

RESOLUTION 19-08

**TO APPROVE A REVISED COOPERATION AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON (“CITY”) AND THE BLOOMINGTON
HOUSING AUTHORITY (“BHA”) FOR PROVISION AND OPERATION OF LOW
INCOME HOUSING UNITS AND ASSOCIATED PAYMENT IN LIEU OF TAXES BY
BHA IN EXCHANGE FOR CITY SERVICES**

- WHEREAS, the City of Bloomington (“City”) and the Bloomington Housing Authority (“BHA”) entered into a Cooperation Agreement on May 2, 1961, a copy of which serves as Exhibit A to the Revised Cooperation Agreement, which is attached to this resolution; and
- WHEREAS, the BHA was established in 1961 and currently owns and operates 312 units of low income housing; and
- WHEREAS, the BHA’s units were either built or last renovated several years ago and are in need of essential repairs and updating;
- WHEREAS, the BHA wishes to take advantage of the Department of Housing and Urban Development’s (“HUD”) Rental Assistance Demonstration (“RAD”) program, which permits the BHA to convert units to the Section 8 project-based funding platform and thereby secure predictable funding through housing assistance payments, loans and tax credits that will fund necessary repairs and renovations; and
- WHEREAS, the BHA was approved for participation in the RAD program by HUD on November 16, 2018; and
- WHEREAS, participating in the RAD program allows the BHA to retain ownership of the land on which its units are located, but requires the BHA to transfer ownership of the repairs and improvements it will make to its housing inventory (the “Project”) to an associated RAD Limited Partnership (“the Partnership”) to finance the Project’s renovations; and
- WHEREAS, the RAD Partnership will be comprised of two general partners: Summit Hill Community Development Corporation (SHCDC), a non-profit organization wholly owned and controlled by the BHA, and a development company, as well as one limited partner that is a low-income housing tax credit investor (the “LIHTC investor”); and
- WHEREAS, the development company’s interest in the Project will be transferred to the BHA and SHCDC when the contract between them terminates, and the LIHTC investor’s interest in the Project will similarly be transferred to the BHA and SHCDC once the tax credit investor receives all agreed upon low-income housing tax credits related to the Project; and
- WHEREAS, the BHA will lease the land associated with the Project to its associated RAD Partnership for a dollar a year for ninety-nine (99) years, and upon termination of the lease, the Partnership will dissolve and the Project will be owned by the BHA and SHCDC; and
- WHEREAS, the federally-mandated process for transitioning BHA units to Section 8 project-based voucher funding platform under the RAD program requires a revision of the Cooperation Agreement between the City and the BHA to reflect the new ownership structure and update outdated provisions in that Agreement; and
- WHEREAS, in addition, the revision to the 1961 Cooperation Agreement, continues the requirement for Payments in Lieu of Taxation, but waives them for a period of 40 years;

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

The Common Council of the City of Bloomington hereby approves the attached revision to the 1961 Cooperation Agreement, which will properly reflect the new ownership structure required by the Bloomington Housing Authority's participation in the federal RAD program, and also make the tax savings available to the new RAD Partnership, and authorizes the Mayor and the Clerk of the City of Bloomington to execute the revised Cooperation Agreement.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 12 day of June, 2019.



DAVE ROLLO, President
Bloomington Common Council

ATTEST:



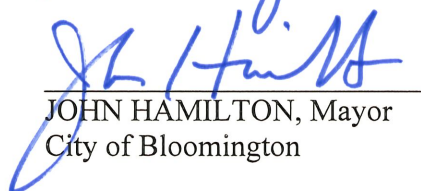
NICOLE BOLDEN, Clerk

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 14th day of June, 2019.



NICOLE BOLDEN, Clerk

SIGNED AND APPROVED by me this 17th day of June, 2019.



JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

The Bloomington Housing Authority is requesting the Council's approval of a revised Cooperation Agreement between the City of Bloomington and the Bloomington Housing Authority ("BHA"). The revision is required because the BHA will be participating in the federal Rental Assistance Demonstration (RAD) program, which will allow the BHA to secure funding for necessary repairs and renovations to its units. The RAD program requires the BHA to change its ownership structure, and the Cooperation Agreement is being revised to reflect that change in structure and extend the tax savings provided for in the Cooperation Agreement to the additional owner entities. The Cooperation Agreement also provides for the City waive its right to Payment in Lieu of Taxation (PILOT) for period of 40 years.

2019 COOPERATION AGREEMENT

This Agreement (“the 2019 Cooperation Agreement”) entered into on June 20, 2019, by and between the Housing Authority of the City of Bloomington, Indiana, and its associated Rental Assistance Demonstration (RAD) Limited Partnership (collectively, the “Local Authority”); and the City of Bloomington, Indiana (“the Municipality”), witnesseth:

Recitals:

WHEREAS, the Municipality and the Local Authority entered into a Cooperation Agreement on May 2, 1961 (“the 1961 Cooperation Agreement”), a copy of which is attached as Exhibit A; and

WHEREAS, the Local Authority shall maintain ownership of the land (“the Land”) on which any low-income housing Project (“the Project”) shall be renovated; and

WHEREAS, the Local Authority will transfer ownership of the Project, which is undergoing renovations pursuant to the Department of Housing and Urban Development’s (HUD’s) Rental Assistance Demonstration (RAD) program, Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-552 as amended by P.L. 113-76, P.L. 113-235, P.L. 114-113, P.L. 115-31, and P.L. 115-141), to its associated RAD Limited Partnership (“the Partnership”) to finance the Project’s renovations. The RAD Limited Partnership shall be comprised of two (2) general partners and one (1) limited partner. The general partners shall be (1) Summit Hill Community Development Corporation (SHCDC), a non-profit organization wholly owned and controlled by the Local Authority; and (2) a development company. The limited partner shall be a low-income housing tax credit (LIHTC) investor (the “LIHTC investor”). However, as soon as the Local Authority’s contract with the development company expires or terminates, the development company’s interest in the Project will be transferred to the Local Authority and SHCDC. Additionally, once the tax credit investor receives all agreed upon low-income housing tax credits (LIHTCs) in relation to the Project, the tax credit investor’s interest in the Project will be transferred to the Local Authority and SHCDC; and

WHEREAS, the Local Authority will lease the Land to its associated RAD Limited Partnership for One Dollar (\$1) a year for ninety-nine (99) years. Upon the lease’s termination, the Partnership will dissolve, and the Project will be owned by the Local Authority and SHCDC; and

WHEREAS, the Local Authority seeks to enter into a payment in lieu of taxes (PILOT) Agreement to establish general stability and predictability for its real property tax exposure; and

WHEREAS, the Local Authority and Municipality collectively agree to enter into the 2019 Cooperation Agreement, which includes a comprehensive PILOT provision in Section 4; and

WHEREAS, the Local Authority’s associated RAD Limited Partnership will honor the RAD Use Agreement (“RAD Use Agreement”), which is between the Local Authority’s associated RAD Limited Partnership and HUD and is attached as Exhibit B; and

WHEREAS, the Local Authority intends to renovate the Project to better serve low-income residents in the State of Indiana (“the Goal”), and its associated RAD Limited Partnership will assist the Local Authority with achieving the Goal through the Partnership’s capability to take out loans with private and public entities to finance the Project.

Now, therefore, in consideration of the above premises, which are incorporated as part of the 2019 Cooperation Agreement, and of the mutual covenants hereinafter set forth, the parties do agree as follows:

1. **Recitals:** The recitals set forth above shall be deemed part of the 2019 Cooperation Agreement.
2. **Definitions:**
 - a. The term "Local Authority" shall mean the Local Authority and its associated RAD Limited Partnership, the latter of which is needed to finance the renovations of the Project; the RAD Limited Partnership shall be comprised of two (2) general partners and one (1) limited partner. The general partners shall be (1) Summit Hill Community Development Corporation (SHCDC), a non-profit organization wholly owned and controlled by the Local Authority; and (2) a development company. The limited partner shall be a low-income housing tax credit (LIHTC) investor (the "LIHTC investor").
 - b. The term "Municipality" shall mean the City of Bloomington, Indiana.
 - c. The term "Project" shall mean any low-rent housing hereafter renovated as an entity by the Local Authority with financial assistance of the Public Housing Administration (the "PHA") or other entities; excluding, however, any low-rent housing project covered by any contract for loans and annual contributions entered into between the Local Authority, the PHA or its predecessor agencies, or other entities prior to the date of this Agreement.
 - d. The term "Taxing Body" shall mean the State or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a Project if it were not exempt from taxation.
 - e. The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and nondwelling rents (excluding all other income of such Project), less the cost to the Local Authority of all dwelling and nondwelling utilities.
3. **Project Financing and Administration:** The Local Authority shall endeavor (a) to secure a contract or contracts with the PHA or other entities for loans covering one or more Projects comprising approximately 312 units of low-rent housing; and (b) to renovate and administer such Project or Projects, each of which shall be located within the corporate limits of the Municipality. The obligations of the parties hereto shall apply to each such Project.
4. **Personal and Real Property Tax Exemption and Payments in Lieu of Taxes (PILOT):** Under the constitution and statutes of the State of Indiana, all Projects are exempt from all real and personal property taxes levied or imposed by any Taxing Body. With respect to any Project, so long as (i) such Project is owned by a public body or governmental agency or the Local Authority's associated RAD Limited Partnership and is used for low-rent housing purposes; or (ii) any contract between the Local Authority and PHA or between the Local Authority's associated RAD Limited Partnership and other entities for loans or annual contributions, or both in connection with such Project remains in force and effect;

or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Municipality agrees that it will not levy or impose any real or personal property taxes upon such Project or upon the Local Authority with respect thereto. During such period, the Local Authority shall make annual payments (“Payments in Lieu of Taxes” or “PILOT Payments”) in lieu of such taxes and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

- a. In light of the Municipality’s extended record of forgoing its right to request and receive PILOT payments from the Local Authority under the 1961 Cooperation Agreement, the Municipality agrees that the Local Authority and its associated RAD Limited Partnership shall pay a PILOT payment of Zero (\$0) Dollars under the 2019 Cooperation Agreement for a period of forty (40) years. After the forty- year period, and unless the PILOT Payments are further waived at that time, the Local Authority and its RAD Limited Partnership shall make PILOT payments in the amount of (i) ten percent (10%) of the Shelter Rent charged by the Local Authority in respect to such Project during the 12-month period ending on September 30th, before such payment is made; or (ii) the amount permitted to be paid by applicable federal, state, local, or common law or federal regulation in effect on the date such payment is made, whichever amount is the lower.
- b. Each such annual Payment in Lieu of Taxes shall be made at the time when real property taxes on such Project would be paid if it were subject to taxation.
- c. The Municipality shall distribute the Payments in Lieu of Taxes among the Taxing Bodies in the proportion which the real property taxes which would have been paid to each Taxing Body for such year if the Project were not exempt from taxation bears to the total real property taxes which would have been paid to all of the Taxing Bodies for such year if the Project were not exempt from taxation; Provided, however, That no payment for any year shall be made to any Taxing Body in excess of the amount of the real property taxes which would have been paid to such Taxing Body for such year if the Project were not exempt from taxation.
- d. Upon failure of the Local Authority to make any Payment in Lieu of Taxes, no lien against any Project or assets of the Local Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof.

5. **Cooperation between Municipality and Local Authority for Project:** During the period commencing with the date of the renovation of any Project and continuing so long as (i) such Project is owned by a public body or governmental agency or the Local Authority’s associated RAD Limited Partnership and is used for low-rent housing purposes; or (ii) any contract between the Local Authority and the PHA or between the Local Authority’s RAD Limited Partnership and other entities for loans or annual contributions, or both, in connection with such Project remains in force and effect; or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Municipality without cost or charge to the Local Authority or the tenants of such Project (other than the Payments in Lieu of Taxes) shall:

- a. Furnish or cause to be furnished to the Local Authority and the tenants of such Project public services and facilities of the same character and to the same extent as

are furnished from time to time without cost or charge to other dwellings and inhabitants in the Municipality;

- b. In so far as the Municipality may lawfully do so, (i) grant such deviations from the building code of the Municipality as are reasonable and necessary to promote economy and efficiency in the renovation, and administration of such Project, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary for the renovation, and protection of such Project and the surrounding territory;
- c. Accept grants of easements necessary and reasonable for the renovation of such Project; and
- d. Cooperate with the Local Authority by such other lawful action or ways as the Municipality and the Local Authority may find necessary in connection with the renovation, and administration of such Project.
- e. In respect to any Project, the Municipality further agrees that within a reasonable time after receipt of a written request therefor from the Local Authority:
 - i. It will accept the dedication of all interior streets, roads, alleys, and adjacent sidewalks within the area of such Project, together with all storm and sanitary sewer mains in such dedicated areas, after the Local Authority, at its own expense, has completed the grading, improvement, paving, and installation thereof in accordance with specifications acceptable to the Municipality;
 - ii. It will accept necessary dedications of land for, and will grade, improve, pave, and provide sidewalks for, all streets bounding such Project or necessary to provide adequate access thereto (in consideration whereof the Local Authority shall pay to the Municipality such amount as would be assessed against the Project site for such work if such site were privately owned); and
 - iii. It will provide, or cause to be provided, water mains, and storm and sanitary sewer mains, leading to such Project and serving the bounding streets thereof (in consideration whereof the Local Authority shall pay to the Municipality such amount as would be assessed against the Project site for such work if such site were privately owned).

6. Failure or Refusal to Cooperate by Municipality: If by reason of the Municipality's failure or refusal to furnish or cause to be furnished any public services or facilities which it has agreed hereunder to furnish or to cause to be furnished to the Local Authority or to the tenants of any Project, the Local Authority incurs any expense to obtain such services or facilities, then the Local Authority may deduct the amount of such expense from any Payments in Lieu of Taxes due or to become due to the Municipality in respect to any Project or any other low-rent housing projects owned or operated by the Local Authority.

7. Entire Agreement: No Cooperation Agreement heretofore entered into between the Municipality and the Local Authority shall be construed to apply to any Project covered by this Agreement. The 2019 Cooperation Agreement contains the entire agreement and understanding between the parties concerning the matters described herein and supersedes all prior agreements, discussions, negotiations, understandings and proposals of

the parties. The terms of the 2019 Cooperation Agreement cannot be changed except in a subsequent written document signed by the parties.

8. **Modifications of Agreement; Successor Owners of Projects:** So long as any contract between the Local Authority and the PHA or between the Local Authority's associated RAD Limited Partnership and other entities for loans (including preliminary loans) or annual contributions, or both, in connection with any Project remains in force and effect, or so long as any bonds issued in connection with any Project or any monies due to the PHA in connection with any Project remain unpaid, this Agreement shall not be abrogated, changed, or modified without the consent of the PHA. The privileges and obligations of the Municipality hereunder shall remain in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Local Authority or its associated RAD Limited Partnership or by any other public body or governmental agency, including the PHA, authorized by law to engage in the development, renovation, or administration of low-rent housing projects. If at any time the beneficial title to, or possession of, any Project is held by such other public body or governmental agency, including the PHA, or other RAD partnership, the provisions hereof shall inure to the benefit of and may be enforced by, such other public body or governmental agency, including the PHA, or other RAD partnership.

9. **Demolitions and Dispositions:** The Municipality agrees that any demolition, condemnation, effective closing, compulsory repair or improvement, or disposition of any dwelling units situated in the locality or metropolitan area in which such Project is located has or will follow and comply with the RAD Use Agreement and all laws regarding the demolition and disposition of dwelling units as established by any federal, state, local, or common law or federal regulation, including but not limited to Section 18 of the Housing Act of 1937 (as amended) and 24 C.F.R. Part 970.

10. **Annual Contributions:** In addition to the Payments in Lieu of Taxes and in further consideration for the public services and facilities furnished and to be furnished in respect to any Project for which no Annual Contributions Contract had been entered into prior to August 2, 1954, between the Local Authority and the PHA;
 - a. After payment in full of all obligations of the Local Authority in connection with such Project for which any annual contributions are pledged and until the total amount of annual contributions paid by the PHA in respect to such Project has been repaid, (a) all receipts in connection with such Project in excess of expenditures necessary for the management, operation, maintenance, or financing, and for reasonable reserves therefor, shall be paid annually to the PHA and to the Municipality on behalf of the local public bodies which have contributed to such Project in the form of tax exemption or otherwise, in proportion to the aggregate contribution which the PHA and such local public bodies have made to such Project, and (b) no debt in respect to such Project, except for necessary expenditures for such Project, shall be incurred by the Local Authority;
 - b. If, at any time, such Project or any part thereof is sold, such sale shall be to the highest responsible bidder after advertising, or at fair market value as approved by the PHA, and the proceeds of such sale, together with any reserves, after application to any outstanding debt of the Local Authority in respect to such Project, shall be

paid to the PHA and local public bodies as provided in clause (a) of this Section 10; Provided, That the amounts to be paid to the PHA and the local public bodies shall not exceed their respective total contribution to such Project.

- c. The Municipality shall distribute the payments made to it pursuant to clauses (a) and (b) of this Section 10 among the local public bodies (including the Municipality) in proportion to their respective aggregate contributions to such Project.

11. Severability: In the event that any provision of the 2019 Cooperation Agreement is found by any court or tribunal of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall remain valid and enforceable.

12. Notices: All notices, requests, demands, and other communications required or permitted under the 2019 Cooperation Agreement will be in writing and will be deemed to have been duly given when delivered by hand or received by certified or registered mail, return receipt requested, with postage prepaid to the parties as follows:

Local Authority: Bloomington Housing Authority
 Attn: Executive Director
 1007 N. Summit Street
 Bloomington, IN 47404

Municipality: Office of the Mayor and City Council of Bloomington
 401 N Morton St, Suites 210 and 110
 Bloomington IN 47404

Copy to: City Legal Department
 401 N Morton St, Suite 220
 Bloomington IN 47404

13. Counterparts: The 2019 Cooperation Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The Parties agree that the 2019 Cooperation Agreement may be transmitted between them by electronic mail, facsimile transmission, or other electronic means. The Parties intend that faxed signatures and electronic digital signatures constitute original signatures and are binding on the parties. The original document shall be promptly executed and/or delivered if requested by either Party.

14. Headings: Headings in the 2019 Cooperation Agreement are for convenience only and shall not be used to interpret or construe its provisions.

IN WITNESS WHEREOF, the Municipality and the Local Authority have respectively signed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

City of Bloomington, Indiana

(SEAL)

By: *Ja Hill*
Mayor

Attest:

[Signature]
City Clerk

The Housing Authority of the City of Bloomington, Indiana

(SEAL)

By: *William Hauer*
Chairperson June 20, 2019

Attest:

Amber F. Krohn
Secretary (Treasurer)

CITY OF BLOOMINGTON
Legal Department
Reviewed By: *Phillipa M. Guthrie*
DATE: 10-17-19

CITY OF BLOOMINGTON
Controller

Reviewed by: *[Signature]*
DATE: 6/17/19
FUND/ACCT: N/A

COOPERATION AGREEMENT

This Agreement entered into this 2nd day of May, 1961, 1961, by and between The Housing Authority of the City of Bloomington, Indiana (herein called the "Local Authority") and the City of Bloomington, Indiana (herein called the "Municipality"), witnesseth:

In consideration of the mutual covenants hereinafter set forth, the parties hereto do agree as follows:

1. Whenever used in this Agreement:

(a) The term "Project" shall mean any low-rent housing hereafter developed as an entity by the Local Authority with financial assistance of the Public Housing Administration (herein called the "PHA"); excluding, however, any low-rent housing project covered by any contract for loans and annual contributions entered into between the Local Authority and the PHA, or its predecessor agencies, prior to the date of this Agreement.

(b) The term "Taxing Body" shall mean the State or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a Project if it were not exempt from taxation.

(c) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and nondwelling rents (excluding all other income of such Project), less the cost to the Local Authority of all dwelling and nondwelling utilities.

(d) The term "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

2. The Local Authority shall endeavor (a) to secure a contract or contracts with the PHA for loans and annual contributions covering one or more Projects comprising approximately 200 units of low-rent housing and (b) to develop and administer such Project or Projects, each of which shall be located within the corporate limits of the Municipality. The obligations of the parties hereto shall apply to each such Project.

3. (a) Under the constitution and statutes of the State of Indiana, all Projects are exempt from all real and personal property taxes levied or imposed by any Taxing Body. With respect to any Project, so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Local Authority and the PHA for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Municipality agrees that it will not levy or impose any real or personal property taxes upon such Project or upon the Local Authority with respect thereto. During such period, the Local Authority shall make annual payments (herein called "Payments in Lieu of Taxes") in lieu of such taxes and in payment for the Public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

(b) Each such annual Payment in Lieu of Taxes shall be made at the time when real property taxes on such Project would be paid if it were subject to taxation, and shall be in an amount equal to either (i) ten percent (10%) of the Shelter Rent charged by the Local Authority in respect to such Project during the 12 months period ending December 31, before such payment is made or (ii) the amount permitted to be paid by applicable state law in effect on the date such payment is made, whichever amount is the lower.

(c) The Municipality shall distribute the Payments in Lieu of Taxes among the Taxing Bodies in the proportion which the real property taxes which would have been paid to each Taxing Body for such year if the Project were not exempt from taxation bears to the total real property taxes which would have been paid to all of the Taxing Bodies for such year if the Project were not exempt from taxation; Provided, however, That no payment for any year shall be made to any Taxing Body in excess of the amount of the real property taxes which would have been paid to such Taxing Body for such year if the Project were not exempt from taxation.

(d) Upon failure of the Local Authority to make any Payment in Lieu of Taxes, no lien against any Project or assets of the Local Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof.

4. The Municipality agrees that, subsequent to the date of initiation (as defined in the United States Housing Act of 1937, as amended) of each Project and within five years after the completion thereof, or such further period as may be approved by the PHA, there has been or will be elimination (as approved by the PHA) by demolition, condemnation, effective closing, or compulsory repair or improvement; of unsafe or insanitary dwelling units situated in the locality or metropolitan area in which such Project is located, substantially equal in number to the number of newly constructed dwelling units provided by such Project; Provided, That, where more than one family is living in an unsafe or insanitary dwelling unit, the elimination of such unit shall count as the elimination of units equal to the number of families accommodated therein; and Provided, further, That this paragraph 4 shall not apply in the case of (i) any Project developed on the site of a Slum cleared subsequent to July 15, 1949, and that the dwelling units eliminated by the clearance of the site of such Project shall not be counted as elimination for any other Project or any other low-rent housing project, or (ii) any Project located in a rural nonfarm area.

5. During the period commencing with the date of the acquisition of any part of the site or sites of any Project and continuing so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Local Authority and the PHA for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Municipality without cost or charge to the Local Authority or the tenants of such Project (other than the Payments in Lieu of Taxes) shall:

(a) Furnish or cause to be furnished to the Local Authority and the tenants of such Project public services and facilities of the same character and to the same extent as are furnished from time to time without cost or charge to other dwellings and inhabitants in the Municipality;

(b) Vacate such streets, roads, and alleys within the area of such Project as may be necessary in the development thereof, and convey without charge to the Local Authority such interest as the Municipality may have in such vacated areas; and, in so far as it is lawfully able to do so without cost or expense to the Local Authority or to the Municipality, cause to be removed from such vacated areas, in so far as it may be necessary, all public or private utility lines and equipment;

(c) In so far as the Municipality may lawfully do so, (i) grant such deviations from the building code of the Municipality as are reasonable and necessary to promote economy and efficiency in the development and administration of such Project, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary for the development and protection of such Project and the surrounding territory;

(d) Accept grants of easements necessary for the development of such Project; and

(e) Cooperate with the Local Authority by such other lawful action or ways as the Municipality and the Local Authority may find necessary in connection with the development and administration of such Project.

6. In respect to any Project the Municipality further agrees that within a reasonable time after receipt of a written request therefor from the Local Authority:

(a) It will accept the dedication of all interior streets, roads, alleys, and adjacent sidewalks within the area of such Project, together with all storm and sanitary sewer mains in such dedicated areas, after the Local Authority, at its own expense, has completed the grading, improvement, paving, and installation thereof in accordance with specifications acceptable to the Municipality;

(b) It will accept necessary dedications of land for, and will grade, improve, pave, and provide sidewalks for, all streets bounding such Project or necessary to provide adequate access thereto (in consideration whereof the Local Authority shall pay to the Municipality such amount as would be assessed against the Project site for such work if such site were privately owned); and

(c) It will provide, or cause to be provided, water mains, and storm and sanitary sewer mains, leading to such Project and serving the bounding streets thereof (in consideration whereof the Local Authority shall pay to the Municipality such amount as would be assessed against the Project site for such work if such site were privately owned).

7. If by reason of the Municipality's failure or refusal to furnish or cause to be furnished any public services or facilities which it has agreed hereunder to furnish or to cause to be furnished to the Local Authority or to the tenants of any Project, the Local Authority incurs any expense to obtain such services or facilities then the Local Authority may deduct the amount of such expense from any Payments in Lieu of Taxes due or to become due to the Municipality in respect to any Project or any other low-rent housing projects owned or operated by the Local Authority.

8. No Cooperation Agreement heretofore entered into between the Municipality and the Local Authority shall be construed to apply to any Project covered by this Agreement.

9. So long as any contract between the Local Authority and the PHA for loans (including preliminary loans) or annual contributions, or both, in connection with any Project remains in force and effect, or so long as any bonds issued in connection with any Project or any monies due to the PHA in connection with any Project remain unpaid, this Agreement shall not be abrogated, changed, or modified without the consent of the PHA. The privileges and obligations of the Municipality hereunder shall remain in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Local Authority or by any other public body or governmental agency, including the PHA, authorized by law to engage in the development or administration of low-rent housing projects.

If at any time the beneficial title to, or possession of, any Project is held by such other public body or governmental agency, including the PHA, the provisions hereof shall inure to the benefit of and may be enforced by, such other public body or governmental agency, including the PHA.

10. In addition to the payments in Lieu of Taxes and in further consideration for the public services and facilities furnished and to be furnished in respect to any Project for which no Annual Contributions Contract had been entered into prior to August 2, 1954, between the Local Authority and the PHA;

(1) After payment in full of all obligations of the Local Authority in connection with such Project for which any annual contributions are pledged and until the total amount of annual contributions paid by the PHA in respect to such Project has been repaid, (a) all receipts in connection with such Project in excess of expenditures necessary for the management, operation, maintenance, or financing, and for reasonable reserves therefor, shall be paid annually to the PHA and to the Municipality on behalf of the local public bodies which have contributed to such Project in the form of tax exemption or otherwise, in proportion to the aggregate contribution which the PHA and such local public bodies have made to such Project, and (b) no debt in respect to such Project, except for necessary expenditures for such Project, shall be incurred by the Local Authority;

(2) If, at any time, such Project or any part thereof is sold, such sale shall be to the highest responsible bidder after advertising, or at fair market value as approved by the PHA, and the proceeds of such sale, together with any reserves, after application to any outstanding debt of the Local Authority in respect to such Project, shall be paid to the PHA and local public bodies as provided in clause 1(a) of this Section 10: Provided, That the amounts to be paid to the PHA and the local public bodies shall not exceed their respective total contribution to such Project:

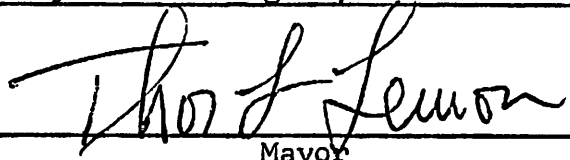
(3) The Municipality shall distribute the payments made to it pursuant to clauses (1) and (2) of this Section 10 among the local public bodies (including the Municipality) in proportion to their respective aggregate contributions to such Project.

IN WITNESS WHEREOF the Municipality and the Local Authority have respectively signed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

City of Bloomington, Indiana

(SEAL)

By



Mayor

Attest:



City Clerk

The Housing Authority of the
City of Bloomington, Indiana

(SEAL)

By



Chairman

Attest:



Secretary (Treasurer)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0276), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This Rental Assistance Demonstration Use Agreement (hereinafter called the "Agreement") made the _____ day of _____, 20____, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD") and _____, Owner, (hereinafter called the "Owner"), provides as follows:

Whereas, Rental Assistance Demonstration (hereinafter called "RAD") provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by Owners to private debt and equity to address immediate and long-term capital needs.

Whereas, Projects funded under the public housing programs may under RAD convert their assistance to long-term, project-based Section 8 rental assistance contracts. Under this component of RAD, Owners may choose between two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No incremental funds are authorized for this component. Owners will convert their assistance at current subsidy levels.

Whereas, Projects shall have a RAD Use Agreement that will be recorded superior to other liens on the property, run for the same term as the initial term of the HAP contract, automatically renew upon each extension or renewal of the HAP contract for a term that runs with each renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination).

Whereas, HUD has approved the conversion of the "Project" identified as _____ and covering real property as described in Exhibit "A" attached hereto; and that this approval is evidenced by and through the terms of the RAD Conversion Commitment as described in Exhibit "B" attached hereto; and that was previously subject to a public housing Declaration of Trust dated _____ and recorded on _____ in the Recorder's Office of _____ County as document number _____, Book _____, Page _____; and such public housing Declaration of Trust was released on (date) _____ and recorded on (date) _____ in the Recorder's Office of _____ County as document number _____, Book _____, Page _____

Whereas, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011) and the corresponding PIH Notice 2012-32 published on July 26, 2012 (hereinafter called the "RAD Notice"), which this Use Agreement incorporates, in exchange for HUD's agreement to permit this conversion to PBVs or PBRA, the Owner has agreed to continue to operate the assisted PBV or PBRA units only as rental housing for the initial term, and each renewal term of the HAP Contract, unless otherwise approved by HUD;

Now Therefore, in consideration of the mutual promises set forth herein and of other valuable consideration, the parties hereby agree as follows:

- 1. Definitions.** All terms used in this Agreement have the same meaning as set forth in the definitions in RAD Notice.
- 2. Term.** The initial term shall be _____. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term, and for an additional period to coincide with any renewal term of the HAP Contract. This Agreement will survive HAP abatement or termination of the HAP Contract unless otherwise approved by HUD.
- 3. Use Restriction and Tenant Incomes.** The HAP-assisted units within this Project shall be used solely as rental housing for tenants meeting the eligibility and income-targeting requirements under the HAP Contract. In the case that the HAP Contract is terminated (due to, e.g.: breach, or non-compliance), new tenants must have incomes at or below 80 percent of the average median income (AMI) at the time of admission for the remainder of the term of the Agreement, applicable to all units previously covered under the HAP contract. Additionally, rents must not exceed 30% of 80% of median income for an appropriate sized unit. Notwithstanding the foregoing, in the event the Owner is able to demonstrate to HUD's satisfaction that despite the Owner's good faith and diligent efforts to do so, the Owner is unable either (1) to rent a sufficient percentage of Units to Low Income Tenants or Very Low Income Tenants in order to satisfy the restrictions in this paragraph, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Owner and HUD. Any such modification of the restrictions listed in this paragraph shall be evidenced by a

written amendment to this Agreement executed by each of the parties hereto.

4. **Subordination.** Any mortgage liens will be subject to this Agreement. This Agreement will survive foreclosure and bankruptcy.
 5. **Fair Housing and Civil Rights Requirements.** Compliance with all applicable fair housing and civil rights requirements including the obligation to affirmatively further fair housing and the site selection and neighborhood standards requirements set forth in 24 CFR §§ 1.4(b)(3) and 941.202, as applicable, is required.
 6. **Federal Accessibility Requirements.** Compliance with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively, is required.
 7. **Transfer of the Agreement.** HUD has been granted and is possessed of an interest in the above described Project such that the Owner shall remain seized of the title to said Project and refrain from transferring, conveying, encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project or any part thereof without the release of said covenants by HUD. The Owner has constituted HUD as its attorney-in-fact to transfer PBV or PBRA assistance to another entity in the event of default under the HAP Contract. With HUD approval, after 10 years from the effective date of the initial term of the HAP Contract, if the Project is economically non-viable or physically obsolete, assistance may be transferred subject to this Agreement. Any such new Owner shall assume the obligations under this Agreement as a condition of any transfer. This Agreement shall be binding upon the Owners and all future successors and assigns until released by HUD.
 8. **Release.** The endorsement by a duly authorized officer of HUD (1) upon any conveyance or transfer made by the Owner of any real or personal property which is determined to be excess to the needs of the Project, or (2) upon any instrument of conveyance or dedication of property, or any interest therein, for use as streets, alleys, or other public rights-of-way, or for the establishment, operation and maintenance of public utilities, or (3) upon any instrument transferring or conveying an interest therein, or (4) upon any instrument of release made by the Owner of the assisted PBV or PBRA units shall be effective to release such property from the restrictive covenants hereby created.
 9. **Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy within the Project, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.
 10. **Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.
 11. **Impairment of HAP Contract.** The terms and provisions of this Agreement shall continue in full force and effect except as expressly modified herein. Any conflicts between this Agreement and the HAP Contract shall be conclusively resolved by the Secretary.
 12. **Execution of Other Agreements.** The Owner agrees that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other conflicting requirements.
 13. **Subsequent Statutory Amendments.** If revisions to the provisions of this Agreement are necessitated by subsequent statutory amendments, the Owner agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. In the alternative, at HUD's option, HUD may implement any such statutory amendment through rulemaking.
 14. **No Negotiation.** This Agreement is not subject to negotiation by the Owner or any lender.
-

In Witness Whereof, HUD and the Owner thereunto duly authorized has caused these presents to be signed in its name and its corporate seal to be hereunto affixed and attested this _____ day of _____, 20_____ .

(Seal)

HUD Attest:

By:

Title:

Date:

State or)
County of) ss:
_____)

Before me, _____, a Notary Public in and for said State,
on this _____ day of _____, 20 _____,
personally appeared _____,
who is personally well known to me to be the _____, of HUD, and the person who
executed the foregoing instrument by virtue of the authority vested in him by, and I having first made known to him the contents
thereof, he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of the Secretary of Housing and
Urban Development for the uses, purposes and considerations therein set forth.

Witness my hand and official seal this _____ day of _____, 20____.
(Seal)

_____ (Notary Public)

My commission expires _____, 20 _____.

Owner Attest:

By:

Title:

Date:

State or)
County of) ss:
)

On this _____ day of _____, 20 _____, before me residing therein, duly commissioned and sworn, personally appeared _____, a Notary Public in and for said county and State, proved to me on the basis of satisfactory evidence to be the Owner of _____, that executed the within instrument and acknowledged to me that such _____ executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.
(Seal)

_____ (Notary Public)

My commission expires _____, 20 _____.

EXHIBIT A – Property Subject to this RAD Use Agreement

EXHIBIT B – RAD Conversion Commitment