bonds shall be removed from the Book-Entry System and converted to physical Permanent Period Bonds (in the form attached to the Permanent Period Indenture attached to the Forward Bond Purchase Agreement) which shall be purchased by the Permanent Period Holder, (v) the Permanent Period Indenture attached to the Forward Bond Purchase Agreement as Exhibit C and Permanent Period Loan Agreement attached to the Forward Bond Purchase Agreement as Exhibit D shall be delivered by the respective parties and become effective and shall supersede the Indenture and this Loan Agreement, respectively, (vi) the proceeds of the Permanent Period Holder Purchase Price, along with other funds of the Borrower, shall be deposited into the Construction Loan Prepayment Fund, and (vii) the Construction Loan shall be paid in full and all security related to the Construction Loan shall be released or if required by the Permanent Period Holder assigned to the Permanent Period Holder or the Trustee, in its capacity as trustee under the Permanent Period Indenture. If the Conversion Conditions are not satisfied on or before the Initial Mandatory Tender Date, the Permanent Period Holder will not have any obligation with respect to the purchase of the Permanent Period Bonds.

G. The Issuer and the Borrower each have full right and lawful authority to enter into this Loan Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed.

H. In order to assure compliance with Sections 103 and 142 through 150 of the Code, the Issuer and the Borrower have each entered into a Federal Tax Exemption Certificate dated as of the Closing Date (collectively, the "Tax Certificate"), and the Issuer and the Borrower has entered into the a Regulatory Agreement and Declaration of Restrictive Covenants dated as of [ ] 1, 2025 (the "Regulatory Agreement"), each of which sets forth various certifications, representations, and covenants relating to the tax-exempt status of the Bonds.

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Borrower agree as follows (provided that any obligation of the Issuer created by or arising out of this Loan Agreement shall never constitute a debt of the Issuer, the County, or the State or give rise to any pecuniary liability of the Issuer, but shall be payable solely out of the Trust Estate created under the Indenture):

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Use of Defined Terms.** In addition to the words and terms defined elsewhere in this Loan Agreement, the words and terms in this Loan Agreement shall have the meanings set forth in the Trust Indenture dated as of [ ] 1, 2025 (the “Indenture”), between the Issuer and the Trustee, the Tax Certificate or the Regulatory Agreement.

**Section 1.02. Interpretation.** Any reference herein to the Issuer, to the Governing Body or to any commissioner, member, director, officer, agent, supervisor, or employee of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of any statute of the State or the United States of America includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee or the Borrower under this Loan Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Loan Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Loan Agreement and the Indenture. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Loan Agreement or the Indenture or any amendment or supplement or exhibit hereto or thereto.

References to the Bonds as “tax-exempt” or to the “tax-exempt status” of the Bonds are to the exclusion of interest on the Bonds (other than any portion of a Bond held by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

**Section 1.03. Captions and Headings.** The captions and headings in this Loan Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)



## ARTICLE II

### REPRESENTATIONS

#### **Section 2.01. Representations of the Issuer.**

(a) The Issuer represents that:

(i) The Issuer is a legally and regularly created, established, organized and validly existing home rule city, municipal corporation and political subdivision under the provisions of Article XX of the Constitution of the State and the Charter and is duly authorized to issue the Bonds and to perform its obligations under this Loan Agreement.

(ii) The Issuer has duly adopted the Bond Ordinance, and the Bond Ordinance has not been terminated, rescinded, canceled, revoked, vacated, amended, supplemented or otherwise modified since the date of its adoption and is and has been since the date of its adoption in full force and effect.

(iii) The Issuer covenants that it will not pledge the amounts derived from this Loan Agreement other than as contemplated in the Indenture.

(iv) To the best knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Issuer that: (i) affects or seeks to prohibit, restrain or enjoin the issuance, execution or delivery of the Bonds, the origination of the loan or the lending of the proceeds of the Bonds to the Borrower, or the execution and delivery of the Bond Documents, (ii) affects or questions the validity or enforceability of the Bonds or the Bond Documents, or (iii) questions the tax-exempt status of interest on the Bonds.

(v) The Issuer hereby finds and determines that financing the Project by the issuance of the Bonds will further the public purposes of the Act.

(vi) No commissioner, member or director of the Issuer, nor any other official or employee of the Issuer, has any known interest, financial, employment or other, in the Borrower, the Project, or in the transactions contemplated hereby.

(vii) To the best knowledge of the Issuer, no action of any nature is pending against the Issuer (i) seeking to restrain or enjoin the issuance of the Bonds or the execution or delivery of any Issuer Document, (ii) questioning the proceedings relating to the Bonds or any Issuer Document, or (iii) questioning the existence or authority of the Issuer or that of its present or former commissioners, members or officers; to the best of the Issuer's knowledge no such action is threatened.

(b) It is expressly acknowledged that the Issuer 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 sale of the Bonds, or as to the correctness, completeness or accuracy of such statements.

(c) No representations, warranties or covenants are made by the Issuer other than those expressly set forth herein. Without limitation of the foregoing, the Issuer does not make any warranty, either express or implied, that the proceeds of the loan under this Loan Agreement will be sufficient to pay all of the costs of the acquisition, rehabilitation, renovation, construction and equipping of the Project. No representation is made as to compliance with any state securities or “blue sky” laws.

(d) The Borrower agrees that if the Borrower should pay any cost relating to the acquisition, rehabilitation, renovation, construction and equipping of the Project, the Borrower shall not be entitled to any reimbursement therefor from the Issuer other than reimbursement from proceeds of the Bonds to the extent permitted to be allocated to reimbursement expenditures under the terms of the Indenture and the Tax Certificate. In the event such proceeds are insufficient to pay all costs of closing the loan and financing the Project, the Borrower shall cause the payment of such additional costs of closing the loan and financing the Project to be made on its behalf as such amounts become due.

**Section 2.02. Representations and Covenants of the Borrower.** The Borrower represents and covenants that as of the date hereof:

(a) The Borrower (i) is a limited partnership duly formed and validly existing under the laws of the State of Colorado, duly authorized and qualified to transact business in the State, and (ii) is authorized to own, on a long-term basis, and operate the Project.

(b) It has full power and authority to execute, deliver and perform the Borrower Documents and to enter into and carry out the transactions contemplated by those documents. The execution, delivery and performance of the Borrower Documents do not, and will not, to the Borrower’s knowledge, violate any provision of law applicable to the Borrower and do not, and will not, conflict with or result in a default in any material respect under any agreement or instrument to which the Borrower is a party or by which it is bound. The Borrower Documents have, by proper action, been duly authorized, executed and delivered by the Borrower and all steps necessary have been taken to constitute the Borrower Documents valid and binding obligations of the Borrower, enforceable in accordance with their terms except as may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting creditors’ rights and general principles of equity.

(c) The Borrower does not currently operate or conduct any business except as related to the financing, acquisition, rehabilitation, renovation, construction, equipping, ownership, and operation of the Project. The Borrower has no material assets or property other than its anticipated interest in the Project and property ancillary thereto.

(d) The General Partner (i) is a limited liability company duly formed and validly existing under the laws of the State of Delaware, (ii) is duly authorized and qualified

to transact business in the State, and (ii) has the requisite legal authority to act as the general partner of the Borrower.

(e) The provision of financial assistance to be made available to the Borrower under this Loan Agreement and the commitments therefor made by the Issuer have induced the Borrower to undertake the transactions contemplated by this Loan Agreement.

(f) The Borrower will use and operate the Project in a manner consistent with the Act and in accordance with the Regulatory Agreement, and the Tax Certificate for as long as required by the Act and the Code and knows of no reason why the Project will not be so operated. If, in the future, there is a cessation of that operation, it will use its commercially reasonable efforts to resume that operation or accomplish an alternate use by the Borrower or others approved by the Issuer which will be consistent with the Act, the Code, the Regulatory Agreement, and the Tax Certificate.

(g) The Project will be completed in material accordance with the Plans and Specifications and the portion of the Project funded with the proceeds of the Bonds will constitute a qualified residential rental project within the meaning of Section 142(d) of the Code, all as further set forth in the Tax Certificate and the Regulatory Agreement, and will be operated and maintained in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other applicable Governmental regulations and as to be consistent with the Act.

(h) The Project will be located entirely within the City of Colorado Springs, El Paso County, Colorado, and within the jurisdiction of the Issuer.

(i) The Borrower has obtained or will obtain all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the Borrower as a condition precedent to the issuance of the Bonds, the execution and delivery of the Borrower Documents or the performance by the Borrower of its obligations thereunder, or that were or are required for the acquisition, rehabilitation, renovation, construction, equipping and/or operation of the Project.

(j) No litigation at law or in equity or proceeding before any governmental agency involving the Borrower or the General Partner is pending (with service of process having been delivered) or, to the best of its knowledge, threatened in which any liability of the Borrower or the General Partner is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the Borrower or the General Partner or that would affect its existence or authority to do business, the acquisition, rehabilitation, renovation, construction, equipping or operation of the Project, the validity of any Borrower Documents or the performance of its obligations thereunder, or the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(k) The Borrower is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money (unless in dispute) and is not in material default under any instrument under and subject to which any indebtedness has been

incurred (unless in dispute), and to its knowledge no event has occurred and is continuing that, under the provisions of any such agreement, with the lapse of time or the giving of notice, or both, would constitute an event of default by the Borrower thereunder.

(l) The Borrower is not in default under or in violation of, and the execution, delivery and compliance by the Borrower with the terms and conditions of the Borrower Documents do not and will not conflict with or constitute or result in a default by the Borrower in any material respect under or violate, (i) the Organizational Documents, (ii) the General Partner's organizational documents, (iii) any agreement or other instrument to which the Borrower is a party or by which it or its assets are bound, or (iv) to its knowledge, any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Borrower or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(m) The Borrower has received and reviewed a copy of the Indenture and approves the terms and conditions thereof and agrees to the terms thereof.

(n) The Borrower has filed or caused to be filed all federal, state and local tax returns that 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, prior to delinquency.

(o) The Borrower has or will have a leasehold interest in and to the land upon which the Project is located and will have absolute ownership (subject to the rights of tenants) of the improvements and personal property comprising the Project, and, as of the Closing Date, there will be no liens or encumbrances against such property other than the liens contemplated by the Construction Loan Documents and other Permitted Liens.

(p) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Project; and that it has not relied on the Issuer or its counsel for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Loan Agreement and the Indenture or otherwise relied on the Issuer or its counsel in any manner.

(q) The Borrower's representations and warranties survive the issuance of the Bonds.

(r) The Borrower's representations and warranties remain operative and in full force and effect regardless of any investigations by or on behalf of the Issuer or the results thereof.

(s) As to enforceability (subject to standard exceptions), when executed and delivered: (i) this Loan Agreement (to the extent validly assigned to the Trustee pursuant to the Indenture) and the Note will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower by the Trustee in accordance with their terms for the benefit of the Holders of the Bonds, and (ii) the Reserved Rights related to the Borrower constitute the legal, valid, and binding agreements of the Borrower enforceable against the Borrower by the Issuer in its own right (or, in the case of indemnification of any Issuer Indemnified Person, by such Issuer Indemnified Person in his, her or its own right) in accordance with their terms.

(t) No written information, exhibit or report furnished to the Issuer by the Borrower in its application for financing or by the Borrower or its representatives in connection with the distribution of the Official Statement or the negotiation of this Loan Agreement or the other Borrower Documents, regardless of whether the Issuer is a party thereto (including any financial statements, whether audited or unaudited, and any other financial information provided in connection therewith) contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(u) The Borrower has complied with all the terms and conditions of the Tax Certificate, including the terms and conditions of the exhibits thereto, and the representations and warranties set forth in the Tax Certificate and the Regulatory Agreement pertaining to the Borrower and the Project are true and accurate in all material respects. The Borrower has furnished to the Issuer in the Tax Certificate all information necessary for the Issuer to file an IRS Form 8038 with respect to the Bonds, and all of such information is and will be on the date of filing, true, complete and correct in all material respects.

(v) The Borrower covenants to pay the fees and expenses of the Issuer, including the Issuer Fees and Expenses, the Issuance Fee and the Issuer's Administrative Fee, all fees of the Department of Local Affairs of the State of Colorado that relate to the Bonds' private activity bond volume cap allocation, if any, and all other fees and expenses described in Section 4.04 hereof.

(w) The Project constitutes a "project" as such term is defined in the Act, and the Borrower intends to cause the Project to operate at all times during the term of this Loan Agreement so as to qualify as a "project" as defined in the Act.

(x) All representations and warranties of the Borrower in any Borrower Document are incorporated herein by reference for the benefit of the Issuer and the Trustee as if fully set forth herein.

The Borrower acknowledges that the representations and covenants herein made by the Borrower have been expressly and specifically relied upon by the Issuer in determining to make the Loan to the Borrower and the Loan would not have been made but for such representations and covenants. All material information provided by the Borrower to the Issuer concerning the Project

and the Borrower was and is on the date of execution of this Loan Agreement true and correct in all material respects.

**Section 2.03. Conversion.** The Borrower acknowledges and agrees that the Loan is subject to Conversion as provided for in Section 2.11 of the Indenture.

(End of Article II)

## ARTICLE III

### PLAN OF FINANCING

#### **Section 3.01. Issuance of Bonds; Application of Proceeds.**

(a) To provide funds to make the Loan for purposes of assisting the Borrower in paying Project Costs, the Issuer shall simultaneously with the execution and delivery hereof proceed with the issuance, sale and delivery of the Bonds upon receipt by the Trustee of the items listed in Section 2.10 of the Indenture. The Issuer agrees the proceeds of sale of the Bonds will be deposited in accordance with the Indenture.

(b) The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption, mandatory tender and remarketing pursuant to and as set forth in the Indenture. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered and will comply with those provisions of the Indenture that contemplate action by the Borrower, all as if the Borrower were a party to the Indenture. The Borrower agrees to perform fully and faithfully all the duties and obligations which the Issuer has covenanted and agreed to in the Indenture to cause the Borrower to perform.

(c) Pending disbursement pursuant to Section 3.06 hereof, the proceeds of the Bonds deposited in the Project Fund, together with any investment earnings thereon, shall constitute a part of the Revenues assigned by the Issuer to the Trustee as security for the payment of Bond Service Charges as provided in the Indenture.

**Section 3.02. The Loan.** The Issuer agrees, upon the terms and conditions herein, to make the Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. The obligation of the Issuer to make the Loan shall be deemed fully discharged upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note payable to the Issuer and assigned to the Trustee without recourse or warranty.

#### **Section 3.03. Construction Loan to Borrower.**

(a) To provide and secure funds for the repayment of the Loan, and to provide for the delivery of the Collateral Payments, the Borrower shall simultaneously with the execution and delivery hereof, proceed with obtaining the Construction Loan. In particular, the Borrower will promptly take all necessary actions on its part to close the Construction Loan and satisfy all other terms, conditions and requirements of the Construction Lender.

(b) The Borrower represents that the Construction Loan will be secured pursuant to the Construction Loan Documents.

(c) In connection with the Construction Loan, the Borrower shall execute and deliver the Construction Loan Documents to which it is a party.

(d) The Borrower agrees to cooperate with the Construction Lender in any manner reasonably requested as contemplated by the Construction Loan Documents.

**Section 3.04. Acquisition, Rehabilitation, Renovation, Construction, Installation, Equipment and Improvement.** The Borrower (a) has acquired or is in the process of acquiring a leasehold interest in the Project site and shall rehabilitate, renovate, construct, improve and equip the Project with all reasonable dispatch and in substantial accordance with the Plans and Specifications, (b) shall pay when due all fees, costs and expenses incurred in connection with that acquisition, rehabilitation, renovation, construction, installation, equipment and improvement from funds made available therefor in accordance with this Loan Agreement or otherwise, except to the extent being contested in good faith, and (c) subject to commercially reasonable efforts, shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in connection with the acquisition, rehabilitation, renovation, construction, improvement and equipping of the Project, and shall enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is that of the Borrower and any contracts made by the Borrower with respect thereto, whether acquisition contracts, rehabilitation/construction contracts or otherwise, or any work to be done by the Borrower on the Project are made or done by the Borrower in its own behalf and not as agent or contractor for the Issuer. The Borrower agrees that it will compensate all workers employed in the rehabilitation, renovation, construction, improvement and equipping of the Project as required by law, except to the extent being contested in good faith.

**Section 3.05. Plans and Specifications.** The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made which would change the purpose of the Project to other than purposes permitted by the Act, the Code, the Tax Certificate, and the Regulatory Agreement.

**Section 3.06. Disbursements From the Project Fund.** Subject to the provisions below and so long as no Event of Default hereunder has occurred and is continuing for which the principal amount of the Bonds has been declared to be immediately due and payable pursuant to Section 7.02 hereof and Section 6.03 of the Indenture, disbursements from the Project Fund shall be made only to pay any of the following Project Costs (to the extent the same are capital in nature or otherwise permitted under the terms of the Tax Certificate):

(a) Costs incurred directly or indirectly for or in connection with the acquisition, rehabilitation, renovation, construction, improvement and equipping of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, accounting, engineering, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work.

(b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the construction period with respect to the Project.

(c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the construction period.



(d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project.

(e) Subject to the limitations set forth in the Tax Certificate, Costs of Issuance of the Bonds, including, financial, legal, accounting, cash flow verification, printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee properly incurred under the Indenture that may become due and payable during the construction period.

(f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition, rehabilitation, renovation, construction, improvement and equipping of the Project.

(g) Payment of interest on the Bonds during the construction period.

(h) Subject to reallocation for federal income tax purposes as described in the Tax Certificate, payment of interest on the Construction Loan.

Any disbursements from the Project Fund for the payment of Project Costs shall be made by the Trustee only upon, and within three (3) business days of, the receipt by the Trustee of: (a) a disbursement request in the form attached hereto as Exhibit B, or, in the case of the initial disbursement at closing pursuant to a settlement statement or closing memorandum on which the Trustee may conclusively rely; and (b) Collateral Payments, including, without limitation, earnings derived from the investment of Eligible Funds, in an amount equal to or greater than the amount of any such disbursement request for deposit in the Collateral Fund as provided in Section 4.02 hereof. The Trustee shall not make disbursements more frequently than once each calendar month. Each such disbursement request shall be consecutively numbered and accompanied by a copy of the approval of the Construction Lender of the payments or reimbursements requested. Proceeds of the Bonds disbursed pursuant to the provisions of this Loan Agreement may only be used to pay those Project Costs identified in the Sources and Uses of Funds attached hereto as Exhibit D, as it may be amended pursuant to the agreement of the Construction Lender, the other subordinate lenders as maker of the Eligible Funds, if any (to the extent required by such subordinate lenders) and the Borrower.

Any disbursement for any item not described in, or the cost for which item is other than as described in, the IRS Form 8038 information statement filed by the Issuer in connection with the issuance of the Bonds as required by Section 149(e) of the Code, and in the notice of public hearing pertaining to the Bonds, except as otherwise described in the Tax Certificate related to any post-closing allocation memorandum, shall be accompanied by a Favorable Opinion of Bond Counsel.

Any money in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs, at the direction of the Authorized Borrower Representative, promptly shall be paid into the Bond Fund for payment of Bond Service Charges.

Notwithstanding any provision of this Loan Agreement or any provision of the Indenture to the contrary, the Trustee shall not disburse funds from the Project Fund unless and until the

Trustee confirms that Eligible Funds in the Collateral Fund plus Eligible Funds in the Project Fund, less the amount of the requested disbursement from the Project Fund, is at least equal to the then-outstanding principal amount of the Bonds; provided, however, the Trustee shall be permitted to transfer funds from the Project Fund to the Collateral Fund upon the direction of the Borrower in the form set forth on Exhibit B hereto, provided that the result of such transfer is that the amount of Eligible Funds remaining on deposit in the Project Fund plus Eligible Funds on deposit in the Collateral Fund is at least equal to then outstanding principal amount of the Bonds.

**Section 3.07. Borrower Required To Pay Costs in Event Project Fund Insufficient.** If money in the Project Fund is not sufficient to pay all Project Costs, the Borrower, nonetheless, will complete the Project in substantial accordance with the Plans and Specifications and shall pay all such additional Project Costs from other sources including from its own funds. The Borrower shall pay all Costs of Issuance of the Bonds in excess of the amounts deposited in the Costs of Issuance Fund. The Borrower shall not be entitled to any reimbursement for any such additional Project Costs or payment of Costs of Issuance from the Issuer, the Trustee or any Holder; nor shall it be entitled to any abatement, diminution or postponement of any Loan Payments or other amounts to be paid under this Loan Agreement.

**Section 3.08. Completion Date.** The Borrower shall notify the Issuer and the Trustee of the Completion Date by the delivery of a Completion Certificate signed by the Authorized Borrower Representative substantially in the form of Exhibit C attached hereto. The Completion Certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in paragraphs (a) and (b) of the Completion Certificate.

**Section 3.09. Investment of Fund Money.**

(a) At the written request of the Authorized Borrower Representative, any money held as part of the Special Funds and the Rebate Fund shall be invested or reinvested by the Trustee in Eligible Investments as provided in the Indenture and the Tax Certificate. Notwithstanding any other provision of this Loan Agreement or any other instrument, the Borrower will take no action, nor shall the Borrower direct the Trustee to take or approve the Trustee taking any action or direct the Trustee to make or approve the Trustee's making any investment or use of proceeds of the Bonds, or any other moneys which may arise out of or in connection with this Loan Agreement, the Indenture or the Project, that would cause the Bonds to be treated as an "arbitrage bond" within the meaning of Section 148 of the Code. In addition, the Issuer and the Borrower covenant and agree to comply with the requirements of Section 148(f) of the Code as it may be applicable to the Bonds or the proceeds derived from the sale of the Bonds or any other moneys which may arise out of, or in connection with, this Loan Agreement, the Indenture or the Project throughout the term of the Bonds. No provision of this Loan Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with Section 148 of the Code or the Regulations promulgated thereunder.

(b) The Borrower acknowledges that regulations of the Comptroller of the Currency grant the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Borrower hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

(End of Article III)

## ARTICLE IV

### LOAN PAYMENTS; COLLATERAL PAYMENTS AND ADDITIONAL PAYMENTS

**Section 4.01. Loan Repayment; Delivery of Note.** In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee on or before each Bond Payment Date, a Loan Payment in an amount equal to the amount necessary to pay Bond Service Charges due on such Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and this Loan Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made with respect to the Bonds on any date equal to the available money in the Bond Fund or transferred thereto from the Collateral Fund or the Project Fund for the payment of Bond Service Charges on that date.

To secure the Borrower's performance of its obligations under this Loan Agreement, the Borrower shall execute and deliver, concurrently with the issuance and delivery of the Bonds, the Note, the Tax Certificate, and the Regulatory Agreement.

So long as no Event of Default has occurred and is continuing hereunder, payments by the Borrower on the Note shall be used by the Trustee to make a like payment of Bond Service Charges and shall constitute Loan Payments.

Upon payment in full, in accordance with the Indenture, of the Bond Service Charges on all Bonds, whether at maturity or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be canceled by the Trustee and surrendered to the Borrower.

**Section 4.02. Collateral Payments.** In consideration of and as a condition to the disbursement of Bond proceeds in the Project Fund to pay Project Costs, and to secure the Borrower's obligation to make Loan Payments, the Borrower shall cause the delivery of Collateral Payments, including, without limitation, earnings derived from the investment of Eligible Funds, in an amount equal to or greater than the amount of the proposed disbursement by the Trustee on or before each such disbursement. All such Collateral Payments shall be paid to the Trustee for the account of the Issuer and shall be held in the Collateral Fund and disbursed in accordance with the provisions of the Indenture. Any such Collateral Payment amounts shall be provided to the Trustee in writing and the Trustee shall not be responsible for computing any amounts under this Section 4.02.

**Section 4.03. Bond Fund and Collateral Fund.** The Borrower and the Issuer each acknowledge that neither the Borrower nor the Issuer has any interest in the Bond Fund or the Collateral Fund and any money deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Holders until full repayment of the Bonds.

**Section 4.04. Additional Payments.** The Borrower shall pay as Additional Payments hereunder the following:

(a) Whether out of the proceeds of the Construction Loan to the Borrower, or other funds, all Costs of Issuance of the Bonds and all expenses incurred in closing the Construction Loan. All fees payable in connection with the closing of the Loan represented by this Loan Agreement shall have been paid or will be paid on the Closing Date.

(b) To the Trustee, (i) the Ordinary Trustee Fees and Expenses to the extent that the funds available in the Costs of Issuance Fund and Expense Fund under the Indenture for the payment thereof are not sufficient and available therefor and (ii) the Extraordinary Trustee Fees and Expenses.

(c) To the Issuer, the Issuance Fee, the Issuer's Administrative Fee, the other Issuer Fees and Expenses, and any other reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, and consultants selected by the Issuer to act on its behalf in connection with the Bond Documents, or the Bonds, including, without limitation, any and all reasonable expenses incurred: (i) in connection with the authorization, issuance, sale and delivery of the Bonds, (ii) in connection with any litigation which may at any time be instituted involving the Bond Documents, or the Bonds or any of the other documents contemplated thereby, (iii) in connection with any amendment or modification of this Loan Agreement, any Bond Documents or any related documents, or the reasonable supervision or inspection of the Borrower, its properties, assets or operations, (iv) in connection with any debt reporting or other requirements applicable to the Issuer required by law or a governmental authority, or (v) or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Loan hereunder or termination of this Loan Agreement.

(d) All amounts required under Section 3.06 of the Indenture in order to remarket the Bonds, and the Borrower agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such remarketing.

(e) All costs of printing any replacement Bonds required to be issued under the Indenture to the extent such costs are not paid by the Holders.

(f) To the extent not paid by the Trustee from the Expense Fund, all of the fees and expenses of the Rebate Analyst (including, but not limited to, the Rebate Analyst's Fee) and any other necessary consultant employed by the Borrower, the Trustee or the Issuer in connection with any of the requirements imposed by the Indenture and the Tax Certificate to the extent funds available under the Indenture are not sufficient and applied therefor. The Borrower shall provide or cause to be provided all information and money (including money necessary to make deposits to the Rebate Fund required by the Tax Certificate and the fees and expenses of the Rebate Analyst to the extent available money in the Bond Fund under the Indenture are inadequate to pay such amounts) to the Trustee and the Rebate Analyst to enable the Trustee and the Rebate Analyst to comply with the Indenture and the Tax Certificate.

(g) To the Dissemination Agent, the Dissemination Agent Fee, as well as any other costs, suits, judgments, losses, damages and expenses in order to provide for compliance with the terms of the Continuing Disclosure Agreement, to the extent funds available in the Expense Fund under the Indenture are not sufficient and applied therefor.

(h) To the Remarketing Agent, the Remarketing Agent fee and any Remarketing Expenses.

(i) To the Department of Local Affairs of the State of Colorado all fees that relate to the Bonds' private activity bond volume cap allocation, if any.

Upon written notice to the Borrower, the Borrower shall transfer funds sufficient to pay such Additional Payments to the Trustee for deposit in the Expense Fund prior to the date such Additional Payments become due and payable, or may pay the foregoing directly to the applicable party.

If an Event of Default (or if "Event of Default" is not a defined term under any of the Borrower Documents, then a default under any provision in such document) occurs under any provision of any of the Borrower Documents and such Event of Default or default is not cured after expiration of all applicable notice and cure provisions, the Borrower shall be liable to, and upon demand shall pay to, the Issuer, the Trustee and the Construction Lender all reasonable fees and disbursements of such persons and their agents (including reasonable attorneys' fees and expenses) which are reasonably connected therewith or incidental thereto except to the extent such fees and disbursements are paid from money available therefor under the Indenture.

Except for those Additional Payments set forth in (a) through (j) above, upon the payment, prepayment, or incurrence of any such cost, expense, or liability described in this Section 4.04 by any party, the Additional Payments in respect thereof shall be payable upon written demand to the Borrower, which demand shall be accompanied by invoices or other appropriate documentation concerning the nature, amount and incurrence of such cost, expense or liability. If the Additional Payments payable under this Section 4.04 are not paid upon such demand, or upon the date such Additional Payments become due and owing for those Additional Payments described in (a) through (j) above, such Additional Payments shall bear interest from the date of such payment or the incurrence thereof or the date such Additional Payments became due and payable, as applicable, at a rate equal to [ ]% per annum (provided such rate shall in no event exceed the Maximum Interest Rate) until the amount due shall have been fully paid.

Except as otherwise provided herein, the obligations of the Borrower under this Section 4.04 shall survive the termination of this Loan Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, unless and until the Borrower has transferred the Project to an unaffiliated entity with the prior written consent of the Issuer, which transferee assumes the obligations of the Borrower pursuant to this Section 4.04.

**Section 4.05. Place of Payments.** The Borrower shall make or cause to be made all Loan Payments directly to the Trustee at its Designated Office. The Borrower shall direct the Construction Lender to make all Collateral Payments directly to the Trustee at its Designated

Office. Additional Payments shall be made by the Borrower directly to the Person to whom or to which they are due.

**Section 4.06. Obligations Unconditional.** The obligations of the Borrower to make Loan Payments, Additional Payments and any payments required of the Borrower under Section 4.08 of the Indenture shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other Person; provided that the Borrower may contest or dispute the amount of any such obligation arising under Section 4.08 of the Indenture so long as such dispute or contest does not result in an Event of Default under the Indenture.

**Section 4.07. Assignment of Agreement and Revenues; Trustee Is Third-Party Beneficiary.** To secure the payment of Bond Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Loan Agreement (without recourse and except for the Reserved Rights). The Borrower hereby agrees and consents to those assignments. To the extent within its control, the Issuer shall not attempt to further assign, transfer or convey its interest in the Revenues or this Loan Agreement or create any pledge or lien of any form or nature with respect to the Revenues, Loan Payments or Collateral Payments hereunder. The Issuer retains the right to enforce any or all of the Reserved Rights, and may take independent action to so enforce such Reserved Rights.

The Trustee shall be a third-party beneficiary of this Loan Agreement.

(End of Article IV)

## ARTICLE V

### ADDITIONAL AGREEMENTS AND COVENANTS

**Section 5.01. Right of Inspection.** At all reasonable times and upon reasonable prior written notice, the Borrower shall allow any duly authorized representative of the Issuer or the Trustee to visit and inspect the Project (subject to the rights of tenants), to examine and make copies of and from its books of record and account, and to discuss its affairs, finances, and accounts with its officers, and shall furnish to the Issuer and the Trustee any information (subject to customary standards of confidentiality) reasonably required regarding its business affairs and financial condition within a reasonable time after receipt of written request therefor.

**Section 5.02. Borrower To Maintain Its Existence; Sale of Project.** The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided, that it may do so if the surviving, resulting or transferee entity assumes in writing all of the obligations of the Borrower under the Borrower Documents and the Construction Loan Documents. The Borrower shall not take any action or allow any action to be taken to terminate the existence of the Borrower except as provided herein. Nothing herein contained shall limit the rights of (a) any direct or indirect owners of interest in the Borrower to (i) transfer, convey, sell or otherwise dispose (a “Transfer”) their ownership interests to any Affiliate or in connection with any estate planning or by operation of law or (ii) make Transfers among and between themselves or (b) the Borrower to make Transfers as otherwise permitted or subject to the conditions set forth herein.

No sale, assignment or transfer of title to the Project, except as may be otherwise required by the Construction Lender, shall be made unless such sale, assignment or transfer is in compliance with the Regulatory Agreement and (a) the Construction Lender consents to such assignment or transfer, , if Construction Lender’s consent is required under the Construction Loan Documents, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower Documents and the Construction Loan Documents, provided that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder arising prior to such sale, assignment or transfer, and (c) no Event of Default as certified in writing to the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Loan Agreement. The Trustee shall consent to any such assignment or transfer if (i) the Construction Lender notifies it in writing that the Construction Lender has determined that the aforesaid conditions have been satisfied, (ii) the Issuer and the Trustee receives a Favorable Opinion of Bond Counsel, and (iii) the Trustee receives written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by a purchaser, assignee or transferee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; provided, however, the Borrower shall not be released from its obligation (x) to pay or reimburse the fees and expenses of the Issuer and the Trustee incurred prior to such sale, assignment or transfer and (y) to indemnify the Trustee and the Issuer with respect to any obligation, event or action incurred or arising prior to such sale, assignment or transfer to the extent said indemnification is provided in the Borrower Documents.



Nothing contained in this Section 5.02 shall be construed to supersede or limit any provisions regarding assignment and transfer of the Project or the existence of the Borrower contained in the Construction Loan Documents or the Regulatory Agreement.

[NTD: Revising for consistency with the Reg Agreement.] Notwithstanding anything to the contrary herein, the following transfers, whether direct or indirect, shall be permitted without the prior written consent of the Trustee or the Issuer (and without the need for an approving opinion of Bond Counsel) and shall not constitute an Event of Default: (a) the removal or replacement of the General Partner and/or Special Limited Partner of the Borrower pursuant to the terms and conditions of the Partnership Agreement; (b) the grant of an option to the General Partner by the Borrower pursuant to the [Purchase Option Agreement] (as defined in the Partnership Agreement) and the General Partner's exercise of such options; (c) the grant of a right of first refusal pursuant to the Right of First Refusal Agreement (as defined in the Partnership Agreement) to the Limited Partner, by the General Partner and the Borrower, and the Limited Partner's exercise of such option [(b) and (c) to be updated upon receipt of equity docs]; (d) a transfer of any non-managing direct or indirect interest in the Borrower, including without limitation; or (e) a transfer of any ownership interest in the Investor Limited Partner. Notwithstanding the foregoing, transfer of the Limited Partner's interest in the Borrower shall be permitted without the prior written consent of the Issuer and without the need for an approving opinion of Bond Counsel. The Borrower's Partnership Agreement may be amended to effectuate any of the above transfers without the consent of the Issuer.

**Section 5.03. Indemnification.** To the fullest extent permitted by law, the Borrower covenants and agrees to indemnify, hold harmless and defend (without limiting the indemnity provided in the Regulatory Agreement) the Issuer Indemnified Persons regardless of whether the Borrower is negligent and the Trustee Indemnified Persons (collectively, the "Indemnified Parties"), against any and all actual fees, costs and charges, losses, damages, demands, claims, judgments, causes of action, suits, taxes (other than income taxes payable by any party as a result of any fees payable to such party in connection with the transaction contemplated hereby), liabilities and expenses of any conceivable nature, kind or character (including, without limitation, reasonable fees and expenses of attorneys, accountants, consultants and other experts, 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 any statutory law (including federal or state securities laws) or at common law or otherwise, by or on behalf of any person arising from any cause whatsoever, joint and several, to which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) this Loan Agreement, the Bonds, the Indenture, the Regulatory Agreement, the Tax Certificate, or the other Bond Documents, or the execution or amendment hereof or thereof or in connection with the transactions contemplated hereby or thereby, including the issuance, sale or resale, remarketing, defeasance or redemption of the Bonds;

(b) the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents or any other documents relating to the Project or the

Bonds or in connection with any federal or state tax audit, or any questions or other matters arising under such documents;

(c) any act or omission of the Issuer or the Borrower or any of their agents, servants, employees or licensees, in connection with the Project or the Bonds, including but not limited to, the Bond Documents;

(d) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought thereon;

(e) the approval of financing for the Project or the issuance of the Bonds, or the execution or amendment of any document related thereto;

(f) the issuance and sale, resale or remarketing of any Bonds or any certifications or representations made by any Person other than the party seeking indemnification in connection therewith, including, but not limited to, any: (i) statement or information made by the Borrower with respect to the Borrower or the Project in any offering document or materials regarding the Bonds, the Project or the Borrower or in the Tax Certificate of the Borrower or in any other certificate executed by the Borrower which, at the time made, is misleading, untrue or incorrect in any material respect, (ii) untrue statement or alleged untrue statement of a material fact contained in any offering material relating to the sale of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, (iii) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold;

(g) the carrying out by the Borrower of any of the transactions contemplated by the Bonds and the Bond Documents or the Borrower's failure to comply with any requirement of this Loan Agreement or the Regulatory Agreement;

(h) any breach or alleged breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default under, this Loan Agreement or the other Bond Documents or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by the Borrower or its affiliates to the Issuer, the Trustee or any other Person in connection with the Borrower's application for the Loan (including, without limitation, any breach or alleged breach by the Borrower of any agreement with respect to the provision of any substitute credit enhancement), including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default

(i) a Determination of Taxability (as defined in the Regulatory Agreement);

(j) the use of the proceeds of the Loan;

(k) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Beneficial Owner's actions taken pursuant to this Loan Agreement or any of the other Bond Documents or any other event or transaction contemplated by any of the foregoing;

(l) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in the Official Statement (in the sections entitled "PRIVATE PARTICIPANTS", "THE PROJECT" AND "ABSENCE OF LITIGATION – THE BORROWER") or any other offering or disclosure document or disclosure or continuing disclosure document for the Project or any of the documents relating to the Bonds, or any omission or alleged omission from the Official Statement (in the sections entitled "PRIVATE PARTICIPANTS", "THE PROJECT" AND "ABSENCE OF LITIGATION – THE BORROWER") or any other offering or disclosure document or disclosure or continuing disclosure document for the Project of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (specifically excluding in all respects information contained in the sections of the Official Statement entitled "THE ISSUER" or "ABSENCE OF LITIGATION – THE ISSUER");

(m) the acceptance or administration of the Bond Documents thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project or the use thereof, including without limitation any lease thereof or assignment of its interest in this Loan Agreement;

(n) the operation of the Project, or the conditions thereof, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, rehabilitation, equipping, installation or construction of, the Project or any part thereof, including any violation of any law, ordinance, court order or regulation affecting the Project or any part of it;

(o) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of the Borrower applying for the Loan or contained in any of the Bond Documents to which the Borrower is a party;

(p) any lien (other than a Permitted Liens) or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project;

(q) any violation or alleged violation of any applicable law or regulation including, without limitation, any environmental law or any inspection, review or testing with respect to, or the release of any toxic substance from, the Project or any part thereof;

(r) the enforcement of, or any action taken by the Issuer or any Indemnified Party, related to remedies under, this Loan Agreement, the Indenture and the other Bond Documents;

(s) any action, suit, claim, proceeding, audit, inquiry, examination, or investigation of a judicial, legislative, administrative or regulatory nature concerning or related to interest payable on the Bonds not being excludable from gross income for purposes of federal income taxation or exempt from state income taxation;

(t) any action, suit, claim or demand contesting or affecting the title of the Project;

(u) the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project or any Indemnified Party;

(v) the Trustee's acceptance or administration of the trusts created by the Indenture and the exercise of its powers or duties thereunder or under this Loan Agreement or any other agreements in connection therewith to which it is a party;

(w) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Borrower or any of its agents, servants, employees or licensees, whether or not related to the Project, or resulting from the acquisition, construction, design, rehabilitation, repair, operation, use or management of all or any part of the Project; and

(x) any brokerage commissions or finders' fees claimed by any broker or other party in connection with the Bonds or the Project; and

(y) to the extent not mentioned in any of the preceding subsections, any cause whatsoever in connection with transactions provided for in this Loan Agreement and the other Bond Documents or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating to the Bonds or the Project.

Notwithstanding anything herein to the contrary, the Borrower's indemnification, defense and hold harmless obligations shall not apply (i) in the case of the foregoing indemnification, defense and hold harmless of the Indemnified Parties (excluding the Issuer and any Indemnified Parties related to the Issuer, including without limitation, any of its officers, members, city council members, directors, trustees, fiscal agents, counsel, officials, agents and employees) to the extent such damages are caused by the gross negligence or willful misconduct of such Person; or (ii) in the case of the foregoing indemnification, defense and hold harmless of the Issuer or any of its officers, members, city council members, directors, trustees, fiscal agents, counsel, officials, agents and employees, to the extent such damages are caused by the willful misconduct of such Person

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 the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Borrower, subject to the approval of the Indemnified Party in such party's sole discretion, 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 the Indemnified Parties 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 participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel.

The obligations of the Borrower under this Section shall survive the termination of this Loan Agreement and the Indenture, the final payment or defeasance of the Bonds, and the resignation or removal of the Trustee. Amounts payable to the Issuer hereunder shall be due and payable five (5) days after demand and will accrue interest at the Interest Rate, commencing with the expiration of the five (5) day period. When the Issuer or the Trustee incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally. The Borrower shall not be liable to the Indemnified Parties under this Section to the extent of any claims, damages, losses, liabilities, costs or expenses incurred by the Indemnified Parties as a result from the Indemnified Parties' willful misconduct or, except the Issuer, the Indemnified Parties' breach of its obligations under the Bond Documents.

To the extent applicable, the indemnification provisions of this section are expressly intended to be enforceable regardless of whether the Borrower alleges or proves the sole, concurrent, contributory or comparative negligence of the Indemnified Parties.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such Indemnified Party has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder; provided that, in all events, no subsequent owner of the Project acquiring title as a result of a foreclosure, a deed in lieu of foreclosure or comparable conversion of the Loan shall be liable for any breach or default of any obligation of any prior owner under the Regulatory Agreement or this Loan Agreement, including any payment or indemnification obligation.

The indemnification provided in this Section is in addition to, and not in substitution of, the indemnification provisions in other documents executed and delivered in connection with the making of the loans to the Borrower evidenced by this Loan Agreement and the issuance of the Bonds. Nothing in this Section shall in any way limit the Borrower's indemnification and other payment obligations set forth in the Regulatory Agreement.

This indemnification shall not be affected by any investigation by or on behalf of the Issuer or by any information the Issuer may have or obtain with respect thereof. This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and

liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim to the fullest extent permitted by law; provided however, that nothing in Section 2.05 shall be deemed to require the Borrower to provide indemnification with respect to liabilities which are found by a court of competent jurisdiction in a non-appealable judgment to have been caused by the willful misconduct of the Issuer or one of their respective directors, officers, officials, employees, representatives or agents or their successors and assigns (and their respective counsel and attorneys) (each, an “*Issuer Indemnified Party*” and collectively, the “*Issuer Indemnified Parties*”).

All amounts payable to the Issuer under this Loan Agreement shall be deemed to be fees and expenses payable to the Issuer for the purposes of the provisions of this Loan Agreement, and of the Indenture dealing with assignment of the Issuer’s rights under this Loan Agreement. The Issuer Indemnified Parties shall not be liable to the Borrower for any reason, except as arising from the willful misconduct of such parties. NOTWITHSTANDING THE FOREGOING, THE ISSUER INDEMNIFIED PARTIES SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM THE GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY OF THE ISSUER INDEMNIFIED PARTIES, BUT NOT FOR ANY LIABILITIES ARISING FROM THE WILLFUL MISCONDUCT OF THE ISSUER INDEMNIFIED PARTIES.

Any provision of this Loan Agreement or any other instrument or document executed and delivered in connection therewith to the contrary notwithstanding, the Issuer retains the right to (i) enforce any applicable federal or State law or regulation or resolution of the Issuer, and (ii) enforce any rights accorded to the Issuer by federal or State law or regulation of the Issuer, and nothing in this Loan Agreement shall be construed as an express or implied waiver thereof. The indemnifications provided by the Borrower shall survive the termination of this Loan Agreement and the satisfaction of the Note, and the resignation or removal of the Trustee.

#### **Section 5.04. Tax Matters.**

(a) ***Representations and Covenants.*** It is the intention of the parties hereto that interest on the Bonds (other than with respect to interest on any portion of the Bonds for a period during which such portion of the Bonds is held by a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code) shall be and remain excludable from gross income for federal income tax purposes, and, to that end, the covenants and agreements of the Borrower in this Section are for the benefit of the Issuer and the Trustee on behalf of and for each and every holder of the Bonds. The Borrower represents, warrants and covenants as follows:

(i) The Borrower will not take any action, or fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the Federal Tax Status of the Bonds. Without limiting the generality of the foregoing, the Borrower covenants that it will comply with the instructions and requirements of the Regulatory Agreement and the Tax Certificate, which are incorporated herein as if set forth fully herein.

(ii) The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower’s rebate requirement or

yield reduction payments (both as may be required under the Tax Certificate) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to comply with all arbitrage and rebate requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Certificate. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Loan Agreement.

(iii) The Loan of the proceeds of the Bonds by the Issuer to the Borrower is to be treated as a “program investment” as defined in Treasury Regulation Section 1.148-1(b). The Borrower (or any “related person,” as such term is used in Section 144(a)(3) of the Code) shall not purchase the Bonds in an amount related to the amount of such Loan.

(b) ***Continuing Compliance.*** The requirements stated in this Section 5.04 will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the exclusion from gross income of interest on the Bonds for federal income tax purposes.

#### **Section 5.05. Affirmative Covenants.**

(a) ***Maintenance of Project.*** The Borrower shall maintain and preserve the Project in good working order and condition, ordinary wear and tear and casualty loss excepted, and shall from time to time make all necessary repairs, renewals, replacements, additions and improvements to the Project.

(b) ***Keeping of Records and Books of Account.*** The Borrower shall keep adequate records and books of account in which complete entries will be made in accordance with the requirements of the Construction Loan Documents or indicating deviations therefrom, reflecting all financial transactions.

(c) ***Payment of Taxes, Etc.*** The Borrower shall promptly pay and discharge or cause to be paid and discharged: all taxes, assessments, fees, and other Governmental charges or levies or imposed upon it or upon any of its properties, income or profits, before the same shall become delinquent; all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and other similar Persons for labor, materials, supplies and rentals, which if unpaid might by law become a lien upon its properties; any indebtedness heretofore or hereafter incurred by it when due, and discharge, perform and observe covenants, provisions and conditions to be discharged, performed and observed by it in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any lien existing at any time upon any of its properties; provided, however, that the Borrower shall not be required to pay any of the foregoing if (i) the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, (ii) the Borrower shall have set aside on its books adequate reserves with respect thereto and (iii) the title of the Borrower to, and its right to use, its properties is not materially and adversely affected thereby.

(d) ***Insurance.*** The Borrower shall at all times maintain or cause to be maintained insurance of such types and in such amounts as may be required by the Construction Loan Documents.

(e) ***Notice of Material Litigation.*** The Borrower shall promptly notify the Issuer in writing of any litigation, arbitration proceeding or administrative investigation, inquiry or other proceeding to which it hereafter becomes a party or be subject to which involves any material risk of any material judgment or liability (unless fully covered by insurance after the payment of applicable deductibles) or which may otherwise result in any material adverse change in the business or assets or in the condition, financial or otherwise, of the Borrower or which materially impairs the ability of the Borrower to perform the Borrower Documents, or any other agreement or instrument herein or therein contemplated.

(f) ***Notice of Default.*** In the event that any Event of Default occurs, the Borrower shall give prompt notice in writing of such happening to the Trustee and the Issuer upon the Borrower obtaining actual knowledge of such Event of Default.

(g) ***Performance of Contracts, Etc.*** Except to the extent contested in good faith, the Borrower shall perform according to and shall comply with all of its contractual obligations and all requirements of law if nonperformance thereof would materially and adversely affect the business or credit of the Borrower on an individual basis or would materially impair the ability of the Borrower to perform this Loan Agreement, the Tax Certificate, the Regulatory Agreement or the Note or any other agreement or instrument herein or therein contemplated.

(h) ***Notice of Other Matters.*** The Borrower shall promptly notify the Issuer in writing of any of the following events:

(i) Any material change with respect to the business, assets, liabilities, financial condition or results of operations of the Borrower other than changes in the ordinary course of business the effects of which do not materially impair the ability of the Borrower to perform its obligations under this Loan Agreement, the Regulatory Agreement, or the Note or any other agreement or instrument herein or therein contemplated.

(ii) A default by the Borrower in any material respect under any material agreement to which the Borrower is a party or by which the Borrower or its properties or assets may be bound, giving in each case the details thereof and specifying the action proposed to be taken with respect thereto.

(i) ***Cooperation in Perfecting Security Interests, Etc.*** The Borrower shall promptly perform, following request by the Trustee, such acts as may be necessary or advisable to perfect and maintain any lien provided for in this Loan Agreement or in any agreement or document contemplated herein or therein, or otherwise to carry out the intent of this Loan Agreement. The Trustee shall not be responsible for the initial filing of



financing statements, and the Issuer shall have no responsibility for the filing, perfection or continuation of any security interest created hereunder or under the Indenture.

(j) ***Environmental Matters.*** The Borrower will take and continue to take prompt action to remedy all environmental pollution and contamination, hazardous waste disposal and other environmental cleanup problems on the Project site or related to the Project, if any, whether or not such cleanup problems have resulted from the order or request of a municipal, state, federal, administrative or judicial authority, or otherwise. The foregoing covenant shall not constitute or create a waiver of any rights the Borrower may have to pursue any legal rights or remedies against any third party for any environmental claims.

(k) ***Patriot Act.*** The Borrower covenants and agrees to provide documentation as reasonably requested or required by the Trustee to enable the Trustee to comply with the requirements of the Patriot Act as described in Section 11.11 of the Indenture.

#### **Section 5.06. Negative Covenants.**

(a) ***Non-discrimination.*** The Borrower will not itself and will not permit any contractors, subcontractors and commercial tenants of the Project to discriminate by reason of race, color, creed, handicap, national origin or sex in the employment of any Person employed by it in connection with the Project or working in or on the Project. The Borrower will require each manager of the Project to covenant that in the leasing of the Project it will not discriminate by reason of age, race, color, creed, handicap, national origin, sex, marital status, sexual orientation or gender identity, and will not discriminate against persons with minor dependents.

(b) ***Nature of Business.*** The Borrower will not change the general character of its business as contemplated to be conducted at the date hereof, or engage in any type of business not reasonably related to its business as normally conducted.

**Section 5.07. Continuing Disclosure.** The Borrower hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement and acknowledges and agrees that it and not the Issuer shall have the sole obligation for providing continuing disclosure pursuant to Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”). Notwithstanding any other provision of this Loan Agreement or the Indenture, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default hereunder or under the Indenture or a default with respect to the Bonds or the Construction Loan Documents.

**Section 5.08. Reliance.** It is expressly understood and agreed by the parties to this Loan Agreement that: (a) the Issuer and its counsel (including Bond Counsel) may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to it by the Trustee, any Holder or the Borrower as to the existence of a fact or state of affairs required under this Loan Agreement to be noticed by the Issuer; (b) the Issuer shall not be under any obligation to perform any recordkeeping or to provide any legal service, it being understood that such services

shall be performed by the Trustee or the Borrower (solely to the extent required to be performed under the Bond Documents); and (c) none of the provisions of this Loan Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights under this Loan Agreement unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking such action. It is recognized that notwithstanding any other provision of this Agreement, neither the Borrower nor the Trustee shall look to the Issuer or the members of its City Council, officers, program participants, attorneys, accountants, financial advisors, agents or staff for damages suffered by the Borrower or Trustee as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Agreement, the Bonds, the Regulatory Agreement, any of the Bond Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason except for representations made by the Issuer in the Indenture, this Agreement and any certificate of the Issuer and the opinion of counsel to the Issuer delivered on the Issue Date.

**Section 5.09. Allocation and Use of Proceeds to Eligible Costs.** Notwithstanding anything to the contrary set forth in any of the documents evidencing or securing the Bonds (other than the Tax Certificate), all of the proceeds of the Bonds shall, for federal income tax purposes, be (a) allocated using the same method used to determine whether 95% of the Bond proceeds have been spent on Qualified Project Costs to each building in the Project and the land on which it is located, and (b) used exclusively to pay costs of the acquisition, rehabilitation, renovation and construction of the Project which are includable in the aggregate basis of any building and the land on which the building is located (“Eligible Costs”) in a manner such that the greatest number of buildings possible satisfies the requirements of Section 42(h)(4)(B) of the Code. Accordingly, no more than 2% of the proceeds of the Bonds will be deemed to have been used to pay any of the Costs of Issuance in connection with the delivery of the Bonds, or to fund any reserve account other to be used to pay Eligible Costs.

**Section 5.10. Reporting Requirements of the Borrower.** The Borrower will furnish to the Issuer and agencies of the State such periodic reports or statements as are required under the Act and requested by the Issuer in writing, or as such agencies may otherwise reasonably require of the Issuer or Borrower throughout the term of this Loan Agreement.

**Section 5.11. Qualified Tenants; Maximum Allowable Rents.** During the Qualified Project Period (as such term is defined in the Regulatory Agreement), the Borrower hereby represents, covenants and agrees that Low Income Tenants (as defined in the Regulatory Agreement) shall occupy at least 40% of the units in the Project. The Borrower agrees that the provisions of this Section 5.11 shall remain in full force and effect for the Qualified Project Period (as defined in the Regulatory Agreement).

**Section 5.12. (Reserved).**

**Section 5.13. Regulatory Agreement.** In order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds and to ensure compliance with the Act and other laws of the State, and certain additional requirements of the Issuer, the Borrower has, concurrently with or before the execution and delivery of the Bonds, executed and delivered

and will cause to be recorded in the official records of the County, the Regulatory Agreement. The Borrower covenants to observe and perform its obligations under the Regulatory Agreement and will cause the residential units in the Project to be, upon completion of the construction of the Project, rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws and the Regulatory Agreement. The Project, when completed, will meet the requirements of this Loan Agreement and the Regulatory Agreement and any applicable requirements of the Act and the Code.

The Borrower covenants to file, or cause to be filed, of record the Regulatory Agreement and such other documents and take such other steps as are necessary in order to ensure 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, such restrictions.

**Section 5.14. Indenture of Trust.** The provisions of the Indenture concerning the Bonds and other matters therein are an integral part of the terms and conditions of the Note, and this Loan Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture 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 Indenture, and the Borrower agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture. Any provisions governing the rights, immunities and protections of the Issuer and the Trustee under the Indenture are incorporated by reference into this Loan Agreement as being applied to the Issuer and the Trustee, respectively, though fully set forth herein.

**Section 5.15. Audit by the Internal Revenue Service.** The Borrower acknowledges that in the event of an examination of the Bonds by the Internal Revenue Service (the “Service”) to determine compliance of the Bonds with the provisions of the Code as they relate to tax-exempt obligations, the Issuer is likely to be treated as the “taxpayer” in such examination. The Borrower agrees, upon written notification by the Issuer, that the Borrower (a) will respond to any inquiries from the Service in connection with such examination; and (b) upon written request of the Issuer, will reimburse the Issuer for all expenses incurred by the Issuer, including reasonable fees and expenses of counsel (and, upon request, will provide in advance a cash deposit in the amount of the reasonably anticipated expenses to be incurred by the Issuer) in connection with such examination of the Bonds by the Service, or will directly pay the costs of any such examination. The Issuer covenants that it will promptly notify (in writing) the Borrower of any inquiry or examination by the Service relating to the Bonds and will cooperate with the Borrower, at the Borrower’s sole expense, in connection with any such inquiry or examination. The Borrower understands and agrees that the interests of the Issuer and the Borrower in any such examination may differ and that the existence of the examination may be subject to public disclosure by the Issuer under the open records laws of the State.

(End of Article V)

## ARTICLE VI

### PREPAYMENT AND REMARKETING

**Section 6.01. Prepayment.** The Loan is subject to optional prepayment by the Borrower according to the same terms and conditions of the Bonds set forth in Section 3.01 of the Indenture.

**Section 6.02. Remarketing of Bonds.** The Borrower is hereby granted the right to (a) give notice of a remarketing of the Bonds in the manner and to the extent set forth in the Indenture, and (b) designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in the Indenture.

**Section 6.03. Borrower's Obligations Upon Tender of Bonds.** If any Unredeemed Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Special Funds for the purpose of paying the redemption price of the Bonds pursuant to the Indenture, the Borrower will cause to be paid to the Trustee as set forth in the Indenture Eligible Funds equal to the amount by which the redemption price of the Bonds exceeds the amount otherwise available pursuant to the Indenture.

**Section 6.04. Option To Terminate.** The Borrower shall have the option to cancel or terminate this Loan Agreement at any time when the Indenture shall have been released in accordance with its provisions. Such option shall be exercised by the Authorized Borrower Representative, on behalf of the Borrower, giving the Issuer and the Trustee at least five days' notice in writing of such cancellation or termination and such cancellation or termination shall become effective at the end of such notice period. The provisions of this Section 6.04 shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

(End of Article VI)

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01. Events of Default.** Each of the following shall be an Event of Default hereunder:

(a) The Borrower shall fail to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable to the extent amounts on deposit in the Bond Fund, including amounts credited as paid and/or transferred from the Collateral Fund and the Project Fund, are insufficient to pay the Bond Service Charges due on such date;

(b) The Borrower shall fail to observe and perform any other agreement, term or condition contained in this Loan Agreement which failure has any material adverse effect and the continuation of such failure for a period of 30 days after written notice thereof shall have been given to the Borrower by the Issuer or the Trustee, or for such longer period as the Issuer (with respect to the Reserved Rights) and the Trustee may, pursuant to the written direction of the Controlling Holders, agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice;

(c) The Borrower shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, which is not dismissed within 90 days; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for 90 days; (iv) make a general assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of 90 days;

(d) Any representation or warranty made by the Borrower herein or any statement in any report, certificate, financial statement or other instrument furnished in connection with this Loan Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any adverse material respect when made or given; and

(e) There shall occur an “Event of Default” as defined in the Indenture.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) hereof, the Borrower shall not be deemed in default (or that an Event of Default is occurring) during the continuance of such inability. However, the Borrower shall

promptly give notice to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term Force Majeure shall mean, without limitation, the following: (i) acts of God; a prohibition by applicable law from performance during a pandemic; strikes, lockouts or other industrial disturbances; acts of terrorism or of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; or partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or (ii) any cause, circumstance or event not reasonably within the control of the Borrower.

The declaration of an Event of Default under subsection (c) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal or state bankruptcy, insolvency, reorganization or similar law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, insolvency, liquidation or reorganization proceedings.

**Section 7.02. Remedies on Default.** Whenever an Event of Default shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(a) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 6.03 of the Indenture, the Trustee shall declare all Loan Payments to be due and payable together with any other amounts payable by the Borrower under this Loan Agreement and the Note, whereupon the same shall become immediately due and payable;

(b) The Trustee may exercise any or all or any combination of the remedies specified in this Loan Agreement or any other Financing Document;

(c) The Issuer or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower pertaining to the Project; or

(d) The Issuer (with respect to the Reserved Rights) or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Loan Agreement, the Tax Certificate and the Regulatory Agreement and the Note or to enforce the performance and observance of any other obligation or agreement of the Borrower under those instruments.

Notwithstanding the foregoing, neither the Issuer nor the Trustee shall be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until satisfactory indemnity has been furnished to the Issuer or the Trustee at no cost or expense to the Issuer or the Trustee. Any amounts collected as Loan Payments or applicable to Loan Payments and any other amounts which would be applicable to payment of

Bond Service Charges collected pursuant to action taken under this Section 7.02 shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the outstanding Bonds have been paid and discharged in accordance with the provisions of the Indenture, shall be paid as provided in Section 4.14 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section 7.02 are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section 7.02 and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

Notwithstanding anything in this Loan Agreement to the contrary, the Issuer shall have the right to independently enforce the Reserved Rights and shall not be required to obtain the consent of the Trustee, the Holders or any other person or entity in order to enforce any of the Reserved Rights.

**Section 7.03. No Remedy Exclusive.** No remedy conferred upon or reserved to the Issuer or the Trustee by this 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 Loan Agreement, the Tax Certificate, the Regulatory Agreement or the Note, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that 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 Issuer or the Trustee to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

**Section 7.04. Agreement To Pay Attorneys' Fees and Expenses.** If an Event of Default should occur and the Issuer or the Trustee should incur expenses, including court costs and reasonable attorneys' fees and expenses, in connection with the enforcement of this Loan Agreement, the Tax Certificate, the Regulatory Agreement or the Note or the collection of sums due thereunder, the Borrower shall reimburse the Issuer and the Trustee, as applicable, for the reasonable expenses so incurred upon demand.

**Section 7.05. No Waiver.** No failure by the Issuer or the Trustee to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

**Section 7.06. Notice of Default.** The Borrower shall give written notice to the Trustee, the Issuer, the Construction Lender and the Investor Limited Partner immediately if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.



**Section 7.07. Investor Limited Partner's Cure Rights.** Notwithstanding anything to the contrary in the Financing Documents, upon the occurrence of an Event of Default that cannot otherwise be cured, the Investor Limited Partner and the Special Limited Partner shall have the option, but not the obligation, to cure that Event of Default itself or by appointing a substitute or additional General Partner that is an affiliate of the Investor Limited Partner or Special Limited Partner to act as such General Partner pursuant to and to the extent permitted by the terms of the Borrower's Organizational Documents. The Issuer hereby agrees that any cure of any Event of Default hereunder made or tendered by the Investor Limited Partner or the Special Limited Partner shall be deemed to be cured by the Borrower, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Borrower.

(End of Article VII)

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.01. Term of Agreement.** This Loan Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the Holders until such time as all of the Bonds shall have been fully paid (or provision made for such payment) or otherwise converted to the Permanent Period Bonds on the Closing Date pursuant to the Indenture and all other sums payable by the Borrower under this Loan Agreement and the Note shall have been paid or upon the Conversion Date, except for obligations of the Borrower under Sections 4.04, 5.03 and 5.04 hereof, which shall survive any termination of this Loan Agreement as provided herein and the resignation or removal of the Trustee.

**Section 8.02. Amounts Remaining in Funds.** Any amounts remaining in the Bond Fund, the Project Fund and the Collateral Fund after all of the outstanding Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and all other amounts required to be paid under this Loan Agreement, the Note and the Indenture have been paid, shall be paid as provided in Section 4.14 of the Indenture.

**Section 8.03. Notices.** All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or forwarded by overnight courier service, delivery charges prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Borrower, the Investor Limited Partner, the Special Limited Partner, the Construction Lender or the Trustee shall also be given to the others. The Borrower, the Issuer, the Construction Lender, the Investor Limited Partner, the Special Limited Partner and the Trustee, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

**Section 8.04. Certain Provisions Required by the Issuer.**

(a) *Expenses.* The Borrower shall pay and indemnify the Issuer and the Trustee against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Trustee, without gross negligence) and arising out of or in connection with the Bond Documents. These obligations and those in Section 6.03 hereof shall remain valid and in effect notwithstanding repayment of the Loan hereunder or termination of this Loan Agreement or the Indenture.

(b) *No Warranty by Issuer.* The Borrower recognizes that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT NOR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO REPRESENTATION, COVENANT, AGREEMENT OR WARRANTY, EXPRESS OR IMPLIED: (I) WITH RESPECT TO THE PROJECT OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, THEIR VALUE,

DESIGN, CONDITION, HABITABILITY, WORKMANSHIP, QUALITY, CAPACITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY LEGAL REQUIREMENTS, LATENT DEFECTS OR THAT THE PROJECT WILL BE ADEQUATE OR SUFFICIENT FOR THE PURPOSES OF THE BORROWER; (II) WITH RESPECT TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT OR ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE BONDS, OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF; OR (III) WITH RESPECT TO THE PLANS AND SPECIFICATIONS TO CONSTRUCT THE PROJECT OR THE ADEQUACY OR SUFFICIENCY OF THE FINANCING. NOTHING IN THIS FINANCING AGREEMENT SHALL BE CONSTRUED AS REQUIRING THE ISSUER TO PROVIDE ANY FINANCING FOR THE PROJECT OTHER THAN THE PROCEEDS OF THE BONDS OR TO PROVIDE SUFFICIENT MONEYS FOR ALL OF THE COSTS OF THE PROJECT.

(c) *No Pecuniary Liability of the Issuer.* No agreements or provisions contained in the Indenture, this Loan Agreement nor any agreement, covenant, or undertaking by the Issuer in connection with the Project or the delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from the Trust Estate and other funds and moneys and Security pledged and assigned hereunder (excluding the Reserved Rights). No failure of the Issuer to comply with any term, covenant, or agreement contained in the Bonds, this Loan Agreement, the Indenture, or in any document executed by the Issuer in connection with the Project or the delivery of the Bonds, shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charge, except to the extent that the same can be paid or recovered from the Trust Estate (excluding the Reserved Rights).

(d) *Agreement by Parties.* It is expressly understood and agreed by the parties to this Loan Agreement that:

(i) The Issuer 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 Borrower or such other appropriate party,

(ii) None of the provisions of this Loan Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Loan Agreement, the Indenture, the Regulatory Agreement or any Bond Documents unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

(iii) It is recognized that notwithstanding any other provision of this Loan Agreement, neither the Borrower nor the Trustee shall look to the Issuer or

the members of its Governing Body, officers, program participants, attorneys, accountants, financial advisors, agents or staff for damages suffered by the Borrower or Trustee as a result of the failure of the Issuer to perform any covenant, undertaking or obligation under this Loan Agreement, the Bonds, the Regulatory Agreement, any of the Bond Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Issuer in any of such documents, nor for any other reason except for representations made by the Issuer in the Indenture, this Loan Agreement and any certificate of the Issuer and the opinion of counsel to the Issuer delivered on the Closing Date.

(iv) All covenants, obligations and agreements of the Issuer contained in this Loan Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any past, present or future commissioner, director, officer, official, agent or employee of the Issuer in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Loan Agreement or in the Indenture. No provision, covenant or agreement contained in this Loan Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Loan Agreement or in any Bonds or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any member of the Governing Body of the Issuer, its officers, officials, attorneys, employees, counsel, financial advisor, or agents, as such, in his or her individual capacity, past, present, or future, or of any successor thereto, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any member of the Governing Body, officials, attorneys, employees, officers, counsel, financial advisors, or agents, as such, in his or her individual capacity, past, present, or future, of the Issuer or of any successor thereto, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Issuer and the Trustee or the Borrower to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such commissioner, director, official, attorney, employee, officer, counsel, financial advisor, or agent, is, by the execution of the Bonds, this Loan Agreement, and the Indenture, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Loan Agreement, and the Indenture, expressly waived and released.

(e) *No Recourse.* No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or any other Bond Document or any instrument

or document executed and delivered by or on behalf of the Issuer in connection with the transactions contemplated hereby, against the Issuer or any successor body, as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or by any legal or equitable proceeding or otherwise and all such liability of the Issuer as such is hereby, expressly waived and released as a condition of and consideration for the adoption of the resolution authorizing the execution of the Bond Documents and the issuance of the Bonds and the delivery of other documents in connection with the Indenture and herewith.

(f) *Limitation on Liability of the Issuer's Officers, Employees, Etc.* The Borrower assumes all risks of the acts or omissions of the Issuer. The Issuer or its respective officers, directors, employees, counsel or agents shall not be liable or responsible for: (i) any acts or omissions of the Issuer; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Issuer.

The Issuer or any of its respective officers, members, directors, employees, counsel or agents shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Issuer shall not be liable for any debts or claims accruing in favor of any such parties against the Borrower or others or against the Project. The Borrower is not and shall not be an agent of the Issuer for any purpose. The Issuer is a not joint venture partner with the Borrower in any manner whatsoever. Prior to default by the Borrower under this Loan Agreement and the exercise of remedies granted herein, the Issuer shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Issuer. Approvals granted by the Issuer for any matters covered under this Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of the Borrower.

(g) *No Liability of Issuer; No Charge Against Issuer's Credit.* The Issuer shall not be obligated to pay the principal (or prepayment amount) of or interest on the Bonds, except from the Trust Estate. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith, credit and taxing power of the Issuer is pledged to the payment of the principal (or redemption price) of, premium, if any, or interest on the Bonds. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Loan Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Agreement, or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth in the Indenture.

The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Loan Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment amount) of and interest on the Bonds as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Trustee, 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 amount) of or interest on the Bonds, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

**The Borrower agrees that EACH OF THE BONDS IS A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM, AND SECURED ONLY BY THE TRUST ESTATE (BUT NOT FUNDS RESULTING FROM THE EXERCISE OF THE RESERVED RIGHTS), AND WHICH SHALL BE USED FOR NO OTHER PURPOSE EXCEPT AS EXPRESSLY AUTHORIZED IN THE INDENTURE. THE BONDS SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE ISSUER, THE COUNTY, ANY PUBLIC AGENCY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE ISSUER, THE COUNTY, ANY PUBLIC AGENCY, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE FOR PAYMENT OF THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER WITH RESPECT THERETO, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS, ASSETS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THE INDENTURE (BUT NOT FUNDS RESULTING FROM THE EXERCISE OF THE RESERVED RIGHTS). THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS OR A MULTIPLE FISCAL-YEAR FINANCIAL OBLIGATION WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS WITH RESPECT TO THE BONDS, OR UNDER THE INDENTURE, SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF OR A MORAL OBLIGATION OF ANY OF THE ISSUER, THE COUNTY ANY PUBLIC AGENCY, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER.**

**Section 8.05. Limited Liability of Borrower.** Anything in this Loan Agreement to the contrary notwithstanding, the monetary obligations of the Borrower contained in this Loan Agreement shall be limited obligations payable solely from the income and assets of the Project and neither the Borrower nor any partner, manager, member, director, official, employee, agent or officer of the Borrower shall have any personal liability for the satisfaction of any obligation of

the Borrower or claim against the Borrower, arising out of this Loan Agreement. Nothing in this Section 8.05 or Section 8.11 shall limit any right that the Construction Lender may have to enforce the Construction Loan Documents in accordance with their terms. Notwithstanding anything contained herein to the contrary, (i) in no event shall Borrower be liable for the gross negligence or willful misconduct of Issuer, Trustee or their agents, and (ii) Borrower shall not be liable for any special, consequential, loss of profit, punitive or other speculative damages, except to the extent that any such damages are actually paid, or required to be paid, to any third-party in connection with the financing contemplated hereby due to any action or inaction on the part of the Borrower.

**Section 8.06. Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Borrower, the Trustee and their respective permitted successors and assigns provided that this Loan Agreement may not be assigned by the Borrower (except in connection with a sale or transfer of assets pursuant to Section 5.02 hereof) and may not be assigned by the Issuer except to the Trustee pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment of Bond Service Charges. This Loan Agreement may be enforced only by the parties, their permitted assignees and others who may, by law, stand in their respective places.

**Section 8.07. Amendments and Supplements.** Except as otherwise expressly provided in this Loan Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Loan Agreement, the Tax Certificate, the Regulatory Agreement and the Note may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article X of the Indenture, as applicable.

**Section 8.08. Execution Counterparts.** This Loan Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**Section 8.09. Severability.** If any provision of this Loan Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 8.10. Governing Law; Venue.** This Loan Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State. Any and all claims, disputes or controversies related to this Loan Agreement or the Note, or breach thereof, shall be litigated in the District Court for El Paso County, Colorado, which shall be the sole and exclusive forum for such litigation.

**Section 8.11. Nonrecourse Obligations.** Notwithstanding anything to the contrary set forth herein, in the Note and in any other document delivered in connection herewith, it is hereby

expressly agreed and understood that the obligations of the Borrower hereunder, under the Note and under every document executed and delivered in connection herewith, are nonrecourse. Neither the Borrower nor any member, partner, officer, director or employee of the Borrower (each, a “Related Party”) shall have any personal liability for the repayment of the Loan. In furtherance thereof, the Issuer and the Trustee shall be entitled to look solely and exclusively to the Revenues, the Project and any income derived therefrom for the payment and other obligations of the Borrower hereunder, under the Note and all evidences of indebtedness secured hereby, and shall not seek a personal judgment against any Related Party of the Borrower, provided that nothing herein shall relieve any such Related Party from liability for any of the following:

- (a) rent collected for more than one month in advance and received by a Related Party and not applied to the reasonable operating requirements of the Project;
- (b) misappropriation or misapplication by a Related Party of insurance or eminent domain proceeds in violation of the Construction Loan Documents;
- (c) fraud or material misrepresentation by a Related Party against the Issuer or the Holder;
- (d) conversion by a Related Party of all or a material portion of the Project; or
- (e) gross negligence, willful misconduct or intentional torts of a Related Party relating to the Project or the revenues therefrom.

**Section 8.12. Electronic Signatures.** The parties agree that the electronic signature of a party to this Loan Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Loan Agreement. For purposes hereof: (a) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; and (b) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.

**Section 8.13. Electronic Storage.** The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

**Section 8.14. Reference Date.** This Loan Agreement is dated for reference purposes only as of [\_\_\_\_\_] 1, 2025. This Loan Agreement will not be effective and binding on the parties hereto unless and until the Closing Date occurs.

**Section 8.15. Survival of Provisions.** The provisions of this Loan Agreement and the Indenture and any other document in connection with the issuance of the Bonds to which the Issuer is a party concerning: (a) the tax-exempt status of the Bonds; (b) the interpretation of this Loan Agreement; (c) governing law; (d) the Issuer’s right to rely on written representations of others contained herein or in any other document, regardless of whether the Issuer is a party thereto; (e) the immunity, right to indemnification and lack of pecuniary liability of the Issuer Indemnified



Persons; and (f) any other provision of this Loan Agreement not described or enumerated above that expressly provides for its survival, shall survive and remain in full force and effect notwithstanding the payment or redemption in full, or defeasance of the Bonds, the discharge of the Indenture, and the termination or expiration of this Loan Agreement.

**Section 8.16.** Conversion Date. On the Conversion Date and upon the execution and delivery of the Permanent Period Indenture, the Permanent Period Bonds, and the Permanent Period Loan Agreement, the Indenture, this Loan Agreement, and the Bonds shall be deemed amended, restated, and superseded in full by the terms thereof.

(End of Article VIII; Signature page follows)

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

**CITY OF COLORADO SPRINGS,  
COLORADO**

By: \_\_\_\_\_  
Blessing Mobolade  
Mayor

Attest:

By \_\_\_\_\_  
Sarah B. Johnson  
City Clerk

**BRADLEY RIDGE APARTMENTS LP, a  
Colorado limited partnership**

By: Bradley Ridge GP LLC, a Delaware limited liability company, its General Partner

By \_\_\_\_\_  
Russell Condas, Vice President

## EXHIBIT A

### FORM OF NOTE

#### PROMISSORY NOTE

##### (Bradley Ridge Apartments Project)

***This Note has not been registered under the Securities Act of 1933. Its transferability is restricted by the Indenture and the Loan Agreement referred to herein.***

\$(PAR).00

[\_\_\_\_], 2025

BRADLEY RIDGE APARTMENTS LP, a Colorado limited partnership (the “Borrower”), for value received, promises to pay in installments to the order of the CITY OF COLORADO SPRINGS, COLORADO (the “Issuer”) under the Indenture hereinafter referred to, the principal amount of \_\_\_\_\_ \$(PAR).00 and to pay interest on the unpaid balance of such principal sum from and after the date hereof at the rate of [\_\_\_\_]% per annum, to but not including the Mandatory Tender Date, and, if the Bonds are remarketed, at the Remarketing Rate from and after the Mandatory Tender Date until the payment of such principal sum has been made or provided for. The principal amount stated above shall be paid on or before [MATURITY DATE]. Interest shall be calculated on the basis of a 360-day year of 12 equal months. Interest on this Note shall be paid on (a) [\_\_\_\_] 1 and [\_\_\_\_] 1 of each year, commencing [\_\_\_\_] 1, 20[25]], (b) each Redemption Date, (c) each Mandatory Tender Date, and (d) the date of acceleration of the Bonds (the “Interest Payment Dates”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the hereinafter defined Indenture.

This Note has been executed and delivered by the Borrower to the Issuer, pursuant to a certain Loan Agreement dated as of [\_\_\_\_] 1, 2025 (the “Loan Agreement”), between the Issuer and the Borrower.

Under the Loan Agreement, the Issuer has loaned the Borrower the principal proceeds received from the sale of the Issuer’s \$(PAR) Multifamily Housing Revenue Bonds (Bradley Ridge Apartments Project) Series 2025 (the “Bonds”) to assist in the financing of the Project, and the Borrower has agreed to repay such loan by making payments (“Loan Payments”) at the times and in the amounts set forth in this Note for application to the payment of Bond Service Charges on the Bonds as and when due. The Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Trust Indenture dated as of [\_\_\_\_] 1, 2025 (the “Indenture”), between the Issuer and Zions Bancorporation, National Association (the “Trustee”). This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture (subject to Reserved Rights).

To provide funds to pay the principal of and interest on the Bonds as and when due as specified herein, the Borrower hereby agrees to and shall make Loan Payments on each Interest Payment Date in an amount equal to the Bond Service Charges on the Bonds payable on such Interest Payment Date. In addition, to provide funds to pay the Bond Service Charges on the Bonds

as and when due at any other time, the Borrower hereby agrees to and shall make Loan Payments on any other date on which any Bond Service Charges on the Bonds shall be due and payable, whether at maturity, upon acceleration or otherwise, in an amount equal to those Bond Service Charges.

If payment or provision for payment in accordance with the Indenture is made in respect of the Bond Service Charges on the Bonds from money other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of Bonds has been made. Consistent with the provisions of the immediately preceding sentence, the Borrower shall have credited against its obligation to make Loan Payments any amounts transferred from the Project Fund or the Collateral Fund to the Bond Fund to pay Bond Service Charges. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be made to the Trustee at its designated corporate trust office for the account of the Issuer and deposited in the Bond Fund created by the Indenture. Except as otherwise provided in the Indenture, the Loan Payments shall be used by the Trustee to pay the Bond Service Charges on the Bonds as and when due.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other Person.

This Note is subject to prepayment, in whole or in part, upon the terms and conditions set forth in Article VI of the Loan Agreement. Any prepayment is subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Loan Agreement or the Indenture.

Whenever an Event of Default under Section 6.01 of the Indenture shall have occurred and, as a result thereof, the principal of and any premium on all Bonds then outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 6.03 of the Indenture, the unpaid principal amount of and accrued interest on this Note shall also be due and payable on the date on which the principal of and premium and interest on the Bonds shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Bonds shall also constitute an annulment of any corresponding declaration with respect to this Note.

The payment obligations of this Note are non-recourse to the Borrower to the extent set forth in Sections 8.05 and 8.11 of the Loan Agreement.

The Borrower, the Trustee and the Issuer acknowledge that this Note, and all Borrower's obligations hereunder, are subject and subordinate to the Construction Loan Documents. In addition, (1) the indebtedness evidenced by this Note and all other documents evidencing or securing this Note (collectively, the "Bond Loan Documents") are and shall be subordinated in right of payment, to the prior payment in full of the indebtedness evidenced by the Construction Loan Documents, and (2) the Bond Loan Documents are and shall be subject and subordinate in

all respects to the liens, terms, covenants and conditions of the Construction Loan Documents and to all advances heretofore made or which may hereafter be made.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name as of the date first above written.

**BRADLEY RIDGE APARTMENTS LP**, a  
Colorado limited partnership

By: Bradley Ridge GP LLC, a Delaware limited  
liability company, its General Partner

By \_\_\_\_\_  
Russell Condas, Vice President

## **ENDORSEMENT**

Pay to the order of Zions Bancorporation, National Association, a national banking association, as Trustee under the Indenture referred to in the Note, as security for the Bonds issued under such Indenture, without recourse and except for Reserved Rights. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

**CITY OF COLORADO SPRINGS,  
COLORADO**

By: \_\_\_\_\_  
Blessing Mobolade  
Mayor

Attest:

By \_\_\_\_\_  
Sarah B. Johnson  
City Clerk

## EXHIBIT B

### FORM OF DISBURSEMENT REQUEST

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS FROM  
PROJECT FUND PURSUANT TO SECTION 3.06 OF THE LOAN AGREEMENT

Pursuant to Section 3.06 of the Loan Agreement dated as of [\_\_\_\_\_] 1, 2025 (the “Loan Agreement”) between the CITY OF COLORADO SPRINGS, COLORADO (the “Issuer”) and BRADLEY RIDGE APARTMENTS LP, a Colorado limited partnership (the “Borrower”), the undersigned Authorized Borrower Representative hereby requests and authorizes ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as trustee (the “Trustee”), as depositary of the Project Fund created by the Trust Indenture dated as of [\_\_\_\_\_] 1, 2025 (the “Indenture”), between the Issuer and the Trustee, to pay to [the Borrower]the Person(s) listed on the Disbursement Schedule hereto out of the money deposited in the Project Fund the aggregate sum of \$\_\_\_\_\_ to pay the costs of the items listed in the Disbursement Schedule. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture and in the Tax Certificate.

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

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

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

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

(d) After taking into account the proposed disbursement as well as any future disbursements,

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

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

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

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

(f) The Borrower's representations, warranties and expectations set forth in the Tax Certificate are reaffirmed and restated, and have been continuously complied with since the making of the Loan, and the same are true, correct and complete in all material respects on the date hereof.

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

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

(i) The Issuer and Bond Counsel are authorized to rely on the representation and warranties contained herein.

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

(k) With respect to this requested disbursement, the Borrower (i) certifies that that it has reviewed any wire instructions set forth in this written disbursement direction to confirm that such wire instructions are accurate, (ii) agrees to indemnify and hold harmless the Trustee from and against any and all claims, demands, losses, liabilities, or expenses sustained, including but not limited to attorney fees and expenses resulting directly or indirectly as a result of making the disbursement requested, and (iii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction.

(Remainder of page intentionally left blank)



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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BRADLEY RIDGE APARTMENTS LP**, a  
Colorado limited partnership

By: Bradley Ridge GP LLC, a Delaware limited  
liability company, its General Partner

By \_\_\_\_\_  
Russell Condas, Vice President

ACKNOWLEDGED AND ACCEPTED:

**JPMORGAN CHASE BANK, N.A.**,  
a national banking association, as Construction Lender

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

(Signature page to Bradley Ridge Disbursement Request)

**DISBURSEMENT SCHEDULE**

TO STATEMENT NO. \_\_\_\_\_ REQUESTING AND AUTHORIZING  
DISBURSEMENT OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 3.06 OF  
THE LOAN AGREEMENT

<u>PAYEE</u>	<u>AMOUNT</u>	<u>PAYMENT INSTRUCTIONS</u>

## **EXHIBIT C**

### **CITY OF COLORADO SPRINGS, COLORADO MULTIFAMILY HOUSING REVENUE BONDS (Bradley Ridge Apartments Project) SERIES 2025**

#### **COMPLETION CERTIFICATE**

Pursuant to Section 3.08 of the Loan Agreement dated as of [\_\_\_\_\_] 1, 2025 (the “Loan Agreement”) between the CITY OF COLORADO SPRINGS, COLORADO (the “Issuer”) and BRADLEY RIDGE APARTMENTS LP, a Colorado limited partnership (the “Borrower”), and relating to the above-captioned Bonds, the undersigned Authorized Borrower Representative hereby certifies that (with capitalized words and terms used and not defined in this Certificate having the meanings ascribed thereto in the Loan Agreement):

(l) The Project was substantially completed and available and suitable for use as multifamily housing on \_\_\_\_\_.

(m) The acquisition, rehabilitation, renovation, construction, equipping and improvement of the Project and those other facilities have been accomplished in such a manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other similar governmental regulations.

(n) The costs of the Project financed with the Loan were \$\_\_\_\_\_.

(o) At least 95% of the proceeds of the Bonds were expended for Qualified Project Costs or remain unspent and will be applied to the redemption of the Bonds.

(p) This Certificate is given without prejudice to any rights against third parties that now exist or subsequently may come into being.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Authorized Borrower Representative has set his or her hand  
as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BRADLEY RIDGE APARTMENTS LP**, a  
Colorado limited partnership

By: Bradley Ridge GP LLC, a Delaware limited  
liability company, its General Partner

By \_\_\_\_\_  
Russell Condas, Vice President

**EXHIBIT D**  
**SOURCES AND USES OF FUNDS**

[Attach]