

City of Bloomington Common Council

Legislative Packet

Wednesday, 08 January 2020

An Organizational Meeting

Starting at 6:30 PM and to be immediately followed by a

Committee of the Whole

Starting no earlier than 8 PM

Material for both meetings are contained herein.

For a schedule of upcoming meetings of the Council and the City's boards and commissions, please consult the City's [Calendar](#).

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**City of
Bloomington
Indiana**



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**To: Council Members
From: Council Office
Re: Weekly Packet
Date: 3 January 2020**

LEGISLATIVE PACKET CONTENTS

ORGANIZATIONAL MEETING IMMEDIATELY FOLLOWED BY A COMMITTEE OF THE WHOLE WEDNESDAY, 8 JANUARY 2020 (6:30 PM)

- Memo from Council Office
- Agendas for Organizational Meeting and Committee of the Whole
- Elections and Appointments by the Council and Assignments by the President
 - Elections and Appointments – 2019 (Final) – 2020 (Blank)
 - Seating Assignments – 2015 2020 (with 2020 – Blank)
 - Interviewing Committees – 2019 (Final) – 2020 (Blank)

Organizational Meeting

Second Readings and Resolutions

- *(New Legislation)* **Resolution 20-02** Approval of the Interlocal Agreement Between Monroe County, Town of Ellettsville, and the City of Bloomington for the Animal Shelter Operation for the Year 2020
 - Memo from Philippa Guthrie, Corporation Counsel;
 - 2018 Breakdown of Incoming Animals by Jurisdiction and Source;
 - FY 2020 Projected Costs and Calculations; and
 - The Interlocal Agreement Between Monroe County, Town of Ellettsville and the City of Bloomington for Animal Shelter Operation for the Year 2020

*Contact: Philippa Guthrie at 812-349-3426 or guthriep@bloomington.in.gov
Virgil Sauder at 812-349-3870 or sauderv@bloomington.in.gov*
- *(New Legislation)* **Resolution 20-03** Approval of Interlocal Cooperation Agreement Between the City of Bloomington and Monroe County, Indiana – Re: Building Code Authority
 - Memo to Council from Philippa Guthrie, Corporation Counsel;
 - Exhibit A - Interlocal Agreement (Building Code Authority)

Contact: Philippa Guthrie at 812-349-3426 or guthriep@bloomington.in.gov

- *(New Legislation)* **Resolution 20-01** To Establish Standing Committees and Abolish Other Certain Committees of the Common Council
 - Memo to Council from Councilmember Steve Volan (please note that certain details in the memo, such as the specific committees created or the departments, divisions, boards or commissions assigned to each committee may not be reflected in the resolution, as the proposal has evolved up to the moment it was released in this packet)
 - Relevant provisions of the Bloomington Municipal Code

Contact: Cm. Volan 812-349-3409, volans@bloomington.in.gov

First Reading

- **Ordinance 20-01** To Amend the City of Bloomington Zoning Maps by Rezoning a 3.2 Acre Property from Commercial Limited (CL) to a Planned Unit Development (PUD) and to Approve a District Ordinance and Preliminary Plan - Re: 105 S. Pete Ellis Drive (Curry Urban Properties, Petitioner)
 - Certificate of Action – Positive Recommendation (6-0-0) (Date of Filing: November 14, 2019)
 - Maps of Site and Surrounding Land Uses
 - Interdepartmental Memo from Jackie Scanlan, Development Services Manager
 - Environmental Commission Report
 - Petitioner Statement (Revised 8/20/19) – Project Description, Resubmittal Modifications, Development Standards Summary/Outline Plan Details
 - Aerial Depiction of Site Plan
 - Renderings of Streetscapes
 - Rendered Landscape Plan
 - Site Coverage Data
 - Site Utility Plan
 - Landscaping Plan (with Planting Palette)
 - Footprints – by floor (Basement – 4th Floor)
 - Elevations
 - Workforce Housing Commitments
 - Email in Opposition to Project (not submitted in time for Plan Commission consideration)

Contact: Jackie Scanlan, 812-349-3423, scanlanj@boomington.in.gov
- **Ordinance 20-02** – Final Approval to Issue Economic Development Notes and Lend the Proceeds for the Renovation of Affordable Housing -Re: Walnut Woods, 818 E. Miller Drive, and Reverent Butler Apartments, 1202 W. 11th Street (Bloomington RAD I, LP, Petitioner)
 - Memo from Larry D. Allen, Assistant City Attorney;
 - PowerPoint Presentation to EDC (and Council);
 - Economic Development Commission (EDC) Res 19-05 (*signed*)
 - Report
 - Letter to Plan Commission
 - Financing Documents
 - Funding Loan Agreement
 - Exhibit A – Form of Governmental Lender Note
 - Exhibit B – Form of Required Transferee Representations

- Exhibit C - Form of Written Requisitions
- Borrower Loan Agreement
 - Exhibit A – Modifications (None)
 - Schedule 5.22 (A) – Reporting Requirements
 - Schedule 5.23 (G) – Form of Compliance Certificate
- Regulatory Agreement and Declaration of Restrictive Covenants
 - Exhibit A – Legal Description (Available upon Request)
 - Exhibit B – Certificate of Income
 - Exhibit C – Certificate of Continuing Program Compliance

Contact: Larry Allen at 812-349-3426 or allenl@bloomington.in.gov

Committee of the Whole

- Ordinance 20-02 – Final Approval to Issue Economic Development Notes and Lend the Proceeds for the Renovation of Affordable Housing -Re: Walnut Woods, 818 E. Miller Drive, and Reverent Butler Apartments, 1202 W. 11th Street (Bloomington RAD I, LP, Petitioner)
→ See above - First Readings

**ORGANIZATIONAL MEETING – ELECTIONS – APPOINTMENTS – ASSIGNMENTS
– MATERIALS - SUMMARY**

As noted above, the Council will hold an Organizational Meeting followed by a Committee of the Whole next Wednesday night (January 8th).

The Organizational Meeting is a time for the Council to hold elections and make appointments, and for the new President to make assignments. These actions typically occur in the following order:

- The Council elects officers – President, Vice President, and Parliamentarian (and the outgoing President is presented with gavel or plaque);
- The new officers are seated and the new President assigns seating for the rest of the Council members (*Please note that any two Council members who wish to switch seats may do so by written request to the Council President (BMC 2.04.110)*);
- The Council appoints Council members to various boards and commissions; and
- The new President assigns Council members to Council committees.

Please see the attached sheets for appointments, assignments, and seating. Note that the sheets include those from last year (for context) as well as blank sheets for completion this year.

Group Photo on January 15, 2020. With a new term and new members, the Council should have a new photo taken for the Council webpage. Unless you suggest an alternate date, the Wednesday after next will be a good opportunity for taking that photo, so please come suitably attired and be ready for a photo after the meeting.

**ORGANIZATIONAL MEETING – SECOND READINGS AND RESOLUTIONS - NEW MATERIALS –
SUMMARY**

**Item 1:
Resolution 20-02 - Approving the Animal Control Interlocal Agreement
Between the County, Town of Ellettsville and City for 2020**

Res 20-02 authorizes the signing of an *Interlocal Agreement* between Monroe County, the Town of Ellettsville, and the City regarding the funding for Animal Shelter operations in FY 2020. The total of those payments to the City will be \$350,148.62.

Under the terms of the *Agreement*, the County will pay a total of \$330,878.41 and the Town of Ellettsville will pay a total of \$19,270.22 to the City for work we do on their behalf. This work includes the services done by the City in sheltering animals coming from the County and otherwise assisting in County operations (i.e. dispatching runs and giving information to callers), but is distinct from the City's animal control field operations, education program, and volunteer program.

The amount of payment is based upon a long-standing formula that takes into account the cost of shelter operations (which is about half the City's Animal Care and Control budget), offset by revenues, and the percentage of shelter operations attributable to animals coming from these jurisdictions during the previous full calendar year. Prior to the 2015 agreement, this formula was applied as a way of *projecting costs* into the next full year. Since that time, the agreement uses the last full-year of expenditures (*Actual Expenditures*) as a *basis for reimbursement* to be paid in the following year. Establishing the amount at this year allows the parties to include the amount in their budgets for next year. Please note that total payments to the City will down by about \$5,325.38 in 2020.

The formula works as follows:

Actual Expenditures for Animal Shelter Operations in 2018 (which is about half of the ACC total budget). This number [\$893,722.83 – which are \$76,038.89 up from last year] is offset by adoption revenues [\$97,930.50 – which are up \$5,703.75 from last year].)	<u>\$795,792.33</u> (up \$70,335.14 from 2017 to 2018)
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Percentage of Shelter Operations Attributable to County (This is based upon the percentage of animals taken in 2018 by the Shelter that arrive from the County (including the Town of Ellettsville). Here is the breakdown by Jurisdiction:	<u>x 44 %</u> (down 5% from 2017 to 2018)
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Jurisdiction	Animals Received by the Shelter ¹	Percentage
City	1,558	43.39%
Out-of-County	434	12.09%
Town of Ellettsville	88	2.45%
Rest of County	1,511	42.08%
Total	3,591	100%

TOTAL \$350,148.63 ²

County – ~ 42% (\$ 330,878.41)

Town of Ellettsville – ~ 3% (\$ 19,270.22)

Item 2:

Resolution 20-03 - Approving the Interlocal Agreement with Monroe County Regarding Building Code Authority – to Extend for One Year (the end of 1/1/20 through 1/1/21)

Res 20-03 approves an Interlocal Agreement with the County which would extend the County’s authority over the administration of building codes for one year, retroactively from the end the day on January 1, 2020 through January 1, 2021. Since 1996, when the County adopted a comprehensive plan and was able to exercise zoning authority over the former 2-mile fringe, the City and County have had agreements over building codes and, for most of that time, the planning and zoning jurisdictions. As noted in previous summaries, the principal benefit of the agreement “is in providing convenient and efficient one-stop-shopping for citizens of Monroe County and the City of Bloomington” who are in need of building permits. Affirming this conclusion, Philippa Guthrie, Corporation Counsel, in her memo, states that “(t)he Administration continues to believe that vesting local building code administration in a single entity (the Monroe County Building Department) is the most cost effective and convenient way to provide necessary building code services to the citizens of the City.”

¹ These animals are characterized by how they arrive at the Shelter: [1] ACO-P/U (i.e. those picked up by animal control officers); [2] Surrender (i.e. those animals surrendered by their owners); and [3] Stray (i.e. those animals brought in by residents).

² This figure is up \$5,325.38 from 2017 to 2018.

Interlocal Agreements

Please note that agreements between political subdivisions (otherwise known as "interlocal agreements") are authorized and governed by I.C. 36-1-7-1 *et seq* and must include the:

- duration;
- purpose;
- manner of financing, budgeting, staffing and supplying the joint undertaking;
- method(s) for disposing of property in the event of a partial or complete termination; and
- administration either through a separate entity or a joint board (which is the approach taken here) with powers as delegated by the agreement.

In addition, these agreements may include:

- any other appropriate matters.

History of Agreements with County on Planning, Zoning, and Building Permits

Over the last two decades, the parties have continued this cooperation with a series of legislation that, on occasion, called for brief extensions to allow for completion of negotiations, and more often, granted full, five-year agreements.³ You may recall that, in 2018, as the result of the City and County signing different versions of the agreement, three resolutions were adopted that year. Among other changes, the last of those agreements shortened the term from 21 months to about nine months and made a few other changes.⁴

Overview of Terms and Extension of Current Agreement

The proposed agreement keeps the same provisions as the existing agreement except for the extension of the term by one year retroactively from the end of the day on January 1, 2020 through January 1, 2021.⁵ The remainder of this summary briefly describes the significant terms of this agreement and, in doing so, reiterates what was written in previous years.

Under the agreement, the Monroe County Building Department enforces all State building, plumbing, electrical, mechanical, energy conservation and fire building safety codes within the City and unincorporated areas of the County, and the City administers all planning, zoning, and subdivision compliance functions within the City's Zoning Jurisdiction Area.⁶

³ The legislation authorizing past agreements included: Res 96-33 (authorizing a 5-year term for both the planning and building codes); Res 01-31 (authorizing a 3-month extension for both planning and building codes); Res 02-09 (authorizing a 5-year term for planning codes) and Res 02-10 (authorizing a 1-year term for building codes); Res 02-38 (authorizing a 4-year term for the building codes); Res 07-02 (authorizing a 5-year term for one agreement covering both planning, zoning and building codes); Res 12-14, authorizing a five-year term for the building code; and, Res 17-15, authorizing a one-year extension for the building code.

⁴ These resolutions included Res 18-05, which authorized a 21-month extension, and Res 18-08, which: shortened the term from 21 to 9 months; removed text that allowed for either party to cancel the agreement upon 30-day written notice to the executive of the other party; and, lastly, corrected some job titles and grammar. And, Res 18-18 which extended the agreement through January 1, 2020.

⁵ The Agreement was approved by the County Commissioners on December 18, 2019.

⁶ The term "City Zoning Jurisdiction Area" is defined as "those portions of the County over which the City, by law or interlocal agreement, possesses planning, zoning, and subdivision control authority."

Along with providing for the future modification of the agreement and liberal interpretation of its terms, recognizing that each term is contingent upon the appropriation of funds, and requiring that cooperation not be unreasonably withheld, the remainder of the agreement provides for the following:

- The Monroe County Building department processes all permits and fees related to the building codes. The fees collected on behalf of the City are the sole payments due under this agreement and will be transmitted on a quarterly basis (as promptly after the 1st of January, April, July, and October after allowing for the County's claims processing procedures).
- The City Planning and Transportation Department will pick up and drop off permit materials every day until the County is able to transmit this information electronically and, in addition, both parties agree to make their best efforts to expedite the permitting process.
- The Monroe County Building department shall not to issue a building permit within the City's planning jurisdiction without receiving a certificate of zoning compliance from the City and without transcribing the conditions onto the permit. They shall not issue any occupancy permit without requiring compliance with the conditions of the permit.
- The City will be responsible for determining zoning and subdivision compliance and administer bonds within its planning jurisdiction area and the County must e-mail any notice of certificate of occupancy permit to the City in order to facilitate simultaneous inspections. Both parties agree to provide information requested by the other party in a timely fashion.
- For residential rental property within the corporate limits, the County may not issue any type of permit that changes the disposition of the structure until the HAND department has reviewed and released the application and cannot issue a certificate of occupancy until HAND has confirmed compliance with the Property Maintenance Code.
- The County will waive fees for affordable housing projects within the City listed in BMC 17.08.050(c) and allow waiver of certain fees under specified conditions for eligible affordable housing projects.
- The County will cooperate with the City in sharing GIS information. This will entail handling and transmitting permit-related data to the City in a manner that meets the City's needs, yet accounts for the County's capabilities.
- The County will notify the appropriate fire department of pertinent applications and transcribe all the requested notations onto the temporary and permanent Certificates of Occupancy. The County will also notify the City Fire Department of all applications for variance from the fire code regarding properties within the City in order to help coordinate communication with the Indiana Fire and Building Safety Commission.
- The County shall inspect utility-related permit activity that occurs within areas between buildings and the connection to the City's main or meter, and determine compliance with applicable ordinances and regulations.
- The County shall issue Stop Work Orders upon the written request of the City Planning and Transportation Director, Transportation and Traffic Engineer, or the Director of HAND. These orders will be used to stop construction activity when there

has been a violation of the zoning or subdivision ordinance, historic preservation ordinance, or in those circumstances when the matter will be presented to the Board of Zoning Appeals. The party whose ordinance(s) have been violated will be responsible for enforcing the violation.

Item 3:

Resolution 20-01 – To Establish Standing Committees and Abolish Other Certain Committees of the Common Council

Res 20-01 is sponsored by Councilmember Volan and establishes seven new standing committees and abolishes three Interview Committees of the Council.

The new standing committees (and existing Land Use Committee) would have four primary charges:

- to consider legislation referred to them and to report back to the Council with a recommendation;
- to research and take public input on other matters of community concern related to the particular committee's domain;
- to provide oversight over and an interface for various city departments, divisions, boards, and commissions; and
- to make appointment recommendations to the Council for various boards and commissions (which, prior to this resolution, would have been the responsibility of the Council Interview Committees "A," "B," and "C")

Standing Committees: A Brief History

Standing committees are not new. A general provision allowing for standing committees has been in local code since 1979. The Land Use Committee, the Sidewalk Committee, the Jack Hopkins Committee, and the Interview Committees are all examples of standing committees. Of these, perhaps the Land Use Committee functions most closely to how the proposed standing committees would operate.

Pursuant to local code, the Council may establish a standing committee by resolution "to facilitate the transaction of business." BMC 2.04.210. Unlike special committees or task forces which sunset after they have completed their duties, standing committees endure and may be abolished only by way of subsequent resolution. Id.

Standing Committees: Two Functions Provided by BMC

The Bloomington Municipal Code provides language that allows a standing committee to operate in two distinct ways.

First, the Code provides that the full Council can refer a matter before the Council (most usually, legislation) to the standing committee to investigate and report back to the Council. In this sense, a standing committee may essentially replace the function of a Committee of the Whole.

The second way in which the BMC contemplates a standing committee functioning is under the more general provision that such committees may "investigate other matters within their

jurisdiction.” BMC 2.04.210. While local code provides for these two functions of a standing committee, it does not require it. Instead, any resolution creating a standing committee must “define the duties and responsibilities of each committee;” such scope may be broad or it may be narrow.

Standing Committees: Other Requirements of the BMC

The BMC also provides for other aspects of a standing committee, such as membership, chairing, attendance, voting, notice and conduct of meetings, reporting requirements, and the scheduling of such meetings. The full text of the relevant BMC provisions follow Councilmember Volan’s proposal. The ways in which these general rules articulate with Councilmember Volan’s proposal are discussed below.

Resolution 20-01: The Specifics

Committees Created: The resolution would create seven new standing committees, meant to allow council members to better manage time and workload, to provide more predictability for all interested parties in meeting scheduling and duration, and to provide councilmembers the ability to specialize in topics and triage issues. In this vein, the following committees are proposed to be created by Res 20-01 (the Land Use Committee, which is referenced in the resolution, was created by Res 18-02):

- Administration Committee
- Community Affairs Committee
- Housing Committee
- Public Safety Committee
- Sustainability, Climate Action, & Resilience Committee
- Transportation Committee
- Utilities & Sanitation Committee

Membership: Each proposed standing committee would be a four-person committee.

Note that the BMC requires that when standing committees are established, the president appoints at least three people to such a committee “observing the preference of each member as closely as possible” and also appoints a chairperson for each committee. BMC 2.04.210. And while all Council members may attend a meeting of a standing committee, only those appointed are authorized to vote on matters before the committee.

Purpose: The purpose of each proposed standing committee is similar, in that each committee would make recommendations to the full Council on matters referred to that committee by the Council. Each committee is also authorized to research and take input on other matters of community concern within that committee’s purview as detailed in the proposed resolution (Section 4). Each committee is also assigned various city departments, divisions, boards, and commissions that the committees would oversee. Finally, the committees are assigned the work previously given to Council Interview Committees of making appointment recommendations to the Council for boards and commissions.

Referral of Legislation: Under Res 20-01, “[f]ollowing the first reading of an ordinance, the Council shall, pursuant to BMC 2.04.155, entertain a motion to refer the legislation to the standing committee best suited to consider the matter” (Section 5).

Res 20-01 includes a partial, but not complete, recitation of the referral process when it comes to referral to a standing committee. Currently, an ordinance coming before Council is typically referred to the Committee of the Whole the week after the legislation is read into the record. The whole Council sits in the Committee of the Whole. Under Res 20-01, after an ordinance is read into the record, the Council would have a choice: either the Council could refer the legislation to the Committee of the Whole or the Council could refer the matter to the relevant four-person standing committee.

More specifically, and pursuant to a change sponsored by Councilmember Volan and passed by the Council in 2012 via Ord 12-10, “[m]otions for referral to a standing committee shall be entertained before a motion for referral to the committee of the whole and shall include the approximate time at which the committee will convene” (BMC 2.04.255). While local code clearly provides that motions to a standing committee shall be made first, there is no requirement under local code, nor under Councilmember Volan’s proposal, that legislation would be referred to such a standing committee. Instead, the requirement is that motions to refer the matter to the Land Use Committee be entertained first. If no motion is made or if such motion is unsuccessful, then the matter would be referred to the Committee of the Whole.

Resolutions do not typically receive a first reading at a regular session of the Council like an ordinance. Res 20-01 proposes that resolutions may be referred to the standing committee best suited to consider the matter by the Council President, after consulting with the Council Vice President and the relevant committee chairs. This authority would also imply that the Council President could decide, after consulting with the Vice President and committee chairs, that the Committee of the Whole was the most appropriate venue to hear a resolution.

Scheduling a Committee meeting

When it comes to the broader charges to provide oversight, to research and gather input on other matters of community concern, or to make appointment recommendations regarding boards and commissions, aside from complying with Indiana Open Door law, there is no requirement about when each standing committee might meet. However, when legislation is referred to a standing committee, changes made by the Council in 2012 require, in relevant part, the following:

- **2nd and 4th Wednesday Requirement:** BMC 2.04.255 requires that any standing committee and any meeting of the Committee of the Whole be held on the second and fourth Wednesday of the month.
- **Meeting Start Time Window – 5:30-9:45p:** BMC 2.04.255 also requires that such a standing committee cannot begin any meeting any earlier than 5:30 pm and cannot end any later than 9:45 pm.
- **Extended Period of Deliberation:** Similar to a Committee of the Whole, when a piece of legislation is referred to a standing committee, the committee would make a non-binding recommendation to the full Council. However, unlike the a Committee of the Whole that, by local code, has to report back to the full Council at the next Regular Session, a standing committee –

again, by local code – does not. Under Res 20-01, when a proposal is referred to a standing committee, unlike a Committee of the Whole, the standing committee could consider the matter over the course of two committee meetings, rather than one as with the Committee of the Whole. This extends the legislative cycle from two to four weeks.

Again, the extended cycle afforded by a standing committee and not extended to that of the Committee of the Whole is a function of local code. Should the Council wish to extend the discussion of an item being considered to the next Committee of the Whole, rather than returning it to the next Regular Session, then it could amend local code to do so, or could suspend the rules and allow for a longer cycle of deliberations by the Committee of the Whole. Furthermore, should Council want to extend deliberations on a matter after it is heard at the Committee of the Whole, the Council can do so by putting the matter to a Second, Third, Fourth, etc. Reading.

Reporting Requirement

Local code requires that reports of standing committees be in writing and signed by a majority of the committee members. Documents referred to the committee are to be returned to the Council with the committee's report. As relayed above, when matters are referred to a standing committee, it is to report back to the full Council no later than the second regular session after being referred by the Council, unless otherwise extended by Council.

The point at which a standing committee is ready to report if legislation has been referred to it is fairly predictable. However, when a committee is meeting to discuss or research a matter that has not been referred to it, the BMC is not entirely clear on when the standing committee has a duty to report back. With the Sidewalk and Jack Hopkins committee, the points of reportage are clear: when the committees have completed their work for the year; and, the interview committees essentially report back when they recommend an appointment to the full Council. However it is anticipated that the "Reports from Council Committees" section on the Council's agenda provides the appropriate place for such a committee to apprise the Council and the public of its on-going work. Of course, a report from a standing committee on a piece of legislation would be given where that particular piece of legislation appears on the meeting agenda.

Open Door

As you are likely aware, any standing committee of the Council is subject to Indiana Open Door law where the public is invited to attend, observe and record what transpires. A notice for these meetings must be posted in advance and a memorandum must be kept during the meetings pursuant to statute. Given the fact that these would be new committees with new processes, staff would work to routinize the posting of notices to ensure compliance with the Open Door law. However, until such processes are in place, councilmembers and staff should be mindful of the notice requirements to ensure that all statutory requirements are met.

Memorializing the Meetings

Where a standing committee has a piece of legislation referred to it and is essentially taking the place of the Committee of the Whole, then practice has been that the memorandum kept for the meeting will be the same sort of very basic memorandum kept for Committees of the Whole. Toward this end, a simple "Report" form has, in the case of the Land Use Committee, served the function of the both the report required by local code and the statutorily-required memorandum.

When it comes to documenting meetings held to “research” and “gather input” on a matter of community concern, a more meaningful and robust record of minutes may be of greater utility to the committee, the Council, and the community. Council members should also be mindful of the potential short turn-around time if a committee meets on a Wednesday and wants to include its report back to the full Council in the legislative packet that would be distributed two days later on Friday.

ORGANIZATIONAL MEETING – FIRST READING – NEW MATERIALS - SUMMARY

Item 1:

Ordinance 20-01 To Amend the City of Bloomington Zoning Maps by Rezoning a 3.2 Acre Property from Commercial Limited (CL) to a Planned Unit Development (PUD) and to Approve a District Ordinance and Preliminary Plan – Re: 105 S. Pete Ellis Drive (Curry Urban Properties, Petitioner)

Ord 20-01 would rezone 3.2 acres in the 100-block of Pete Ellis Drive from Commercial Limited (CL) to Planned Unit Development (PUD) and approve the associated District Ordinance⁷ and Preliminary Plan.⁸ The proposal came forward to the Council on November 14th with a positive recommendation from the Plan Commission (by a vote of 6-0).

A Note on State (Timeframe for Action) and Local Procedure (Referral to Committee).

Under statute, the Council has 90 days to act (which expires on Wednesday, February 12th) and, absent a majority vote of the Council to adopt or reject it, the recommendation of the Plan Commission would go into effect on that date. Also, under local rules, please know that, at introduction, the Council should entertain a Motion to Refer to the Land Use Committee or, in the event that fails, a Motion to Refer to the Committee of the Whole.⁹

The Site and Surrounding Uses

The site is 3.2 acres (which requires a waiver of the 5-acre minimum size for a PUD) of treeless, undeveloped land that slopes downward toward south west corner. It is located along three streets – Pete Ellis Drive on the east, Longview on the south and, East 7th on the west - and is surrounded by Residential High Density (RH) zoning on the north, Commercial Limited (CL) and Commercial Arterial (CA) zoning to the east and south east, RH zoning to the south, and a church and vacant land to the west. Further to the north will be the new hospital which the petitioner had in mind when designing the proposal.

⁷ According to BMC 20.04.040 (c), “The PUD district ordinance shall indicate the land uses, development requirements, and other applicable specifications that shall govern the planned unit development.” The District Ordinance may only provide alternative standards to those set forth in Chapter 20.02 (Zoning Districts) and Chapter 20.05 (Development Standards). Where the District Ordinance is silent on those specifications, the relevant provisions of the UDO apply. See also BMC 20.04.080 (Process – PUD district ordinance and preliminary plan).

⁸ According to BMC 20.04.040(d), “The preliminary plan shall show the conceptual location of all proposed improvements.” See also BMC 20.04.080 (Process – PUD District ordinance and preliminary plan) (a)(2) and (c)(3) for the purpose and required content of the preliminary plan.

⁹ BMC 2.04.255 (Committees – Scheduling)

History

The incumbent Council members and, perhaps others, may recall a similar project for this site proposed by Curry Urban Properties coming to the Council in May of 2019.¹⁰ At that time, given the negative recommendation from the Plan Commission and a heavy Council agenda, a motion by the Council to introduce the ordinance failed which, under statute, led to its defeat 90 days after the negative recommendation was certified to the Council.¹¹

Changes in Proposal

One large, well-modulated, 4-story building is still proposed with first floor retail on the east and south and residential on the other fronts and on the upper floors. Otherwise, the changes, in brief, include:

- **Reduction in Height and Bulk at Southwest Corner** – one unit was removed at the tallest corner, which decreased the height of that façade from 61’ to 57’ and increased the setback from the property line to 15’;
- **Increase in Streetside Green space on Southside** – the “module” just east of the corner “was pushed back to create more outside green space”;
- **Expected 19,000 sf of Commercial Space** – there will be “an expected 19,000 sf of commercial use” targeting medical uses related to the new hospital (rather than a range of 12,000 – 19,000 sf);
- **Reduction in Residential Density, Units, and Bedrooms** - the density will decrease from 30 to 29 Units per Acre (UPA); the number of units will decrease from 280 to 264; the number of bedrooms will decrease from 360 to 344; and, the “mix of studio units, one-bedroom units, and two-bedroom units” will shift so that “roughly 30% are expected to be two-bedroom units”;¹²
- **Little Change in Parking** – there will still be an internal, 306-space parking structure (with 102 spaces per floor) accessed off Longview Drive, which will serve both residential and commercial uses, but a reduction of one (from 16 to 15) back-in, angled, on-street parking spaces on Pete Ellis Drive; and, more significantly
- **Agreement with HAND Department for Workforce Housing** – there is an agreement with the HAND department “to set aside 15% of the bedrooms on the site for workforce housing, which is more in line with other petitions than the previous proposal.” In particular, the new proposal dispenses with the previous alternatives: Alternative (A), where 20% of units were to be set aside for 100% “unadjusted” Area Median Income (AMI) for 99 years or Alternative B, where 10% of the units were to be set aside for persons with incomes of no more than 120% AMI for a period of 20 years. Instead, there is a commitment for two tiers of affordable housing for a period of 99 years, where no more than 25% of the maximum threshold income will serve as the base rent.¹³ In the first tier, 10% of the bedrooms will be set aside for incomes of no more than 100% of AMI (\$51,700) and, in the second tier, no more than 5% of the bedrooms be set aside for persons with income of no more than 120% of AMI.

¹⁰ The petition was heard by the Plan Commission on November 5, 2018 and March 18, 2019 and forwarded to the Council with a negative recommendation on March 25th by a vote of 5-3.

¹¹ IC § 36-7-4-608(g)

¹² The memo also notes the petitioner’s proposal to “build to FITWEL standards, which ... amount to positively effecting [sic] the health of the tenants ... through design and programming.”

¹³ Please see the Commitment for what is included in the base rent.

Opposition to Project – Five Emails (which was too late to include for the Plan Commission)

Jackie Scanlan, Development Services Manager, sent along five emails (included in this packet) from neighbors who, for various reasons (primarily increased traffic), opposed the project. She noted that, unfortunately these emails were improperly addressed and were not discovered in time to give to the Plan Commission.

Summary Follows Interdepartmental Memo

Rather than review and summarize the Interdepartmental Memo (Memo) and Petitioner materials provided in this packet, this summary tracks the organization of the Memo which, along with the Plan Commission, recommended in favor of this petition. That said, the following paragraphs touch upon the Memo's treatment of the:

- Comprehensive Plan
- District Ordinance and Preliminary Plan - For a detailed review of these documents, the reader is directed to the Memo and Petitioner's Revised Statement.
- PUD Considerations for Plan Commission and Council under the UDO - For a review of, and proposed findings for, the Plan Commission regarding these considerations, please see the Memo.
 - Since they mirror considerations by the Council, these findings might inform the Council's perspective on these considerations; and
- Environmental Commission Memo - Please note that the Environmental Commission filed a report with recommendations (which Plan Staff incorporated into the PUD at Final Plan stage).

Comprehensive Plan – “Regional Activity Center (RAC) in the southwest corner of the Regional Academic Health Center Focus Area.”

As spelled out in more detail at the end of this summary, in considering a PUD, decision-makers are to balance a number of factors, including (but not limited to) the extent to which the proposal is congruent with the Comprehensive Plan and surrounding uses. The Memo notes that the site is within a Regional Activity Center (RAC), which is characterized as a high intensity retail and multifamily area that “complement[s] rather than compete[s] with the Downtown district,” grows vertically to 2- to 3- stories, and buffers adjacent residential areas with less intense uses. This site is also part of the Regional Academic Health Center Focus Area, where ancillary support services, businesses, and medical offices may relocate to be near the new hospital. Within that context, the Memo states the following:

The development of this three acre parcel will add mixed use with office and multifamily residential to a portion of the Regional Activity Center that is not on the main commercial thoroughfare. With the inclusion of workforce housing, housing to support the employees of the Regional Academic Center is considered and included. The project will include mixed uses with a building forward design and improvements to the adjacent pedestrian facilities. The proposed Preliminary Plan is consistent with most of the intent and development guidance of the Comprehensive Plan for this area. The size and massing of the building are larger than the Comprehensive Plan guidance suggests, but the largest corner of the site (the southwest corner) has been setback in order to mitigate some of the size. Additionally, the building has been planned 15 feet from the northern property line, which is in excess

of what would be required for the CL zoning district to mitigate effects on the neighboring high-density residential property.

Preliminary Plan

As set forth in the Memo, the Preliminary Plan (and District Ordinance) cover:

- Uses and Development Standards (largely Commercial Limited) with deviations allowed for: first floor residential; maximum of 5,000 sf for a single commercial tenant; density (from 15 to 29 UPA); height (from 40' to 57'); and maximum impervious surface area (from 50% to 66%);
- Residential Density (where there is an increase from 15 to 29 UPA with 264 units and 344 bedrooms);
- Height and Bulk (where the building exceeds the 40' limit, but with this round of changes, mitigates the impact through setbacks and both horizontal and vertical modulation – especially at the southwest corner of the site);
- Parking, Streetscape and Access (which includes an interior parking garage with 306 spaces [76 for 19,000 sf of commercial uses and 230 spaces for 344 bedrooms]; 15 back-in, on-street parking on Pete Ellis Drive; widening the sidewalk on Pete Ellis Drive to at least 6' and the multi-use path on Longview and 7th to at least 12'; and, with a 5' wide tree plot on those street fronts;¹⁴
- Bicycle Parking and Alternative Transportation (where bicycle parking will comply with the UDO and two bus lines currently stop along Pete Ellis Drive);
- Architectural Materials (where the building has modulation and strategic recesses to mitigate its size and will be made of brick and block masonry, metal/steel, storefront glass, stone, and fiber-cement siding); and
- Environmental Considerations (where additional [some in the form of vertical plantings] and use of cisterns to help water them are meant to offset the higher deviation for impervious surface area [- 64% rather than 50%]).

Environmental Commission Memo

The Environmental Commission made two recommendations, which the Memo from staff indicates will be incorporated into the PUD at the Final Plan stage. The first recommends that the landscaping comply with UDO standards (with the planting of diverse, native species) and the second recommends that the planned, LEED-compliant practices be described and the maintenance plan for the green or live wall elements be provided.

Plan Commission – Conclusion - Recommendation - Conditions of Approval

At the end of the Memo, Plan staff provided the following paragraph, which concluded that while the nearly doubling of density and the four-stories in height are uncharacteristic of the surrounding property, the unique design, proximity to the new hospital, inclusion of workforce housing, and the efforts to mitigate the bulk and height at the southwest corner together warrant support of this proposal:

¹⁴ Please note that the streetscape along Pete Ellis Drive will be designed in concert with P&T to include planter beds, rain gardens, and varying shrub mixtures.

The proposed PUD does offer a unique architectural design and a range of benefits and features for the tenants, while also providing supportive commercial space and workforce housing in an area that will soon contain a large workforce generator, the new hospital. The project includes multiple characteristics that support the goals of the Comprehensive Plan. While the density is close to double that of the densest zoning district in the current UDO, the Comprehensive Plan supports increased density in areas that have existing infrastructure to support it. Additionally, the large size of the building is an issue, but the petitioner has attempted to mitigate those concerns by utilizing modulation on all sides, as well as setting the top floor of the building back at its tallest location. The Comprehensive Plan clearly encourages incorporating diverse housing types within the City and this PUD contributes to this goal and provides a clear public benefit.

Based upon that conclusion, the Plan Commission voted 6 – 0 to forward this proposal with positive recommendation. In so doing, it waived the five-acre minimum requirement for a PUD and imposed seven conditions of approval, which are reordered (in terms of the timing of the conditions) and paraphrased, in part, as set forth below:

Prior to Grading Permit

- The Board of Public Works must approve an encroachment agreement regarding all items in the right-of-way prior to issuance of a grading permit (CoA 2);
- Staff Approval of Final Plan and Actions to be Taken with Submittal of, or Prior to, Approval of Final Plan
- P&T staff are authorized to review and approve the Final Plan (CoA 1);
- “Petitioner will submit a traffic study with application for Final Plan” (CoA 6); and
- “Petitioner shall describe the LEED-compliant practices planned, as well as provide plans for the green and live wall elements being planned along with a maintenance plan for their future viability with application for Final Plan approval” (CoA 7);

Prior to Occupancy Permit

- “All public improvements, including but not limited to bike racks, sidewalks, and sidepaths must be located in either [the] right-of-way or a recorded pedestrian easement” and those items in the right-of-way must be approved by the Board of Public Works (CoA 4);
- “A Zoning Commitment indicating that these improvements, as well as the rain gardens, will be maintained by the property owner in perpetuity must be recorded” (CoA 5); and
- Petitioner must record the proposed workforce housing commitment (CoA 3).

Council Review

As explained in the beginning paragraphs of this summary, the Council has until February 12th to act on this proposal and its failure to act by that time would let the recommendation of the Plan Commission stand and let this project to go into effect on that date.

In reviewing a PUD proposal, the Council’s review is guided by both local code and State statute. Both are reviewed below. In reviewing a PUD, Council must have a rational basis for its decision, but otherwise has wide discretion.

Bloomington Municipal Code (BMC)

BMC 20.04.080 directs that, in its review of a PUD, the Council shall consider as many of the following criteria as may be relevant to a specific PUD proposal. Amendments to a PUD are considered in the same manner as the creation of a new PUD. BMC 20.04.080(j)(1).

- The extent to which the PUD meets the requirement of 20.04, Planned Unit Development Districts.
- The extent to which the proposed preliminary plan departs from the UDO provisions otherwise applicable to the property (including but not limited to, the density, dimension, bulk, use, required improvements, and construction and design standards and the reasons why such departures are or are not deemed to be in the public interest).
- The extent to which the PUD meets the purpose of the UDO, the Comprehensive Plan, and other adopted planning policy documents.
- The physical design of the PUD and the extent to which it makes adequate provision for public services; provides adequate control over vehicular traffic; provides for and protects designated common open space; and furthers the amenities of light and air, recreation and visual enjoyment.
- Relationship and compatibility of the PUD to adjacent properties and neighborhood, and whether the PUD would substantially interfere with the use or diminish the value of adjacent properties and neighborhoods.
- The desirability of the proposed preliminary plan to the city's physical development, tax base and economic well-being.
- The proposal will not cause undue traffic congestion, and can be adequately served by existing or programmed public facilities and services.
- The proposal preserves significant ecological, natural, historical and architectural resources.
- The proposal will not be injurious to the public health, safety, and general welfare.
- The proposal is an effective and unified treatment of the development possibilities on the PUD site.

Local code also provides that permitted uses in a PUD are subject to the discretion and approval of the Plan Commission and the Council. Permitted uses are determined in consideration of the Comprehensive Plan, existing zoning, land uses contiguous to the area being rezoned and the development standards outlined in the UDO. BMC 20.04.030.

Indiana Code

Indiana Code § 36-7-4-603 directs that the legislative body “shall pay reasonable regard” to the following:

- the Comprehensive Plan (see above for the Memo’s perspective on congruence with this document);
- current conditions and the character of current structures and uses in each district;
- the most desirable use for which the land in each district is adapted;
- the conservation of property values throughout the jurisdiction; *and*
- responsible development and growth. (I.C. § 36-7-4-603)

Importantly, these are factors that a legislative body must *consider* when making a zone map change decisions. However, nothing in statute requires that the Council find absolute conformity with each of the factors outlined above. Instead, the Council is to take into consideration the entire constellation of the criteria, balancing the statutory factors.¹⁵

When adopting or amending a PUD district ordinance, State law provides that the Council may adopt or reject the proposal and may exercise any powers provided under State law. Those powers include:

- Imposing reasonable conditions;
- Conditioning issuance of an improvement location permit on the furnishing of a bond or a satisfactorily written assurance guaranteeing the timely completion of a proposed public improvement;
- Allowing or requiring the owner of real property to make written commitments (I.C. § 36-7-4-1512).

Item 2:

**Ordinance 20-02 – Final Approval to Issue Economic Development Notes and Lend the Proceeds for the Renovation of Affordable Housing -
Re: Walnut Woods, 818 E. Miller Drive, and Reverent Butler Apartments, 1202 W. 11th Street (Bloomington RADI,LP, Petitioner)**

Ord 20-02 grants final approval to issue a maximum of \$11 million in tax-exempt Economic Development Notes and lend the proceeds to Bloomington RAD I, LP to renovate Walnut Woods at 818 East Miller Drive and Reverend Butler Apartments at 1202 West 11th Street.

Legislative History

This ordinance is the third and final piece of Council legislation needed to renovate and improve these affordable housing facilities currently owned by Bloomington Housing Authority (BHA). Reverend Butler Apartments was built in 1972 and contains 56 units and Walnut Woods was built in 1981 and contains 60 units.

The first piece of legislation was Resolution 19-08, which revised a cooperation agreement between the City and the BHA, entered into in 1961 with the intent to construct federally-funded low income housing.¹⁶ The revisions primarily allowed BHA to take advantage of a Housing and Urban Development (HUD)- approved Rental Assistance Demonstration (RAD) program in order to make repairs and renovations at a much quicker pace than would be otherwise possible through federal funds. The RAD program would create a new ownership structure, where the affected units would be converted into Section 8 housing and the housing assistance payments

¹⁵ Notably, Indiana courts have made clear that municipalities have wide latitude in approving in PUDs and need not always comply with its comprehensive plan. Instead, comprehensive plans are guides to community development, rather than instruments of land-use control. *Borsuk v. Town of St. John*, 820 N.E. 2d 118 (2005).

¹⁶ 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. For more on this step in the process, please download the Council Legislative Packet issued for the 5 June 2019 Meetings at <https://bloomington.in.gov/council/meetings/2019>

along with loans and tax credits will allow private investment that will achieve those repairs and renovations within about 2 years.

The second piece of legislation was Resolution 19-15,¹⁷ which gave “preliminary approval” for the issuance of bonds (notes) and the lending of the proceeds for these renovation projects.

Financing

These bonds are a large part of the financing for this approximately \$11 million project. They are advantageous for developers and investors for two primary reasons: first, the interest rate is lower than conventional bonds and is not considered taxable income for investors; and, second, there is an associated tax credit. While, at this time, the figures are not known, in the past, an amount of bonds, equity, deferred development fee, and income have worked together to privately fund this project.

Project and Participants

Project: “Bloomington RAD I, LP proposes to invest more than \$5 million in capital improvements to address significant needs at the properties. The renovations will focus on addressing current code requirements, environmental remediation, handicap accessibility, structural repair, unit modernization, improvements in energy efficiency, street appeal and site work. The work will include reconfiguring units to accommodate wheelchairs, safety features including new hardwired smoke detectors, new flooring throughout all units, new kitchen cabinets, countertops, addition of dishwashers and washers and dryers, high efficiency furnaces and air conditioner condensers, new roofs, handicap ramps, and site lighting. It has been estimated that the renovations will cost approximately \$53,000 per unit.”

Issuer: City of Bloomington

Borrower: Bloomington RAD I, LP (created by the Bloomington Housing Authority) has obtained tax credits through the Indiana Housing and Community Development Authority (IHCDA) and will borrow the proceeds from the issuance of notes to pay for this project

Funding Lender: BMO Harris Bank

¹⁷ Resolution 19-15 Preliminary Approval to Issue Economic Development Bonds and Lend the Proceeds for the Renovation of Affordable Housing – Re: Walnut Woods, 818 E. Miller Drive, and Reverend Butler Apartments, 1202 W. 11th Street (Bloomington RAD, I, LP, Petitioner). For more on this “bond inducement resolution,” please download the Council Legislative Packet issued for the 2 October 2019 Meetings at <https://bloomington.in.gov/council/meetings/2019>

Legislative Process – Ordinance Contents

Indiana statute (I.C. 36-7-11.9 [Economic Development and Pollution Control - Definitions] and 12 [Economic Development and Pollution Control]) allows municipalities to help developers obtain financing for economic development facilities after the local Economic Development Commission has held a legally advertised public hearing, adopted a resolution, and submitted the requisite records to the Council. That hearing was held on December 18th and the signed resolution is included in this packet.

After specifying the statutory authority to bond¹⁸ for economic development projects, describing the Project, identifying the participants and describing the role each plays in this financing arrangement, acknowledging financing documents and the form of the ordinance, and reciting the prerequisite steps¹⁹ taken by the EDC (culminating with the adoption and submission of EDC Resolution 19-05), the ordinance:

- finds that the Project will be of benefit to the health and welfare of the community by “promoting the substantial likelihood of creating and retaining opportunities for gainful employment” and “further the public purpose ... through, among other things, the provision of quality, affordable, multifamily housing;”
- approves the Financing Documents (which are included in the packet and are in substantially final form²⁰) and incorporates them by reference into the ordinance (with two copies kept in the City Clerk and Council Office for public inspection);
- authorizes the issuance of no more than \$11 million in tax exempt notes with a maturity date that cannot exceed 40 years (with an optional redemption within 20 years of issuance) and an interest rate that cannot exceed 12%;²¹
- authorizes the Mayor and City Clerk to execute the Financing Documents, which are approved by the ordinance, on behalf of the City in order to facilitate this transaction;
- declares that the ordinance and Financial Documents are a contract between the City and holder(s) of the notes and cannot be repealed or amended in a manner that adversely affects the rights of holders of these notes (and repeals any legislation inconsistent with these documents);
- requires the City (subject to certain obligations of the Borrower) to use its best efforts to assure that the use of the proceeds comply with IRS regulations regarding tax exempt bonding;
- relieves City and its officers and employees of any liability for the issuance;²²
- states that the bonds do not constitute a debt of the City;
- based upon representation of the Borrower, finds that the tax credits allocated to the Project

¹⁸ As I understand it, the term “notes” rather than “bonds” applies to this project because there is one Lender of Funds (BMO Harris Bank) rather than bonds which were prepared for, marketed to, potential holders of the bonds.

¹⁹ One, among many steps, is consideration of “any adverse competitive impact” of this project on other similar facilities in the community. (Second-to-last Whereas clause on first page of the ordinance). Also, please note that a Report was submitted, along with the EDC resolution. In the past, the P&T department has responded with a memo regarding compliance with the UDO and congruence with the Comprehensive Plan.

²⁰ These include the following and associated exhibits: Funding Loan Agreement; Borrow Loan Agreement; Regulatory Agreement and Declaration of Restrictive Covenants; Form of Bond Ordinance; and Form of Notes.

²¹ Please note that the ordinance authorizes the Clerk to sell such bonds and sets limits on how much above and below the principal amount they may be sold.

²² Except as the result of intentional misrepresentation or willful misconduct.

does not exceed what is necessary for its feasibility and its viability as a qualified housing project for the requisite period; and

- declares that all actions of the Council were done in conformance with the Open Door Law.

Disclosure of any Financial Conflict of Interest.

Under IC 36-7-12-16, members of the Council may have “a pecuniary interest employment, financing agreement, or other contract made under this chapter if the member discloses the member's pecuniary interest before any action by the fiscal body on it and does not vote on any such matter.” *Please let me know if you believe you may have such a pecuniary interest or you have any questions in this regard.*

Review by Bond Counsel

The issuance of bonds is a complicated process and, in order to protect the City's interests, City Legal and outside Bond Counsel have reviewed the ordinance and confirmed their conformance with statute and the obligations that are imposed on the City.

**NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL
ORGANIZATIONAL MEETING AND
COMMITTEE OF THE WHOLE**

**6:30 P.M., WEDNESDAY, 08 JANUARY 2020
COUNCIL CHAMBERS
SHOWERS BUILDING, 401 N. MORTON ST.**

ORGANIZATIONAL MEETING

I. ROLL CALL

II. AGENDA SUMMATION

III. APPROVAL OF MINUTES: *None*

IV. REPORTS *(A maximum of twenty minutes is set aside for each part of this section.)*

- 1. Councilmembers**
- 2. The Mayor and City Offices**
- 3. Council Committees**
- 4. Public ***

V. ELECTION OF OFFICERS

(Once the Council elects its officers, the newly-elected President will assign Councilmembers their seats at the dais. The President may also, at this time, announce assignments of Councilmembers to Council committees.)

VI. APPOINTMENTS TO BOARDS AND COMMISSIONS

(The Council may take this opportunity to appoint Councilmembers to serve on various boards and commissions; and, if any nominations are ready, the Council may also consider the appointment of members of the public to serve on boards and commissions, as well.)

VII. LEGISLATION FOR SECOND READING AND RESOLUTIONS

1. Resolution 20-02 To Approve the Interlocal Agreement Between Monroe County, the Town of Ellettsville, and the City of Bloomington for Animal Shelter Operation for the Year 2020

Committee Recommendation: *N/A*

2. Resolution 20-03 To Approve of the Interlocal Cooperation Agreement Between the City of Bloomington and Monroe County, Indiana – Re: Building Code Authority

Committee Recommendation: *N/A*

3. Resolution 20-01 To Establish Standing Committees and Abolish Other Certain Committees of the Common Council

Council Sponsor: Councilmember Volan

Committee Recommendation: *N/A*

VIII. LEGISLATION FOR FIRST READING

1. Ordinance 20-01 To Amend the City of Bloomington Zoning Maps by Rezoning a 3.2 Acre property From Commercial Limited (CL) to a Planned Unit Development (PUD) and to Approve a District Ordinance and Preliminary Plan – Re: 105 S. Pete Ellis Drive (Curry Urban Properties, Petitioner)

Anticipated motion to refer to Land Use Committee

** Members of the public may speak on matters of community concern not listed on the agenda at one of the two public comment opportunities. Citizens may speak at one of these periods, but not both. Speakers are allowed five minutes; this time allotment may be reduced by the presiding officer if numerous people wish to speak.*

2. Ordinance 20-02 Final Approval to Issue Economic Development Notes and Lend the Proceeds for the Renovation of Affordable Housing – Re: Walnut Woods, 818 E. Miller Drive, and Reverend Butler Apartments, 1202 W. 11th Street (Bloomington RAD I, LP, Petitioner)

IX. ADDITIONAL PUBLIC COMMENT *

(A maximum of twenty-five minutes is set aside for this section.)

X. COUNCIL SCHEDULE

XI. ADJOURNMENT

(To be immediately followed by a Committee of the Whole)

COMMITTEE OF THE WHOLE

Chair: Councilmember Isabel Piedmont-Smith

2. Ordinance 20-02 Final Approval to Issue Economic Development Notes and Lend the Proceeds for the Renovation of Affordable Housing – Re: Walnut Woods, 818 E. Miller Drive, and Reverend Butler Apartments, 1202 W. 11th Street (Bloomington RAD I, LP, Petitioner)

Asked to attend:

Larry Allen, Assistant City Attorney
Representative of Petitioner

** Members of the public may speak on matters of community concern not listed on the agenda at one of the two public comment opportunities. Citizens may speak at one of these periods, but not both. Speakers are allowed five minutes; this time allotment may be reduced by the presiding officer if numerous people wish to speak.*

Auxiliary aids are available upon request with adequate notice. Please call (812)349-3409 or e-mail council@bloomington.in.gov.

Material Related to Elections, Appointments, and Assignments Scheduled for Action at the Common Council Organizational Meeting

1. *Document for Reference: Election of Council Officers, Appointments & Assignments For 2019*
 - Election of Officers,
 - Appointments to Boards and Commissions (*by the Council*), and
 - Assignments (*by the President*) to the Council Committees for 2019

2. *Document for Action: Election of Council Officers, Appointments & Assignments For 2020 (blank)*
 - Election of Officers,
 - Appointments to Boards and Commissions (*by the Council*), and
 - Assignments (*by the President*) to Standing Committees

3. *Document for Action: Council Member Seating History 2015 – 2020 (Assigned by President and blank 2020)*

4. *Document for Reference: Boards and Commissions - Interview Committee Assignment Grid 2016 - 2019*

5. *Document for Action: Boards and Commissions - Interview Committee Assignment Grid 2020 (blank 2020)*

ELECTION OF COUNCIL OFFICERS, APPOINTMENTS & ASSIGNMENTS FOR 2019

ACTION BY MOTIONS OF THE COUNCIL

President	Dave Rollo
Vice President	Dorothy Granger
Parliamentarian	Steve Volan

Citizens Advisory Committee - Community Development Block Grants (CDBG)

Social Services	Susan Sandberg
Physical Improvements	Andy Ruff

Commission for Bloomington Downtown Chris Sturbaum

Economic Development Commission (City) Dave Rollo

Economic Development Commission (County) Allison Chopra

Environmental Resource Advisory Committee Dorothy Granger

Metropolitan Planning Organization Isabel Piedmont-Smith

Plan Commission Susan Sandberg

Solid Waste Management District Isabel Piedmont-Smith

Board of the Urban Enterprise Association Chris Sturbaum

Utilities Service Board (ex officio) Jim Sims

Bloomington Economic Development Corporation Jim Sims

Bloomington Commission on Sustainability Dave Rollo

Parking Commission (New 2017) Steve Volan

PS LIT – Allocation Committee (New 2017 – assuming the MC LIT Council members meet in the same manner as 2016) Dorothy Granger, Isabel Piedmont-Smith, Jim Sims & Allison Chopra

Monroe County Food and Beverage Tax Advisory Commission (New 2019 – IC 6-9-41-16[a][5]) Steve Volan

ACTION BY PRESIDENT (Assignment to Standing Committees)

Jack Hopkins Social Services Funding Committee (5 council members)
Allison Chopra (Chair), Dorothy Granger, Isabel Piedmont-Smith, Andy Ruff & Susan Sandberg

Council Sidewalk Committee (4 council members) (Regarding 2020 Funds)
Dorothy Granger (Chair), Dave Rollo, Jim Sims & Chris Sturbaum

Council Land Use Committee (4 council members)
Steve Volan (Chair), Allison Chopra, Isabel Piedmont-Smith & Chris Sturbaum

Council Interview Committees for Citizen Appointments to Boards and Commissions (see accompanying list)

**ELECTION OF COUNCIL OFFICERS, APPOINTMENTS &
ASSIGNMENTS FOR 2020**

ACTION BY MOTIONS OF THE COUNCIL

President _____
Vice President _____
Parliamentarian _____

Citizens Advisory Committee - Community Development Block Grants (CDBG)

Social Services _____
Physical Improvements _____

Commission for Bloomington Downtown _____

Economic Development Commission (City) _____

Economic Development Commission (County) _____

Environmental Resource Advisory Committee _____

Metropolitan Planning Organization _____

Plan Commission _____

Solid Waste Management District _____

Board of the Urban Enterprise Association _____

Utilities Service Board (ex officio) _____

Bloomington Economic Development Corporation _____

Bloomington Commission on Sustainability _____

Parking Commission _____

**PS LIT – Allocation Committee (Assuming the
MC LIT members meet in the same manner)** _____

**Monroe County Food and Beverage Tax Advisory
Commission (New 2019 – IC 6-9-41-16[a][5])** _____

ACTION BY PRESIDENT (Assignment to Standing Committees)

Jack Hopkins Social Services Funding Committee (5 council members)

Council Sidewalk Committee (4 council members) (Regarding 2021 Funds)

Council Land Use Committee (4 council members)

Standing Committee (Name): _____

Standing Committee (Name): _____

Standing Committee (Name): _____

Standing Committee (Name): _____

Standing Committee (Name): _____

Standing Committee (Name): _____

Standing Committee (Name): _____

Standing Committee (Name): _____

Standing Committee (Name): _____

Council Interview Committees for Citizen Appointments to Boards and Commissions
(see accompanying list)

Council Member Seating History 2015 – 2020 (Assigned by President) ¹

Seating For the Year 2015

Neher	Granger	Mayer	Ruff	Rollo	Sandberg	Sturbaum	Volan	Spechler
			Vice President	President	Parliamentarian			

Seating For the Year 2016

Granger	Sturbaum	Mayer	Sandberg	Ruff	Volan	Piedmont-Smith	Chopra	Rollo
			Vice President	President	Parliamentarian			

Seating For the Year 2017 (January – July)

Sturbaum	Ruff	Chopra	Granger	Sandberg	Mayer	Piedmont-Smith	Volan	Rollo
			Vice President	President	Parliamentarian			

Seating For the Year 2017 (August – December)

Sturbaum	Ruff	Chopra	Granger	Sandberg	Volan	Piedmont-Smith	Sims	Rollo
			Vice President	President	Parliamentarian			

Seating For the Year 2018

Ruff	Sturbaum	Chopra	Piedmont-Smith	Granger	Volan	Sandberg	Sims	Rollo
			Vice President	President	Parliamentarian			

Seating For the Year 2019

Ruff	Chopra	Piedmont-Smith	Granger	Rollo	Volan	Sims	Sturbaum	Sandberg
			Vice President	President	Parliamentarian			

Seating For the Year 2020

			Vice President	President	Parliamentarian			

¹ Written requests by two Council members to exchange seats will be granted by the President. (per BMC 2.04.110)

**BOARD AND COMMISSION -- INTERVIEW COMMITTEE¹
ASSIGNMENT GRID 2016 - 2019**

Committee →	A Allison, Jim & Chris	B Dorothy, Steve & Andy	C Isabel, Dave & Susan
↓ Boards and Commissions			
Animal Control	X		
Bloomington Community Arts Commission			X
Bike and Ped Commission		X	
Bloomington Digital Underground		X	
Board of Zoning Appeals	X		
Commission on Aging	X		
Commission on Hispanic and Latino Affairs			X
Commission on the Status of Black Males		X	
Commission on the Status of Women		X	
Commission on Sustainability			X
Commission on the Status of Children and Youth			X
Economic Development Commission	COUNCIL		
Environmental Commission		X	
Historic Preservation	X		
Housing Quality Appeals Board	X		
Housing Trust Fund			X
Human Rights Commission			X
MLK Commission		X	
Parking			X²
Public Transportation Corporation	X		
Redevelopment Commission	X		
Telecommunications Council		X	
Traffic Commission		X	
Tree Commission			X
Urban Enterprise Association	X		
Utilities Service Board			X

¹ The three Board and Commission Interview Committees are Standing Committees of the Council enabled by *Res 13-04 To Consolidate the Council Board and Commission Interviewing and Nominating Committees*. Please note that the resolution assigned the duties regarding each board and commission to a specific Interviewing Committee.

² The Parking Commission was established with adoption of *Res16-41* and the duty to make recommendations regarding citizen appointments to the Council was delegated to Interviewing Committee C by adoption of a motion at the Organizational Meeting on January 11, 2017.

BOARD AND COMMISSION -- INTERVIEW COMMITTEE¹ ASSIGNMENT GRID 2020

Committee →	A	B	C
↓ Boards and Commissions			
Animal Control	X		
Bloomington Community Arts Commission			X
Bike and Ped Commission		X	
Bloomington Digital Underground		X	
Board of Zoning Appeals	X		
Commission on Aging	X		
Commission on Hispanic and Latino Affairs			X
Commission on the Status of Black Males		X	
Commission on the Status of Women		X	
Commission on Sustainability			X
Commission on the Status of Children and Youth			X
Economic Development Commission	COUNCIL		
Environmental Commission		X	
Historic Preservation	X		
Housing Quality Appeals Board	X		
Housing Trust Fund			X
Human Rights Commission			X
MLK Commission		X	
Parking			X ²
Public Transportation Corporation	X		
Redevelopment Commission	X		
Telecommunications Council		X	
Traffic Commission		X	
Tree Commission			X
Urban Enterprise Association	X		
Utilities Service Board			X

¹ The three Board and Commission Interview Committees are Standing Committees of the Council enabled by *Res 13-04 To Consolidate the Council Board and Commission Interviewing and Nominating Committees*. Please note that the resolution assigned the duties regarding each board and commission to a specific Interviewing Committee.

² The Parking Commission was established with adoption of *Res16-41* and the duty to make recommendations regarding citizen appointments to the Council was delegated to Interviewing Committee C by adoption of a motion at the Organizational Meeting on January 11, 2017.

RESOLUTION 20-02

**TO APPROVE THE INTERLOCAL AGREEMENT
BETWEEN MONROE COUNTY, THE TOWN OF ELLETTSVILLE
AND THE CITY OF BLOOMINGTON FOR
ANIMAL SHELTER OPERATION FOR THE YEAR 2020**

WHEREAS, the Common Council of the City of Bloomington desires to contract with Monroe County and the Town of Ellettsville, through the authority of I.C. § 36-1-7-2, to provide services and facilities to Monroe County and the Town of Ellettsville for animal care and control in consideration of payment therefore; and,

WHEREAS, an agreement has been reached between the City of Bloomington, Monroe County and the Town of Ellettsville to provide said services and facilities for 2020;

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

Section 1. The Common Council hereby approves the Animal Shelter Interlocal Agreement attached hereto and incorporated herein for Fiscal Year 2020 and authorizes the Mayor and the Director of the Animal Shelter to execute the Agreement as attested to by the Clerk of the City of Bloomington.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2020.

, 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 _____ day of _____, 2020.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2020.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This resolution authorizes execution, by the Mayor and Director of Animal Care and Control, of the Animal Shelter Interlocal Agreement for Fiscal Year 2020 between the City of Bloomington, Monroe County and Town of Ellettsville. The agreement provides that Monroe County shall pay the City of Bloomington the sum of \$330,878.41 for 2020 in return for the space the City provides to the County and services it renders on the County’s behalf. The agreement further provides that the Town of Ellettsville shall provide the City of Bloomington the sum of \$19,270.22 for 2020 in return for the space the City provides the Town of Ellettsville and services it renders on the Town of Ellettsville’s behalf. In total, the City will receive \$350,148.63 from the County and Town.

MEMO

To: City of Bloomington Common Council
From: Jacquelyn F. Moore, Assistant City Attorney
Date: December 18, 2019
Re: 2020 Animal Interlocal

The City of Bloomington, Monroe County, and the Town of Ellettsville have agreed to renew the annual Animal Interlocal Agreement. This Agreement provides that the City of Bloomington will house, care for and euthanize animals from Monroe County and the Town of Ellettsville at the City's shelter, and provide related services such as adoptions, responding to inquiries from the public, and receiving and recording license fees. In exchange, Monroe County and the Town of Ellettsville agree to pay the City a percentage of the Animal Shelter Operations Program 2018 Expenditures for those services.

The amount to be paid to the City under the 2020 Animal Interlocal was calculated using the total for 2018 animal shelter expenditures, which was reduced by 2018 Actual Adoption Revenue. That sum was then multiplied by the percentage of animals taken in by the shelter from both Monroe County and the Town of Ellettsville. For 2020, Monroe County and the Town of Ellettsville will pay the City \$350,148.63.

2018 BREAKDOWN OF INCOMING ANIMALS BY JURISDICTION AND SOURCE

Animals included in City of Bloomington Total

<u>Jurisdiction</u>	<u>ACO P/U</u>	<u>Surrender</u>	<u>Stray</u>	<u>Total</u>	
City	408	665	485	1,558	43.39%
Owen County		41	20	61	
Greene County		37	29	66	
Lawrence County		112	43	155	
Brown County		3	0	3	
Morgan County		41	3	44	
Other Counties		72	33	105	
Subtotal	0	306	128	434	12.09%

Animals included in Monroe County Total

<u>Jurisdiction</u>	<u>AMO P/U</u>	<u>Surrender</u>	<u>Stray</u>	<u>Total</u>	
Monroe County	320	605	586	1,511	42.08%
Ellettsville		59	29	88	2.45%
Subtotal	320	664	615	1,599	44.53%

TOTAL INCOMING ANIMALS 728 1,635 1,228 3,591

ACO P/U - These are animals picked up in the field by city and county animal control officers.

Surrender - These are owned animals surrendered at the shelter.

Stray - These are stray animals brought to the shelter by citizens.

**CITY OF BLOOMINGTON/MONROE COUNTY
INTERLOCAL AGREEMENT FOR ANIMAL CONTROL**

FY 2020 PROJECTED COSTS AND CALCULATIONS

There are four components to the Animal Control Department budget:

- Animal Shelter Operations
- Animal Control Field Operations
- Education Program
- Volunteer Program

Monroe County pays the City of Bloomington a percentage of the Animal Shelter Operations program. The percentage is calculated as the percentage of animals Monroe County generated of the total number of animals handled the previous year.

ANIMAL SHELTER OPERATIONS PROGRAM ACTUAL 2018 EXPENDITURES =
\$795,792.33

(2018 Actual Expenditure amount of \$893,722.83 is reduced by 2018 Actual Adoption Revenue amount of \$97,930.50.)

2018 PERCENTAGE OF ANIMALS FROM MONROE COUNTY SOURCES

- Picked up by AMO's 320
- Strays brought in by county residents 615
- Animals relinquished by Monroe County residents 664

Total number of Monroe County Animals 1,599

Total number of animals handled by Shelter in 2016 3,591

Percentage of animals from Monroe County sources 44%

ANIMAL SHELTER OPERATIONS PROGRAM ACTUAL 2018 EXPENDITURES × 44% = 2020
INTERLOCAL AMOUNT

$$\$795,792.33 \times 44\% = \$350,148.63$$

2020 MONROE COUNTY ANIMAL INTERLOCAL AMOUNT \$350,148.63

ANIMAL SHELTER INTERLOCAL AGREEMENT FOR FISCAL YEAR 2020

WHEREAS, the City of Bloomington Animal Care & Control Department operates the Animal Shelter for the care and control of animals; and,

WHEREAS, the City of Bloomington Animal Care & Control Department enforces licensing, animal care and animal control ordinances within the corporate boundaries of the municipality, including impoundment, adoptions and euthanizing of animals of the Animal Shelter; and,

WHEREAS, the County Animal Management Officers exercise similar functions within the County, but utilize the Shelter premises and staff for impoundment, adoptions and euthanasia; and,

WHEREAS, the County Animal Management Officers exercise similar functions within the town limits of the Town of Ellettsville, but utilize the Shelter premises and staff for impoundment, adoptions and euthanasia; and,

WHEREAS, the Town of Ellettsville finds it in the best interest of its citizens to contract with Monroe County for the animal management services and the City of Bloomington, Indiana for Animal Shelter use; and,

WHEREAS, Monroe County finds it in the best interest of its citizens to contract with the City of Bloomington, Indiana for Animal Shelter use and to provide the Town of Ellettsville animal management services; and,

WHEREAS, the City of Bloomington, Town of Ellettsville, and Monroe County are empowered pursuant to Indiana Code § 36-1-7 to contract together on the basis of mutual advantage to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local government;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions herein agreed, the parties agree as follows:

1. The duration of the Agreement shall be for one (1) year, commencing January 1, 2020 and ending on December 31, 2020.
2. The City of Bloomington ("City") agrees to provide the Town of Ellettsville ("Town") and Monroe County ("County") the following:
 - a. The impoundment, general animal care, adoption and euthanasia for the Town and County.
 - b. Use of supplies and equipment in the City Animal Shelter by the County personnel;

- c. Assistance to the Town and County in answering phone calls, dispatching service calls and explaining the County animal management laws to callers; and
 - d. Accept and record payments for County license fees, and to remit these funds to the County monthly.
3. County shall administer and enforce County Animal Management Laws, including relevant kennel regulations, within the corporate limits of Ellettsville.
 4. The County agrees to pay the City the sum of \$330,878.41.
 5. The Town agrees to pay the City the sum of \$19,270.22.
 6. The level of cooperation recited in this Agreement is intended to exist for the purpose of efficient and effective delivery of governmental services to the citizens of the City, Town, and County; however, the parties recognize that modifications may be required, either to the Agreement itself, or to the practices and procedures that bring the recitals contained within this document to fruition.
 7. The City, Town, and County departments affected by the terms of this Agreement will continue to communicate and cooperate together to assure that the purposes of this Agreement are achieved on behalf of and to the benefit of the citizens of the respective political subdivisions.
 8. Payments shall be made semi-annually to the Controller of the City of Bloomington, upon the timely submission by the City of a claim. Such claims should be submitted to the Monroe County Board of Commissioners, Room 322, Courthouse, Bloomington, Indiana 47404 and the Town Council of Ellettsville, 1150 West Guy McCown Drive, P.O. Box 8, Ellettsville, Indiana, 47429.

THE PARTIES, intending to be bound, have executed this *ANIMAL SHELTER INTERLOCAL AGREEMENT FOR FISCAL YEAR 2020* on this 23rd day of December, 2019.

TOWN OF ELLETTSVILLE, INDIANA

Brian Mobley
Brian Mobley, President
Ellettsville Town Council

DATE: 12-23-2019

ATTEST:

Sandra Hash
SANDRA HASH, Clerk/Treasurer

DATE: 12-23-2019

CITY OF BLOOMINGTON

MONROE COUNTY COMMISSIONERS

JOHN HAMILTON, MAYOR

DATE: _____



JULIE THOMAS, PRESIDENT

DATE: 12-4-19



LEE JONES, COMMISSIONER

DATE: 12-4-19



PENNY GITHENS, COMMISSIONER

DATE: 12-4-19

ATTEST:

NICOLE BOLDEN, CLERK

DATE: _____

ATTEST:



CATHERINE SMITH, COUNTY AUDITOR

DATE: 12.4.19

RESOLUTION 20-03

**APPROVAL OF INTERLOCAL COOPERATION AGREEMENT BETWEEN THE
CITY OF BLOOMINGTON AND MONROE COUNTY, INDIANA –
Re: Building Code Authority**

WHEREAS, Indiana Code allows governmental entities to jointly exercise powers through interlocal cooperation agreements; and

WHEREAS, the City of Bloomington and Monroe County have exercised such powers since 1996 in order to coordinate and combine certain building code services, as explained and set forth in the attached Interlocal Cooperation Agreement which is incorporated herein as Exhibit A (“Agreement”); and

WHEREAS, it is in the best interests of the citizens of Bloomington that such cooperation continue to through January 1, 2021;

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

SECTION 1. It is in the best interests of the citizens of Bloomington, Indiana, to coordinate and combine certain building code services through interlocal cooperation with Monroe County Government as has been done since 1996; therefore, the City of Bloomington intends to continue such cooperation from the end of the day on January 1, 2020 through January 1, 2021, under the terms of the attached Interlocal Cooperation Agreement (Exhibit A). The Agreement shall be retroactive to January 2, 2020.

SECTION 2. The Common Council of the City of Bloomington, as the fiscal and legislative body of the City of Bloomington, in Monroe County, Indiana, hereby approves the Interlocal Cooperation Agreement, pursuant to Indiana Code § 36-1-7-1, et seq.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2020.

, 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 _____ day of _____, 2020.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2020.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

The attached Interlocal Cooperation Agreement (Exhibit A) extends through January 1, 2021 the long-term arrangement between the City of Bloomington and Monroe County to combine and coordinate the provision of certain building code services. This interlocal cooperation is authorized by Indiana Code § 36-1-7-1.



**CITY OF BLOOMINGTON
LEGAL DEPARTMENT
MEMORANDUM**

TO: Members of the Common Council of the City of Bloomington

FROM: Philippa Guthrie, Corporation Counsel

CC: Dan Sherman, Council Administrator/Attorney

RE: Building Interlocal Agreement

DATE: December 26, 2019

State law allows governmental entities to jointly exercise powers through interlocal cooperation agreements. The City and Monroe County have many such interlocal agreements, including one regarding the administration of the local building codes.

In 1996, the City and Monroe County entered into a five-year interlocal agreement that resulted in the County administering the local building codes for the City and County. This meant that the County handled permit application processing, project inspection, and permit issuance for all properties within the City and within the unincorporated areas of Monroe County.

The Building Interlocal has been extended several times since its initial five-year term. The Administration continues to believe that vesting local building code administration in a single entity (the Monroe County Building Department) is the most cost effective and convenient way to provide necessary building code services to the citizens of the City.

The Building Interlocal that is presented to you is in the same form as last year's iteration of the Building Interlocal. It expired at the end of the day on January 1, 2020 and will be extended for one year through January 1, 2021. We ask you to approve the Agreement retroactive to January 2, 2019. It will be revisited before expiration in 2021. It was approved and signed by the County Council and the County Commissioners on December 19, 2020.

INTERLOCAL COOPERATION AGREEMENT BETWEEN THE
CITY OF BLOOMINGTON AND MONROE COUNTY, INDIANA
REGARDING BUILDING CODE AUTHORITY

WHEREAS, Indiana Code § 36-1-7-1 et seq. permits governmental entities to jointly exercise powers through interlocal cooperation agreements; and

WHEREAS, in 1996, the City of Bloomington, Indiana ("City"), acting by and through its Mayor and its Common Council, and the County of Monroe, Indiana ("County"), acting by and through its Board of Commissioners and its County Council, determined that the interests of the citizens of Monroe County, Indiana, would be better served by coordinating and combining certain City and County building code services through an interlocal cooperation agreement; and

WHEREAS, in 1996, the City and the County entered into a five-year interlocal cooperation agreement, effective beginning April 1, 1997, that conferred County-wide Building Code administration authority on the Monroe County Building Department; and

WHEREAS, the term of the original interlocal agreement has been extended, through subsequent agreements, to January 1, 2020;

WHEREAS, the City and the County have determined that it is more cost effective and convenient for the citizens of Monroe County, Indiana, to continue to have the authority, power and responsibility for local building code administration, including permit application processing, project inspection, and permit issuance vested in a single entity, the Monroe County Building Department; and

WHEREAS, this Interlocal Cooperation Agreement ("Agreement") reflects the commitments and understandings agreed to by the City and the County in order to efficiently and effectively provide the transfer of powers between the City and the County;

NOW, THEREFORE, the City and the County hereby agree as follows:

Part 1. Definitions.

"Building Permit" shall include without limitation any permit for construction, remodeling, demolition, moving, plumbing, electrical, or any other permit that affects construction, demolition, use and/or occupancy of land, buildings or structures, provided that such permit is within the scope of "Building Code Jurisdiction" as defined herein.

"Building Code Jurisdiction" refers to applicability, administration and enforcement of City and County ordinances adopting state building, plumbing, electrical, mechanical, energy conservation, swimming pool, and fire safety codes; specifically, this term refers to Monroe County Code

Chapter 430 and to those portions of Bloomington Municipal Code Title 17 that concern such State codes.

"City Zoning Jurisdiction Area" refers to those portions of the County over which the City, by law or by interlocal cooperation agreement, possesses planning, zoning, and subdivision control authority.

"County Zoning Jurisdiction Area" refers to those portions of the County over which the County, by law or by interlocal cooperation agreement, possesses planning, zoning, and subdivision control authority.

Part 2. Building Code Jurisdiction.

The Monroe County Building Department shall enforce all State building, plumbing, electrical, mechanical, energy conservation, and fire building safety codes, as adopted by City and County ordinances, within the corporate limits of the City, and within all other unincorporated areas of Monroe County, Indiana. The City will administer planning, zoning, and subdivision compliance functions within the City Zoning Jurisdiction Area, including, without limitation, the assignment of street addresses.

- A. The Monroe County Building Department shall accept building permit applications and will provide review, issue permits, receive fees, and provide inspections and enforcement, as required, for all buildings within the County in accordance with County Building Codes.
- B. City zoning compliance review and the issuance of a Certificate of Zoning Compliance ("CZC") by the City are conditions precedent to the issuance of a building permit for any project located within the City Zoning Jurisdiction Area. For projects located within the City Zoning Jurisdiction Area, the County will collect the City Zoning Compliance Review Fee, in the amount established by the City, in addition to the County Building Permit Fee.
- C. The County will not issue a building permit for a project located within the City Zoning Jurisdiction Area unless and until a Certificate of Zoning Compliance has been issued for the project by the City. The County will transcribe the CZC conditions required by the City onto the building permit; and the County will require compliance with the conditions as part of any temporary or permanent Certificate of Occupancy issued for the project by the County.
- D. The City Planning and Transportation Department will send a staff person to the Monroe County Building Department once a work day to pick up and return all permit application materials until such time as the Monroe County Building Department is able to electronically transmit such application materials directly to the City Planning and Transportation Department. Both parties agree to make their best efforts to expedite the processing of permits under this agreement, and specifically, County agrees to insure that permit applications are ready to be picked up by the City Planning and Transportation Department as soon as reasonably possible after receipt by the County, and City agrees to

review and act upon all permit applications as soon as reasonably possible after receipt from the County.

- E. The City will inspect and enforce zoning and subdivision compliance and administer bonds within the City Zoning Jurisdiction Area. The Monroe County Building Department will e-mail the City Planning and Transportation Department a Notice of Certificate of Occupancy Inspection to allow the City and the County inspections to take place simultaneously where reasonably possible. The County and the City will cooperate in providing information requested by the other party in a timely fashion.
- F. The County will not issue any construction, remodel, demolition, moving, or any other type of permit that might change the disposition of a structure to a residential rental within the corporate limits of the City until the City Code Enforcement Division ("HAND") has completed plan review and released the application. The County will schedule all final inspections of those permits with HAND where reasonably possible. The County will not issue a Certificate of Occupancy to a residential rental property within the corporate limits of the City unless and until compliance with the City of Bloomington Property Maintenance Code has been determined by HAND.
- G. For projects located within the corporate limits of the City, the County agrees to recognize and enforce Section 17.08.050(c) of the Bloomington Municipal Code which provides for the waiver of fees under specified conditions for eligible affordable housing projects up to the amount of \$2,500.00 per year.
- H. In recognition of the City's investment in the GIS mapping system, the County agrees to collect and verify GIS data for the City in a manner consistent with both the informational needs of the City and the information gathering and processing capabilities of the County. The County shall provide such data as is customarily obtained through building permit administration and planning subdivision approvals. The County will cooperate in enhancing its computer capability and compatibility for information exchange with the City.
- I. The County will notify the appropriate Fire Department for fire code inspections and shall transcribe all notations requested by the Fire Department, with jurisdiction over the project area, on to temporary and permanent Certificates of Occupancy. The County will notify the City Fire Department to coordinate review, response, and comment to the State Fire and Building Safety Commission regarding all applications for variance within the corporate boundaries of the City.
- J. The County shall inspect for compliance with all City of Bloomington Utilities regulations and any City ordinances governing construction/connection of utilities related to permit activity between the building and the connection to City's meter or main.
- K. The County shall issue stop work orders on Building Permits issued by the County where violations of applicable City zoning/subdivision or historic preservation regulations, including erosion control, would result from continued construction activity, or where work is stayed due to an appeal to the Board of Zoning Appeals as provided in Indiana Code §

36-7-4-1001. The County shall issue such stop work order upon written request of the City Planning Director, the Manager of Engineering Services, or the Director of Housing and Neighborhood Development. Enforcement action shall be taken by the governmental entity whose ordinances or conditions of approval have been violated.

Part 3. Recitals of Commitment, Purpose, Duration, and Renewal of Agreement.

- A. The level of cooperation recited in this Agreement is intended to exist in perpetuity for the efficient and effective delivery of governmental services to the citizens of Monroe County. However, the parties recognize that modifications may be required, both to the Agreement itself, and to the practices and procedures that bring the recitals contained within this document to fruition.
- B. The County will collect the City Zoning Compliance Review Fee specified by the City, pursuant to Part 2, Paragraph B of this Agreement, and will transmit the collected fees to the City on a quarterly basis. Payments to the City will be made as promptly as possible after April 1, July 1, October 1, and January 1 of each year of this Agreement, allowing for the County's claim processing procedures. No other payments will be due to the City, from the County, under this Agreement.
- C. The term of this Agreement shall be from January 2, 2020, through January 1, 2021. This Agreement may be renewed by mutual agreement of the parties for an appropriate term of years.
- D. The City and County departments affected by the terms of this Agreement will continue to communicate and cooperate together to assure that the purposes of this Agreement are achieved on behalf of and to the benefit of the citizens of Monroe County, Indiana.

Part 4. Interpretation and Severability.

- A. Because the jurisdictional approach set forth in this Agreement departs from current practice, the parties acknowledge and agree that this Agreement shall be liberally construed so that the parties can cooperatively address unforeseen problems through the implementation of policies, with minimal need for Agreement amendment.
- B. If any provision of this Agreement is declared, by a court of competent jurisdiction, to be invalid, null, void, or unenforceable, the remaining provisions shall not be affected and shall have full force and effect.

Part 5. Approval, Consent and/or Cooperation.

Whenever this Agreement requires the approval, consent and/or cooperation of a party (or parties), said approval, consent and/or cooperation shall not be unreasonably withheld.


Part 6. Appropriation of Funds.

The parties acknowledge and agree that the performance of this Agreement is subject to the appropriation of sufficient funds by their respective councils. The parties agree to make a good faith effort to obtain all necessary appropriations from their councils and to comply with all provisions of this Agreement to the extent feasible under current or future appropriations.

SO AGREED this 18 day of Dec, 2019.


MONROE COUNTY, INDIANA

CITY OF BLOOMINGTON, INDIANA



JULIE THOMAS, President
Monroe County Board of Commissioners

JOHN HAMILTON, Mayor



ERIC SPOONMORE, President
Monroe County Council

DAVE ROLLO, President
Bloomington Common Council

ATTEST:

ATTEST:



CATHERINE SMITH, Auditor

NICOLE BOLDEN City Clerk

RESOLUTION 20-01

TO ESTABLISH STANDING COMMITTEES AND ABOLISH OTHER CERTAIN COMMITTEES OF THE COMMON COUNCIL

- WHEREAS, the City of Bloomington Common Council (“Council”) has an interest in the efficient governance of the City; and
- WHEREAS, predictability and accessibility in the legislative process is desirable for all involved, including city departments, city residents, and the various petitioners that come before the Council; and
- WHEREAS, one way to create greater predictability and accessibility in the legislative process and to provide more opportunities for concerned residents to be heard is by creating a slate of standing committees of Councilmembers, each devoted to a particular subject matter; and
- WHEREAS, a slate of standing committees would allow Councilmembers to better manage their workload and time, to provide predictability in meeting scheduling and duration, to specialize in the topics of greatest concern to them, to respond to changing community priorities, to triage issues before a matter is heard by the full Council; and, per Bloomington Municipal Code (“BMC”) 2.04.230(b), to provide an extended cycle of committee deliberation when warranted; and
- WHEREAS, standing committees, which are simply subsets of the Council, do not supplant the full Council, but do research on behalf of, and make recommendations to, the full Council; and
- WHEREAS, since February 2018, the Council has successfully used the Land Use Committee to make recommendations to the Council on matters certified to the Council by the Plan Commission and to research and take input on other land use matters of community concern; and
- WHEREAS, in 2013, Resolution 13-04 consolidated the previous 24, three-member Council Board and Commission Interviewing and Nominating Committees into three, three-member Interviewing Committees (named Interview Committees “A,” “B,” and “C”), whose purposes are to review and make recommendations to the full Council regarding the appointment of citizens to the City’s boards and commissions; and
- WHEREAS the work of reviewing and making recommendations to the full Council regarding the appointment of members of the public to the City’s boards and commissions would be better suited for the standing committee whose mandate most closely matches that of the particular board or commission; and
- WHEREAS, BMC 2.04.210 provides for the establishment of and governs standing committees “to facilitate the transaction of business,” 2.04.220 governs meetings; 2.04.230 governs reporting requirements; and, 2.04.255 governs the scheduling of such committees;

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

SECTION 1. Establishment. The Council hereby establishes the following committees as standing committees of the Council:

- Administration Committee
- Community Affairs Committee
- Housing Committee
- Public Safety Committee
- Sustainability, Climate Action, & Resilience Committee
- Transportation Committee
- Utilities & Sanitation Committee

SECTION 2. Dissolution of Interview Committees. Each of the Council's three Interviewing Committees, Interview Committees "A," "B," and "C," shall be abolished.

SECTION 3. Composition. Each standing committee listed above in Section 1 shall be composed of four members of the Council.

SECTION 4. Purpose. The purpose of each of the newly-created standing committees, along with the existing Land Use Committee, is to make recommendations to the full Council on matters referred to that committee by the Council, and to research and take input on other matters of community concern within the particular committee's purview, as detailed below. Additionally, the duty of each committee listed below shall be to review and make recommendations to the full Council regarding the appointment of citizens to the City's boards and commissions, as detailed herein.

- (a) The Administration Committee shall be responsible for making recommendations to the Council on matters referred to that committee by the Council, and to research and take input on other city administrative matters of community concern. The Administration Committee shall also be responsible for oversight of the following boards, commissions, and city departments:

City Departments/Divisions

- Office of the Controller
- Human Resources
- Information Technology Services
- Legal/Risk Management
- Facilities Division of Public Works Department
- Fleet Division of Public Works Department

Boards and Commissions

- Bloomington Digital Underground Advisory Committee
- Board of Public Works

The Administration Committee shall also be responsible for making appointment recommendations to the Council for the following boards and commissions:

- Bloomington Digital Underground Advisory Committee

- (b) The Community Affairs Committee shall be responsible for making recommendations to the Council on matters referred to that committee by the Council, and to research and take input on other community affairs and matters that do not otherwise fall within the purview of another standing committee. The Community Affairs Committee shall also be responsible for oversight of the following boards, commissions, and city departments:

City Departments/Divisions

- Community & Family Resources

Boards and Commissions

- Commission on Aging
- Commission on Hispanic and Latino Affairs
- Commission on the Status of Children and Youth
- Commission on the Status of Women
- Commission on the Status of Black Males
- Martin Luther King, Jr. Birthday Commission
- Human Rights Commission
- Farmers' Market Advisory Council

The Community Affairs Committee shall also be responsible for making appointment recommendations to the Council for the following boards and commissions:

- Commission on Aging
- Commission on Hispanic and Latino Affairs
- Commission on the Status of Children and Youth
- Commission on the Status of Women
- Commission on the Status of Black Males
- Martin Luther King, Jr. Birthday Commission
- Human Rights Commission

- (c) The Housing Committee shall be responsible for making recommendations to the Council on matters referred to that committee by the Council, and to research and take input on other housing issues of community concern. The Housing Committee shall also be responsible for oversight of the following boards, commissions, and city departments:

City Departments/Divisions

- Housing and Neighborhood Development

Boards and Commissions

- Historic Preservation Commission
- Housing Quality Appeals Board
- Housing Authority Board

The Housing Committee shall also be responsible for making appointment recommendations to the Council for the following boards and commissions:

- Historic Preservation Commission
- Housing Quality Appeals Board

- (d) Consistent with Resolution 18-02, the Land Use Committee shall continue to be responsible for making recommendations to the Council on matters certified to the Council by the Plan Commission, and to research and take input on other land use matters of community concern. The Land Use Committee shall also be responsible for oversight of the following boards, commissions, and city departments:

City Departments/Divisions

- Parks and Recreation
- Planning and Transportation: planning matters

Boards and Commissions

- Board of Zoning Appeals
- Plan Commission
- Plat Committee
- Tree Commission
- Board of Park Commissioners

The Land Use Committee shall also be responsible for making appointment recommendations to the Council for the following boards and commissions:

- Board of Zoning Appeals
- Tree Commission

- (e) The Public Safety Committee shall be responsible for making recommendations to the Council on matters referred to that committee by the Council, and to research and take input on other public safety matters of community concern. The Public Safety Committee shall also be responsible for oversight of the following boards, commissions, and city departments:

City Departments

- Animal Control Division of Public Works Department
- Fire
- Police

Boards and Commissions

- Animal Control Commission
- Dispatch Policy Board
- Board of Public Safety

The Public Safety Committee shall also be responsible for making appointment recommendations to the Council for the following boards and commissions:

- Animal Control Commission

- (f) The Sustainability, Climate Action & Resilience Committee shall be responsible for making recommendations to the Council on matters referred to that committee by the Council, and to research and take input on other sustainability, climate, or resilience matters of community concern. The Sustainability, Climate Action & Resilience Committee shall also be responsible for oversight of the following boards, commissions, and city departments:

City Departments

Economic and Sustainable Development

Boards and Commissions

- Bloomington Urban Enterprise Association
- Redevelopment Commission
- Environmental Commission
- Bloomington Arts Commission
- Bloomington Commission on Sustainability
- Economic Development Commission
- Bloomington Industrial Development Advisory Commission

The Sustainability, Climate Action & Resilience Committee shall be responsible for making appointment recommendations to the Council for the following boards and commissions:

- Bloomington Urban Enterprise Association
- Redevelopment Commission
- Environmental Commission
- Bloomington Arts Commission
- Bloomington Commission on Sustainability

- (g) The Transportation Committee shall be responsible for making recommendations to the Council on matters referred to that committee by the Council, and to research and take input on other transportation matters of community concern. The Transportation Committee shall also be responsible for oversight of the following boards, commissions, and city departments:

City Departments/Divisions

- Planning and Transportation: transportation matters
- Streets Division of Public Works Department

Boards and Commissions

- Public Transportation Corporation Board of Directors (Transit)
- Bicycle and Pedestrian Safety Commission
- Traffic Commission
- Parking Commission
- Metropolitan Planning Organization Citizens Advisory Committee
- Metropolitan Planning Organization Policy Committee
- Metropolitan Technical Advisory Committee

The Transportation Committee shall be responsible for making appointment recommendations to the Council for the following boards and commissions:

- Public Transportation Corporation Board of Directors
- Bicycle and Pedestrian Safety Commission
- Traffic Commission
- Parking Commission

- (h) The Utilities & Sanitation Committee shall be responsible for making recommendations to the Council on matters referred to that committee by the Council, and to research and take input on other utilities or sanitation matters of community concern. The Utilities & Sanitation Committee shall also be responsible for oversight of the following boards, commissions, and city departments:

City Departments/Divisions

Sanitation Division of Public Works Department
Utilities

Boards and Commissions

- Utilities Service Board

The Utilities & Sanitation Committee shall be responsible for making appointment recommendations to the Council for the following boards and commissions:

- Utilities Service Board

SECTION 5. Motion to Refer to Standing Committee. Following the first reading of an ordinance, the Council shall, pursuant to BMC 2.04.255, entertain a motion to refer the legislation to the standing committee best suited to consider the matter. Once such a motion has been entertained, the Council may, if no other referral was made, entertain a motion for referral to the committee of the whole. Resolutions may be referred to the standing committee best suited to consider the matter by decision of the Council President in consultation with the Vice President and the various committee chairs.

SECTION 6. Severability. If any section, sentence or provision of this resolution, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions or applications of this resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this _____ day of _____, 2020.

, 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 _____ day of _____, 2020.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2020.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This resolution is sponsored by Councilmember Volan and proposes the creation of various Council standing committees, along with the dissolution of Council Interviewing Committees.

2020 Council

Organizational Plan

- **Establish a Full Slate of Standing Committees**
- **Implement Time Limits in All Meetings**
- **Three Proposals for Slates of Committees**

1. Create a Full Slate of Standing Committees

The first piece of legislation in 2020, on Organization Day (Jan. 8), should be a resolution to create several permanent, or “standing”, committees of four members each, to break down the workload and allow each CM to specialize in the topics of greatest concern to them.

A committee’s objective: triage

In most Indiana cities, a committee cannot kill legislation. The objective of a subset of members studying an ordinance is to triage: what are minor issues that can be dealt with easily, what are major issues (if any) that should be left for the whole Council to decide, and what issues can the committee handle on behalf of the whole Council? This is theoretically what the Committee of the Whole (CoW) does, but there are so many cases of ordinances where not every member of Council needed to hear it twice, or to weigh in on it twice. (Often members weigh in during CoW and say nothing at regular session, where minutes are kept.)

Why committees of four?

Four members is an advantageous number: five would be a majority of council, which might make people think that “the decision has been made” if they reach unanimity on a piece of legislation. Three members, on the other hand, would create a potential quorum problem whenever any two members run into each other. (Note: there is a “chance meeting” statute that protects against unintentional encounters between members be.)

A 4-member standing committee also underscores its advisory nature. It takes at least 3 members to give a positive or negative recommendation, as the table below demonstrates.

<u>Y-N-A</u>	<u>Y-N-A</u>	<u>Y-N-A</u>	<u>Recommendation</u>
4-0-0	3-0-1	3-1-0	Approval
2-0-2	2-1-1	1-0-3	(Lean Approval)
2-2-0	1-1-2	0-0-4	Neutral
1-2-1	0-1-3	0-2-2	(Lean Disapproval)
1- 3-0	0- 3-1	0- 4-0	Disapproval

The slate of committees should reflect Council’s workload

Together, the total set of committees would broadly cover every typical issue that might come before Council. Council should eschew Committee of the Whole except at budget time. Individual committees can be changed, renamed, or merged from year to year as issues change.

Committees should reflect Council’s priorities, too

Committees do not have to strictly track the departments of the administration. The administration governs as it sees fit, as does Council. Council may thus prefer to put more emphasis on, say, sustainability than the administration does, or spread the divisions of Public Works across several committees. Some departments, like Parks, have very little legislation that comes before Council; others, like HAND, put many items on the agenda.

Replacing nominating committees

Council has previously divided into three teams to handle the nominations it must make to almost 40 boards and commissions. The CMs on each team, and the portfolio of commissions each team receives, were chosen randomly several years ago. There was no thought given to the expertise or knowledge of the members making such decisions.

Each board or commission should instead be assigned to the standing committee whose mandate most closely matches. The members of a Housing committee would be much more familiar with the HAND department than three random CMs who don't think about the Board of Zoning Appeals more than once or twice a year.

A mechanism for oversight

Council is a co-equal branch of Indiana city government with the Mayor. As such, it has authority to oversee all operations of the executive branch (see below; emphasis mine). Two-thirds of Council can impeach a city employee!

2.04.200 - Investigatory powers
—Removal of officers.

Most Common Categories of Committees among Indiana's 2nd-Class City Councils	
Finance/Budget	18
Public Safety	16
Land Use	15
Public Works	15
Parks & Rec	10
Health	9
Rules	8
Utilities	7
Economic Development	4
Personnel	4
Transportation	4
Administration	3
Education	3
Human Resources	3
Community Affairs	3
Ordinance	3
Animal Shelter	2
Arts & Culture	2
[Tax] Abatements	2
Ethics	2
License	2
Waters & Harbors	2
Investigation	2
Social Services Fund	2

The council shall have the power to supervise and investigate all departments, officers, and employees of the government of the city and to remove any officer or employee against whom charges are sustained. Investigations shall be conducted in accordance with the rules and procedures set forth in state law. A vote of two-thirds of the members of the council shall be required to impeach or remove an officer or employee.

(Ord. 79-97 § 2 (part) 1979).

The standing committee is the vehicle for asserting that "power to supervise." If there is a Safety committee, for example, the chair of that committee is duly appointed to be Council's primary point person on fire, police, and animal control.

When Council creates a committee permanently, the members of the committee may independently solicit information from a department, because they have been authorized to do so by Council. The committee may hold fact-finding hearings on emergent topics which are not the subject of legislation referred to it. (The CoW, in contrast, is a temporary mechanism. It only hears legislation referred to it, and dissolves each time it concludes a meeting. It is by definition not "standing.")

Standing committees

manage time better

According to city code, hearings of standing committees that have had legislation referred to them must be scheduled serially on second and fourth Wednesdays so that all members may attend any hearing. They can begin no earlier than 5:30 and no later than 9:45 pm. This means that, unlike Committee of the Whole, committee chairs must manage the time of the hearing. People cannot speak as long as they want, for another committee is soon to follow. So Wednesday night committee hearings must have hard start and stop times. This makes it much more predictable when an issue will be heard, and easier to attend without having to sit through the entire evening's agenda of the CoW.

2. Implement Time Limits in All Meetings

Council is notorious for its very long meetings. While Council limits how long each member of the public may speak, it rarely limits the total period of public comment on an item of legislation. It also has no requirement for limits on the number of opportunities CMs have to ask questions on an item, on the question or comment periods, or a CM's speech.

Referral to committees may help somewhat to reduce time spent on legislation, because BMC 2.04.255 requires that standing committee hearings be limited so that they can be scheduled serially on even-numbered Wednesday nights,. Over the past two years, the Land Use Committee has successfully shown that meeting times can be limited to two hours or less on even the most complex

Planned Unit Development. (Serial scheduling of committees also makes those hearings much more predictable: one need not sit through two or three other issues, but can come at a set time to address a specific issue while in committee.)

But the solution must be across the board: everyone's time to speak must be limited – public, petitioners, city staff and CMs alike.

It will mean regularly moving to suspend the rule in BMC 2.04.120, for question periods can run very long however legitimate the questions. (They run long most often when a CM tries to persuade before the debate period through "quomment", a poorly-disguised comment during question period. Because debate is limited, this technique allows a CM to get extra time to persuade, rather than allow members to fully understand the issue at hand. It is a behavior that must be gaveled more robustly in the future.) The following are the only parts of city code that specify time limits.

2.04.120 - Limits on debate. No member shall speak more than once upon a question until every other member has had the opportunity to speak. The council may, before debate begins, decide by a two-thirds vote of all members to set time limits on debate upon a particular pending question, but time spent in answering questions shall not be counted against the speaker. (Ord. 79-97 § 2 (part), 1979).

2.04.250 - Committee of the Whole. (c)(2) - No limit shall be placed on frequency of speaking, but no member may speak for longer than five minutes at a time;

While some of the following solutions should be permanently implemented through ordinance, they can be implemented ad hoc with a two-thirds majority.

A. Limit presentation periods

The default amount of time for a presentation to be made to Council by city staff or a petitioner should be 20 minutes for an ordinance or resolution. An amendment to legislation should have a default of 10 minutes. (During the 2019 UDO hearings, staff were given 5 minutes to reply to the presentation of an amendment, which they rarely needed.) More can be had with permission, but the default should no longer simply be “as much time as one wants.”

B. Limit question/debate periods

Question periods before and after public comment on the item, and the debate period before a vote, should all be limited by default to no more than 30 minutes. (During the UDO, 20 minutes proved to be enough for most members to have their questions on amendments answered satisfactorily.)

C. Limit public comment

During consideration of the food truck ordinance in 2014, one member of the public spoke for 21 minutes, followed by another who spoke for 10. Each of these gentlemen had about 5 minutes of ideas. Because there was no rule at the time limiting public comment, Council heard more than 20 minutes of repetitive argument. 5 minutes is the default maximum that members of the public should have to speak to an issue – a number that Council has been, and should continue to be, very willing to reduce when an issue is popular. 30 minutes should be the default for public comment on an item (20 on an amendment).

D. Limit CM time to question

Within a question period, members should have no more than two opportunities of three minutes each to ask questions. This, however, requires that CMs be vigilant, because the answer from staff or petitioner counts against that time. A member may “reclaim their time” from a respondent who is dithering, or who may be intentionally wasting the CM’s time.

E. Limit CM time to persuade

The final period of an item of legislation has typically been called “comment from CMs.” But this is when CMs should be able to seek to persuade the other members, and thus must have an opportunity to rebut each other. The period should be called “debate,” and each CM should have two opportunities to speak by default. (The first sentence of BMC 2.04.120 reads “No member shall speak more than once upon a question until every other member has had the opportunity to speak.” This means the Chair should not wait for others to make a 2nd-round comment before he or she speaks first; CMs should be able to rebut everyone.)

In debate, no member should have more than two five-minute periods as a matter of course. Council may find three minutes per statement as more preferable.

F. Install timing equipment

The dais has cutouts from long ago when CRT devices were installed for CMs to see presentations. A tablet running a simple timing app can be installed between parliamentarian and president for the time to be managed. In addition, a screen on the wall and a tablet on the public podium should also be installed to project the timer to the public and the speaker, respectively – and respectfully. # # #

SLATES OF STANDING COMMITTEES: PROPOSAL A

ADMINISTRATION

Departments (4+2 divs.): Controller, Human Resources, Information Technology Services (ITS), Legal/Risk Mgmt., Public Works: Facilities, Fleet

Commissions (2): Digital Underground Advisory C, Public Works B

COMMUNITY AFFAIRS

Departments (2): Community & Family Resources (CFRD), Parks & Recreation

Commissions (12): Aging C, Hispanic & Latino Affairs, Human Rights C, CDBG Funding Citizens Adv C, Farmers' Market Adv C, Jack Hopkins Social Services Funding C, MLK Birthday Celebration C, Park C, Status of Black Males C, Status of Children & Youth C, Status of Women C, Tree C

HOUSING

Departments: Housing & Neighborhood Development (HAND)

Commissions (4): Historic Pres. C, Housing Authority B, Housing Quality Appeals B, Sidewalk C

LAND USE

Departments (1 div.): P&T: Planning

Commissions (3): Plan C, Plat C, Bd Zoning Appeals

PUBLIC SAFETY

Departments (2+1 div.): Public Works: Animal Control, Fire, Police

Commissions (4): Animal Control C, Dispatch Policy B, Public Safety B, Public Safety Local Inc. Tax Cmte of MC LIT

SUSTAINABILITY, CLIMATE ACTION, & RESILIENCE

Departments: Economic & Sustainable Development (E&SD)

Commissions (7): Arts C, Economic Development C, Environmental C, Industrial Development Advisory C, Redevelopment C, Urban Enterprise Association, Sustainability C

TRANSPORTATION

Departments (1+2 divs.): Bloomington Transit, Planning & Transportation: Transportation; Public Works: Streets

Commissions (7): Bicycle.& Pedestrian Safety C, MPO Citizens Adv Cmte, MPO Policy, MPO Technical Adv Cmte, Parking C, Traffic C, Transit Corp

UTILITIES & SANITATION

Departments (1+1 div.): Public Works: Sanitation, Utilities

Commissions: Utilities Svc B

SLATES OF STANDING COMMITTEES: PROPOSAL B

ADMINISTRATION

Departments (4+2 divs.): Controller, Human Resources, Information Technology Services (ITS), Legal/Risk Mgmt., Public Works: Facilities, Fleet

Commissions (3): Digital Underground Advisory C, Bd of Public Works, **Human Rights C**

COMMUNITY AFFAIRS

Departments: Community & Family Resources

Commissions (10): Aging C, Hispanic & Latino Affairs, CDBG Funding Citizens Adv C, Farmers' Market Adv C, Jack Hopkins Social Services Funding C, MLK Birthday Celebration C, Cs on Status of Black Males, Status of Children & Youth, Status of Women

ENVIRONMENT, PARKS & ARTS

Departments (1+1): Parks & Rec: E&SD: Arts

Commissions (4): Arts C, Environmental C, Parks C, Tree C

HOUSING

Departments: Housing & Neighborhood Dev

Commissions (4): Historic Pres. C, Housing Authority B, Housing Quality Appeals B, Sidewalk C

LAND USE

Departments (1 div.): P&T: Planning

Commissions (3): Plan C, Plat C, BZA

PUBLIC SAFETY

Departments (2+1 div.): Public Works: Animal Control, Fire, Police

Commissions (4): Animal Control C, Dispatch Policy B, Public Safety B, Public Safety Local Inc. Tax Cmte of MC LIT

SUSTAINABILITY, CLIMATE ACTION, & RESILIENCE

Departments: Economic & Sustainable Dev

Commissions (6): Economic Dev C, Industrial Dev Adv C, Redevelopment C, Urban Enterprise Association, Sustainability C

TRANSPORTATION

Departments (1+2 divs.): Bloomington Transit, Planning & Transportation: Transportation; Public Works: Streets

Commissions (7): Bicycle.& Pedestrian Safety C, MPO Citizens Adv Cmte, MPO Policy, MPO Technical Adv Cmte, Parking C, Traffic C, Transit Corp

UTILITIES & SANITATION

Departments (1+1 div.): Public Works: Sanitation, Utilities

Commissions: Utilities Svc B

SLATES OF STANDING COMMITTEES: PROPOSAL C

ADMINISTRATION

Departments (4+2 divs.): Controller, Human Resources, Information Technology Services (ITS), Legal/Risk Mgmt., Public Works: Facilities, Fleet

Commissions (2): Digital Underground Advisory C, Public Works B

COMMUNITY AFFAIRS

Departments (2): Community & Family Resources (CFRD), Parks & Recreation

Commissions (10): Aging C, Hispanic & Latino Affairs, Human Rights C, Farmers' Market Adv C, MLK Birthday Celebration C, Parks C, Status of Black Males C, Status of Children & Youth C, Status of Women C, Tree C

HOUSING

Departments: Housing & Neighborhood Development (HAND)

Commissions (4): Historic Pres. C, Housing Authority B, Housing Quality Appeals B, Sidewalk C

LAND USE

Departments (1 div.): P&T: Planning

Commissions (3): Plan C, Plat C, Zoning Appeals B

PUBLIC SAFETY

Departments (2+1 div.): Public Works: Animal Control, Fire, Police

Commissions (4): Animal Control C, Dispatch Policy B, Public Safety B, Public Safety Local Inc. Tax Cmte of MC LIT

SOCIAL SERVICES

Jack Hopkins Social Services Funding C, CDBG Funding Citizens Adv C

SUSTAINABILITY, CLIMATE ACTION, & RESILIENCE

Departments: Economic & Sustainable Development (E&SD)

Commissions (7): Arts C, Economic Development C, Environmental C, Industrial Development Advisory C, Redevelopment C, Urban Enterprise Association, Sustainability C

TRANSPORTATION

Departments (1+2 divs.): Bloomington Transit, Planning & Transportation: Transportation; Public Works: Streets

Commissions (7): Bicycle.& Pedestrian Safety C, MPO Citizens Adv Cmte, MPO Policy, MPO Technical Adv Cmte, Parking C, Traffic C, Transit Corp

UTILITIES & SANITATION

Departments (1+1 div.): Public Works: Sanitation, Utilities

Commissions: Utilities Svc B

For Context: BMC provisions on Council Standing Committees and Committee of the Whole

2.04.200 - Investigatory powers — Removal of officers.

The council shall have the power to supervise and investigate all departments, officers, and employees of the government of the city and to remove any officer or employee against whom charges are sustained. Investigations shall be conducted in accordance with the rules and procedures set forth in state law. A vote of two-thirds of the members of the council shall be required to impeach or remove an officer or employee.

2.04.210 - Standing committees—Establishment.

To facilitate the transaction of business, the council may by resolution establish standing committees and define the duties and responsibilities of each committee. If such committees are established, the presiding officer shall appoint at least three council members to each committee, observing the preference of each member as closely as possible, and shall appoint a chairperson for each committee. Legislation and questions before the council may be referred for investigation and report to the standing committees and the committees may investigate other areas within their jurisdiction. All council members may attend the meetings of any standing committee, but only those members who have been appointed to the committee shall be permitted to vote on questions before the committee. The council may create or abolish standing committees by adoption of subsequent resolutions.

2.04.220 - Standing committees—Meetings.

A committee shall meet on call of its chairperson or any two of its members. Notice shall be communicated by the city clerk, who shall keep a record of such notices. A majority of the membership of a committee shall constitute a quorum, which shall be necessary to conduct the business of the committee. The chairperson may act as secretary of the committee or the committee may appoint a secretary, who shall keep a memorandum of the proceedings and the recommendations made at the committee meeting. In committee meetings the rules of debate shall be relaxed in order to encourage discussion but general procedural decorum shall prevail.

2.04.230 - Standing committees—Reports.

- (a) The reports of standing committees shall be in writing and signed by a majority of the committee. Documents referred to the committee shall be returned with the report.
- (b) Matters or questions referred to standing committees shall normally be reported back to the council not later than the second regular session after being referred to the committee, but the council may extend the time for reporting. When a committee to which a matter or question has been referred with instructions to report at a specific time is not ready to report at that time, the matter referred shall, unless further time is granted, be considered as though reported back without recommendation.
- (c) The council may agree by majority vote to discharge any committee from further consideration of any matter referred to it. The matter referred shall be brought back before the council and take its proper place in the order of business.
- (d) When an ordinance or resolution is reported back from a committee with recommendations, the recommendation of the committee shall have no force unless adopted by the council at a properly convened session.
- (e) Any member of a committee may file a minority report and may move that the minority report be substituted for the recommendations of the majority.

2.04.250 - Committee of the whole.

(a) With the exceptions noted in this section, the council may resolve itself into a committee of the whole to consider ordinances, resolutions, or other matters with the freedom of committee procedures. The council may decide by majority vote to cancel any such committee meeting or to meet at an alternative date and time. The council may by majority vote resolve itself into a committee of the whole at any other time and for any other legitimate purpose.

(b) Whenever the council resolves itself into a committee of the whole the presiding officer shall leave the chair. Chair of the committee meetings scheduled for Wednesday evenings and city budget hearings shall rotate by alphabetical order among all councilmembers except the council president and such rotation will be tracked by the city clerk. Should a councilmember be unable to attend a committee meeting the next member on the rotation shall preside and the rotation shall proceed from that point. The council president will designate the chair for any unscheduled committee meetings.

(c) When the council resolves itself into the committee of the whole, the rules of the council shall govern except that:

- (1) The committee of the whole may consider only matters and questions referred to it, and the only motions in order shall be to amend or adopt, or that the committee rise and report;
- (2) No limit shall be placed on frequency of speaking, but no member may speak for longer than five minutes at a time;
- (3) Interested citizens may be heard on the question under consideration if they address the chair and ask permission to speak;
- (4) The previous question may not be moved;
- (5) The clerk shall keep a memorandum of proceedings and recommendations in a manner consistent with Indiana Code § 5-14-1.5-4.

(d) When the committee of the whole rises, the presiding officer of the council shall resume the chair, and the chairperson of the committee shall report its recommendations to the council. The question shall then be on agreeing the recommendations of the committee and adopting the action or measures recommended.

2.04.255 - Committees—Scheduling.

(a) Meetings of standing committees or the committee of the whole convened to consider legislation referred by the council shall meet on the second or fourth Wednesday of the month. Motions for referral to a standing committee shall be entertained before a motion for referral to the committee of the whole and shall include the approximate time at which the committee will convene.

- (1) If more than one standing committee has had legislation referred to it during the same period of time, the committees shall not be scheduled at the same time, so that any council members may attend any meeting.
- (2) Such standing committee meetings shall not begin before 5:30 p.m. or after 9:45 p.m.
- (3) Such meetings of the committee of the whole shall convene at 6:30 p.m. local time.

(b) A council committee shall not meet on legal holidays as enumerated in Indiana Code § 1-1-9-1 during the month of August, on the Wednesday evening immediately before Thanksgiving Day, or on or between the fourth Wednesday in December and New Year's Eve.

ORDINANCE 20-01

TO AMEND THE CITY OF BLOOMINGTON ZONING MAPS BY REZONING A 3.2 ACRE PROPERTY FROM COMMERCIAL LIMITED (CL) TO A PLANNED UNIT DEVELOPMENT (PUD) AND TO APPROVE A DISTRICT ORDINANCE AND PRELIMINARY PLAN.

**- Re: 105 S. Pete Ellis Drive
(Curry Urban Properties, Petitioner)**

WHEREAS, Ordinance 06-24, which repealed and replaced Title 20 of the Bloomington Municipal Code entitled, "Zoning", including the incorporated zoning maps, and incorporated Title 19 of the Bloomington Municipal Code, entitled "Subdivisions", went into effect on February 12, 2007; and

WHEREAS, the Plan Commission has considered this case, PUD-34-19, and recommended that the petitioner, Curry Urban Properties, be granted an approval to rezone 3.2 acres from Commercial Limited (CL) to a Planned Unit Development (PUD) and to approve a preliminary plan and district ordinance; and

WHEREAS, the Plan Commission therefore requests that the Common Council consider this petition;

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

SECTION 1. Through the authority of IC 36-7-4 and pursuant to Chapter 20.04 of the Bloomington Municipal Code, the zoning of the property located at 105 N. Pete Ellis Drive shall be changed from Commercial Limited (CL) to Planned Unit Development (PUD). The property is further described as follows:

A part of the Southwest Quarter of Section Thirty five (35), Township nine (9) North, Range one (1) West, in Monroe County, Indiana, more particularly described as follows: Lot 8 in the Deckard East Third Street Subdivision as shown on the final plat thereof, recorded in Plat Cabinet C, Envelope 334 in the Office of the Recorder of Monroe County, Indiana. AND ALSO EXCEPTING that part platted as Arlington Park, Phase 1 as per plat thereof, recorded in Plat Cabinet C Envelope 196, in the Office of the Recorder of Monroe County, Indiana.

SECTION 2. This District Ordinance and the Preliminary Plan shall be approved as attached hereto and made a part thereof.

SECTION 3. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 4. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2020.

, 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 _____ day of _____, 2020.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2020.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

Ordinance 20-01 would rezone a 3.2 acre property from Commercial Limited (CL) to a Planned Unit Development (PUD) and approve a PUD District Ordinance and preliminary plan to allow the construction of a mixed-use building.

****ORDINANCE CERTIFICATION****

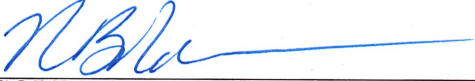
In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 20-01 is a true and complete copy of Plan Commission Case Number PUD-34-19 which was given a positive recommendation by a vote of 6 Ayes, 0 Nays, and 0 Abstentions by the Bloomington City Plan Commission at a public hearing held on November 4, 2019

Date: November 14, 2019



TERRI PORTER, Secretary
Plan Commission

Received by the Common Council Office this 14th day of November, 2019.



NICOLE BOLDEN, City Clerk

Appropriation Ordinance # _____	Fiscal Impact Statement Ordinance # _____	Resolution # _____
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Type of Legislation:

Appropriation	End of Program	Penal Ordinance
Budget Transfer	New Program	Grant Approval
Salary Change	Bonding	Administrative Change
Zoning Change	Investments	Short-Term Borrowing
New Fees	Annexation	Other

If the legislation directly affects City funds, the following must be completed by the City Controller:

Cause of Request:

Planned Expenditure _____	Emergency _____
Unforeseen Need _____	Other _____

Funds Affected by Request:

Fund(s) Affected	_____	_____
Fund Balance as of January 1	\$ _____	\$ _____
Revenue to Date	\$ _____	\$ _____
Revenue Expected for Rest of year	\$ _____	\$ _____
Appropriations to Date	\$ _____	\$ _____
Unappropriated Balance	\$ _____	\$ _____
Effect of Proposed Legislation (+/-)	\$ _____	\$ _____
Projected Balance	\$ _____	\$ _____

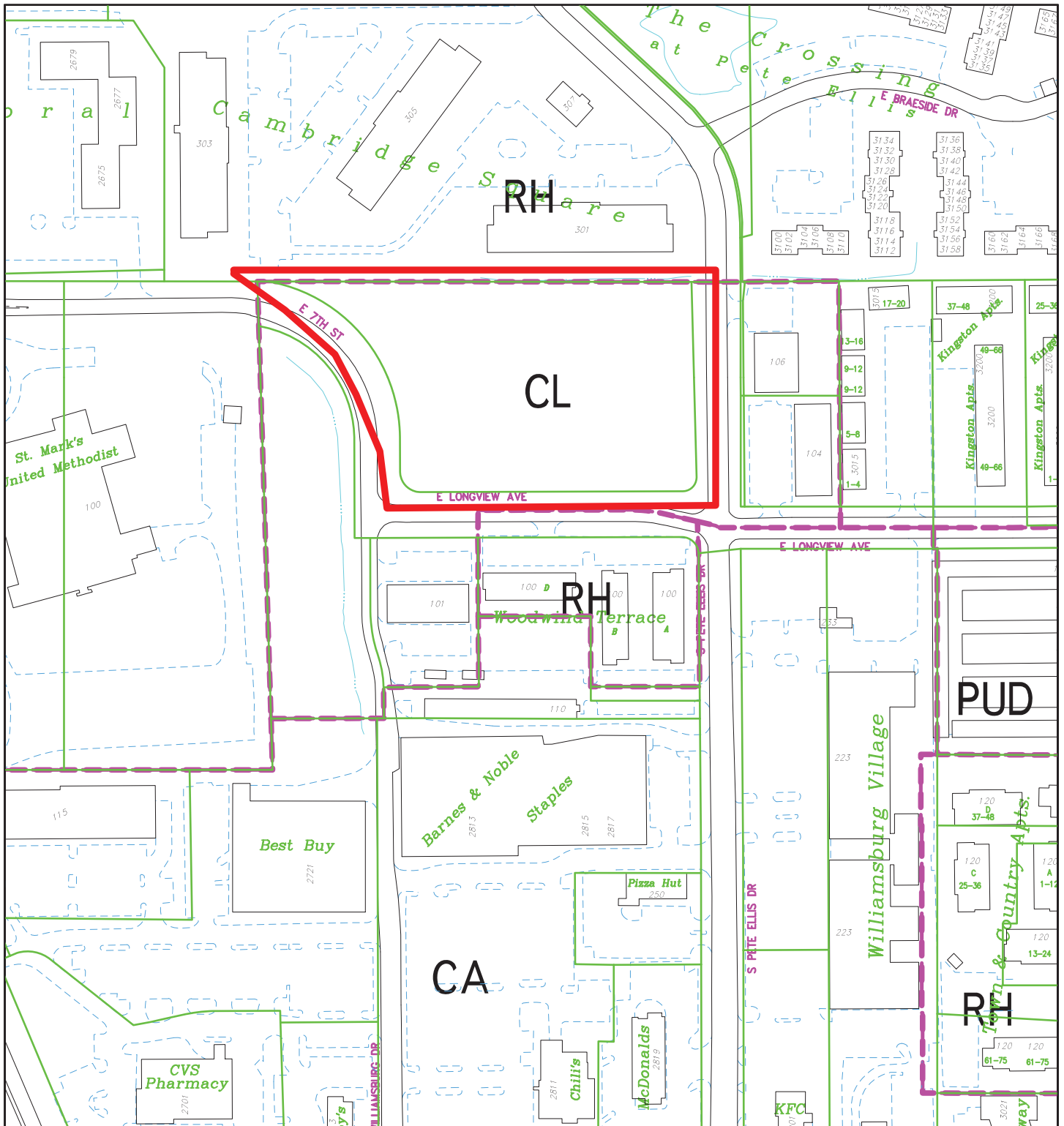
Signature of Controller

Will the legislation have a major impact on existing City appropriations, fiscal liability or revenues?

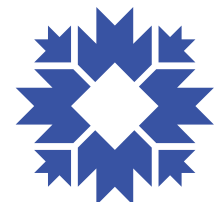
Yes _____ No _____

If the legislation will not have a major fiscal impact, explain briefly the reason for your conclusion.

If the legislation will have a major fiscal impact, explain briefly what the effect on City costs and revenues will be and include factors which could lead to significant additional expenditures in the future. Be as specific as possible. (Continue on second sheet if necessary.)



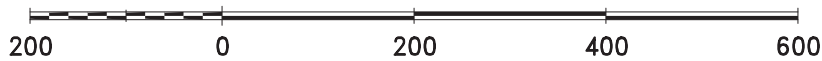
City of Bloomington
 Planning & Transportation



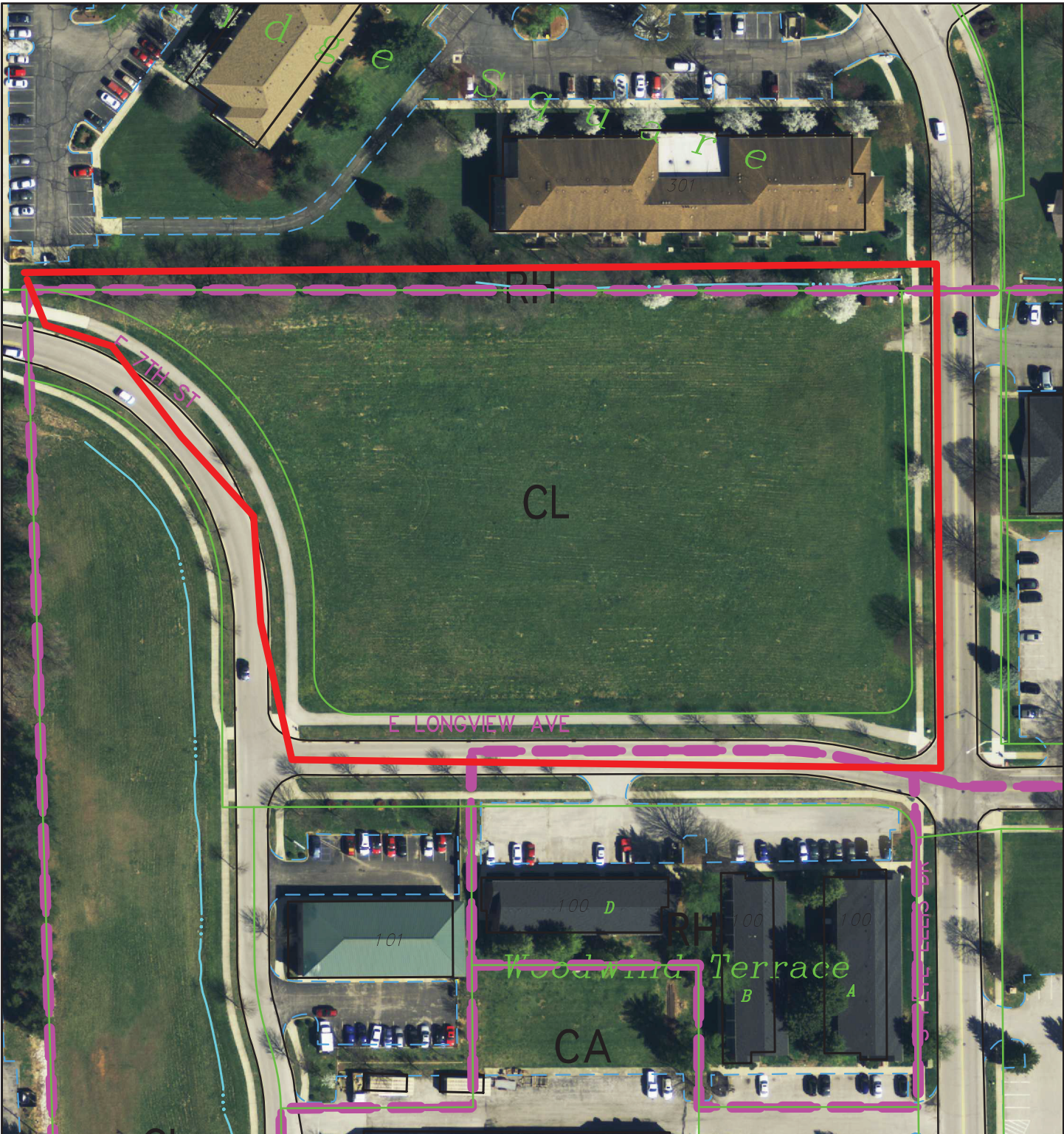
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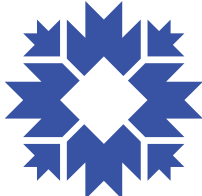
By: scanlanj
 21 Sep 18



For reference only; map information NOT warranted.



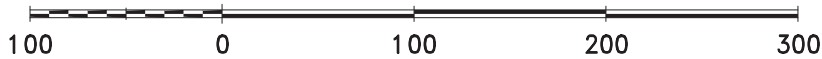
City of Bloomington
 Planning & Transportation



Scale: 1" = 100'



By: scanlanj
 21 Sep 18



For reference only; map information NOT warranted.

Interdepartmental Memo

To: Members of the Common Council
From: Jacqueline Scanlan, AICP, Development Services Manager
Subject: PUD-34-19
Date: November 14, 2019

Attached are the staff report, maps, petitioner's statement, and exhibits which pertain to Plan Commission case PUD-34-19. The Plan Commission heard this petition at the November 4, 2019 hearing and voted 6-0 to send this petition to the Common Council with a positive recommendation.

The Plan Commission report for that hearing is included below.

BACKGROUND:

Area: 3.2 acres
Current Zoning: Commercial Limited
GPP Designation: Regional Activity Center / edge of Focus Area
Existing Land Use: Undeveloped
Proposed Land Use: Dwelling, Multi-Family / Commercial / Business/Professional Office
Surrounding Uses: North – Dwelling, Multi-Family
West – Vacant / Place of Worship
East – Commercial
South – Dwelling, Multi-Family

REPORT: The property is located at the northwest corner of E. Longview Avenue and S. Pete Ellis Drive and is zoned Commercial Limited (CL). The 3.2 acre property is currently undeveloped. Surrounding zoning includes Residential High Density Multifamily (RH) to the north, Residential High Density Multifamily (RH) and Commercial Limited (CL) to the south, and Commercial Limited (CL) to the east and west. The surrounding properties have been developed with a mix of high density multi-family residences and commercial tenant spaces with the St. Mark United Methodist Church just to the west of the site. This property has frontage on 3 public streets- E. 7th Street to the west, E. Longview Drive to the south, and S. Pete Ellis Drive to the east. There are no environmental constraints on this property.

The petitioner proposes to create a Planned Unit Development in order to construct a 4-story, mixed-use building. The proposal includes an expected 19,000 square feet of commercial space, apartments on the upper floor and a portion of the ground floor, and a parking garage. The commercial use is expected to be medical office related to the new hospital campus. The multifamily portion of the proposal includes a mix of studio units, one-bedroom units, and two-bedroom units for a total of 264 units. Roughly 30% of the units are expected to be two-bedroom units, resulting in 344 total bedrooms. The overall density is proposed at a maximum of 30 units/acre, with 29 units/acre in the current design. The building will also contain a structured parking garage accessed from Longview Drive with 306 parking spaces, with 102 spaces per floor. The structured parking will be for the office portion of the building, as well as for the residential tenants. The petitioner also proposes improving up to 15 spaces of on-street parking on Pete Ellis Drive.

PREVIOUS PETITION: This is similar to a petition that was submitted for this site last year with some changes to address concerns about excessive bulk and lack of green design, as well as the addition of workforce housing on site. The southwest corner, which was the tallest location on site, was amended to remove a unit from that corner, so that it would be setback and visually read as a more appropriate size. Additionally, a module immediately east of that change along Longview was pushed back to create more outside green space. The petitioner is also proposing to build to FITWEL standards, which are described in the petitioner's statement, but amount to positively effecting the health of the tenants on the property through design and programming. The petitioner has also come to an agreement with the Housing and Neighborhood Development Department to set aside 15% of the bedrooms on the site for workforce housing, which is much more in-line with other petitions than the previous proposal.

Some Plan Commissioners had concerns about the bulk and the public benefit of the project. The Department recommended denial, and the petition was forwarded to Council with a negative recommendation and was not heard by Council.

COMPREHENSIVE PLAN: This property is designated as *Regional Activity Center* in the southeast corner of the *Regional Academic Health Center Focus Area*. The Comprehensive Plan notes the following about the intent of the *Regional Activity Center* area:

- ...district is a large commercial area that provides high intensity retail activity
- Regional Activity Centers contain higher intensity uses such as national retailers, offices, food services, lodging, and entertainment.
- The district may also incorporate medium- to high-density multifamily residential uses.
- The main purpose of the district is to provide semi-urban activity centers that complement, rather than compete with, the Downtown district.
- The district is expected to change with increasing activity through infill and redevelopment.
- Incorporating multifamily residential within the district is supported.
- Changing the context of the district towards mixed use is a significant change.
- Less intense commercial uses should be developed adjacent to residential areas to buffer the impacts of such development. Multifamily residential and office uses could likewise serve as transitional elements.
- Redevelopment within the district should be encouraged to grow vertically, with the possibility of two- or three-story buildings to accommodate denser office development, residential multifamily, structures parking, and improved multimodal connectivity.

The Comprehensive Plan notes the following about the *Regional Academic Health Center Focus Area*:

- The relocation of the hospital onto the Indiana University campus will allow for the hospital to grow and meet the needs of the region. However, there are many ancillary support services, businesses, and medical offices that also may relocate near the hospital.

The development of this three acre parcel will add mixed use with office and multifamily residential to a portion of the Regional Activity Center that is not on the main commercial thoroughfare. With the inclusion of workforce housing, housing to support the employees of the Regional Academic Center is considered and included. The project will include mixed uses with a building forward design and improvements to the adjacent pedestrian facilities. The proposed

Preliminary Plan is consistent with most of the intent and development guidance of the Comprehensive Plan for this area. The size and massing of the building are larger than the Comprehensive Plan guidance suggests, but the largest corner of the site (the southwest corner) has been setback in order to mitigate some of the size. Additionally, the building has been planned 15 feet from the northern property line, which is in excess of what would be required for the CL zoning district to mitigate effects on the neighboring high-density residential property.

PRELIMINARY PLAN:

Uses/Development Standards: The petitioner is proposing to utilize the Commercial Limited (CL) zoning district for the permitted uses and development standards for this project. The deviations from the CL district include requesting to allow first-floor residential uses and the removal of the maximum square footage limitation that exists in CL for a single tenant, which is currently limited to 5,000 square feet per tenant. Other deviations requested from the CL district include an increase in allowable density, building height, and impervious surface coverage. The project will meet all other development standards for the CL district. Architecture standards are addressed separately in this report.

Residential Density: The maximum residential density allowed in the CL district is 15 units per acre, which is the densest by-right development allowed in the UDO outside of the downtown. The petitioner is proposing a maximum of 30 units per acre for the PUD, with 20 units per acre for the current design. The proposed density is double that of the currently allowed density. The petitioner is proposing 264 units with 344 bedrooms. The Comprehensive Plan calls for medium- to high-density multifamily residential in the *Regional Activity Center* designation.

Height and Bulk: The petitioners are proposing one, four-story building to be articulated to appear as multiple buildings through the use of varying architectural materials, building recesses, and setbacks along the facades. Because of the grade change on the lot, the southwest corner has been pushed back, so that the corner will still appear as 4-stories, though the basement level will be visible. Additionally, the module immediately east of the southwest corner has been recessed to break up the visual weight of that corner and provide more green space adjacent to the public right-of-way. Modulation is also used on all facades to reduce the effect of one large building.

The CL zoning district has a maximum height of 40 feet. The petitioner has submitted heights based on proposed finished grade for the building. The highest point is in the center of the south-facing façade, at 57 feet tall. The petitioner mitigated height concerns along the northern property line by setting the building 15 feet from that line. A review by the Department has found that the proposed massing is adequately mitigated by the proposed modulations and articulations.

Parking, Streetscape, and Access: The property has frontage on 7th Street, Longview Avenue, and Pete Ellis Drive. A possible total of 306 structured parking spaces are proposed in a garage that would be located in the middle portion of the building. If an estimated 19,000 square feet of commercial space is installed and 1 parking space per 250 square feet of commercial space is allocated for the commercial component, 76 of the parking spaces would be used for the office uses. The result is approximately 230 onsite parking spaces for the possible 360 bedrooms. This is a total number of parking spaces equal to 0.64 spaces per bedroom.

The petitioner is also proposing up to 15 parking spaces in the right-of-way on Pete Ellis Drive. There is one vehicular access proposed into the building from Longview Avenue.

There is currently a 5' wide concrete sidewalk along Pete Ellis Drive and 8' wide, multi-use paths along 7th Street and Longview Drive. The petitioner plans to widen the Pete Ellis Drive sidewalk to a minimum of 6' wide, as well as widen the 7th Street and Longview Drive 8' multi-use paths to 12' wide, concrete multi-use paths. A minimum 5' wide tree plot will also be installed along the 7th Street and Longview Street frontages. Along Pete Ellis Dr. the petitioner has proposed to use planter beds and rain gardens, along with varying shrub mixtures instead of a typical tree plot. These will be maintained by the Petitioner. The Department is working with the petitioner on the best design for the Pete Ellis Drive frontage.

Bicycle Parking and Alternative Transportation: The development has 360 proposed bedrooms and 19,000 square feet of commercial/office space. The UDO requires one bicycle parking space for every 6 bedrooms and one bicycle space for each 15 parking spaces for the commercial use. Since the project is larger than 20,000 square feet, all bicycle parking spaces must be covered. They will meet current UDO bicycle parking requirements by providing both bicycle parking spaces along the exterior of the building as well as internal bike storage areas. Bloomington Transit's eastside local 8 bus, as well as an intermittent 3 line bus both pass the property on the eastern side.

Architecture/Materials: Due to the unique design of the building and different elements that are being included, it is difficult to hold the building to the design standards of one specific district. Instead, the proposed renderings and elevations show the amount of modulation, building design elements, and articulation desired to mitigate the effects of such a large building. Substantial modulation has been shown around the building and includes recessing portions of the upper floor in places, and all four-floors in the southwest corner. Materials to be used include brick and block masonry, metal/steel, storefront glass, stone, and fiber-cement siding.

Environmental Considerations: The petition site is a grassed open space and will be almost entirely developed. The petitioner proposes a 66% impervious surface coverage maximum. The CL zoning district has a 50% maximum coverage requirement. The petitioner proposes to include additional plantings; vertical plantings in the garage screening; and to use a series of downspouts and cisterns to capture some of the building stormwater runoff and utilize it to water landscaping and planters, as well as for some of the proposed community garden space. These measures are meant to offset some of the concerns raised related to stormwater runoff created by impervious surfaces.

The development is proposing to be built as a FITWEL building, the first in Bloomington. FITWEL is a building certification program that focuses on positive impacts to residents through design and programming at the site.

Housing Diversity: The petitioner has worked with the Housing and Neighborhood Development Department to formulate a plan to address workforce housing on-site. A letter describing the details is included.

ENVIRONMENTAL COMMISSION RECOMMENDATIONS: The Bloomington Environmental Commission (EC) made 2 recommendations concerning this development, which are listed below:

- 1.) The Petitioner shall revise the Landscape Plan to comply with UDO regulations.

STAFF RESPONSE: This will be required at the PUD Final Plan stage.

- 2.) The petitioner shall describe the LEED-compliant practices planned, as well as provide plans for the green or live wall elements being planned along with a maintenance plan for their future viability.

STAFF RESPONSE: If the Plan Commission approves this project, then the Department would recommend this be incorporated into the review of the PUD final plan.

20.04.080(h) Planned Unit Development Considerations

The UDO outlines that in their consideration of a PUD District Ordinance and Preliminary Plan, the Plan Commission and Common Council shall consider as many of the following as may be relevant to the specific proposal. The following list shall not be construed as providing a prioritization of the items on the list. Each item shall be considered individually as it applies to the specific Planning Unit Development proposal.

- (1) The extent to which the proposed Preliminary Plan meets the requirements, standards, and stated purpose of Chapter 20.04: Planned Unit Development Districts.

Section 20.04.010 of the UDO, states that the purpose of the planned unit development (PUD) is to encourage flexibility in the development of land in order to promote its most appropriate use; to improve the design, character and quality of new developments; to encourage a harmonious and appropriate mixture of uses; to facilitate the adequate and economic provision of streets, utilities, and city services; to preserve the natural, environmental and scenic features of the site; to encourage and provide a mechanism for arranging improvements on sites so as to preserve desirable features; and to mitigate the problems which may be presented by specific site conditions. It is anticipated that planned unit developments will offer one or more of the following advantages:

- (a) Implement the guiding principles and land use policies of the Comprehensive Plan; specifically reflect the policies of the Comprehensive Plan specific to the neighborhood in which the planned unit development is to be located;
- (b) Buffer land uses proposed for the PUD so as to minimize any adverse impact which new development may have on surrounding properties; additionally provide buffers and transitions of density within the PUD itself to distinguish between different land use areas;
- (c) Enhance the appearance of neighborhoods by conserving areas of natural beauty, and natural green spaces;
- (d) Counteract urban monotony and congestion on streets;
- (e) Promote architecture that is compatible with the surroundings;
- (f) Promote and protect the environmental integrity of the site and its surroundings and provide suitable design responses to the specific environmental constraints of the site and surrounding area; and
- (g) Provide a public benefit that would not occur without deviation from the standards of the Unified Development Ordinance.

PROPOSED FINDINGS: The petition does provide some of the items listed above, including implementation of guiding principles in the Comprehensive Plan related to development and supportive commercial space in the area near the Regional Health Campus. Additionally, providing workforce housing options in close proximity to the Campus.

- (2) The extent to which the proposed Preliminary Plan departs from the Unified Development Ordinance provisions otherwise applicable to the subject property, including but not limited to, the density, dimension, bulk, use, required improvements, and construction and design standards and the reasons why such departures are or are not deemed to be in the public interest.

PROPOSED FINDINGS: The proposed deviations from the UDO that are outlined in the PUD District Ordinance are necessary to further the purpose of the PUD which is to provide an innovative building that is appropriately designed for this area. The Petitioner has attempted to address deviations related to increased building height through modulation and recessing sections of the building. These architectural elements also help break up the massing of the building as a result of the increased density and building size. It is completely at the Plan Commission and City Council's discretion to determine whether or not the proposed deviations from the UDO standards are warranted. The height of the building is out of character with those that exist in the area today. 50 feet in height is allowed in the surrounding RH and CA zoning districts however, there are no nearby areas with a height greater than three stories. With a proposed height maximum of 57', the proposed building may appear out of character with the surrounding buildings. However, modulation and setback have been included to mitigate the negative impacts.

- (3) The extent to which the Planned Unit Development meets the purposes of this Unified Development Ordinance, the Comprehensive Plan, and any other adopted planning objectives of the City. Any specific benefits shall be specifically cited.

PROPOSED FINDINGS: The petition does further some of the goals of the UDO and the Comprehensive Plan, including contributing to a need for housing across multiple areas of the economic spectrum, from workforce housing to small-unit market rate.

- (4) The physical design of the Planned Unit Development and the extent to which it:
- a. Makes adequate provision for public services;
 - b. Provides adequate control over vehicular traffic;
 - c. Provides for and protects designated common open space; and
 - d. Furthers the amenities of light and air, recreation and visual enjoyment.

PROPOSED FINDINGS: The PUD provides adequate public services by improving the adjacent multi-use paths along 7th Street and Longview Drive and new on-street parking along Pete Ellis Drive. Vehicular traffic into the building will only occur at one access point along Longview Drive. Although the petitioner is proposing a reduced level of impervious surface coverage, this reduction is based on a dense, infill site design that would be typical of a Downtown design rather than a suburban location and is based on a desired overall development plan. However, while there is outdoor space that is specifically included for residents, the site has been designed to include outdoor space immediately adjacent to the right-of-way along the west and south facades, for

use by the public. The increased setback to the north property line provides an increase in separation for light and air between this and the adjacent property.

- (5) The relationship and compatibility of the proposed Preliminary Plan to the adjacent properties and neighborhood, and whether the proposed Preliminary Plan would substantially interfere with the use or diminish the value of adjacent properties and neighborhoods.

PROPOSED FINDINGS: This site is surrounded by high density multifamily residences and commercial uses. While the density proposed on this site is higher than surrounding properties, this type of dense infill development is encouraged when surrounded by appropriate infrastructure and goods and services. The site is adjacent to 3 public roads and is therefore well serviced. In addition, it is located in close proximity to several grocery stores and shopping areas, as well as is on a Bloomington Transit bus route.

- (6) The desirability of the proposed Preliminary Plan to the City's physical development, tax base and economic well-being.

PROPOSED FINDINGS: The provision of 264 units and 19,000 square feet of potential medical office space will increase the tax base to the City and provide office space adjacent to the new Hospital location. Additionally, a diverse housing mixture with this petition furthers the goals of economic well-being in related to the provision of a mixture of housing types for the community.

- (7) The proposal will not cause undue traffic congestion, and can be adequately served by existing or programmed public facilities and services.

PROPOSED FINDINGS: This site will be accessed from 3 different vehicular access points which will help distribute the vehicular traffic to this site. Pete Ellis Drive is classified as a Primary Collector and Longview Drive is classified as a proposed Primary Collector, these designations are indicative of highly used roads and therefore appropriate locations for increased density. The Department and the petitioner have committed to re-studying this area to insure that traffic is properly controlled through this corridor and the petitioner will submit a traffic study with the final plan if approved.

- (8) The proposal preserves significant ecological, natural, historical and architectural resources.

PROPOSED FINDINGS: There are no known significant ecological, natural, historical or architectural resources on this site.

- (9) The proposal will not be injurious to the public health, safety, and general welfare.

PROPOSED FINDINGS: The PUD is adequately buffered from adjacent residential properties and the petitioner has placed the development as far south as possible to reduce impacts to the adjacent residences to the north.

- (10) The proposal is an effective and unified treatment of the development possibilities on the

PUD site.

PROPOSED FINDINGS: The establishment of a PUD for this property allows a unique development that would not otherwise be accomplished within an existing zoning district and under the UDO guidelines. Creation of this PUD allows the necessary deviations from the UDO requirements to allow the construction of a unique building, and supports the goals of the Comprehensive plan related to increased development in this area, increased housing in general and in this area, and increased workforce housing.

CONCLUSION: The proposed PUD does offer a unique architectural design and a range of benefits and features for the tenants, while also providing supportive commercial space and workforce housing in an area that will soon contain a large workforce generator, the new hospital. The project includes multiple characteristics that support the goals of the Comprehensive Plan. While the density is close to double that of the densest zoning district in the current UDO, the Comprehensive Plan supports increased density in areas that have existing infrastructure to support it. Additionally, the large size of the building is an issue, but the petitioner has attempted to mitigate those concerns by utilizing modulation on all sides, as well as setting the top floor of the building back at its tallest location. The Comprehensive Plan clearly encourages incorporating diverse housing types within the City and this PUD contributes to this goal and provides a clear public benefit.

RECOMMENDATION: The Plan Commission voted 6-0 to forward this petition to the Common Council with a positive recommendation including the waiver of the five acre minimum and the following conditions:

1. PUD Final Plan approval is delegated to the Planning and Transportation Department staff.
2. Prior to the issuance of a grading permit, all items in the right-of-way shall receive an encroachment agreement from the Board of Public Works.
3. The petitioner will record the proposed workforce housing commitment before any occupancy is issued for the site.
4. All public improvements, including but not limited to bike racks, sidewalks, and side paths must be located in either right-of-way or a recorded pedestrian easement. Board of Public Works approval for those items in the right-of-way must be obtained before any occupancy permits will be issued.
5. A Zoning Commitment indicating that these improvements, as well as the rain gardens, will be maintained by the property owner in perpetuity must be recorded before any occupancy will be issued.
6. The petitioner will submit a traffic study with the application for Final Plan approval.
7. The petitioner shall describe the LEED-compliant practices planned, as well as provide plans for the green or live wall elements being planned along with a maintenance plan for their future viability with the application for Final Plan approval.



City of Bloomington
Bloomington Environmental Commission

MEMORANDUM

Date: October 7, 2019
To: Bloomington Plan Commission
From: Bloomington Environmental Commission
Subject: PUD-34-19: Curry Urban Properties, second hearing
100 block of Pete Ellis Drive and Longview Avenue

The purpose of this memo is to convey the environmental concerns and recommendations of the Environmental Commission (EC) with the hope that action will be taken to enhance its environment-enriching attributes. The EC reviewed the petition and offers the following comments and requests for your consideration.

The EC continues to believe that any PUD District Ordinance should not reduce the environmental protection requirements to less than the minimum Unified Development Ordinance (UDO) standards. A number of years ago staff and citizens of Bloomington worked tirelessly to craft the development standards we now find in the Bloomington Municipal Code. These standards went through a public process and were vetted by the citizenry and voted on by our lawmakers. Although it's time to update these regulations, the trend in Bloomington has been to strengthen its environmental standards, not weaken them. The EC applauds the efforts made by the Petitioner to modify this development by adding many recommended green building and site features to the current version of their development.

1.) LANDSCAPE PLAN

The Landscape Plan needs to be revised before it meets the UDO regulations, and can be approved. The Petitioner must have an approved Landscape Plan in place prior to the issuance of the required Grading Permit. The EC recommends the site be designed with diverse plantings that benefit local pollinating insects and birds, reduce the heat island effect, sequester carbon dioxide, and slow and cleanse rainwater. Using native plants provides food and habitat for birds, butterflies, and other beneficial insects while promoting biodiversity in the city. Native plants do not require chemical fertilizers nor pesticides and are water efficient once established.

2.) GREEN BUILDING PRACTICES

The EC requests that the Petitioner describe the LEED-compliant features that are mentioned on page 8 of the Petitioner's Statement, and also provide the design and maintenance plans for the green or live wall elements incorporated into building/garage screening.

EC RECOMMENDATIONS:

- 1.) The Petitioner shall revise the Landscape Plan to comply with UDO regulations.
- 2.) The Petitioner shall describe the LEED-compliant practices planned, as well as provide plans for the green or live wall elements being planned along with a maintenance plan for their future viability.

PETITIONER'S STATEMENT – REVISED 8.20.19

Petition:

Rezone real estate identified as Lot Number 8, located in Deckard East Third Street Subdivision, Monroe County, Indiana consisting of 3.2 acres from CL to Planned Unit Development (PUD).

Project Description:

Petitioner petitions for rezoning of the property from Commercial Limited to a mixed use, Planned Unit Development. The property currently is unimproved. Various utility lines border and bisect the property. The property is surrounded to the North by multi-family housing under RH zone. East of the property fronting on North Pete Ellis Drive are commercial properties, developed commercial lots under CL zoning. East of the lots fronting on North Pete Ellis Drive are additional multi-family housing under RH zoning. Southeast of the property is zoned CA. South of the property and fronting on Longview Avenue are multi-family housing under RH zoning. At the southwest corner of the property south of Longview Avenue is a small commercial development under CL zoning. West of the property fronting on East Seventh Street is a vacant, unimproved parcel.

Petitioner proposes to develop a mixed-use development consisting of multi-family residential use on a building outlining the west one-half of the property; 1st floor commercial use on the building outlining the east ½ of the property and a 3-floor interior parking garage in the middle of the property with top floor (4th floor) residential units. The buildings will be connected and constructed as a single building but with breaks and variations by design, by structural elements (e.g., the garage) and by façade features. The proposed building is projected at four floors. The center of the property on the east and west sides of the garage will be developed with courtyard/open space.

In an effort to provide a public benefit to the City of Bloomington, Petitioner has offered 15% of its unit bedrooms to be set aside for workforce housing. Two-thirds of these workforce housing units will be restricted to income earners whose annual income does not exceed 80% of the Area Median Income (AMI) while the remaining one-third of the workforce housing units will be restricted to those income earners making no more than 100% of AMI. Base rental rates will be limited to 25% of those income earners total annual income. Petitioner has described this offering in further detail in the accompanying letter to Housing and Neighborhood Development.

RESUBMITTAL MODIFICATIONS

Since the initial Planning Commission hearings, the Petitioner has had follow up meetings with members of The Planning Administration, Bloomington Economic and Sustainable Development, Housing and Neighborhood Development, Planning and Transportation, and the Environmental Commission and has worked to address comments and concerns stemming from the prior

submissions and those expressed by the Planning Commission during the hearings. The comments/concerns and responses from the Petitioner are outlined below:

- Neighboring apartment community to the north (zoned RH) expressed concern about the possibility of shadows being cast upon their property due to the massing and proximity of the petitioner's proposed development. Concerns of sight lines into units from adjacent balconies was also raised (Cate)

Petitioner Response: Although the Petitioner could build “by right” at a 10-foot setback from the northern boundary of the property (the boundary adjacent to the concerned neighbor), Petitioner has agreed to shift the entire building in-ward from the northern setback, thus modifying the previously proposed set back of 7 feet to 15 feet (with exception of the north east corner unit which is 14 feet from the property line). Moreover, numerous modulations of the building at the 4th floor will step back another 5 feet (or 20 feet from the property boundary) to provide relief of the building height and mass. Additionally, Petitioner voluntarily eliminated numerous balconies along the north elevation in addition to proposing the planting of additional, large canopy trees, to accompany the existing trees and in order to respect the neighbor's concerns. Petitioner will work with neighbor for tree placement.

Petitioner spoke with representatives of the property owner, including their Asset Manager and Corporate General Counsel (CGC) to clarify design, density, height, setback and other elements of Petitioner's proposed development. At the close of this communication, neighboring owner's CGC stated that unless Petitioner heard from him otherwise that they were satisfied with Petitioner's response. Petitioner has received not further communication from CGC or neighboring owner,

- Overall Building Massing seen as a concern (EC, Scanlan, Kinzie)
- Planning Administration feels that the height of the proposed building at the southwest corner (7th and Longview) should be reduced

Petitioner Response: Petitioner recognizes that the project is a single building (actually 3 buildings connected) rather than separate structures, and whose massing is more consistent with that of urban developments. The Petitioner is intending to provide the feeling of a more “urban” context to the structure in a secured, contiguous, building with conditioned interior corridors. Moreover, the building and exterior/perimeter improvements provide a “build-forward” design concept, consistent with the Comprehensive Plan. It should be reiterated that the subject property is within a designated Regional Activity Center and part of the Regional Academic Health Center Focus Area whose intent is to promote higher intensity uses; medium- to high-density multifamily uses; to provide semi-urban activity centers that complement downtown; encourage vertical growth, residential multi-family, denser office uses, structured parking and improved multi-modal connectivity.

However, the Petitioner initially reduced the building mass by shrinking the building and eliminating 12 units (and 12 beds). As noted, the northern set back was moved inward from the initial petition, basically doubling the set back. This also helped to increase open

space on the property. In numerous places along each elevation of the building, the 4th floor units are stepped back 5 feet. This is done to provide some relief from the proposed, four-story height. Petitioner has worked with its architect to further reduce several parapet heights to lower the overall height in numerous areas, from 1' to 4'. Regarding the building height at the southwest corner, (previously 61' as measured from adjacent grade to roof parapet, including the exposed "lower-level" of the building), the top corner unit (4th floor) was eliminated in its entirety, creating a "step back" of 25 feet or more which results in the building now "reading" as a +/- 50' building at this corner, including the "lower-level." Overall, while the building height exceeds the 40-foot restriction of CL zoning, it does retain a varied, articulated roofline for functional and aesthetic reasons and works through the challenges of the significant grade changes (over 20 feet) from the northwest to the southwest corner of the parcel.

Additional changes were proposed to the Planning Administration regarding massing and modulation. With the removal of the top corner unit, the Petitioner has redesigned the façade to include window planters (planter boxes) to be incorporated at the base of windows aligning the south and west elevations of the corner, as well as within the open, roof-top element.

Finally, the Petitioner elected to further modulate a significant portion of the southern elevation of the proposed building along Longview Drive. Between the parking garage and the aforementioned southwest corner module that was modified, the Petitioner has created a pedestrian "pocket park" or forecourt in front of the lower-level element created by the natural grade of the parcel. This public forecourt was created by stepping back the building 17' from the previously proposed plan. Doing so: a) reduces four one bedroom units from the project; b) greatly enhances the building presentation and how it addresses the multi-use path across the building front; c) reduces the building massing and enhances the modulation; and d) creates a public amenity and pocket park which beautifies the streetscape and "softens" the building elevation.

- Environmental concerns as to the project being below the open space requirement; impervious surfaces (EC, Sandberg, Cate, Kinzie, Kappas). EC has requested the Petitioner redesign the building.

Petitioner Response: Although Petitioner will not redesign the building, Petitioner has worked with the architects and engineers to reduce the building size, shrinking the building mass and creating open space vis-à-vis compressing the building inward, from north to south (more than doubling the northern set back) and from east to west to add four feet of additional set back from the eastern side. The resulting changes have resulted in nearly a 25% improvement to open space compared to the Petitioner's initial submittal. Although Petitioner will not be able to reach the 50% open space request, it has improved the open space from 25% to nearly 34% and will be significantly exceeding the landscaping and planting requirements as well as the water quality requirements.

Petitioner has further reduced the paved surfaces and covered area and/or has worked with the landscape architect to program permeable materials for pathways. It should be noted

that the eastern property boundary includes a 20-foot easement for utilities. Coupled with the utilities that run throughout the 15-foot Right-of-Way along Pete Ellis Drive, the Engineer and Landscape architect have not programmed trees (large, evergreen or medium) along the frontage as trees cannot be planted within 10 feet of the easement. Petitioner will work through its landscape architect (Rundell Ernstberger Associates) and the city of Bloomington to address this along with the overall landscape plans.

Petitioner will be expanding pedestrian sidewalks and paths that surround the property along 7th Street, Longview Avenue and Pete Ellis Drive under the direction of Bloomington Transportation. Additionally, Petitioner will work with the city to install back-in angled parking (as requested by Planning Commission and shown on the drawings) along the western lane of Pete Ellis Drive, which would expand the existing Right-of-Way onto Petitioner's property, and into the easement. The street frontage will be landscaped and hardscaped with a 6-foot sidewalk bordered on each side by storm planters within the sidewalk, and flow-through planters against the building which serve to collect rainwater from roofs of the proposed structure. This rainwater will be harvested within cisterns and be used for irrigation purposes, while overflow will be directed into flow through planters and storm planters. A stormwater planter / rain garden will be included within the Right-of-Way to control storm water along the street and parking area. Permeable pavers will be utilized in several portions of the project, especially along the Pete Ellis Drive promenade.

While Petitioner had already planned community gardens and many of the water quality improvements, among other public benefits, it has sophisticated a concept landscape plan with its landscape architect that includes managing rain water and storm water quality via rain gardens, and rain water diversion and harvesting through cisterns, flow thorough planters and rain gardens within each of the interior courtyards. However, the most compelling response Petitioner can provide is that the planting and landscape requirements established by the city will be significantly exceeded by Petitioner (see Concept Plant Schedule).

Moreover, Petitioner is excited to bring Bloomington its first FITWEL Building. FITWEL Certification articulates a vision for the future where every building is enhanced to support the well-being of its occupants, and surrounding communities. It is a new and emergent building certification that positively impacts occupant health and productivity through workplace design and operations. FITWEL's development is led by the U.S. Centers for Disease Control and Prevention and the General Services Administration. This demonstrates how the focus for sustainable buildings have shifted in the U.S. from green buildings that were "high performance" because they had a low carbon footprint to, now, occupant well-being and the resultant increased productivity which has been studied, and proven. The well-being of building occupants is increasingly being described as the number one driver of sustainability. The Petitioner has volunteered to deliver the City of Bloomington its inaugural FITWEL Building.

- Bicycle Traffic, Safety and Connectivity / Traffic along Pete Ellis Drive. Several members of the Planning Commission responded to the parking along Pete Ellis as well as wanting

to make certain the bicycle and pedestrian paths remain safe amid the ingress/egress to the proposed building (Kopper, Kinzie, Wisler, Hoffman).

Petitioner Response: From the onset, Petitioner has worked to promote a bicycle-friendly community, where this development provides connectivity. The multi-modal functionality of the location and design of the project is not by accident. Petitioner, through its third-party professionals, has worked with Bloomington Transportation to address these concerns. The result is the back-in angled parking, expanded bicycle paths and expanded bicycle parking to be located near the entrance of the garage and proximate to the proposed, expanded B-line along Longview Avenue. Further, Petitioner will analyze best solutions and install safety/warning controls at parking garage ingress/egress. Finally, should the project be approved by City Council, Petitioner will commission a traffic study for Pete Ellis Drive and the angled parking, as well as the surrounding traffic patterns, or will work with the city as it conducts its own traffic studies of the area in conjunction with the changing patterns the Hospital is sure to bring about.

- Density- although not called out specifically as an issue the comments as to massing are consistent with density in this regard. In fact, many members of the Planning Commission expressed that they welcome increased density or are in favor of increased density rather than sprawl.

Petitioner Response: Petitioner has revised the density to be no more than 30 D.U.E per acre versus the prior 33 D.U.E, a 10% reduction. The resulting 30 D.U.E is consistent with the density of nearly all other multi-family properties in the surrounding area (zoned RH). To simply achieve the density of what competing properties already have pursuant their zoning classification, moving to a 5-story or taller building alone would not result in a feasible economic model. Building to this level would change the construction class/type, a much more expensive proposition. Thus, achieving even 30 D.U.E, and parking it adequately would be very difficult without at least a 4-story structure covering 60% or more of the site. Subterranean parking would also be cost prohibitive. Separate structures as well as a podium structure along with stand-alone office building was studied but would not achieve an economic model that was feasible, nor would it significantly improve the open space. Moreover, higher structures in this location would likely be viewed as imposing if five or more stories, considering the concern over the proposed 4-story structure.

DEVELOPMENT STANDARDS SUMMARY / OUTLINE PLAN DETAILS:

Commercial space:

Estimated at 20,000 square feet; no less than 12,000 square feet would be programmed for the development

Multi-family residential:

Studios, 1-bedroom and 2-bedroom mix. D.U.E not to exceed 30 per acre

Parking:

306 garage spaces; 15 potential on-street parking spaces (angled parking along Pete Ellis
76 garage spaces to serve commercial use

Residential parking: 230 garage spaces (.86/unit; .66/bed). Development not to exceed
.90/unit and .70/bed

Architectural Standards:

CL Zone

Modifications: first floor, commercial use space; no modulation requirement. Modulations
to be incorporated in final development plan

Exterior Materials: varying brick and block masonry; metal/steel; storefront glass and
framing (commercial and potentially portions of residential building areas); fiber-cement
composite (Hardie) siding/board and batten; stone

Site plan details:

Setbacks: varying by side and building façade (see site plan diagram)

North side: 14 feet at NE Corner, 15 feet or more elsewhere (modified from 7')

East side: 24 feet (modified from 20')

South side: 4.5 feet (southwest corner) to 22 feet (modified from 9')

West side: 4.5 feet at point of 7th street curve; varying distance 7 feet minimum for
remainder

Garage entrance:

Longview Ave.

Uses:

CL zone permitted uses

Modification: add first floor multifamily residential use

No Maximum floor space for a single tenant

Basic PUD development:

1. Dedicated commercial space, expected to be 19,000 square feet on the east side, fronting on S. Pete Ellis Drive. This space will be flexible in total area

This space is anticipated to be medical office space and will be marketed as such

2. Multi-Family residential use (mix of studio, one-bedroom and two-bedroom apartments); generally, the units are oriented to those seeking a more personal, single-living environment

Targeted market: staff and employees associated with the IU Health complex; single professionals and staff and employees associated with the offices and accessory businesses expected to develop adjacent to the IU Health complex

3. Building height to be 4 floors. Throughout the building, numerous portions of the building's 4th floor are set back from the lower floors. Along the eastern portion of the building, the length of the building along Pete Ellis Drive steps back 5 feet at the 2nd floor and another 5 feet at numerous areas along the 4th floor. There remains a lower level at the southwest corner of the building and across Longview Drive, east up to the Parking Garage
4. Residential buildings will allow first floor residential use (CL Zone requires 2nd floor and above residential use) with commercial along Pete Ellis Drive
5. Open space (to be calculated) estimated at 34% of the lot. This open space is below the current CL zoning standards, the site shape, topography, the city's build-forward design preference and the economic feasibility of the project necessitate this open space design; however, Petitioner is proposing to: a.) exceed landscaping and plantings requirements, b.) include plantings vertically with green elements in the garage screening, c.) exceed rain water quality issues with multi-function water harvesting, flow through planters and rain gardens, d.) include numerous sustainable practices including community gardens as well as delivering the first FITWEL Building in Bloomington, and e.) bring numerous public benefit to the project including re-locating and improving current sidewalk paths, as necessary, at Pete Ellis, Longview and 7th street (all three sides) with multi-use paths
6. Parking – The building will include a four-story structure that is central to the building design. This portion of the building will also serve the project with mixed uses, housing three stories of parking garage with a 4th floor residential component. Parking garage will be interior to the development with the commercial and residential use building(s) wrapping around the courtyard with parking lot/parking garage interior to the courtyard. Parking garage to extend to the development line along the north property line
7. Exterior finish materials: multiple types of masonry; steel; glass and composite

Development Standards:

Development standards applicable to the CL Zone will be used for roofs, exterior materials, modulations, and entrances. Development plan will specify building setbacks at each property line frontage

Building Height:

The building will not exceed four stories, excepting the lower-level units at the southwest corner and along Longview Drive. Building height, as measured from proposed finished grade, varies along the length of each side:

- North side: ranges from 48 to 53' in center of building to 52' (NE corner) and 53' (NW corner)
- East side: ranges from 49' to 54' in center of building to 53' 2" (SE corner) and 52' (NE corner)
- South side: ranges from 51' to 57' in center of building to 53' 2" (SE corner) and approximately 53' at outside SW corner
- West side: ranges from 49' to 54' in center of building to 53' (NW corner) and approximately 53' at outside SW corner

- a. Architectural roof top or roof line elements to provide both form and function at no more than one point at the peak of any section of building that exceeds 60 feet in height (as measured from adjacent, proposed finished grade at that point of the building).
- b. The site has significant topography slope, particularly along the western border of the parcel. Approximately 20 feet of grade change occurs from the point of the parcel that is furthest to the northwest as compared to the point furthest to the southwest of the parcel. It is anticipated that the building plane at the first-floor level will be set at an elevation which causes the southwest corner of the building (at 7th Street and Longview) to be elevated + 8 feet above the parcel's grade at this location. Thus, the Petitioner has planned functional space within this "sub-level" of the building that will include 6 "garden" units which address the Longview street frontage and will be accessible internally as well as via the described "pocket park." This adds a "story" to the building at the southwest elevation of the development, albeit below the average grade along 7th Street.
- c. Petitioner has worked extensively with Architect and Civil Engineer to reduce heights around building, and modulate the fourth floor with 5-foot step backs in numerous portions of the building while maintaining dynamic roof lines around the building.

Unit Mix and DUE:

1. The building will include a mix of Studio, One- and Two-Bedroom Units. Projected D.U.E is 29 per acre. Actual development not to exceed 30 per acre. The site is 3.2 acres.
2. The project will house 264 units. As roughly 30% of those units are expected to be Two-bedroom units, the total bedroom count would calculate to 344 bedrooms, although the project is not a student housing community.

Parking:

1. Up to 15 angled parking spaces will be improved along the western-most lane of Pete Ellis Drive, to serve the commercial spaces at that location.
2. The internal parking garage is expected to have no more than 102 spaces per floor and no more than a total of 306 spaces.
3. A portion of the first floor of the parking garage will serve the commercial spaces (Pete Ellis Drive portion of the building) and meet municipal parking code and count requirements as well as the number of spaces required by the ultimate user/tenant.
4. Assuming 4 spaces per 1,000 square feet (assumed user requirement), and a 19,000 square foot user, the commercial spaces will require 76 of the total 321 spaces (15 angled, street spaces and 306 garage spaces). This would leave 245 spaces for 264 units (or 344 beds). Excluding the street parking, this parking ratio is 229 spaces in the garage for residents or 0.87:1 per unit or 0.67:1 per bedroom.

Bicycle parking:

Bike racks and bike storage will exceed requirements for CL and RH zones and will also serve FITWEL certification requirements, whichever is greater. Covered, secure bicycle parking and storage will be housed within the garage of the building. The petitioner is proposing additional public bicycle racks at various areas surrounding the building (along the multi-use paths) and will work with Bloomington's share bicycle program to install a kiosk along the perimeter of the property.

Housing:

Oriented to single-living environment around the IU Health Medical Center, University, Service Industry, Young professional, medical/grad students, nursing students, researchers, interns, staff and employees of professional offices and staff and employees at the IU Health complex.

Green Building Elements Planned:

- Petitioner will be delivering Bloomington's first FITWEL building, a new and emergent building certification that positively impacts occupant health and productivity through workplace design and operations as led by the U.S. Centers for Disease Control and Prevention and the General Services Administration.
- Energy Star appliances / Energy efficient building materials / LEED compliant
- Downspout Cisterns for on-site rain water harvesting to be used for watering landscaping and other exterior uses
- Downspout flow through planters and rain gardens along perimeter and interior courtyards
- green or live wall elements incorporated into building / garage screening

- Comprehensively, the property will exceed landscape and planting requirements per the current zoning
- Storm water control and quality - series of cisterns, flow-through planters and storm planters (in sidewalk) and rain gardens are proposed along Pete Ellis drive
- Electric car charging stations within parking garage
- Sustainability – community vegetable and herb gardens
- Multi-modal transportation

Public Benefits:

- Workforce housing to comprise 15% of unit bedroom count – Petitioner has proposed workforce housing commitments in a separate letter to HAND, attached and included with this resubmittal
- Multi-modal transportation – proposed project is pedestrian to Bloomington’s largest work centers (IU Health upon completion, College Mall, Indiana University)
 - Several bus-line stops in proximity to the subject location
 - Petitioner promoting the use of bicycles and non-vehicular transportation through widening of paths around perimeter to multi-use paths, placement of bicycle parking, and public bicycle racks
- Public Art - exterior murals / interior art displayed for public viewing (not just residents); viewings to be programmed
 - Petitioner proposes to commit to a 5-year program to rotate art periodically (6-month to 1-year rotation) for public display. Works to be commissioned with City of Bloomington
 - Petitioner proposes to conduct receptions and “gallery” style viewings, free to public (donations will be accepted for local not-for profit, art related groups)
- Scholarship - public art to be commissioned with IU art department and will be offered to city art programs - works to be displayed within building (can be sold by artists) in return for annual scholarships or grants from Petitioner
- Sustainability: In addition to meeting FITWEL standards, approximately 1/3 of the interior courtyard space within the western courtyard will be improved with herb, flower and vegetable gardens - improvements will include gardening areas/plots for residents
 - Petitioner proposes to program monthly events or demonstrations using the planted foods and flowers; such as making floral arrangements; cooking with the harvested vegetables and herbs with local chefs, etc.
 - Gardens will be irrigated with harvested rainwater from the cistern system Petitioner is proposing
- “Jam Session” Room - public music room/studio will be included for use by area musicians, music scholars, etc. for "plug-in and play" sessions to create, share and explore musical interests of those within the community looking to "pick up" instruments and create with others

- Amphitheater – directly adjacent to the Jam Session, an amphitheater is planned for live music or other performances, free to the public
- Bike Depot – Petitioner will work with City of Bloomington to include a public bike depot at the property
- Streetscaping – Petitioner is re-locating and improving the current sidewalk along including a pedestrian, public forecourt (pocket park) along Longview Drive, complete with permeable pavers, landscaping, trees and benches. Proposed improvements along Pete Ellis Drive will include a multi-use path, green and hard scaping, cisterns for water harvesting, rain water flow-thru planters, storm planters, and rain gardens among other elements.
 - Public benches will be included
 - Vegetative, floral and landscaping improvements would exceed minimum requirements
 - It is anticipated that “large” tree planting will not be possible along Pete Ellis Drive proposed improvements due to numerous utility lines and easement which traverses the eastern property border
 - Back-in, angled parking along Pete Ellis Drive is proposed
 - Public bicycle racks/parking will be included in the improved areas
 - Rain gardens (to be built on city ROW) along Pete Ellis are proposed
 - Permeable pavers will be incorporated into the hardscape finishes
 - Petitioner is proposing multi-function rainwater quality controls in series of steps commencing with harvesting, to overflow within flow-through planters and storm planters, then into rain gardens before flowing to city storm
- Connectivity and Safety - Petitioner has been asked by City of Bloomington to widen current bicycle paths along Longview and 7th Street, and improve them as 8’ to 12’ multi-use paths
 - Petitioner will be working cooperatively with the City of Bloomington to accommodate this requested safety and functionality improvement



⊕
 AERIAL SITE PLAN
 NOT TO SCALE

2019.08.23

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
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PETE ELLIS DRIVE
RENDERING

2019.08.23

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SEVENTH STREET
RENDERING

2019.08.23

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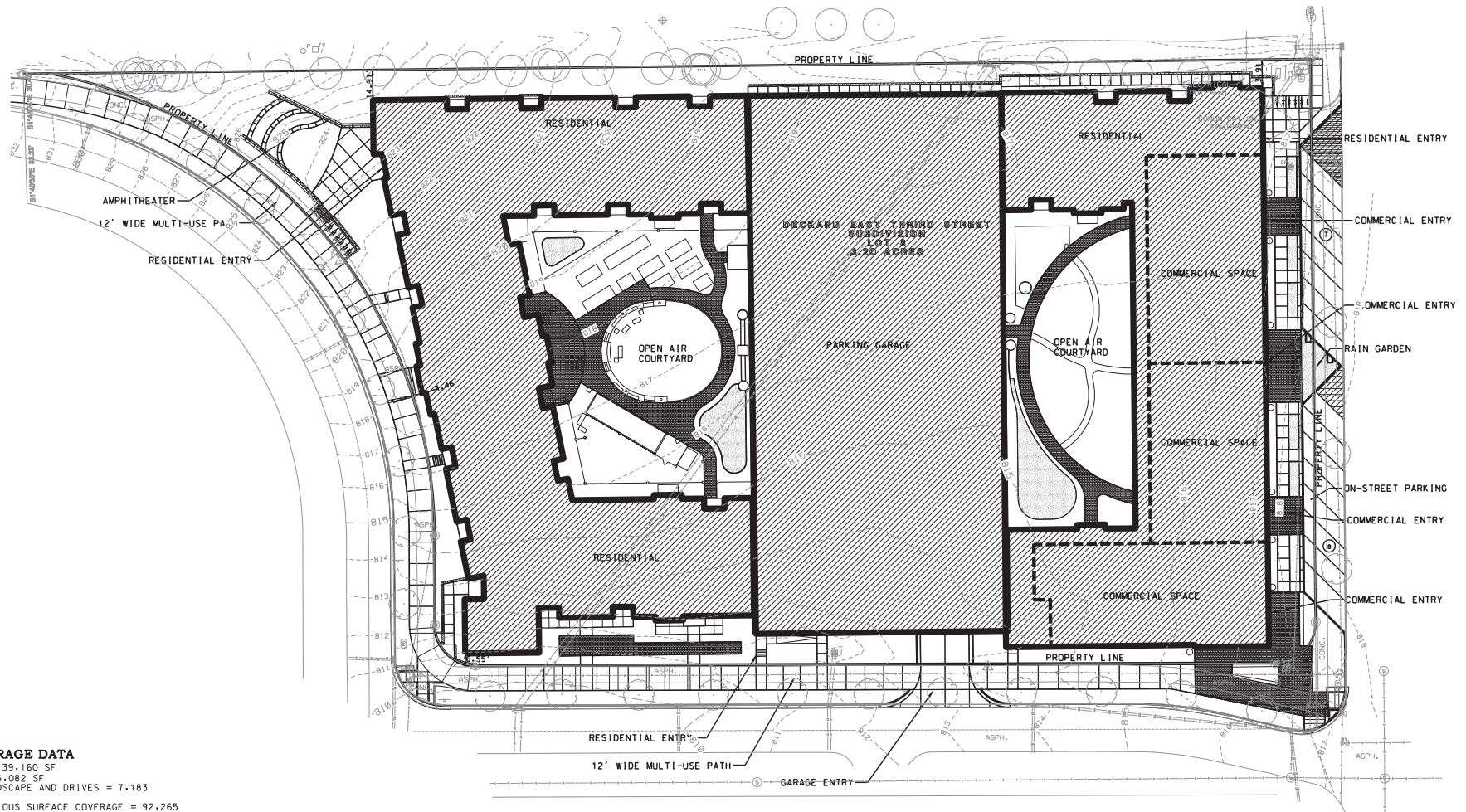
EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408





CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408



SITE COVERAGE DATA
 SITE AREA = 139,160 SF
 BUILDING = 95,082 SF
 EXTERIOR HARDSCAPE AND DRIVES = 7,183
 TOTAL IMPERVIOUS SURFACE COVERAGE = 92,265
 IMPERVIOUS SURFACE COVERAGE PERCENTAGE = 66.3%



SITE PLAN

2019.08.23

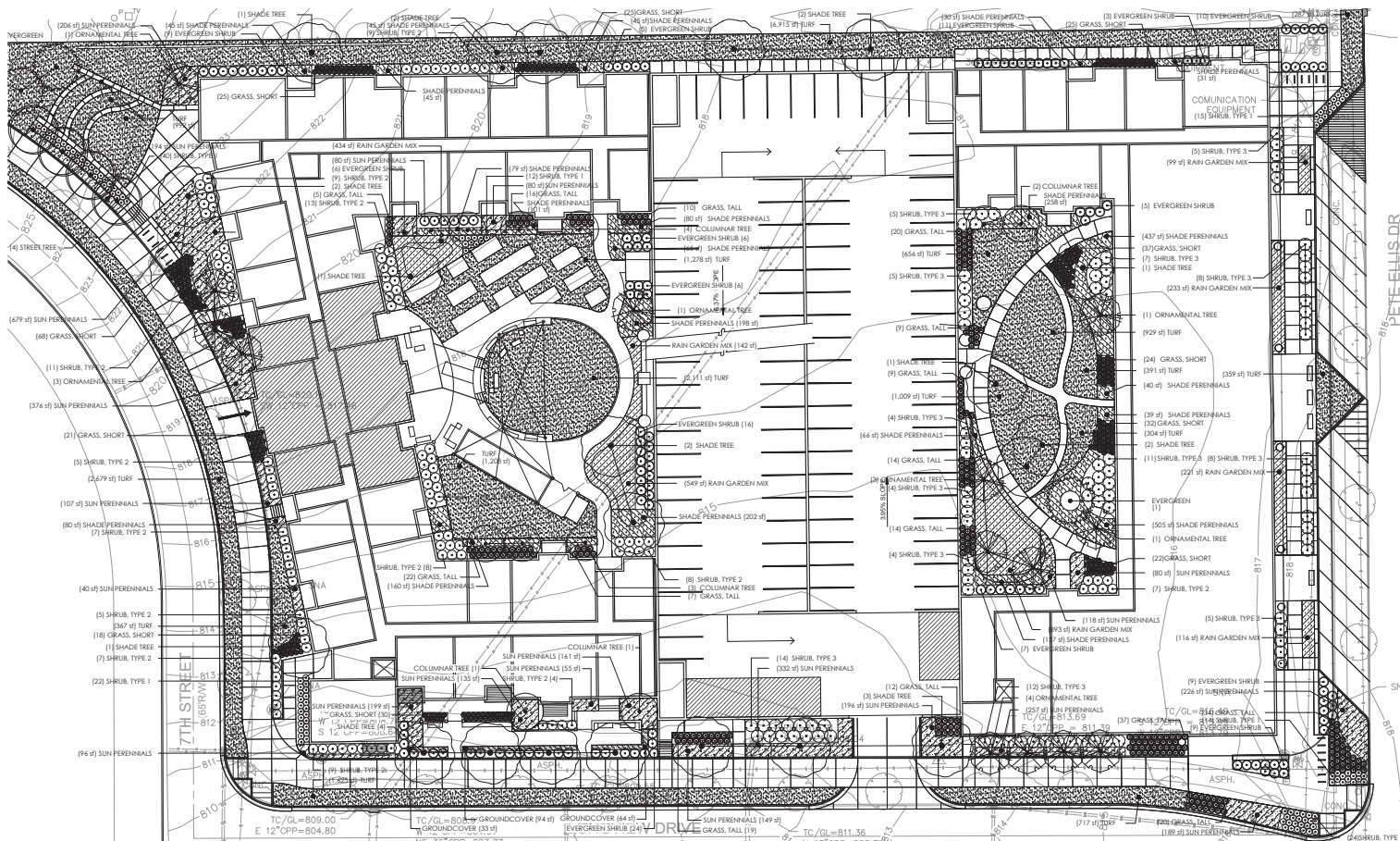
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LUPTON RAUSCH
 ARCHITECTURE 4
 INTERIOR DESIGN



CONCEPT PLANT SCHEDULE

PLANT TYPE	QUANTITY	PLANT NAME	PLANT TYPE	QUANTITY	PLANT NAME	PLANT TYPE	QUANTITY	PLANT NAME
TREES	4	Shade Tree	SHRUB, TYPE 1	22	Shrub, Type 1	SHRUB, TYPE 2	107	Shrub, Type 2
	1679	Sun Perennials		107	Sun Perennials		107	Sun Perennials
	107	Shade Perennials		107	Shade Perennials		107	Shade Perennials
	107	Grass, Short		107	Grass, Short		107	Grass, Short
SHRUBS	11	Shrub, Type 1	SHRUB, TYPE 2	107	Shrub, Type 2	SHRUB, TYPE 3	107	Shrub, Type 3
	107	Sun Perennials		107	Sun Perennials		107	Sun Perennials
	107	Shade Perennials		107	Shade Perennials		107	Shade Perennials
	107	Grass, Tall		107	Grass, Tall		107	Grass, Tall
GRASS	107	Grass, Short	GRASS, TALL	107	Grass, Tall	GRASS, MIX	107	Grass, Mix
	107	Grass, Tall		107	Grass, Tall		107	Grass, Mix
	107	Grass, Mix		107	Grass, Tall		107	Grass, Mix
	107	Grass, Tall		107	Grass, Tall		107	Grass, Mix

LANDSCAPING PLAN
NOT TO SCALE

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408

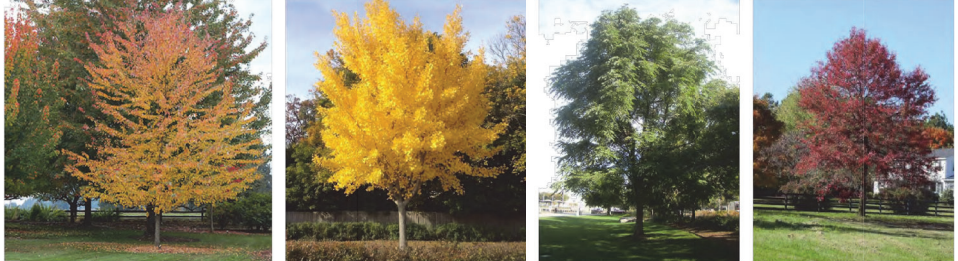
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LUPTON RAUSCH
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STREET TREES



Sienna Glen Maple Presidential Gold Ginkgo Espresso Kentucky Coffeetree Green Gable Black Tupelo

SHADE TREES



Ruby Red Horsechestnut Emerald City Tulip Poplar Highbeam Overcup Oak Shumard Oak Commendation Elm

COLUMNAR TREES



Armstrong Freeman Maple Franz Fontaine European Hornbeam Regal Prince Oak Urban Pinnacle Bur Oak Boulevard American Linden

ORNAMENTAL TREES



Autumn Brilliance Serviceberry Katsura Tree Multi-stem Eastern Redbud Aurora Flowering Dogwood

SHRUBS



Compact Inkberry Red Sprite Winterberry Kalley's Compact Juniper Sugar Shack Butternut Tor Birchleaf Spirea Little Princess Spirea Scarlet Beauty Sweetspire Wintertur Smooth Withered Alice Oakleaf Hydrangea Ruby Slippers Oakleaf Hydrangea American Beautyberry

STREET TREES



Sneezeweed Blue Star Back-eyed Susan Cinnamon Fern Jack Frost Brunnera Foamflower False Indigo Variegated Solomon's Seal Brodiaea Hosta White Swirl Iris Eastern Columbine Kobold Blazingstar Sum & Substance Hosta Japanese Spurge White Phlox Caesar's Brother Iris Northern Maidenhair Fern White Astilbe Purple Coneflower Raydon's Favorite Aromatic Aster Pink Astilbe Honorable Jobert Anemone

EVERGREEN TREE



Eastern White Pine

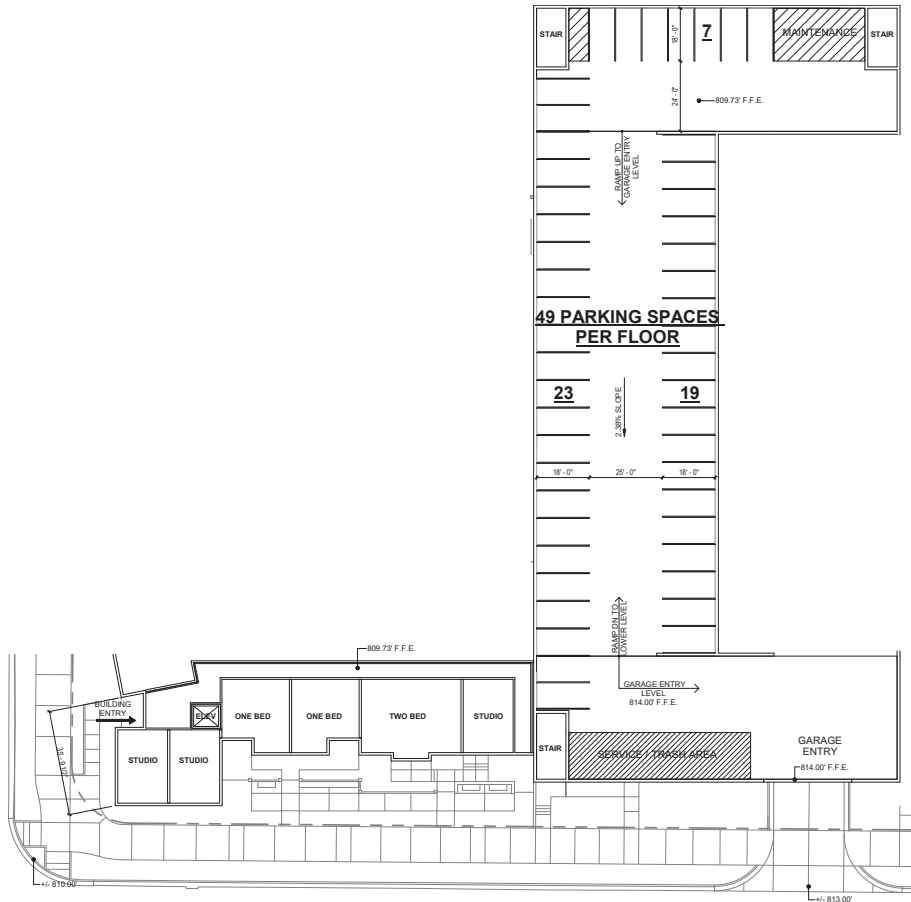
GRASSES & BANGARDEN PLANTS



CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408





EXTERIOR PRECEDENT IMAGERY



LOWER LEVEL PLAN

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408

2019.08.23

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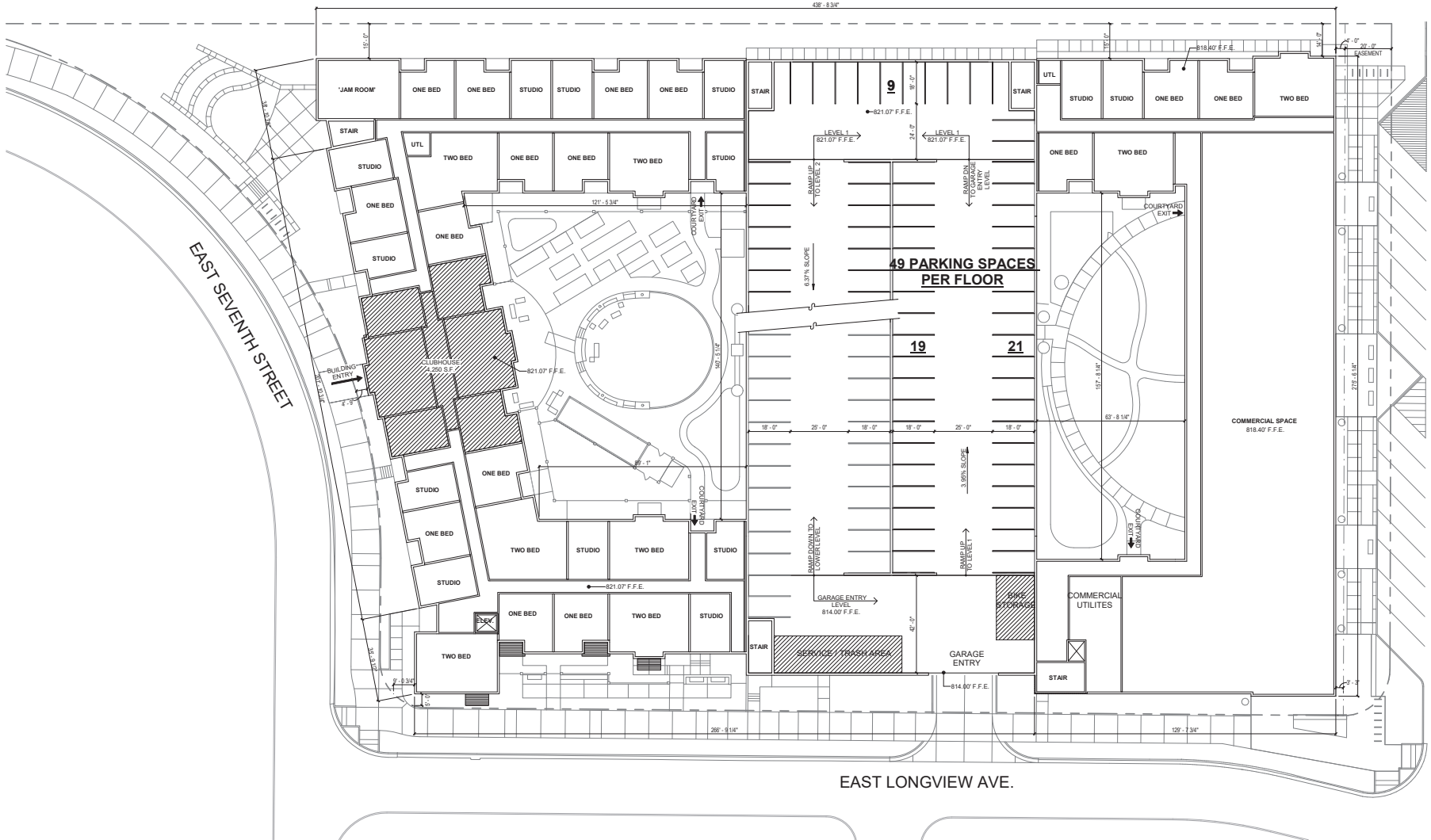
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**LUPTON
RAUSCH**

ARCHITECTURE 4
INTERIOR DESIGN





0 5 10 20 30 FEET
SCALE

FIRST FLOOR PLAN

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408

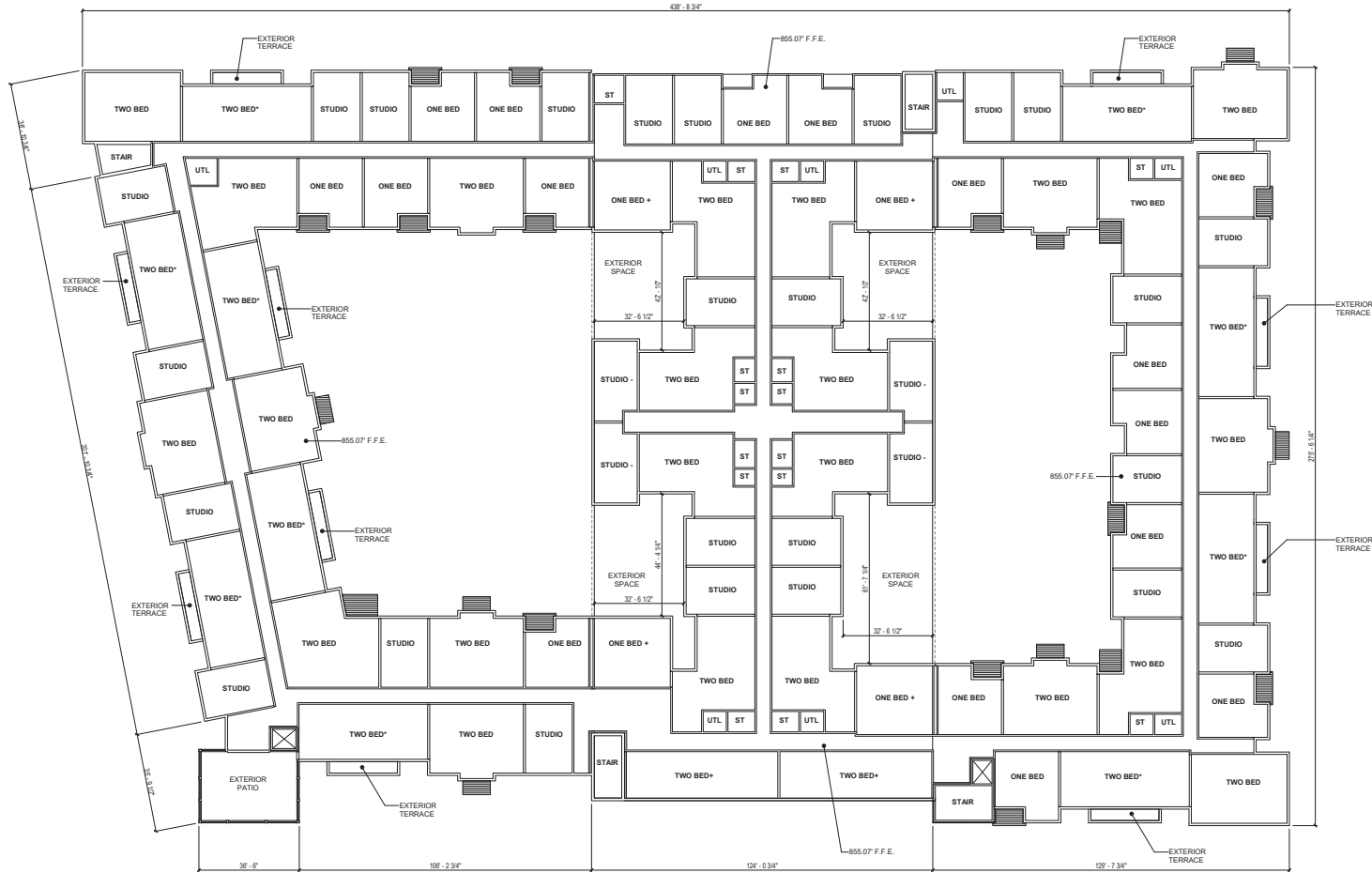
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LUPTON RAUSCH
ARCHITECTURE 4
INTERIOR DESIGN

NORTH PETE ELLIS DRIVE



FOURTH FLOOR PLAN

2019.08.23

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
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LUPTON RAUSCH
ARCHITECTURE 4
INTERIOR DESIGN



EAST ELEVATION - PETE ELLIS DRIVE



SOUTH ELEVATION - LONGVIEW AVENUE



WEST ELEVATION - SEVENTH STREET



NORTH ELEVATION

0 4 8 10 20 32 FEET
SCALE

COLORED ELEVATIONS

2010.08.29

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408



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**LUPTON
RAUSCH**
ARCHITECTURE +
INTERIOR DESIGN

September 23, 2019

Doris Sims, Director
Housing & Neighborhood Development
City of Bloomington
401 N Morton Street
Bloomington, IN 47404

RE: **REVISION 2.0** Curry Urban Properties – Planned Unit Development
Longview & Pete Ellis Drive

Dear Doris:

Curry Urban Properties (Petitioner), is pleased to bring its proposed, mixed-use development to the city of Bloomington. Pursuant to our recent conversations and meetings related to the subject matter, Petitioner offers the below workforce housing commitments in fulfilling a public benefit for Bloomington:

- Petitioner will commit to offering 10% of the total bedrooms within its project to income earners whose annual income is not more than 100% of HUD's Area Median Income (for Monroe County – Bloomington*) or AMI at the time of the lease. The base rental rate shall not exceed an amount equal to 25% of the adjusted AMI at the time of the lease.
- Petitioner will commit to offering 5% of the total bedrooms within its project to income earners whose annual income is not more than 120% of HUD's Area Median Income (for Monroe County – Bloomington*) or AMI at the time of the lease. The base rental rate shall not exceed an amount equal to 25% of the adjusted AMI at the time of the lease.
- Said commitment will remain in place for a period of ninety-nine (99) years.
- The base rental rate shall be inclusive of utilities with the exception of cable/internet, and electricity. As to Petitioner including water/sewer in the base rental rate: In the event the individual units within the property are separately metered or sub-metered for water/sewer utility, to discourage waste and encourage preservation, Petitioner (or property landlord) shall have the right to pass through to tenant the amount of monthly billing/usage that exceeds the average monthly billing (based upon usage) for same/similar sized units at the property. This is true for ALL units in the building.
- Location and unit finish premiums, furniture, washer/dryer are not considered base rental rate amounts throughout the property and will therefore not be included in base rental rates, rather these will be additions to base rent rates. This is true for ALL units in the building.

**AMI for 2019 for Bloomington is mutually agreed by Petitioner and The City of Bloomington to be \$51,700*

As Petitioner is proposing a development whose unit mix will approximate 70% studio and one-bedroom units, those units being committed be limited to studio and one-bedroom units. Petitioner will market to income earners in the provided AMI ranges and will maintain a list of such prospective, qualified tenants who will be offered units which become available (vacant units) on a first-come, first-serve basis.

We are excited to progress this project through the final entitlement process and look forward to working closely with the city of Bloomington to its successful completion and operation.

Kind Regards,

Curry Urban Properties, LLC
Tyler E. Curry



Jacqueline Scanlan <scanlanj@bloomington.in.gov>

Fwd: Curry LLC

Jacqueline Scanlan <scanlanj@bloomington.in.gov>
To: Mindy Metzcar <mindymetzcar@gmail.com>, johnmetzcar@gmail.com

Wed, Nov 6, 2019 at 9:35 AM

Ms. Metzcar,

The email address that you used is missing a portion, which is why we did not receive this email. I will include it in the record going to Council with a note that the Plan Commission was unable to consider it.

For future reference, the planning email address is: planning@bloomington.in.gov.

Thank you,
Jackie Scanlan, AICP
Development Services Manager

On Mon, Nov 4, 2019 at 7:29 PM Mindy Metzcar <mindymetzcar@gmail.com> wrote:

Jackie,

Here is the email I sent 10/24.

Thank you,

Mindy Metzcar

----- Forwarded message -----

From: **Mindy Metzcar** <mindymetzcar@gmail.com>

Date: Thu, Oct 24, 2019, 4:00 PM

Subject: Curry LLC

To: <planning@in.gov>

Cc: Mindy Metzcar <mindymetzcar@gmail.com>, John Metzcar <johnmetzcar@gmail.com>

Dear Plan Commission,

I am writing to express my concerns about the Curry LLC proposal for Longview and Pete Ellis. I am a resident in Park Ridge neighborhood, on Longview Avenue for the past 15 years, first as a renter and now as a homeowner. My family values the safety and pedestrian and bicycle friendly aspects of Park Ridge and surrounding neighborhoods that initially drew us to this area of Bloomington. I attended the first Plan Commission meeting in fall 2018 to voice my concerns about this project. I believe the potential risks for safety greatly outweigh the potential benefit to the community in a project of this size on a relatively small plot of land in an already busy area.

I have seen the influx of traffic as a result of a growing residential population and increase in businesses in the area. The proposed apartment and business space in the Curry LLC project will certainly exacerbate traffic congestion and pose safety risks for pedestrians in the area which includes some of our most vulnerable citizens: small children, older adults, and citizens who are differently abled. The introduction of the 4-way stop sign at Pete Ellis and Longview some years ago improved the safety of those traveling in the area, but would not be substantial for the influx of hundreds of potential tenants in the Curry LLC project. The safety of the early childcare center, Penny Lane, located directly across the street from this proposed building site, would be at risk with the introduction of hundreds of tenants and additional vehicles.

As 15-year residents we have seen Bloomington grow and thrive, and anticipate seeing that continue with the arrival of the new hospital and continued student population of IU. We are very much in favor of the city doing all they can to ensure affordable housing is available for the growing needs of the residents. We were very fortunate to find affordable housing in Colonial East Apartments on Longview Avenue and appreciate knowing there are subsidized apartment units on Pete Ellis. I understand the need for affordable housing throughout the city, both workforce housing and providing housing for young professionals who may be moving in to work at the new hospital, IU, or any number of organizations and businesses in the area. I do not, however, understand the need to push for gentrification of an area that currently has lower-cost rentals. I also do not understand why Tyler Curry misled the Plan Commission at the

10/7/19 meeting in claiming there are no objections to this proposal. Though I was unable to attend that 10/7/19 meeting, I strongly object to this proposal and the disadvantages that it would bring outweighing the benefits. With the proposed project having little discernible change from the first iteration, a claim of no one objecting the proposal seems like an intentional act on the part of Curry LLC to deceive the Plan Commission. With well over 600 apartment units along Pete Ellis and Longview Avenue, the addition of hundreds more apartment units will further congest a busy area and jeopardize the safety of area residents and customers. A building of 4-6 stories with so many units does not fit; physically, aesthetically, or safely; in this area. We implore you not approve the Curry LLC project at the proposed size.

Thank you,

Mindy and John Metzcar



Jacqueline Scanlan <scanlanj@bloomington.in.gov>

Opposition to Curry request for waivers and PUD at Pete Ellis Drive & Longview (please add to Nov 4th packet)

2 messages

B. Edmonds <ammasav@gmail.com>

Sat, Oct 19, 2019 at 10:34 PM

To: Eric Greulich <greulice@bloomington.in.gov>

Cc: Jacqueline Scanlan <scanlanj@bloomington.in.gov>, Mindy Metzcar <mindymetzcar@gmail.com>, mary.grogan@hotmail.com, "Akers, Stephen Paul" <spakers@indiana.edu>, jimmymoore@smumc.church, info@needmoreroasters.com, evolutioninstitute@gmail.com, vanessa@odeninsures.com

Dear Planning Commissioners and Planning Dept Employees,

Thank you for being the first line of defense for community residents to help sort out the issues of expansion and suitability for location and topography.

As a retired medical professional and living on the South side of Cambridge Square, I oppose lack of surveys, planning and overall concept in which Curry LLC proposal from 2018 to 2019 revision. They have made no real sacrifices in height or mass and only amped up the fun factors.

The traffic is an unquestionable issue that will never be predicted as to the impact of saving one life trying to squeeze an ambulance from the South side of the railroad tracts to the hospital. The ambulance drivers are at Cambridge Square daily. Just ask them as they know how to access the locked buildings.

I watched the Plan Commission meetings from start to finish as they were happening in 2018 & Oct 2019 and review the tapes when available. I take notes and compare all the statistics and facts offered. I will summarize my notes below.

Basically, Curry

1) On Nov. 5, 2018, Mike Carmin announced he sent letters to 25 surrounding neighbors and according to the Plan Commission they project was only required to contact property owners within a hundred yards of the proposal. These property owners includes only 5 individuals: Scott May, St. Marks, Matt Murphy, Gene B Glick and the owner of the land Penny Lane sits. All the business in the Murphy strip mall were uninformed as was the director of Penny Lane (in the portion since the 90's). None of the over 340 nearby tenants (who would be affected by noise) of any of the complexes were informed of the meeting in October 2018. I was told, by my property manager that she had four hours notice to set up a space to meet with Carmin and no time to alert 150 residents who would be severely impacted. Carmin disregarded the Glick request for more time to research to proposal which was a concern for everyone who approached the Glick Corporate office with opposition.

2) Curry is creating a circus atmosphere and not an academic structure suitable for medical students and physicians offices. Curry added to the amphitheater, a bocci ball court and a massive TV screen inside the parking garage, and have still planned a music "jammin: room" for the public. These active loud actives are not suitable for quiet suburbs, church vicinity and senior housing adjacent and a strip mall where one seeks a foot massage, coffee and laptop time, a health institute teaching SOMA therapies and a day care center where scheduled rest periods are essential for the mental and physical health of 75 young pre-school children.

The old Marsh on Kingston is suitable to bocci ball, amphitheater, large movie screens and playground would be a superb Eastside indoor mall for because there is a buffer businesses and woods between the landowners in Park Ridge. Letting off steam is

3) Curry barely reduced the number of apartments on the SW corner (for site lines) and overall from 280 to 264 units with still 340 bedrooms...same as before. They likely eliminated studios than bedrooms where he can legally charge by the tenant on the leases.

4) Curry merely reduced the number of parking spots on Pete Ellis from 26 to 15 and are planning back in parking which will stop the traffic and create congestion and tempers to rise and honking will ensure outside day care and medical offices. The back in parking may be safer yet the bus stop is only 50 feet to the north and the stop sign in within an arms length of proposed parking spaces.

5) Curry merely reduced the garage parking from 308 to 302 between 2018 and 2019.

6) Curry has avoided a traffic study and has implied the city should pay for it since the hospital is going to increase traffic. Tyler Curry actually told me by phone in the fall of 2018 "the city will just have to widen Pete Ellis". His arrogance is off the charts. INDOT is not planning to widen Tenth Street until 2023. East Seventh off the Bypass is a major thoroughfare for East bound residents to avoid the College Mall & Third intersection and Tenth Street & Pete Ellis traffic issues. For residents in Cedar Gate, The Crossing and all complexes on Longview, and Cambridge Square as well as Barrington, Bell Trace, Grandview and those heading to Tamarron and Eastern Heights...they have all discovered going from Bypass to East Seventh to Longview, North on Pete Ellis then right on John Hinkle Place and curving around Woodbridge to Tenth Street is the fastest route from the bypass to East Tenth to avoid Pete Ellis/Range Ridge Road intersection where accidents are common.

7) Curry moved the north set back from 7 to 15 ft (only 8 ft) which will still cast a shadow on Cambridge Square more than 4 dark months a year from mid November thru mid March. The leaves are off the trees and the sun has no chance to penetrate the brick facade and reduce the tenants all electric bills. The setback distance on the North side proposed will likely destroy the mature deep root systems of the most valuable and ground water absorbing River Birch trees. The River Birch sit deep into the culvert and absorb overflowing 6-8 foot deep trench covered by giant rocks that direct road water and rain water into the giant storm sewer, which overflows after each rain. When the retention pond, North of The Crossing entrance, overflows onto Pete Ellis by 1-3 foot deep to the field, which then the soil is saturated for days.

8) Curry has merely reduced the height from 61 to 57 at most, which means his architects reduced the height between floors from 2 ft to 1.5 ft. Anything height above 40 is unacceptable and completely out of character for the surrounding buildings. This compromise for height is inadequate. Please insist on reducing the height to 40 foot standard and maximum 3 stories for all the above mentioned reasons.

9) Curry verbally offered to provide 15% workforce house. No contract until project is completed and there is no guarantee they will follow actually deal with the extra paperwork and screening needed to offer such discounts to tenants. Fifteen percent of 264 apartments is 39.6 apartments and there is no written mention of 39.6 units.

10) Curry have never specifically mentioned the storm sewer issue costs of relocation and the utility costs. Currently the storm sewer starts mid Cambridge Square North side and goes diagonally underground coming out at the corner of Seventh and Longview. In order to build a structure on the top of the field, the storm sewer will have to be engineered by the city and moved to cut the property in half so the parking garage can be built above. This means the exit will be mid Longview...and Woodland Terrace has many ground floor apartments. The storm water will have to be trenched deep underground because the entrance to the parking garage will be likely be directly below the new sewer location.

11) Curry have never mentioned the flooding in the field from April to July and how they will dry out the soil. If you ever walk in the field during half the year, your shoes sink a good 3-4 inches and that is why the hay is only mowed twice a year. Photos taken from the 3rd floor balcony at Cambridge Square were sent to the Plan Commission during a full trench of water was backed up to the storm sewer entrance. The soil on the Cambridge Square hill near the storm trench is overgrowing with thick moss year round and grass cannot grow.

12) Curry met with the Environmental Commission and adjusted Green Space from 25% of the property to 34%, and I question the species they have in their document as to whether the species are suitable native plantings that will not require professional care. Who is going to care for all the gardens they have planned. The project seemed to imply the residents will be the gardeners..and this is a stretch unless the resident responsibility is in the leases.

I suggest that if Curry is allowed to break ground, they will find utilities that all need reworked at a cost they are not planning to pay, a thick clay soil with limited drainage factors that will hamper providing deep enough sturdy footings and eventual blasting to limestone beds.

I oppose the project based on lack of proper research of the needs of the medical professionals who will clammer to be close to the hospital. Clearly Mike Carmin mentioned in 2018 that physicians were "dumping" properties near the hospital and yet Curry has not produced a survey of the medical community needs. Curry has not produced any documents as to rental prices a physician would pay to locate on Pete Ellis. Curry has not provided any documents to determine the amount of square footage physicians require and the extra utilities they need to manage extraordinarily complex medical equipment. How is Curry able to ask for a waiver for the medical office size without such documentation?

I oppose the project based on any reasonable reduction in mass and height. Curry has never produced research to support the facts of staff wages. Curry has not determined affordable for average staff or medical student.

A BETTER SOLUTION #1:

It seems more suitable for Curry to keep the CL zoning and subdivide the property and build linked condominium style medical offices as he leases the property lot by lot. Like Landmark Ave, Pete Ellis has a potential to provide professional

12/13/2019

City of Bloomington, Indiana Mail - Opposition to Curry request for waivers and PUD at Pete Ellis Drive & Longview (please add to Nov ...

offices linked together or in separate condo offices. The traffic will be predictable during standard business hours. Curry sustains the lease of the land and profits from not being responsible for upkeep. Nearby residents and low key businesses will be able to live with quiet enjoyment.

A BETTER SOLUTION #2:

Sell the property to IU Health to build more structures like the 3 they lease on Clarizz Blvd which house multiple medical offices build to suit the needs of IU physicians. The traffic will be predictable during standard business hours. Nearby residents and low key businesses will be able to live with quiet enjoyment.

Best Regards,
Barbara Edmonds
301 North Pete Ellis Drive.

Jacqueline Scanlan <scanlanj@bloomington.in.gov>
To: Desiree King <desiree.king@bloomington.in.gov>

Mon, Nov 4, 2019 at 6:14 PM

[Quoted text hidden]



Jacqueline Scanlan <scanlanj@bloomington.in.gov>

Cury proposal

3 messages

mary grogan <mary.grogan@hotmail.com>
To: "scanlanj@bloomington.in.gov" <scanlanj@bloomington.in.gov>

Mon, Nov 4, 2019 at 4:04 PM

To whom it may concern:

As the Vice President of the Barrington Place Home Owner's association, I am a property owner who would negatively be affected by the proposed zone changes proposed by Cury.

The traffic on Pete Ellis and 10th intersection is already a danger to the many drivers and pedestrians crossing this intersection. Those of us who must reach their property via 10th st are already at whits end due to the large number of impatient drivers passing on the right in an intersection where no such passing is permitted- while traffic waits for those wanting to turn onto Pete Ellis from 10th.

The proposed addition of numerous residents would only congest this intersection further.

We request you deny the request of Cury to increase density for this property zone.

Thank you for your consideration.

Sincerely,

Mary Grogan

ÓperaMaya

General Director/Directora General

Arts Alliance of Greater Bloomington

Board Secretary /Festivals Representative

Barrington Place Home Owner Association

Board Vice President

www.operamaya.com

www.sopranomarygrogan.com

USA: 812-964-3616

MEX: (WhatsApp) 984-140-6651

Mary Grogan

ÓperaMaya

General Director/Directora General

Arts Alliance of Greater Bloomington

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Jacqueline Scanlan <scanlanj@bloomington.in.gov>

[Planning] Proposed development at Pete Ellis and 7th Street

'Bud Vanest' via Planning Department <planning@bloomington.in.gov>

Tue, Oct 29, 2019 at 8:42 PM

Reply-To: budjovan@yahoo.com

To: "planning@bloomington.in.gov" <planning@bloomington.in.gov>

We are resident home owners in the Park Ridge East subdivision. We drive through the intersection at Pete Ellis Drive and 7th Street almost daily.

We object to the proposed apartment complex being built on this corner for many reasons.

1) There is already a considerable amount of traffic at that intersection because of the nearness of the post office, the day care center, the many businesses within half a block of the intersection, and the number of apartment complexes already in the area.

2) City buses, school buses, and postal workers' vehicles also use this intersection daily.

3) The proposed amenities, which include a large screen TV in the parking garage and a concrete stage and amphitheater are not compatible with the single family residences and senior citizen residences already in the area.

4) There will be considerable increase in traffic when the hospital is built, and ambulances need to have clear streets and intersections to get to the hospital.

Please do not approve this housing complex being built on this site.

Everett and Joyce Vanest
3515 E. Park Lane

Jacqueline Scanlan <scanlanj@bloomington.in.gov>
To: mary grogan <mary.grogan@hotmail.com>

Mon, Nov 4, 2019 at 4:11 PM

Got it, thanks!

Jackie Scanlan, AICP
Development Services Manager

[Quoted text hidden]

Jacqueline Scanlan <scanlanj@bloomington.in.gov>
To: Desiree King <desiree.king@bloomington.in.gov>

Mon, Nov 4, 2019 at 4:35 PM

Please print 8 copies, thanks!

[Quoted text hidden]



Jacqueline Scanlan <scanlanj@bloomington.in.gov>

RE: CASE #: PUD-34-19 The Curry Project, Longview & PetEllis

2 messages

A L Watzel <awatzel@gmail.com>
To: scanlanj@bloomington.in.gov

Mon, Nov 4, 2019 at 4:00 PM

Dear Jackie Scanlan,

I am hoping this reaches you before the Planning meeting tonight!

I have been worrying about this proposed addition for over a year now. And wrote to the Planning folks last February. Since then, more information has come to my attention. The owner of the Needmore Coffee Bar at that corner tells me of numerous traffic accidents at the Pete Ellis/Longview intersection which is currently only a stop sign. It is a very busy road! I have also been informed that the possible widening of Pete Ellis will not occur for several years. It currently is bearing more traffic than it handles well! I have also been aware of the traffic problems at 7th St and the By-Pass which would be a possible exit for this large apartment complex. Turns toward the large commercial section south of 7th St are NOT forbidden, and are dangerous to By-Pass southbound travelers, yet that is likely to be preferred to reach restaurants, banks, Mall. [et.al](#). Most of what I see now, is an **decrease** in the **safety** for our neighborhood.

Reading the comments of the Planning folk in the Commission packet for Nov.4th, there seem to be numerous areas that the Curry Plan deviates from the standards set by the city and concerned groups in the city. From non native plants, to deviations on units per acre, there is an abundance of change introduced. Too much to make such a sizeable change to our neighborhood. This huge building would overshadow all the residential housing neighbors.

I do not approve of the addition at this location of a large number of residents and autos. I live in the original Park Ridge neighborhood. We who live here have only two exits to the north, Smith Road and PeteEllis, due to the railroad to our north. We share the PeteEllis exit with five multi-family apartment complexes on Longview. North of Longview there are several additional multi-family complexes plus a busy nursery school, and a small strip mall holding several businesses. PeteEllis is currently overburdened frequently with cars backed up at the stop sign at Longview. This road should not be asked to carry the **additional cars proposed**.

I worry also about the elders from Cambridge Square who walk south past this proposed location. I had heard there was to be off street, head-in, parking in this proposal. I oppose this for the safety of the elders who walk this road, as well as for the interruption of the congested traffic on PeteEllis. This would be an accident waiting to happen. This street is an accident-prone road already, what with the emptying of the northern complexes onto a curved, hilly street, and the to-and-fro of the nursery school parents. And I have grave reservations about the back-in parking now proposed!

I am glad you know of my reservations on this proposed large apartment complex. I suspect it is being built at this location because of the proximity to the University, a straight shot on 7th St., not to the hospital, tho that makes a great excuse. So now I'll close and repeat my request. I would like to know the current situation of this proposal as it proceeds. I would like updates. And the dates of any public meetings concerning it. I am so sorry I have difficulty driving after sunset, or I would be there tonight. Thank you.

Sincerely,
Ann Watzel
[112 S Morningside Drive](#)
[Bloomington, IN 47408](#)
812.964.3571

Jacqueline Scanlan <scanlanj@bloomington.in.gov>
To: Desiree King <desiree.king@bloomington.in.gov>

Mon, Nov 4, 2019 at 4:35 PM

Please print 8 copies, thanks!

Jackie
[Quoted text hidden]

ORDINANCE 20-02

**FINAL APPROVAL TO ISSUE ECONOMIC DEVELOPMENT NOTES AND
LEND THE PROCEEDS FOR THE RENOVATION OF AFFORDABLE HOUSING
- Re: Walnut Woods, 818 E. Miller Drive, and Reverend Butler Apartments, 1202
W. 11th Street (Bloomington RAD I, LP, Petitioner)**

- WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and
- WHEREAS, the Act provides that an issuer may, pursuant to the Act, issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of economic development facilities, for diversification of economic development and creation or retention of opportunities for gainful employment; and
- WHEREAS, the Act provides that such bonds may be secured by a trust indenture between an issuer and a corporate trustee; and
- WHEREAS, a representative of Bloomington RAD I, LP, an Indiana limited partnership (the "Borrower") has requested that the City of Bloomington, Indiana (the "Issuer") issue notes and lend the proceeds thereof to the Borrower in order to finance the acquisition, renovation, improvement and equipping of multifamily housing facilities consisting of (a) an apartment complex known as Walnut Woods, containing approximately 60 apartment units located at 818 E. Miller Drive, Bloomington, Indiana, and (b) an apartment complex known as Reverend Butler Apartments containing approximately 56 units, each together with functionally related and subordinate facilities such as carports, garages and parking areas, located at 1202 W. 11th Street, Bloomington, Indiana and funding costs of issuance and any necessary reserves in connection therewith (the "Project"); and
- WHEREAS, this Ordinance authorizes the City of Bloomington to issue up to \$11,000,000 aggregate principal amount of its City of Bloomington, Indiana Economic Development Revenue Note, Series 2020A (Walnut Woods/Reverend Butler Project) and its City of Bloomington, Indiana Economic Development Revenue Note, Series 2020B (Walnut Woods/Reverend Butler Project) (collectively, the "Notes") in one or more series and approving and authorizing other actions in respect thereto; and
- WHEREAS, the Bloomington Economic Development Commission (the "Commission") has rendered a report concerning the proposed acquisition, renovation, improvement and equipping of economic development facilities for the Borrower and the Area Plan Commission of the City of Bloomington, Indiana has been given the opportunity to comment thereon; and
- WHEREAS, the Commission after a public hearing held on December 18, 2019, pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") found that the acquisition, renovation, improvement and equipping of the Project complies with the purposes and provisions of the Act, that such acquisition, renovation, improvement and equipping will be of benefit to the health and welfare of the Issuer and its citizens through the requirement that the Project serve persons and families of low and moderate income, that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the credit period for the Project and that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan; and

WHEREAS, the Commission has considered whether the acquisition, renovation, improvement and equipping of the Project will have an adverse competitive effect or impact on any similar facility or facilities of the same kind already constructed or operating in the same market area or in or about Bloomington, Indiana; and

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to acquire, renovate, improve and equip the Project and to pay costs related to issuing the Notes by issuing not to exceed \$11,000,000 aggregate principal amount of the Notes; and

WHEREAS, the Issuer intends to issue the Notes in one or more series pursuant to a Funding Loan Agreement (the "Funding Loan Agreement"), by and among the Issuer, a fiscal agent selected by the Borrower (the "Fiscal Agent") and the BMO Harris Bank N.A., as funding lender (the "Funding Lender") in order to obtain funds to lend to the Borrower for the purpose of acquiring, renovating, improving and equipping the Project pursuant to a Borrower Loan Agreement with respect to the Notes between the Issuer and the Borrower (the "Borrower Loan Agreement"), provided, however, that the aggregate principal amount of the Notes shall not exceed \$11,000,000; and

WHEREAS, the Borrower Loan Agreement provides for the repayment by the Borrower of the loan of the proceeds of the Notes pursuant to which the Borrower will agree to make payments sufficient to pay the principal and interest on the Notes as the same become due and payable and to pay administrative expenses in connection with the Notes; and

WHEREAS, no member of the Council has any pecuniary interest in any employment, Borrower Loan Agreement or other contract made under the provisions of the Act and related to the Notes authorized herein, which pecuniary interest has not been fully disclosed to the Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

WHEREAS, there has been submitted to the Commission for its approval substantially final forms of the Funding Loan Agreement, Borrower Loan Agreement, each Regulatory Agreement and Declaration of Restrictive Covenants and the Notes (hereinafter referred to collectively as the "Financing Documents") and this proposed form of ordinance which were incorporated by reference in the Commission's Resolution adopted on December 18, 2019, which Resolution has been transmitted hereto; and

WHEREAS, the Borrower will be liable for the debt described in the Borrower Loan Agreement; and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the acquisition, renovation, improvement and equipping of the Project, the Issuer hereby finds and determines that the funding approved by the Commission for the acquisition, renovation, improvement and equipping of the Project will be of benefit to the health and general welfare of the citizens of the Issuer, complies with the provisions of the Act and the amount necessary to finance the costs of the Project, will require the issuance, sale and delivery of one or more series of economic development revenue notes in an aggregate combined principal amount not to exceed \$11,000,000;

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

SECTION 1. It is hereby found that the acquisition, renovation, improvement and equipping of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Notes, the loan of the net proceeds thereof to the Borrower for the purposes of acquiring, renovating, improving and equipping the Project, and the repayment of said loan by the Borrower will be of benefit to the health or general welfare of the Issuer and its citizens and does comply with the purposes and provisions of the Act, including in particular, the requirement of promoting a substantial likelihood of creating or retaining opportunities for gainful

employment. Furthermore, it is hereby found that the acquisition, renovation, improvement and equipping of the Project will further a public purpose of the Issuer through, among other things, the provision of quality, affordable, multifamily housing.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the Council or City Controller. In compliance with Indiana Code Title 36, Article 1, Chapter 5, Section 4, two (2) copies of the Financing Documents are on file in the office of the Clerk of the Council for public inspection.

SECTION 3. The Issuer shall issue its Notes in one or more series, as described above, in the aggregate principal amount not to exceed \$11,000,000, for the purpose of procuring funds to loan to the Borrower in order to finance the acquisition, renovation, improvement and equipping of the Project which Notes will be payable as to principal and interest solely from the payments made by the Borrower pursuant to the Financing Documents to evidence and secure said loan and as otherwise provided in the above-described Financing Documents. The Notes shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the Issuer.

SECTION 4. The Clerk is authorized and directed to sell such Notes to the purchasers thereof at a price not less than 97% of the aggregate principal amount thereof (excluding any original issue premium or discount) plus accrued interest, if any, and at a fixed or initial variable rate of interest not to exceed 12% percent per annum. The Notes will mature no later than 40 years from the date of their issuance, and shall be subject to optional redemption within 20 years of the date of issuance thereof at a price not to exceed 100% of the principal amount thereof plus any actual yield maintenance payments.

SECTION 5. The Mayor and Clerk are authorized and directed to execute those Financing Documents approved herein which require the signature of the Mayor and Clerk and any other document which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the Issuer. The signatures of the Mayor and the Clerk on the Notes may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the Issuer. The signatures of the Mayor and the Clerk on the Notes may be facsimile signatures. The Clerk and City Controller are authorized to arrange for the delivery of such Notes to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and Clerk may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve changes therein and also in those Financing Documents which do not require the signature of the Mayor and/or Clerk without further approval of this Common Council or the Commission if such changes do not affect terms set forth in Indiana Code Title 36, Article 7, Chapter 12, Section 27(a)(1) through (a)(10).

SECTION 6. The provisions of this ordinance and the Financing Documents shall constitute a contract binding between the Issuer and the holder or holders of the Notes and after the issuance of said Notes, this ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as said Notes or the interest thereon remains unpaid.

SECTION 7. Subject to the obligations of the Borrower set forth in the Borrower Loan Agreement, each Regulatory Agreement and Declaration of Restrictive Covenants and the Tax Representation Certificate, the Issuer will use its best efforts to restrict the use of the proceeds of the Notes in such a manner and to expectations at the time the Notes are delivered to the purchasers thereof, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations promulgated thereunder. The Mayor and the Clerk, or any other officer having responsibility with respect to the issuance of the Notes, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for inclusion in the transcript of proceedings for the Notes, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 of the Code and the regulations thereunder.

SECTION 8. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Borrower Loan Agreement, shall be had against any member, director, or officer or attorney,

as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof or for or to any holder of the Notes secured thereby, or otherwise, of any sum that may remain due and unpaid by the Issuer upon any of such Notes. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to any owner or holder of the Notes, or otherwise, of any sum that may remain due and unpaid upon the Notes hereby secured or any of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Borrower Loan Agreement and the issuance, sale and delivery of the Notes.

SECTION 9. The Borrower and its general partner will indemnify and hold the Issuer, including its officials, attorneys, employees and agents, free and harmless from any loss, claim, damage, tax, penalty, liability, disbursement, litigation expenses, attorneys' fees and expenses and other court costs arising out of, or in any way relating to, the execution or performance of the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Notes, including the issuance and sale of the Notes or failure to issue or sell the Notes or other actions taken under the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Notes, all as further described in the Borrower Loan Agreement, except in any case as a result of the intentional misrepresentation or willful misconduct of the Issuer.

SECTION 10. It is hereby determined that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Council has solely relied upon representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by the Issuer as to the feasibility or viability of the Project. The Council hereby authorizes and directs the Clerk to review and make the foregoing determination again for and on behalf of the Issuer at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the Indiana Housing and Community Development Authority ("IHCDA") and either written representations of the Borrower or of IHCDA to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan. Such determinations shall occur on or about the date of the sale of the Notes to the purchasers thereof and on or about the date that each building of the Project is placed in service. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan.

SECTION 11. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 12. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 13. It is hereby determined that all formal actions of the Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5 et seq., as amended.

SECTION 14. The Mayor and the Clerk are authorized to take all such further actions or to execute, attest and deliver such further instruments and documents in the name of the Issuer as in their judgment shall be necessary or advisable in order fully to consummate the transaction and carry out the purposes of this Ordinance.

SECTION 15. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code Title 36, Article 3, Chapter 4, Section 14.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this _____ day of _____, 2020.

, 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 _____ day of _____, 2020.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2020.

JOHN HAMILTON, Mayor
City of Bloomington

STATE OF INDIANA)
) SS:
MONROE COUNTY)

I, Nicole Bolden, Clerk of the Common Council, Bloomington, Monroe County, Indiana, do hereby certify the above and foregoing is a full, true and complete copy of ORDINANCE NO. _____, 2020, an ORDINANCE, passed by the Common Council on the ___ day of _____, 2020, by a vote of _____ YEAS and _____ NAYS, which was signed by the Mayor on the ___ day of _____, 2020, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Bloomington, Indiana, this ___ day of _____, 2020.

(SEAL)

Nicole Bolden, Clerk, Common Council

Synopsis

Ordinance 20-02 authorizes the City of Bloomington to issue up to \$11,000,000 in aggregate principal amount of its City of Bloomington, Indiana Economic Development Revenue Note, Series 2020A (Walnut Woods/Reverend Butler Project) and its City of Bloomington, Indiana Economic Development Revenue Note, Series 2020B (Walnut Woods/Reverend Butler Project) (collectively, the "Notes") in one or more series and approving and authorizing other actions in respect thereto.



MEMORANDUM

To: Members of the City of Bloomington Common Council

From: Larry D. Allen, Assistant City Attorney

CC: Alex Crowley, Director, ESD
Philippa Guthrie, Corporation Counsel
Dan Sherman, Attorney Advisor, Common Council

Date: December 18, 2019

Re: Ordinance 20-03 — Authorization for Proposed Housing Bond Transaction with Bloomington RAD I, Legislative for Walnut Woods and Reverend Butler Apartments

This Ordinance is to authorize the City of Bloomington to Issue Economic Development Revenue Bonds pursuant to Indiana Code 36-7-11.9 and 36-7-12 in an amount not to exceed Eleven Million Dollars (\$11,000,000.00). The City would lend the funds from this Economic Development Revenue Bond to Bloomington RAD I, LP, an Indiana limited partnership and its affiliated limited partner or limited liability company for the acquisition, rehabilitation, and renovation of the affordable housing developments currently known as Walnut Woods Apartments, 818 E. Miller Drive, and Reverend Butler Apartments, 1202 W. 11th Street in Bloomington.

Bloomington RAD I, LP, and its partners would fully indemnify the City and take full responsibility for payment of the bond – the City would bear no cost. This renovation would modernize these housing developments and restore structural integrity. As required by law, the Economic Development Commission (“EDC”) held a public hearing and recommended approval to the Council on December 18, 2019. The Council previously passed the inducement resolution, as recommended by the EDC, in Resolution 19-15.

Background

Walnut Woods and Reverend Butler Apartments are currently owned by the Bloomington Housing Authority (“BHA”). Earlier this year, the BHA changed its funding model for these types of property based on the federal Rental Assistance Demonstration Program. This program enables the BHA to give housing vouchers directly to residents. As a result, BHA has engaged Bloomington RAD I, LP, to acquire and renovate these developments.

Walnut Woods Apartments, located at 818 E. Miller Drive, was built in 1981 and contains 60 affordable housing units. Reverend Butler Apartments, located at 1202 W. 11th Street, was built in 1972 and contains 56 affordable housing units. There are currently eight (8) employees working at these complexes, all of whom shall be retained throughout the acquisition and renovation process.

Rehabilitation Project

Bloomington RAD I, LP proposes to invest more than \$5 million in capital improvements to address significant needs at the properties. The renovations will focus on addressing current code requirements, environmental remediation, handicap accessibility, structural repair, unit modernization, improvements

Economic and Sustainable Development Department

in energy efficiency, street appeal and site work. The work will include reconfiguring units to accommodate wheelchairs, safety features including new hardwired smoke detectors, new flooring throughout all units, new kitchen cabinets, countertops, addition of dishwashers and washers and dryers, high efficiency furnaces and air conditioner condensers, new roofs, handicap ramps, and site lighting. It has been estimated that the renovations will cost approximately \$53,000 per unit.

To fund this renovation project, Bloomington RAD I, LP will rely on available tax credits from the Indiana Community Housing Development Authority (IHCDA). Currently the project is located in a qualified census tract that the IHCDA considers a distressed area for development, which would allow for additional tax credits.

Financing Process

To finance this major rehabilitation project, Bloomington RAD I, LP will require the issuance of revenue bonds, in an amount not to exceed \$11,000,000. While they could seek these revenue bonds from the State of Indiana through IHCDA, that would add a 1% financing fee to the cost. Instead, they request that the City of Bloomington issue the necessary revenue bonds to finance the acquisition, renovation, improvement and equipping of the properties. These bonds would not be payable from taxes or be a general obligation of the City; they would be payable solely from revenues of the project. Bloomington RAD I, LP, would assume total liability for bond payments and indemnify the City via the financing agreement. This would exert no effect on the City's constitutional debt limit or bank qualified limit. In essence, the City acts only as a "conduit"—allowing the borrower to access capital at a tax-exempt rate and receive equity for the project in the form of tax credits.

Procedure of Housing Bond Transaction

Bloomington RAD I, LP, is seeking approval of the financing agreement and authorization to issue bonds and use proceeds to reimburse developer for these improvements. Previously, the Council approved inducement of this process, which enabled Bloomington RAD I, LP, to pursue IHCDA tax credits and preserve the "distressed" status of the qualified census tract containing Walnut Woods and Reverend Butler developments, resulting in a larger amount of tax credit equity for the rehabilitation of the project.

The public procedure required by state law is the following:

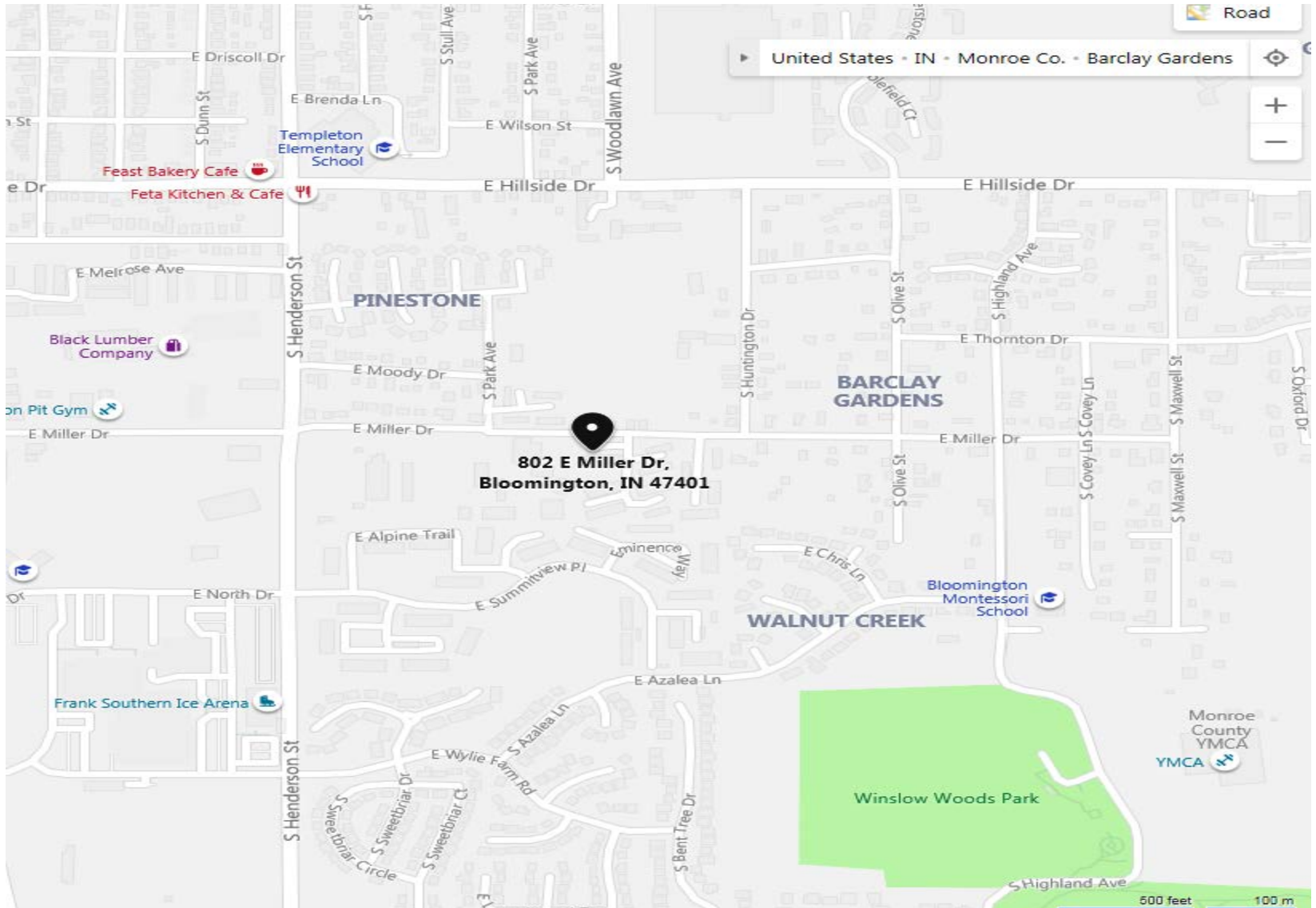
1. Common Council passes inducement resolution
2. Bloomington RAD I, LP, applies for IHCDA tax credits, negotiates financing agreement
3. IHCDA approves Bloomington RAD I, LP, tax credit application
4. EDC holds public hearing to approve financing agreement, issuance of bonds
5. Common Council approves financing agreement and issuance of bonds

The EDC recommends that the Common Council approve the financing agreements and authorize the issuance of the financing notes.

Presentation to City of Bloomington Common Council (1/8/2020)

Walnut Woods and Rev. Butler
Apartments
Economic Development Revenue
Bonds

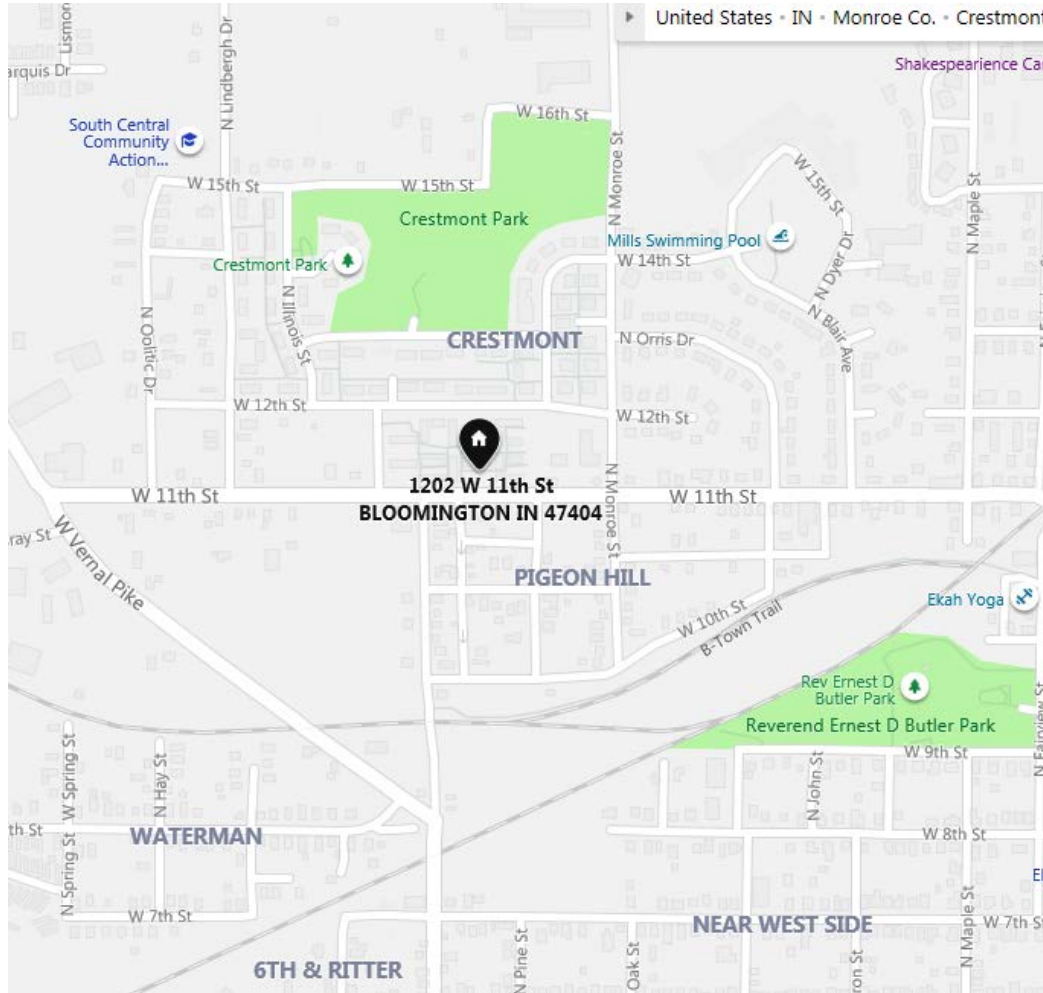
Walnut Woods



Walnut Woods



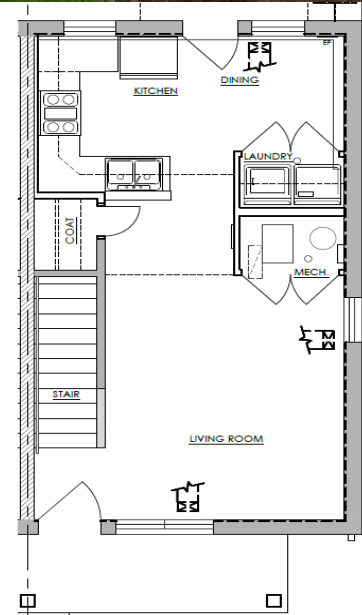
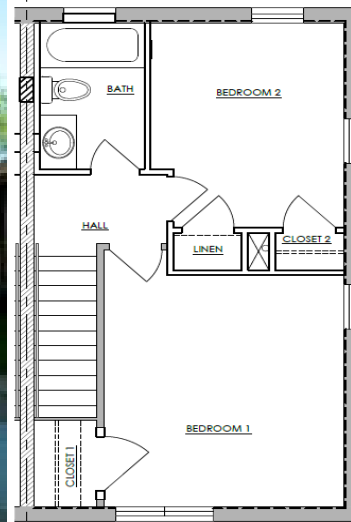
Rev. ED Butler Apartments



Rev. Butler Highlights

- ➔ Originally built in 1972.
- ➔ 56 apartments serving Individuals and Families.
- ➔ Located at 1202-1326 West 11th Street and 1201-1321 West 12th Street.
- ➔ Currently managed and owned by Bloomington Housing Authority.
- ➔ 100% of the units will receive rental subsidy through a HAP contract.
- ➔ Will be owned and managed by partnership (investor LP and BHA instrumentality- Summit Hill CDC, GP)

Rev. Butler



Proposed Project

- ➔ Renovations focused on addressing code requirements, handicap accessibility, structural repair, unit modernization and energy efficiency.
- ➔ Includes reconfiguring units to accommodate wheelchairs and safety features as well as new roofs and site lighting.
- ➔ Interior improvements include: new hardwired smoke detectors, new flooring throughout all units, new kitchen cabinets, countertops, addition of dishwashers and washers and dryers, high efficiency furnaces and air conditioner condensers, new roofs, handicap ramps, and site lighting
- ➔ Total renovation cost per unit is \$53,000
- ➔ Resident relocation for no more than 60 days. Moving and relocation services will be paid for by BHA.
- ➔ No new jobs will be created and 8 jobs will be retained.

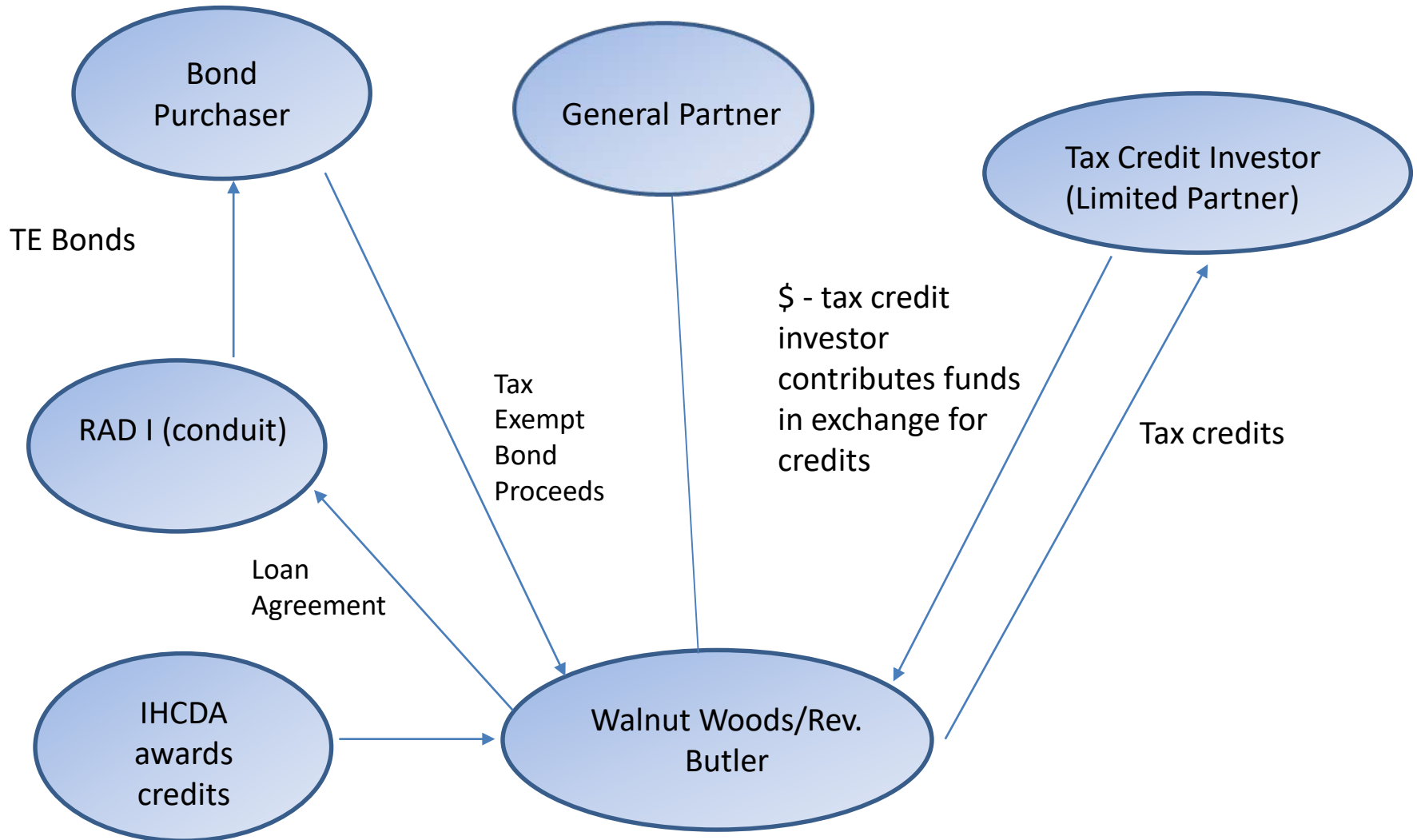
BRINSHORE DEVELOPMENT

- ➔ Established in 1994
- ➔ Senior Housing, market rate and low income community developer
- ➔ 7,000 unit portfolio
- ➔ Experienced community developer and partner
 - ➔ Supportive Service communities
 - ➔ Non-Profit Housing organizations
 - ➔ Health system partnerships
 - ➔ Arts and Public Housing

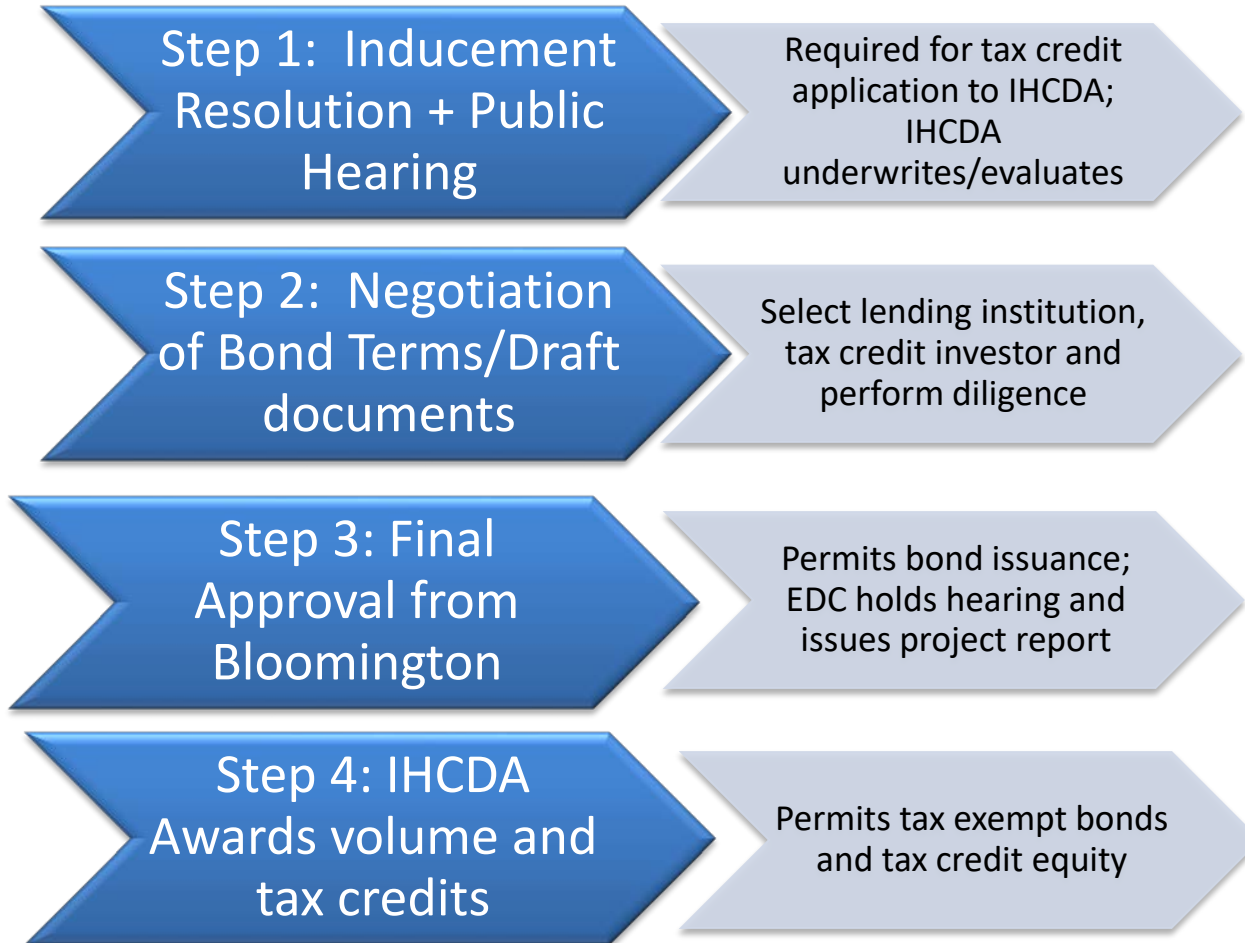
RENTAL ASST DEMONSTRATION (RAD)

- ➔ Enacted by Congress in 2012 because of underfunding of public housing.
- ➔ RAD allows public housing agencies to leverage public and private debt and equity in order to reinvest in the public housing stock. This is critical given the 25.6 billion dollar backlog of public housing capital improvements.
- ➔ In RAD, units move to a Section 8 platform with a long-term contract that, by law, must be renewed. This ensures that the units remain permanently affordable to low-income households.
- ➔ Residents continue to pay 30% of their income towards the rent and they maintain the same basic rights as they possess in the public housing program.
- ➔ RAD maintains the public stewardship of the converted property through clear rules on ongoing ownership and use.
- ➔ The RAD program is cost-neutral and does not increase HUD's budget. This program simply shifts units from the Public Housing program to the Section 8 program so that providers may leverage the private capital markets to make capital improvements.

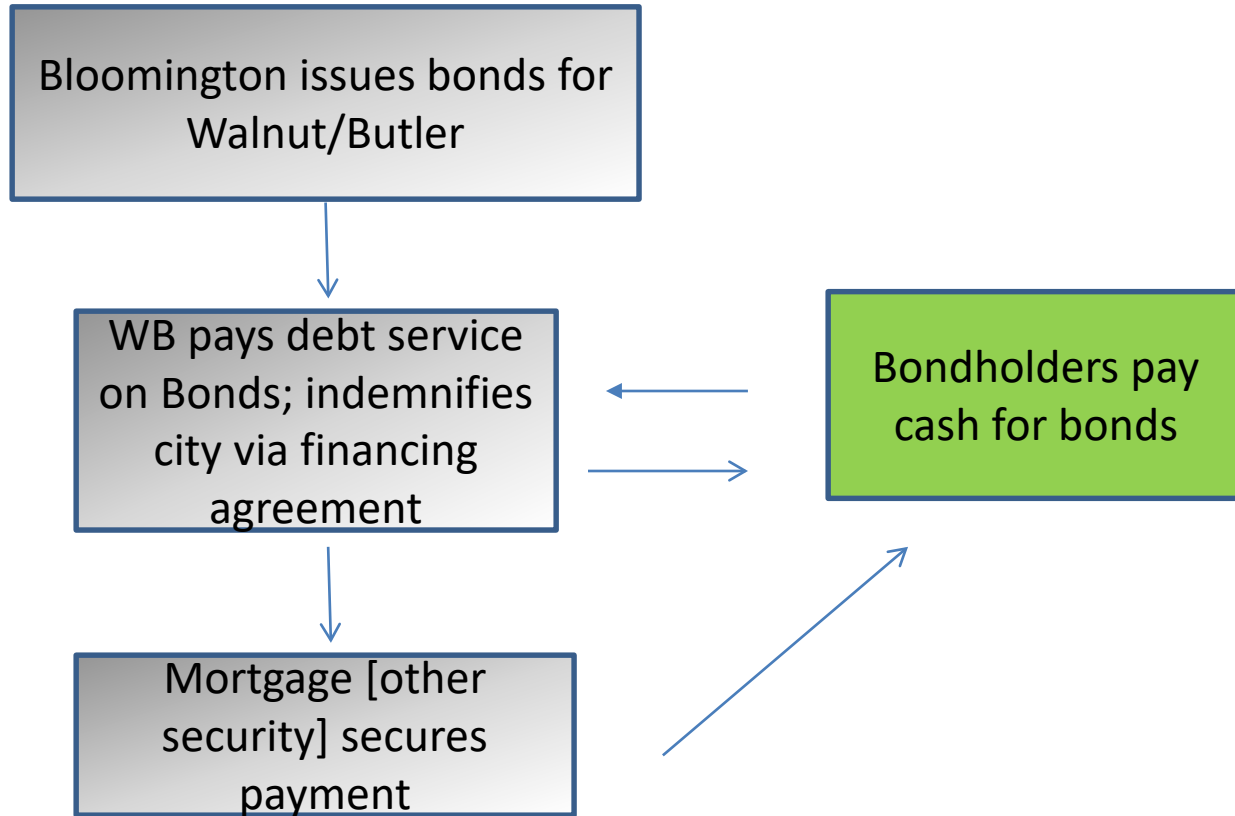
Bond and Credit Structure



Bond and Tax Credit Process



Basic Bond Issuance



Private Placement Structure

- ➔ BMO Harris will directly purchase bonds
- ➔ No public offering
- ➔ Benefits include:
 - ➔ Direct negotiation
 - ➔ Savings on transaction costs
 - ➔ Limited publicity for city
 - ➔ Ease of administration/fewer parties

Bond Characteristics

- ➔ Issued pursuant to IC 36-7-12
 - Requires EDC to render project report, hold public hearing, and Council to approve ordinance authorizing bonds
- ➔ Bonds will not be payable from taxes or be a general obligation of the city; payable solely from revenues of the project; no effect on the city's constitutional debt limit or bank qualified limit
- ➔ City acts only as a “conduit” – allowing the borrower to access capital at a tax-exempt rate and receive equity for the project in the form of tax credits
 - No ongoing obligations or administration by the city – borrower is responsible for all tax covenants, payments and indemnifies city in all respects

Conclusion

Any Questions?

Thank you!

**RESOLUTION 19-05
OF THE
CITY OF BLOOMINGTON
ECONOMIC DEVELOPMENT COMMISSION**

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, the Act provides that an issuer may, pursuant to the Act, issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of economic development facilities for diversification of economic development and creation or retention of opportunities for gainful employment in or near such issuer; and

WHEREAS, the Act provides that such bonds may be secured by a trust indenture between an issuer and a corporate trustee; and

WHEREAS, a representative of Bloomington RAD I, LP, an Indiana limited partnership (the "Borrower") has requested that the City of Bloomington, Indiana (the "Issuer") issue notes and lend the proceeds thereof to the Borrower in order to finance the acquisition, renovation, improvement and equipping of multifamily housing facilities consisting of (a) an apartment complex known as Walnut Woods, containing approximately 60 apartment units located at 818 E. Miller Drive, Bloomington, Indiana, and (b) an apartment complex known as Reverend Butler Apartments containing approximately 56 units, each together with functionally related and subordinate facilities such as carports, garages and parking areas, located at 1202 W. 11th Street, Bloomington, Indiana and funding costs of issuance and any necessary reserves in connection therewith (the "Project") ; and

WHEREAS, the creation or retention of opportunities for gainful employment and the provision of quality, affordable, multifamily housing to be achieved by the acquisition, renovation, improvement and equipping of the Project will be of public benefit to the health, safety and general welfare of the Issuer and its citizens; and

WHEREAS, it would appear that the acquisition, renovation, improvement and equipping of the Project would be of benefit to the health or general welfare of the Issuer and its citizens; and

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to acquire, renovate, improve and equip the Project and to pay the costs of issuing the Notes (as defined herein) and fund reserves, if any, by issuing not to exceed \$11,000,000 aggregate principal amount of its City of Bloomington, Indiana Economic Development Revenue Note, Series 2020A (Walnut Woods/Reverend Butler Project) and its City of Bloomington, Indiana Economic Development

Revenue Note, Series 2020B (Walnut Woods/Reverend Butler Project) (collectively, the "Notes") in one or more series; and

WHEREAS, the Issuer intends to issue the Notes pursuant to a Funding Loan Agreement (the "Funding Loan Agreement"), by and among the Issuer, a fiscal agent selected by the Borrower (the "Fiscal Agent") and BMO Harris Bank N.A., as funding lender (the "Funding Lender") in order to obtain funds to lend to the Borrower for the purpose of acquiring, renovating, improving and equipping the Project pursuant to a Borrower Loan Agreement (the "Borrower Loan Agreement") with respect to the Notes between the Issuer and the Borrower, provided, however, that the aggregate principal amount of the Notes shall not exceed \$11,000,000; and

WHEREAS, the Borrower Loan Agreement provides for the repayment by the Borrower of the loan of the proceeds of the Notes pursuant to which the Borrower will agree to make payments sufficient to pay the principal and interest on the Notes as the same become due and payable and to pay administrative expenses in connection with the Notes; and

WHEREAS, in connection with the adoption of this Resolution, the Commission has considered whether the acquisition, renovation, improvement and equipping of the Project may have an adverse competitive effect on similar facilities operating in the City of Bloomington, Indiana; and

WHEREAS, there has been submitted to the Commission for its approval of substantially final forms of the Funding Loan Agreement, Borrower Loan Agreement, each Regulatory Agreement and Declaration of Restrictive Covenants and Notes (hereinafter referred to collectively as the "Financing Documents") and the proposed form of ordinance which are by this reference incorporated herein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF BLOOMINGTON ECONOMIC DEVELOPMENT COMMISSION as follows:

SECTION 1. It is hereby found that the acquisition, renovation, improvement and equipping of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Notes, in an aggregate principal amount not to exceed \$11,000,000, and the loan of the net proceeds thereof to the Borrower for the purposes of acquiring, renovating, improving and equipping the Project, and the repayment of said loan by the Borrower will be of benefit to the health or general welfare of the Issuer and its citizens and does comply with the purposes and provisions of the Act, including in particular the requirement of promoting a substantial likelihood of creating or retaining opportunities for gainful employment. Furthermore, it is hereby found that the acquisition, renovation, improvement and equipping of the Project will further a public purpose of the Issuer through, among other things, the provision of quality, affordable, multifamily housing.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the Council or City Controller. In compliance with Indiana Code Title 36, Article 1, Chapter 5, Section 4, two (2)

copies of the Financing Documents are on file in the office of the Clerk of the Council for public inspection.

SECTION 3. The Commission hereby recommends the Issuer issue its Notes as described above, in the aggregate principal amount not to exceed \$11,000,000 for the purpose of procuring funds to loan to the Borrower in order to acquire, renovate, improve and equip the Project, which Notes will be payable as to principal and interest solely from the payments made by the Borrower pursuant to the Financing Documents to evidence and secure said loan and as otherwise provided in the above-described Financing Documents. The Notes shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the Issuer.

SECTION 4. The Commission further recommends that the Issuer authorize the Clerk and City Controller to sell such Notes to the purchasers thereof at a price not less than 97% of the aggregate principal amount thereof (excluding any original issue premium or discount), plus accrued interest, if any, and at a fixed or initial variable rate of interest not to exceed 12% percent per annum. The Commission further recommends that the Issuer authorize the optional redemption of the Notes within 11 years of the date of issuance thereof at a price of 100% of the principal amount thereof.

SECTION 5. The Commission recommends that the Mayor and Clerk be authorized and directed to execute those Financing Documents approved herein which require the signature of the Mayor and Clerk and any other document which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the Issuer. The signatures of the Mayor and the Clerk on the Notes may be necessary or desirable to consummate the transaction. The signatures of the Mayor and the Clerk on the Notes may be facsimile signatures. The Commission also recommends that the Clerk and City Controller be authorized to arrange for the delivery of such Notes to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and Clerk may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve changes therein and also in those Financing Documents which do not require the signature of the Mayor and/or Clerk without further approval of the Common Council or the Commission if such changes do not affect terms set forth in Indiana Code Title 36, Article 7, Chapter 12, Section 27(a)(1) through (a)(10).

SECTION 6. The Commission approves the form of and recommends the adoption of the ordinance by the Common Council of the Issuer. The provisions of such ordinance, if and when adopted, and the Financing Documents shall constitute a contract binding between the Issuer and the holder or holders of the Notes and after the issuance of said Notes, the special resolution shall not be repealed or amended, in any respect which would adversely affect the right of such holder or holders so long as said Notes or the interest thereon remains unpaid.

SECTION 7. The Commission finds and determines that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Commission has relied solely upon representations of the Borrower.

The foregoing determination shall not be construed to be a representation or warranty by the Commission as to the feasibility or viability of the Project. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan.

SECTION 8. The Secretary of this Commission is directed to cause this resolution and two copies of the financing documents in their final forms to be transmitted to the office of the Clerk of the Council for presentation to the Common Council with the recommendation that the Common Council approve such documents in their final forms pursuant to the proposed form of Ordinance hereby recommended to the Common Council.

* * * * *

Adopted this 18th day of December, 2019


CITY OF BLOOMINGTON ECONOMIC
DEVELOPMENT COMMISSION




Kurt Zorn, President



Vanessa McClary, Member



Geoff McKim, Member



Dave Rollo, Member

Malcomb Webb, Member

REPORT OF THE CITY OF BLOOMINGTON, INDIANA ECONOMIC DEVELOPMENT
COMMISSION CONCERNING THE PROPOSED FINANCING OF
ECONOMIC DEVELOPMENT FACILITIES FOR
BLOOMINGTON RAD I, LP, AN INDIANA
LIMITED PARTNERSHIP

The City of Bloomington Economic Development Commission (the "Commission") proposes to recommend to the Common Council of the City of Bloomington, Indiana, that it provide funds for the acquisition, renovation, improvement and equipping of economic development facilities for Bloomington RAD I, LP, an Indiana limited partnership. Such economic development facilities consist of the acquisition, renovation, improvement and equipping of multifamily housing facilities consisting of (a) an apartment complex known as Walnut Woods, containing approximately 60 apartment units located at 818 E. Miller Drive, Bloomington, Indiana, and (b) an apartment complex known as Reverend Butler Apartments containing approximately 56 units, each together with functionally related and subordinate facilities such as carports, garages and parking areas, located at 1202 W. 11th Street, Bloomington, Indiana and funding costs of issuance and any necessary reserves in connection therewith (the "Project"). The total cost for the acquisition, renovation, improvement and equipping of the Project is presently estimated to be in an amount of approximately \$17,700,000, including incidental costs of issuance of the economic development revenue notes and funding any necessary reserves in connection therewith.

No public facilities to be paid for by the government will be made necessary on account of the acquisition, renovation, improvement and equipping of the Project.

The Commission has considered whether the Project will have an adverse competitive effect on any similar facilities already constructed or operating in or near Bloomington, Indiana.

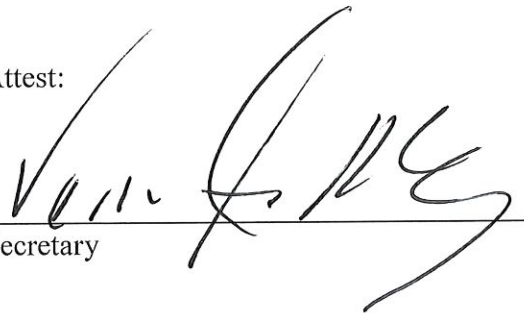
It is estimated that upon the acquisition, renovation, improvement and equipping of the Project, the operation will retain 8 employees, with an estimated total payroll of approximately \$320,000 annually.

Adopted this 18th day of December, 2019.



Kurt Zorn, President

Attest:



Secretary

December 18, 2019

Mr. Brad Wisler
President
City of Bloomington, Indiana Plan Commission
401 N. Morton St., Suite 130
Bloomington, IN 47404

Re: REPORT OF THE CITY OF BLOOMINGTON, INDIANA ECONOMIC
DEVELOPMENT COMMISSION CONCERNING THE PROPOSED
FINANCING OF ECONOMIC DEVELOPMENT FACILITIES FOR
BLOOMINGTON RAD I, LP, AN INDIANA LIMITED PARTNERSHIP

Dear Mr. Wisler:

Enclosed is a copy of a report of the Economic Development Commission (the "Commission") of the City of Bloomington, Indiana with respect to the financing of an industrial development project located within your jurisdiction for Bloomington RAD I, LP (the "Project").

Pursuant to the provisions of Indiana Code Section 36-7-12-23(b), you may transmit to the Commission within five (5) days of receipt of this report any written comments you may have concerning the Project. Any responses should be addressed to the Commission, at the following address:

Bloomington Economic Development Commission
401 N. Morton Street, Suite 150
Bloomington, Indiana 47404

Sincerely,

CITY OF BLOOMINGTON, INDIANA
ECONOMIC DEVELOPMENT COMMISSION



Kurt Zorn, President

Enclosure

FUNDING LOAN AGREEMENT

Among

**BMO HARRIS BANK N.A.,
as Funding Lender**

and

**CITY OF BLOOMINGTON, INDIANA,
as Governmental Lender**

and

**BMO HARRIS BANK N.A.,
as Fiscal Agent**

Dated as of February 1, 2020,

Relating to:

**\$ _____
CITY OF BLOOMINGTON, INDIANA
ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2020A
(WALNUT WOODS/REVEREND BUTLER PROJECT)**

and

**\$ _____
CITY OF BLOOMINGTON, INDIANA
ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2020B
(WALNUT WOODS/REVEREND BUTLER PROJECT)**

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FUNDING LOAN AGREEMENT

This Funding Loan Agreement, dated as of February 1, 2020 (this “Funding Loan Agreement”), is entered into by BMO HARRIS BANK N.A., (together with any successor hereunder, the “Funding Lender”) and the CITY OF BLOOMINGTON, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (together with its successors and assigns, the “Governmental Lender”) and BMO HARRIS BANK N.A., a national banking association organized and existing under the laws of the United States of America, as fiscal agent (the “Fiscal Agent”).

RECITALS

WHEREAS, the Governmental Lender has been duly created and organized pursuant to and in accordance with the provisions of the Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as amended (the “Act”); and

WHEREAS, by virtue of the authority of the Constitution and laws of the State, in particularly the Act, and the Bond Ordinance of the Governmental Lender adopted on January 15, 2020, the Governmental Lender is authorized to enter into this Funding Loan Agreement and to do or cause to be done all the acts and things herein provided or required to be done, to issue the Governmental Lender Notes and to use the proceeds of the Governmental Lender Notes to make a loan to the Borrower that will provide moneys to finance the acquisition of a [leasehold and fee simple interest], renovation, rehabilitation, improvement and equipping of the Project; and

WHEREAS, Bloomington RAD I, LP, an Indiana limited partnership (the “Borrower”), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender (i) will advance funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower to finance the acquisition, renovation, rehabilitation, improvement and equipping of multifamily housing facilities consisting of (a) an apartment complex known as Walnut Woods, containing approximately 60 apartment units located at 818 E. Miller Drive, Bloomington, Monroe County, Indiana, and (b) an apartment complex known as Reverend Butler Apartments containing approximately 56 units located at 1202 W. 11th Street, Bloomington, Monroe County, Indiana, each together with functionally related and subordinate facilities such as carports, garages and parking areas (the “Project”); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the “Borrower Loan Agreement”), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its [Promissory Note – Borrower Loan (Series 2020A)] (the “Series 2020A Borrower Note”) related to the Series 2020A Borrower

Loan (as defined herein) and its [Promissory Note – Borrower Loan (Series 2020B)] (the “Series 2020B Borrower Note” and together with the Series 2020A Borrower Note, the “Borrower Notes”) related to the Series 2020B Borrower Loan (as defined herein) each dated the Closing Date and the obligations of the Borrower under the Borrower Notes will be secured by a lien on and security interest in the Project pursuant to a [Leasehold Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] of even date herewith (the “Security Instrument”), made by the Borrower in favor of the Governmental Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its Economic Development Revenue Note, Series 2020A (Walnut Woods/Reverend Butler Project) dated as of the Closing Date (the “2020A Governmental Note”) and its Economic Development Revenue Note, Series 2020B (Walnut Woods/Reverend Butler Project) dated the Closing Date (the “2020B Governmental Note” together with the 2020A Governmental Note, the “Governmental Lender Notes”) evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make the Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Notes, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Definitions. For all purposes of this Funding Loan Agreement, except as otherwise expressly provided or unless the context otherwise clearly requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

(b) The terms “herein, “hereof” and “hereunder” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

(c) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance

with the Approved Accounting Method. All references herein to “Approved Accounting Method” refer to such principles as they exist at the date of application thereof.

(e) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

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

(h) The following terms have the meanings set forth below:

“Additional Borrower Payments” shall have the meaning given such term in the Borrower Loan Agreement.

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with such Person.

“Approved Transferee” means (1) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the “Securities Act”) that is a financial institution or commercial bank having capital and surplus of \$5,000,000 or more, (2) an affiliate of the Funding Lender, or (3) a trust or custodial arrangement established by the Funding Lender or one of its affiliates the beneficial interests in which will be owned only by QIBs.

“Authorized Amount” shall mean \$_____, the maximum principal amount of the Funding Loan under this Funding Loan Agreement.

“Authorized Governmental Lender Representative” means the Mayor or Clerk or person or persons at the time designated to act on behalf of the Governmental Lender by written certificate furnished to the Fiscal Agent and the Borrower containing the specimen signatures of such person or persons and signed by the Mayor or the Clerk of the Governmental Lender. Such certificate may designate an alternate or alternates.

“Bond Ordinance” shall mean the ordinance of the Governmental Lender adopted on January 15, 2020 authorizing the Governmental Lender Notes and the Funding Loan and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

“Borrower” shall mean Bloomington RAD I, LP, an Indiana limited partnership.

“Borrower Loan” shall mean collectively the Series 2020A Borrower Loan and the Series 2020B Borrower Loan.

“Borrower Loan Agreement” shall mean the Borrower Loan Agreement, of even date herewith, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

“Borrower Loan Agreement Default” shall mean any “Event of Default” set forth in 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall “exist” if a Borrower Loan Agreement Default shall have occurred and be continuing beyond any applicable cure period.

“Borrower Loan Amount” shall mean the amount of \$_____.

“Borrower Loan Documents” shall have the meaning given such term in the Borrower Loan Agreement.

“Borrower Notes” shall mean the “Borrower Notes” as defined in the Borrower Loan Agreement.

“Business Day” shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York or the city where the Fiscal Agent is located are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“Closing Date” shall mean February ____, 2020, the date that initial Funding Loan proceeds are disbursed hereunder.

“Code” shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

[“Construction Escrow” shall have the meaning given such term in the Construction Funding Agreement.]

[“Construction Escrow Agreement” shall have the meaning given such term in the Construction Funding Agreement.]

“Construction Funding Agreement” means that certain Construction Funding Agreement of even date herewith, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced periodically during construction by the Funding Lender, as agent of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower through the Construction Escrow and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

[“Contingency Draw-Down Agreement” means the Contingency Draw-Down Agreement of even date herewith among the Funding Lender, the Fiscal Agent and the

Borrower relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.]

“Control” shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

“Default” shall mean the occurrence of an event, which, under any Funding Loan Document, would, but for the giving of notice or passage of time, or both, be an event of default under the applicable Funding Loan Document or a Borrower Loan Agreement Default.

“Draw-Down Notice” shall mean a notice described in Section 1.01 of the Contingency Draw-Down Agreement regarding the conversion of the Funding Loan from a draw down loan to a fully funded loan.

“Event of Default” shall have the meaning ascribed thereto in Section 9.1 hereof.

“Fiscal Agent” shall mean BMO Harris Bank N.A., as fiscal agent hereunder, and any successor fiscal agent or co-fiscal agent appointed under this Funding Loan Agreement.

“Fiscal Agent Fees” shall mean the ongoing compensation and expenses payable to the Fiscal Agent as follows:

(a) shall mean the annual fee of the Fiscal Agent due so long as any portion of the Funding Loan is outstanding in the amount of \$_____ annually, payable in advance by the Borrower to the Fiscal Agent on each anniversary of the Closing Date (with the first annual fee payable on the Closing Date);

(b) the reasonable fees and charges of the Fiscal Agent for necessary extraordinary services rendered by it and/or reimbursement for extraordinary expenses incurred by it under this Funding Loan Agreement as and when the same become due, including reasonable fees and expenses of legal counsel and internal default administrators (including fees prior to litigation, at trial or for appellate proceedings); provided, however, that the Fiscal Agent shall not be required to undertake any such extraordinary services unless provision for the payment of extraordinary expenses satisfactory to the Fiscal Agent shall have been made; and

(c) for purposes of the Borrower Loan Agreement, indemnification of the Fiscal Agent by the Borrower.

“Fitch” shall mean Fitch, Ltd.

“Funding Lender” shall mean BMO Harris Bank N.A., a national banking association, and any successor under this Funding Loan Agreement and the Borrower Loan Documents.

“Funding Loan Agreement” shall mean this Funding Loan Agreement, of even date herewith, by and among the Funding Lender, the Governmental Lender, and the Fiscal Agent, as

it may from time to time be supplemented, modified or amended by one or more indentures or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

“Funding Loan Documents” shall mean (i) this Funding Loan Agreement, (ii) the Borrower Loan Agreement, (iii) the Regulatory Agreements, (iv) the Tax Certificate, (v) the Borrower Loan Documents, (vi) any Rate Management Agreement (vii) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (viii) all amendments, modifications, renewals and substitutions of any of the foregoing.

“Funding Loan Payment Fund” shall mean the fund of that name established under Section 7.3 hereof.

“Government Obligations” shall mean noncallable, nonprepayable (i) direct, general obligations of the United States of America, or (ii) any obligations unconditionally guaranteed as to the full and timely payment of all amounts due thereunder by the full faith and credit of the United States of America (including obligations held in book entry form), but specifically excluding any mutual funds or unit investment trusts invested in such obligations.

“Governmental Lender” shall mean the City of Bloomington, Indiana.

“Governmental Lender Notes” shall mean the Governmental Lender Notes described in the recitals of this Funding Loan Agreement.

“Highest Rating Category” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is “A 1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG 1” (for fixed rate) or “VMIG 1” (for variable rate) for three months or less and “Aaa” for greater than three months. If at any time (i) both S&P and Moody’s rate a Permitted Investment and (ii) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, a Permitted Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Permitted Investment will be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“Maturity Date” shall mean _____ for the 2020A Governmental Note and _____ for the 2020B Governmental Note, subject to the terms of Sections 2.1 and 9.2 of this Agreement.

“Maximum Rate” shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Funding Loan under State law.

“Minimum Beneficial Ownership Amount” shall mean an amount no less than fifteen percent (15%) of the outstanding principal amount of the Funding Loan.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Note Proceeds Account” means the Note Proceeds Account of the Project Fund established under Section 7.3.

“Noteowner” or “owner of the Governmental Lender Notes” means the owner, or as applicable, collectively the owners, of the Governmental Lender Notes as shown on the registration books maintained by the Fiscal Agent pursuant to Section 2.4(e).

[“Negative Arbitrage Deposit” has the meaning set forth in the Contingency Draw-Down Agreement.]

“Opinion of Counsel” shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required to address the excludability of interest on the Governmental Lender Notes from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

“Permitted Investments” shall mean, to the extent authorized by law for investment of any moneys held under this Funding Loan Agreement:

(a) Government Obligations.

(b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America (other than the Federal Home Loan Mortgage Corporation) or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(c) Obligations, in each case rated in the Highest Rating Category, of (i) any state or territory of the United States of America, (ii) any agency, instrumentality, authority or political subdivision of a state or territory or (iii) any public benefit or municipal corporation the principal of and interest on which are guaranteed by such state or political subdivision.

(d) Any written repurchase agreement entered into with a Qualified Financial Institution whose unsecured short term obligations are rated in the Highest Rating Category.

(e) Commercial paper rated in the Highest Rating Category.

(f) Interest bearing negotiable certificates of deposit, interest bearing time deposits, interest bearing savings accounts and bankers’ acceptances, issued by a Qualified Financial Institution if either (i) the Qualified Financial Institution’s unsecured short term obligations are rated in the Highest Rating Category or (ii) such deposits, accounts or acceptances are fully collateralized by investments described in clauses (a) or (b) of this definition or fully insured by the Federal Deposit Insurance Corporation.

(g) An agreement held by the Fiscal Agent for the investment of moneys at a guaranteed rate with a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or the Second Highest Rating Category, or whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or Second Highest Rating Category; provided that such agreement is in a form acceptable to the Funding Lender and the Fiscal Agent; and provided further that such agreement includes the following restrictions:

(1) the invested funds will be available for withdrawal without penalty or premium, at any time that the Funding Lender is required to pay moneys from the Fund(s) established under this Funding Loan Agreement to which the agreement is applicable;

(2) the agreement, and if applicable the guarantee or insurance, is an unconditional and general obligation of the provider and, if applicable, the guarantor or insurer of the agreement, and ranks *pari passu* with all other unsecured unsubordinated obligations of the provider, and if applicable, the guarantor or insurer of the agreement;

(3) the Funding Lender and the Fiscal Agent receive an Opinion of Counsel, which may be subject to customary qualifications, that such agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and, if applicable, an Opinion of Counsel that any guaranty or insurance policy provided by a guarantor or insurer is legal, valid, binding and enforceable upon the guarantor or insurer in accordance with its terms; and

(4) the agreement provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any Rating Agency or falls below the Second Highest Rating Category, the provider must, within ten days, either: (A) collateralize the agreement (if the agreement is not already collateralized) with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Fiscal Agent or a third party custodian, such collateralization to be effected in a manner and in an amount reasonably satisfactory to the Funding Lender, or, if the agreement is already collateralized, increase the collateral with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Fiscal Agent or a third party custodian, in an amount reasonably satisfactory to the Funding Lender, (B) at the request of the Funding Lender, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium unless required by law or (C) transfer the agreement, guarantee or insurance, as applicable, to a replacement provider, guarantor or insurer, as applicable, then meeting the requirements of a Qualified Financial Institution and whose unsecured long term obligations are then rated in the Highest Rating Category or the Second Highest Rating Category. The agreement may provide that the downgraded provider may elect which of the remedies to the down grade (other than the remedy set out in (B)) to perform.

(h) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Fiscal Agent or the Funding Lender or any of the affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated “AAAmG” or “AAAm” by S&P or “Aaa” by Moody’s so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If approved in writing by the Funding Lender, a money market mutual fund portfolio may also contain obligations and agreements to repurchase obligations described in paragraphs (b) or (c), the money market mutual fund must be rated “AAAmG” or “AAAm” by S&P or “Aaa” by Moody’s. If at any time (i) both S&P and Moody’s rate a money market mutual fund and (ii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.

(i) Any other investment authorized by the laws of the State, if such investment is approved in writing by the Funding Lender.

Permitted Investments shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment with a final maturity or any agreement with a term greater than one year from the date of the investment. This exception (1) shall not apply to Permitted Investments listed in paragraphs (g) and (i).

(2) Except for any obligation described in paragraph (a) or (i), any obligation with a purchase price greater or less than the par value of such obligation.

(3) Any asset backed security, including mortgage backed securities, real estate mortgage investment conduits, collateralized mortgage obligations, credit card receivable asset backed securities and auto loan asset backed securities.

(4) Any interest only or principal only stripped security.

(5) Any obligation bearing interest at an inverse floating rate.

(6) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(7) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

(8) Any investment described in paragraph (d) or (g) with, or guaranteed or insured by, a Qualified Financial Institution described in clause (iv) of the definition of Qualified Financial Institution if such institution does not agree to submit to jurisdiction, venue and service of process in the United States of America in the agreement relating to the investment.

(9) Any investment to which S&P has added an “r” or “t” highlighter.

“Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Pledged Revenues” shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Lender Notes, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by the Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Notes, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

“Prepayment Premium” shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the corresponding Borrower Note (including any Prepayment Premium as set forth in the corresponding Borrower Note) and (ii) any premium payable on the Governmental Lender Notes pursuant to this Funding Loan Agreement.

“Project” shall have the meaning given to that term in the Borrower Loan Agreement.

“Project Fund” shall mean the fund of that name established under Section 7.3 hereof.

“Qualified Financial Institution” shall mean any (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, savings and loan association, or insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Funding Lender the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) other entity which is acceptable to the Funding Lender. With respect to an entity which provides an agreement held by the Fiscal Agent for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term “Permitted Investments” or an entity which guarantees or insures, as applicable, the agreement, a “Qualified Financial Institution” may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

“Rating Agency” shall mean any one and each of S&P, Moody’s and Fitch then rating the Permitted Investments or any other nationally recognized statistical rating agency then rating the Permitted Investments, which has been approved by the Funding Lender.

“Regulations” shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

“Regulatory Agreements” shall mean collectively each Regulatory Agreement & Declaration of Restrictive Covenants relating to the Project, dated as of the date hereof, by and among the Governmental Lender, the Borrower and the Fiscal Agent, as hereafter amended or modified.

[“Remaining Funding Loan Proceeds Account” has the meaning set forth in the Contingency Draw-Down Agreement.]

[“Remaining Funding Loan Proceeds Account Earnings Subaccount” has the meaning set forth in the Contingency Draw-Down Agreement.]

“Required Transferee Representations” shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

“Responsible Officer” shall mean any officer within the Corporate Trust Services Department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

“Second Highest Rating Category” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax exempt municipal debt established by S&P is “AA” for a term greater than one year, with corresponding ratings by Moody’s of “Aa.” If at any time (i) both S&P and Moody’s rate a Permitted Investment and (ii) one of those ratings is below the Second Highest Rating Category, then such Permitted Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated “AA” by S&P and “A” by Moody’s is not rated in the Second Highest Rating Category.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security” shall mean the security for the performance by the Governmental Lender of its obligations under the Governmental Lender Notes and this Funding Loan Agreement as more fully set forth in Article IV hereof.

“Security Instrument” shall mean the [Leasehold Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] (as amended, restated and/or supplemented from time to time) of even date herewith, made by the Borrower in favor of the

Governmental Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan.

“Series 2020A Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of \$ _____, as evidenced by the Series 2020A Borrower Note.

“Series 2020B Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of \$ _____, as evidenced by the Series 2020B Borrower Note.

“S&P” shall mean S&P Global Ratings, an S&P Global Inc. business division, and its successors.

“State” shall mean the State of Indiana.

“Tax Certificate” shall mean the Tax Representation Certificate, dated the Closing Date, executed and delivered by the Borrower.

“Tax Counsel” shall mean Ice Miller LLP or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

“Tax Counsel Approving Opinion” shall mean an opinion of Tax Counsel substantially to the effect that the Governmental Lender Notes constitute a valid and binding obligation of the Governmental Lender and that, under existing statutes, regulations published rulings and judicial decisions, the interest on the Governmental Lender Notes is excludable from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Tax Counsel No Adverse Effect Opinion” shall mean an opinion of Tax Counsel to the effect that the taking of the action specified therein will not impair the excludability of interest on the Governmental Lender Notes from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Title Company” shall mean National Title Services Group, a division of Greater Illinois Title Company.

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Unassigned Rights” shall mean the Governmental Lender’s rights to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its rights of access under Section 5.17 thereof, its rights to indemnification under Section 5.15 thereof, its rights to attorneys’ fees under Sections 5.11 and 5.14 thereof, its rights to receive notices, reports and other statements and its rights to consent to certain matters, as provided in this Funding Loan Agreement and the Borrower Loan Agreement.

“Written Certificate,” “Written Certification,” “Written Consent,” “Written Direction,” “Written Notice,” “Written Order,” “Written Registration,” “Written Request,” and “Written Requisition” shall mean a written certificate, direction, notice, order or requisition signed by an Authorized Borrower Representative, an Authorized Governmental Lender Representative or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Fiscal Agent or such other Person as required under the Funding Loan Documents.

“Yield” shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

Section 1.2. Effect of Headings and Table of Contents. The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.3. Date of Funding Loan Agreement. The date of this Funding Loan Agreement is intended as and for a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

Section 1.4. Designation of Time for Performance. Except as otherwise expressly provided herein, any reference in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

Section 1.5. Interpretation. The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.

ARTICLE II

TERMS; GOVERNMENTAL LENDER NOTES

Section 2.1. Terms.

(a) Principal Amount. The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount.

(b) Draw-Down Funding. The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Fiscal Agent for the account of the Governmental Lender for disbursement to the Borrower [through the Construction Escrow] as and when needed to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement and the Construction Funding Agreement. Upon each advance of principal under this Funding Loan Agreement, a like amount of the Borrower Loan shall be deemed concurrently and simultaneously advanced under the Borrower Loan Agreement and the Construction Funding Agreement, including the initial advance of \$_____. Notwithstanding

anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after _____; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion. The Governmental Lender has reviewed and approved the form of Contingency Draw-Down Agreement and consents to the terms thereof and agrees to take all actions reasonably required of the Governmental Lender in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Funding Lender or the Borrower.

(c) Origination Date; Maturity. The Funding Loan shall be originated on the Closing Date and shall mature on the Maturity Date related to the 2020A Governmental Note and on the Maturity Date related to the 2020B Governmental Note at which times the entire principal amount evidenced by the 2020A Governmental Note and the 2020B Governmental Note, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable; provided however, that notwithstanding the foregoing, the parties hereto (i) acknowledge that the current stated maturity dates set forth in the corresponding Borrower Notes are dates that will occur prior to the respective Maturity Date stated in the 2020A Governmental Note and the 2020B Governmental Note, and (ii) agree that should the Borrower Notes mature prior to the stated Maturity Date of the Governmental Lender Notes, the Governmental Lender Notes will mature concurrently with the Borrower Notes.

(d) Principal. The outstanding principal amount of the Governmental Lender Notes and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances under the Borrower Loan Agreement and the Construction Funding Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Notes previously received upon payment of corresponding principal amounts under the corresponding Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Notes and interest thereon shall be payable on the basis specified in this paragraph (d) and in paragraphs (e) and (f) of this Section 2.1.

The Fiscal Agent shall keep a record of all principal advances and principal repayments made under the Governmental Lender Notes and upon request shall provide the Governmental Lender and the Funding Lender with monthly statements of the outstanding principal balance of the Governmental Lender Notes and the Funding Loan.

(e) Interest. Interest shall be paid on the outstanding principal amount of the Governmental Lender Notes at the rate or rates set forth in the corresponding Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(f) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Notes shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the Borrower

Loan and the Borrower Notes. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the corresponding Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Notes.

(g) Usury. If, from any circumstances whatsoever, the fulfillment of any provision of the Governmental Lender Notes, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the Maximum Rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Notes, this Funding Loan Agreement and all other Funding Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Governmental Lender intends and agrees that (i) interest shall be computed upon the assumption that payments under the Borrower Loan Agreement and other Funding Loan Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, shall be spread over the actual term of the Funding Loan.

Section 2.2. Form of Governmental Lender Notes. As evidence of its obligation to repay the Funding Loan solely from the Pledged Revenues, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Notes. The Governmental Lender Notes shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement.

Section 2.3. Execution and Delivery of Governmental Lender Notes. The Governmental Lender Notes shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its Clerk. The manual or facsimile signatures of individuals who were the proper officers of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the authentication and delivery of the Governmental Lender Notes or shall not have held such offices at the date of the Governmental Lender Notes. The Fiscal Agent shall manually authenticate the Governmental Lender Notes by executing the Certificate of Authentication appended thereto.

Section 2.4. Required Transferee Representations; Participations; Sale and Assignment.

(a) The Funding Lender shall deliver to the Governmental Lender the Required Transferee Representations in substantially the form attached hereto as Exhibit B on the Closing Date.

(b) The Funding Lender shall have the right to sell (i) the Governmental Lender Notes and the Funding Loan or (ii) any portion of or a participation interest in the Governmental Lender Notes and the Funding Loan, to the extent permitted by Section 2.4(c) below, provided that such sale shall be only to Approved Transferees that execute and deliver to the Funding Lender, with a copy to the Governmental Lender and the Fiscal Agent, the Required Transferee Representations.

(c) Notwithstanding the other provisions of this Section 2.4, no beneficial ownership interest in the Governmental Lender Notes and Funding Loan shall be sold in an amount that is less than the Minimum Beneficial Ownership Amount.

(d) No service charge shall be made for any sale or assignment of any portion of the Governmental Lender Notes, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such sale or assignment. Such sums shall be paid in every instance by the purchaser or assignee of the Funding Loan or portion thereof.

(e) The Governmental Lender Notes, or any interest therein, shall be in fully-registered form transferable to subsequent holders only on the registration books which shall be maintained by the Fiscal Agent for such purpose and which shall be open to inspection by the Governmental Lender and the Funding Lender. The Governmental Lender Notes shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

(f) The parties agree that no rating shall be sought from a rating agency with respect to the Funding Loan or the Governmental Lender Notes.

ARTICLE III

PREPAYMENT

Section 3.1. Prepayment of the Governmental Lender Notes from Prepayment under the Borrower Notes. The Governmental Lender Notes is subject to voluntary and mandatory prepayment as follows:

(a) The Governmental Lender Notes shall be subject to voluntary prepayment in full or in part by the Governmental Lender, from funds of the Governmental Lender received by the Governmental Lender or the Fiscal Agent, as provided in the Borrower Loan Agreement, to the extent and in the manner and on any date that the corresponding Borrower Notes are subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under the corresponding Borrower Note, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Lender Notes to be prepaid, except as specifically permitted in the corresponding Borrower Note, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

(b) The Governmental Lender Notes shall be subject to mandatory prepayment in whole or in part upon prepayment of the corresponding Borrower Note at the direction of the Funding Lender in accordance with the terms of the corresponding Borrower Note at a prepayment price equal to the outstanding principal balance of the corresponding Borrower Note prepaid, plus accrued interest plus any other amounts payable under the corresponding Borrower Note or the Borrower Loan Agreement.

Section 3.2. Notice of Prepayment. Notice of prepayment of the Governmental Lender Notes shall be deemed given to the extent that notice of prepayment of the corresponding Borrower Note is timely and properly given to Funding Lender and the Fiscal Agent in accordance with the terms of the corresponding Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Notes is required to be given.

ARTICLE IV

SECURITY

Section 4.1. Security for the Funding Loan. To secure the payment of the Funding Loan and the Governmental Lender Notes, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Notes are secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender (except as limited herein), a lien on and security interest in the following described property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement, the Borrower Notes and the other Borrower Loan Documents, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding Loan Documents, and all other payments, revenues and receipts derived by the Governmental

Lender under and pursuant to, and subject to the provisions of, the Funding Loan Documents;

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held by the Fiscal Agent under this Funding Loan Agreement and any amounts held at any time in the Remaining Funding Loan Proceeds Account and the Remaining Funding Loan Proceeds Account Earnings Subaccount, [any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement,] subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Fiscal Agent or the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Fiscal Agent or the Funding Lender is hereby authorized to receive any and all such property as and for additional security for the Funding Loan and the Governmental Lender Notes and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Notes, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Notes by the Governmental Lender. The Security so pledged and then or thereafter received by the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

Section 4.2. Delivery of Security. To provide security for the payment of the Funding Loan and the Governmental Lender Notes, the Governmental Lender has pledged and assigned to secure payment of the Funding Loan and the Governmental Lender Notes its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Funding Lender the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

(a) The originally executed Borrower Notes endorsed without recourse to the Funding Lender by the Governmental Lender;

(b) The originally executed Borrower Loan Agreement and Regulatory Agreements;

(c) The originally executed Security Instrument and all other Funding Loan Documents existing at the time of delivery of the Borrower Note and an assignment for security of the Security Instrument from the Governmental Lender to the Funding Lender, in recordable form;

(d) Uniform Commercial Code financing statements or other chattel security documents giving notice of the Funding Lender's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project, in form suitable for filing; and

(e) Uniform Commercial Code financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement.

Section 4.3. Additional Documents. The Governmental Lender shall deliver and deposit with the Funding Lender such additional documents, financing statements, and instruments as the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Funding Lender of its lien and security interest in and to the Security including, at the request of the Funding Lender[, any amounts held under the Contingency Draw-Down Agreement,] at the expense of the Borrower.

ARTICLE V

LIMITED LIABILITY

Section 5.1. Source of Payment of Funding Loan and Other Obligations. The Funding Loan is a limited obligation of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned hereunder. None of the Governmental Lender, the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein, and none of the Funding Loan or the Governmental Lender Notes or any of the Governmental Lender's agreements or obligations with respect to the Funding Loan, the Governmental Lender Notes, or hereunder, shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever.

Section 5.2. Exempt from Individual Liability. No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any present or future officer, director, employee or agent of the Governmental Lender in his individual capacity, and neither the officers, directors, employees or agents of the Governmental Lender executing the Governmental Lender Notes or this Funding Loan Agreement shall be liable personally on the Governmental Lender Notes or under this Funding Loan Agreement or be subject to any personal liability or accountability by reason of the issuance of the Governmental Lender Notes or the execution of this Funding Loan Agreement.

ARTICLE VI

CLOSING CONDITIONS; APPLICATION OF FUNDS

Section 6.1. Conditions Precedent to Closing. Closing of the Funding Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Funding Lender in its sole discretion of each of the conditions precedent to closing set forth in this Funding Loan Agreement, including but not limited to the following:

- (a) Receipt by the Funding Lender of the original Governmental Lender Notes authenticated by the Fiscal Agent;
- (b) Receipt by the Funding Lender of the original executed Borrower Notes, endorsed to the Funding Lender by the Governmental Lender;
- (c) Receipt by the Funding Lender of executed counterpart copies of this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Funding Agreement, the Regulatory Agreements, the Tax Certificate and the Security Instrument;
- (d) A certified copy of the Bond Ordinance;
- (e) The Required Transferee Representations from the Funding Lender;
- (f) Delivery into escrow or to the Fiscal Agent, as appropriate, of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, in accordance with Section 2.3(c)(ii) of the Borrower Loan Agreement;
- (g) Receipt by the Funding Lender of a Tax Counsel Approving Opinion;
- (h) Receipt by the Funding Lender of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Notes are exempt from registration under the Securities Act of 1933, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;
- (i) Delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender, the Funding Lender to the effect that the Funding Loan Documents to which the Borrower is a party are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender and the Funding Lender; and
- (j) Receipt by the Funding Lender of any other documents or opinions that the Funding Lender or Tax Counsel may require.

ARTICLE VII

FUNDS AND ACCOUNTS

Section 7.1. Authorization to Create Funds and Accounts. Except as provided in Section 7.3 hereof, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Funding Lender, the Fiscal Agent and any designee of the Funding Lender are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender or the Fiscal Agent pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

Section 7.2. Investment of Funds. Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested in Permitted Investments at the direction of the Borrower, subject in all cases to the restrictions of Section 7.9 hereof and of the Tax Certificate.

Section 7.3. Establishment of Funds. There are established with the Fiscal Agent the following funds and accounts:

- (a) The Funding Loan Payment Fund; and
- (b) The Project Fund, and within the Project Fund a Note Proceeds Account;

All money required to be deposited with or paid to the Fiscal Agent for the account of any of the funds or accounts created by this Funding Loan Agreement shall be held by the Fiscal Agent for the benefit of the Funding Lender shall, while held by the Fiscal Agent, constitute part of the Pledged Revenues and be subject to the lien hereof.

Section 7.4. Funding Loan Payment Fund. The Governmental Lender and the Borrower shall have no interest in the Funding Loan Payment Fund or the moneys therein, which shall always be maintained by the Fiscal Agent completely separate and segregated from all other moneys held hereunder and from any other moneys of the Governmental Lender and the Borrower.

The Fiscal Agent shall deposit into the Funding Loan Payment Fund any amounts received from the Borrower as payments of principal of, premium, if any, or interest on the (i) Series 2020A Borrower Loan to be attributed to the Funding Loan related to the 2020A Governmental Note and (ii) Series 2020B Borrower Loan to be attributed to the Funding Loan related to the 2020B Governmental Note any other amounts received by the Fiscal Agent that are subject to the lien and pledge of this Funding Loan Agreement, including any Pledged Revenues not required to be deposited not otherwise specifically directed in writing to be deposited into other funds created by this Funding Loan Agreement.

The Fiscal Agent shall apply all amounts on deposit in the Funding Loan Payment Fund in the following order of priority:

First, to the Noteowner to pay or provide for the payment of the interest then due on the Funding Loan;

Second, to the Noteowner to pay or provide for the payment or the prepayment of principal (and premium, if any) on the Funding Loan, provided moneys have been transferred or deposited into the Funding Loan Payment Fund for such purpose; and

Third, to the Noteowner to pay or provide for the payment of the Funding Loan on the Maturity Date.

Section 7.5. Reserved.

Section 7.6. Disbursements Funding Loan Interest Payments. The Funding Lender shall have the right to advance proceeds of the Funding Loan to itself to pay accrued interest on the Funding Loan when due with or without a Written Requisition of the Borrower.

Section 7.7. Project Fund.

(a) All proceeds of the Funding Loan provided by the Funding Lender to the Fiscal Agent shall be deposited to the Note Proceeds Account of the Project Fund and disbursed as provided herein and in the Construction Funding Agreement. The Fiscal Agent shall disburse moneys in the Note Proceeds Account of the Project Fund to the Construction Escrow for the acquisition, renovation, rehabilitation, improvement and equipping of the Project, to pay other Qualified Project Costs and to pay other costs related to the Project as provided herein.

Not less than 95% of the moneys deposited in and credited to the Note Proceeds Account of the Project Fund representing the proceeds of the Funding Loan, including Investment Income thereon, will be expended for Qualified Project Costs (the "95% Requirement"). The amounts on deposit in the Note Proceeds Account of the Project Fund shall not be applied to the payment of Costs of Funding.

Before any payment shall be made from the Project Fund, the Regulatory Agreements shall have been executed and submitted to a title company for recordation in the official records of Monroe County, Indiana and there shall be filed with the Fiscal Agent a Written Requisition of the Borrower substantially in the form attached hereto as Exhibit C and approved by the Funding Lender pursuant to the terms, conditions and provisions of the Construction Funding Agreement.

In addition to the above, in connection with a Written Requisition:

(i) Only the signature of an authorized officer of the Funding Lender shall be required on a Written Requisition during any period in which a default by the Borrower has occurred and is then continuing under the Borrower Loan (Written Notice of which default has been given in writing by an authorized officer of the Funding Lender to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such Written Notice as to the occurrence and continuation of such a default).

(ii) The Fiscal Agent shall disburse amounts in the Project Fund upon receipt of a Written Requisition signed only by the Funding Lender, without any need for any signature by an Authorized Borrower Representative, so long as the amount to be disbursed is to be used solely to make payments of principal, interest and/or fees due under the Funding Loan Documents.

(iii) The Fiscal Agent may conclusively rely on all Written Requisitions, the execution only by the Funding Lender with respect to the Written Requisitions delivered to Fiscal Agent in accordance with clauses (i) and (ii), the execution by the Authorized Borrower Representative and the approval of all Written Requisitions by the Funding Lender with respect to all other Written Requisitions, as required by this Section, as conditions of payment from the Project Fund, which Written Requisitions constitute, as to the Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. These documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Funding Lender and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Project or the construction work or to make any independent investigation with respect to the matters set forth in any Written Requisition or other statements, orders, certifications and approvals received by the Fiscal Agent. The Fiscal Agent is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, renovation, rehabilitation, improvement and equipping of the Project.

(b) Upon receipt of each Written Requisition executed only by the Funding Lender with respect to the Written Requisitions delivered to Fiscal Agent in accordance with clauses (i) and (ii) of subsection (a), or submitted by the Borrower and approved in writing by the Funding Lender with respect to all other Written Requisitions, the Fiscal Agent shall promptly, but in any case within three Business Days, make payment from the Note Proceeds Account within the Project Fund in accordance with such Written Requisition. The Fiscal Agent shall have no duty to determine whether any requested disbursement from the Note Proceeds Account of the Project Fund complies with the terms, conditions and provisions of the Funding Loan Documents, constitutes payment of Qualified Project Costs or complies with the 95% Requirement. The approval in writing of a Written Requisition by the Funding Lender shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Funding Loan Documents applicable to such disbursement have been fully satisfied or waived and the Written Requisition from the Borrower shall, insofar as the Fiscal Agent and the Governmental Lender, as applicable, are concerned, constitute conclusive evidence that the costs described in the Written Requisition constitute Qualified Project Costs or other permitted Project costs.

The Fiscal Agent shall provide Written Notice to the Borrower, the Funding Lender and the Governmental Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the disbursements as and when required by this Section 7.7(b). Except as provided in the next sentence, all such payments shall at Funding

Lender's written direction be made by check or draft payable, or by wire transfer, either (i) to the Construction Escrow for disbursement in [accordance with the Construction Escrow Agreement], (ii) directly to the person, firm or corporation to be paid, (iii) to the Borrower and such person, firm or corporation, or (iv) upon receipt by the Funding Lender of evidence that the Borrower has previously paid such amount and Written Direction to the Fiscal Agent as to such as evidenced by the Funding Lender's approval of the Written Requisition, to the Borrower. Upon the occurrence of an Event of Default of the Borrower of which the Fiscal Agent has knowledge as provided herein, which is continuing under the Funding Loan Documents, with the Written Requisition signed only by the Funding Lender, the Fiscal Agent shall apply amounts on deposit in the Note Proceeds Account of the Project Fund to the payment of principal of and interest on the Funding Loan and receipt of either (a) a Tax Counsel No Adverse Effect Opinion or (b) an acknowledgment by the Funding Lender that the interest on the Governmental Lender Notes may no longer be excludable from gross income for federal income tax purposes. If a Written Requisition signed by the Authorized Borrower Representative and countersigned by an authorized officer of the Funding Lender is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Fund, the Fiscal Agent shall close the Project Fund.

Prior to any mandatory prepayment of the Funding Loan pursuant to the terms hereof, any amounts then remaining in the Note Proceeds Account of the Project Fund shall, at the written direction of the Funding Lender and upon receipt by the Fiscal Agent of a Tax Counsel No Adverse Effect Opinion, be transferred to the Funding Loan Payment Fund to be applied to the prepayment of the Funding Loan pursuant hereto.

Section 7.8. Reserved.

Section 7.9. Investments.

(a) Amounts on deposit in the Project Fund shall be invested in Permitted Investments directed in writing by the Borrower. Investment Income earned on amounts on deposit in each account of the Project Fund (if any) shall be transferred to the Funding Loan Payment Fund.

(b) Amounts on deposit in the Funding Loan Payment Fund shall be invested in Permitted Investments directed in writing by the Borrower. Investment Income earned on amounts on deposit in the Funding Loan Payment Fund shall be retained in and credited to and become a part of the amounts on deposit in that account of the Funding Loan Payment Fund.

The Fiscal Agent may make any and all investments permitted under this Funding Loan Agreement through its own trust or banking department or any affiliate and may pay said department reasonable, customary fees for placing such investments. The Fiscal Agent and its affiliates may act as principal, agent, sponsor, advisor or depository with respect to Permitted Investments under this Funding Loan Agreement. The Fiscal Agent shall not be liable for any

losses from investments made by the Fiscal Agent in accordance with this Funding Loan Agreement.

The Governmental Lender, the Funding Lender and the Borrower (by its execution of the Borrower Loan Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Governmental Lender or the Funding Lender the right to receive brokerage confirmations of security transactions as they occur, the Governmental Lender and the Funding Lender will not receive such confirmations to the extent permitted by law. The Fiscal Agent shall furnish the Borrower, the Funding Lender and the Governmental Lender (to the extent requested by such parties) periodic cash transaction statements which shall include detail for all investment transactions, if any, made by the Fiscal Agent hereunder.

Section 7.10. Reserved.

ARTICLE VIII

REPRESENTATIONS AND COVENANTS

Section 8.1. General Representations. The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Governmental Lender is a municipal corporation duly organized and validly existing under the laws of the State of Indiana, has the power and authority to (i) enter into the Funding Loan Documents to which it is a party and the transactions contemplated thereby, (ii) incur the limited obligation represented by the Governmental Lender Notes and the Funding Loan and apply the proceeds of such obligation or loan to finance the Project and (iii) carry out its other obligations under this Funding Loan Agreement and the Governmental Lender Notes, and by proper action has duly authorized the Governmental Lender's execution and delivery of, and its performance under, such Funding Loan Documents and all other agreements and instruments relating thereto.

(b) The Governmental Lender (i) is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not constitute a default under or a violation of, (a) the Act or (b) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it or the provisions of any agreements and instruments to which the Governmental Lender is a party, which default under or violation would prevent it from entering into the Funding Loan Agreement, executing and delivering the Governmental Lender Notes, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and (ii) to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representations as to the necessity of registering the Borrower Notes pursuant to any securities laws or complying with any other requirements of securities laws).

(c) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender with respect to (i) the organization and existence of the Governmental Lender, (ii) its authority to execute or deliver the Funding Loan Documents to which it is a party, (iii) the validity or enforceability of any such Funding Loan Documents or the transactions contemplated thereby, (iv) the title of any officer of the Governmental Lender who executed such Funding Loan Documents or (v) any authority or proceedings relating to the execution and delivery of such Funding Loan Documents on behalf of the Governmental Lender, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

(d) The revenues and receipts to be derived from the Borrower Loan Agreement, the Borrower Notes and this Funding Loan Agreement have not been pledged previously by the Governmental Lender to secure any of its notes or bonds other than the Funding Loan Agreement as evidenced by the Governmental Lender Notes.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

Section 8.2. No Encumbrance on Security. The Governmental Lender will not knowingly create or knowingly permit the creation of any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on a parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents at the direction and upon being satisfactorily indemnified by the Borrower.

Section 8.3. Repayment of Funding Loan. Subject to the provisions of Article III hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Lender Notes, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Notes and this Funding Loan Agreement.

Section 8.4. Reserved.

Section 8.5. Borrower Loan Agreement Performance.

(a) The Funding Lender and the Fiscal Agent, on behalf of the Governmental Lender, may (but shall not be required to nor obligated to) perform and observe any agreement or covenant of the Governmental Lender under the Borrower Loan Agreement, all to the end that the Governmental Lender's rights under the Borrower Loan Agreement may be unimpaired and free from default.

(b) The Governmental Lender will promptly notify or cause to be notified the Borrower, the Fiscal Agent and the Funding Lender in writing of the occurrence of any

Borrower Loan Agreement Default, provided that the Governmental Lender has received written notice or otherwise has knowledge of such event.

Section 8.6. Maintenance of Records; Inspection of Records.

(a) The Fiscal Agent shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Governmental Lender Notes and interests therein. The Fiscal Agent shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Funding Loan, subject to the inspection of the Funding Lender and the Governmental Lender and their representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender and the Funding Lender will at any and all times, upon the reasonable request of the Borrower, the Fiscal Agent, the Governmental Lender or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender or the Funding Lender as appropriate, relating to the Project and the Funding Loan, if any, and to make copies thereof.

Section 8.7. Tax Covenants. The Governmental Lender covenants to and for the benefit of the Fiscal Agent and the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will:

(a) Enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreements in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreements within a reasonable period after any such violation is first discovered;

(b) Not take or cause to be taken any other action or actions, or fail to take any action or actions, which would cause the interest payable on the Governmental Lender Notes to be includable in gross income for federal income tax purposes;

(c) At all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Governmental Lender Notes will be excluded from the gross income of the holders of the Governmental Lender Notes, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Notes or a portion thereof is a “substantial user” of the facilities financed with the Governmental Lender Notes or a “related person” within the meaning of Section 147(a) of the Code;

(d) Not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Funding Loan to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations; and

(e) Require the Borrower to agree, pursuant to the terms and provisions of the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds

of the Funding Loan, or any other moneys which may be deemed to be proceeds of the Funding Loan pursuant to the Code, which would cause the Funding Loan to be an “arbitrage bond” within the meaning of Sections 103(b) and 148 the Code, and to comply with the requirements of the Code throughout the term of the Funding Loan; and

(f) Require the Borrower to take all steps necessary to compute and pay any rebatable arbitrage in accordance with Section 148(f) of the Code.

In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full.

For purposes of this Section 8.7 the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s control and no acts, omissions or directions of the Borrower, the Fiscal Agent, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel. Notwithstanding anything herein, nothing herein or in the Tax Certificate, shall estop or limit the right or ability of the Governmental Lender to assert any position or take any action, or to refrain from any position or taking any action, that the Governmental Lender may hereafter determine, based on its sole determination of any material benefits and burdens to the Governmental Lender, to be in the Issuer’s best interest, without regard to its effect on the Borrower or the Noteholders except any adverse effect on the tax-exempt status of the Notes.

Section 8.8. Performance by the Borrower. The Borrower, on behalf of the Governmental Lender, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Potential Default under the Borrower Loan Agreement exists.

Section 8.9. Maintenance of Records. The Funding Lender shall keep and maintain adequate records pertaining to funds and accounts relative to the Borrower Loan established with the Fiscal Agent, if any, including all deposits to and disbursements from said funds and accounts and will provide information and records relating thereto to the Fiscal Agent or the Governmental Lender upon request.

ARTICLE IX

DEFAULT; REMEDIES

Section 9.1. Events of Default. Any one or more of the following shall constitute an event of default (an “Event of Default”) under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or Governmental body):

(a) A default in the payment of any interest upon the Governmental Lender Notes when such interest becomes due and payable; or

(b) A default in the payment of principal of, or premium on, the Governmental Lender Notes when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise; or

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender and the Borrower by the Funding Lender, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under this Funding Loan Agreement; provided that, so long as the Governmental Lender has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender is diligently pursuing such cure to the Funding Lender’s satisfaction, with the Funding Lender’s Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

(d) A default in the payment of any Additional Borrower Payments; or

(e) Any other “Default” or “Event of Default” under any of the other Funding Loan Documents (taking into account any applicable grace periods therein).

Section 9.2. Acceleration of Maturity; Rescission and Annulment.

(a) Subject to the provisions of Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender may declare the principal of the Funding Loan and the Governmental Lender Notes and the interest accrued thereon to be immediately due and payable, by notice to the Governmental Lender and the Borrower and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Funding Loan and the Governmental Lender Notes shall become immediately due and payable.

(b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Governmental Lender, rescind and annul such declaration and its consequences if:

(i) There has been deposited with the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Funding Loan, (2) the principal of and Prepayment Premium on the Funding Loan that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Funding Loan, (3) to the extent that payment of such

interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Funding Loan, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and

(ii) All Events of Default, other than the non-payment of the principal of the Funding Loan which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

(c) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.

Section 9.3. Additional Remedies; Funding Lender Enforcement.

(a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of this Section 9.3 and Section 9.9 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute.

(b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce its rights and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law:

(i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or part of the Security;

(ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan

Agreement, and recording the same in the real estate records of the jurisdiction in which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

(iv) to take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Governmental Lender Notes, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect.

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Notes or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Governmental Lender Notes, and provided that the Governmental Lender may enforce specific performance with respect to the Unassigned Rights.

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreements, and if such default remains uncured for a period of 30 days after the Borrower and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreements has occurred and specifying the nature of the default, the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreements or to exercise its other rights or remedies thereunder.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.5, 5.14 or 5.15 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender shall have the right to exercise all its rights and remedies thereunder (subject to the last paragraph of Section 9.14 hereof).

Section 9.4. Application of Money Collected. Any money collected by the Funding Lender pursuant to this Article and any other sums then held by the Funding Lender as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

(a) *First*, To the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to the Governmental Lender, the Funding Lender and the Rebate Analyst;

(b) *Second*, To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Notes, then due and unpaid in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Funding Loan) on overdue principal of, and Prepayment Premium and overdue installments of interest on the Funding Loan; provided, however, that partial interests in any portion of the Funding Loan shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and

(c) *Third*, The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

Section 9.5. Remedies Vested in Funding Lender. All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Notes may be prosecuted and enforced by the Funding Lender without the possession of the Governmental Lender Notes or the production thereof in any proceeding relating thereto.

Section 9.6. Restoration of Positions. If Funding Lender shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

Section 9.7. Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 9.8. Delay or Omission Not Waiver. No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

Section 9.9. Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Funding Lender, the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Governmental Lender, the Fiscal Agent and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 9.10. Remedies Under Borrower Loan Agreement or Borrower Notes. As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Notes, whether or not the Governmental Lender Notes have been accelerated or declared due and payable by reason of an Event of Default.

Section 9.11. Waiver of Appraisal and Other Laws.

(a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Governmental Lender, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof.

(b) If any law now in effect prohibiting the waiver referred to in Section 9.11(a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

Section 9.12. Suits to Protect the Security. The Funding Lender shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

Section 9.13. Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in

the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 9.14. Assumption of Obligations. In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Notes, the Regulatory Agreements and any other Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents.

ARTICLE X

AMENDMENT; AMENDMENT OF BORROWER LOAN AGREEMENT AND OTHER DOCUMENTS

Section 10.1. Amendment of Funding Loan Agreement. Any of the terms of this Funding Loan Agreement and the Governmental Lender Notes may be amended or waived only by an instrument signed by the Funding Lender, the Fiscal Agent and the Governmental Lender, provided, however, no such amendment which materially affects the rights, duties, obligations or other interests of the Borrower shall be made without the consent of the Borrower, and, provided further, that if the Borrower is in default under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender.

Section 10.2. Amendments Require Funding Lender Consent. The Governmental Lender shall not consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender.

Section 10.3. Consents and Opinions. No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion and (ii) the Funding Lender shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid

and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

ARTICLE XI

THE FISCAL AGENT

Section 11.1. Appointment of Fiscal Agent; Acceptance. The Governmental Lender hereby appoints BMO Harris Bank N.A. as Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

Section 11.2. Certain Duties and Responsibilities of Fiscal Agent.

(a) The Fiscal Agent undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations shall be read into this Funding Loan Agreement against the Fiscal Agent.

(b) If an event of default exists hereunder or under any Borrower Loan Document, the Fiscal Agent shall exercise such of the rights and powers vested in it by this Funding Loan Agreement, and subject to Section 11.2(c)(iii) hereof, use the same degree of care and skill in its exercise, as a prudent corporate trust officer would exercise or use under the circumstances in the conduct of corporate trust business.

(c) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, in each case, as finally adjudicated by a court of law, except that:

(i) This subsection shall not be construed to limit the effect of subsection (a) of this Section;

(ii) The Fiscal Agent shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts;

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

(iv) No provision of this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it in its sole discretion.

(v) Subject to its rights to indemnification pursuant to Section 11.4 hereof, the Fiscal Agent is directed to enter into the Borrower Loan Documents to which it is a party and other related documents, solely in its capacity as Fiscal Agent.

(d) Whether or not therein expressly so provided, every provision of this Funding Loan Agreement and the other Funding Loan Documents relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section.

(e) The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Funding Loan Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Funding Loan Agreement.

(f) The permissive rights of the Fiscal Agent to do things enumerated in this Funding Loan Agreement shall not be construed as a duty.

Section 11.3. Notice. Upon the occurrence of any default hereunder or under any Borrower Loan Document and provided that a Responsible Officer of the Fiscal Agent is aware of or has received Written Notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, the Equity Investor (as defined in the Borrower Loan Agreement), and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.1 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 11.4(g) hereof, unless such default shall have been cured or waived.

Section 11.4. Certain Rights of Fiscal Agent. Except as otherwise provided in Section 11.1 hereof:

(a) The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) Any request or direction of the Governmental Lender mentioned herein shall be sufficiently evidenced by a certificate or order executed by an Authorized Governmental Lender Representative;

(c) Whenever in the administration of this Funding Loan Agreement or any Borrower Loan Document the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith

on its part, rely upon a Written Certificate of the Governmental Lender, the Funding Lender or the Borrower, as appropriate;

(d) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Funding Loan Agreement or any Borrower Loan Document at the request or direction of the Funding Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct, provided, that nothing contained in this subparagraph (d) shall be construed to require such security or indemnity for the performance by the Fiscal Agent of its obligations under Article VIII hereof;

(e) The Fiscal Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document but the Fiscal Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Fiscal Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Governmental Lender, if any, and of the Borrower, in either case personally or by agent or attorney after reasonable notice and during normal business hours;

(f) The Fiscal Agent may execute any of its powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and pay reasonable compensation thereto and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. The Fiscal Agent may act upon the advice of counsel of its choice concerning all matters hereof and the Fiscal Agent shall not be responsible for any loss or damage resulting from any action or inaction taken in good faith reliance upon said advice; and

(g) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any Borrower Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Notice of such default by the Governmental Lender or the Funding Lender, and all notices or other instruments required by this Funding Loan Agreement or under any Borrower Loan Document to be delivered to the Fiscal Agent, must, in order to be effective, be delivered in writing to a Responsible Officer of the Fiscal Agent at the Office of the Fiscal Agent, and in the absence of such Written Notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid.

Section 11.5. Not Responsible for Recitals. The recitals contained herein and in the Governmental Lender Notes shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the Pledged Revenues, the Security or any part

thereof, or as to the title of the Governmental Lender thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Funding Loan Agreement or of the Funding Loan.

The Fiscal Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the funding of the Funding Loan.

The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Project. Unless otherwise expressly provided, the Fiscal Agent shall be under no obligation to analyze, review or make any credit decisions with respect to any financial statements, reports, notices, certificates or documents received hereunder but shall hold such financial statements reports, notices, certificates and documents solely for the benefit of, and review by, the Funding Lender and such other parties to whom the Fiscal Agent may provide such information pursuant to this Funding Loan Agreement.

The Fiscal Agent makes no representations as to and shall have no responsibility for the sufficiency of the insurance required under any of the Borrower Loan Documents.

Section 11.6. May Hold Funding Loan. The Fiscal Agent in its individual or any other capacity is the owner of the Funding Loan and may otherwise deal with the Governmental Lender, the Funding Lender and the Borrower with the same rights it would have if it were not Fiscal Agent.

Section 11.7. Moneys Held in Trust. Moneys held by the Fiscal Agent in trust hereunder need not be segregated from other funds except to the extent hereunder directed or as required by law. The Fiscal Agent shall be under no liability for interest on any moneys received by it hereunder except as otherwise provided herein.

Section 11.8. Compensation and Reimbursement. Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct, both as finally adjudicated by a court of law.

When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

(a) The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered.

(b) As security for the performance of the obligations of the Borrower under this Section and for the payment of such compensation, expenses, reimbursements and

indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Pledged Revenues.

(c) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

Section 11.9. Fiscal Agent Required; Eligibility. Any successor Fiscal Agent shall at all times be a trust company, a state banking corporation or a national banking association with the authority to accept trusts in the State approved in writing by the Governmental Lender and either (a) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, (b) be a wholly owned subsidiary of a bank holding company, or a wholly owned subsidiary of a company that is a wholly owned subsidiary of a bank holding company, or (c) be otherwise acceptable to the Funding Lender in its sole and absolute discretion.

Section 11.10. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Fiscal Agent hereunder and no appointment of a successor Fiscal Agent pursuant to this Article shall become effective until the written acceptance by the successor Fiscal Agent of such appointment.

(b) The Fiscal Agent may resign at any time by giving 60 days' Written Notice thereof to the Governmental Lender, the Borrower and the Funding Lender. If an instrument of acceptance by a successor Fiscal Agent shall not have been delivered to the Fiscal Agent within 30 days after the giving of such notice of resignation, the resigning Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(c) The Fiscal Agent may be removed at any time with 30 days' notice by (i) the Governmental Lender, with the Written Consent of the Funding Lender (which consent of the Funding Lender shall not be unreasonably withheld), (ii) the Borrower (unless the Borrower is in default under any of the Borrower Loan Documents), subject to applicable notice and cure periods, with the Written Consent of the Funding Lender and the Governmental Lender, or (iii) the Funding Lender with the Written Consent of the Governmental Lender and Written Notice delivered to the Fiscal Agent and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the Office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within 60 days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any of the institutions approved by the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental

Lender, the Borrower and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(e) The retiring Fiscal Agent shall cause Written Notice of each resignation and each removal of the Fiscal Agent and each appointment of a successor Fiscal Agent to be provided to the Funding Lender. Each notice shall include the name of the successor Fiscal Agent and the address of the office of the successor Fiscal Agent.

Section 11.11. Acceptance of Appointment by Successor.

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender and to the retiring Fiscal Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Fiscal Agent shall become effective and such successor Fiscal Agent, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Fiscal Agent; notwithstanding the foregoing, on request of the Governmental Lender or the successor Fiscal Agent, such retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Fiscal Agent upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Fiscal Agent, and shall duly assign, transfer and deliver to such successor Fiscal Agent all property and money held by such retiring Fiscal Agent hereunder. Upon request of any such successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Fiscal Agent all such estates, properties, rights, powers and trusts.

(b) No successor Fiscal Agent shall accept its appointment unless at the time of such acceptance such successor Fiscal Agent shall be qualified and eligible under this Article, to the extent operative.

Section 11.12. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause Written Notice of such succession to be delivered to the Governmental Lender and Funding Lender within 30 days of such succession.

Section 11.13. Appointment of Co-Fiscal Agent. It is the purpose of this Funding Loan Agreement that there shall be no violation of any laws of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreements, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent or hold title to the properties, in trust, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co fiscal agent hereunder, upon Written Notice to the Governmental Lender, the Funding Lender and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreements or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co fiscal agent shall run to and be enforceable by either of them.

Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate fiscal agent or co fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co fiscal agent.

Section 11.14. Reserved.

Section 11.15. No Recourse Against Officers or Employees of Fiscal Agent. No recourse with respect to any claim related to any obligation, duty or agreement contained in this Funding Loan Agreement or any other Funding Loan Document shall be had against any officer or employee, as such, of the Fiscal Agent, it being expressly understood that the obligations, duties and agreements of the Fiscal Agent contained in this Funding Loan Agreement and the other Funding Loan Documents are solely corporate in nature.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Notices. All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, email, commercial delivery service, overnight courier, telegraph, telex, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows:

If to the Governmental Lender:	City of Bloomington, Indiana 401 N. Morton St. Bloomington, Indiana 47404 Attention: Mayor
with a copy to:	City of Bloomington, Indiana 401 N. Morton St. Bloomington, Indiana 47404 Attention: City Attorney
If to the Fiscal Agent:	BMO Harris Bank N.A. 115 South LaSalle Street – 19W Chicago, IL 60603 Attention: _____
If to Borrower:	Bloomington RAD I, LP c/o Brinshore Development, LLC 666 Dundee Road, Suite 1102 Northbrook, Illinois 60062 Attention: Senior Vice President
with a copy to:	Bloomington RAD I, LP c/o Bloomington Housing Authority 1007 N. Summit Street Bloomington, Indiana 47404 Attention: Executive Director
and a copy to:	Kuhl & Grant LLP 707 E. North Street, Suite 800 Indianapolis, Indiana 46202 Attention: Gareth W. Kuhl
and a copy to:	Nixon Peabody LLP Tower 46 55 West 46 th Street New York, NY 10036 Attention: Kathie Soroka

If to the Funding Lender:

BMO Harris Bank N.A.
115 South LaSalle Street – 19W
Chicago, IL 60603
Attention: Tania Kadakia

and a copy to:

Charity & Associates, P.C.
20 North Clark Street
Suite 1150
Chicago, IL 60602
Attention: Brandon R. Calvert

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (i) three Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, telex, telegraph or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day. Any facsimile signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

Section 12.2. Term of Funding Loan Agreement. This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Notes, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

Section 12.3. Successors and Assigns. All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

Section 12.4. Legal Holidays. In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such

later payment or such act shall have the same force and effect as if made on the date of payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period after such date and prior to the date of payment.

Section 12.5. Governing Law. This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

Section 12.6. Severability. If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Notes or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

Section 12.7. Execution in Several Counterparts. This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

Section 12.8. Nonrecourse Obligation of the Borrower. Prior to the Conversion Date (as defined in the Borrower Notes) Borrower shall be fully liable, on a recourse basis, to Funding Lender for repayment of all amounts due hereunder and under the Borrower Loan Documents. After the Conversion Date, any obligations of the Borrower under this Funding Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, except for the recourse liabilities associated with fraud, misrepresentation, misuse, indemnification or other liabilities specified in the Borrower Notes.

Section 12.9. Waiver of Trial by Jury. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE FISCAL AGENT, BORROWER AND THE BENEFICIARY PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS FUNDING LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 12.10. Electronic Transactions. The transactions described in this Funding Loan Agreement may be conducted and related documents and may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12.11. Reference Date. This Funding Loan Agreement is dated for reference purposes only as of the first day of February, 2020.

IN WITNESS WHEREOF, the Funding Lender, the Fiscal Agent, and the Governmental Lender have caused this Funding Loan Agreement to be duly executed as of the date first written above.

BMO HARRIS BANK N.A., as Funding Lender

By: _____
Authorized Signatory

BMO HARRIS BANK N.A., as Fiscal Agent

By: _____
Authorized Signatory

CITY OF BLOOMINGTON, INDIANA, as Governmental Lender

By: _____
Hon. John Hamilton, Mayor

EXHIBIT A

FORM OF GOVERNMENTAL LENDER NOTE

THIS GOVERNMENTAL LENDER NOTE MAY BE OWNED ONLY BY AN APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS GOVERNMENTAL LENDER NOTE (A) REPRESENTS THAT IT IS AN APPROVED TRANSFEREE AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS GOVERNMENTAL LENDER NOTE TO ANOTHER APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT.

**CITY OF BLOOMINGTON, INDIANA
ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2020[A][B]
(WALNUT WOODS/REVEREND BUTLER PROJECT)**

DATED FEBRUARY __, 2020

\$ _____

FOR VALUE RECEIVED, the undersigned CITY OF BLOOMINGTON, INDIANA (“Obligor” or “Governmental Lender”) promises to pay to the order of BMO HARRIS BANK N.A. (“Holder”) the maximum principal sum of _____, on _____, 20____, or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of February 1, 2020 (the “Funding Loan Agreement”), among Governmental Lender, Holder, and BMO Harris Bank N.A., as Fiscal Agent, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on the Funding Loan then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts held derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Funding Loan Agreement. This Note is issued on a draw-down basis pursuant to the terms of the Funding Loan Agreement.

Governmental Lender shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.

The Funding Loan and this Governmental Lender Note are pass-through obligations relating to a \$_____ loan (the “Borrower Loan”) made by Governmental Lender from proceeds of the Funding Loan to Bloomington RAD I, LP, an Indiana limited partnership, as

borrower (the “Borrower”), under that certain Borrower Loan Agreement, dated as of February 1, 2020 (as the same may be modified, amended or supplemented from time to time, the “Borrower Loan Agreement”), between the Governmental Lender and the Borrower, evidenced by the [Series 2020A][Series 2020B] Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note, payments on which are passed-through under this Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned under the Funding Loan Agreement. None of the Governmental Lender, the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein and in the Funding Loan Agreement, and none of the Funding Loan or this Governmental Lender Note or any of the Governmental Lender’s agreements or obligations with respect to the Funding Loan or this Governmental Lender Note shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The Governmental Lender has no taxing power.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Governmental Lender shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such Maximum Rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Governmental Lender is required to pay interest at a rate in excess of such Maximum Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such Maximum Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Governmental Lender Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

If there is an Event of Default under the Funding Loan Documents, then in any such event and subject to the requirements set forth in the Funding Loan Agreement, the Holder may declare the entire unpaid principal balance of this Governmental Lender Note and accrued interest, if any,

due and payable at once. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Lender Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Governmental Lender shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Governmental Lender to pay the entire sum then due, and Governmental Lender's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Governmental Lender which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note or caused this Governmental Lender Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

CITY OF BLOOMINGTON, INDIANA

By: _____
Its: Mayor

[SEAL]

ATTEST:

By: _____
Its: Clerk

CERTIFICATE OF AUTHENTICATION

This Governmental Lender Notes is the Governmental Lender Notes described in the within mentioned Funding Loan Agreement.

Date of Authentication: _____

BMO HARRIS BANK N.A., as
Fiscal Agent

By: _____
Name: _____
Title: _____

EXHIBIT B

FORM OF REQUIRED TRANSFEREE REPRESENTATIONS

[_____, 20__]

The undersigned, as holder (the “Holder”) of a loan (the “Funding Loan”) in the maximum amount of \$_____ from BMO HARRIS BANK N.A., as funding lender (“Funding Lender”) to the CITY OF BLOOMINGTON, INDIANA (“Governmental Lender”) pursuant to a Funding Loan Agreement dated as of February 1, 2020 (the “Funding Loan Agreement”) among the Funding Lender, BMO HARRIS BANK N.A., as fiscal agent (the “Fiscal Agent”) and the Governmental Lender (the “Funding Loan”) evidenced by the Governmental Lender's Indiana Economic Development Revenue Note, Series 2020A (Walnut Woods/Reverend Butler Project) and its Indiana Economic Development Revenue Note, Series 2020B (Walnut Woods/Reverend Butler Project) (collectively, the “Governmental Lender Notes”), or an interest therein, hereby represents that:

1. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the Project to be able to evaluate the risk and merits of the investment represented by the Funding Loan. The Holder is able to bear the economic risks of such investment.

2. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project the use of proceeds of the Funding Loan and the Funding Loan and the security therefor so that, as a reasonable investor, the Holder has been able to make its decision to extend the Funding Loan. In entering into this transaction, the Holder acknowledges that it has not relied upon any representations or opinions of the Governmental Lender relating to the legal consequences to the Funding Lender or other aspects of its making the Funding Loan and acquiring the Governmental Lender Notes, nor has it looked to, nor expected, the Governmental Lender to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operation, the Project (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transactions contemplated by the Funding Loan Agreement and the Borrower Loan Agreement, or the adequacy of the funds pledged to the Funding Lender to secure repayment of the Governmental Lender Notes.

3. The Holder is an Approved Transferee. For this purpose, Approved Transferee means (1) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the “Securities Act”) that is a financial institution or commercial bank having capital and surplus of \$25,000,000 or more, (2) an affiliate of the Funding Lender, or (3) a trust or custodial arrangement established by the Funding Lender or one of its affiliates the beneficial interests in which will be owned only by QIBs.

4. The Holder acknowledges that it is making the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan; provided, however, that the Holder may sell or transfer the Governmental Lender Notes and the Funding Loan as provided in Section 2.4 of the Funding Loan Agreement.

5. In the event any placement memorandum to be provided to any subsequent buyer or beneficial owner of such portion of the Funding Loan will disclose information with respect to the Governmental Lender other than its name, location and type of political subdivision and general information with respect to the Funding Loan and Borrower Loan and related documents, the Holder will provide the Governmental Lender with a draft of such placement memorandum and the Governmental Lender shall have the right to approve any description of the Governmental Lender therein (which approval shall not be unreasonably withheld).

6. The Holder understands that the Funding Loan is a limited obligation of the Governmental Lender; payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Funding Loan are expressly limited as set forth in the Funding Loan Agreement and related documents.

7. The Holder is duly and legally authorized to make the Funding Loan, and the Holder is duly and legally authorized to execute this Required Transferee Representations Letter. The Holder has satisfied itself that the Funding Loan is a lawful investment for it under all applicable laws.

8. The Holder is familiar with the City of Bloomington, Indiana (the "Issuer") and is aware that the Funding Loan is not being offered and sold under or pursuant to an official statement or other disclosure document. In lieu thereof, the Holder was afforded the opportunity to ask questions of the Borrower and to review documents and other materials relating to the Issuer generally and the Funding Loan particularly. Specifically, but without limitation, the Holder was given the opportunity to review and did review and evaluate information relating to the sources of repayment of the Funding Loan and the security therefor. Based on that review and on a general familiarity with the Issuer, the Holder understands that (i) the Funding Loan does not constitute an indebtedness, a liability, a general or moral obligation or a pledge of the faith or loan of credit of the Issuer, the State of Indiana (the "State") or any political subdivision of the State within the meaning of any constitutional or statutory provisions, (ii) neither the Issuer, the State nor any of its political subdivisions shall be obligated to pay the principal of or interest on the Funding Loan or other costs incident thereto except from the revenues and assets pledged with respect thereto, (iii) neither the faith and credit nor the taxing power of the United States of America, the Issuer, the State or any of its political subdivisions is pledged to the payment of the principal of or interest on the Funding Loan or other costs incident thereto and (iv) the Funding Loan is not a debt of the United States of America or any of its agencies and are not guaranteed by the United States of America or any of its agencies.

9. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Funding Loan Agreement.

[Signature Page to Required Transferee Representations]

BMO HARRIS BANK N.A.,
as Holder

By: _____
Name: _____
Its: _____

EXHIBIT C

**FORM OF WRITTEN REQUISITION
(Project Fund)**

Draw # _____

BMO Harris Bank N.A.
115 S. LaSalle Street – 19W
Chicago, IL 60603
Attention: _____

Re: CITY OF BLOOMINGTON, INDIANA ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2020A (WALNUT WOODS/REVEREND BUTLER PROJECT) AND CITY OF BLOOMINGTON, INDIANA ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2020B (WALNUT WOODS/REVEREND BUTLER PROJECT)

This requisition is being delivered to you in accordance with the Funding Loan Agreement dated as of February 1, 2020 (the “Funding Loan Agreement”) among BMO Harris Bank N.A. (the “Funding Lender”), the City of Bloomington, Indiana (the “Governmental Lender”) and BMO Harris Bank N.A., as fiscal agent (the “Fiscal Agent”) pursuant to which the above-referenced note (the “Governmental Lender Notes”) were issued. Capitalized terms not defined herein shall have the meanings assigned thereto in the Funding Loan Agreement.

1. You are requested to disburse funds in the amount of \$_____ from the Note Proceeds Account of the Project Fund as Draw #_____ pursuant to Section 7.7 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth on Schedule I attached hereto and incorporated herein by reference.

2. The undersigned certifies that:

(i) there has been received no notice (a) of any lien, right to lien or attachment upon, or claim affecting the right of the payee to receive payment of, any of the moneys payable under such requisition to any of the persons, firms or corporations named therein, and (b) that any materials, supplies or equipment covered by such requisition are subject to any lien or security interest, or if any notice of any such lien, attachment, claim or security interest has been received, such lien, attachment, claim or security interest has been released, discharged, insured or bonded over or will be released, discharged, insured or bonded over upon payment of the requisition;

(ii) this Requisition contains no items representing payment on account of any percentage entitled to be retained at the date of the certificate;

(iii) the obligation stated on this Requisition has been incurred in or about the acquisition, construction or equipping of the Project, each item is a proper charge against

the Project Fund, and the obligation has not been the basis for a prior requisition that has been paid;

(iv) this Requisition contains no items representing Costs of Funding or any other amount constituting an issuance cost under Section 147(g) of the Code and payment of the costs referenced herein will not violate any representation, warranty or covenant of the Borrower in the Borrower Loan Agreement, the Regulatory Agreements or the Tax Certificate;

(v) not less than 95% of the sum of: (a) the amounts requisitioned by this Requisition to be funded from the Note Proceeds Account of the Project Fund plus (b) all amounts previously disbursed from the Note Proceeds Account of the Project Fund have been or will be applied by the Borrower to pay Qualified Project Costs;

(vi) the Borrower acknowledges that fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a "related person" (within the meaning of Section 144(a)(3) of the Code) are not deemed to be Qualified Project Costs; and

(vii) as of the date hereof, no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement or under the Borrower Loan Agreement.

Dated: _____, 20__

BLOOMINGTON RAD I, LP, an Indiana limited partnership

By: Bloomington RAD I Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD I, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President

Approved by Funding Lender:

BMO HARRIS BANK N.A.

By: _____

Title: _____

Date: _____

BORROWER LOAN AGREEMENT

Between

CITY OF BLOOMINGTON, INDIANA,

as Governmental Lender,

and

BLOOMINGTON RAD I, LP,

as Borrower

Dated as of February 1, 2020

Relating to:

\$ _____

Funding Loan originated by BMO HARRIS BANK N.A., as Funding Lender

The interest of the Governmental Lender in this Borrower Loan Agreement (except for certain rights described herein) has been pledged and assigned to BMO Harris Bank N.A., as funding lender (the “Funding Lender”), under that certain Funding Loan Agreement, of even date herewith, by and among the City of Bloomington, Indiana (the “Governmental Lender”), **BMO Harris Bank N.A.** (the “Fiscal Agent”) and the Funding Lender, under which the Funding Lender is originating a loan to the Governmental Lender the proceeds of which are to be used to fund the Borrower Loan made under this Borrower Loan Agreement.

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BORROWER LOAN AGREEMENT

THIS BORROWER LOAN AGREEMENT (this “Borrower Loan Agreement”) is entered into as of February 1, 2020, between the CITY OF BLOOMINGTON, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (together with its successors and assigns, the “Governmental Lender”) and BLOOMINGTON RAD I, LP, an Indiana limited partnership (together with its successors and assigns, the “Borrower”).

WITNESSETH:

RECITALS

WHEREAS, the Governmental Lender has been duly created and organized pursuant to and in accordance with the provisions of the Act (as defined herein); and

WHEREAS, by virtue of the authority of the Constitution and laws of the State, and particularly Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (the “Act”) and pursuant to the Bond Ordinance of the Governmental Lender adopted on _____, 2020, the Governmental Lender is authorized to enter into this Borrower Loan Agreement and to do or cause to be done all the acts and things herein provided or required to be done, to issue the Governmental Lender Notes (as defined herein) and to use the proceeds of the Governmental Lender Notes to make loans to the Borrower that will provide moneys to finance the acquisition of a [leasehold and fee simple] interest, renovation, rehabilitation, improvement and equipping of the Project (as defined herein); and

WHEREAS, the Borrower has applied to the Governmental Lender for a loan (the “Borrower Loan”), for the acquisition, renovation, rehabilitation, improvement and equipping of multifamily housing facilities consisting of (a) an apartment complex known as Walnut Woods, containing approximately 60 apartment units located at 818 E. Miller Drive, Bloomington, Monroe County, Indiana, and (b) an apartment complex known as Reverend Butler Apartments containing approximately 56 units located at 1202 W. 11th Street, Bloomington, Monroe County, Indiana, each together with functionally related and subordinate facilities such as carports, garages and parking areas (the “Project”); and

WHEREAS, the Borrower’s repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Notes, as defined herein; and

WHEREAS, the Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, of even date herewith (the “Funding Loan Agreement”), among the Governmental Lender, the Fiscal Agent and BMO Harris Bank N.A. (the “Funding Lender”), under which the Funding Lender will make a loan (the “Funding Loan”) to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance the acquisition, construction, renovation, rehabilitation, improvement and equipping of the Project; and;

WHEREAS, the Borrower Loan is secured by, among other things, that certain [Leasehold Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] (as amended, restated and/or supplemented from time to time, the “Security Instrument”), of even

date herewith and assigned to the Funding Lender to secure the Funding Loan, encumbering the Project, and will be advanced to Borrower pursuant to this Borrower Loan Agreement, the Funding Loan Agreement [and the Construction Funding Agreement].

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Specific Definitions. For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Security Instrument or, if not defined in the Security Instrument, in the Funding Loan Agreement.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(e) Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word “including” means “including but not limited to.”

Section 1.2 Definitions. The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

“Act” shall mean Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as now in effect and as it may from time to time hereafter be amended or supplemented.

“Act of Bankruptcy” shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof.

“ADA” shall have the meaning set forth in Section 4.1.38 hereof.

“Additional Borrower Payments” shall mean the payments payable pursuant to Section 2.5 (Additional Borrower Payments), Section 2.6 (Overdue Payments; Payments in Default), Section 3.3.3 of the Construction Funding Agreement (Borrower Loan in Balance), Section 5.14 (Expenses) and Section [10] of the Borrower Notes (Voluntary and Involuntary Prepayments).

“Agreement of Environmental Indemnification” shall mean the Environmental Indemnification and Release Agreement, of even date herewith, executed by the Borrower and Guarantor for the benefit of the Funding Lender and any lawful holder, owner or pledgee of the Borrower Notes from time to time.

“Appraisal” shall mean an appraisal of the Project and Improvements, which appraisal shall be (i) performed by a qualified appraiser licensed in the State selected by Funding Lender, and (ii) satisfactory to Funding Lender (including, without limitation, as adjusted pursuant to any internal review thereof by Funding Lender) in all respects.

“Approved Developer Fee Schedule” shall have the meaning set forth in the Construction Funding Agreement.

“Architect” shall mean any licensed architect, space planner or design professional that Borrower may engage from time to time, with the approval of Funding Lender, to design any portion of the Improvements, including the preparation of the Plans and Specifications.

“Architect’s Agreement” means any agreement that Borrower and any Architect from time to time may execute pursuant to which Borrower engages such Architect to design any portion of the Improvements, including the preparation of the Plans and Specifications, as approved by Funding Lender.

“Authorized Borrower Representative” shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender, the Funding Lender and the Fiscal Agent and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

“Bankruptcy Code” shall mean the United State Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

“Bankruptcy Event” shall have the meaning given to that term in the Construction Funding Agreement.

“Bankruptcy Proceeding” shall have the meaning set forth in Section 4.1.8 hereof.

“Beneficiary Parties” shall mean, collectively, the Funding Lender and the Governmental Lender.

“Borrower” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Borrower Affiliate” means, as to the Borrower, its General Partner or the Guarantor, (i) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of Borrower, its general partner or the Guarantor, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Borrower, its general partner or the Guarantor, (iii) any partner, shareholder or, if a limited liability company, member of Borrower, its general partner or the Guarantor, or (iv) any other person that is related (to the third degree of consanguinity) by blood or marriage to the Borrower, its general partner or the Guarantor (to the extent any of the Borrower, its general partner or the Guarantor is a natural person).

“Borrower Controlling Entity” shall mean, if the Borrower is a partnership, any general partner or managing partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower, or if the Borrower is a not for profit corporation, the shareholders thereof.

“Borrower Deferred Equity” shall have the meaning set forth in the Construction Funding Agreement.

“Borrower Initial Equity” shall have the meaning set forth in the Construction Funding Agreement.

“Borrower Loan” shall mean collectively the Series 2020A Borrower Loan and the Series 2020B Borrower Loan.

“Borrower Loan Agreement” shall mean this Borrower Loan Agreement.

“Borrower Loan Amount” shall mean \$ _____, the aggregate original maximum principal amount of the Series 2020A Borrower Note and the Series 2020B Borrower Note.

“Borrower Loan Documents” shall mean this Borrower Loan Agreement, the Construction Funding Agreement, the Borrower Notes, the Security Instrument, the Agreement of Environmental Indemnification, the Guaranty, [the Replacement Reserve Agreement], the [Operating Reserve Agreement], the Subordination Agreements, the [Contingency Draw Down Agreement], the Rate Management Agreement and all other documents or agreements evidencing, securing, guarantying or relating to the Borrower Loan.

“Borrower Loan Payment Date” shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Notes, or (ii) any other date on which the Borrower Notes are prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

“Borrower Loan Payments” shall mean the monthly loan payments payable pursuant to the Borrower Notes.

“Borrower Loan Proceeds” shall mean proceeds of the Borrower Loan, to be disbursed in accordance with Section 2.10 of this Borrower Loan Agreement and the Construction Funding Agreement.

“Borrower Notes” shall mean collectively the Series 2020A Borrower Note and the Series 2020B Borrower Note.

“Borrower Payment Obligations” shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

“Business Day” shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which federally insured depository institutions in Chicago, Illinois, or the city where the Fiscal Agent is located, are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“Calendar Month” shall mean each of the twelve (12) calendar months of the year.

“CC&R’s” shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project or the Mortgaged Property.

“Closing Date” means February ____, 2020.

“Code” shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Collateral” shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which the Governmental Lender and/or the Funding Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Security Instrument, or (iii) any other Security Document, which Collateral shall include the Project, all of which collateral is pledged and assigned to Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

“Commodity Exchange Act” the Commodity Exchange Act (7 U.S.C. §1 *et seq.*), as amended from time to time, and any successor statute.

“Computation Date” shall mean [_____ 31, 2025, _____ 31, 2030, _____ 31, 2035] and the Maturity Date.

“Condemnation” shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Project, whether direct or indirect.

“Construction Consultant” shall mean a third-party architect or engineer selected and retained by Funding Lender, at the cost and expense of Borrower, to monitor the progress of construction and/or rehabilitation of the Project and to inspect the Improvements to confirm compliance with this Borrower Loan Agreement.

["Construction Contract" shall mean any agreement that Borrower and any Contractor from time to time may execute pursuant to which Borrower engages the Contractor to construct any portion of the Improvements, as approved by Funding Lender.]

["Construction Escrow" shall have the meaning given such term in the Construction Funding Agreement.]

["Construction Escrow Agreement" shall have the meaning given such term in the Construction Funding Agreement.]

"Construction Funding Agreement" means that certain Construction Funding Agreement of even date herewith, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced periodically during construction by the Funding Lender, as agent of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower through the Construction Escrow and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

"Construction Schedule" shall mean a schedule of construction or rehabilitation progress with the anticipated commencement and completion dates of each phase of construction or rehabilitation, as the case may be, and the anticipated date and amounts of each Disbursement for the same, as approved by Funding Lender, as assignee of the Governmental Lender.

["Contingency Draw-Down Agreement" means the Contingency Draw-Down Agreement of even date herewith, among the Funding Lender, the Fiscal Agent and the Borrower relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.]

"Continuing Disclosure Agreement" shall mean that certain Continuing Disclosure Agreement of even date herewith, between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the Project, the Borrower and the Funding Loan subsequent to the Closing Date, as amended, supplemented or restated from time to time.

"Contractor" shall mean any licensed general contractor or subcontractor that Borrower may directly engage from time to time, with the approval of Funding Lender, to construct and/or rehabilitate any portion of the Improvements.

"Contractual Obligation" shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

"Cost Breakdown" shall mean the schedule of costs for the Improvements, as set forth in the Construction Funding Agreement, as the same may be amended from time to time with Funding Lender's consent.

"Costs of Funding" shall mean the Governmental Lender's Closing Fee and the fees, costs, expenses and other charges incurred in connection with the funding of the Borrower Loan and the

Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower Loan Documents and Funding Loan Documents and shall include, but shall not be limited to, the following: (i) counsel fees (including but not limited to Tax Counsel, counsel to the Governmental Lender, Borrower's counsel, and Funding Lender's counsel); (ii) financial advisor fees incurred in connection with the closing of the Borrower Loan and the Funding Loan; (iii) certifying and authenticating agent fees and expenses related to funding of the Funding Loan; (iv) printing costs (for any preliminary and final offering materials relating to the Funding Loan); (v) any recording fees; (vi) any additional fees charged by the Governmental Lender; (vii) Fiscal Agent Fees; and (viii) costs incurred in connection with the required public notices generally and costs of the public hearing.

"Costs of Funding Deposit" shall mean the amount required to be deposited by the Borrower with the Title Company to pay Costs of Funding in connection with the closing of the Borrower Loan and the Funding Loan on the Closing Date.

"Cost of Improvements" shall mean the costs for the Improvements, as set forth on the Cost Breakdown.

"County" shall mean Monroe County, Indiana.

"Date of Disbursement" shall mean the date of a Disbursement.

"Day" or "Days" shall mean calendar days unless expressly stated to be Business Days.

"Debt" shall mean, as to any Person, any of such Person's liabilities, including all indebtedness (whether recourse and nonrecourse, short term and long term, direct and contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

"Default Rate" shall have the meaning given to that term in the corresponding Borrower Note.

"Determination of Taxability" shall mean (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the Governmental Lender Notes issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Governmental Lender Notes is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Governmental Lender Notes, other than a holder who is a "substantial user" of the Project or a "related person" (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower), the Funding Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with

respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

“Developer Fee” shall have the meaning set forth in the Construction Funding Agreement.

“Disbursement” means a disbursement of Borrower Loan Proceeds and Other Borrower Moneys pursuant to this Borrower Loan Agreement.

“Engineer” shall mean any licensed civil, structural, mechanical, electrical, soils, environmental or other engineer that Borrower may engage from time to time, with the approval of Funding Lender, to perform any engineering services with respect to any portion of the Improvements.

“Engineer’s Contract” shall mean any agreement that Borrower and any Engineer from time to time may execute pursuant to which Borrower engages such Engineer to perform any engineering services with respect to any portion of the Improvements, as approved by Funding Lender.

“Equipment” shall have the meaning given to the term “Personalty” in the Security Instrument.

“Equity Contributions” shall mean the equity to be contributed by the Equity Investor to Borrower, in accordance with and subject to the terms of the Limited Partnership Agreement.

“Equity Investor” shall mean, collectively, Cinnaire Fund for Housing LP 34 and Cinnaire Indiana Community Fund LP 19-5, and their permitted successors and assigns.

“ERISA” shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

“Event of Default” shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement. An Event of Default shall “exist” if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

“Excess Revenues” shall have the meaning ascribed thereto in Section 2.2(e) hereof.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Expenses of the Project” shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP regarding any calculation related to an annual financial independent audit, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring

in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents), a management fee (however characterized) not to exceed the Underwritten Management Fee, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

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

“Final Completion” shall have the meaning set forth in the Construction Funding Agreement.

“Final Completion Date” shall have the meaning set forth in the Construction Funding Agreement as such date may be extended as provided in the Construction Funding Agreement.

“Fiscal Agent” shall mean BMO Harris Bank N.A., a national banking association, in its capacity as Fiscal Agent to the Governmental Lender, its successors and assigns.

“Fiscal Agent Fees” shall have the meaning set forth in the Funding Loan Agreement.

“Funding Lender” shall mean BMO Harris Bank N.A., a national banking association, its successors and assigns, in its capacity as lender under the Funding Loan.

“Funding Loan” means the Funding Loan in the original maximum principal amount of \$ _____ made by Funding Lender to Governmental Lender under the Funding Loan Agreement, the proceeds of which are used by the Governmental Lender to make the Borrower Loan.

“Funding Loan Agreement” means the Funding Loan Agreement, of even date herewith, among the Governmental Lender, the Fiscal Agent and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

“Funding Loan Documents” shall have the meaning given to that term in the Funding Loan Agreement.

“GAAP” shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

“General Partner” shall mean, collectively, (i) Bloomington RAD I Manager, LLC, an Indiana limited liability company, and/or (ii) if applicable, any other Person that the partners of the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted with the Funding Lender’s approval pursuant to the Borrower Loan Documents), selected to be a General Partner of the Borrower.

“Governmental Authority” shall mean (i) any governmental municipality or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence.

“Governmental Lender” shall have the meaning set forth in the first paragraph of this Borrower Loan Agreement.

“Governmental Lender Notes” shall mean collectively the City of Bloomington, Indiana Economic Development Revenue Note, Series 2020A (Walnut Woods/Reverend Butler Project) and the City of Bloomington, Indiana Economic Development Revenue Note, Series 2020B (Walnut Woods/Reverend Butler Project) each dated the Closing Date and collectively issued in the original maximum principal amount of the Funding Loan, made by the Governmental Lender and payable to Funding Lender, as it may be amended, supplemented or replaced from time to time.

“Governmental Lender’s Closing Fee” shall mean \$_____. The Governmental Lender’s Closing Fee is payable to the Governmental Lender on the Closing Date pursuant to Section 2.3(c)(iii) hereof.

“Gross Income” shall mean project-based Section 8 Housing Assistance Payments earned but not yet received by the Borrower, receipts, revenues, income and other moneys received or collected by or on behalf of Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan proceeds, equity or capital contributions, extraordinary items received not in the ordinary course of business or tenant security deposits being held by Borrower in accordance with applicable law.

“Gross Proceeds” shall mean, without duplication, the aggregate of:

(a) the net amount (after payment of all expenses of originating the Funding Loan) of Funding Loan proceeds received by the Governmental Lender as a result of the origination of the Funding Loan;

(b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan proceeds;

(c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and

(d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

“Guarantor” shall mean _____ or any other person or entity which may hereafter become a guarantor of any of the Borrower’s obligations under the Borrower Loan.

“Guaranty” shall mean the Guaranty Agreement of even date herewith, by Guarantor for the benefit of the Beneficiary Parties (as defined therein).

“Improvements” shall mean the Project and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property to be constructed, rehabilitated and/or installed at or on the Land in accordance with the Cost Breakdown and the Plans and Specifications.

“Indemnified Party” shall have the meaning set forth in Section 5.15 hereof.

“Installment Computation Date” shall mean any Computation Date other than the first Computation Date or the final Computation Date.

“Interest Rate” shall mean the rate of interest accruing on the Series 2020A Borrower Loan pursuant to the Series 2020A Borrower Note and the Series 2020B Borrower Loan pursuant to the Series 2020B Borrower Note.

“Land” means the real property described on Exhibit A to the Security Instrument.

“Late Charge” shall mean the amount due and payable as a late charge on overdue payments under the Borrower Notes, as provided in Section 1.2 of the Borrower Notes and Section 2.5 hereof.

“Legal Action” shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

“Legal Requirements” shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any property (including the Project) or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and

authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in force affecting all or part of the Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the Project, or (ii) in any way limit the use and enjoyment thereof.

“Liabilities” shall have the meaning set forth in Section 5.15 hereof.

“Licenses” shall have the meaning set forth in Section 4.1.22 hereof.

“Lien” shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

“Limited Partnership Agreement” shall mean that certain [Amended and Restated Limited Partnership] of the Borrower dated as of even date herewith, as the same may be amended, restated or modified in accordance with its terms.

“Management Agreement” shall mean the Management Agreement between the Borrower and the Manager, pursuant to which the Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Manager” shall mean the management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Construction Funding Agreement, the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

“Material Adverse Change” means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of the Borrower, General Partner, or the Mortgaged Property; (c) could reasonably be expected to impair materially the ability of the Borrower or General Partner to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

“Maturity Date” shall (i) for the Series 2020A Borrower Loan, have the meaning ascribed to such term in the Series 2020A Borrower Note, and (ii) for the Series 2020B Borrower Loan, have the meaning ascribed to such term in the Series 2020B Borrower Note.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Mortgaged Property” shall have the meaning given to that term in the Security Instrument.

“Net Operating Income” shall mean: (i) the Gross Income, less (ii) the Expenses of the Project.

“Nonpurpose Investment” shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

“Operating Reserve Agreement” shall mean any Operating Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

“Other Borrower Moneys” shall mean monies of Borrower other than Borrower Loan Proceeds and includes, but is not limited to, the Subordinate Debt, Net Operating Income, the Borrower’s Equity Contributions and any other funds contributed by or loaned to the Borrower for application to the Costs of the Improvements or other costs associated with the Project.

“Other Charges” shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

“Patriot Act Offense” shall have the meaning set forth in Section 4.1.48 hereof.

“Permitted Encumbrances” shall have the meaning given to that term in the Security Instrument.

“Permitted Lease” shall mean a lease and occupancy agreement pursuant to the form approved by Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than six (6) months nor more than two (2) years.

“Person” shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

“Plan” shall mean (i) an employee benefit or other plan established or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate makes or is

obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

“Plans and Specifications” shall mean the plans and specifications for the construction and/or rehabilitation, as the case may be, of the Project approved by Funding Lender.

“Potential Default” shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice or passage of time, or both, be an Event of Default.

“Prepayment Premium” shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Notes (including any prepayment premium as set forth in the Borrower Notes).

“Project” shall mean the Mortgaged Property (as defined in the Security Instrument) and Improvements thereon owned by the Borrower and encumbered by the Security Instrument, together with all rights pertaining to such real property and Improvements, as more particularly described in the Granting Clauses of the Security Instrument and referred to therein as the “Mortgaged Property.”

“Project Agreements and Licenses” shall mean any and all Construction Contracts, Engineer’s Contracts and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

“Provided Information” shall have the meaning set forth in Section 9.1.1 (a) hereof.

“Qualified ECP Borrower” means at any time, that Borrower has total assets exceeding Ten Million Dollars (\$10,000,000.00) or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Project Costs” shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.108(a)(1) of the Regulations, provided, however, that only such portion of the interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction or rehabilitation of the Project; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by a Borrower Affiliate (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out of pocket costs incurred by such affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by such affiliate, and (C) any overhead expenses incurred by such affiliate which

are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an “affiliated group” (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to October 2, 2019, being the date on which the Governmental Lender first declared its “official intent” to reimburse costs paid with respect to the Project (within the meaning of Section 1.150-2 of the Regulations) or the date of issue of the Funding Loan, and (iv) if the costs of the acquisition and construction or rehabilitation of the Project were previously paid and are to be reimbursed with proceeds of the Funding Loan such costs were (A) “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Funding Loan (as defined in Section 1.148-1 of the Regulations), or (B) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three years after the expenditures is paid); provided, however, that (w) Costs of Funding shall not be deemed to be Qualified Project Costs; (x) fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) shall not be deemed to be Qualified Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Project Costs and other costs and expenses to be paid from the proceeds of the Funding Loan; and (z) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Project Costs.

“Rate Management Agreement” shall mean any agreement, including, without limitation, any Swap Contract, with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrower or its subsidiaries shall be a Rate Management Agreement.

“Rate Management Obligations” shall mean the liability of Borrower to Funding Lender, or any Affiliates of Funding Lender in respect of any Rate Management Agreement as Borrower may from time to time enter into with Funding Lender or any of its Affiliates, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefore).

“Rebate Amount” shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Funding Loan.

“Rebate Analyst” shall mean the rebate analyst, if any, selected by the Borrower as provided in Section 5.34(d) and approved in writing by the Governmental Lender and the Funding Lender, as evidenced by a signed agreement between the Borrower and the Rebate Analyst (the “Rebate Analyst Agreement”), a copy of which shall be delivered to the Governmental Lender and the Funding Lender.

“Rebate Analyst’s Fee” shall mean the fee of the Rebate Analyst payable by the Borrower to the Rebate Analyst.

“Rebate Fund” shall mean the Rebate Fund held by the Fiscal Agent created pursuant to the Funding Loan Agreement.

“Regulations” shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

“Related Documents” shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest (including each agreement that is the subject of any Borrower Loan Document), the Limited Partnership Agreement, and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating to or executed in connection with the transactions contemplated by this Borrower Loan Agreement.

“Replacement Reserve Agreement” shall mean any Replacement Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

“Replacement Reserve Fund Requirement” means Borrower’s funding obligations from time to time under the Replacement Reserve Agreement.

“Retainage” shall have the meaning set forth in the Construction Funding Agreement.

[“Review Fee” shall mean the three thousand dollars (\$3,000) fee payable to Funding Lender in connection with the review of requests from the Borrower in connection with events requiring the consent and/or approval of the Funding Lender, including, but not limited to, subordinate financings and easements.]

“Secondary Market Disclosure Document” shall have the meaning set forth in Section 9.1.2 hereof.

“Secondary Market Transaction” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security Documents” shall mean the Security Instrument, the Replacement Reserve Agreement, the Collateral Agreements and the Collateral Assignments (as such terms are defined in the Construction Funding Agreement), the Subordination Agreements, this Borrower Loan

Agreement, the Agreement of Environmental Indemnification, and such other assignments, pledges, security instruments or agreements that Funding Lender may reasonably request.

“Security Instrument” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Series 2020A Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement in the aggregate principal amount of \$_____, as evidenced by the Series 2020A Borrower Note.

“Series 2020B Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement in the aggregate principal amount of \$_____, as evidenced by the Series 2020B Borrower Note.

“Series 2020A Borrower Note” shall mean that certain Borrower Promissory Note related to the Series 2020A Borrower Loan in the original maximum principal amount of \$_____ dated as of the Closing Date made by Borrower and payable to Governmental Lender, as endorsed and assigned to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

“Series 2020B Borrower Note” shall mean that certain Borrower Promissory Note related to the Series 2020B Borrower Loan in the original maximum principal amount of \$_____ dated as of the Closing Date made by Borrower and payable to Governmental Lender, as endorsed and assigned to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

“State” shall mean the State in which the Project is located.

“Subordinate Debt” shall mean the subordinate loans to Borrower in the amount of (i) \$_____ being made by _____, (ii) \$_____ being made by the _____, and (iii) \$_____ being made by the _____ pursuant to the Subordinate Loan Documents.

“Subordinate Lender” shall mean any entity providing Subordinate Debt.

“Subordinate Loan Documents” shall mean, collectively, all instruments, agreements and other documents evidencing, securing or otherwise relating to the Subordinate Debt or executed and delivered by Borrower and/or Subordinate Lender in connection with the Subordinate Debt.

“Subordination Agreements” shall mean those certain Subordination Agreements of even date herewith by and among Funding Lender, Subordinate Lenders and Borrower, as amended, restated, supplemented or otherwise modified.

“Substantial Completion Date” shall have the meaning set forth in the Construction Funding Agreement as such date may be extended as provided in the Construction Funding Agreement.

“Substantially Complete” or “Substantially Completed” shall have the meaning set forth in the Construction Funding Agreement.

“Swap Contract” means any agreement, whether or not in writing, relating to any Swap Transaction, including, unless the context otherwise clearly requires, any agreement or contract that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute, and CFTC Regulation 1.3(xxx), any form of master agreement (the “Master Agreement”) published by the International Swaps and Derivatives Association, Inc., and any other master agreement, entered into prior to the date hereof or any time after the date hereof, between Swap Counterparty and Borrower (or its Affiliate), together with any related schedules and confirmations, as the same may be amended, restated, replaced, supplemented, superseded or otherwise modified from time to time in accordance with its terms, relating to or governing any or all of the foregoing.

“Swap Counterparty” means Funding Lender or an Affiliate of Funding Lender, in its capacity as counterparty under any Swap Contract.

“Swap Obligation” means with respect to Borrower, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Transaction” means any transaction that is a rate swap, basis swap transaction, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, note or bill option, interest rate option, forward foreign exchange transaction, cap transaction, spot or floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, swap option, currency option, credit swap or default transaction, T-lock, or any other similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, entered into prior to the date hereof or any time after the date hereof between Swap Counterparty and Borrower (or its Affiliate) so long as a writing, such as a Swap Contract, evidences the parties’ intent that such obligations shall be secured by the Security Instrument in connection with (i) the Funding Loan, (ii) any other loans or credit facilities between Funding Lender (or its Affiliate) and Borrower (or its Affiliate), or (iii) any loans or credit facilities between Borrower and any other lender.

“Tax Counsel” shall have the meaning set forth in the Funding Loan Agreement.

“Taxes” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

“Term” shall mean the term of this Borrower Loan Agreement pursuant to Section 10.14.

“Title Company” means National Title Services Group, a division of Greater Illinois Title Company.

“Title Insurance Policy” shall mean the mortgagee title insurance policy, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

“Transfer” shall have the meaning given to that term in the Security Instrument.

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

[“Underwritten Management Fee” shall have the meaning set forth in the Construction Funding Agreement.]

“Unassigned Rights” shall have the meaning given to that term in the Funding Loan Agreement.

“Unit” shall mean a residential apartment unit within the Improvements.

“Written Consent” and “Written Notice” shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender or the Funding Lender, as appropriate.

ARTICLE II

GENERAL

Section 2.1 Origination of Borrower Loan. In order to provide funds for the purposes provided herein, the Governmental Lender agrees that it will, in accordance with the Act, enter into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender. The proceeds of the Funding Loan shall be advanced by the Funding Lender to the Borrower in accordance with the terms of the Construction Funding Agreement, the Funding Loan Agreement and this Borrower Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to disburse the Borrower Loan to the Fiscal Agent (which shall disburse any amounts so received to the Borrower) for the account of the Governmental Lender, to take certain actions and exercise certain remedies with respect to the Borrower Loan (except for Unassigned Rights), and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to Funding Lender in its role as agent of the Governmental Lender (except for Unassigned Rights). The Funding Lender may designate a servicer to fulfill the rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to this Section 2.1.

Section 2.2 Security for the Funding Loan.

(a) As security for the Funding Loan, the Governmental Lender has pledged and assigned to the Funding Lender under and pursuant to the Funding Loan Agreement (a) each Borrower Note and all of its right, title and interest in and to this Borrower Loan Agreement and the Borrower Loan Documents (except for the Unassigned Rights) and all revenues and receipts therefrom and the security therefor (including the Security Instrument) and (b) the amounts on deposit from time to time in any and all funds

established under the Funding Loan Agreement. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Notes, which shall be endorsed and delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment to the Funding Lender.

(b) With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

(i) Tax Covenants. Seek specific performance of, and enforce, the tax covenants of the Funding Loan Agreement, the Regulatory Agreement, the Tax Certificate and the Borrower Loan Agreement, and seek injunctive relief against acts which may be in violation of any of the tax covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate Fund;

(ii) Regulatory Agreement. Seek specific performance of the obligations of the Borrower or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the Governmental Lender may enforce any right it may have under the Regulatory Agreement for monetary damages only against Excess Revenues (defined below), if any, of the Borrower, unless Funding Lender otherwise specifically consents in writing to the use of other funds; and

(iii) Reserved Rights. Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it may have for monetary damages against Excess Revenues, if any, of the Borrower, unless Funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

(c) In no event shall the Governmental Lender, except at the express written direction of the Funding Lender:

(i) prosecute its action to a lien on the Project; or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by Funding Lender of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by

the Borrower under the Borrower Loan Documents or the Funding Loan Documents; or

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

(d) The Governmental Lender shall provide Written Notice to the Funding Lender immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.

(e) As used in this Section 2.2, the term “Excess Revenues” means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

Section 2.3 Loan; Borrower Notes; Conditions to Closing.

(a) The Funding Loan periodically during construction shall be funded directly to the Fiscal Agent by the Funding Lender for disbursement to the Borrower through the Construction Escrow pursuant to the Construction Funding Agreement, in one or more installments not to exceed the Borrower Loan Amount in accordance with the disbursement procedures set forth in the Construction Funding Agreement and the Funding Loan Agreement. Upon funding of each installment of the Funding Loan, the Governmental Lender shall be deemed to have made the Borrower Loan to the Borrower in a like principal amount. Each Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the corresponding Borrower Note. The proceeds of the Borrower Loan shall be used by the Borrower to pay costs of the acquisition, construction, rehabilitation, development and/or equipping of the Project. The Borrower hereby accepts the Borrower Loan and acknowledges that the Governmental Lender shall cause the Funding Lender to fund the Borrower Loan in the manner set forth herein and in the Funding Loan Agreement and the Construction Funding Agreement. The Governmental Lender acknowledges that the Borrower Loan shall be funded by the Funding Lender to the Fiscal Agent for the account of the Governmental Lender.

Proceeds of the Borrower Loan (other than those used to pay interest on the Funding Loan in accordance with Section 7.6 of the Funding Loan Agreement) will be deposited in the Note Proceeds Account of the Project Fund held by the Fiscal Agent under the Funding

Loan Agreement, and the Funding Lender shall (except for payments of interest on the Funding Loan in accordance with Section 7.6 of the Funding Loan Agreement) fund all or a portion of the Borrower Loan to the Fiscal Agent for further disbursement to the Borrower through the Construction Escrow upon receipt from the Borrower of a Written Requisition in accordance with the terms of the Funding Loan Agreement and the Construction Funding Agreement.

(b) The Borrower hereby accepts the Borrower Loan. As evidence of its obligation to repay the Borrower Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Notes. Each Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the corresponding Borrower Note.

(c) Closing of the Borrower Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Governmental Lender and the Funding Lender, in their sole discretion of each of the conditions precedent to closing set forth in the Funding Loan Agreement and this Borrower Loan Agreement, including but not limited to the following:

(i) evidence of proper recordation of the Security Instrument, an assignment of the Security Instrument from the Governmental Lender to the Funding Lender, the Regulatory Agreement, and each of the other documents specified for recording in instructions delivered to the Title Company by counsel to the Funding Lender (or that such documents have been delivered to an authorized agent of the Title Company for recordation under binding recording instructions from Funding Lender's counsel or such other counsel as may be acceptable to the Funding Lender);

(ii) delivery into escrow with the Title Company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit and the Borrower Initial Equity, all as specified in written instructions delivered to the Title Company by counsel to the Funding Lender (or such other counsel as may be acceptable to the Funding Lender) and as specified in a closing memorandum of the Funding Lender; and

(iii) payment of all fees payable in connection with the closing of the Funding Loan and Borrower Loan including the Governmental Lender's Closing Fee and the initial fees and expenses of the Fiscal Agent and Funding Lender.

Section 2.4 Borrower Loan Payments.

(a) The Borrower shall make Borrower Loan Payments in accordance with the corresponding Borrower Note. Each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Fiscal Agent by 2:00 p.m., central time, or, if to the servicer, by 11:00 a.m., central time, on the Borrower Loan Payment Date. Each

such payment shall be made to the Fiscal Agent by deposit to such account as the Fiscal Agent may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the corresponding Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(b) The Funding Lender shall provide a copy of the debt service schedule (the “Debt Service Schedule”) which it prepares in connection with the commencement of amortization of the Borrower Loan to the Fiscal Agent and Governmental Lender.

(c) Subject to Section 7.6 of the Funding Loan Agreement, payments of principal and interest on the Borrower Notes (other than payments from Borrower Deferred Equity as set forth in the Construction Funding Agreement) shall be paid directly to the Fiscal Agent, which shall then remit such funds to Funding Lender.

Section 2.5 Additional Borrower Payments.

(a) The Borrower shall pay the following amounts:

(i) to the Fiscal Agent, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.35 hereof and the Rebate Analyst’s Fee and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

(ii) to the Governmental Lender, the Ongoing Governmental Lender Fee and all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under the Borrower Loan Documents or the Funding Loan Documents, and any taxes and assessments with respect to the Project, as and when the same become due;

(iii) to the Fiscal Agent, the Fiscal Agent Fees;

(iv) all Costs of Funding and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the Funding Loan, as and when the same become due;

(v) to the Funding Lender, on demand, all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, any Review Fee, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan

Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; and

(vi) any Late Charge due and payable under the terms of the corresponding Borrower Notes and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection (vi) shall be made to the Funding Lender.

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender, Funding Lender;

(ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and

(iii) all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender, the Funding Lender or the Construction Consultant, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

Borrower's obligations to pay principal on the Borrower Loan and obligations to make payments under the Rate Management Agreement executed in connection with the Borrower Loan are pari passu in nature. After acceleration of the Borrower Loan or the Maturity Date, any principal payments received on the Borrower Loan or payments received with respect to the Rate Management Obligations shall be applied on a pari passu basis.

Section 2.6 Overdue Payments; Payments in Default. If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Funding Lender, a Late Charge in the amount and to the extent set forth in the Borrower Notes, if any.

Section 2.7 Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds. The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Funding Lender; (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Funding Lender in accordance with the Security Instrument; and (c) deposits with respect to any replacement reserve funds required by the Funding Lender shall be calculated by the Funding Lender in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Funding Lender, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to

deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following Written Notice to the Borrower.

Section 2.8 Grant of Security Interest; Application of Funds. To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Funding Lender, and grants to the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all payments to or moneys held in the funds and accounts created and held by the Funding Lender for the Project. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the Funding Lender shall apply or cause to be applied any sums held by the Funding Lender, the Fiscal Agent with respect to the Project in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

Section 2.9 Marshalling; Payments Set Aside. The Governmental Lender and Funding Lender shall be under no obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that Borrower makes a payment or payments or transfers any assets to the Fiscal Agent, Governmental Lender or Funding Lender, or the Governmental Lender or Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Fiscal Agent, Governmental Lender or Funding Lender and any and all remedies available to the Fiscal Agent, Governmental Lender or Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against Borrower, Guarantor or General Partner and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Fiscal Agent, Governmental Lender and Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Fiscal Agent, Governmental Lender or Funding Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Fiscal Agent, Governmental Lender or Funding Lender in connection with the exercise by the Fiscal Agent, Governmental Lender or Funding Lender of its rights under this Section 2.9.

Section 2.10 Borrower Loan Disbursements. Except for payments of interest on the Funding Loan in accordance with Section 7.6 of the Funding Loan Agreement, the Borrower Loan shall be disbursed by the Funding Lender through the Fiscal Agent for the account of the Governmental Lender to the Borrower through the Construction Escrow pursuant to the Construction Funding Agreement.

ARTICLE III

RESERVED

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. To induce the Governmental Lender to execute this Borrower Loan Agreement and to induce Funding Lender to make Disbursements, Borrower represents and warrants for the benefit of the Governmental Lender, Fiscal Agent, Funding Lender, that the representations and warranties set forth in this Section 4.1 are complete and accurate as of the Closing Date and will be complete and accurate, and deemed remade, as of the date of each Disbursement and as of the date of the Maturity Date and any extension thereof, in accordance with the terms and conditions of the Borrower Notes. Subject to Section 4.2 hereof, the representations, warranties and agreements set forth in this Section 4.1 shall survive the making of the Borrower Loan, and shall remain in effect and true and correct in all material respects until the Borrower Loan and all other Borrower Payment Obligations have been repaid in full:

Section 4.1.1 Organization; Special Purpose. The Borrower is in good standing under the laws of the State (and under the laws of the state in which the Borrower was formed if the Borrower was not formed under the laws of the State), has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper corporate limited partnership or limited liability company action, as appropriate has duly authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) of the Borrower executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership, management and operation of the Project.

Section 4.1.2 Proceedings; Enforceability. Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

Section 4.1.3 No Conflicts. The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Limited Partnership Agreement of the Borrower, or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree

or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

Section 4.1.4 Litigation; Adverse Facts. There is no Legal Action, nor is there a basis known to Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower, the General Partner or the Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the Funding Loan Documents, upon the ability of each of Borrower, General Partner and Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition, assets (including the Project), properties or operations of the Borrower, the General Partner or the Guarantor. None of the Borrower, General Partner or Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of Borrower, General Partner and Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower, General Partner or Guarantor. None of Borrower, General Partner or Guarantor are (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the Project), condition (financial or otherwise); (b) subject to, or in default with respect to, any other Legal Requirement that would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise); or (c) in default with respect to any agreement to which Borrower, General Partner or Guarantor, as applicable, are a party or by which they are bound, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise); and (d) there is no Legal Action pending or, to the knowledge of Borrower, threatened against or affecting Borrower, General Partner or Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the Funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities subject to the rights of the Project's tenants.

Section 4.1.5 Agreements; Consents; Approvals. Except as contemplated by the Borrower Loan Documents and the Funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the Project, or the Borrower's business, properties, operations or financial, except the Permitted Encumbrances. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Project is bound.

No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of the Borrower Loan Documents or the Funding Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

Section 4.1.6 Title. The Borrower shall have [marketable leasehold and fee simple interest] to the Project, free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the fee (or leasehold, if applicable) interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project, all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

Section 4.1.7 Survey. To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

Section 4.1.8 No Bankruptcy Filing. The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "Bankruptcy Proceeding"), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Closing Date, the Borrower has the ability to pay its debts as they become due.

Section 4.1.9 Full and Accurate Disclosure. No statement of fact made by the Borrower in any Borrower Loan Document or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the Project or the business,

operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

Section 4.1.10 No Plan Assets. The Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3 101.

Section 4.1.11 Compliance. The Borrower, the Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect the financial condition or business prospects or the business of the Borrower. There has not been committed by the Borrower or any Borrower Affiliate involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof or any moneys paid in performance of the Borrower's obligations under any Borrower Loan Document or any Funding Loan Documents.

Section 4.1.12 Contracts. All service, maintenance or repair contracts affecting the Project have been entered into at arm's length (except for such contracts between the Borrower and its affiliates or the affiliates of the Borrower Controlling Entity of the Borrower) in the ordinary course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

Section 4.1.13 Financial Information. All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects, (ii) accurately represent the financial condition of the Project as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

Section 4.1.14 Condemnation. No Condemnation or other proceeding has been commenced or, to the Borrower's knowledge, is contemplated, threatened or pending with respect to all or part of the Project or for the relocation of roadways providing access to the Project.

Section 4.1.15 Federal Reserve Regulations. No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such

Board of Governors, or for any purpose prohibited by Legal Requirements or any Borrower Loan Document or Funding Loan Document.

Section 4.1.16 Utilities and Public Access. To the best of the Borrower's knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting the Project, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (i) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (ii) the number of parties sharing such easement and/or recreational facilities and amenities must be specified, (iii) the Borrower's responsibilities and share of expenses are specified, and (iv) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

Section 4.1.17 Not a Foreign Person. The Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

Section 4.1.18 Separate Lots. Each parcel comprising the Land is a separate tax lot and is not a portion of any other tax lot that is not a part of the Land.

Section 4.1.19 Assessments. There are no pending or, to the Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the Project that may result in such special or other assessments.

Section 4.1.20 Enforceability. The Borrower Loan Documents and the Funding Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

Section 4.1.21 Insurance. The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the Construction Funding Agreement and Security Instrument and has delivered to the Funding Lender copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement, if applicable, and the Security Instrument.

Section 4.1.22 Use of Property; Licenses. The Project will be used exclusively as a multifamily residential rental project and other ancillary appurtenant and related uses, which use is consistent with the zoning classification for the Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the Project (collectively, the "Licenses") required at this time for the construction or rehabilitation, as appropriate, and

equipping of the Project have been obtained. To the Borrower's knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Licenses required for the future use and occupancy of the Project and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course following the Final Completion Date. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower's knowledge, pending or threatened that would result in a change of the zoning of the Project.

Section 4.1.23 Flood Zone. On the Closing Date, no structure within the Mortgaged Property lies or is located in an identifiable or designated Special Flood Hazard Area. Subsequent to the Closing Date, if the Mortgaged Property is determined to be in a Special Flood Hazard Area, Borrower will obtain appropriate flood insurance as required under the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994 as amended or as required by the Funding Lender pursuant to its underwriting guidelines.

Section 4.1.24 Physical Condition. The Project, including all Improvements, parking facilities, systems, fixtures, Equipment and landscaping, are or, after completion of the construction, rehabilitation and/or repairs, as appropriate, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. The physical configuration of the Project is not in material violation of the ADA, if required under applicable law.

Section 4.1.25 Encroachments. All of the Improvements included in determining the appraised value of the Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Funding Lender.

Section 4.1.26 State Law Requirements. The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Borrower Loan, the Funding Loan and the Project.

Section 4.1.27 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Project to the Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.

Section 4.1.28 Investment Company Act. The Borrower is not (i) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; or (ii) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended.

Section 4.1.29 Fraudulent Transfer. The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower’s assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, exceed the Borrower’s total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower’s assets is and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, be greater than the Borrower’s probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower’s assets do not and, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

Section 4.1.30 Ownership of the Borrower. Except as set forth in the Limited Partnership Agreement of the Borrower, the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in the Borrower.

Section 4.1.31 Environmental Matters. To the best of Borrower’s knowledge, the Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument. The Borrower will execute and deliver the Agreement of Environmental Indemnification on the Closing Date.

Section 4.1.32 Name; Principal Place of Business. Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal places of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other places of business, other than the Project and such principal places of business.

Section 4.1.33 Subordinated Debt. There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than Permitted Encumbrances and the permitted secured indebtedness described in Section 6.7 hereof, except an unsecured deferred

developer fee not to exceed the amount permitted by Funding Lender as determined on the Closing Date.

Section 4.1.34 Filing of Taxes. The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

Section 4.1.35 General Tax. All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Certificate are incorporated by reference herein and the Borrower will comply with such as if set forth herein.

Section 4.1.36 Approval of the Borrower Loan Documents and Funding Loan Documents. By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender or the Funding Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender or the Funding Lender in any manner.

Section 4.1.37 Funding Loan Agreement. The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

Section 4.1.38 Americans with Disabilities Act. The Project, as designed, will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990 (“ADA”), to the extent required (as evidenced by an architect’s certificate to such effect).

Section 4.1.39 Requirements of Act, Code and Regulations. The Project satisfies all requirements of the Act, the Code and the Regulations applicable to the Project.

Section 4.1.40 Regulatory Agreement. The Project is, as of the date of origination of the Funding Loan, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code and the Regulations, and pursuant to leases which comply with all applicable laws.

Section 4.1.41 Intention to Hold Project. The Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreement, to sell the Project or any part of it; and the Borrower intends to occupy the Project or cause the Project to be occupied

and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

Section 4.1.42 Concerning General Partner.

(a) The General Partner of Borrower is a limited liability company, duly organized and validly existing under the laws of the State. The General Partner has all requisite power and authority, rights and franchises to enter into and perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by such General Partner for its own account and on behalf of Borrower, as General Partner of Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

(b) General Partner has made all filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of General Partner.

(c) General Partner is duly authorized to do business in the State.

(d) The execution, delivery and performance by Borrower of the Borrower Loan Documents and the Funding Loan Documents have been duly authorized by all necessary action of General Partner on behalf of Borrower, and by all necessary action on behalf of General Partner.

(e) The execution, delivery and performance by General Partner, on behalf of Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (i) General Partner's organizational documents; (ii) any other Legal Requirement affecting General Partner or any of its properties; or (iii) any agreement to which General Partner is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties, any of the Collateral or any of the property or funds pledged or delivered to Funding Lender pursuant to the Security Documents.

Section 4.1.43 Government and Private Approvals. All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, rehabilitation, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that Borrower is not required to have as of the Closing Date, will be obtained), and will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. All such orders, consents, permits, authorizations and approvals that may not be denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders,

consents, permits, authorizations or approvals are required, and, once obtained, such orders, consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. Except as set forth in the preceding two sentences, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of Borrower, are required for the due execution, delivery and performance by Borrower or General Partner of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by Borrower or General Partner, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the Project is not conditional upon the happening of any further event.

Section 4.1.44 Concerning Guarantor. The Borrower Loan Documents and the Funding Loan Documents to which the Guarantor is a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by Guarantor and are legally valid and binding obligations of Guarantor, enforceable against Guarantor in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

Section 4.1.45 No Material Defaults. Except as previously disclosed to Funding Lender in writing, there exists no material violation of or material default by Borrower under, and, to the best knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with respect to: (i) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the Project or any portion or interest thereof or therein; (ii) any lease or other agreement affecting the Project or to which Borrower is a party; (iii) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which Borrower or the Project may be bound; or (iv) any mortgage, instrument, agreement or document by which Borrower or any of its respective properties is bound; in the case of any of the foregoing: (1) which involves any Borrower Loan Document or Funding Loan Document; (2) which involves the Project and is not adequately covered by insurance; (3) that might materially and adversely affect the ability of Borrower, General Partner or Guarantor to perform any of its respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party; or (4) which might adversely affect the priority of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

Section 4.1.46 Payment of Taxes. Except as previously disclosed to Funding Lender in writing: (i) all tax returns and reports of Borrower, General Partner and Guarantor required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges upon Borrower, General Partner and Guarantor, and upon their respective properties, assets, income and franchises, which are due and payable have been paid when due and payable; and (ii) Borrower knows of no proposed tax assessment against it or against General Partner or Guarantor that would be material to the condition (financial or otherwise) of Borrower, General Partner or Guarantor, and neither Borrower nor General Partner have contracted with any Governmental Authority in connection with such taxes.

Section 4.1.47 Rights to Project Agreements and Licenses. Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. Borrower's interest in the Plans and Specifications and all Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents and the Funding Loan Documents or as otherwise approved by Funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business.

Section 4.1.48 Patriot Act Compliance. Borrower is not now, nor has ever been (i) listed on any Government Lists (as defined below), (ii) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) Bank Representative Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" shall mean (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control ("OFAC"), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Funding Lender notified Borrower in writing is now included in "Government Lists", or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Funding Lender notified Borrower in writing is now included in "Government Lists".

Section 4.1.49 Rent Schedule. Borrower has prepared a prospective Unit absorption and rent collection schedule with respect to the Project substantially in the form approved by Funding Lender, which schedule takes into account, among other relevant factors (i) a schedule of minimum monthly rentals for the Units, and (ii) any and all concessions including free rent periods, and on the basis of such schedule, Borrower believes it will collect rents with respect to the Project in amounts greater than or equal to debt service on the Borrower Loan.

Section 4.1.50 Other Documents. Each of the representations and warranties of Borrower or General Partner contained in any of the other Borrower Loan Documents or the Funding Loan Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of Funding Lender.

Section 4.1.51 Subordinate Loan Documents. The Subordinate Loan Documents are in full force and effect and the Borrower has paid all commitment fees and other amounts due and payable to the Subordinate Lender(s) thereunder. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the Subordinate Loan Documents.

Section 4.1.52 Rate Management Obligations. Borrower has not entered into any Rate Management Agreement in connection with the Borrower Loan, except as permitted or required hereunder. On each date on which a Rate Management Agreement is entered into (a) Borrower will be deemed to represent to Funding Lender that Borrower is a Qualified ECP Borrower and (b) each guarantor, if any, of any of Borrower's Swap Obligations that are included as part of the indebtedness and/or obligations the payment and/or performance of which are guaranteed by such guarantor is an "eligible contract participant," as such term is defined in the Commodity Exchange Act.

The Borrower and the Funding Lender hereby agree that: (i) either party can transfer its interest in the Borrower's Swap Obligations in compliance with the provisions thereof; and (ii) there are not economic consequences contained in the Borrower's Swap Obligations of terminating the Borrower's Swap Obligations that would incentivize the Borrower to keep the Notes outstanding to avoid payment on the Borrower's Swap Obligations in such event.

Section 4.2 Survival of Representations and Covenants. All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Governmental Lender and the Funding Lender notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Funding Lender or on its or their behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.1.31 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 11.1 hereof.

ARTICLE V

AFFIRMATIVE COVENANTS

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the Fiscal Agent and the Funding Lender that:

Section 5.1 Existence. The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all material Licenses, and (iv) qualify to do business and remain in good standing under the laws of the State.

Section 5.2 Taxes and Other Charges. The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance

with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

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

Section 5.3 Repairs; Maintenance and Compliance; Physical Condition. The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or Equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

Section 5.4 Litigation. The Borrower shall give prompt Written Notice to the Governmental Lender, the Funding Lender of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

Section 5.5 Performance of Other Agreements. The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project.

Section 5.6 Notices. The Borrower shall promptly advise the Governmental Lender, the Funding Lender of (i) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (ii) any fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document to which it is a party in a timely manner, or (iii) the occurrence of any Potential Default or Event of Default of which the Borrower has knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower shall cause to be delivered to the Governmental Lender and the Funding Lender any Securities and Exchange Commission or other public filings, if any, of the Borrower within two (2) Business Days of such filing.

Section 5.7 Cooperate in Legal Proceedings. The Borrower shall cooperate fully with the Governmental Lender and the Funding Lender with respect to, and permit the Governmental Lender and the Funding Lender at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender and/or the Funding Lender under any Borrower Loan Document or Funding Loan Document.

Section 5.8 Further Assurances. The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (i) furnish to the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that Borrower's construction or renovation of the Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements relating to the Project, reasonably requested by the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (ii) execute and deliver to the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Borrower Loan, as the Funding Lender may reasonably require from time to time; (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Funding Lender shall reasonably require from time to time; provided, however, with respect to clauses (i)-(iii) above, the Borrower shall not be required to do anything that has the effect of (A) changing the essential economic terms of the Borrower Loan or (B) imposing upon the Borrower greater personal liability under the Borrower Loan Documents and the Funding Loan Documents; and (iv) upon the Funding Lender's request therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long as such Potential Default or Event of Default, as applicable, is continuing pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (b) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Funding Lender in each of the locations reasonably designated by the Funding Lender.

Section 5.9 Delivery of Financial Information. After notice to the Borrower of a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to the Funding Lender of the Provided Information, deliver copies of all financial information required under Article IX.

Section 5.10 Environmental Matters. So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all Hazardous Materials Laws (as defined in the Security Instrument), (b) promptly notify the Funding Lender if the Borrower shall become aware that any Hazardous Materials (as defined in the Security Instrument) are on or near the Project in violation of Hazardous Materials Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Hazardous Material Laws, in each case as set forth in the Security Instrument or the Agreement of Environmental Indemnification.

Section 5.11 Governmental Lender's, Fiscal Agent's Fees and Funding Lender's Fees. The Borrower covenants to pay the reasonable fees and expenses of the Governmental

Lender, the Fiscal Agent (including the Fiscal Agent Fees) and the Funding Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender, the Fiscal Agent or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

Section 5.12 Estoppel Statement. The Borrower shall furnish to the Funding Lender for the benefit of the Funding Lender within ten (10) days after request by the Funding Lender, with a statement, duly acknowledged and certified, setting forth (i) the unpaid principal of the Borrower Notes, (ii) the applicable Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Borrower Payment Obligations, and (v) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender, within 30 days of a request by the Funding Lender, tenant estoppel certificates from each commercial tenant at the Project in form and substance reasonably satisfactory to the Funding Lender; provided that the Funding Lender shall not make such requests more frequently than twice in any year.

Section 5.13 Defense of Actions. The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects the Funding Lender's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Funding Lender appears to be prior or superior to the Borrower Loan Documents or the Funding Loan Documents. The Funding Lender shall have no obligation to do any of the above. The Funding Lender may take any such action without notice to or demand upon the Borrower. No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or Funding Loan Documents. In the event (i) that the Security Instrument is foreclosed

in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (ii) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding the Funding Lender is made a party or (iii) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

Section 5.14 Expenses. The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the Fiscal Agent and the Funding Lender (except as provided in Section 9.1 hereof) in connection with the Borrower Loan and the Funding Loan, including reasonable fees and expenses of the Governmental Lender's, the Fiscal Agent's, the Funding Lender's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the Fiscal Agent and the Funding Lender (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the Funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the Fiscal Agent and the Funding Lender for all reasonable amounts expended, advanced or incurred by the Governmental Lender and the Funding Lender to collect the Borrower Notes, or to enforce the rights of the Governmental Lender and the Funding Lender under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender and the Funding Lender under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the Date of Disbursement until the date of reimbursement to the Governmental Lender, the Fiscal Agent and the Funding Lender, all of which shall constitute part of the Borrower Loan and the Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.14 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the Fiscal Agent or the Funding Lender, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the Funding Loan Documents, including the acquisition of the Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the gross negligence or willful misconduct of any other party, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by Section 18(i) of the Security Instrument.

Section 5.15 Indemnity. In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of Governmental Lender, the Fiscal Agent or Funding Lender pursuant hereto and under law or

equity, to the fullest extent permitted by law, the Borrower (and with respect to the Governmental Lender, the General Partner) agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Funding Lender and its affiliates, the Beneficiary Parties, and each of their respective officers, directors, employees, attorneys and agents (each an “Indemnified Party”), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the “Liabilities”) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except with respect to any Secondary Market Disclosure Document (other than any Borrower’s obligations under Article IX);

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

(c) Any lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Governmental Lender or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and Other Charges imposed on the Governmental Lender or the Funding Lender in respect of any portion of the Project;

(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

(e) The enforcement of, or any action taken by the Governmental Lender or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(f) [Reserved];

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

(h) Any Determination of Taxability;

(i) Any breach (or alleged breach) by Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by Borrower, General Partner, Guarantor or their Affiliates to Governmental Lender, the Funding Lender or any other Person in connection with Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by Borrower of any agreement with respect to the provision of any substitute credit enhancement);

(j) any failure (or alleged failure) by Borrower, the Funding Lender or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(k) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or rehabilitation of, the Project or any part thereof; or

(l) the use of the proceeds of the Borrower Loan and the Funding Loan,

except in the case of the foregoing indemnification of the Governmental Lender, the Fiscal Agent, the Funding Lender or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.15 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnity hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan. The provisions of this Section 5.15 shall survive the termination of this Borrower Loan Agreement.

Section 5.16 No Warranty of Condition or Suitability by the Governmental Lender or Funding Lender. Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

Section 5.17 Right of Access to the Project. The Borrower agrees that the Governmental Lender, the Funding Lender and the Construction Consultant, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice, to enter onto the Land (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Funding Lender and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

Section 5.18 Notice of Default. The Borrower will provide the Governmental Lender and the Funding Lender as soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Potential Default or Event of Default with a statement of an Authorized Borrower Representative describing the details of such Potential Default or Event of Default and any curative action Borrower proposes to take.

Section 5.19 Covenant with Governmental Lender and Funding Lender. The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the purchase by the Funding Lender of the Governmental Lender Notes and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Funding Lender and any lawful owner, holder or pledgee of the Borrower Notes or the Governmental Lender Notes from time to time.

Section 5.20 Obligation of the Borrower to Construct or Rehabilitate the Project. The Borrower shall proceed with reasonable dispatch to construct or rehabilitate, as appropriate, and equip the Project. If the proceeds of the Borrower Loan, together with the Other Borrower Moneys, available to be disbursed to the Borrower are not sufficient to pay the costs of such construction or rehabilitation, as appropriate, and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender or the Funding Lender in respect of any such costs or to any diminution or abatement in the repayment of the Borrower Loan. The Governmental Lender and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the Project. The Governmental Lender and the Funding Lender do not make any representation or warranty, either express or implied, that moneys, if any, which will be made available to the Borrower will

be sufficient to complete the Project, and the Governmental Lender and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed.

Section 5.21 Maintenance of Insurance. Borrower will maintain the insurance required by the Security Instrument and the Construction Funding Agreement.

Section 5.22 Information; Statements and Reports. Borrower shall furnish or cause to be furnished to Funding Lender:

(a) Financial Statements; Rent Rolls. In the manner and to the extent required under the Security Instrument and Schedule 5.22(a) of this Agreement, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

(b) Intentionally Omitted;

(c) Intentionally Omitted;

(d) Intentionally Omitted;

(e) Notices; Certificates or Communications. Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to Borrower, General Partner or Guarantor naming Governmental Lender or Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

(f) Certification of Non-Foreign Status. Promptly upon request of Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by Funding Lender;

(g) Compliance Certificates. Together with each of the documents required pursuant to Section 5.22(a) hereof submitted by or on behalf of Borrower, a compliance certificate substantially in the form attached hereto as Schedule 5.22(g); and

(h) Other Items and Information. Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of Borrower, General Partner, Guarantor or the Project, as Funding Lender or Governmental Lender reasonably requests from time to time.

Section 5.23 Additional Notices. Borrower will, promptly after becoming aware thereof, give notice to Funding Lender and the Governmental Lender of:

(a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

(b) any Legal Action which is instituted by or against Borrower, General Partner or Guarantor, or any Legal Action which is threatened against Borrower, General Partner or Guarantor which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, prospects, assets, management, ownership or condition (financial or otherwise) of Borrower, General Partner, Guarantor or the Project;

(c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which Borrower, General Partner or Guarantor is a party or by or to which Borrower, General Partner or Guarantor, or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, General Partner or Guarantor, as applicable;

(d) any default, alleged default or potential default on the part of Borrower under any of the CC&R's (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

(e) any notice of default, alleged default or potential default on the part of Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by Borrower with respect to, or alleging, the same default, alleged default or potential default;

(f) any change or contemplated change in (i) the location of Borrower's or General Partner's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by Borrower or General Partner; or (iii) the nature of the trade or business of Borrower; and

(g) any default, alleged default or potential default on the part of any general or limited partner (including, without limitation, General Partner and the Equity Investor) under the Limited Partnership Agreement.

Section 5.24 Compliance with Other Agreements; Legal Requirements.

(a) Borrower shall timely perform and comply with, and shall cause General Partner to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Limited Partnership Agreement, and Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing. The Borrower shall cause the Equity Investor to timely perform and comply with its obligation to pay the installments of the Borrower Deferred Equity in accordance with and subject to the conditions and adjustments set forth in the Limited Partnership Agreement, and the Borrower shall perform or cause to be timely satisfied all conditions to the payment of such installments and not do or permit to be done anything to impair any installment of Borrower Deferred Equity.

(b) Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project or construction and/or rehabilitation of the Improvements, and will furnish Funding Lender with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&R's and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, rehabilitation, equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of low or moderate income. The Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. Funding Lender shall at all times have the right to audit, at Borrower's expense, Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of low or moderate income, and Borrower shall supply all such information with respect thereto as Funding Lender may request and otherwise cooperate with Funding Lender in any such audit. Without limiting the generality of the foregoing, Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to construct, occupy, operate, market and lease the Project.

Section 5.25 Completion and Maintenance of Project. Borrower shall cause the construction or rehabilitation, as the case may be, of the Improvements, to be prosecuted with diligence and continuity and shall achieve Final Completion on or before the Final Completion Date. Borrower shall thereafter maintain the Project as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of first class maintenance.

Section 5.26 Fixtures. Borrower shall deliver to Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

Section 5.27 Income from Project. Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose. Prior to the Maturity Date, Borrower shall not make or permit any distributions or other payments of Net Operating Income to its partners, shareholders or members, as applicable, in each case, without the prior Written Consent of Funding Lender.

Section 5.28 Leases and Occupancy Agreements.

(a) Lease Approval.

(i) Borrower has submitted to Funding Lender, and Funding Lender has approved, Borrower's standard form of tenant lease for use in the Project. Borrower

shall not materially modify that approved lease form without Funding Lender's prior Written Consent in each instance, which consent shall not be unreasonably withheld or delayed. Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without Funding Lender's prior Written Consent if:

(A) The lease is a Permitted Lease, and is executed in the form approved by Funding Lender without material modification;

(B) Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&R and is financially capable of performing all of its obligations under the lease; and

(C) The lease conforms to the Rent Schedule attached as an exhibit to the Construction Funding Agreement and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&R.

(ii) If any Event of Default has occurred and is continuing, Funding Lender may make written demand on Borrower to submit all future leases for Funding Lender's approval prior to execution. Borrower shall comply with any such demand by Funding Lender.

(iii) No approval of any lease by Funding Lender shall be for any purpose other than to protect Funding Lender's security for the Borrower Loan and to preserve Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by Funding Lender shall result in a waiver of any default of Borrower. In no event shall any approval by Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant or guarantor.

(b) Landlord's Obligations. Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

(c) Leasing and Marketing Agreements. Except as may be contemplated in the Management Agreement with Borrower's Manager, Borrower shall not without the approval of Funding Lender enter into any leasing or marketing agreement and Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

Section 5.29 Project Agreements and Licenses. To the extent not heretofore delivered to Funding Lender, Borrower will furnish to Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to Funding Lender and consents to such assignments where required by Funding Lender, all in form and substance acceptable to Funding Lender. Neither Borrower nor

General Partner has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to Funding Lender.

Section 5.30 Payment of Debt Payments. In addition to its obligations under the Borrower Notes, Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (iii) promptly inform Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to Funding Lender a copy of any notice of default or notice of any event that might result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

Section 5.31 ERISA. Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA.

Section 5.32 Patriot Act Compliance. Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Project, including those relating to money laundering and terrorism. Funding Lender shall have the right to audit Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the Project, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Funding Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Funding Lender in connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

Borrower covenants that it shall comply with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, Borrower shall not take any action, or permit any action to be taken, that would cause Borrower's representations and warranties in Article IV become untrue or inaccurate at any time during the term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, Borrower shall certify in writing to such Beneficiary Party that Borrower's representations, warranties and obligations under Article IV remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. Borrower shall immediately notify the Funding Lender in writing of (a) Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached, (b) Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and economic sanctions. Borrower shall also reimburse Funding Lender for any expense incurred by Funding Lender in evaluating

the effect of an investigation by Governmental Authorities on the Funding Loan and Funding Lender's interest in the collateral for the Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon Funding Lender as a result thereof.

Section 5.33 Funds from Equity Investor. Borrower shall cause the Equity Investor to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms of the Limited Partnership Agreement and the Construction Funding Agreement. The Borrower Initial Equity shall be deposited in the Construction Escrow for disbursement to the Borrower upon receipt from the Borrower of a Written Requisition in accordance with the terms of the Funding Loan Agreement and the Construction Funding Agreement. The Borrower Deferred Equity shall be funded and applied in accordance with the Limited Partnership Agreement and as set forth in the Construction Funding Agreement.

Section 5.34 Tax Covenants. The Borrower further represents, warrants and covenants as follows:

(a) General. The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Governmental Lender Notes from gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Security Instrument and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Governmental Lender Notes, the Funding Loan or affecting the Project. Capitalized terms used in this Section 5.34 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the Funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the Governmental Lender Notes, unless it has received and filed with the Governmental Lender and the Funding Lender a Tax Counsel No Adverse Effect Opinion (other than with respect to interest on any portion of either Governmental Lender Notes for a period during which such portion of either of the Governmental Lender Notes is held by a "substantial user" of any facility financed with the proceeds of the Governmental Lender Notes or a "related person," as such terms are used in Section 147(a) of the Code), the Borrower will comply with this Section 5.34.

(b) Use of Proceeds. The use of the net proceeds of the Funding Loan at all times will satisfy the following requirements:

(i) Limitation on Net Proceeds. At least 95% of the net proceeds of the Funding Loan (within the meaning of the Code) actually expended and finally allocated shall be used to pay Qualified Project Costs that are costs of a “qualified residential rental project” (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and property that is “functionally related and subordinate” thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations).

(ii) Limit on Costs of Funding. The proceeds of the Funding Loan will be expended for the purposes set forth in this Borrower Loan Agreement and in the Funding Loan Agreement and no portion thereof in excess of two percent of the proceeds of the Funding Loan, within the meaning of Section 147(g) of the Code, will be expended to pay Costs of Funding of the Funding Loan.

(iii) Prohibited Facilities. The Borrower shall not use or permit the use of any proceeds of the Funding Loan or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(iv) Limitation on Land. Less than 25 percent of the net proceeds of the Funding Loan actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein, nor will any portion of the net proceeds of the Funding Loan be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(v) Limitation on Existing Facilities. No portion of the net proceeds of the Funding Loan will be used for the acquisition of any existing property or an interest therein unless (A) the first use of such property is pursuant to such acquisition or (B) the rehabilitation expenditures with respect to any building and the equipment therefor will equal or exceed 15 percent of the cost of acquiring such building financed with the proceeds of the Funding Loan (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent). For purposes of the preceding sentence, the term “rehabilitation expenditures” shall have the meaning set forth in Section 147(d)(3) of the Code.

(vi) Accuracy of Information. The information furnished by the Borrower and used by the Governmental Lender in preparing its certifications with respect to Section 148 of the Code and the Borrower’s information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of origination of the Funding Loan.

(vii) Limitation of Project Expenditures. The acquisition, construction and equipping of the Project were not commenced (within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of the resolution of the Governmental Lender with respect to the Project on October 2, 2019 and no obligation for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, construction or equipping of the Project was paid

or incurred prior to 60 days prior to such date, except for permissible “preliminary expenditures”, which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs incurred prior to the commencement of construction, rehabilitation or acquisition of the Project.

(viii) Qualified Costs. The Borrower hereby represents, covenants and warrants that the proceeds of the Funding Loan shall be used or deemed used exclusively to pay costs which are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code’s regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code and that for the greatest number of buildings the proceeds of the Funding Loan shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Funding Loan for the purpose of complying with Section 42(h)(4)(B) of the Code; provided however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Funding Lender nor the Governmental Lender shall have any obligation to enforce this statement nor shall they incur any liability to any person, including without limitation, the Borrower, the partners of the Borrower, any other affiliate of the Borrower or the holders or payees of the Funding Loan and the Borrower Notes for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or event of default under this Borrower Loan Agreement or the Funding Loan Agreement.

(c) Limitation on Maturity. The average maturity of the Governmental Lender Notes does not exceed 120 percent of the average reasonably expected economic life of the Project to be financed by the Funding Loan, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the Net Proceeds of the Funding Loan. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (A) the Closing Date for the Funding Loan or (B) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

(d) No Arbitrage. The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Funding Loan or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause the Governmental Lender Notes to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Borrower Loan Agreement or the Borrower Notes relating to the Funding Loan, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Funding Loan, unless

the Borrower has obtained in each case a Tax Counsel No Adverse Effect Opinion with respect to such action, a copy of which shall be provided to the Governmental Lender and the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Funding Loan, invest or cause any Gross Proceeds to be invested in any investment (or to use Gross Proceeds to replace money so invested), if, as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Funding Loan to the Maturity Date, except as permitted by Section 148 of the Code and Regulations thereunder or as provided in the Regulatory Agreement. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Regulations thereunder relating to the Funding Loan and the interest thereon, including the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender at all times from and after the Closing Date for the calculation of rebatable amounts to the United States Treasury Department. The Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts not later than forty-five days after the fifth anniversary of the Closing Date and each five years thereafter and not later than forty-five days after the final Computation Date and agrees that the Borrower will pay all costs associated therewith. the Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the Governmental Lender and Funding Lender.

(e) No Federal Guarantee. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the Governmental Lender Notes to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(f) Representations. The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its opinion with respect to the excludability from gross income of the interest on the Governmental Lender Notes for federal income tax purposes, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein in order to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information which Tax Counsel has not requested.

(g) Qualified Residential Rental Project. The Borrower hereby covenants and agrees that the Project will be operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Governmental Lender Notes remains outstanding, to the end that the interest on the Governmental Lender Notes shall be excludable from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(h) Information Reporting Requirements. The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information regarding the Governmental Lender Notes to be filed with the Internal Revenue Service within prescribed time limits.

(i) Funding Loan Not a Hedge Bond. The Borrower covenants and agrees that not more than 50% of the proceeds of the Funding Loan will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Funding Loan will be used to carry out the governmental purposes of the Funding Loan within the three-year period beginning on the Closing Date.

(j) Termination of Restrictions. Although the parties hereto recognize that, subject to the provisions of the Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate in accordance with Section 10.14 hereof, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) Public Approval. The Borrower covenants and agrees that the proceeds of the Funding Loan will not be used in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Funding Loan.

(l) 40/60 Test Election. The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) Modification of Tax Covenants. Subsequent to the origination of the Funding Loan and prior to its payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 5.34 hereof may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Borrower Loan Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Funding Lender, the Fiscal Agent and the Borrower hereby agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the Governmental Lender Notes to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion as to the effect of such proposed amendment upon the inclusion of interest on the Governmental Lender Notes in the gross income of the recipient thereof for federal income tax purposes. The Borrower shall pay

all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record, any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file-stamped copy to the Funding Lender, necessary to effectuate the intent of this Section 5.34, and the Borrower and the Governmental Lender hereby appoint the Funding Lender as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section 5.34; provided, however, that the Funding Lender shall take no action under this Section 5.34 without first notifying the Borrower or the Governmental Lender, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 5.34.

The Borrower irrevocably authorizes and directs the Fiscal Agent and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Fiscal Agent or the Funding Lender, or any agent of the Governmental Lender or the Funding Lender. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase interests in the Funding Loan in an amount related to the amount of the Borrower Loan.

Section 5.35 Payment of Rebate.

(a) Arbitrage Rebate. The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the Funding Loan or the Governmental Lender Notes in accordance with Section 148(f) of the Code including:

(i) Delivery of Documents and Money on Computation Dates. The Borrower will deliver to the Fiscal Agent, with a copy to the Funding Lender, within 40 days after each Computation Date:

(A) a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

(B) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations), or (2) if such Computation Date is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such final

Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations); and

(C) if a Rebate Amount is positive, an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

(ii) Correction of Underpayments. If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.35 of an amount described in Section 5.35(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Fiscal Agent (for deposit to the Rebate Fund) and cause the Fiscal Agent to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Regulations, within 175 days after any discovery or notice and (2) deliver to the Fiscal Agent an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the Governmental Lender Notes from becoming arbitrage bonds within the meaning of Section 148 of the Code.

(iii) Records. The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.35 for at least six years after the later of the final maturity of the Governmental Lender Notes or the date the Funding Loan is retired in full.

(iv) Costs. The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst (which shall initially be Ice Miller LLP), a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

(v) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Funding Loan which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan were not subject to Section 148(f) of the Code.

(vi) Modification of Requirements. If at any time during the term of this Borrower Loan Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.35, such Person shall be permitted to take such action if it

shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion with respect to such action.

(b) Rebate Fund. The Fiscal Agent shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

(c) Within 15 days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(d) All payments to the United States of America pursuant to this Section 5.35 shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Fiscal Agent by the Borrower or the Rebate Analyst as set forth in this Section 5.35).

(e) The Borrower shall preserve all statements, forms and explanations received pursuant this Section 5.35 and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan.

(f) Moneys and securities held in the Rebate Fund shall not be deemed funds of the Fiscal Agent, the Funding Lender or of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the Funding Lender to secure the Funding Loan or any other obligations.

(g) Notwithstanding anything to the contrary in this Borrower Loan Agreement, no payment shall be made to the United States if the Borrower shall furnish to the Governmental Lender, Fiscal Agent and the Funding Lender an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the excludability from gross income for federal income tax purposes of interest on the Governmental Lender Notes. In such event, the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender with respect to such withdrawal.

(h) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.35 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Funding Lender.

Section 5.36 Covenants under Funding Loan Agreement. The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan Agreement to perform. The

foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

Section 5.37 Continuing Disclosure Agreement. The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Funding Loan, the Borrower and other matters as specifically provided for in such agreement.

ARTICLE VI

NEGATIVE COVENANTS

Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Borrower Payment Obligation or other obligation of Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. Borrower covenants and agrees that it will not, directly or indirectly:

Section 6.1 Management Agreement. The Borrower shall not, without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the Management Agreement or otherwise replace the Manager or enter into any other management agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement).

Section 6.2 Dissolution. Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

Section 6.3 Change in Business or Operation of Property. Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction or rehabilitation, as appropriate, of the Project).

Section 6.4 Debt Cancellation. Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

Section 6.5 Assets. Purchase or own any real property or personal property incidental thereto other than the Project.

Section 6.6 Transfers. Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Security Instrument, nor transfer any material License required for the operation of the Project.

Section 6.7 Debt. Other than as expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any partner thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) the Subordinate Debt, (iii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, (iv) guaranty obligations owed to the Borrower pursuant to the Limited Partnership Agreement or related documents and (v) trade payables incurred in the ordinary course of business.

Section 6.8 Assignment of Rights. Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

Section 6.9 Principal Place of Business. Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender.

Section 6.10 Limited Partnership Agreement. Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of its rights or remedies under the Limited Partnership Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Limited Partnership Agreement resulting solely from the "Permitted Transfer" of membership interests of Borrower as defined in and permitted by the Security Instrument.

Section 6.11 ERISA. Maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan, or permit the assets of the Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

Section 6.12 No Hedging Arrangements. Except with respect to the Rate Management Agreement executed in connection with the Borrower Loan, without the prior Written Consent of the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

Section 6.13 Loans and Investments; Distributions; Related Party Payments.

(a) Without the prior Written Consent of Funding Lender in each instance, Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or

otherwise acquire any interest in Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in Borrower, or make any distribution, in cash or in kind, in respect of interests in Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in Borrower (except to the extent permitted by the Security Instrument and subject to the limitations set forth in Section 5.27 hereof).

(b) Disbursements for fees and expenses of any Borrower Affiliate and developer fees (however characterized) will only be paid to the extent that such fee or expense bears a proportionate relationship to the percentage of completion of the construction or rehabilitation, as the case may be, of the Improvements, as determined by the Construction Consultant, and only after deducting the applicable Retainage. Except as otherwise permitted hereunder or by the Funding Lender, no Disbursements for the Developer Fee or any “deferred developer fees” shall be made prior to the Maturity Date other than in accordance with the Approved Developer Fee Schedule.

Section 6.14 Amendment of Related Documents or CC&R’s. Without the prior Written Consent of Funding Lender in each instance, except as provided herein or in the Construction Funding Agreement, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&R’s (including, without limitation, those contained in the Borrower Loan Agreement, any Architect’s Agreement or Engineer’s Contract, any Construction Contract, and any Management Agreement, but excluding the Limited Partnership Agreement, which is covered by Section 6.10), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

Section 6.15 Personal Property. Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at the time of installation, without Funding Lender’s prior Written Consent; provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

Section 6.16 Fiscal Year. Without Funding Lender’s Written Consent, which shall not be unreasonably withheld, neither Borrower nor General Partner shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

Section 6.17 Publicity. Neither Borrower nor General Partner shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify Funding Lender or any of its Affiliates as the source of the financing provided for herein, without the prior written approval of Funding Lender in each instance (provided that nothing herein shall prevent Borrower or General Partner from identifying Funding Lender or its Affiliates as the source of such financing to the extent that Borrower or General Partner are required to do so by disclosure requirements applicable to publicly held companies). Borrower and General Partner agree that no sign shall be posted on the Project in connection with the construction or rehabilitation of the Improvements unless such sign identifies BMO Harris Bank

and its affiliates as the source of the financing provided for herein or Funding Lender consents to not being identified on any such sign.

Section 6.18 Subordinate Loan Documents. Without Funding Lender’s prior written consent, Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

ARTICLE VII

RESERVED

ARTICLE VIII

DEFAULTS

Section 8.1 Events of Default. Each of the following events shall constitute an “Event of Default” under this Borrower Loan Agreement:

(a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of the corresponding Borrower Note, or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due in accordance with the terms and provisions of the Borrower Notes, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document[, which default remains uncured for a period of five (5) days after Written Notice thereof shall have been given to the Borrower];

(b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsection (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, the Borrower Notes, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) days after Written Notice thereof shall have been given to the Borrower;

(c) an Event of Default, as defined by the Borrower Notes, the Security Instrument or any other Borrower Loan Document, occurs (or to the extent an “Event of Default” is not defined in any other Borrower Loan Document, any default or breach by the Borrower or any Guarantor of its obligations, covenants, representations or warranties under such Borrower Loan Document occurs and any applicable notice and/or cure period has expired);

(d) any representation or warranty made by any of the Borrower, the Guarantor or the General Partner in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, the Guarantor or the General Partner

in connection with any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Closing Date;

(e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(f) the Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur, unless in all cases the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section 5.2 of the Security Instrument; which, in the case of a non-profit Borrower Controlling Entity, may be replaced within sixty (60) days of such event with another non-profit Borrower Controlling Entity acceptable to the Funding Lender, in which case no Event of Default shall be deemed to have occurred;

(g) any portion of Borrower Deferred Equity to be made by Equity Investor and required for (i) completion of the construction or rehabilitation, as the case may be, of the Improvements, (ii) repayment of the Borrower Loan and Funding Loan or (iii) the operation of the Improvements, is not received in accordance with the Limited Partnership Agreement and Construction Funding Agreement after the expiration of all applicable notice and cure periods and is not offset by additional funds as provided in the Limited Partnership Agreement or directly by the Borrower;

(h) the failure by Borrower or any ERISA Affiliate of Borrower to comply in all respects with ERISA, or the occurrence of any other event (with respect to the failure of Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to impose upon Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of Fifty Thousand Dollars (\$50,000);

(i) a Bankruptcy Event shall occur with respect to Borrower, any General Partner or Guarantor, or there shall be a change in the assets, liabilities or financial position of any such Person which has a material adverse effect upon the ability of such Person to perform such Person's obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document, provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default: (i) if such Bankruptcy Event occurs on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such Bankruptcy Event occurs prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after said occurrence;

(j) all or any material portion of the property of Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released: (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days of the date thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days of the date thereof;

(k) subject to Section 10.16 hereof, Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of \$100,000, and such failure continues beyond the expiration of any applicable cure or grace periods unless Borrower shall be contesting the validity of such obligation in good faith by appropriate proceedings and in a manner reasonably acceptable to the Lender.

(l) any material litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower, any General Partner or Guarantor, or property of Borrower, any General Partner or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, any General Partner or Guarantor, as applicable, provided that any such material litigation or proceeding against a Guarantor shall not constitute an Event of Default: (i) if such material litigation is commenced on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such material litigation or proceeding is commenced prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after said commencement;

(m) a final and uninsured judgment or decree for monetary damages in excess of **[\$100,000]** or a monetary fine or penalty in excess of **[\$100,000]** (not subject to appeal or as to which the time for appeal has expired) and that in Funding Lender's sole discretion has a material adverse effect on the ability of the Borrower, General Partner or Guarantor to perform its obligations under the Borrower Loan Documents is entered against Borrower, any General Partner or Guarantor by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged, bonded over or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment, fine or penalty), provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default: (i) if such judgment, decree, fine or penalty is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, decree, fine or penalty is entered prior to the date upon

which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after said judgment, decree, fine or penalty is entered;

(n) a final and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of **[\$100,000]** or more and that in Funding Lender's sole discretion has a material adverse effect on the ability of the Borrower, General Partner or Guarantor to perform its obligations under the Borrower Loan Documents shall be rendered against Borrower, any General Partner or Guarantor, or against any of their respective assets, that is not paid, superseded or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against Borrower, any General Partner or Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of Borrower, any General Partner or Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhanded and unstayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of ten (10) days or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of thirty (30) days, or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder, provided that any such judgment, levy, writ, warrant, attachment or similar process against a Guarantor shall not constitute an Event of Default: (i) if such judgment, levy, writ, warrant, attachment or similar process is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, levy, writ, warrant, attachment or similar process is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after said judgment, levy, writ, warrant, attachment or similar process is entered or occurs, as applicable;

(o) the inability of Borrower to satisfy any condition for the receipt of a Disbursement hereunder (other than an Event of Default specifically addressed in this Section 8.1) and failure to resolve the situation to the satisfaction of Funding Lender for a period in excess of thirty (30) days unless (i) such inability shall have been caused by conditions beyond the control of Borrower, including, without limitation, acts of God or

the elements, fire, strikes and disruption of shipping; (ii) Borrower shall have made adequate provision, acceptable to Funding Lender, for the protection of materials stored on-site or off-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft; (iii) Borrower shall furnish to Funding Lender satisfactory evidence that such cessation of construction or rehabilitation will not adversely affect or interfere with the rights of Borrower under labor and materials contracts or subcontracts relating to the construction or operation of the Improvements; and (iv) Borrower shall furnish to Funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Final Completion Date;

(p) the construction or rehabilitation of the Improvements is abandoned or halted prior to completion for any period of thirty (30) consecutive days;

(q) Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any Governmental Authority with jurisdiction over the Mortgaged Property or the Project orders or requires that construction or rehabilitation of the Improvements be stopped, in whole or in part, or that any required approval, license or permit be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days;

(r) failure by the Borrower to Substantially Complete the construction or rehabilitation, as the case may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Substantial Completion Date, provided, however, the Borrower shall not be deemed in default in the event that the Borrower is unable to observe this Section 8.1(r) by reason of an event of Force Majeure (as defined in the Construction Funding Agreement), provided further that the Borrower shall use its best efforts to remove the effects thereof;

(s) failure by Borrower to Finally Complete the construction or rehabilitation, as the case may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Final Completion Date;

(t) failure by any Subordinate Lender to disburse the proceeds of its Subordinate Loan in approximately such amounts and at approximately such times as set forth in the Cost Breakdown and in the Subordinate Loan Documents;

(u) an "Event of Default" or "Default" (as defined in the applicable agreement) shall occur under any of the Subordinate Loan Documents, after the expiration of all applicable notice and cure periods;

(v) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 8.1), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Funding Lender to the Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period

and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in the Funding Lender's judgment, absent immediate exercise by the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Notes or this Borrower Loan Agreement or any security given under any other Borrower Loan Document; or

(w) any failure by the Borrower to perform or comply with any of its Rate Management Obligations.

Section 8.2 Remedies.

Section 8.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Funding Lender may, take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Notes to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion; and upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Funding Lender.

Section 8.2.2 Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Funding Lender against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Funding Lender (or with respect to an Event of Default pursuant to Section 8.1(w), any Swap Counterparty), at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Funding Lender permitted by law, equity or contract or as set forth in the Borrower Loan Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Funding Lender shall remain in full force and effect until

they have exhausted all of its remedies, the Security Instrument has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations has been paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Funding Lender to resort to any portion of the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion of the Project, and the Funding Lender may seek satisfaction out of the entire Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 8.2.3 Delay. No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Funding Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Funding Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Security Instrument to the extent necessary to foreclose on the Project, the Rents, the funds or any other collateral.

Section 8.2.4 Set Off; Waiver of Set Off. Upon the occurrence of an Event of Default, Funding Lender may, at any time and from time to time, without notice to Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of Borrower to Funding Lender arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and Borrower hereby grants to Funding Lender, as security for the Borrower Payment Obligations, a security interest in, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Debt at any time held or owing by Funding Lender to or for the credit or the account of Borrower.

Section 8.2.5 Assumption of Obligations. In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Borrower Loan Agreement, the Borrower Notes, the Regulatory Agreement, and any other Borrower Loan Documents and Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

Section 8.2.6 Accounts Receivable. Upon the occurrence of an Event of Default, Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing Borrower's accounts, accounts receivable and other claims for payment of money, arising in connection with the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Funding Lender.

Section 8.2.7 Defaults under Other Documents. Funding Lender shall have the right to cure any default under any of the Related Documents and the Subordinate Loan Documents, but shall have no obligation to do so.

Section 8.2.8 Abatement of Disbursements. Notwithstanding any provision to the contrary herein or any of the other Borrower Loan Documents or the Funding Loan Documents, Funding Lender's obligation to make further Disbursements shall abate (i) during the continuance of any Potential Default, (ii) after any disclosure to Funding Lender of any fact or circumstance that, absent such disclosure, would cause any representation or warranty of Borrower to fail to be true and correct in all material respects, unless and until Funding Lender elects to permit further Disbursements notwithstanding such event or circumstance; and (iii) upon the occurrence of any Event of Default.

Section 8.2.9 Completion of Improvements. Upon the occurrence of any Event of Default, Funding Lender shall have the right to cause an independent contractor selected by Funding Lender to enter into possession of the Project and to perform any and all work and labor necessary for the completion of the Project substantially in accordance with the Plans and Specifications, if any, and to perform Borrower's obligations under this Borrower Loan Agreement. All sums expended by Funding Lender for such purposes shall be deemed to have been disbursed to and borrowed by Borrower and shall be secured by the Security Documents.

Section 8.2.10 Right to Directly Enforce. Notwithstanding any other provision hereof to the contrary, the Funding Lender shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Governmental Lender, provided that only the Governmental Lender may enforce the Unassigned Rights. In the event that any of the provisions set forth in this Section 8.2.10 are inconsistent with the covenants, terms and conditions of the Security Instrument, the covenants, terms and conditions of the Security Instrument shall prevail.

Section 8.2.11 Power of Attorney. Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, Borrower hereby constitutes and appoints Funding Lender, or an independent contractor selected by Funding Lender, as its true and lawful attorney-in-fact with full power of substitution, for the purposes of completion of the Project and performance of Borrower's obligations under this Borrower Loan Agreement in the name of Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence and continuation of an Event of Default (it being understood and agreed that said power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until full payment and performance of all obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents):

- (a) to use any of the funds of Borrower or General Partner, including any balance of the Borrower Loan, as applicable, and any funds which may be held by Funding

Lender for Borrower (including all funds in all deposit accounts in which Borrower has granted to Funding Lender a security interest), for the purpose of effecting completion of the construction or rehabilitation, as the case may be, of the Improvements, in the manner called for by the Plans and Specifications;

(b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications;

(c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(d) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;

(e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Project or, the Improvements, or may be necessary or desirable for the completion of the construction or rehabilitation, as the case may be, of the Improvements, or clearance of objections to or encumbrances on title;

(f) to execute all applications and certificates in the name of Borrower, which may be required by any other construction contract;

(g) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the construction or rehabilitation, as the case may be, of the Improvements, which Borrower might do on its own behalf;

(h) to let new or additional contracts to the extent not prohibited by their existing contracts;

(i) to employ watchmen and erect security fences to protect the Project from injury; and

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the Funding Loan Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the Funding Lender assignees or designees become the owner of the Project and assume the obligations identified above, and the Borrower Notes, the Borrower Loan and the other Borrower Loan Documents and Funding Loan Documents remain outstanding.

ARTICLE IX

SPECIAL PROVISIONS

Section 9.1 Sale of Note and Secondary Market Transaction.

Section 9.1.1 Cooperation. Subject to the restrictions of Section 2.4 of the Funding Loan Agreement, at the Funding Lender's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender customarily adheres or which may be reasonably required in the marketplace or by the Funding Lender in connection with one or more sales or assignments of all or a portion of either of the Governmental Lender Notes or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of either of the Governmental Lender Notes (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that the Borrower shall not incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender, and shall not materially modify Borrower's rights or obligations. Such Secondary Market Transaction shall not relieve the Funding Lender of its obligations hereunder. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

(a) (i) provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward looking statements or lack of audit, and (iii), at the expense of the Funding Lender, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender pursuant to this paragraph (a) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Funding Lender and the Rating Agencies;

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as

such amendment does not affect the material economic terms of the Borrower Loan Documents and the Funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

Section 9.1.2 Use of Information. The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a “Secondary Market Disclosure Document”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1(c) hereof, with the Funding Lender in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

Section 9.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents. In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party). The Borrower shall, if requested by the Funding Lender, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project or the Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

Section 9.1.4 Borrower Indemnity Regarding Filings. In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify Funding Lender and the underwriter group for any securities (the “Underwriter Group”) for any Liabilities to which Funding Lender or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Funding Lender, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender or the Underwriter Group in connection with defending or investigating the Liabilities; provided that

the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

Section 9.1.5 Indemnification Procedure. Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

Section 9.1.6 Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to Borrower: Bloomington RAD I, LP
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Peter Levavi

with a copy to: Bloomington RAD I, LP
c/o Bloomington Housing Authority
1007 N. Summit Street
Bloomington, Indiana 47404
Attention: Executive Director

and a copy to: Kuhl & Grant LLP
707 E. North Street, Suite 800
Indianapolis, Indiana 46202
Attention: Gareth W. Kuhl

and a copy to: Nixon Peabody LLP
Tower 46
55 West 46th Street
New York, NY 10036
Attention: Kathie Soroka

If to the Governmental Lender: City of Bloomington, Indiana
401 N. Morton St.
Bloomington, Indiana 47404
Attention: Mayor

with a copy to: City of Bloomington, Indiana
401 N. Morton St.
Bloomington, Indiana 47404
Attention: City Attorney

If to the Funding Lender: BMO Harris Bank N.A.
115 S. LaSalle Street – 19W
Chicago, IL 60603
Attention: Tania Kadakia

And to: Charity & Associates, P.C.
20 North Clark Street
Suite 1150
Chicago, IL 60602
Attention: Brandon R. Calvert

Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

Section 10.2 Brokers and Financial Advisors. The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations. The Funding Lender agrees to deal fairly with the Borrower.

Section 10.3 Survival. This Borrower Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Notes and the assignment of the Borrower Notes to the Funding Lender, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the Governmental Lender and the Funding Lender.

Section 10.4 Preferences. Upon receipt of a Tax Counsel No Adverse Effect Opinion, the Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations. To the extent the Borrower makes a payment to the Governmental Lender, or the Governmental Lender receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender.

Section 10.5 Waiver of Notice. The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, as the case may be, to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Funding Lender, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender to the Borrower.

Section 10.6 Offsets, Counterclaims and Defenses. The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender with respect to a Borrower Loan Payment. Any assignee of Funding Lender's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower

may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

Section 10.7 Publicity. The Funding Lender (and any Affiliates thereof) shall have the right to issue press releases, advertisements and other promotional materials describing the Funding Lender's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the Funding Lender or one of its or their Affiliates. All news releases, publicity or advertising by the Borrower or Borrower Affiliates through any media intended to reach the general public, which refers to the Borrower Loan Documents or the Funding Loan Documents, the Borrower Loan or the Funding Lender in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Funding Lender, as applicable.

Section 10.8 Construction of Documents. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the Funding Loan Documents and that the Borrower Loan Documents and the Funding Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

Section 10.9 No Third Party Beneficiaries. The Borrower Loan Documents and the Funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and nothing contained in any Borrower Loan Document shall be deemed to confer upon anyone other than the Governmental Lender, the Funding Lender and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

Section 10.10 Assignment. The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the Funding Loan Documents and all Funding Lender's rights, title, obligations and interests therein may be assigned by the Funding Lender, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise. Upon such assignment, all references to Funding Lender in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender. Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that Borrower has delivered, or caused to be delivered, to Funding Lender with reference to Borrower, General Partner, Guarantor or any Borrower Affiliate, or the Project, including information that Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or Funding Loan Agreements, or Borrower's interest in any moneys to be disbursed or advanced hereunder, without

the prior written consent of the Governmental Lender and the Funding Lender. Notwithstanding anything contained in this Agreement to the contrary, if Funding Lender assigns its rights, title, obligations or interest to the Borrower Loan or the Funding Loan, Funding Lender shall ensure that said assignment does not result in the termination of the Rate Management Agreement executed in connection with the Borrower Loan.

Section 10.11 [Intentionally Omitted].

Section 10.12 Governmental Lender, Fiscal Agent and Funding Lender Not in Control; No Partnership. None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Fiscal Agent or the Funding Lender the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Fiscal Agent and the Funding Lender being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Fiscal Agent and the Funding Lender is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Fiscal Agent or the Funding Lender or to create an equity in the Project in the Governmental Lender, the Fiscal Agent or the Funding Lender. Neither the Governmental Lender, the Fiscal Agent nor the Funding Lender undertakes or assumes any responsibility or duty to the Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (1) the Governmental Lender, the Fiscal Agent and the Funding Lender are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Fiscal Agent and the Funding Lender do not intend to ever assume such status; (2) the Governmental Lender, the Fiscal Agent and the Funding Lender shall in no event be liable for any the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Fiscal Agent and the Funding Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Fiscal Agent, the and the Funding Lender and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Fiscal Agent, the Funding Lender and the Borrower, or to create an equity in the Project in the Funding Lender, or any sharing of liabilities, losses, costs or expenses.

Section 10.13 Release. The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

Section 10.14 Term of Borrower Loan Agreement. This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full and the Borrower Loan and the Funding Loan have been retired or the payment thereof

has been provided for; except that on and after payment in full of the Borrower Notes, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.11 (Governmental Lender's and Fiscal Agent's Fees), 5.14 (Expenses), 5.15 (Indemnity), 9.1.3, 9.1.4, 9.1.5, 9.1.6 and 10.15 (Reimbursement of Expenses) hereof, as well as under Section 5.7 of the Construction Funding Agreement, shall survive the termination of this Borrower Loan Agreement.

Section 10.15 Reimbursement of Expenses. If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Fiscal Agent or the Funding Lender shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse the Governmental Lender, the Fiscal Agent and the Funding Lender for fees of such attorneys and such other expenses so incurred.

The Borrower's obligation to pay the amounts required to be paid under this Section 10.15 shall be subordinate to its obligations to make payments under the Borrower Notes.

Section 10.16 Permitted Contests. Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to Funding Lender's rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless Borrower shall have given prior Written Notice to the Governmental Lender and the Funding Lender of Borrower's intent to so contest or object thereto, and unless (i) Borrower has, in the Governmental Lender's and the Funding Lender's judgment, a reasonable basis for such contest, (ii) Borrower pays when due any portion of the claim, demand, levy or assessment to which Borrower does not object, (iii) Borrower demonstrates to Funding Lender's satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Project, (v) Borrower at all times prosecutes the contest with due diligence, and (vi) Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, the amount so determined to be due and owing by Borrower. In the event that Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, any payment required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and Funding Lender may draw or realize upon any bond or other security delivered to Funding Lender in connection with the contest by Borrower, in order to make such payment.

Section 10.17 Funding Lender Approval of Instruments and Parties. All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and

documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by Funding Lender. Funding Lender's approval of any matter in connection with the Project shall be for the sole purpose of protecting the security and rights of Funding Lender. No such approval shall result in a waiver of any default of Borrower. In no event shall Funding Lender's approval be a representation of any kind with regard to the matter being approved.

Section 10.18 Funding Lender Determination of Facts. Funding Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

Section 10.19 Calendar Months. With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

Section 10.20 Determinations by Lender. Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental Lender and the Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

Section 10.21 Governing Law. This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

Section 10.22 Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Borrower Loan Agreement against Borrower or any of Borrower's assets in any court of any other jurisdiction.

Section 10.23 Successors and Assigns. This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal

representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a “person” or “persons” shall be deemed to include individuals and entities.

Section 10.24 Severability. The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

Section 10.25 Entire Agreement; Amendment and Waiver. This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver. Without limiting the generality of the foregoing, no Disbursement shall constitute a waiver of any conditions to the Governmental Lender’s or the Funding Lender’s obligation to make further Disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding the Governmental Lender or the Funding Lender from thereafter declaring such inability to constitute a Potential Default or Event of Default under this Borrower Loan Agreement.

Section 10.26 Counterparts. This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

Section 10.27 Captions. The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

Section 10.28 Servicer. Borrower hereby acknowledges and agrees that, pursuant to the terms of Section 39 of the Security Instrument: (a) from time to time, the Governmental Lender or the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Notes, this Borrower Loan Agreement or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same force and effect.

Section 10.29 Beneficiary Parties as Third Party Beneficiary. Each of the Beneficiary Parties shall be a third party beneficiary of this Borrower Loan Agreement for all purposes.

Section 10.30 Waiver of Trial by Jury. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE BENEFICIARY PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO

THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 10.31 Time of the Essence. Time is of the essence with respect to this Borrower Loan Agreement.

Section 10.32 Modifications. Modifications (if any) to this Borrower Loan Agreement (“Modifications”) are set forth on Exhibit A attached to this Borrower Loan Agreement. In the event of a Transfer under the terms of the Security Instrument, some or all of the Modifications to this Borrower Loan Agreement may be modified or rendered void by the Governmental Lender or the Funding Lender at its option by notice to Borrower or such transferee.

Section 10.33 Reference Date. This Borrower Loan Agreement is dated for reference purposes only as of February 1, 2020 and will not be effective and binding on the parties hereto unless and until the Closing Date (as defined herein) occurs.

ARTICLE XI

LIMITATIONS ON LIABILITY

Section 11.1 Limitation on Liability. Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Borrower Notes.

Section 11.2 Limitation on Liability of Governmental Lender. The Governmental Lender shall not be obligated to pay the principal (or prepayment price) of or interest on the Funding Loan, except from moneys and assets received by the Funding Lender on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Neither the faith and credit nor the taxing power of the State, or any political subdivision thereof, nor the faith and credit of the Governmental Lender is pledged to the payment of the principal (or prepayment price) of or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender’s sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement, together with investment income on certain funds and accounts held by the Funding Lender under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment price) of and interest on the Funding Loan as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Funding Lender, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment price) of or interest on the Funding Loan, including,

but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Funding Lender, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Funding Lender, the Governmental Lender or any such third party, as the case may be, therefor.

Section 11.3 Waiver of Personal Liability. No member, officer, agent or employee of the Governmental Lender or any director, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal (or prepayment price) of or interest on the Funding Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

Section 11.4 Limitation on Liability of Funding Lender's Officers, Employees, Etc.

(a) Borrower assumes all risks of the acts or omissions of the Governmental Lender, the Fiscal Agent and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender, the Fiscal Agent and the Funding Lender at law or under any other agreement. None of Governmental Lender, the Fiscal Agent and the Funding Lender, nor the other Beneficiary Parties or their respective officers, directors, employees or agents shall be liable or responsible for (i) for any acts or omissions of the Governmental Lender, the Fiscal Agent and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Fiscal Agent and the Funding Lender. In furtherance and not in limitation of the foregoing, the Governmental Lender, the Fiscal Agent and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Governmental Lender, the Fiscal Agent and the Funding Lender.

(b) None of the Governmental Lender, the Fiscal Agent, the Funding Lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project. Borrower is not and shall not be an agent of the Governmental Lender, the Fiscal Agent and the Funding Lender for any purpose. None of the Governmental Lender, the Fiscal Agent or the Funding Lender is a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender, the Fiscal Agent and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment

of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender, the Fiscal Agent and the Funding Lender. Approvals granted by the Governmental Lender, the Fiscal Agent and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

(c) Any obligation or liability whatsoever of the Governmental Lender, the Fiscal Agent and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's, the Fiscal Agent's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 11.5 Delivery of Reports, Etc. The delivery of reports, information and documents to the Governmental Lender, the Fiscal Agent and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's, the Fiscal Agent's and the Funding Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender, the Fiscal Agent and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender, the Fiscal Agent and the Funding Lender.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

BLOOMINGTON RAD I, LP, an Indiana limited partnership

By: Bloomington RAD I Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD I, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President

(additional signature pages follow)

GOVERNMENTAL LENDER:

CITY OF BLOOMINGTON, INDIANA

By: _____
Hon. John Hamilton, Mayor

Agreed to and Acknowledged by:

FUNDING LENDER:

BMO HARRIS BANK N.A.

By: _____
Name: _____
Title: _____

EXHIBIT A
MODIFICATIONS

None.

SCHEDULE 5.22(A)
REPORTING REQUIREMENTS

SCHEDULE 5.22(G)

FORM OF COMPLIANCE CERTIFICATE

TO: BMO Harris Bank N.A. (“Funding Lender”) as Lender under the Loan Agreement described below

This Compliance Certificate is furnished to Lender pursuant to that certain Borrower Loan Agreement dated as of February 1, 2020, between us (as extended, renewed, amended or restated from time to time, the “**Loan Agreement**”). Unless otherwise defined herein, the terms used in this Compliance Certificate have the meanings ascribed thereto in the Loan Agreement.

The Undersigned here certifies that:

1. I am duly authorized agent of Bloomington RAD I, LP, an Indiana limited partnership;
2. I have reviewed the terms of the Loan Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes an Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Compliance Certificate, except as follows _____; and
4. The financial statements required by Section 5.22 of the Loan Agreement and being furnished to you concurrently with this Compliance Certificate are true, correct and complete as of the date and for the periods covered thereby.

The foregoing certifications, together with the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of _____, 20__.

[signature page follows]

BLOOMINGTON RAD I, LP, an Indiana limited partnership

By: Bloomington RAD I Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD I, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS

By and Among

CITY OF BLOOMINGTON, INDIANA,
as Issuer

BLOOMINGTON RAD I, LP,
as Borrower

and

BMO HARRIS BANK N.A.,
as Fiscal Agent

Relating to:

City of Bloomington, Indiana
Economic Development Revenue Note, Series 2020A
(Walnut Woods/Reverend Butler Project)

and

City of Bloomington, Indiana
Economic Development Revenue Note, Series 2020B
(Walnut Woods/Reverend Butler Project)

Concerning:

Reverend Butler Apartments

Dated as of February 1, 2020

After Recording Send to:
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282
Attention: Tyler Kalachnik

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**REGULATORY AGREEMENT AND DECLARATION
OF RESTRICTIVE COVENANTS**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (including the Exhibits hereto), dated as of February 1, 2020 (as amended, modified or supplemented from time to time, this "*Regulatory Agreement*"), is entered into by and among CITY OF BLOOMINGTON, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (together with its successors and assigns, the "*Issuer*"), BLOOMINGTON RAD I, LP, a limited partnership duly organized and validly existing under the laws of the State of Indiana (together with its permitted successors and assigns, the "*Borrower*") and BMO HARRIS BANK N.A., as fiscal agent (the "*Fiscal Agent*");

WITNESSETH:

WHEREAS, the Borrower will be the owner of buildings and related improvements, furnishings, equipment and related property to be installed therein, located in the City of Bloomington, Monroe County, Indiana, on a [leasehold and fee simple interest] in the real property legally described in *Exhibit A* attached hereto and made a part hereof (the "*Project Site*" or the "*Land*"), comprising 56 units of housing for residential rental purposes, a portion of such units which are to be rented to individuals and families of low or moderate income (such building, improvements, furnishings, equipment and related property being collectively referred to as the "*Project Facilities*" and, together with the Project Site, the "*Development*"); and

WHEREAS, the acquisition, renovation, rehabilitation, improvement and equipping of the Development will be financed in part from a portion of the proceeds of the sale of the \$_____ aggregate principal amount of the Issuer's Economic Development Revenue Note, Series 2020A (Walnut Woods/Reverend Butler Project) (the "*Series 2020A Note*") and the Issuer's Economic Development Revenue Note, Series 2020B (Walnut Woods/Reverend Butler Project) (the "*Series 2020B Note*" and together with the Series 2020A Note, the "*Notes*") issued by the Issuer under the Funding Loan Agreement dated as of February 1, 2020 (the "*Funding Loan Agreement*") among the Issuer, BMO Harris Bank N.A., as funding lender (the "*Lender*"), and the Fiscal Agent and pursuant to the provisions of Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as amended (the "*Act*") and loaned to the Borrower from the Issuer pursuant to the Borrower Loan Agreement dated as of February 1, 2020 (the "*Borrower Loan Agreement*") between the Borrower and the Issuer; and

WHEREAS, interest on the Notes is excludable from gross income of the owners thereof for federal tax purposes, *provided*, among other things, the Development continuously complies with Section 142(d) of the Internal Revenue Code of 1986, as amended (the "*Code*"), and the regulations promulgated thereunder (the "*Regulations*"); and

WHEREAS, compliance of the Development with the requirements of Section 142(d) of the Code and the Regulations for treatment of the Notes as "exempt facility bonds" used to provide a qualified residential rental project (as defined therein) is within the control of the Borrower; and

WHEREAS, it is necessary for the Borrower to agree to this Regulatory Agreement, and thereby consent to be regulated as herein set forth to preserve the excludability of interest on the

Notes from gross income of the owners thereof under Section 103(a) of the Code and the Regulations.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Issuer, the Borrower and the Fiscal Agent hereby agree, as follows:

Section 1. *Term of Restrictions.*

(a) *Occupancy Restrictions:* The term of the Occupancy Restrictions set forth in Section 3 hereof (the "*Occupancy Restrictions*") with respect to the Development shall commence on the first day after the acquisition, construction and installation of the Development by the Borrower on which at least ten percent (10%) of the residential units in the Development are first occupied, and end with respect to the Development on the latest of the date (i) which is fifteen (15) years after the date on which at least fifty percent (50%) of the residential units in the Development are first occupied following the acquisition, rehabilitation and installation thereof by the Borrower, (ii) which is the first day on which no Notes or other tax-exempt private activity bonds (as defined in Section 141(a) of the Code) issued with respect to the Development are outstanding (including any refunding of any such obligations), or (iii) on which any assistance provided with respect to the Development under Section 8 of the United States Housing Act of 1937, as amended, terminates (which Occupancy Restrictions period is hereinafter referred to as the "*Qualified Project Period*" for the Development).

(b) *Rental Restrictions:* The Rental Restrictions set forth in Section 4 hereof (the "*Rental Restrictions*") with respect to the Development shall remain in effect during the Qualified Project Period for the Development set forth in paragraph (a) of this Section 1.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this Section 1, this Regulatory Agreement and all other restrictions hereunder shall cease to apply in the event of an involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the date of issue of the Notes which prevents the Fiscal Agent from enforcing the provisions of this Regulatory Agreement, or condemnation or similar event, *provided* that within a reasonable time period either (i) the Notes are retired; or (ii) any insurance proceeds or condemnation award or other amounts received as a consequence of such event are used to provide a project which meets the requirements of Section 142 of the Code and applicable Regulations, or any successor law or regulation. However, the provisions of this subsection (c) shall cease to apply (and the provisions of subsections (a) and (b) shall apply for the remainder of the Qualified Project Period) in the event of foreclosure, transfer of title by deed in lieu of foreclosure, or similar event if, at any time subsequent to such event and during the Qualified Project Period, the Borrower or any transferee or assignee of the Development or a related person to any of the foregoing (as defined in Section 147(a)(2) of the Code) (a "*Related Person*") obtains an ownership interest in the Development for federal tax purposes.

(d) This Regulatory Agreement shall terminate with respect to the Development upon the earlier of (i) termination of the Occupancy Restrictions and the Rental Restrictions, as provided in subsections (a) and (b) of this Section 1 for the Development, or (ii) termination pursuant to the

provisions of subsection (c) of this Section 1 for the Development, or (iii) delivery to the Issuer, the Borrower and the Fiscal Agent of an opinion of a nationally recognized municipal bond counsel ("*Bond Counsel*") in form and substance satisfactory to the Issuer and the Fiscal Agent to the effect that continued compliance with the Rental Restrictions and the Occupancy Restrictions for the Development is not required in order for interest on the Notes to remain excludable from gross income of the owners of the Notes for federal income tax purposes, or (iv) three (3) years (subject to any change in all applicable rules, rulings, policies, procedures, regulations or other official statement promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Section 142(d) of the Code and affecting the Development) following the conclusion of the final tax year of the holders of the Notes, after all outstanding Tax-Exempt Notes are redeemed or have matured.

(e) Except following the termination of the Qualified Project Period (which shall not require an opinion of independent counsel prior to filing any documentation necessary to remove this Regulatory Agreement from the real estate records of Monroe County, Indiana), upon delivery by the Borrower to the Issuer and the Fiscal Agent of an opinion of independent counsel acceptable to the Issuer that the conditions to termination of this Regulatory Agreement have been met, the Issuer and the Fiscal Agent shall, upon request by the Borrower or its assigns, file any documentation necessary to remove this Regulatory Agreement from the real estate records of Monroe County, Indiana.

Section 2. *Development Restrictions.* The Borrower represents and warrants as of the date hereof, and covenants that:

(a) The Borrower has reviewed the provisions of this Regulatory Agreement with its counsel and understands said provisions.

(b) Any functionally related and subordinate facilities (*e.g.*, parking areas, laundry facilities, tenant offices, physical therapy rooms, dining rooms, meeting rooms, common areas, swimming pools, tennis courts, etc.) (the "*Related Facilities*") to the Development will be made available to all tenants of the Development on an equal basis. Fees charged to residential tenants for use of the Related Facilities will be commensurate with fees charged for similar facilities at similar residential rental properties in the surrounding area and, in no event will any such fees charged to tenants of the Development be discriminatory or exclusionary as to the low-income tenants of the Development. No Related Facilities financed with the proceeds of the Notes will be made available to persons other than tenants or their guests. Parking, if available, will be made available to all tenants on a first come, first served basis.

(c) For the Qualified Project Period, the Borrower shall not: (1) except upon a sale or transfer of the Development in accordance with the terms of this Regulatory Agreement, the Funding Loan Agreement, or the Security Instrument (as defined in the Funding Loan Agreement), encumber any portion of the Development or grant commercial leases of any portion thereof [financed with proceeds of the Notes] or permit the conveyance, transfer or encumbrance of any portion of the Development (except for apartment leases), it being understood that the terms of the conveyance, transfer, lease or encumbrance will be subordinate to this Regulatory Agreement; or (2) demolish any part of the Development or substantially subtract from any real or personal property of the Development; *provided*, that nothing herein shall prohibit the Borrower from

granting operating leases and/or licenses of those facilities constituting part of the Development which are functionally related and subordinate to the residential units, such as laundry or recreational facilities, for the purpose of providing for the operation of such facilities for the benefit of the Development.

(d) For the Qualified Project Period, the Borrower shall exercise reasonable diligence to comply with the requirements of this Regulatory Agreement and shall correct any noncompliance within sixty (60) days after such noncompliance is first discovered or would have been discovered by the exercise of reasonable diligence.

(e) The Borrower shall cause the Development to meet the requirements of this Regulatory Agreement.

(f) Upon completion of construction, the Development will consist of a building or structure or several proximate buildings or structures of similar construction each containing one or more similarly constructed residential units located on a single tract of land or contiguous tracts of land which are owned, for Federal tax purposes, at all times by one person or entity, and may include facilities functionally related and subordinate thereto. Each such building or structure will be a discrete edifice or other man-made construction consisting of an independent foundation, outer walls and roof and containing four or more similarly constructed units. Neither the Borrower nor an employee of the Borrower shall occupy a unit in a building with fewer than five units.

(g) All of the units in the Development will contain complete living, sleeping, eating, cooking and sanitation facilities for a single person or a family. Each unit will contain a kitchen that includes a stove, cooking range, full-size refrigerator and sink.

(h) None of the units in the Development will at any time be utilized on a transient basis, or used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court.

(i) The Borrower has incurred, or will incur within six (6) months after the Closing Date, a substantial binding obligation to acquire, construct, or equip the Project, pursuant to which the Borrower is or will be obligated to expend at least five percent (5%) of the principal amount of the Notes.

(j) The Borrower will promptly commence the acquisition, construction, and equipping of the Project and will proceed with due diligence to complete the same.

(k) The Borrower reasonably expects to complete the acquisition, renovation, rehabilitation, improvement and equipping of the Project and to expend the full amount of the Funding Loan prior to the date which is three (3) years after the Closing Date.

(l) Not more than twenty-five percent (25%) of the net proceeds of the Notes will be used (directly or indirectly) for the acquisition of land or an interest therein.

(m) All of the amounts received by the Issuer from the proceeds of the Notes and earnings from the investment of such proceeds will be used to pay Qualified Project Costs; at least ninety-five percent (95%) of such amounts will be used to pay or reimburse the Borrower for

payment of Qualified Project Costs as certified by the Borrower on requisitions in the form required by the Borrower Loan Agreement; and no more than two percent (2%) of the proceeds of the Notes shall be used to pay, or reimburse the Borrower for payment of, Costs of Funding of the Notes, within the meaning of section 147(g) of the Code.

(n) None of the dwelling units in the Project will at any time be utilized on a transient basis or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park. No unit within the Project will be rented for a period of less than thirty (30) days.

(o) No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or uses. The Borrower shall not take any steps in connection with a conversion of the Project to condominium ownership during the Qualified Project Period.

(p) All of the dwelling units will be available for rental on a continuous basis to members of the general public (subject to rent, income, and other restrictions) and as permitted by Department of Housing and Urban Development and the provisions of Revenue Procedure 2019-17, and the Borrower will not give preference to any particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented to Low Income Tenants and Eligible Tenants.

Section 3. *Occupancy Restrictions.* Pursuant to Section 142 of the Code, the Issuer has elected, and the Borrower hereby agrees, that the requirements of subparagraph B of such Section 142(d)(1) of the Code shall apply to the Development. The Borrower represents, warrants and covenants that:

(a) At all times during the Qualified Project Period, subject to the provisions of Revenue Procedure 2004-39, at least forty percent (40%) of the completed residential units in the Development shall be continuously occupied (or, only after the initial occupancy thereof, treated as occupied as provided herein) by individuals whose aggregate adjusted income (computed in the manner described in Section 1.167(k)-3(b)(3) of the Regulations, prior to its removal by T.D. 8474, 1993-1 C.B. 242) (hereinafter, "*Adjusted Gross Income*") does not exceed sixty percent (60%) of the median gross income, adjusted for family size, for the area in which the Development is located, determined in a manner consistent with determinations of lower income families and median gross income under Section 8 of the United States Housing Act of 1937, as amended, as adjusted under Section 142(d)(2)I (a "*Qualifying Tenant*"); *provided*, that if all the occupants of a unit are students (as defined in Section 151(c)(4) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, the occupants of that unit shall not be deemed to be "*Qualifying Tenants*." The determination of whether an individual or family meets the income requirement set out above shall be made at the earlier of the time occupancy commences or the execution of the current lease with respect thereto and on an annual basis thereafter and shall be based upon Income Certifications (as hereinafter defined). Any residential unit occupied by an individual or family who is a *Qualifying Tenant* shall continue to be treated as occupied by a *Qualifying Tenant* during their tenancy in such unit, even though they subsequently cease to be of low or moderate income, unless the most recent determination of their income indicates that their income exceeds one hundred and forty percent (140%) of the applicable income limit (whether as

a result of an increase in income or a decrease in family size or otherwise) and after such determination but before the next determination any residential unit of comparable or smaller size in the Development is occupied by a new resident whose income exceeds the then applicable income limit. Any residential unit vacated by a Qualifying Tenant shall be treated as occupied by a Qualifying Tenant until reoccupied, other than for a temporary period not to exceed thirty-one (31) days, at which time the character of such unit with respect to occupancy by a Qualifying Tenant shall be redetermined. In applying the foregoing forty percent (40%) requirement, 0.40 shall be multiplied by the total number of completed residential units, and if the resulting number contains a fraction, it shall be rounded up to the next highest whole unit.

(b) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall, prior to occupying a residential unit or signing a lease, be required to sign and deliver to the Borrower, a "Certification of Income" attached hereto as *Exhibit B* (the "*Income Certification*") in which the prospective Qualifying Tenant certifies that he and his family, if applicable, are Qualifying Tenants and pursuant to the lease signed by a Qualifying Tenant, said tenant shall be required to submit, at least annually, a new Income Certification on the basis of the current income of the tenant. In addition, such Qualifying Tenant shall be required to provide whatever other information, documents or certifications, including employment verifications and income tax returns, as are reasonably deemed necessary by the Borrower, the Issuer or the Fiscal Agent to substantiate the initial or subsequent Income Certification. Notwithstanding any other provision hereof, if all units in the Project are set aside for Qualifying Tenants, such tenants shall not be required to submit a new annual Income Certification.

(c) The Borrower shall use or cause to be used, in renting any residential units in the Development to a prospective Qualifying Tenant, a lease that provides for termination of the lease and consent by such person to immediate eviction, subject to applicable provisions of Indiana law, for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification.

(d) All Income Certifications will be maintained on file at the Development so long as any Notes are outstanding and for five (5) years thereafter with respect to each Qualifying Tenant who occupied a residential unit in the Development during the period the restrictions hereunder are applicable, and the Borrower shall, upon request, make such Income Certifications available for inspection by the Fiscal Agent and the Issuer.

(e) On the first day of the month after any residential unit in the Development is available for occupancy and on the first day of each calendar quarter thereafter, the Borrower will submit to the Issuer, with a copy to the Fiscal Agent, the "Certificate of Continuing Program Compliance," in the form attached hereto as *Exhibit C*, executed by the Borrower stating the percentage of completed residential units in the Development which were occupied or held available for occupancy by Qualifying Tenants (but only after initial occupancy by a Qualifying Tenant) at all times during the preceding month or quarter, as appropriate, and identifying Qualifying Tenants who commenced or terminated occupancy in the Development during such month or quarter, as appropriate; *provided however*, that once all the units in the Project are occupied by Qualifying Tenants, no such submission shall be required so long as thereafter, any new tenant qualifies as a Qualifying Tenant..

(f) On the annual anniversary of the issuance of the Notes (or at such other times, as prescribed by the Secretary of the United States Treasury Department), the Borrower will submit to the Secretary of the United States Treasury Department (with a copy to the Fiscal Agent), to the extent required by law, a certificate in the form that the Secretary prescribes, that the Development continues to meet the requirements of Section 142 of the Code.

Section 4. *Rental Restrictions.* The Borrower represents, warrants and covenants that once available for occupancy, each residential unit in the Development will be rented or available for rental on a continuous basis to members of the general public (other than residential units for a resident manager and/or maintenance personnel and residential units for individuals or families of low or moderate income as provided for in Section 3). Each Qualifying Tenant occupying a unit in the Development shall be required to execute a written lease which shall be effective for a term of at least six (6) months. No meals or other services will be provided to the tenants of the Development on a regularly scheduled basis.

Section 5. *Transfer Restrictions.* For the Qualified Project Period, the Borrower shall sell, transfer, assign, convey, change title to or otherwise dispose of the Development or any interest therein (a "*Transfer*"), in whole or in part, only with consent of the Issuer and in accordance with the terms of the Borrower Loan Agreement and the Borrower Loan Documents (defined in the Borrower Loan Agreement). Further, any such sale, transfer, assignment, conveyance, change in title or other disposition shall only be permitted if: (1) the Borrower shall not be in default hereunder; (2) the purchaser or assignee shall execute any necessary or appropriate document reasonably requested by the Fiscal Agent or the Issuer with respect to assuming its obligations under this Regulatory Agreement and the Borrower Loan Agreement (together, the "*Assumption Agreement*"), which document shall be recorded in the Monroe County, Indiana, Recorder's Office; (3) the Fiscal Agent and the Issuer shall have received an opinion of Bond Counsel, which opinion is reasonably acceptable to the Issuer and the Fiscal Agent, to the effect that such transfer will not adversely affect the excludability of the interest on the Notes from gross income of the owners thereof for federal income tax purposes; (4) the Borrower shall deliver to the Fiscal Agent and the Issuer a certificate, reasonably acceptable in form to the Issuer and the Fiscal Agent, to the effect that the Borrower did not develop the Development with the intention of sale upon completion; (5) the Borrower shall deliver to the Fiscal Agent and the Issuer an opinion of counsel to the transferee, which opinion is reasonably acceptable to the Issuer, that the transferee has duly assumed the obligations of the Borrower under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee; and (6) such other conditions are met as are set forth in or referred to in the Borrower Loan Agreement or as the Fiscal Agent or the Issuer may reasonably impose as part of the Assumption Agreement (i) to protect the excludability of the interest on the Notes from gross income of the owners thereof for federal income tax purposes; (ii) to ensure that the Development is not acquired by a person which has pending against it, or which has a history of, building code violations, as identified by county, state or federal regulatory agencies; and (iii) to provide that all indemnification obligations for the benefit of the Fiscal Agent and the Issuer pursuant to Section 9 of this Regulatory Agreement and elsewhere are assumed by the purchaser or assignee. Once the Assumption Agreement has been delivered and all conditions of this Section 5 have been satisfied, and the Borrower has obtained the consent to such transfer of any other party required under the terms of the Borrower Loan Agreement, the Fiscal Agent and the Issuer shall deliver a release to the Borrower with respect to any future compliance with the provisions of this Regulatory Agreement with respect to the

Development, and the Issuer shall deliver a release with respect to any future compliance with the provisions of the Borrower Loan Agreement (subject to any further transfer restrictions in the Funding Loan Agreement). The Borrower shall deliver the form of Assumption Agreement to the Fiscal Agent and the Issuer at least ten (10) business days prior to a proposed Transfer.

Section 6. *Enforcement.*

(a) The Borrower shall permit, after three (3) business days' prior notice, any duly authorized representative of the Fiscal Agent or the Issuer to inspect any books and records of the Borrower regarding the Development and with respect to the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Regulatory Agreement.

(b) In addition to the information provided for in Section 3I, the Borrower shall submit any other information, documents or certifications reasonably requested by the Issuer or the Fiscal Agent which the Issuer or the Fiscal Agent deems reasonably necessary to substantiate continuing compliance with the provisions of this Regulatory Agreement; provided that, the Issuer shall have no duty to monitor compliance with the provisions of this Regulatory Agreement.

(c) The Issuer, the Fiscal Agent and the Borrower each covenants that it will not knowingly take, fail to take or permit any action within its control that would adversely affect the excludability of interest on the Notes from gross income of the owners thereof for federal income tax purposes. Moreover, each covenants to take any lawful action within its control (including amendment of this Regulatory Agreement as may be necessary, in the opinion of Bond Counsel) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statement promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Section 142(d) of the Code and affecting the Development.

(d) If the Borrower shall fail to observe or perform any covenant, condition or agreement contained herein on its part to be observed or performed, and such failure continues for sixty (60) days after the Borrower discovers, or by the exercise of reasonable diligence should have discovered, or receives notice from the Issuer or the Fiscal Agent of, such failure, then and in such event, the Fiscal Agent, the Issuer and, to the extent permitted by the Funding Loan Agreement, any owner of a Bond shall be entitled, individually or collectively, and in addition to all other remedies provided by law or in equity:

(i) to compel specific performance by the Borrower of its obligations under this Regulatory Agreement, it being recognized that the beneficiaries of the Borrower's obligations hereunder cannot be adequately compensated by monetary damages in the event of a default by the Borrower; and

(ii) to cause the Borrower to pay to the Issuer an amount equal to all rent received by the Borrower with respect to the units occupied, or held available for occupancy by, Qualifying Tenants, if such units are knowingly or negligently rented to persons who do not comply with the requirements of such units. Such payment shall not reduce the amount due under the Borrower Loan Agreement.

(e) The Borrower and the Fiscal Agent each acknowledge that the primary purpose for requiring compliance with the restrictions provided in this Regulatory Agreement is to preserve the excludability from gross income for federal income tax purposes of interest on the Notes to the owners thereof, and that the Fiscal Agent on behalf of the owners of the Notes, who are declared to be third party beneficiaries of this Regulatory Agreement, shall be entitled, for any breach of the provisions hereof, to all remedies both at law and in equity in the event of any default hereunder.

(f) The Issuer and the Fiscal Agent hereby agree that the cure of any default hereunder made or tendered by the Equity Investor (as defined in the Funding Loan Agreement) shall be accepted or rejected by the Issuer and the Fiscal Agent on the same basis as if tendered by the Borrower.

Section 7. *Covenants to Run with the Land; Successors Bound.* The Borrower hereby subjects the Development to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Fiscal Agent, the Issuer and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants, reservations and restrictions running with the land to the extent permitted by law and shall pass to and be binding upon the Borrower's successors in title to the Development throughout the term of this Regulatory Agreement. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Development or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

Section 8. *Recording and Filing.* The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the conveyance and real property records of Monroe County, Indiana, and in such other places as the Fiscal Agent may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

Section 9. *Indemnification.* THE BORROWER SHALL BE REQUIRED AND HEREBY AGREES TO PAY, INDEMNIFY AND HOLD THE ISSUER AND THE FISCAL AGENT, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES AND AGENTS (EXCEPT FOR CLAIMS ARISING OUT OF ACTS OR OMISSIONS OF THE ISSUER RESULTING FROM WILLFUL MISCONDUCT) AND THE OWNERS OF THE NOTES HARMLESS FROM, ANY AND ALL LOSS, DAMAGE, COST, EXPENSE, SUIT, JUDGMENT, ACTION, INJURY OR LIABILITY WHICH THEY, OR ANY OF THEM, MAY SUFFER OR INCUR (INCLUDING WITHOUT LIMITATION ANY COSTS, FEES AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES, INCURRED IN CONNECTION WITH THE ENFORCEMENT OF THIS REGULATORY AGREEMENT) BY REASON OF (A) THE DESIGN, CONSTRUCTION, INSTALLATION, OPERATION, USE, OCCUPANCY, MAINTENANCE OR OWNERSHIP OF THE DEVELOPMENT (INCLUDING COMPLIANCE WITH LAWS, ORDINANCES AND RULES AND REGULATIONS OF PUBLIC AUTHORITIES RELATING THERETO); OR (B) ANY WRITTEN STATEMENTS OR REPRESENTATIONS WITH RESPECT TO THE BORROWER, THE DEVELOPMENT OR THE NOTES MADE OR GIVEN TO THE ISSUER OR THE FISCAL AGENT, OR ANY UNDERWRITERS OR PURCHASERS OF ANY OF THE NOTES, BY THE BORROWER, OR ANY OF ITS PARTNERS OR AGENTS, INCLUDING, BUT NOT LIMITED TO, STATEMENTS OR REPRESENTATIONS OF FACTS, FINANCIAL INFORMATION OR BORROWER AFFAIRS; OR (C) ANY FRAUDULENT ACT BY OR ON

BEHALF OF THE BORROWER OR ANY OFFICER OF THE BORROWER, INCLUDING WITHOUT LIMITATION ANY INTENTIONAL MISREPRESENTATION OF, OR INTENTIONAL FAILURE TO DISCLOSE, A MATERIAL FACT IN CONNECTION WITH THE ISSUANCE AND SALE OF THE NOTES OR THE APPLICATION OF THE PROCEEDS THEREOF; OR (D) ANY VIOLATION OF THE RESTRICTIONS CONTAINED IN SECTION 2 OR THE OCCUPANCY RESTRICTIONS CONTAINED IN SECTION 3 AND THE CONTINUANCE OF SUCH VIOLATION OF SECTION 2 OR SECTION 3 FOR THIRTY (30) DAYS AFTER WRITTEN NOTICE OF SUCH VIOLATION SHALL BE GIVEN TO THE BORROWER BY THE ISSUER OR THE FISCAL AGENT OR ANY OWNER OF THE NOTES, OR FORTY-FIVE (45) DAYS AFTER THE DATE SUCH VIOLATION SHOULD HAVE BEEN DISCOVERED BY THE BORROWER BY EXERCISE OF REASONABLE DILIGENCE; OR I ANY VIOLATION OF THE RENTAL RESTRICTIONS CONTAINED IN SECTION 4 OR THE TRANSFER RESTRICTIONS CONTAINED IN SECTION 5. THE FOREGOING INDEMNIFICATION SHALL BE IN ADDITION TO ANY INDEMNIFICATION PROVISIONS SET FORTH IN THE FUNDING LOAN AGREEMENT OR ANY OF THE OTHER FUNDING LOAN DOCUMENTS.

THE BORROWER ALSO SHALL PAY AND DISCHARGE AND SHALL INDEMNIFY AND HOLD HARMLESS THE FISCAL AGENT AND, TO THE EXTENT APPLICABLE, THE ISSUER FROM (X) ANY LIEN OR CHARGE UPON PAYMENTS BY THE BORROWER TO THE FISCAL AGENT HEREUNDER AND (Y) ANY TAXES (INCLUDING, WITHOUT LIMITATION, ALL AD VALOREM TAXES AND SALES TAXES), ASSESSMENTS, IMPOSITIONS AND OTHER CHARGES IN RESPECT OF ANY PORTION OF THE DEVELOPMENT. IF ANY SUCH CLAIM IS ASSERTED, OR ANY SUCH LIEN OR CHARGE UPON PAYMENTS, OR ANY SUCH TAXES, ASSESSMENTS, IMPOSITIONS OR OTHER CHARGES, ARE SOUGHT TO BE IMPOSED, THE FISCAL AGENT OR THE ISSUER SHALL GIVE PROMPT NOTICE TO THE BORROWER, AND THE BORROWER SHALL HAVE THE SOLE RIGHT AND DUTY TO ASSUME, AND WILL PROMPTLY ASSUME, THE DEFENSE THEREOF, WITH FULL POWER TO LITIGATE, COMPROMISE OR SETTLE THE SAME IN ITS SOLE DISCRETION; *PROVIDED*, THAT THE FISCAL AGENT OR THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY SUCH ACTION OR PROCEEDING AND TO PARTICIPATE IN THE DEFENSE THEREOF; BUT UNLESS SUCH SEPARATE COUNSEL IS EMPLOYED WITH THE APPROVAL AND CONSENT OF THE BORROWER (WHICH APPROVAL AND CONSENT SHALL NOT BE UNREASONABLY WITHHELD), OR PURSUANT TO A COURT ORDER, THE BORROWER SHALL NOT BE REQUIRED TO PAY THE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL.

THE FOREGOING INDEMNIFICATIONS SHALL EXTEND TO AND INCLUDE THE ORDINARY NEGLIGENCE AND GROSS NEGLIGENCE OF THE ISSUER, SHALL SURVIVE THE TERMINATION OF THIS REGULATORY AGREEMENT, AND SHALL BE A PERSONAL LIABILITY OBLIGATION OF THE INDEMNITOR, NOTWITHSTANDING ANY PROVISION OF ANY AGREEMENT TO THE CONTRARY. NO PROVISION OF THIS REGULATORY AGREEMENT SHALL BE CONSTRUED TO RELIEVE THE FISCAL AGENT FROM LIABILITY FOR ITS OWN NEGLIGENCE OR WILLFUL MISCONDUCT.

For purposes of this Section 9, the term "agent" shall not include legal counsel.

Section 10. Agent of the Issuer and the Fiscal Agent. The Issuer and the Fiscal Agent shall have the right to appoint an agent or administrator to carry out any of their respective duties and obligations hereunder, and shall inform the other parties hereto of any such agency appointment by written notice. The Issuer shall not be responsible for the negligence or misconduct of such agent if appointed with due care.

With a copy to: BMO Harris Bank N.A.
115 South LaSalle Street – 19W
Chicago, IL 60603
Attention: Tania Kadakia

With a copy to: Charity & Associates, P.C.
20 North Clark Street
Suite 1150
Chicago, IL 60602
Attention: Brandon R. Calvert

With a copy to: Nixon Peabody LLP
Tower 46
55 West 46th Street
New York, NY 10036
Attention: Kathie Soroka

The Equity Investor: _____

Attention: _____

With a copy to: _____

Attention: _____

The Fiscal Agent: BMO Harris Bank N.A.
115 South LaSalle Street – 19W
Chicago, IL 60603
Attention: _____

The Issuer: City of Bloomington, Indiana
401 N. Morton St.
Bloomington, Indiana 47404
Attention: City Attorney

Section 16. Governing Law. This Regulatory Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, and, where applicable, the laws of the United States of America.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Regulatory Agreement to be signed by their respective, duly authorized representatives, as of the day and year first above written.

CITY OF BLOOMINGTON, INDIANA, as Issuer

By: _____
Hon. John Hamilton, Mayor

BMO HARRIS BANK N.A., as Fiscal Agent

By: _____

Printed: _____

Title: _____

BLOOMINGTON RAD I, LP, an Indiana limited partnership

By: Bloomington RAD I Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD I, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President

STATE OF INDIANA)
) SS
COUNTY OF MONROE)

I, _____, a Notary Public, do hereby certify that _____, personally known to me to be the same person whose name is, as _____ of the City of Bloomington, Indiana, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2020.

Notary Public in and for
the State of Indiana

(Seal)

My commission expires:

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, a Notary Public, do hereby certify that _____, personally known to me to be the same person whose name is, as a _____ of BMO Harris Bank N.A., subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2020.

Notary Public in and for
the State of Indiana

(Seal)

My commission expires:

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, a Notary Public, do hereby certify that Richard Sciortino, personally known to me to be the same person whose name is, as President of RJS Real Estate Services, Inc., an Illinois corporation, member of Brinshore Development L.L.C., an Illinois limited liability company, manager of Bloomington RAD I Manager, LLC, an Indiana limited liability company, general partner of Bloomington RAD I, LP, an Indiana limited partnership, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2020.

Notary Public in and for
the State of _____

(Seal)

My commission expires:

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, a Notary Public, do hereby certify that Amber Skoby, personally known to me to be the same person whose name is, as President of Summit Hill RAD I, LLC, an Indiana limited liability company, member of Bloomington RAD I Manager, LLC, an Indiana limited liability company, general partner of Bloomington RAD I, LP, an Indiana limited partnership, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2020.

Notary Public in and for
the State of _____

(Seal)

My commission expires:

EXHIBIT A

LEGAL DESCRIPTION

ALL OF THAT LAND in Monroe County, Indiana which is described as follows:

EXHIBIT B

CERTIFICATION OF INCOME

NAME OF DEVELOPMENT: _____

ADDRESS OF DEVELOPMENT: _____

DATE: _____

The undersigned does hereby declare, depose and certify, under penalty of perjury, as follows:

If additional space is needed in filling out this form, attach sheets identifying the additional information referenced to the appropriate line number.

Line:

1.	2.	3.	4.	5.
Name of Head of Household, Spouse and Members of Your Family living in Unit	Relationship to Head of Household	Age	Social Security Number	Place of Employment
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Each line hereinafter is for the income of *all of the above persons* during the 12-month period beginning on this date or, if you signed a lease prior to this date, the date of the signing of your lease or the latest anniversary date of the signing of your lease, whichever is applicable. Please refer to Part I of the Instruction Sheet for detailed explanations as to the income information required. Part II of the Instruction Sheet provides information on income which may be excluded.

- 6. (a) Wages, salaries, tips, etc. \$ _____
- (b) Interest, dividends, and other net income of any kind from real or personal property (also enter on line 13(b)) \$ _____
- 7. Net income from the operation of a business or profession \$ _____
- 8. The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment \$ _____
- 9. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay \$ _____
- 10. Welfare assistance (*i.e.*, welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by federal, state or local governments) \$ _____
- 11. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the unit \$ _____
- 12. All regular pay, special pay, and allowances of a member of the Armed Forces \$ _____

The individual incomes of all the persons listed in Line 1 above during the 12-month period beginning this date is as follows:

NAMES	TOTALS
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

13. If any of the persons described above has any income of any kind from real property, savings, stocks, bonds, and other forms of capital investment (excluding interests in Indian trust land and excluding equity accounts in the Department of Housing and Urban Development ("*HUD*") homeownership programs), provide the following:

- (a) The total value of all such assets owned by all such persons \$ _____
- (b) The total amount of income expected to be derived from such assets in the 12-month period commencing this date or, if you signed a lease prior to this date, the date of the signing of your lease or the latest anniversary date of the signing of your lease (from line 6(b)) \$ _____

14.(a) Will all of the persons listed in Column 1 above be or have they been full time students during five calendar months of this calendar year (i) at an educational organization which normally maintains regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, or (ii) in institutional on-farm training under the supervision of an accredited agent of an educational organization described in clause (i) or of a state or political subdivision of a state?

Yes _____ No _____

(b) If the answer to 14(a) is yes, is any such person married and eligible to file a joint federal income tax return?

Yes _____ No _____

I/WE, the undersigned, state that I/WE have read and answered fully and truthfully each of the preceding questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed above, and I/WE declare under penalty of perjury that the foregoing representations are true and correct.

HEAD OF FAMILY

SPOUSE

Subscribed and sworn to before me
this _____ day of _____, _____.

_____ [SEAL]
Notary Public

My commission expires:

INSTRUCTION SHEET

Part I of this Instruction Sheet contains line-by-line instructions to assist your completion of the Certification of Income. The Certification of Income is a statement of the total anticipated amounts, monetary or not, which go to, or on behalf of, the Head of the Family or Spouse (even if temporarily absent) or to any other member of the family who proposes to live in the unit during the 12-month period commencing on this date or, if you signed a lease prior to this date, the date of the signing of your lease or the latest anniversary date of the signing of your lease, whichever is applicable, including (i) amounts which are anticipated to be received from a source outside the Family during the 12-month period commencing on this date and (ii) all net income derived from assets to which any member of the Family has access. Excluded therefrom is income specified in PART II of this section.

PART I:

1. "Family" means two or more persons related by blood, marriage, adoption, or operation of law.

6. (a) Provide the total of all wages, salaries, commissions, tips, bonuses, over-time pay, fees and other compensation for personal services, without regard to payroll deductions.

(b) For this purpose, expenditures for amortization of capital indebtedness shall not be deducted to determine income. An allowance for depreciation of assets may be deducted based on straight-line depreciation as provided in regulations of the United States Treasury. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family.

7. For this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business. An allowance for depreciation of assets used in a business or profession may be deducted based on straight-line depreciation as provided in regulations of the United States Treasury. Any withdrawal of cash or assets from the operation of a business or profession will be included in net income from a business or profession except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family.

8. Periodic amounts do *not* include deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

9. Payments in lieu of earnings do *not* include lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlements for personal or property losses.

10. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance

agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

(ii) the maximum amount that the Welfare Assistance agency could in fact allow the Family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

12. This does *not* include the special pay to a Family member serving in the Armed Forces who is exposed to hostile fire.

13. The amount entered on line 13(a) should include the net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds or other forms of capital investment,

(a) *excluding* an interest in Indian trust land, equity accounts in HUD ownership programs, the value of necessary items of personal property such as furniture and automobiles, the value of a trust fund which is not revocable by, or under the control of, any member of the Family or household, so long as the fund continues to be held in trust and the value of a home currently purchased with assistance under 24 C.F.R. Part 982, subpart M (limited, however, to the first 10 years after the purchase date of the home), but

(b) *including*, in the case of the disposition of any business or family assets for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of this certificate, the excess of the fair market value of the assets disposed over the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

PART II:

The determination of income for the Certification of Annual Income does *not* include any of the following:

- A. Temporary, nonrecurring or sporadic income (including gifts).
- B. Income from the employment of children (including foster children) under the age of 18 years.
- C. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the Family, who are unable to live alone).

D. Amounts received by the Family that are specifically for, or in reimbursement of, the cost of medical expenses for any Family member.

E. The full amount of student financial assistance paid directly to the student or to the educational institution.

F. (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the public housing agency or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination and serving as a member of the public housing agency's governing board. No resident may receive more than one such stipend during the same period of time; and

(v) Incremental earnings and benefits resulting to any Family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the Family member participates in the employment training program.

G. Income of a live-in aide. A "live-in aide" means a person who resides with one or more elderly or near-elderly persons (i.e., persons who are at least 50 years of age), or persons with disabilities, and who:

(a) is determined to be essential to the care and well-being of the person(s);

(b) is not obligated for the support of the person(s); and

(c) would not be living in the unit except to provide the necessary supportive services.

A "person with disabilities" means a person who: (a) has a disability as defined in 42 U.S.C. § 423; (b) is determined, pursuant to certain regulations, to have a physical, mental, or emotional impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes his or her ability to live independently, and (iii) is of such a nature that such ability could be improved by more suitable housing conditions; or (c) has a developmental disability as defined in 42 U.S.C. § 6001. The term does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. The term does not include a person whose disability is based solely on any drug or alcohol dependence.

H. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937, as amended, as published in the Federal Register from time to time.

I. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

J. Earnings in excess of \$480 for each full time student 18 years old or older (excluding the Head of Household and Spouse).

K. Adoption assistance payments in excess of \$480 per adopted child.

L. Amounts received by the Family in the form of refunds or rebates under state or local law for property taxes paid on the unit.

M. Amounts paid by a state agency to a Family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled Family member at home.

FOR COMPLETION BY DEVELOPMENT OWNER ONLY:

I. CALCULATION OF ANNUAL INCOME:

1. Enter the amount of income for the entire family by adding line 6(a) with lines 7 through 12: \$ _____
- 2.(a) If the amount entered in 13(a) is *greater* than \$5,000, enter the *greater* of:
 - (i) the amount entered in 13(b) *or*
 - (ii) a percentage of the total entered in 13(a) based on the current passbook savings rate as determined by HUD

(b) If the amount entered in 13(a) is less than \$5,000, enter the amount entered in 13(b): \$ _____

3. Add number (1) and (2) to determine ANNUAL INCOME: \$ _____

II. DETERMINATION OF TENANT ELIGIBILITY:

1. Is the amount entered in line 3 above less than or equal to 60 percent of area median gross income for the area in which the Development is located, completed taking into account the area in which the Development is located and size of the Family occupying the unit for which this Certification of Income is being completed, as adjusted by Section 142(d)(2)(E)?

Yes _____ No _____

2. Check one of the following:

(a) Line (1) above is No, therefore the Household does not qualify as a Qualified Tenant. _____

(b) Line (1) above is Yes, and 14(a) above is No, therefore the Household qualifies as a Qualified Tenant. _____

(c) Line (1) above is Yes and 14(b) above is Yes, therefore the Household qualifies as a Qualified Tenant. _____

(d) Line (1) above is Yes and 14(a) above is Yes and 14(b) above is No, therefore the Household does not qualify as a Qualified Tenant. _____

3. Number of apartment unit assigned: _____

Apartment Owner

EXHIBIT C

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Date: _____

Property Name: _____

On Site Property Mgr: _____

Address: _____ Telephone No. _____

To: City of Bloomington, Indiana
401 N. Morton St.
Bloomington, Indiana 47404
Attention: City Attorney

BMO Harris Bank N.A.
115 S. LaSalle Street – 20W
Chicago, IL 60603
Attention: _____

The undersigned, as the authorized representative of Bloomington RAD I, LP (the "*Borrower*"), hereby certifies that he or she has read and is thoroughly familiar with the provisions of the various documents associated with the issuance of the City of Bloomington, Indiana Economic Development Revenue Note, Series 2020A (Walnut Woods/Reverend Butler Project) and City of Bloomington, Indiana Economic Development Revenue Note, Series 2020B (Walnut Woods/Reverend Butler Project), including the related Regulatory Agreement and Declaration of Restrictive Covenants, dated as of February 1, 2020 (the "*Regulatory Agreement*"), among the City of Bloomington, Indiana (the "*Issuer*"), the Borrower and BMO Harris Bank N.A., as fiscal agent (the "*Fiscal Agent*"), and the Funding Loan Agreement dated as of February 1, 2020 (the "*Funding Loan Agreement*") among the Issuer, the Fiscal Agent and BMO Harris Bank N.A., as funding lender (the "*Funding Lender*") and the Borrower Loan Agreement dated as of February 1, 2020 between the Borrower and the Issuer, as well as other procedures and instructions and guidelines to maintain tax-exempt multiple family status, and certifies the following as of the date of this certificate:

_____ Total Occupied Units in Development

_____ Total Vacant Units

_____ Total Units

_____ Units Occupied by Eligible Tenants (as defined in the Regulatory Agreement)

_____ Units Held Vacant for Eligible Tenants

_____ Total (At least 90% of Total Units) = _____ Units

_____ Units Occupied by Qualifying Tenants (as defined in the Regulatory Agreement)
_____ Units Held Vacant for Occupancy Continuously Since Last Occupied by Qualifying Tenant
_____ Total (At least 40% of Total Units) = _____ Units

No default has occurred in observance of the covenants in the Regulatory Agreement, the Borrower Loan Agreement, the Funding Loan Agreement or the other documents governing the Development.

To my knowledge, no determination of taxability has occurred.

CERTIFIED BY:

BLOOMINGTON RAD I, LP, an Indiana limited partnership

By: Bloomington RAD I Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD I, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President