

## ORDINANCE 17-03

**TO AMEND ORDINANCE 95-75 ENTITLED “ESTABLISHING THE HOUSING TRUST FUND AND ITS BOARD OF DIRECTORS AND APPROVING THE DESIGNATED HOUSING TRUST FUND ENDOWMENT AGREEMENT,”  
AS SUBSEQUENTLY AMENDED**

**(Revising and Updating the Housing Trust Endowment Fund Agreement with the Community Foundation of Bloomington and Monroe County and Terminating the City’s Housing Trust Fund Board)**

- WHEREAS, on December 6, 1995, the Common Council adopted Ordinance 95-75 approving the Housing Trust Endowment Fund Agreement (Fund Agreement) between the Community Foundation of Bloomington and Monroe County (“Community Foundation”) and the City of Bloomington, Indiana (“City”) to govern the use of funds deposited in a Housing Trust Fund held by the Community Foundation;
- WHEREAS, Ordinance 95-75 also established a Board of Directors (“Board”) of the Housing Trust Fund and provided instructions to the Board regarding use of the Fund; and
- WHEREAS, in 1997, with the adoption of Ordinance 97-12, and in 2000, with the adoption of Ordinance 0-21, the City amended Ordinance 95-75, to among other amendments, change the affordability period of projects to be funded; and
- WHEREAS, on November 18, 2016, the Common Council adopted Ordinance 16-41, which established a new Housing Development Fund in the Office of the Controller to promote affordable housing under the administration of the Housing and Neighborhood Development (HAND) department; and
- WHEREAS, after more than 20 years, the Common Council believes that in order for the City to make sufficient progress in the development of affordable housing, the Fund Agreement must be further amended to, along with some general revisions and updating, align the purpose of the Housing Trust Fund so that it provides support to the City’s Housing Development Fund; and
- WHEREAS, in addition, the Common Council believes that, with the establishment of the City’s Housing Development Fund under the administration of the HAND department, the Board is no longer necessary and should be disbanded;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA THAT:

SECTION 1. Section I of Ordinance 95-75 shall be amended to revise the Designated Housing Trust Endowment Fund Agreement, as attached in Exhibit A to this Ordinance 17-03, and such revised Agreement is hereby approved and incorporated herein by reference. In accordance with IC 36-1-5-4, two copies of the material are on file in the Office of City Clerk for public inspection.


SECTION 2. Section II of Ordinance 95-75 shall be deleted in its entirety and replaced with the following:

SECTION II: The Department of Housing and Neighborhood Development or its successor shall act as the City’s liaison with the Community Foundation in fulfilling the terms of the revised Designated Housing Trust Endowment Fund Agreement in Exhibit A.


PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 22<sup>nd</sup> day of March, 2017.

  
SUSAN SANDBERG, President  
Bloomington Common Council

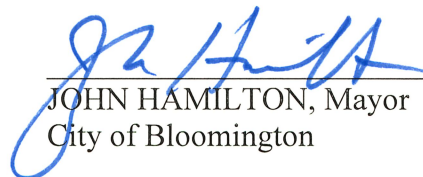
ATTEST:

  
NICOLE BOLDEN, Clerk  
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 23<sup>rd</sup> day of March, 2017.

  
NICOLE BOLDEN, Clerk  
City of Bloomington

SIGNED and APPROVED by me upon this 23<sup>rd</sup> day of March, 2017.

  
JOHN HAMILTON, Mayor  
City of Bloomington

#### SYNOPSIS

On December 6, 1995, the Common Council adopted Ordinance 95-75 which established a Designated Housing Trust Endowment Fund (“Fund”) at the Community Foundation of Bloomington and Monroe County (“Community Foundation”), approved a funding agreement governing the use of the funds (“Fund Agreement”), and established a Housing Trust Fund Board of Directors (“Board”). The purpose of this Fund was to promote affordable housing options in the City of Bloomington (“City”). Over the intervening years, Ordinance 95-75 has been amended twice, via Ordinances 97-12 and Ordinance 00-21, in a large part, to amend the Instructions to the Board in order to clarify the intended use of the funds. However, the changes to Instructions to the Board did not further, or align well with, the community’s efforts to promote affordable housing. Recently, the City established a Housing Development Fund administered by the Housing and Neighborhood Development (HAND) department to continue the effort in promoting affordable housing. Also, over those years, the Fund Agreement has never been amended or revised. Due to restrictions in the ordinance and Fund Agreement, funds have continued to accumulate and over the last several years have been very rarely used. For these reasons, the parties agree that the Fund Agreement must be amended in order to make the funds more easily used for their intended purpose of enhancing affordable housing options in the City. In addition, the Common Council finds that the City’s Housing Trust Fund board is no longer necessary and should be terminated.

*Note: On March 22, 2017, the Council adopted Am 01 which corrected the cite to the ordinance which established the Housing Development Fund as it appeared in the fourth Whereas clause.*



**COMMUNITY FOUNDATION of BLOOMINGTON and MONROE COUNTY,  
INC. DESIGNATED ENDOWMENT FUND AGREEMENT for the  
CITY OF BLOOMINGTON HOUSING TRUST ENDOWMENT FUND**

**THIS AGREEMENT** (the "Agreement") is made and entered into as of April 16, 2017, by and between Community Foundation of Bloomington and Monroe County, Inc. (the "Community Foundation"), and City of Bloomington ("Donor"). and supersedes the previous Housing Trust Endowment Fund Agreement (Previous Agreement) which was executed on January 10, 1996. The Previous Agreement was authorized by City Council Ordinance 95-75 (dated December 13, 1995) as amended by City Council Ordinances 97-12 (dated March 20, 1997) and 00-21 (dated May 18, 2000). The Agreement is subject to approval by the Donor with adoption of Ordinance 17-03 which further amends City Council Ordinance 95-75.


**WHEREAS**, Donor is a single tax-exempt nonprofit organization (described in Code sections 501(c)(3) and either 509(a)(1), 509(a)(2), or 509(a)(3)) as the "Designated Charitable Organization") that established a designated endowment fund in the Community Foundation; and

**WHEREAS**, the Community Foundation is an Indiana nonprofit corporation exempt from federal income taxes under Internal Revenue Code ("Code") section 501(c)(3), a public charity described in Code section 170(b)(1)(A)(vi), and accordingly an appropriate institution within which to establish such a designated endowment fund; and

**WHEREAS**, the Community Foundation continues to be willing and able to hold and administer such a designated endowment fund, subject to the terms and conditions hereof.

**NOW THEREFORE**, the parties agree as follows:

**1. GIFT AND FUND DESIGNATION.** Donor transferred irrevocably to the Community Foundation the property (cash, publicly traded securities, or other assets) described in the attached Exhibit A to establish a designated endowment fund to be known as the **City of Bloomington Housing Trust Endowment Fund** (the "Fund"). Subject to the right of the Community Foundation to reject any particular gift, from time to time the Community Foundation may accept additional irrevocable gifts of property from Donor or from any other source to be added to the Fund, all subject to the provisions hereof. All gifts, bequests, and devises to this Fund shall be irrevocable once accepted by the Community Foundation.

 initials

**2. PURPOSE.** The purpose of the Fund shall be to provide support to the City of Bloomington's Housing Development Fund, for use for exempt purposes within the meaning of Code section 170(c)(1) or 170(c)(2)(B) and consistent with the mission and purposes of the Community Foundation. The Housing Development Fund was established by City Council Ordinance 16-41 (dated November 21, 2016), and as that ordinance may be amended in the future, to provide financing for the development of affordable housing options for eligible individuals and families of the community through financial grants and other assistance, acquisition of land and structures, and the construction and rehabilitation of affordable housing. .

**3. DISTRIBUTIONS.** The ordinary income, capital appreciation (realized and unrealized), and principal (both historic dollar value and any principal contributions, accumulations, additions, or reinvestments) allocable to the Fund, net of the fees and expenses set forth in this Agreement, may be committed, granted, or expended pursuant to the distribution (or spending) policy of the Community Foundation, as such policy may be amended from time to time by the Community Foundation, solely for purposes described in this Agreement. The Community Foundation's distribution (or spending) policy, as applied to endowments such as the Fund, shall be designed to take into account total return concepts of investment and spending, with the goal of preserving the real spending power of endowments over time while balancing the need for consistent spending to support the charitable and similar purposes of such endowments.

If any gift to the Community Foundation for the Fund is accepted subject to conditions or restrictions as to the use of the gift or income therefrom, such conditions or restrictions will be honored, subject, however, to the authority of the Board to vary the terms of any gift if continued adherence to any condition or restriction is in the judgment of the Board unnecessary, incapable of fulfillment, or inconsistent with the charitable or other exempt purposes of the Community Foundation or the needs of the community served by the Community Foundation. No distribution shall be made from the Fund that may in the judgment of the Community Foundation jeopardize or be inconsistent with the Community Foundation's Code section 501(c)(3) status or result in the imposition of any excise tax, penalty, or other tax, fine, or assessment under the Code.

**4. ADMINISTRATIVE PROVISIONS.** Notwithstanding anything herein to the contrary, the Community Foundation shall hold and administer the Fund, and all contributions and assets allocable to the Fund, subject to the provisions of applicable law and the Community Foundation's Articles of Incorporation and Bylaws and written policies, as amended from time to time. The Board shall oversee distributions from the Fund and shall have all powers of modification and removal specified in United States Treasury Regulation section 1.170A-9(f)(11)(v)(B) or corresponding provisions of any subsequent federal tax laws.

The Board agrees to provide Donor upon request a copy of any annual examination of the finances of the Community Foundation as reported by any independent certified public accountants or other accounting professionals retained

by the Community Foundation.

This Agreement and all related proceedings shall be governed by and interpreted under the laws of the State of Indiana. Any action with respect to this Agreement shall be brought in or venued to a court of competent jurisdiction in Indiana.

**5. CONDITIONS FOR ACCEPTANCE OF GIFTS.** Donor agrees and acknowledges that the establishment of the Fund is made in recognition of, and subject at all times to, applicable law and the terms and conditions of the Articles of Incorporation and Bylaws and written policies of the Community Foundation, as amended from time to time, and that the Fund shall at all times be subject to such terms and conditions, including, but not by way of limitation, provisions for:

- a. Presumption of Donor's intent;
- b. Variance from Donor's direction; and
- c. Amendments.

**6. CONTINUITY OF THE FUND.** The Fund shall continue so long as assets are available in the Fund and the purposes of the Fund can be served by its continuation. If the Fund is terminated, the Community Foundation shall use any remaining assets in the Fund exclusively for charitable or other exempt purposes that:

- a. are within the scope of the charitable and other exempt purposes of the Community Foundation; and
- b. most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

**7. NOT A SEPARATE TRUST.** The Fund shall be a component part of the Community Foundation. All money and property in the Fund shall be held as general assets of the Community Foundation and not segregated as trust property of a separate trust.

**8. ACCOUNTING.** The receipts and disbursements of the Fund shall be accounted for separately and apart from those of other gifts to the Community Foundation.


**9. INVESTMENT OF FUND ASSETS.** The Community Foundation shall have all powers necessary, or in its judgment desirable, to carry out the purposes of the Fund including, but not limited to, the power to retain, invest, and reinvest the assets of the Fund and the power to commingle the assets of the Fund for investment purposes with those of other funds or the Community Foundation's general assets. Funds may be invested in uninsured securities and are subject to investment risks that may result in loss of value.


**10. COSTS OF THE FUND.** It is understood and agreed that the Fund shall

share a fair portion of the total investment and administrative costs and expenses of the Community Foundation. Those costs and expenses charged against the Fund shall be determined in accordance with the then current fee schedule identified by the Community Foundation as applicable to funds of this type, as such schedule may be amended by the Community Foundation from time to time. Any costs and expenses incurred by the Community Foundation in accepting, transferring, or managing property donated to the Community Foundation for the Fund, including without limitation the Community Foundation's costs and expenses (including reasonable attorneys' fees) of any claim or proceeding with respect to the Fund in which the Community Foundation is prevailing party, also shall be paid from the Fund.

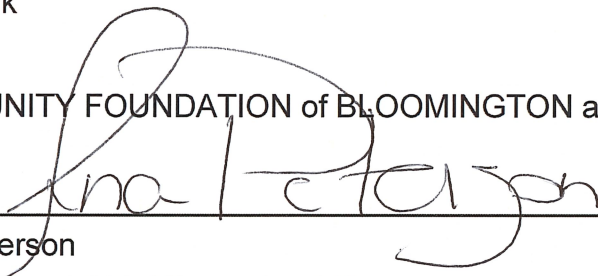
11. **AMENDMENT.** This agreement may be amended in writing by mutual consent of both parties.

**IN WITNESS WHEREOF,** Donors and the Community Foundation, by a duly authorized officer, have executed this Agreement as of the day and year first above written.

By   
Mayor John Hamilton  
City of Bloomington

ATTEST:   
Nicole Bolden  
City Clerk

COMMUNITY FOUNDATION of BLOOMINGTON and MONROE COUNTY, INC.

By   
Tina Peterson  
President and Chief Executive Officer

**DESIGNATED ENDOWMENT FUND AGREEMENT**  
**between**  
**COMMUNITY FOUNDATION OF BLOOMINGTON AND MONROE COUNTY, INC.**  
**and**  
**CITY OF BLOOMINGTON**  
**for the**  
**CITY OF BLOOMINGTON HOUSING TRUST ENDOWMENT FUND**

**EXHIBIT A**

Property transferred from City of Bloomington to establish a Designated Endowment Fund, the ***City of Bloomington Housing Trust Endowment Fund***:

Amount: \$500,000

Date: April 30, 1996