



green colorado credit reserve lender participation agreement

This LENDER PARTICIPATION AGREEMENT (this "Agreement") made effective the _____ day of _____, 20__, by and between the Colorado Housing and Finance Authority ("CHFA"), a body corporate and a political subdivision of the State of Colorado, whose address is 1981 Blake Street, Denver, Colorado 80202, as Fiscal Agent for the State of Colorado (the "State") acting by and through the Governor's Energy Office (the "GEO") and _____ ("Lender"), whose address is _____.

RECITALS

A. The GEO Revolving Loan and Credit Reserve Fund (the "GEO Fund") was created by the State acting by and through GEO, as a revolving loan program and loan loss reserve fund to promote energy efficiency and renewable energy throughout Colorado. The source of initial funds for the GEO Fund is the State Energy Plan, funded by the United States Department of Energy through the American Recovery and Reinvestment Act of 2009 ("ARRA").

B. The Green Colorado Credit Reserve Program (the "Program") is a pool guaranty program established by the State as a component of the GEO Fund. The State has engaged CHFA as its Fiscal Agent under the direction of the GEO for the purposes of establishing and managing a separate trust account for loan loss reserve funds allocated under the GEO Fund to the Program and serving as the program manager for the Program.

C. CHFA, as Fiscal Agent of the State, and the Lender desire to enter into this Agreement to set forth the terms and conditions of the Program that will apply if the Lender decides to register Loans in the Program.

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. The following terms shall have the meanings indicated:

(a) "Affiliate of the Borrower" means any person or entity directly or indirectly controlled by the Borrower or directly or indirectly controlling the Borrower or under common control with the Borrower. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons: (i) owns, controls, or has the power to vote fifty percent (50%) or more of any class of voting securities or interests of the other person; (ii) controls in any manner the election or appointment of a majority of the directors or management of the other person; or (iii) has the power to exercise a controlling influence over the management or policies of the other person.

(b) "Affiliate of the Lender" means any person or entity directly or indirectly controlled by the Lender or directly or indirectly controlling the Lender or under common control with the Lender. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons: (i) owns, controls, or has the power to vote fifty percent (50%) or more of any class of voting securities or interests of the other person; (ii) controls in any manner the election or appointment of a majority of the

directors or management of the person; or (iii) has the power to exercise a controlling influence over the management or policies of the other person.

(c) "Bank Lender" means the type of institution defined as such in the definition of Eligible Lender below.

(d) "Borrower" means an Eligible Borrower which is the recipient of a Loan which is, has been, or will be registered by the Lender in the Program.

(e) "Business Day" means any day other than a Saturday, Sunday, or any other day on which commercial banks in Colorado are required or authorized to be closed.

(f) "Claim" means any claim filed by the Lender pursuant to paragraph 8.

(g) "Colorado Business Enterprise" means an individual or entity carrying on a trade or business primarily within the State of Colorado.

(h) "Eligible Borrower" means (i) a business enterprise carrying on a trade or business within the State of Colorado which will utilize the Loan so as to promote energy efficiency or renewable energy or to cause the primary economic benefit of the Loan, including the creation of jobs, to be located in the State of Colorado as determined by the Program Manager, and which may be a profit-making or not-for-profit enterprise and (ii) a residential homeowner who obtains a loan from an Eligible Lender under an energy efficiency or renewable energy generation loan program established by such Eligible Lender and acceptable to the GEO.

(i) "Eligible Lender" means a depository institution which has been designated as an eligible public depository under the Public Deposit Protection Act (C.R.S. §11-10.5-101, et seq.) or the Savings and Loan Association Public Deposit Protection Act (C.R.S. §11-47-101, et seq.), is located in the State of Colorado and regulated by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board, the Colorado Division of Banking or similar regulatory agency (a "Bank Lender"). Eligible Lenders shall also include Community Development Finance Institutions and State of Colorado funded Business Loan Funds (a "Non-Bank Lender").

(j) "Eligible Loan" means a Loan that meets the criteria for an Eligible Loan set forth in the Program Guidelines in effect at the time a Loan is registered and for which each of the representations and warranties set forth in paragraph 4 is true and correct.

(k) "GCCR Account" means the money market account opened with Lender in the name of the Program Manager pursuant to paragraph 5.

(l) "Gross Loan Amount" means the total amount of principal that is to be advanced pursuant to the Loan documents executed by the Lender and a Borrower. With respect to a Loan made pursuant to a line of credit agreement between the Lender and a Borrower, the Gross Loan Amount shall equal the maximum stated amount of principal that may be advanced under the terms of such agreement.

(m) "Lender Insider" means an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the

terms "executive officer", "director", "principal shareholder", "immediate family" and "related interest" shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and the Office of Thrift Supervision Regulations at 12 C.F.R. §563.43.

(n) "Loan" means any advance of money to a Borrower by the Lender that is evidenced by a promissory note or other instrument that obligates the Borrower to repay the advance.

(o) "Loss Reserve Funds" means the funds deposited into the GCCR Account by the Program Manager pursuant to subparagraph 6(e).

(p) "Minority Business Enterprise" means a Colorado Business Enterprise more than fifty percent (50%) of which is owned by women and/or persons who are members of a minority group. For purposes of this definition, minority group members are African/Black Americans, Hispanic-Americans, Asian-Americans, American Indians/Native Americans, American Eskimos and American Aleuts. The Lender may rely on written representations by Borrowers regarding their status as a Minority Business Enterprise and need not conduct an independent investigation.

(q) "Net Proceeds of the Loan" means the Gross Loan Amount less costs incurred in issuing the Loan which are paid by the Borrower out of the Gross Loan Amount.

(r) "Non-Bank Lender" means the type of institution defined as such in the definition of Eligible Lender above.

(s) "Program" means the Green Colorado Credit Reserve Program established by the State.

(t) "Program Guidelines" means the Green Colorado Credit Reserve Program Guidelines established by the State and provided to the Lender by the Program Manager, as amended from time to time.

(u) "Program Manager" means CHFA or any successor appointed by the GEO, to act as the Fiscal Agent of the State. If no such successor is appointed by GEO, then GEO shall act as the Program Manager.

(v) "Registered Loan" means a Loan registered under the Program pursuant to paragraph 6.

2. Representations and Warranties of CHFA. At the execution and delivery of this Agreement, CHFA represents and warrants:

(a) Valid Existence. CHFA is a body corporate and a political subdivision of the State of Colorado established and acting pursuant to the Colorado Housing and Finance Authority Act set forth at C.R.S. §29-4-701, et seq. (the "Act").

(b) Due Authorization, Enforceability, No Violation. CHFA has the necessary power under the Act to act as the Fiscal Agent of the State and has been authorized by the State to execute and deliver this Agreement. This Agreement when executed shall be valid, binding and enforceable against the State in accordance with its terms.

3. Representations and Warranties of the Lender. At the execution and delivery of this Agreement and as of the time of the registration of any Loan, the Lender represents and warrants:

(a) Due Organization and Qualification. The Lender is an Eligible Lender duly organized and authorized to make loans in the State of Colorado.

(b) Due Authorization, Enforceability, No Violation. The Lender has all necessary power and has duly taken all action on its part to authorize, execute and deliver this Agreement. This Agreement when executed shall be valid, binding and enforceable against the Lender in accordance with its terms. The execution and performance of this Agreement by the Lender will not violate or conflict with any instrument, agreement, order or decree by which the Lender is bound.

(c) Current Tax Status. The Lender has filed all tax returns (federal, state and local) required to be filed and paid taxes shown thereon to be due, including interest and penalties, or, to the extent the Lender has not paid such taxes, the Lender is contesting in good faith an assertion of liability based on such returns.

(d) Discrimination and Affirmative Action. During the performance of this Agreement, the Lender agrees as follows:

(i) The Lender will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The Lender will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lender agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provision of this non-discrimination clause.

(ii) The Lender will, in all solicitations or advertisements for employees placed by or on behalf of the Lender, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

(e) Minority Access to the Program. The Lender agrees to use its best efforts to provide Minority Business Enterprises with the maximum practicable opportunity to participate in the Program.

4. Representations and Warranties of the Lender Made at Each Loan Registration. With respect to any Loan that the Lender files for registration hereunder, the Lender shall represent and warrant as of the time of each such filing:

(a) Representations Obtained from Borrower. The Lender has obtained from the Borrower the following representations and warranties and, to its actual knowledge, the Lender has no reason to believe based on information available to it that any such representation or warranty is not true:

(i) If applicable, the Borrower is duly organized (for profit or not-for-profit), validly existing and in good standing under the laws of the state under which the Borrower is organized and if the Borrower is not organized under the laws of the State of Colorado, the Borrower is qualified to do business in the State of Colorado.

(ii) The Borrower is not in material violation of any federal or state law, judgment, decree, order, statute, or governmental rule or regulation.

(iii) The Borrower is an Eligible Borrower.

(iv) The Loan is an Eligible Loan and all of the Net Proceeds of the Loan will be applied to support a Colorado Business Enterprise in connection with the Program purposes as set forth in the Program Guidelines in effect at the time of such filing.

(v) The Borrower has not been promised or told by the Lender, its employees or agents that it has any legal, beneficial or equitable interest in any payment or other funds credited to the GCCR Account.

(b) Lender Representations and Warranties.

(i) The aggregate Gross Loan Amount of all Registered Loans to the Borrower or any Affiliates of the Borrower does not exceed \$100,000.00, unless otherwise approved by the Program Manager. In making this representation, the Lender may rely upon certifications as to the identities of Affiliates of the Borrower provided to the Lender by the Borrower.

(ii) The Lender has complied in all material respects with all federal and state laws, statutes, and governmental rules and regulations pertaining to the making of the Loan.

(iii) The Lender shall service each Registered Loan and shall proceed to recover against the Borrower and all collateral securing a Registered Loan in the event of a default by the Borrower in accordance with its standard policies and procedures, and in accordance with the standard of loan servicing employed by the Lender for its commercial loan portfolio generally.

(iv) Immediately upon making the Loan, to the Lender's actual knowledge, neither the Borrower nor any Affiliate of the Borrower will be in material violation of any term of any mortgage, loan agreement or indenture with the Lender.

(v) The Lender has determined that the Loan is an Eligible Loan and the Lender has completed all documents required to be filed with the Program Manager to register the Loan in accordance with the terms of this Agreement.

(vi) The Loan is not being made to benefit a Lender Insider or an Affiliate of the Lender.

(vii) The Loan is made in accordance with the Program Guidelines currently in effect.

5. Establishment of GCCR Account.

(a) Establishment of GCCR Account; Initial Deposit of Funds. Upon execution of this Agreement (i) if Lender is a Bank Lender, the Lender shall open a money market account at the Lender in the name of the Program Manager to be used as the GCCR Account hereunder or (ii) if Lender is a Non-Bank Lender, the Program Manager shall open a money market account in the Program Manager's name at a bank of the Program Manager's choosing to be used as the GCCR Account hereunder. The account shall be called the "Colorado Housing and Finance Authority–Green Colorado Credit Reserve - _____ (Non-Bank Lender's Name)_____."

(b) Ownership, Control and Investment of Account. All funds deposited in the GCCR Account shall be the exclusive property of the State and controlled by the Program Manager which shall be the sole signatory on the account, provided that the Program Manager may not withdraw funds from the GCCR Account except as is specifically provided for in this Agreement. All funds deposited into the GCCR Account shall be treated by Lender (or Program Manager's bank if Lender is a Non-Bank Lender) as public deposits pursuant to C.R.S. §11-10.5-101, et seq., or C.R.S. §11-47-101, et seq., and the Lender (or Program Manager's bank) shall comply with the requirements thereof.

(c) Interest Earned. All interest earned on the funds in the GCCR Account shall remain in the account and be distributed in the same manner as all other funds therein in accordance with this Agreement.

(d) GCCR Account Statements. If the Lender is a Bank Lender, a monthly statement for the GCCR Account shall be provided to the Program Manager by Lender. If the Lender is a Non-Bank Lender, Program Manager shall provide Lender with a copy of the monthly statement for the GCCR Account it maintains for the Lender.

6. Registration of Loans in the Program; Loan Registration Fees; Loss Reserve Funds; Refinance of Registered Loans; Termination of Registration.

(a) Loan Terms. Although the execution of this Agreement does not require Lender to register its Loans, a Loan must be registered under the Program before Loss Reserve Funds will be made available to the Lender for such Loan. A Loan to be registered in the Program may be made with such interest rate, fees, and other terms and conditions as the Lender and Borrower may lawfully agree, subject to the provisions of this Agreement to qualify the Loan as an Eligible Loan. Only Eligible Loans may be registered in the Program.

(b) Registration Procedure. In order to register a Loan under the Program, the Lender shall satisfy the following requirements no later than the close of business on the thirtieth (30th) calendar day after the date on which any and all of Lender's required Loan documents have been executed and delivered.

(i) The Lender shall deliver to the Program Manager a completed Loan Registration Form in the form attached hereto as Appendix 1 (which form may be updated by the Program Manager from time to time), executed by an authorized officer of the Lender. For the purposes of this Agreement, the filing of a Loan for registration shall be deemed to occur on the date on which the Program Manager receives the fully and properly completed Loan Registration Form, which may be faxed to its Commercial Division at (303) 291-5709.

(c) Acceptance of Registration by Program Manager. Upon the Program Manager's determination that the Lender has satisfied the requirements set forth in this Agreement, the Program Manager shall register the Loan, deposit the applicable Loss Reserve Funds in the GCCR Account in accordance with subparagraph 6(e) and, if Lender is a Non-Bank Lender, provide Lender with evidence of such deposit in Lender's GCCR Account held in Program Manager's name.

(d) No Loan Registration Fee. No Borrower of an Eligible Loan registered under the Program shall be required to pay a fee under the Program at the time the Loan is registered. However, the Lender may at its option charge the Borrower a loan origination fee provided that the total fees paid by the Borrower in connection with the Registered Loan cannot exceed four percent (4.0%) of the Gross Loan Amount thereof, excluding closing costs. The Lender may include the allowed loan origination fee in the Gross Loan Amount if the Borrower and Lender so agree.

(e) Deposit of Loss Reserve Funds by Program Manager. Loss Reserve Funds shall be deposited into the GCCR Account by the Program Manager with respect to each Registered Loan in an amount calculated as set forth in the Program Guidelines in effect at the time the Loan is registered.

(f) Extension, Renewal and Refinance of Registered Loans. A Registered Loan may be extended, renewed and refinanced provided that any increase in the Gross Loan Amount of the Registered Loan shall not cause the Gross Loan Amount thereof to exceed \$100,000, unless approved in writing by the Program Manager. No additional Loss Reserve Funds shall be deposited into the GCCR Account by the Program Manager in connection with any increase in the Gross Loan Amount. The Lender may charge an additional origination fee for the extension, renewal or refinance of a Registered Loan, however the total fees paid by the Borrower in connection therewith cannot exceed four percent (4.0%) of the Gross Loan Amount thereof, excluding closing costs.

(i) The Lender shall notify the Program Manager in writing that the Registered Loan has been extended, renewed or refinanced and, if there is no increase in the Gross Loan Amount, provide a written statement detailing the change accompanied by a copy of the original Loan Registration Form for the Loan. If the Gross Loan Amount has been increased as allowed, the Lender shall submit a new Loan Registration Form, together with a copy of the original Loan Registration Form.

(g) Termination of Registration. If a Registered Loan that is a line of credit has an outstanding balance of zero for a consecutive 12-month period, such line of credit shall no longer be considered a Registered Loan unless before the expiration of the 12-month period the Lender has affirmed in writing to the Borrower that the line of credit will remain open, the Borrower has acknowledged in writing such reaffirmation and such reaffirmation is received by the Program Manager. If and as of the date on which the outstanding balance of a Registered Loan that is not a line of credit is reduced to zero, such Loan shall no longer be considered a Registered Loan. If at the end of the term of a Registered Loan there remains an outstanding balance owed to the Lender solely because the Borrower is in default, then such a Loan shall remain a Registered Loan until the default of the Borrower is cured or such balance is reduced to zero.

7. Annual Loan Status Reports; Withdrawal of Excess Funds from GCCR Account.

(a) Annual Loan Status Report. On or before January 30 of each year, the Lender shall file a report with the Program Manager in the form attached hereto as Appendix 2 (which form may be updated by the Program Manager from time to time), indicating the outstanding balance and current status of each Registered Loan as of the previous December 31.

(b) Right to Withdraw Excess Funds. If upon receipt of the annual status reports regarding the Lender's Registered Loans the Program Manager determines that the balance in the GCCR Account exceeds the aggregate Gross Loan Amounts of all the Lender's Registered Loans at that time, the Program Manager may withdraw such excess amount from the GCCR Account. If the Program is terminated by the State pursuant to subparagraph 13(b) or if at any time Lender has no Registered Loans in the Program as determined in accordance with Section 6(g) above, the Program Manager may withdraw the balance remaining in the GCCR Account subject to the requirements of subparagraph 13(b).

(c) Failure to File Reports. If the Lender fails to file a status report concerning any Registered Loan within thirty (30) calendar days of its original due date, the Program Manager shall be entitled to withdraw from the GCCR Account, based on the Program Manager's determination from an audit of the Lender's files and the GCCR Account as provided in paragraph 15 below, conducted at Lender's sole expense, an amount not greater than the amount by which the GCCR Account balance exceeds the aggregate outstanding Gross Loan Amount of all Registered Loans as of the date for which such report was required to be filed.

8. Claims by Lender Against GCCR Account. If a Registered Loan becomes delinquent or otherwise in default, the Lender may file a Claim with the Program Manager for reimbursement of losses out of the GCCR Account in accordance with the provisions of this paragraph 8.

(a) Requirement to Charge Off Loan. The Lender may file a Claim with respect to a Registered Loan only to the extent of a charge off of all or a portion of the Registered Loan in accordance with the Lender's ordinary policies and procedures for charging off commercial Loans or as required by federal or state regulatory agencies. The Lender shall cease to accrue interest on a Registered Loan for which a Claim has been made in accordance with generally accepted accounting principles and as required by federal or state regulatory agencies.

(b) Delivery of Claim Form to Program Manager. Upon making the charge off required by subparagraph 8(a), the Lender may file a Claim with the Program Manager by submitting a completed Claim Form in the form attached hereto as Appendix 3 (which form may be updated by the Program Manager from time to time) signed by an authorized officer of the Lender which shall be accompanied by satisfactory evidence that Lender has charged off such amount on its books. Any Claim that is filed hereunder shall be delivered to the Program Manager not later than thirty (30) calendar days after the date the charge off, made in accordance with subparagraph 8(a), occurs.

(c) Loan History Information. At the time a Claim is submitted, the Lender shall provide a certified loan history which shall include disbursements, payments, accruals of interest and any other charges with respect to the Registered Loan for which the Claim is filed, certified by an authorized officer of the Lender. The Lender shall provide the Program Manager with such further information concerning the Registered Loan as may be reasonably requested

by the Program Manager. The Lender shall retain documentation in its files evidencing all expenses for which a Claim is filed.

(d) Amount of Claim. The allowable amount of the Claim shall equal the amount of the principal and accrued interest charged off by Lender on the Registered Loan together with Lender's reasonable out-of-pocket expenses provided, however, that the amount of the Claim shall not exceed the Gross Loan Amount as stated in the Loan documents at the time of registration. The amount of the Claim shall not include any amount attributable to (i) damages paid by the Lender as a result of a legal claim against Lender for negligence, misconduct or otherwise or (ii) unpaid late charges or additional default interest imposed by the Lender.

9. Payment of Claims from GCCR Account.

(a) Review of Claims Prior to Payment. The Program Manager shall review Claims submitted by the Lender prior to payment of such Claims in accordance with subparagraph 9(b). Prior to the expiration of the ten (10) Business Day period specified in subparagraph 9(b) below for payment of a Claim, the Program Manager may issue a written notice of proposed rejection or adjustment of the Claim to the Lender that shall state the basis for the proposed rejection or adjustment. A Claim may be rejected or adjusted on the basis that any representation or warranty provided by the Lender with respect to a Registered Loan was known by the Lender, or should have been known by the Lender but for its negligence, to be false at the time the Loan was filed for registration or Lender's failure to comply with the requirements of this Agreement. Upon receiving a notice of rejection or adjustment, the Lender may object to such notice by delivering a written statement to the Program Manager explaining the basis for such objection within ten (10) Business Days after receipt of the Program Manager's notice. After review of Lender's objection, the Program Manager shall determine in its sole discretion whether to reject or adjust such Claim.

(b) Payment of Claim. Within ten (10) Business Days after receipt by the Program Manager of a completed Claim Form, certified loan history and other evidence required from the Lender, in accordance with paragraph 8 above, the Program Manager shall pay, to the extent funds are available in the GCCR Account, the amount of such Claim unless the Program Manager disputes the Claim in accordance with subparagraph 9(a).

(c) Recovery of Paid Claims by Program Manager. The Program Manager shall have the right to seek recovery from the Lender of any Claim paid to the Lender if the Program Manager determines, in its sole discretion, that any representation or warranty provided by the Lender with respect to a Registered Loan was known by the Lender, or should have been known by the Lender but for its negligence, to be false at the time the Loan was filed for registration or that a Claim was paid by the Program Manager in error. Upon its preliminary determination to dispute and recover a paid Claim in accordance with this subparagraph, the Program Manager shall issue a written notice of such intent to the Lender that shall state the basis for the intent to dispute and recover a Claim. The Lender may object to such action by delivering a written statement to the Program Manager explaining the basis for such objection within ten (10) Business Days after receipt of the notice. After receiving such objection, the Program Manager shall determine whether to seek recovery of the paid Claim in its sole discretion.

(d) Insufficient Funds. Lender's right to receive payment for a Claim approved by the Program Manager shall be limited to the amount of funds in its GCCR Account. Loss Reserve Funds deposited with respect to multiple Registered Loans may be used to pay a

Claim made with respect to any one of them. If there are insufficient funds in the GCCR Account to cover the entire amount of the Lender's Claim, the Program Manager shall pay to the Lender an amount equal to the current balance in the GCCR Account to satisfy the Claim on a partial basis. Such payment shall be deemed to satisfy the Claim in full and the Lender shall have no other or further right to receive any amount from the GCCR Account with respect to that Claim. If the Lender submits two or more Claims contemporaneously and there are insufficient funds in the GCCR Account to cover the entire amount of such Claims, the Lender may designate the order of priority in which the Program Manager shall pay such Claims.

10. Reports of Collection Status. Within sixty (60) calendar days after a Claim is paid, the Lender shall provide the Program Manager with a written statement outlining the Lender's proposed plan for pursuing its collection rights under the documents evidencing and securing the Registered Loan. This statement shall include the identity, location and estimated value of all collateral that secures payment thereof and the proposed and the proposed methods of collection it will pursue against the collateral and any guarantors. Thereafter, the Lender shall periodically, but at least quarterly, provide a report to the Program Manager summarizing the status of and any changes to the proposed collection plan or collateral. At such time as the Lender determines that such collection activities are no longer economically feasible, it will so advise the Program Manager in writing at which time no further reports will be necessary.

11. Recovery by Lender Subsequent to Claim.

(a) If subsequent to payment of all or part of a Claim by the Program Manager the Lender recovers any amount due on the Loan, the Lender shall within ten (10) Business Days both notify the Program Manager in writing and deposit in the GCCR Account (or if the account has been closed for any reason, shall directly pay to the Program Manager) such amount recovered, less (a) any amount of the Lender's loss on the Loan not covered by the Claim paid, and (b) reasonable out-of-pocket expenses incurred. The Lender shall retain documentation in its files evidencing any such expenses which may be reviewed by the Program Manager upon request.

(b) In the event of any such recovery, the Lender shall no later than ten (10) Business Days after such recovery, provide the Program Manager with a written statement containing the following information: the name of the borrower; the amount recovered; the date the Claim was filed; the date the Claim was paid; the amount of the Lender's loss not covered by the paid Claim; the recovery costs incurred by the Lender; and the date the recovered funds were deposited into its GCCR Account. The Lender shall attach a copy of the deposit slip showing that the recovered funds were deposited into the GCCR Account to the written statement.

12. Subrogation Rights of The State.

(a) In General. If the payment made on a Claim pursuant to paragraph 9 has fully covered the Lender's loss on a Registered Loan, or if the payment made on a Claim pursuant to paragraph 9, when combined with any other recovery obtained by the Lender with respect to such Loan, has fully covered the Lender's loss, the State, upon its written notice to Lender, shall be subrogated to the rights of the Lender with respect to any collateral, security or other right of recovery, in connection with the Loan, which has not been realized upon by the Lender. Upon such notice, the Lender shall assign to the State all of its right, title and interest in and to the Loan documents and any remaining collateral, security or other right of recovery in connection with the Loan. The Lender shall provide the Program Manager with all reasonable assistance thereafter as the Program Manager may request in proceeding with respect to any

such collateral, security or other right of recovery, except that such reasonable assistance shall not require the Lender to incur any out-of-pocket expenses. Any funds received by the Program Manager as a result of enforcement actions taken with respect to any such collateral, security or other right of recovery shall be promptly deposited by the Program Manager in the GCCR Account (or if the account has been closed for any reason, promptly paid directly to the Lender), less: (i) any reasonable out-of-pocket expenses incurred by the State and/or Program Manager in taking such enforcement actions; (ii) the amount of any payments made by the State and/or Program Manager pursuant to subparagraph 12(b); and (iii) the amount of any payment made to Lender from the GCCR Account under and/or directly related to the Claim

(b) Payment to Secure Subrogation Rights. If the State determines that it desires to exercise its right of subrogation in connection with a Registered Loan and would be entitled to exercise such right except for the fact that the Lender's loss has not been fully covered, the State, at its option, may pay from State funds appropriated for such purpose, other than those available in the GCCR Account, an amount sufficient to result in the Lender's loss being fully covered. Upon making such payment pursuant to this subparagraph, the State shall be subrogated to the rights of the Lender in accordance with subparagraph 12(a).

13. Suspension; Termination of Program.

(a) The Program Manager may temporarily suspend its obligation to register Loans in the Program under this Agreement for any reason, including lack of funding, by giving Lender seven (7) Business Days prior written notice. Such suspension shall be effective on the date specified in such notice and shall remain effective until the Program Manager reinstates its obligation to register loans by written notice to Lender.

(b) The Program Manager may, for any reason, terminate its obligation to register Loans in the Program under this Agreement by providing seven (7) Business Days prior written notice to Lender. Such termination shall be effective on the date specified in the notice of termination. Any termination under this subparagraph shall be prospective only and shall not apply to any Loans previously registered under the Program. Subsequent to a termination of the Program Manager's obligation to register Loans under the Program pursuant to this subparagraph, when the balance of the GCCR Account is reduced to zero, either through payments of Claims with respect to remaining Registered Loans or through withdrawals of funds by the Program Manager pursuant to paragraph 7, and all obligations and opportunities to collect on Registered Loans have expired or lapsed, this Agreement shall automatically terminate, thereby releasing Program Manager from any and all obligations hereunder.

14. Amendments to the Agreement. The Program Manager may, in its sole discretion and by giving at least fourteen (14) calendar days prior written notice to the Lender, amend any provision of this Agreement. However, in the absence of the written consent of the Lender, no such amendment shall be applicable to Loans made prior to the effective date of the amendment and no such amendment shall diminish Lender's rights as of the effective date of the amendment with respect to funds in the GCCR Account.

15. Audit. Upon notice to the Lender, the Program Manager may audit or retain an independent Certified Public Accountant to audit the records and files of the Lender relating to its Registered Loans and the GCCR Account during normal business hours of the Lender. Such audit shall be conducted at the expense of Program Manager, except as otherwise provided in Section 7(c) above.

16. Lender's Waiver of Set-Off Rights. Notwithstanding any express or implied right of set-off provided to the Lender by any depository agreement or any other agreement, the Lender hereby waives any and all rights of set-off against any funds held in the GCCR Account arising in connection with any claim against the Program Manager or the State whether arising under this Agreement or otherwise.

17. Lender's Waiver and Indemnification. The Lender hereby waives any and all claims, including claims of contribution or indemnity, against the Program Manager or the State arising from (a) the making, servicing and collection of any Loan made by the Lender and (b) the State's ownership or the Program Manager's control of the funds deposited in the GCCR Account. The Lender shall defend, indemnify and hold harmless the Program Manager and the State, their respective officers, directors, employees and agents, from and against any and all losses suffered by, and any and all claims, liabilities or penalties asserted against any of the foregoing parties by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Lender.

18. Term of Agreement. This Agreement shall be in full force and effect until terminated pursuant to paragraph 13 (b) above.

19. Miscellaneous.

(a) Information. The Lender shall promptly provide the Program Manager with such information regarding its participation in the Program as the Program Manager may reasonably require.

(b) Compliance with Applicable Law. The Lender shall comply with all applicable federal and Colorado laws, statutes, rules and regulations in the making, servicing and collection of any Loan.

(c) Limitation of Rights. This Agreement shall be for the exclusive benefit of the Lender and the State and the Program Manager and shall not be construed to give any other person any legal or equitable right, remedy or claim under or in respect to this Agreement.

(d) Severability. If any clause or provision of this Agreement is held illegal or invalid by any court, the invalidity of such clause or provision shall not affect any of the remaining clauses or provisions hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause or provision had not been contained herein.

(e) Notices. All notices, certificates, request or other communications hereunder shall be sufficiently given when delivered: by messenger; by professional courier service; by registered or certified mail, postage prepaid, return receipt requested; or by facsimile upon confirmation of receipt, addressed as follows:

If to the Program Manager:

Colorado Housing and Finance Authority
Attn: Green Colorado Credit Reserve Program
1981 Blake Street
Denver, Colorado 80202
Facsimile: (303) 291-5709

If to the Lender:

(f) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

(g) Assignment. The Lender may not assign or transfer any interest in this Agreement without the prior written consent of the Program Manager.

(h) No Personal Liability. No member, officer or employee of the Program Manager, including any person executing this Agreement, or the State shall be liable personally under this Agreement or subject to any personal liability for any reason relating to the execution of this Agreement or the Program.

(i) Diligence. The Lender agrees to exercise reasonable prudence, care and diligence in the making, servicing and collection of Loans under the Program.

(j) Captions. The captions in this Agreement are for convenience only and in no way define, limit or prescribe the scope or intent of any provisions or paragraphs of this Agreement.

(k) Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. The jurisdiction and venue of any action brought by any party in connection herewith shall be in the District Court in and for the City and County of Denver, Colorado.

[Remainder of Page Intentionally Left Blank. Signature Page Follows.]

In Witness Whereof, this Agreement is entered into effective as of the date first written above.

CHFA:

COLORADO HOUSING AND FINANCE AUTHORITY, as
Fiscal Agent for the State of Colorado acting by and
through the Governor's Energy Office

By: _____
Cris A. White
Executive Director/CEO

LENDER:

By: _____
Print Name: _____
Print Title: _____