

City of Bloomington Common Council

Legislative Packet

Containing legislation and materials related to:

Wednesday, 19 October 2022

Regular Session at 6:30pm



CITY OF BLOOMINGTON COMMON COUNCIL

AGENDA:
REGULAR SESSION
WEDNESDAY | 6:30 PM
19 October 2022

*Council Chambers (#115), Showers Building, 401 N. Morton Street
The meeting may also be accessed at the following link:*

<https://bloomington.zoom.us/j/86710759585?pwd=cTJYZTNvYkxpV3BLNXRqOTZOOTFrQT09>

- I. **ROLL CALL**
- II. **AGENDA SUMMATION**
- III. **APPROVAL OF MINUTES**
 - a) September 29, 2021 (Special Session)
 - b) October 06, 2021 (Regular Session)
 - c) September 28, 2022 (Special Session)
- IV. **REPORTS** (*A maximum of twenty minutes is set aside for each part of this section.*)
 - A. **Councilmembers**
 - B. **The Mayor and City Offices**
 - a. Climate Action Plan Progress Report
 - C. **Council Committees**
 - D. **Public***
- V. **APPOINTMENTS TO BOARDS AND COMMISSIONS**
- VI. **LEGISLATION FOR SECOND READINGS AND RESOLUTIONS**
 - A. Appropriation Ordinance 22-04 – To Specifically Appropriate from the General Fund Expenditures not Otherwise Appropriated to Fund an Emergency Reproductive Health Care Program to Help Address the Impacts of Indiana’s Near-Total Abortion Ban

Committee recommendation: N/A
 - B. Resolution 22-18 – Resolution Proposing an Ordinance Modifying Local Income Tax Allocations in Monroe County and Casting 56.66 Votes in Favor of the Ordinance – Re: Adjusting the Allocations Between the Public Safety Answering Point (PSAP) and General Public Safety Purposes Tax Rates Without Changing Other Allocations or the Total Expenditure Tax Rate

Committee recommendation: N/A

* 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 email council@bloomington.in.gov.

VII. LEGISLATION FOR FIRST READINGS

- A. Ordinance 22-28 – Final Approval to Issue Economic Development Revenue Notes and Lend the Proceeds for the Renovation of Affordable Housing – Re: Country View Apartments, 2500 S. Rockport Road, Bloomington, Indiana (Country View Housing, LP, Petitioner)
- B. Ordinance 22-29 – Ordinance Authorizing and Approving a Payment in Lieu of Taxes (“PILOT”) Agreement With Country View Housing Limited Partnership for Country View Apartments
- C. Ordinance 22-31 – To Amend Title 15 of the Bloomington Municipal Code Entitled “Vehicles and Traffic” – Re: Amending Section 15.12.010 (Stop Intersections) to Change a Stop Intersection Location to a Multi-Stop Intersection Location

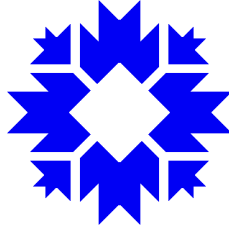
VIII. ADDITIONAL PUBLIC COMMENT* *(A maximum of twenty-five minutes is set aside for this section.)*

IX. COUNCIL SCHEDULE

X. ADJOURNMENT

* 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 email council@bloomington.in.gov.



**City of Bloomington
Office of the Common Council**

NOTICE

Wednesday, 19 October 2022

Regular Session

Starting at 6:30 pm

This meeting will be held in the Council Chambers (Suite #115, City Hall, 401 N. Morton St) and may also be accessed electronically via Zoom (see information below).

Join Zoom Meeting

<https://bloomington.zoom.us/j/86710759585?pwd=cTJYZTNvYkxpV3BLNXRqOTZOOTFrQT09>

Meeting ID: 867 1075 9585

Passcode: 933647

One tap mobile

+13017158592,,86710759585# US (Washington DC)

+13092053325,,86710759585# US

Meeting ID: 867 1075 9585

Find your local number: <https://bloomington.zoom.us/j/86710759585?pwd=cTJYZTNvYkxpV3BLNXRqOTZOOTFrQT09>

As a quorum of the Council or its committees may be present, this gathering constitutes a meeting under the Indiana Open Door Law (I.C. § 5-14-1.5). For that reason, this statement provides notice that this meeting will occur and is open for the public to attend, observe, and record what transpires.



**City of Bloomington
Office of the Common Council**

Minutes for Approval

29 September 2021 | 06 October 2021
28 September 2022

In Bloomington, Indiana on Wednesday, September 29, 2021 at 6:30pm, Council President Jim Sims presided over a Special Session of the Common Council. Per the Governor's Executive Orders, this meeting was conducted electronically via Zoom.

COMMON COUNCIL
SPECIAL SESSION
September 29, 2021

Councilmembers present via Zoom: Matt Flaherty, Isabel Piedmont-Smith, Dave Rollo, Kate Rosenbarger, Susan Sandberg, Sue Sgambelluri, Jim Sims, Ron Smith, Stephen Volan
Councilmembers absent: none

ROLL CALL [6:32pm]

Council President Sims summarized the agenda.

AGENDA SUMMATION [6:33pm]

Flaherty moved and it was seconded that Appropriation Ordinance 21-02 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Deputy City Clerk Susan Stoll read the legislation by title and synopsis.

Appropriation Ordinance 21-02 - An Ordinance for Appropriations and Tax Rates (Establishing 2022 Civil City Budget for the City of Bloomington)

Sims referred Appropriation Ordinance 21-02 to the Committee of the Whole immediately following the Special Session on September 29, 2021.

Flaherty moved and it was seconded that Appropriation Ordinance 21-03 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Stoll read the legislation by title and synopsis.

Appropriation Ordinance 21-03 - An Ordinance Adopting a Budget for the Operation, Maintenance, Debt Service and Capital Improvements for the Water and Wastewater Utility Departments of the City of Bloomington, Indiana for the Year 2022

Sims referred Appropriation Ordinance 21-03 to the Committee of the Whole immediately following the Special Session on September 29, 2021.

Flaherty moved and it was seconded that Appropriation Ordinance 21-04 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Stoll read the legislation by title and synopsis.

Appropriation Ordinance 21-04 - Appropriations and Tax Rates for Bloomington Transportation Corporation for 2022

Sims referred Appropriation Ordinance 21-04 to the Committee of the Whole immediately following the Special Session on September 29, 2021.

Flaherty moved and it was seconded that Ordinance 21-36 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Stoll read the legislation by title and synopsis.

Ordinance 21-36 -An Ordinance Fixing the Salaries of Officers of the Police and Fire Departments for the City of Bloomington, Indiana, for the Year 2022

Sims referred Ordinance 21-36 to the Committee of the Whole immediately following the Special Session on September 29, 2021.

Flaherty moved and it was seconded that Ordinance 21-37 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Stoll read the legislation by title and synopsis.

Ordinance 21-37 - An Ordinance Fixing the Salaries of Appointed Officers, Non-Union and A.F.S.C.M.E. Employees for All the Departments of the City of Bloomington, Monroe County, Indiana, for the Year 2022

Sims referred Ordinance 21-37 to the Committee of the Whole immediately following the Special Session on September 29, 2021.

Flaherty moved and it was seconded that Ordinance 21-38 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Stoll read the legislation by title and synopsis.

Ordinance 21-38 - To Fix the Salaries of All Elected City Officials for the City of Bloomington for the Year 2022

Sims referred Ordinance 21-38 to the Committee of the Whole immediately following the Special Session on September 29, 2021.

Flaherty moved and it was seconded that Ordinance 21-39 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Stoll read the legislation by title and synopsis.

Ordinance 21-39 - An Ordinance to Amend Ordinance 20-22, Which Fixed Salaries for Officers of the Police and Fire Departments for the Year 2021 - Re: Pay Grade Changes for Police Lieutenants and Captains, Additional Pay, and Retention Pay

Sims referred Ordinance 21-39 to the Committee of the Whole immediately following the Special Session on September 29, 2021.

Stephen Lucas, Council Attorney, reviewed the council schedule.

COUNCIL SCHEDULE [6:50pm]

Sims adjourned the meeting with no objection.

ADJOURNMENT [6:52pm]

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this ____ day of _____, 2022.

APPROVE:

ATTEST:

Susan Sandberg, PRESIDENT
Bloomington Common Council

Nicole Bolden, CLERK
City of Bloomington

In Bloomington, Indiana on Wednesday, October 6, 2021 at 6:30pm, Council President Jim Sims presided over a Regular Session of the Common Council. Per the Governor's Executive Orders, this meeting was conducted electronically via Zoom.

COMMON COUNCIL
REGULAR SESSION
October 6, 2021

Councilmembers present via Zoom: Matt Flaherty, Isabel Piedmont-Smith, Dave Rollo, Kate Rosenbarger, Susan Sandberg, Sue Sgambelluri, Jim Sims, Ron Smith, Stephen Volan
Councilmembers absent: none

ROLL CALL [6:32pm]

Council President Jim Sims summarized the agenda.

AGENDA SUMMATION [6:33pm]

There were no minutes for approval.

APPROVAL OF MINUTES [6:35pm]

Rollo spoke about the passing of Jesse Slokum, also known as "Peter Rabbit."

REPORTS

- COUNCIL MEMBERS [6:35pm]

Piedmont-Smith invited people to her constituent meeting on October 09, 2021 via Zoom.

Flaherty announced his constituent meeting on the third Monday of the month would be on October 18, 2021 via Zoom.

Sandberg announced a joint constituent meeting with Rollo on October 16, 2021 via Zoom.

Kaisa Goodman, Special Projects Manager, Department of Economic & Sustainable Development, presented an update on the Economic Development Administration (EDA) Cares Act Grant and the Bloomington Certified Tech Park (CTP). She provided a synopsis of the CTP, goals, recertification information, and additional components of the project.

- The MAYOR AND CITY OFFICES [6:38pm]

Jennifer Pearl, President of Bloomington Economic Development Corporation (BEDC), discussed the EDA Cares Act Grant and described the project, including The Center, the Trades District Technology Center (TDTC), and provided additional information pertaining to the project including estimated economic impacts.

Volan commented on parking and asked if the master plan needed to be revised.

Goodman responded that there would be adjustments. She explained that the proposed location of the parking garage ended up being further south based on the analysis that was conducted.

Volan asked for further clarification and if it was a priority to build that amount of parking.

Alex Crowley, Director of the Economic and Sustainable Department, spoke about the proposed parking within the Trades District. The developer had been concerned about parking and the city needed to signal that parking would be available. The hope was to have private investments as originally detailed in the master plan.

Volan commented on the rate of parking space per office space. He said he had voted for the Trades garage for centralized parking in a garage to eliminate the need for parking spaces at each building.

Crowley said that the goal was to consolidate parking spaces into dense parking but there would be some onsite parking at buildings.

Volan asked to what extent was the tech park plan similar to what was announced that day.

Crowley stated that things changed since 2013 but that the basic plan was the same. The goal was to encourage development and the EDA plan would help stimulate that growth.

There were no council committee reports.

- COUNCIL COMMITTEES [7:11pm]

Jim Shelton spoke about the Court Appointed Special Advocate (CASA) program. He said that, likely due to the pandemic, there were more children in need of a CASA due to physical abuse by their parents.

- PUBLIC [7:11pm]

Sims discussed nominating Flaherty to the city's internal Climate Working Group.

APPOINTMENTS TO BOARDS AND COMMISSIONS [7:16pm]

Sgambelluri moved and it was seconded that Cm. Flaherty be appointed to the city's internal Climate Working Group. The motion received a roll call vote of Ayes: 8, Nays: 0, Abstain: 1 (Flaherty).

Vote to appoint Councilmember Flaherty to Climate Working Group [7:19pm]

LEGISLATION FOR SECOND READING AND RESOLUTIONS [7:19pm]

Flaherty moved and it was seconded that Ordinance 21-34 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 8 (Rollo out of the room), Nays: 0, Abstain: 0. Chief Deputy Clerk Sofia McDowell read the legislation by title and synopsis.

Ordinance 21-34 - To Amend Title 2 of the Bloomington Municipal Code Entitled "Administration and Personnel" - Re: Amending BMC 2.04.420 (Motion to adjourn or recess) to Place Greater Limits on the Duration of Council Meetings That They May End at a Reasonable Hour

Flaherty moved and it was seconded to that Ordinance 21-34 be adopted.

Volan presented Ordinance 21-34 to the council and said legislation was necessary for there to be a meeting end time. He explained that it was important to not have meetings that continue after midnight. There was brief discussion regarding amendments.

Council questions:

Rollo said that Amendment 02 safeguarded for exceptions when there was business that needed to be dealt with.

Volan responded that Ordinance 21-34 was an effort to have council commit to ending meetings at a reasonable hour. The method of triggering the end of the meeting was not the significant part of the legislation. He said if unanimous consent was too stringent, then Amendment 02 allowed for two councilmembers to move and second to adjourn.

Sandberg appreciated the proposal, and expressed concern for rigidity with a formal end time for meetings. She commented on the ability to resolve a matter in the meeting by extending the end time.

Volan said that there were times that council needed to take action in order to comply with state laws. He commented on the duration of meetings and provided examples. Volan also commented on scheduling legislation, items on the agenda, and steps council could take after five hours and fifteen minutes. He said anticipating the end time of a meeting was important though difficult.

Sandberg said that another mechanism, in addition to councilmembers being mindful of time, was to better schedule the agenda.

Volan responded that council could also better manage comments from the public.

Smith asked for clarification on the amendment where two councilmembers could move to end the meeting.

Volan responded that after midnight, a councilmember could move to adjourn, and another could second the motion.

Smith asked why it could not just be a majority of the council.

Volan said that was what was currently in place. He provided additional information regarding amendments.

Ordinance 21-34 (cont'd)

Council questions:

Sims pointed out that any councilmember could make a motion to adjourn. He asked Volan for further clarification on limiting public comment time.

Volan said that Ordinance 21-34 did not address public comment time. He discussed time limits per speaker and explained that three minutes per speaker was twenty speakers per hour. If there were many members of the public wanting to comment, then council could limit the time per speaker or the total public comment period.

Volan moved and it was seconded to adopt Amendment 02 to Ordinance 21-34.

Amendment 02 to Ordinance 21-34

Amendment 02 Synopsis: This amendment is sponsored by Councilmember Volan based on feedback provided by the Committee of the Whole. It requires a motion to adjourn (or a motion to rise and report in Committee of the Whole) made after five and half hours from the meeting's call to order or after 11:59 p.m. local time, whichever occurs first, to have a second, meaning that two members instead of one would be required to trigger adjournment under this ordinance. This amendment and Amendment 01 to Ordinance 21-34 are mutually exclusive.

Sgambelluri asked if a motion, and a second, would be sufficient to end the meeting, and that the motion was not debatable.

Council questions:

Volan confirmed that motions to adjourn were not debatable, but motions to recess were debatable.

Lucas said that Bloomington Municipal Code stated that a motion to adjourn or recess were both not debatable.

Piedmont-Smith asked for clarification regarding motions to adjourn or recess, and which motion took precedence.

Volan responded that the president needed to acknowledge a councilmember before they could make a motion. He said that a motion to adjourn should take precedence over a motion to recess.

Piedmont-Smith confirmed that neither motion to recess, or adjourn, were not debatable.

Volan confirmed that was correct.

Piedmont-Smith stated that if there was a motion on the table, the president would not allow another motion until the first one was disposed of.

Lucas read a comment from Dave Askins submitted via Zoom chat regarding the uncertainty for the public of council making motions to adjourn or recess and taking votes to extend the meeting.

Public comment:

Volan commented on the "10:30pm Rule" already in local code, which called for a vote in order to hear a new item after 10:30pm.

Council comment:

The motion received a roll call vote of Ayes: 7, Nays: 2 (Sims, Smith), Abstain: 0.

Vote to adopt Am 02 to Ordinance 21-34 [7:57pm]

There was brief council discussion regarding amendments.

There were no council questions.

Council questions:

There were no comments from the public.

Public comments:

Piedmont-Smith thanked Volan and thought it wise to limit council's time in deliberation in meetings. The quality of the decision making declined as the evening went on. It was fairer to city staff and members of the public to end the meeting in a timely manner and resume deliberations at another meeting. She would support Ordinance 21-34 as amended.

Council comment:

Sims also thanked Volan and said that he was opposed to Ordinance 21-34. He did not believe it was necessary because council already had tools at their disposal to end meetings. He commented on the duration of meetings and provided reasons against Ordinance 21-34. Sims commented on the long meeting that was held on March 03, 2021.

Volan commented on the duration of meetings, the "10:30pm Rule," and scheduling.

Piedmont-Smith spoke about the duration of the March 03, 2021 meeting. She said that because the council was split four-four, there was not a way to end the meeting sooner.

Sims said that council could have broken quorum, though it was not a desirable tool to use.

Rollo said he would support Ordinance 21-34 as amended but that it would result in more meetings.

The motion to adopt Ordinance 21-34 as amended received a roll call vote of Ayes: 7, Nays: 2 (Sims, Sandberg), Abstain: 0.

Vote to adopt Ordinance 21-34 as amended [8:09pm]

Flaherty moved and it was seconded that Resolution 21-35 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. McDowell read Resolution 21-35 by title and synopsis only.

Resolution 21-35 - Resolution Proposing an Ordinance Modifying Local Income Tax Allocations in Monroe County and Casting 58.28 Votes in Favor of the Ordinance - Re: Adjusting the Allocations between the Public Safety Answering Point (PSAP) and General Public Safety Purposes Tax Rates Without Changing Other Allocations or the Total Expenditure Tax Rate [8:11pm]

Flaherty moved and it was seconded that Resolution 21-35 be adopted.

Lucas presented Resolution 21-35 and provided details of the allocations.

Rollo asked about the need for raising the Public Safety Answering Point (PSAP).

Council questions:

Smith explained that it was for additional staff.

Lucas confirmed that was correct.

Sims stated that the main purpose of Public Safety Local Income Tax (PSLIT) was to fund PSAP and 911. Whatever amount was left over was distributed by certified shares. Sims also explained that there were nine positions.

Geoff McKim, County Councilor, spoke in support of the PSLIT PSAP rate.

Public comment:

There were no council comments.

Council comments:

The motion to adopt Resolution 21-35 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to adopt Resolution 21-35 [8:23pm]

LEGISLATION FOR FIRST
READING [8:24 pm]

Flaherty moved and it was seconded that Ordinance 21-40 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. McDowell read Ordinance 21-40 by title and synopsis only.

Ordinance 21-40 – To Amend Title 6 (Health and Sanitation) of the Bloomington Municipal Code – Re: Removal of Sanitation Fee Expiration Provision Effective November 1, 2020 Contained in Subsection 6.04.090(7) of the Bloomington Municipal Code

Flaherty moved and it was seconded that the council introduce and consider Ordinance 21-40 for adoption at the same meeting and on the same night it was introduced. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to introduce and consider Ordinance 21-40 for adoption [8:27pm]

Flaherty moved and it was seconded to adopt Ordinance 21-40.

Larry Allen, Assistant City Attorney in the Legal Department, presented Ordinance 21-40. He said it ratified the continued collection of sanitation fees, per code, and eliminated the sunset provision. He provided background information.

Council questions:

There were no council questions.

Public comment:

There was no public comment.

Council comments:

Flaherty stated that he would support Ordinance 21-40 and commented on the discussion from the meeting where Ordinance 17-06 was passed. He spoke about the idea of “pay as you throw,” rebating, incentivizing less waste production, and the sunset date. He also commented on American with Disabilities Act (ADA) concerns with waste bins and not obstructing the sidewalk. Flaherty discussed the funding of collection services and the rate structure.

Volan commented on amendments in 2017 regarding Ordinance 17-06. He discussed parking, revisiting rates, inflation, and anticipating increases in rates. He provided examples and discussed methods of considering rates. He would support Ordinance 21-40.

Sims reminded council that Adam Wason, Director of Public Works, would be sharing a report on October 20, 2021. He also reminded councilmembers that a two-thirds majority was necessary for Ordinance 21-40 to pass.

Vote to adopt Ordinance 21-40 [8:38pm]

The motion to adopt Ordinance 21-40 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Flaherty moved and it was seconded that Ordinance 21-35 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. McDowell read Ordinance 21-35 by title and synopsis only.

Ordinance 21-35- To Amend the City of Bloomington Zoning Maps by Rezoning 1.31 Acres of Property from Mixed-Use Employment (ME) to Mixed-Use Medium Scale (MM) – Re: 135, 201, 215 S. Westplex Avenue (Wheeler Mission, Petitioner)

Sims referred Ordinance 21-35 to Committee of the Whole, immediately following the conclusion of that night’s Regular Session.

Mary Sutherlin commented spoke about her property located by the State Farm office.

ADDITIONAL PUBLIC COMMENT [8:41pm]

Lucas reviewed the upcoming council schedule.

COUNCIL SCHEDULE [8:43pm]

Flaherty moved and it was seconded to cancel the work session on October 08, 2021. Sims canceled the work session without objection.

Sims adjourned the meeting.

ADJOURNMENT [8:49pm]

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this ____ day of _____, 2022.

APPROVE:

ATTEST:

Susan Sandberg, PRESIDENT
Bloomington Common Council

Nicole Bolden, CLERK
City of Bloomington

For Approval

In the Council Chambers of the Showers City Hall, Bloomington, Indiana on Wednesday, September 28, 2022 at 6:30pm, Council President Susan Sandberg presided over a Special Session of the Common Council.

COMMON COUNCIL
SPECIAL SESSION
September 28, 2022

Councilmembers present: Matt Flaherty, Isabel Piedmont-Smith, Dave Rollo, Susan Sandberg, Sue Sgambelluri, Jim Sims, Stephen Volan

ROLL CALL [6:31pm]

Councilmembers present via Zoom: Kate Rosenbarger, Ron Smith (arrived at 6:34pm)

Councilmembers absent: none

Council President Sandberg summarized the agenda.

AGENDA SUMMATION [6:32pm]

Rollo moved and it was seconded that Appropriation Ordinance 22-01 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. City Clerk Nicole Bolden read the legislation by title and synopsis.

Appropriation Ordinance 22-01 - An Ordinance for Appropriations and Tax Rates (Establishing 2023 Civil City Budget for the City of Bloomington)

Sandberg referred Appropriation Ordinance 22-01 to the Committee of the Whole immediately following the Special Session on September 28, 2022.

Rollo moved and it was seconded that Appropriation Ordinance 22-02 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Bolden read the legislation by title and synopsis.

Appropriation Ordinance 22-02 - An Ordinance Adopting a Budget for the Operation, Maintenance, Debt Service and Capital Improvements for the Water and Wastewater Utility Departments of the City of Bloomington, Indiana for the Year 2023

Sandberg referred Appropriation Ordinance 22-02 to the Committee of the Whole immediately following the Special Session on September 28, 2022.

Rollo moved and it was seconded that Appropriation Ordinance 22-03 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Bolden read the legislation by title and synopsis.

Appropriation Ordinance 22-03 - Appropriations and Tax Rates for Bloomington Transportation Corporation for 2023

Sandberg referred Appropriation Ordinance 22-03 to the Committee of the Whole immediately following the Special Session on September 28, 2022.

Rollo moved and it was seconded that Ordinance 22-25 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Bolden read the legislation by title and synopsis.

Ordinance 22-25 - An Ordinance Fixing the Salaries of Officers of the Police and Fire Departments for the City of Bloomington, Indiana, for the Year 2023

Sandberg referred Ordinance 22-25 to the Committee of the Whole immediately following the Special Session on September 28, 2022.

Rollo moved and it was seconded that Ordinance 22-26 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Bolden read the legislation by title and synopsis.

Ordinance 22-26 - An Ordinance Fixing the Salaries of Appointed Officers, Non-Union and A.F.S.C.M.E. Employees for All the Departments of the City of Bloomington, Monroe County, Indiana, for the Year 2023

Sandberg referred Ordinance 22-26 to the Committee of the Whole immediately following the Special Session on September 28, 2022.

Rollo moved and it was seconded that Ordinance 22-27 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Bolden read the legislation by title and synopsis.

Ordinance 22-27 - To Fix the Salaries of All Elected City Officials for the City of Bloomington for the Year 2023

Sandberg referred Ordinance 22-27 to the Committee of the Whole immediately following the Special Session on September 28, 2022.

Stephen Lucas, Council Attorney, reviewed the council schedule.

COUNCIL SCHEDULE [6:40pm]

Rollo moved and it was seconded to adjourn. The motion was approved by voice vote.

ADJOURNMENT [6:41pm]

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this ____ day of _____, 2022.

APPROVE:

ATTEST:

Susan Sandberg, PRESIDENT
Bloomington Common Council

Nicole Bolden, CLERK
City of Bloomington

For Approval



REPORT TO COUNCIL

2022

**CLIMATE &
SUSTAINABILITY
PROGRESS UPDATE**



Bloomington Climate & Sustainability Action Plans

The 2021 Bloomington Climate Action Plan (CAP) established long-term climate resilience vision and mitigation goals for Bloomington through 2050. Implementation of the Climate Action Plan strategic and actions is intended as a 10 year communitywide effort implemented in three phases throughout the decade.

The 2018 Sustainability Action Plan (SAP) represented the first formal sustainability planning effort for the City of Bloomington and strengthened existing sustainability efforts by identifying and communicating strategic goals with an emphasis on climate change goals and mitigation strategies.

The following 2022 Progress Report to Council includes a brief description of progress towards actions designated as "completed," "underway," "ongoing," "not started," or "inactive."

Find both the Climate & Sustainability Action Plans and past year's climate and sustainability reports to Council on the City of Bloomington's website at: bloomington.in.gov/sustainability.

Bloomington's Climate Action Plan goal is to reduce community greenhouse gas emissions 25% below 2018 emissions levels by 2030 and achieve carbon neutrality by 2050.

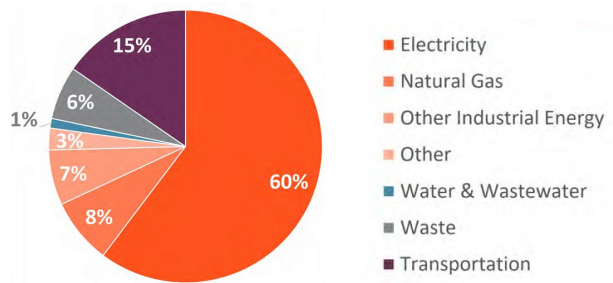
1.3

In 2018, 1.3 million metric tons of carbon dioxide equivalent (MT CO₂e) were emitted in Bloomington.

16%

Between 2008 and 2018, greenhouse gas emissions fell 16% due in part to reduced emissions associated with energy use.

Bloomington GHG Emissions Sources (2018)



Bloomington greenhouse gas emissions are projected to decrease an additional 9% by 2030 for a 43% total reduction by 2050 under a "business-as-usual" scenario. Successful implementation of sector based strategies and climate action goals are projected to reduce emissions by 321,856 metric tons annually and increase resiliency to climate impacts.

Climate Mitigation- community emissions sources (see pie chart above for percentage contributions)

- Buildings & Energy- electricity and natural gas consumption
- Transportation - on-road vehicle traffic and off-road equipment
- Waste Management- landfill gas generation
- Water & Wastewater- wastewater collection and treatment

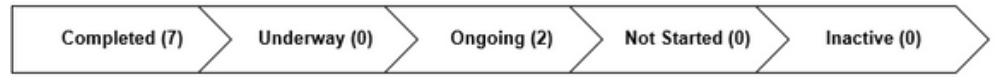
Climate Adaptation- improve resilience outcomes

- Health & Safety- reduce climate impacts, including heat and flooding
- Water & Wastewater- improve flood mitigation and reduced stormwater infiltration
- Local Food & Agriculture- increase local food system & production capacity
- Greenspace & Ecosystem Health- urban tree canopy coverage & greenspace

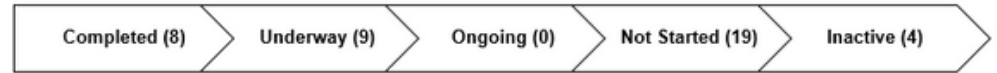
Bloomington Climate & Sustainability Action Plans 2022 Progress Tracker



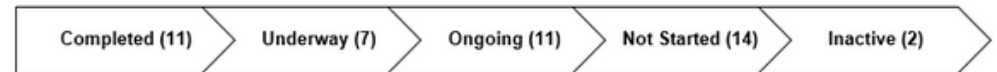
Climate Change & Adaptation



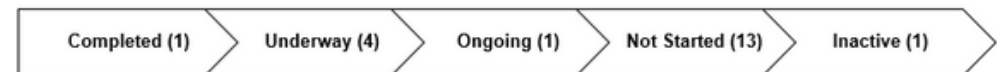
Buildings & Energy Use



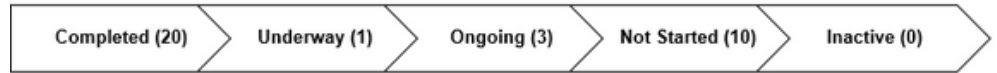
Transportation and Land Use



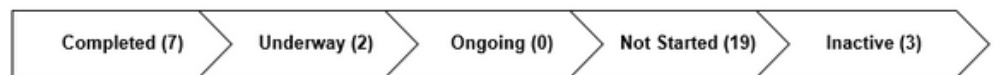
Waste Management



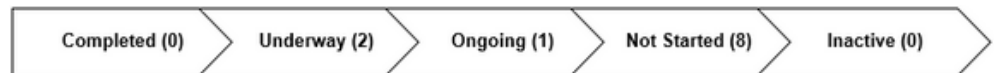
Water & Wastewater



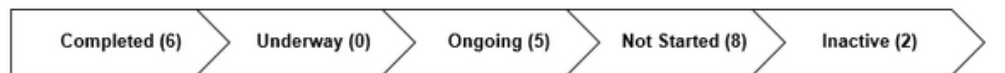
Local Food & Agriculture



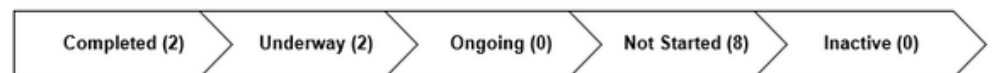
Health & Safety



Greenspace



Climate Economy



Climate Change & Adaptation



SAP GOAL 1.1: Reduce community GHG emissions 11 percent by 2023, relative to a baseline of 1.3 million metric tons of GHG emissions in 2016.

Completed:

- ✓ 1.1.a. Establish a consistent methodology for measuring and reporting community GHG emissions.
- ✓ 1.1.b. Evaluate the viability of creating a community renewable energy goal.
- ✓ 1.1.c. Implement Solarize Bloomington with the Solar Indiana Renewable Energy Network (SIREN) to aid residential low cost solar installations.
- ✓ 1.1.d. Achieve designation as a SolSmart community by taking steps to streamline development requirements and encourage local solar markets.
- ✓ 1.1.e. Educate the public about the Monroe County Solar for All campaign and geothermal installations.
- ✓ 1.1.f. Investigate the feasibility of becoming a Green Power Community to encourage businesses, institutions, and individuals to collectively use more clean power.

Ongoing:

- 1.1.g. Facilitate habitat restoration and tree planting with proper siting on public and private properties to sequester carbon dioxide and reduce building energy needs.
- 1.1.h. Engage local businesses to reduce GHG emissions through outreach, education, and advisory services.

SAP GOAL 1.2: Create a community climate adaptation plan by 2022.

Completed:

- ✓ 1.2.a. Conduct a climate vulnerability assessment.

Energy & Built Environment



SAP GOAL 2.1: Reduce building energy use in the Bloomington community 20 percent by 2023, relative to a baseline usage of 9.4 million MMBTUs in 2016.

Completed:

- ✓ 2.1.b. Establish a consistent methodology to monitor and report community-wide energy use.
- ✓ 2.1.d. Collaborate with local utility companies to improve energy efficiency programs and sub-metering.
- ✓ 2.1.f. Work with private and non-profit lenders to establish low-interest loans for small-scale energy efficiency improvements and renewable energy projects.

Underway:

- ❖ 2.1.c. Collaborate with the business community on a voluntary program to disclose energy usage and costs, to help drive future energy savings.
- ❖ 2.1.e. Collaborate with local landlords to establish a voluntary program for green leases that clarify landlord and tenant responsibilities for energy efficiency projects and associated energy savings.

Inactive:

- ♦ 2.1.a. Develop and implement an annual work plan for the Monroe County Energy Challenge (MCEC) to improve residential and commercial energy efficiency.

SAP GOAL 2.2: Increase the percentage of residential and commercial buildings using sustainable building certification programs and incentives by 2023, relative to a 2019 baseline.

Completed:

- ✓ 2.2.a. Update the Sustainable Development Incentive program and develop a mechanism to track utilization of the program and post data to BClear.
- ✓ 2.2.c. Evaluate the development of a SMART goal for increasing the use of sustainable building certification program, per the development of a 2019 baseline.
- ✓ 2.2.d. Develop a list of sustainable building projects to establish a baseline for 2019, and a mechanism for tracking this data moving forward.

Underway:

- ❖ 2.2.b. Develop an educational program on sustainable building certifications and incentive programs in collaboration with the business community.

Inactive:

- ◆ 2.2.e. Create annual sustainable building tour for commercial builders.
- ◆ 2.2.f. Complete at least one Living Building Challenge petal certification project.
- ◆ 2.2.g. Host an annual green home show to showcase sustainable building features and programs.

CAP Goal EB 1: Increase distributed renewable energy to 250,000 MWH of total generation annually by 2030.

Strategy EB 1-A: Increase solar on City facilities 20% by 2030.

Not Started:

- EB1-A-1: Conduct a detailed "Renewable Energy Master Plan" for all primary city facilities which have not yet already achieved renewable energy meeting 100% annual energy demand. Plan to incorporate strategies to address electricity storage, energy resilience, emergency operations, explore virtual net metering with Duke Energy, and provide an implementation plan to achieve on-site renewable energy goal and outline options to achieve 100% renewable energy for all city facilities (on-site and offsite options).
- EB1-A-2: Establish a policy which requires all new construction and significant renovation projects for City facilities to be constructed to meet "Solar Ready" requirements and to include a solar feasibility assessment and project option for inclusion of on-site solar, include "Return on Investment" assessment, and incorporate solar where return is favorable.

Strategy EB 1-B: Support and accelerate installation of on-site solar PV to 250,000 MWH of total generation citywide annually by 2030.

Underway:

- ❖ EB1-B-3: Continue to sponsor a community-wide "Solarize" program for residential group purchase of Solar PV. Explore use of city staff, resources, or financing mechanisms to support the required reach of annual solarize programs to achieve long-range goals.
- ❖ EB1-B-4: Partner on a county-wide solar strategy to expand solar, especially to low and moderate income households with a goal of 60 low income homes installed annually. Explore the establishment of financing mechanisms such as revolving loans, grants, or use of LIHEAP funding to support affordability and equitable renewable energy adoption.
- ❖ EB1-B-1: Identify the "Solar Top 50" commercial/industrial properties within the city and produce detailed solar feasibility assessments for each site. Assessments to include potential solar generation and economic performance and return on investment estimates, information on financing and ownership models, and next step resources. Provide solar assessment reports to properties, free of charge, and conduct an informational workshop to assist building owners and businesses in understanding the assessments and next step potential. "Solar Top 50" assessment effort could be repeated annually, particularly through 2025.
- ❖ EB1-B-2: Sponsor a community-wide "Solarize" program for commercial and industrial group purchase of Solar PV. Include an invitation to participate to all building sites included in the "Solar Top 50" feasibility effort. Explore use of city staff, resources, or financing mechanisms to support the required reach of annual solarize programs to achieve long range goals.

Strategy EB 1-C: Improve energy policy.

Completed:

- ✓ EB1-C-1: Streamline and offer expedited permitting for renewable energy installations.

CAP Goal EB 2: Increase energy efficiency citywide 16% for electricity and 12% for natural gas of 2018 values.

Strategy EB 2-A: Increase total City owned building electrical energy efficiency 16% for electricity and 12% for natural gas of 2018 values.

Not Started:

- EB2-A-1: Update the City's Green Building Program policy to include clear energy reduction requirements to be measured annually during the building's operation (such as "achieving and maintaining a minimum ENERGY STAR rating of 75, and built to meet or exceed IGCC code"). Consider increasing the minimum LEED design standard to Gold. Invite County, School District, and other public agencies located within the City to participate in City's Green Building Program standards.
- EB2-A-2: Establish a policy to require all primary City facilities to benchmark and disclose annual energy consumption. Invite County, School District, and other public agencies located within the City to participate in City's facilities benchmarking and disclosure effort.
- EB2-A-3: Conduct a Building Energy Audit on all primary City owned facilities without energy audits conducted within last 5 years. Fully implement recommendations of these and previous audits. Prioritization should be given to the City's largest energy consuming sites.
- EB2-A-4: Establish a City policy requiring the review of all large capital expenditures against the GHG emission reduction and climate adaptation goals of the CAP. Capital projects to be reviewed against their projected contributions in reduced GHG emissions, energy use, and vehicle-miles-traveled as well as the project's projected social cost of carbon savings and climate resilience. Explore development of project calculator tools to evaluate capital project proposals against City's CAP Goals.

Strategy EB 2-B: Support and accelerate energy efficiency citywide.

Not Started:

- EB2-B-1: Adopt, implement, and promote a Commercial Building Energy Benchmarking and Disclosure ordinance for all public buildings and all commercial buildings 30,000 square feet and larger.
- EB2-B-2: Work with utilities to incentivize and promote replacement of inefficient building heating and cooling equipment before end-of-life, and facilitate the bulk purchasing of efficient equipment. Goal: achieve 250 households replacing equipment annually.
- EB2-B-3: Establish an Energy Efficiency Upgrade cost sharing incentive program providing a 25% matching grant for qualified buildings and applicants. Coordinate grant with utility offered rebates. Goal: utilization by 60 businesses annually

Strategy EB 2-C: Support and accelerate energy efficiency citywide.

Not Started:

- EB2-C-1: Promote, provide and distribute the City's Net Zero Energy Building Guide document to local home shows or remodeler showcase events, designers, homebuilder associations, and realtors. Include the City's Net Zero Energy Building Guide and Solar Ready Guideline documents on the City's Design Guidelines web page.
- EB2-C-2: Provide training on solar ready and net-zero strategies as found in the City's Net Zero Energy Building Guide and Solar Ready Guidelines to area homeowners, multi-family building owners, local builders association, and real estate agents. Goal: 1% market coverage (300 households) attending training annually.

CAP Goal EB 3: Support decarbonization of the local electricity grid.

Strategy EB 3-A: Support Duke Energy's grid emissions goal of 50% below 2005 levels by 2030.

Not Started:

- EB3-A-1: Collaborate with Duke Energy for the development of a pilot/demonstration community solar program achieving a total of 7,000 MWH in subscribed annual community solar energy by 2030. Identify underutilized sites such as landfill, brownfield, Superfund sites, or detention pond sites (for floating solar) and identify most advantageous site to develop and install pilot solar garden. Collaboratively develop and issue an RFP for community solar developers to advance community solar options and subscriptions within City. RFP shall focus on projects that benefit all residents, particularly communities of color and low-income populations. Include community solar option benefiting small businesses.

Strategy EB 3-B: Advocate for stronger state policy.

Not Started:

- EB3-B-1: Collaborate with other communities, industry, and state agencies to support the State establishing the enabling legislation for Commercial Property Assessed Clean Energy (C -PACE) and Residential Property Assisted Clean Energy (R-PACE) financing.
- EB3-B-2: Collaborate with other communities, industry, and state agencies to support the State in establishing policies and laws to expand the market for renewable energy, make it easier for large multi-family, commercial, and industrial customers to benefit from renewable energy (e.g. feed-in tariff, Power Purchase Agreements, Solar Lease agreements, roof space rental, community solar, virtual net metering, aggregated net metering, etc.) Include information on current State of Indiana related regulations and cost and payback information.

Strategy EB 4-A: Support and accelerate electrification of on-site fossil fuel combustion systems citywide by 2% of 2018 consumption levels (natural gas, propane, fuel oil, etc).

Not Started:

- EB4-A-1: Conduct an "Electrification Assessment and Action Plan" to outline actions and priorities for electrification of all City facilities to move towards zero on-site fossil fuel combustion. Work with regional energy partnerships to implement Plan for all City facilities. Include new and existing buildings, explore strategies to address electricity storage, and create a case study to highlight and share challenges, solutions, and lessons learned to share with the broader community.

Strategy EB 4-B: Support and accelerate low/no carbon alternatives to on-site fossil fuel combustion by 1% of 2018 consumption levels (natural gas, propane, fuel oil, etc).

Underway:

- EB4-B-2: As recommended by the City of Bloomington Waste To Energy Taskforce, the City should further investigate the potential of an aerobic digester wastewater-to-energy installation at the Dillman Road Wastewater Treatment Plant. Utilization of biogas as renewable natural gas source for city facilities, large corporate off taker, or community residents should be included in study.
- EB4-B-3: Study the potential of capturing beneficial use of landfilled solid waste stream through waste-to-energy strategies including zero emission plasma gasification, methane capture, and anaerobic digestion.

Not Started:

- EB4-B-1: Work with Vectren (Centerpoint) to establish an option for Renewable Natural Gas sourced from regional sources for residential and commercial customers. Program to include tracking for citywide natural gas reporting for GHG inventories. Achieve 5% use by 2030.

Goal EB 5: Increase financing options for Energy Efficiency and Renewable Energy projects citywide.

Strategy EB 5-A: Promote Equity in Energy and Resource Costs and Ownership

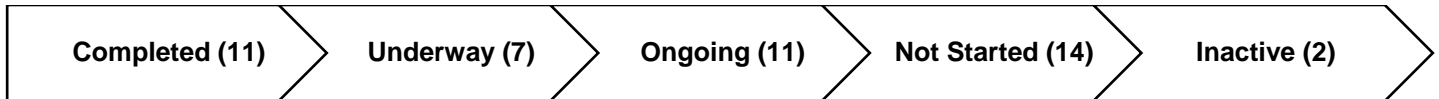
Completed:

- ✓ EB-A-3: Establish a Recover Forward energy fund to invest in energy efficiency and renewable energy projects with a focus on supporting improved equity in Renewable Energy and Energy Efficiency in the community.

Not Started:

- EB5-A-1: Develop partnerships with low-income and supportive housing serving organizations, the County, and the Bloomington Housing Authority to ensure that efficiency and renewable programs, incentives, and practices, meet the specific needs of these populations.
- EB5-A-2: Collaborate with Duke Energy and Vectren (Centerpoint) to increase energy efficiency funding options for families including low-interest financing, on-bill financing, Pay as You Save, and other programs as determined to be most effective.
- EB5-A-4: Collaborate with partners such as Citizens Action Coalition to establish and regularly host utility bill clinics similar to those offered by Minnesota Citizens Utility Board to help residents understand their bills, discuss energy savings options, and hear about rebate/incentive availability and clean energy options.

Transportation



SAP GOAL 3.1: Ensure Five Urban Village Centers meet the criteria established in the Comprehensive Plan by 2023.

Completed:

- ✓ 3.1.a. Establish an inter-departmental team to organize resources and expertise needed to establish Urban Village Centers and identify five priority focus areas that would have maximum community impact and improve social equity.
- ✓ 3.1.b. Incorporate electric vehicle charging stations into sustainable development incentives to influence common infrastructure at Urban Village Centers.
- ✓ 3.1.d. Attract a variety of amenities to locate in or near priority Village Centers.
- ✓ 3.1.e. Implement appropriate multi-modal projects in priority Village Centers, emphasizing those identified in the 2018 Bloomington Transportation Plan; with streets that provide safe access for visitors of all levels of ability.
- ✓ 3.1.f. Locate planned affordable housing within or nearby Village Centers or collaborate to pilot affordable housing in the vicinity.

Ongoing:

- 3.1.c. Establish an infill development program to inventory vacant or underused lots, help ensure infill areas are build-ready when possible, and offer financial incentives to spur development of compact communities and prevent urban sprawl.

SAP GOAL 3.2: Shift the Bloomington Community transportation commute mode split to 60 percent Single Occupancy Vehicle by 2022, compared to a baseline of 62.8 percent in 2016 (as measured in the American Community Survey).

Completed:

- ✓ 3.2.a. Work with businesses to expand bicycle parking and encourage participation in the American League of Cyclists Bicycle Friendly Business program.
- ✓ 3.2.b. Expand the use of marketing efforts for bike share program.
- ✓ 3.2.c. Create a campaign to encourage use of car share programs in lieu of automobile ownership through marketing and incentives.
- ✓ 3.2.d. Develop a program to encourage local businesses and major employers to establish commute trip reduction programs, including incentives for multi-modal transportation and an emergency ride home program for individuals who don't drive to work alone.

SAP GOAL 3.3: Achieve bicycle and pedestrian fatality rates of zero by 2023.

Ongoing:

- 3.3.a. Encourage citizen use of UReport mechanism to report safety issues.
- 3.3.c. Develop schedule for improvements and implement at most dangerous intersections, as identified by the Bloomington Monroe County Metropolitan Planning Organization.

Not Started:

- 3.3.b. Adopt a Vision Zero Policy to signal commitment to zero safety incidents in the community.
- 3.3.d. Implement a 4 to 5 second vehicle traffic signal delay after pedestrian lights indicate “walk” so that pedestrians and cyclists have time to become visible before automobiles are given the green light.

SAP GOAL 3.4: Achieve the Walk Friendly Communities Platinum level designation by 2022.

Ongoing:

- 3.4.c. Implement recommended projects in 2018 Transportation Plan to increase the miles of pedestrian pathways and sidewalks that support multi-modal transportation.

Inactive:

- ◆ 3.4.a. Host a “Walking to Platinum” community summit to identify priority actions and opportunities to enhance walkability in Bloomington.
- ◆ 3.4.b. Focus priorities for infrastructure investment using Walk Scores, Urban Village Center designations and socio-economic data.

SAP GOAL 3.5: Achieve the League of American Bicyclists Platinum Rating by 2022.

Underway:

- ❖ 3.5.a. Develop a new Complete Streets Policy and Design Guidebook

Ongoing:

- 3.5.c. Encourage people walking and bicycling to report lighting issues and maintenance needs and issues (i.e., pothole repair and debris removal) with the UReport app
- 3.5.d. Increase safe and secure bicycle parking through covered parking and indoor options
- 3.5.e. Increase the miles of bicycle facilities, including those recommended in the 2018 Transportation Plan and Transform 2040 Plan

Not Started:

- 3.5.b. Develop and implement a plan for improved lighting on bicycle paths

SAP GOAL 3.6: Increase the use of the Bloomington Transit system 5 percent by 2023, relative to a baseline of 3.3 million transit users in 2017.

Completed:

- ✓ 3.6.b. Assess Walk Score ratings for public transit for Bloomington’s 56 neighborhoods to determine needed route improvements

Ongoing:

- ❖ 3.6.a. Expand “Way-To-Go” user-training program offered by BT and monitor participation rates

Not Started:

- 3.6.c. Create a marketing campaign to minimize first-time user apprehension, such as online “how-to” guides for safe use of public transit, a mentor program to partner first-time transit users with experienced riders, and educational campaigns designed specifically for youth riders.
- 3.6.d. Make all youth tickets on BT free
- 3.6.e. Collaborate with employers to provide transit benefits programs that promote use of public transit

CAP Goal TL 1 Decrease on-road vehicle miles traveled (VMT) by 8% of 2018 values.

Strategy TL 1-B: Increase bicycle/pedestrian commuting from 17% to 18% by creating infrastructure to better encourage alternatives to vehicles.

Ongoing:

- ❖ TL1-B-2: Implement the Multimodal Projects recommendations included in the 2019 City of Bloomington Transportation Plan and BMCMPPO’s Transportation Improvement Program.

Strategy TL 1-C: Increase transit utilization by 10% over 2018 passenger miles by 2030 through infrastructure and frequency investments.

Completed:

- ✓ TL1-C-1: Implement recommendations of the Bloomington Route Optimization Study.

Underway:

- ❖ TL1-C-3: Identify and implement micro-transit options as appropriate to improve access to and accessibility of transit system for portions of the community not yet well served, particularly serving vulnerable populations

Not Started:

- TL1-C-2: Collaborate with Bloomington Transit and/or other providers to establish a Guaranteed Ride Home program. Guaranteed Ride Home is a free reimbursement program for registered commuters. Its purpose is to minimize the chance of being "stuck at work" due to limited transit schedules, like express routes that only travel in one direction at certain times during the day.

Strategy TL 1-D: Increase shared mobility (carpooling) utilization by 3% of work commute trips.

Ongoing:

- TL1-D-1: Outline clear policies for electric bikes, skateboards and scooters on city bike lanes, paths and trails. Establish a communication campaign to effectively reach users.

Not Started:

- TL1-D-2: Establish a subsidy / incentive for EV car sharing services with the goal of increasing car share coverage, particularly among vulnerable populations and those without current vehicle access. Qualifying programs must use plug in EV's or other low and no-carbon vehicle alternatives only.

Strategy TL 1-E: Encourage density and increase housing options and affordability with the goal of increasing gross density by 3% of 2018 values.

Underway:

- ❖ TL1-E-1: Encourage development of accessory dwelling units ("ADU") to create additional legal ADUs compatible with residential neighborhoods. This will add additional housing options for the City's workforce, seniors, families with changing needs, and others for whom ADUs present an affordable housing option.
- ❖ TL1-E-3: Continue assessment and review of Unified Development Ordinance for identification of zoning modifications to encourage appropriate increased density, increased community "walkability," and decreased reliance on automobile use.

Not Started:

- TL1-E-2: Reevaluate minimum parking requirements in the Unified Development Ordinance as listed in Table 04-9: Minimum Vehicle Parking Requirements. Require parking for all modes of travel in project design, as appropriate.

Strategy TL 1-F: Build Complete Streets; goal 10% increase in Complete Street coverage by 2030.

Underway:

- ❖ TL1-F-1: Review, modify, and adopt a revised BMCMPPO Complete Streets Policy to add criteria and review procedures for City funded projects. Include in the review and modification an assessment of national best practices in support of achieving the goals of the Climate Action Plan.

Not Started:

- TL1-F-2: Conduct a Sidewalk and Bike Path Quality Assessment and Master Plan to identify needs to accelerate bike paths, building sidewalks, crosswalks, and other walking infrastructure, particularly in high-need areas and areas serving vulnerable populations. Create an implementation plan establishing annual increases in the total miles of sidewalks, on-road bicycle lanes and multi-use paths

Strategy TL 1-G: Increase pedestrian access and safety.

Completed:

- ✓ TL1-G-2: Create and implement a 5 year transportation funding plan that matches the MPO Metropolitan Transportation Plan and 2019 Transportation Plan.

Ongoing:

- TL1-G-1: Implement improvement recommendations of the 2019 Transit Stop Safety and Accessibility Assessment.

Strategy TL 1-H: Reduce commercial/industrial vehicle use by 8% of 2018 values.

Not Started:

- TL1-H-1: Establish an Electric Vehicle Suitability and Fleet Optimization Study utilizing fleet monitoring technology to assess fleets for alternative fuel suitability as well as identify fleet optimization management options for reduced VMT.

Strategy TL 1-I: Reduce citywide off-road and lawn equipment annual emissions to below 35,000 metric tons.

Underway:

- TL1-I-1 Introduce a policy to replace City off-road and lawn equipment with electric and low carbon fuel alternative options at the time of replacement with traditional internal combustion engine (ICE) as optional requiring proof of need. Establish emissions standards, testing and biofuel preference for any combustion vehicles remaining in the equipment fleet. Encourage County, School District, and Indiana University to develop and implement their own policies.

Strategy TL 2-A: Transition City fleet to electric vehicle and alternative fuels (hybrid/ hybrid electric, plug in hybrid electric).

Underway:

- ❖ TL2-A-1: Introduce a policy to replace City fleet vehicles and buses with electric and hybrid options at the time of replacement, and require emissions standards, testing and biofuel preference for any combustion vehicles remaining in the fleet.

Strategy TL 2-B: Support and encourage electric vehicle and alternative fuel (hybrid/ hybrid electric, plug in hybrid electric) vehicle adoption citywide.

Not Started:

- TL2-B-1: Coordinate with Monroe County and State of Indiana to establish an annual auto registration reporting process to monitor the adoption rate of electric vehicles in the City.
- TL2-B-2: Create an Electric Vehicle (EV) Action Plan to guide access to chargers on City property and citywide, explore alternative technologies like smart cable technology and streetlight/EV charger integration, address barriers to charging for garage-free homes and rental properties, increase use of EVs in car sharing programs, assess options to lower EV and EV charger implementation costs, and recommend EV charging station requirement amendments to the Unified Development Ordinance to support EV plan. Coordinate with ERI or Purdue to establish tracking of EV registration within the community.
- TL2-B-3: Support electric car charging station infrastructure in new commercial and multifamily housing during the initial construction phase by providing information on appropriate conduit and electrical panel considerations as a part of permit application process. Collaborate with electric utility to develop and provide information on utility, local, State, and Federal incentives supporting EV infrastructure.

Waste Management



SAP GOAL 5.1: Divert at least 40 percent of the volume of residential waste collected by City Sanitation from being landfilled by 2023.

Completed:

- ✓ 5.1.b. Provide community support for the annual Hoosier to Hoosier Community Sale.

Underway:

- ❖ 5.1.e. Develop a prioritized plan for expanding participation in the Green Business Network, focusing on increased recycling participation by multi-family and commercial participants.
- ❖ 5.1.g. Create a composting program for both residential and commercial food waste.

Not Started:

- 5.1.a. Conduct a waste characterization study of sample households in Bloomington, with an associated education and outreach campaign for improved recycling techniques and reduced contamination levels.
- 5.1.c. Create a community waste reduction campaign targeted at businesses and citizens.
- 5.1.f. Establish a voluntary program with the construction industry to divert construction waste from the landfill and provide incentives and recognition for participants.
- 5.1.h. Explore the long-term opportunity for a Materials Recovery Facility in Bloomington.

Inactive:

- ♦ 5.1.d. Create and implement a sustainable business certification program that includes opportunities to report recycling rates and offers sectoral guidance for sustainable business practices.

CAP Goal WM 1 Increase landfill solid waste diversion by 30% of 2018 values (26,500 tons of waste reduction).

Strategy WM 1-A: Increase organics diversion by 40% of 2018 values (from 33,900 tons - 38.4% of community mixed waste based on private hauler data - to 20,300).

Underway:

- ❖ WM1-A-1: Create a pilot "Food Scraps Bag" pilot program to test food scraps composting collection across restaurant, commercial and residential customer base where food scrap bags are separated at landfill without separate compost bins and collection vehicles.

Not Started:

- WM1-A-2: Establish a "Towards Zero Waste Certification" program to provide education to food retailers and restaurants on strategies to reduce waste and to promote businesses successfully achieving certification levels. Goal: 20 additional businesses enrolled annually.
- WM1-A-3: Coordinate with local food banks to support edible food donation through coordination with the food bank and donations from City and community partner events. Explore expansion of effort by identifying food retailer and restaurant partners for increased participation and support.

Strategy WM 1-B: Increase recyclables diversion by 35% of 2018 values (from 28,000 tons - 31.7% of community mixed waste based on private hauler data - to 18,200).

Underway:

- ❖ WM1-B-2: Conduct outreach to determine what assistance may be needed to increase recycling, organics collection, and composting.

Not Started:

- WM1-B-1: Ensure that recycling in schools, City buildings, public housing, and public spaces is fully implemented. Conduct a study to determine which facilities do not currently have recycling or could have recycling diversion significantly improved. Coordinate with those facilities to improve recycling participation.

Strategy WM 1-C: Increase diversion of potential recoverables by 33% of 2018 values.

Not Started:

- WM1-C-1: Develop and fund a waste audit and diversion assistance program for businesses. Program to support businesses in establishing tracking and reporting waste streams, identify reduction, diversion, beneficial use opportunities, identification of potential financing sources, and connect businesses with energy audit and other resources in support of full CAP goals. Goal: 60 business waste audits completed annually with businesses engaged in measuring and diverting waste
- WM1-C-2: Conduct a Beneficial Use Study to identify greatest beneficial use opportunities present in current City solid waste streams. Study to estimate potential return on investment and identify job and economic development potential associated with opportunities. Research/identify pilot project opportunities to explore capture of benefit.

Strategy WM 1-D: Support waste reduction through policy and operational refinements.

Not Started:

- WM1-D-1: Establish a Zero Waste policy for City operations that outlines increasing incremental annual waste reduction goals charting a path to Zero Waste. Policy to require that outside users of City facilities also follow Zero Waste policy and will modify the event permit application to require the inclusion of recycling and composting at events.

Strategy WM 1-E: Expanded recycling and organics options for multi-family residents.

Not Started:

- WM1-E-1: Based on results of outreach action WM1-B-2, identify financial and other barriers to recycling and composting in multi-family buildings (e.g., different priorities between property management companies and tenants, lack of knowledge of costs).
- WM1-E-2: Based on results of outreach action WM1-B-2, and action WM1-E-1, explore creation of additional collection drop off sites.
- WM1-E-3: Make a brochure that can be used by landlords to give info to their residents to assure developers and apartment owners help residents know about park locations, bike/ walk/transit info, sustainability goals and resources, trash and recycling opportunities, renewable energy options, incentives, etc. Brochure can be distributed as a part of the Rental Licensing program in addition to other avenues.

Goal WM 2 Educate, motivate, and empower the public to achieve waste reduction and diversion.

Strategy WM 2-A: Create, implement, and promote public awareness and education campaigns.

Ongoing:

- WM2-A-1: Create a comprehensive communication campaign to provide standardized information and communications on waste reduction, recycling, and organics collection options to reach the residential sector.

Water & Wastewater



SAP GOAL 6.1: Reduce Per Capita Daily Water Consumption 20 percent by 2023, relative to a baseline of 96.2 gallons in 2016.

Completed:

- ✓ 6.1.c. Implement advanced metering infrastructure to allow remote meter readings, assist with identification of leaks, and provide customers with more detailed usage data.

Ongoing:

- 6.1.a. Develop an enhanced public education campaign to encourage water conservation, with a focus on peak summer month water use.

Not Started:

- 6.1.b. Develop home leak detection repair program for low-income individuals.
- 6.1.d. Review and update drought contingency policies in the event of future emergencies.
- 6.1.e. Establish rain sensor irrigation rebate program and provide information on appropriate sensor settings.
- 6.1.f. Explore options for implementing water rates to encourage conservation.

SAP GOAL 6.2: Participate in at least two partnerships designed to improve surface water quality in Monroe County by 2023.

Completed:

- ✓ 6.2.a. Pursue Clean Water Act 319 grants for efforts to clean and protect Bloomington area watersheds through collaborations with community partners.
- ✓ 6.2.b. Begin implementation of approved Clean Water Act 319 programs and monitor progress by assessing populations of pollution intolerant invertebrates.

SAP GOAL 6.3: Expand participation in City-led surface water quality programs, compared to a 2019 baseline.

Completed:

- ✓ 6.3.b. Evaluate development of a SMART goal for increasing the participation in City-led surface water quality programs, per the development of a 2019 baseline
- ✓ 6.3.c. Sponsor promotional efforts aimed at increasing participation in these educational programs

SAP GOAL 6.4: Increase the number of green infrastructure features in the Bloomington community to improve stormwater quality, compared to a 2019 baseline.

Completed:

- ✓ 6.4.b. Evaluate the development of a SMART goal for increasing the number of community green infrastructure features, per the development of a 2019 baseline.
- ✓ 6.4.c. Develop an educational program and hands-on demonstrations teaching resident responsibility regarding stormwater management, best practices for stormwater pollution prevention, and financial assistance programs.
- ✓ 6.4.d. Conduct rain garden, stormwater and green infrastructure tours.

Not Started:

- 6.4.a. Establish a 2019 baseline for the number of community green infrastructure features designed to improve stormwater quality by encouraging the community to report green infrastructure on the Green Spots or other relevant website.
- 6.4.e. Offer stormwater billing credits for residents who implement green infrastructure projects.

SAP GOAL 6.5: Decrease the number of impaired water bodies in Monroe County by 2023, compared to a baseline number of 21 in 2016.

Completed:

- ✓ 6.5.a. Expand educational programs to educate residents, businesses and schools about stormwater management responsibilities and issues using the “Only Rain Down the Drain” campaign as reference.
- ✓ 6.5.b. Engage in marketing efforts to increase participation in voluntary stormwater pollution prevention programs.
- ✓ 6.5.c. Develop UReport mechanism for reporting of illicit discharges and promote citizen reporting capability.
- ✓ 6.5.d. Inventory and begin necessary infrastructure improvements to the stormwater system.

SAP GOAL 6.6: Eliminate all chronic sewer overflow locations, up to a certain magnitude storm event (exact metric to be determined by CBU staff).

Completed:

- ✓ 6.6.b. Invest in an Inflow and Infiltration Program to eliminate leaks in sewer mains.
- ✓ 6.6.d. Invest in major infrastructure improvements to increase collection capacity and eliminate locations of chronic overflows, e.g. the College Mall Rd. sewer interceptor.

Ongoing:

- 6.6.a. Continue to be vigilant about grease and sewer inspections to prevent one-time overflow events.

Not Started:

- ◆ 6.6.c. Implement a Clear Water Program, possibly including ordinance changes, to eliminate illicit connections of sump pumps, downspouts and other illegal connections to sanitary sewers.

CAP Goal W 1 Decrease potable water consumption by 3% of 2018 values.

Strategy W 1-A: Promote increased water conservation citywide.

Not Started:

- W1-A-1: Facilitate reduction of water use by top 20 customers through an opt-in program. Offer free technical resources to large institutions and businesses to identify specific opportunities for employees or customers to conserve water and incorporate water efficiency into internal operations.
- W1-A-2: Accelerate the installation of low-flow water fixtures in residential homes and expand the program to commercial businesses. Goal: achieve 100 households and 10 businesses upgraded annually.

Strategy W 1-B: Maintain and update city plans and standards in support water conservation goals.

Not Started:

- W1-B-1 Evaluate the potential to update the City's Green Building Ordinance to include installation of rainwater collection systems at City facilities for graywater uses, and investigate opportunities for graywater reuse at existing and new City facilities and properties. Implement graywater systems identified capable of reducing energy/water demand in other areas (i.e. watering urban tree canopy to reduce heat island effect and air conditioning needs).

CAP Goal W 2 Maintain source and drinking water quality through climate related challenges.

Strategy W 2-A: Improve water quality protections and awareness.

Completed:

- ✓ W2-A-1 Strengthen riparian/stream/wetland protection in local ordinances and regulations where feasible.

CAP Goal W 3 Reduce energy use associated with treating and transporting water and wastewater by 10% of 2018 values.

Strategy W 3-A: Reduce energy use associated with treating and transporting water and wastewater by 10% of 2018 values.

Completed:

- ✓ W3-A-1 Promote measures that reduce the energy needed to heat, treat and transport water, including continued evaluation of new hydroelectric and photovoltaic opportunities.

Strategy W 3-B: Capture and use of wastewater energy potential.

Underway:

- W3-B-1 Research into biogas opportunities at the City's wastewater treatment plant and explore opportunities for renewable natural gas development capacity.

CAP Goal W 4 Mitigate flood hazards and impacts.

Strategy W 4-A: Update design standards and plans for flood mitigation.

Completed:

- ✓ W4-A-2 Perform a flood risk assessment using historical data and future precipitation forecasts to identify areas and critical infrastructure vulnerable to flooding.

Ongoing:

- W4-A-1 Review and update public infrastructure design standards and the City's Stormwater Management Plan to meet climate change projections for Bloomington.

Strategy W 4-B: Increase green infrastructure capacities citywide.

Completed:

- ✓ W4-B-1 Promote native landscaping to help restore and conserve natural habitats and avoid turf grass.
- ✓ W4-B-2 Encourage use of rain gardens at public agency sites as well as commercial and residential sites.
- ✓ W4-B-3 Add stormwater absorption features, such as bioswales, rain gardens, and pervious pavement systems to City-owned space.

Local Food & Agriculture



SAP GOAL 4.1: Increase access to healthy, local food relative to 2019 baseline levels, as defined by a community survey developed in coordination with the City and community partners.

Completed:

- ✓ 4.1.a. Develop an annual community survey designed to evaluate changes in healthy food access over time
- ✓ 4.1.b. Develop a food system asset map of existing groups and efforts related to the functional food system (transportation, etc.) and social support services (restaurants, food banks, etc.)

Underway:

- 4.1.c. Coordinate community efforts to address root causes of food insecurity, healthy food access, productive reuse of vacant land, and economic opportunities and education around the local food system.

Not Started:

- 4.1.d. Design and host quarterly, community Healthy Food Fairs, where people can sign up for SNAP and MCCSC food programs, learn about local food resources, etc., and supplement fairs with a web presence to provide access to all resources in one spot.

- 4.1.e. Evaluate the development of a SMART goal for increasing access to healthy, local food per the results of the 2019 survey and baseline development.
- 4.1.g. Establish a refrigerated food truck program to transport healthy foods to food deserts.
- 4.1.h. Collaborate with convenience stores to expand healthy food offerings.

Inactive

- ♦ 4.1.f. Implement the Stock Healthy, Shop Healthy community program to improve access to healthy, affordable foods by working with small food retailers.
- ♦ 4.1.j. Determine the potential for produce prescription program to enable doctors to prescribe produce for health issues experienced among individuals with low access to healthy, local food, and implement if feasible

SAP GOAL 4.2: Increase the area of food gardens within the community, compared to a 2019 baseline.

Completed:

- ✓ 4.2.a. Establish a 2019 baseline for the number and size of gardens in the community used to grow food for personal consumption or sale, and a mechanism for tracking this data moving forward.
- ✓ 4.2.d. Add 39 raised garden beds at Switchyard Park.

Not Started:

- 4.2.b. Develop a consultation and implementation program to create additional gardens at community locations interested in sponsoring a garden for individuals affiliated with their organization (e.g. churches, neighborhood associations).
- 4.2.c. Evaluate the development of a SMART goal for increasing the area of food gardens in the community, per the results of the 2019 survey and baseline development.
- 4.2.e. Place a garden in all committed elementary schools and other organizations and provide consultation on establishment and maintenance.
- 4.2.f. Collaborate with Bloomington Housing Authority (BHA) to ensure public housing residents have access to sufficient gardening space, tools, and other resources needed to be successful.

Inactive:

- ♦ 4.2.g. Facilitate a guided tour of farms and gardens within city limits to inspire and encourage acceptance of vegetative alternative practices.

SAP GOAL 4.3: Increase the percentage of food that large institutional buyers purchase from local farmers (defined as farmers in the state of Indiana) by 2023, compared to a 2019 baseline.

Completed:

- ✓ 4.3.a. Establish a 2019 baseline measurement of total value and percentage of local food purchases for large institutional buyers, and a mechanism for tracking this information moving forward.
- ✓ 4.3.c. Host a community meeting with institutional buyers and local growers to identify challenges and opportunities for collaboration.
- ✓ 4.3.d. Evaluate the development of a SMART goal for increasing the percentage of food purchased by large institutional buyers from local farmers, per the development of a 2019 baseline.

Not Started:

- 4.3.b. Hire a local full-time value chain coordinator for the City of Bloomington to assist with initiatives to create economic opportunities for farmers and gardeners.
- 4.3.e. Conduct research on locations of nearby processing facilities to determine how shared community resources (i.e. grain mills, mobile abattoirs, food storage, root cellars, refrigeration) are structured in other communities to provide support for small local farmers.

CAP Goal FA 1 Increase food and nutrition security citywide.

Strategy FA 1-A: Address financial food insecurity.

Not Started:

- FA1-A-1 Explore potential of collaborating with low cost produce providers to establish local food markets serving low income, vulnerable, and food insecure communities while addressing retail and commercial food waste.

Strategy FA 1-B: Improve food access.

Underway:

- FA1-B-3 Collaborate with convenience stores and food pantries to incentivize the purchase and distribution of affordable, fresh foods.

Not Started:

- FA1-B-1 Conduct a detailed Food Security Assessment to determine food insecurity conditions within the City, areas with limited access to full service grocery stores and markets (particularly within areas of higher vulnerable populations), identify areas within the City for improvement, and establish detailed strategies to increase food security within City.
- FA1-B-2 Support senior programs that involve both food and community such as volunteering or donating to local charities

CAP Goal FA 2 Increase local agricultural resilience to climate shocks.

Strategy FA 2-A: Provide information and promote climate responsive agriculture practices.

Not Started:

- FA2-A-1 Collaborate with the Monroe County School Corporation, Monroe County, Indiana University, Monroe County Farmer's Association, Indiana Grown, and local organic farmers associations to encourage adoption of strategies to increase soil health and increased carbon sequestration for Croplands and Grazing Lands.

Strategy FA 2-B: Support climate resilient agriculture through City plans and programs.

Not Started:

- FA2-B-1 Collaborate with Monroe County to develop a comprehensive farmland conservation plan that prioritizes food production while taking into consideration other Bloomington greenspace and climate adaptation priorities. The plan could also include specific maps or areas prioritized for farmland conservation or identify those areas most at risk from development or climate change impacts. Program should focus on exploring increased local food-to-table, local food utilization, and local development of cultural food products in support of Bloomington area underserved communities.

CAP Goal FA 3 Increase and stabilize local food market.

Strategy FA 3-A: Increase local food supply.

Not Started:

- FA3-A-1: Fund a Local Food Coordinator position with an annual budget for activities and initiatives to focus on a values-based supply chain for buyers in the City. Working with City officials, this coordinating professional will define the climate values (i.e., local, soil health, animal welfare, fair wages, nutritionally dense, etc.) and define the foodshed or geographic area of food production that the City can influence through policy
- FA3-A-2: Revise zoning ordinances to remove barriers to urban agriculture: yard and rooftop food production, edible landscaping and foraging. Examine and pursue other policy levers to increase food production within the City. Utilize available and appropriate Parks and Recreation lands for urban farming and food production.
- FA3-A-3: Assess, develop, and adopt financial incentives through CDFI and CDBG programs to recruit and support the startup of small and mid-sized food processors in the City.

Strategy FA 3-B: Strengthen demand for local foods.

Not Started:

- FA3-B-1 Pass city policy to procure locally grown and organic foods for events and other organized food catering at city-managed facilities. Coordinate with School District, Indiana University, County, and local hospitals to establish similar locally sourced foods procurement policies. Explore development of group purchasing and logistics agreements to increase efficiency of local farm-to-agency process.

Health & Safety



CAP Goal HS 1: Educate, engage, and empower the public for climate health and safety.

Strategy HS 1-A: Improve training to address risks exacerbated by climate change.

Ongoing:

- HS1-A-1 Ensure public safety staff are properly trained to recognize and respond to physical and behavioral signs of heat-related illness.

Not Started:

- HS1-A-2 Strengthen emergency management capacity to prepare for and respond to the impacts of climate change. The City should prioritize capacity improvements such as training and equipment to address risks exacerbated by climate change - see the City of Bloomington Climate Risk and Vulnerability Assessment 2020. Emergency management should be equipped to address the possibility of multiple emergencies at the same time, such as the combination of extreme heat and power outage.

Strategy HS 1-B: Establish and expand public health communication campaigns.

Not Started:

- HS1-B-1 Develop a climate change public health communication campaign to reach those without access to internet or technology, limited English speakers, and individuals in hard to reach vulnerable populations.
- HS1-B-2 Increase public education and outreach about the basics of climate change and how it will affect the community. Consider inclusion of explanation of exponential rates of change if global tipping points are met.

CAP Goal HS 2: Prepare Bloomington for climate risks and impacts.

Strategy HS 2-A: Strengthen community response capacity and support networks.

Underway:

- ❖ HS2-A-1 Enhance community networks and connections for those who require special attention, such as the elderly, homebound, disabled, isolated, or those likely to be in need of financial assistance during or after extreme weather events (heat, cold and heavy precipitation).

Strategy HS 2-B: Improve equity of climate adaptation measures.

Not Started:

- HS2-B-1 Utilize current science, best practices and updated maps of flooding and flash flooding potential, micro heat island vulnerability, and populations most vulnerable to flooding and heat impacts to help inform decisions and priorities about projects, project approvals, and programs that help to cool the urban environment.

CAP Goal HS 3 Respond to climate risks and impacts.

Strategy HS 3-A: Assist the city's heat, flooding, and storm vulnerable population in preparing for and mitigating climate change impacts.

Not Started:

- HS3-A-1 Seek to reduce exposure to extreme heat and improve stormwater damage by promoting, distributing, or providing installation assistance of shade trees focused on community areas identified as having high heat island impact based on City's Citywide Ground Cover and Heat Island Assessment (see Greenspace section, strategy G 3-A) and/or flash flood prone. Assistance should prioritize vulnerable populations.
- HS3-A-2 Offer on-site and on-line flood assessments and readiness improvements to residents within flood and flash flood prone areas.

- HS3-A-3 Create a flood risk education campaign including development of an online education hub with information, tools and resources.

Strategy HS 3-B: Establish a climate impacts mutual aid program.

Not Started:

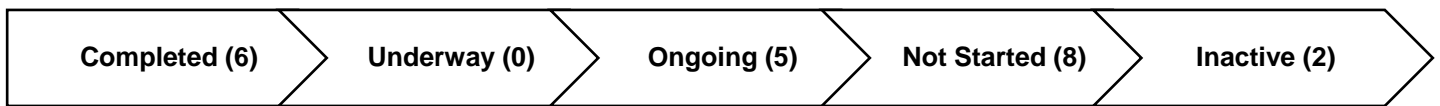
- HS3-B-1 Coordinate with County, State, Indiana University, surrounding communities, non-profit agencies, and utilities to establish a Mutual Aid and Response program. Program to focus on range of current and projected risks and hazards including flooding, extreme weather, storms, power outage, and emergency debris management.

Strategy HS 3-C: Establish and update plans to address climate risks and impacts.

Underway:

- HS3-C-1 Coordinate with County, Indiana University, Red Cross, and utilities to develop a debris management plan to support response to severe storm events and flooding. Explore potential of integrating HAND neighborhood cleanup grants into plan.

Greenspace & Ecosystem Health



GOAL 7.1: Conserve greenspace and enhance 100 acres of habitat in priority areas surrounding Clear Creek, Griffy Lake, and Jackson Creek by 2023.

Completed:

- ✓ 7.1.a. Ensure consideration of smart growth principles in future land use decisions to preserve important green spaces.
- ✓ 7.1.b. Establish a volunteer program to assist with habitat restoration plans on public and private properties.
- ✓ 7.1.d. Create and implement a public education campaign highlighting benefits of biodiversity and habitat connectivity, the National Wildlife Federation certified habitat program, and reporting on the GreenSpots website.

Ongoing:

- 7.1.c. Develop and implement a plan for restoration in each priority area and establish a habitat corridor between Griffy Lake and Clear Creek, pursuing funding from Clean Water Indiana for implementation assistance.

GOAL 7.2: Remove 100 acres of invasive plants on public lands and 100 acres on private lands by 2023.

Completed:

- ✓ 7.2.c. Include requirements for native plants in all future landscaping plans.
- ✓ 7.2.d. Create native plants demonstration and education sites with plant details at Switchyard Park and/or other City parks.
- ✓ 7.2.e. Develop coordinated community campaign encouraging removal of invasive plants, communicating benefits of native plants, and encouraging reporting on the Green Spots website.

Ongoing:

- 7.2.g. Develop and implement prioritized plans for removal/ management of invasive species on public properties, emphasizing Griffy Lake, Leonard Springs, Upper Cascades, Lower Cascades, and Olcott Park.

Not Started:

- 7.2.f. Create an educational campaign on the most effective methods of deer management and deer-resistant plants.

Inactive:

- ♦ 7.2.a. Begin mapping acreage of invasive species removal with Garmin system and report on Green Spots Website to track progress over time.
- ♦ 7.2.b. Develop a public education program to enhance public participation in invasive removal efforts through reporting species via the EDDMap application and the Adopt-an-Acre program.

CAP Goal G 1: Increase quantity and quality of greenspace within the community.

Strategy G 1-A: Establish city greenspace plans integrating findings and goals of Climate Action Plan.

Not Started:

- G1-A-1 Complete a Land Conversion Opportunity Study. Analyze public and private property for unused turf and impervious areas, and create a Ground Cover Conversion Implementation plan by census tract to convert identified areas to native grasslands, wetlands, shrub, and forested areas. Identify incentive opportunities and establish an outreach campaign.

Strategy G 1-B: Improve the connectivity and functionality of greenspaces within the city.

Not Started:

- G1-B-1: Enhance the connectivity of greenbelt and habitat corridors across the community, including identification and improvement of "pollinator corridors" and "wildlife corridors."

CAP Goal G 2: Increase quantity and quality of climate adaptive native habitats.

Strategy G 2-A: Create and expand native habitat policies and infrastructure.

Ongoing:

- G2-A-1 Create a policy requiring the use of native plants in landscaping at City-owned properties unless a data-driven case can be made that such use is not appropriate.

Strategy G 2-B: Increase the use of native species and pollinator restoration areas.

Ongoing:

- G2-B-1 Install roadside climate-adaptive native vegetation that creates effective barriers to prevent drifting of air pollutants to adjacent schools, residences, and parks.

CAP Goal G 3: Increase citywide tree canopy coverage by 3% of 2018 values.

Strategy G 3-A: Establish city plans and policies in support of tree canopy and ground cover goals.

Not Started:

- G3-A-1 Conduct a Citywide Ground Cover and Heat Island Assessment. Assessment should include tree canopy, light-colored impervious surface, dark-colored impervious surface, grassland, and water coverage by census tract. Study should include heat island impact study to identify areas of high heat island contribution and impact. Findings of tree coverage, benefits, heat island impacts, and opportunities should be overlapped with vulnerable population mapping from the City's Climate Vulnerability Assessment.

Strategy G 3-B: Support and empower community partners, businesses and residents in meeting tree canopy goals.

Ongoing:

- G3-B-1 Create additional incentives for tree planting, particularly in prioritized areas within the City as established by the Citywide Ground Cover and Heat Island Assessment.

CAP Goal G 4: Reduce stormwater and micro heat island impacts.

Strategy G 4-A: Reduce impervious surfaces.

Not Started:

- G4-A-1: Create a "Living Streets" policy (Living Streets combines the concepts of complete streets and green streets, and also puts additional focus on quality of life aspects for City residents) to guide current and future street construction, reconstruction, and maintenance projects within the City.

Strategy G 4-B: Increase water uptake capacity of greenspace.

Not Started:

- G4-B-1: Implement a policy requiring a biochar (a carbon-rich product resulting from the pyrolysis of organic residues) soil amendment for all City building and earth working construction sites. Encourage biochar soil amendment use for private sector construction and earth working construction sites. Biochar improves soil carbon sequestration and builds carbon content of topsoil, and improves water retention and permeability characteristics.
- G4-B-2: Implement a policy to require soil profile rebuilding at new tree installations at all City building project sites or compacted soil conditions to reduce erosion and runoff contaminated with fertilizers, increase soil carbon stores and support long-term soil building. Encourage soil profile rebuilding for private sector building project sites or compacted soil conditions.

Climate Economy



CAP Goal CE 1: Build marketplace climate resilience.

Strategy CE 1-A: Evaluate climate risks to businesses.

Not Started:

- CE1-A-1: Collaborate with businesses to identify industry specific economic impacts Bloomington businesses (particularly small businesses and disadvantaged group businesses) face based on the climate change based on risks and hazards identified in this report, the Climate Risk and Vulnerability Assessment, and the City/County emergency management response plan. Collaborate with businesses to identify economic resilience strategies in response to those economic vulnerabilities and conduct outreach to industry groups and public-private partnerships to promote private sector investment addressing them.

Strategy CE 1-B: Accelerate the transition to a carbon free local economy.

Not Started:

- CE1-B-1: Work with local unions and businesses to ensure that apprenticeship program includes solar training.
- CE1-B-2: Explore the development of a job training and entrepreneurial development program similar to Operation Fresh Start. Program to focus on developing green jobs skills within vulnerable and underserved populations in local sustainable agriculture, energy efficiency audits and upgrades, renewable energy, and other skills that support the goals of the CAP.

- CE1-B-3: Explore supporting local low income solar installations through the development of a local SREC market and financing mechanisms to offset solar installation costs for low income residents and small businesses.

CAP Goal CE 2: Attract, create, and support businesses that are committed to sustainability and climate goals.

Strategy CE 2-A: Increase workforce development for the climate economy.

Underway:

- CE2-A-1: Establish a job training and entrepreneurial development program focused on jobs that reduce GHG emissions, or support climate adaptation and community resilience. Explore Operation Fresh Start as a model.

Strategy CE 2-B: Support Climate Economy economic development and new business creation.

Underway:

- CE2-B-2: Implement recommendations from the City of Bloomington Renewable Energy Potentials Study 2020. Prioritize utilization of local workforce and local renewable energy companies.

Not Started:

- CE2-B-1: Establish a Clean Energy business incubator to support the establishment of innovative energy efficiency and renewable energy business models within the community. Explore incorporation with Ivy Tech Community College.
- CE2-B-3: Partner with State and County waste management and local and regional recycling centers to establish a program to encourage and promote new entrepreneurial businesses advancing the use of recycled material feed stock, the utilization of organics composting, and "Circular Economy" concepts which further the goals of the CAP.

CAP Goal CE 3: Develop new mechanisms for financing City climate action plan implementation.

Strategy CE 3-A: Leverage existing financing pathways.

Completed:

- ✓ CE3-A-1: Explore adopting a tax financing mechanism such as a "resilience penny" property tax increase of \$0.01 per \$100 of assessed value and dedicate additional funds for climate mitigation and climate adaptation strategies. Funds may be used directly, or may be used as a repayment source for a bond issue. (ED-LIT)

Not Started:

- CE3-A-2: Establish a policy that designates City Electric and Natural Gas Franchise Fee Income as funding source for Climate Initiatives.

Strategy CE 3-B: Develop new financing pathways.

Completed:

- ✓ CE3-A-4: Adopt a "resilience penny" property tax increase of \$0.01 per \$100 of assessed value and dedicate additional funds for climate mitigation and climate adaptation strategies. Funds may be used directly, or may be used as a repayment source for a bond issue. (ED-LIT)

Not Started:

- CE3-A-5: Explore the potential of developing a "Carbon Impact Fee" similar to the City of Watsonville CA. Additional funds raised to be used for Climate Mitigation and Adaptation implementation. Increased revenue to be used to fund Climate Mitigation and Adaptation implementation with a focus on the actions and strategies which improve equity outcomes.





MEMO FROM COUNCIL OFFICE ON

Appropriation Ordinance 22-04 - To Specially appropriate from the General Fund Expenditures not Otherwise Appropriated to Fund an Emergency Reproductive Health Care Grant Program to Help Address the Impacts of Indiana's Near-Total Abortion Ban

Synopsis

This ordinance appropriates \$100,000 from the General Fund to provide the necessary resources for an Emergency Reproductive Health Care Grant Program administered in 2022 by the Community and Family Resources Department to address the negative impacts of S.B. 1 experienced by residents.

Relevant Materials

- [Appropriation Ordinance 22-04](#)
- Memo from Beth Cate, Corporation Counsel

Summary

[Appropriation Ordinance 22-04](#) proposes an additional appropriation of \$100,000 out of the city's general fund to be used for an emergency reproductive health care grant program to be administered by the Community and Family Resources Department. The administration is proposing this grant program in response to the state's passage of Senate Bill 1 (S.B. 1) earlier this year, which imposes a near-total ban on abortion services in Indiana.

On August 17th, 2022, the Common Council passed [Resolution 22-15](#), which was signed by the Mayor on August 22nd. That resolution expressed the Council's intent to take appropriate steps to protect and advance the rights of individuals in Indiana who can become pregnant and to uphold all persons' rights to privacy, dignity, and self-determination. It also stated that the legislative policy of the City of Bloomington would be to support efforts to protect reproductive rights.

The administration is proposing to fund an emergency grant program in order to support organizations responding to S.B. 1's impact in Bloomington and on residents. This program would take the form of a competitive grant and is described in more detail in the attached staff memo from Corporation Counsel Beth Cate. The specific details and features of the program are still under development, but, as the staff memo notes, would be administered through CFRD in a manner consistent with local, state, and federal law with the goal of making awards no later than December 31, 2022.



City of Bloomington Indiana

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Appropriation Ordinance 22-04 proposes an additional appropriation for 2022 out of the city's general fund for the purposes described above and described in the legislation. [Indiana Code 36-4-7-8](#) provides that the legislative body may, on the recommendation of the city executive, make further or additional appropriations by ordinance, as long as the result does not increase the city's tax levy that was set as part of the annual budgeting process. The additional appropriation requested by Appropriation Ordinance 22-04 should not result in such an increase to the city's tax levy. Please note that a public notice of the proposed additional appropriation has been published pursuant to [Indiana Code 6-1.1-18-5](#) and that the Council must conduct a public hearing (scheduled for October 19, 2022) on the proposal before adoption.

Contact

Beth Cate, Corporation Counsel, 812-349-3426, beth.cate@bloomington.in.gov

Jeff Underwood, Controller, 812-349-3412, underwoj@bloomington.in.gov

APPROPRIATION ORDINANCE 22-04

**TO SPECIALLY APPROPRIATE FROM THE GENERAL FUND EXPENDITURES
NOT OTHERWISE APPROPRIATED TO FUND AN EMERGENCY REPRODUCTIVE
HEALTH CARE GRANT PROGRAM TO HELP ADDRESS THE IMPACTS OF
INDIANA’S NEAR-TOTAL ABORTION BAN**

WHEREAS, on June 24, 2022, the United States Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. ____ (2022), which reversed nearly fifty years of Supreme Court case law recognizing a fundamental federal constitutional right to decide whether to carry a pregnancy to term; and

WHEREAS, prior to the *Dobbs* decision, states were prevented as a matter of federal constitutional law from banning, or imposing an undue burden on access to, abortion before the ability of the fetus to live outside the womb (typically estimated at 22 weeks after the pregnant person’s last menstrual period); and

WHEREAS, following the *Dobbs* decision, the Indiana General Assembly met in special session between July 25 and August 5 to revise Indiana’s abortion laws, and passed Senate Bill 1 (“S.B. 1”), which the Governor signed and which imposes a near-total ban on abortion in the state; and

WHEREAS, S.B. 1 bans all abortions performed in the state from the moment of fertilization except (a) in the first 10 weeks of postfertilization age of the fetus when the pregnancy resulted from rape or incest or (b) when reasonable medical judgment indicates that abortion is needed to prevent death or a serious risk of substantial and irreversible *physical* – but not psychological or emotional – harm to the patient, or to address a fetal anomaly reasonably certain to result in the child’s death within 3 months after live birth; and

WHEREAS, S.B. 1 requires that the few abortions that may still lawfully be performed in the state be performed in either a hospital or a hospital-owned ambulatory outpatient surgical center (ASC), rather than the clinics that have safely performed for decades the overwhelming majority of abortions in the state, and no inherent or documented difference in level or safety of care supports this restriction; and

WHEREAS, abortion services in hospitals and ASCs are severely restricted geographically in Indiana and are substantially more expensive than clinic-based abortion care, rendering access to even the few abortions permitted under S.B. 1 nearly impossible as a practical matter for many residents, especially those residents with low-incomes; and

WHEREAS, the risk of death associated with childbirth is substantially higher than that associated with abortion, and Indiana’s infant and maternal mortality rates are among the worst in the nation; and

WHEREAS, most people seeking an abortion have already had at least one child, and being forced to carry another pregnancy to term can substantially undermine a family’s economic and emotional resources to care for existing children; and

WHEREAS, S.B. 1 requires the state medical licensing board to revoke a physician’s license to practice medicine in the state if the Attorney General proves that the physician knowingly or intentionally performed an abortion not permitted under S.B. 1,

using the lowest burden of proof available under law – a “preponderance of the evidence” or “more likely than not”; and

WHEREAS, S.B. 1 also imposes criminal penalties including imprisonment of one to six years and fines of up to \$10,000, on persons who knowingly or intentionally perform a prohibited abortion; and

WHEREAS, physicians in this state may credibly fear that they will be prosecuted and/or have their licenses revoked for exercising their professional medical judgment if government officials disagree with their assessment of a patient’s condition or otherwise wish to harass health care professionals in order to chill them from providing lawful abortion care to patients; and

WHEREAS, the restrictions and penalties S.B. 1 imposes on access to abortion will undermine the physical, psychological, emotional, and economic well-being of residents experiencing pregnancy or capable of becoming pregnant, as well as their children and families; undermine the exercise of independent medical judgment by reproductive health care professionals and discourage them from practicing in the state, thereby further reducing the availability of reproductive health care services for residents; and likely increase the population of children in the state’s already-strained foster care and adoption systems; and

WHEREAS, in response to the passage of S.B. 1, on August 17, 2022 the Common Council adopted Resolution 22-15, which was signed and approved by the Mayor on August 22, 2022 and indicated that:

(1) denying Hoosiers capable of pregnancy – including our fellow city and county residents – the right to bodily integrity and self-determination will impose tremendous physical, psychological, and economic harms, and

(2) the law will impose those harms disproportionately on people of color, economically disadvantaged people, and all others who face discrimination in the health care system; and

WHEREAS, while a state trial court has temporarily stayed enforcement of S.B. 1, the Attorney General is challenging the stay, which could be lifted at any point by a higher court; and

WHEREAS, during the litigation process the uncertainty surrounding the availability and provision of reproductive health care in Indiana is likely to impose substantial challenges for persons who are pregnant or capable of becoming pregnant, health care professionals, and community organizations that assist residents with access to services surrounding pregnancy and reproductive health; and

WHEREAS, Resolution 22-15 stated the Common Council’s intent to “take such steps as may be appropriate to protect and advance the rights of individuals in Indiana who can become pregnant and to uphold all persons’ rights to privacy, dignity and self-determination”; and

WHEREAS, providing additional funding to community organizations that offer lawful assistance to residents who are experiencing the impacts of S.B. 1, is one such step and a critical response to the reproductive health care crisis that law has created; and

WHEREAS, the Common Council has determined and found that an Emergency Reproductive Health Care Grant Program, administered by and through the Community and Family Resources Department (CFRD) and containing features (application materials, evaluation criteria, funding agreement) similar to other social services grantmaking programs, is an appropriate way to provide this funding to such organizations; and

WHEREAS, the Common Council has determined and found that there are insufficient funds available and provided in the existing departmental budget to fund the Emergency Reproductive Health Care Grant Program and that this additional appropriation will remedy this deficiency; and

WHEREAS, notice of a hearing on said appropriation has been duly given by publication as required by law, and the hearing on said appropriation has been held, at which all taxpayers and other interested persons had an opportunity to appear and express their views as to such appropriation; and

WHEREAS, the Common Council now finds that all conditions precedent to the adoption of an ordinance authorizing an additional appropriation of the City have been compiled with in accordance with Indiana law;

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

SECTION 1: For the expenses of said Emergency Reproductive Health Care Grant Program the following additional sums of money are hereby appropriated and ordered set apart from the General Fund for the purposes herein specified, subject to the laws governing the same:

	AMOUNT REQUESTED
General Fund – Community and Family Resources	
Classification 3 – Services and Charges:	\$ 100,000
Grant Total General Fund (Fund #101)	\$ <u>100,000</u>

SECTION 2: There is hereby appropriated the sum of One Hundred Thousand Dollars (\$100,000) out of the General Fund, for the purpose of making emergency reproductive health care grants in 2022 to community organizations offering lawful assistance to residents of Bloomington experiencing negative impacts from S.B. 1, using features (application materials, evaluation criteria, funding agreement) similar to other social services grantmaking programs. Such appropriation shall be in addition to all appropriations provided for in the existing 2022 budget and shall continue in effect until the completion of the described purposes.

SECTION 3. Each of the Mayor and the Controller is hereby authorized and directed, for and on behalf of the City, to execute and deliver any agreement, certificate or other instrument or take any other action which such officer determines to be necessary or desirable to carry out the intent of this Ordinance, including the filing of a report of an additional appropriation with the Indiana Department of Local Government Finance, which determination shall be conclusively evidenced by such officer's having executed such agreement, certificate or other instrument or having taken such other action, and any such agreement, certificate or other instrument heretofore executed and delivered and any such other action heretofore taken are hereby ratified and approved.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this ____ day of _____, 2022.

SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this ____ day of _____, 2022.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this ____ day of _____, 2022.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance appropriates \$100,000 from the General Fund to provide the necessary resources for an Emergency Reproductive Health Care Grant Program administered in 2022 by the Community and Family Resources Department to address the negative impacts of S.B. 1 experienced by residents.

MEMO

TO:	Members of the City of Bloomington Common Council
CC:	Stephen Lucas, Attorney, Common Council
FROM:	Beth Cate, Corporation Counsel
DATE:	September 28, 2022
RE:	\$100K emergency annual fund to help residents with SB1 impacts

On August 5, 2022 the Indiana General Assembly passed and Governor Holcomb signed into law Senate Bill 1 (“S.B. 1”), which came into effect on September 15. This law bans nearly all abortions in the state. It also requires that any abortions allowed under the law’s very narrow exceptions be performed in hospitals or ambulatory outpatient surgical centers that are hospital-owned, rather than in the clinics that have safely performed for decades the vast majority of abortions in the state.

In response to the passage of S.B. 1, on August 17, 2022 the Common Council adopted Resolution 22-15, which the Mayor signed and approved on August 22, 2022, and which indicated that:

- (1) denying Hoosiers capable of pregnancy – including our fellow city and county residents – the right to bodily integrity and self-determination will impose tremendous physical, psychological, and economic harms, and
- (2) the law will impose those harms disproportionately on people of color, economically disadvantaged people, and all others who face discrimination in the health care system.

Three lawsuits have been filed, one in Monroe County, one in Marion County, and one in the Southern District of Indiana, challenging the legal validity of S.B. 1. The judge hearing the Monroe County case has stayed the enforcement of the law pending a decision on the merits, finding that “there is a reasonable likelihood that this significant restriction of personal autonomy offends the liberty guarantees of the Indiana Constitution and the Plaintiffs will prevail on the merits as to their claim that S.B. 1 violates Article I, §1 of the Indiana Constitution.” *Planned Parenthood Northwest, Hawai’i, Alaska, Indiana, Kentucky, Inc., et al. v. Members of the Medical Licensing Board of Indiana, et al.*, Order Granting Preliminary Injunction, Cause No. 53C06-2208-PL-001756 (Sept. 22, 2022).

The state has already filed an appeal of the stay and is seeking expedited action by the Indiana Supreme Court. If the state prevails S.B. 1 will go back into effect immediately, pending a decision on the merits. A final resolution of the legal validity of S.B. 1 may take years; in the meantime, the uncertainty surrounding the availability and provision of reproductive health care in Indiana is likely to create substantial challenges for persons who are pregnant or capable of becoming pregnant, health care professionals, and community organizations that assist Hoosiers with access to services surrounding pregnancy and reproductive health.

Resolution 22-15 states the Council’s intent to “take such steps as may be appropriate to protect and advance the rights of individuals in Indiana who can become pregnant and to uphold all persons' rights to privacy, dignity and self-determination.” One critical step the City can take is to support organizations responding to the reproductive health care crisis that S.B. 1 has imposed on our community.

Accordingly, the Administration proposes that the City make available to such organizations \$100,000 in emergency grant funds in each of 2022 and 2023, which they can provide to applicants who help meet needs associated with pregnancy and reproductive health.

The \$100,000 for 2023 is reflected in the proposed 2023 budget. A public hearing on the 2023 budget has been noticed for September 28.

To make \$100,000 in grant funds available in 2022, we recommend that the Council approve an additional appropriation of \$100,000 from the General Fund to Classification - 3 Services and Charges within the budget of the Community and Family Resources Department (CFRD). A proposed Additional Appropriation Ordinance is attached. The Director of CFRD will conduct a competitive grant process to award these funds as soon as possible and by no later than December 31, 2022. The process will include application materials, evaluation criteria, and a funding agreement similar to other social services grantmaking programs.

Funds from this additional appropriation will address impacts of S.B. 1 and will be used consistent with valid local, state and federal law.

The Administration will give the public notice of this proposed additional 2022 appropriation by publication as required under Indiana Code 6-1.1-18-5(a) and Indiana Code 5-3-1-2(b). If, following the public hearing, Council approves the proposed additional appropriation, the Controller will promptly file a certified copy with the Department of Local Government Finance (DLGF) as required by state law, IC 6-1.1-18-5(b) and (e). The DLGF has 15 days to determine in writing whether sufficient funds are available to cover the appropriation. The Administration expects an affirmative ruling from the DLGF.

Council review and approval of this proposed additional appropriation ordinance will also satisfy the requirements of Bloomington Municipal Code 2.26.210, which calls for Council review and approval by resolution of expenditures of at least \$100,000.



MEMO FROM COUNCIL OFFICE ON:

Resolution 22-18 - Resolution Proposing an Ordinance Modifying Local Income Tax Allocations in Monroe County and Casting 56.66 Votes in Favor of the Ordinance - Re: Adjusting the Allocations between the Public Safety Answering Point (PSAP) and General Public Safety Purposes Tax Rates Without Changing Other Allocations or the Total Expenditure Tax Rate

Synopsis

Resolution 22-18 proposes an ordinance to the Monroe County Local Income Tax Council that would modify the allocation of tax revenues between two components of the Local Income Tax Expenditure tax rate. This reallocation will affect the public safety answering point (PSAP) and general public safety (Public Safety) allocations authorized under Indiana Code § 6-3.6-6-8, without changing other components of the Expenditure Rate or the Expenditure Rate overall. With adoption of the ordinance, the allocation for the PSAP would decrease to 0.0631% (representing 25.259% of the total), and the allocation for Public Safety would increase to 0.1869% (representing 74.74% of the total). The reallocation follows the recommendation of the Public Safety Local Income Tax Committee of the County Local Income Tax Council and would go into effect on January 1, 2023.

Relevant Materials

- Resolution 22-18
- Worksheet displaying PS LIT Committee recommendations along with distributions from previous years
- 2023 Central Dispatch Budget Worksheet

Summary

Resolution 22-18 proposes an ordinance for adoption by the Monroe County Local Income Tax (MC LIT) Council that would reallocate the tax rate between two components of the Public Safety Local Income Tax in 2023, without changing any other rates and with no net increase to the local income taxes. It would also cast the City's 56.6 of the MC LIT Council's 100 votes in favor of the ordinance.

In particular, the ordinance would adjust the allocation for the Unified Central Dispatch, otherwise referred to in statute as the Public Safety Answering Point (PSAP), from 0.0807% to 0.0631% and adjust the allocation for general public safety purposes (Public Safety) from 0.1693% to 0.1869%. The total Public Safety Income Tax rate would remain at 0.25% and the Local Income Tax Rate would remain at 2.035%.



On August 9, 2022, the PS LIT Committee made the following recommendations to the members of the MC LIT Council regarding PS LIT rates and revenues in 2023:

- 1) accept the recommendation of the Policy Board regarding the PSAP budget and resulting tax rate for the operation of the Unified Central Dispatch; and
- 2) acknowledge the allocation of the remaining tax rate and revenues by operation of law in accordance with IC 6-3.6-6-8(c).

Please note that this matter is scheduled for a public hearing at a Special Session of the Council on Wednesday, October 19th at 6:30 p.m.

Context and History of Public Safety Local Income Tax (PS LIT)

In 2015, the General Assembly consolidated local income taxes and, among other things, enabled localities to impose a new Public Safety Local Income Tax (PS LIT). Public safety is defined by statute and refers to the following:

1. a police and law enforcement system to preserve public peace and order;
2. a firefighting and fire prevention system;
3. emergency ambulance services;
4. emergency medical services;
5. emergency action (as defined by IC 13-11-2-65, which is dealing with the uncontrolled release of a hazardous material);
6. a probation department of a court;
7. confinement, supervision, services under a community corrections program;
8. a juvenile detention facility under IC 31-31-8;
9. a juvenile detention center under IC 31-31-9;
10. a county jail;
11. a communications system, an enhanced emergency telephone system, a PSAP, that is part of the statewide 911 system, or the statewide 911 system;
12. medical and health expenses for jailed inmates or other confined persons;
13. pension payments for certain public safety personnel (including police and fire); and
14. law enforcement training.

In 2016, Monroe County authorized a PS LIT with an additional 0.25% in the LIT rate. This additional tax rate was then allocated between a tax rate percentage for Public Safety Answering Point (PSAP) (IC 6-3.6-2-13.5; IC 36-8-16.7-20), which now provides primary funding for the Unified Central Dispatch, along with E911 revenues, and a tax rate percentage for other public safety purposes (General Purpose Public Safety defined in IC 6-3.6-2-14). The Bloomington Common Council's deliberations on [Resolution 16-05](#) and the initial adoption of the PS LIT are contained in the Council's [June 1, 2016 Regular Session Minutes](#).



In addition, and as a result of a change in state law, the legislation depicted all of the local income taxes and affirmed the rates existing prior to adoption of the ordinances ([Res 16-16](#)). Since that time, the PSAP and General Public Purpose Public Safety LIT have continued, with the allocation of rates between them changing from year to year, following the recommendation of the PS LIT Committee and adoption by the MC LIT Council ([Res 17-37](#), [Res 18-16](#), [Res 19-14](#), [Res 20-14](#), [Res 21-35](#)).

In May 2022, an increase to the total expenditure tax rate was proposed and adopted via [Resolution 22-09](#), which allocated the additional revenue to economic development at a rate of .69%. Because the MC LIT Council-imposed Economic Development Income Tax went into effect October 1, 2022, the total local income tax is now 2.035% instead of 1.345%.

The following table lists the tax rates in effect in 2022 (as depicted in the MC LIT Council’s October 2021 and May 2022 Ordinances) and highlights the proposed changes for 2023:

Local Income Tax Type		Existing 2022 Rate		Proposed Changes in 2023
Property Tax Relief Rate (Indiana Code 6-3.6-5)		0.0518%		No Change
Total Expenditure Rate (Indiana Code 6-3.6-6)		1.8882% (Oct 1, 2022)		No Change
Components of Total Expenditure Rate	Correctional and rehabilitation Facilities (IC § 6-3.6-6-2.7)		N/A	0.000%
	Public Safety		0.1693%	0.1869%
	Public Safety Answering Point (PSAP)		0.0807%	0.0631%
	Economic Development	0.000% (Sep 30)	0.69% (Oct 1)	No Change
	Certified Shares		0.9482%	No Change
Special Purpose Rate (Juvenile Local Income Tax) (Indiana Code 6-3.6-5)		0.095%		No Change
Total:		2.035% (Oct 1, 2022)		No Change

Public Safety Local Income Tax – Components and Distribution

For purposes of explaining the changes proposed in [Res 22-18](#), this memo will focus on the Public Safety and PSAP components of the Expenditure Rates set forth in the above table.

Pursuant to Indiana Code (IC 6-3.6-6-8) the revenue associated with these rates are directed in a specified order and manner:

- First, any of the rate dedicated to PSAP is directed exclusively toward this purpose;
- Second, any amounts specified by resolution of the MC LIT Council under Indiana Code § 6-3.6-6-8(c) are directed to Qualifying Service Providers who apply for funds before July 1st (There are no funds directed to Qualifying Services Providers for 2022); and



City of Bloomington Indiana

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- Third, the remainder of these revenues are directed via the certified distribution to taxing units who are members of the Monroe County Local Income Tax Council as set forth under Indiana Code § 6-3.6-6-8(b).

PS LIT Committee Recommendations

The PS LIT Committee met on June 16, 2022, July 19, 2022, and August 9, 2022, and made the following funding recommendations:

1. \$2,585,000 for Unified Central Dispatch; and
2. The remainder of the public safety LIT revenue (est. \$7,648,927) to be distributed as certified shares to the four eligible taxing units.

Contact

Council Administrator/Attorney Stephen Lucas, 812-349-3409, lucass@bloomington.in.gov

RESOLUTION 22-18

**RESOLUTION PROPOSING AN ORDINANCE MODIFYING
LOCAL INCOME TAX ALLOCATIONS IN MONROE COUNTY AND
CASTING 56.66 VOTES IN FAVOR OF THE ORDINANCE**

- Re: Adjusting the Allocations between the Public Safety Answering Point (PSAP)
and General Public Safety Purposes Tax Rates
Without Changing Other Allocations or the Total Expenditure Tax Rate**

WHEREAS, the Monroe County (“County”) Local Income Tax Council previously imposed a County Option Income Tax in the County (under Indiana Code 6-3.5) which, pursuant to Indiana Code 6-3.6, was transformed into a Local Income Tax; and

WHEREAS, pursuant to Indiana Code § 6-3.6-3-1, having previously adopted the County Option Income Tax in the County under Indiana Code 6-3.5-6, the County Local Income Tax Council continues to serve as the adopting body for the Local Income Tax and with the same membership; and

WHEREAS, Indiana Code 6-3.6 permits Local Income Taxes to be imposed for various specified purposes, including one for public safety (“Public Safety Income Tax”) and, pursuant to Indiana Code §6-3.6-6-8, a portion of the Public Safety Income Tax may be used to fund a public safety answering point (“PSAP”) and the remainder may be used for other public safety (General Public Safety) purposes as defined in Indiana Code §6-3.6-2-14; and

WHEREAS, pursuant to Indiana Code § 6-3.6-11-4, the tax revenues for PSAP shall be allocated and distributed to the PSAP before allocation and distribution to any taxing units; and

WHEREAS, in September 2016, after notice and a hearing and in support of public safety for all county residents, the Monroe County Local Income Tax Council adopted an ordinance that increased the local income tax expenditure rate by twenty five hundredths percent (0.25%) (“2016 Increased Expenditure Rate”) from nine thousand four hundred eighty two ten-thousandths percent (0.9482%) (“Previous Expenditure Rate”) to one and one thousand nine hundred eighty two ten-thousandths percent (1.1982%) pursuant to Indiana Code § 6-3.6-6-2; and

WHEREAS, upon adoption of that ordinance, the total Local Income Tax Rate rose to one and three hundred forty five thousandths percent (1.345%), with the 2016 Increased Expenditure Rate allocated to and used for public safety purposes pursuant to Indiana Code § 6-3.6-6-8 (“Public Safety Income Tax”), and the Previous Expenditure Rate remaining allocated to Certified Shares pursuant to Indiana Code § 6-3.6-6-10; and

WHEREAS, on May 4, 2022, after notice and a hearing, the Monroe County Local Income Tax Council adopted an ordinance that imposed an Economic Development Income Tax (“EDIT”) at a rate of sixty-nine hundredths percent (0.69%) pursuant to Indiana Code § 6-3.6-6-4, which increased the total Local Income Tax Rate from one and three hundred forty five thousandths percent (1.345%) to two and thirty-five thousandths percent (2.035%), to take effect October 1, 2022; and

WHEREAS, the Public Safety Income Tax generated by the Expenditure Rate is composed of two allocations, one of which directs tax revenues to PSAP and the other of which directs tax revenues to General Public Safety purposes; and

WHEREAS, along with authorizing the 2016 Increased Expenditure rate, the September 2016 ordinance also divided this rate and associated revenue between these two purposes for the fiscal year 2017, and, these rates were subsequently modified by the County Local Income Tax Council for fiscal year 2018, 2019, 2020, 2021, and 2022 with the adoption of ordinances in October 2017, October 2018, September 2019, October 2020, and October 2021; and

WHEREAS, the allocations made by ordinance in September 2016, as modified by the ordinances in October 2017, October 2018, September 2019, October 2020, October 2021, and May 2022 are depicted in the following table and, pursuant to Indiana Code § 6-3.6-6-4, continue in effect until rescinded or modified:

Local Income Tax Type		Existing Rate	
Property Tax Relief Rate (Indiana Code 6-3.6-5)		0.0518%	
Total Expenditure Rate (Indiana Code 6-3.6-6)		1.8882%	
<i>Components of Total Expenditure Rate</i>	Public Safety		0.1693%
	Public Safety Answering Point		0.0807%
	Economic Development		0.69%
	Certified Shares		0.9482%
Special Purpose Rate (Juvenile Local Income Tax) (Indiana Code 6-3.6-5)		0.095%	
Total:		2.035%	

WHEREAS, in 2018, with enactment of P.L. 184-2018, a Correctional Facility Rate as set forth in IC § 6-3.6-6-2.7, was added as another component of the Total Expenditure Rate, but is not included in the above table because the Monroe County Council, as fiscal body for Monroe County, serves as the adopting body per IC § 6-3.6-3-1 and, it should be noted, has not adopted this rate; and

WHEREAS, Indiana Code § 6-3.6-6-8(c) requires the Monroe County Local Income Tax Council to review, but not necessarily fund, timely applications submitted for a distribution of Public Safety Income Tax revenues from fire departments, volunteer fire departments, and emergency medical services providers that: (1) provide fire protection or emergency medical services within Monroe County and (2) are operated by or serve a political subdivision that is not otherwise entitled to a distribution of Public Safety Income Tax (“Qualifying Service Providers”); and

WHEREAS, pursuant to Indiana Code § 6-3.6-6-8(c), any specified amounts of Public Safety Income Tax revenues directed by resolution of the Monroe County Local Income Tax Council to the aforementioned Qualifying Service Providers shall be distributed before the remainder of public safety revenue is directed by certified distribution to the jurisdictions represented on the Monroe County Local Income Tax Council; and

WHEREAS, in June, July, and August of this year, representatives from the members of the County Local Income Tax Council convened as the Public Safety Local Income Tax (PS LIT) Committee (of the County Local Income Tax Council) to review PS LIT expenditures and estimated revenues, review any applications for funding by Qualifying Service Providers under the above statutory provision, and consider recommendations from the Dispatch Policy Board regarding the 2023 Budget for Unified Central Dispatch (which is primarily funded by the local PSAP); and

WHEREAS, one application for funding was submitted from Qualifying Service Providers under IC 6-3.6-6-8(c), which did not receive a recommendation for funding from the PS LIT Committee and was not funded by the Monroe County Local Income Tax Council; and

WHEREAS, at its meeting on August 9, 2022, the PS LIT Committee made the following recommendations to the County Local Income Tax Council regarding PS LIT rates and revenues in 2023: 1) accept the recommendation of the Dispatch Policy Board regarding the PSAP allocation for the operation of the Unified Central Dispatch; and, 2) acknowledge the allocation of the remaining tax rate and revenues by operation of law in accordance with the aforementioned statute; and

WHEREAS, the Bloomington Common Council is a member of the County Local Income Tax Council, was represented on the PS LIT Committee, and is adopting this resolution in order to propose to the other members of the County Local Income Tax Council the following ordinance that reflects the recommendations of the PS LIT

Committee and, in so doing, also to cast its fifty-six and sixty-six hundredths (56.66) votes as a member of the Monroe County Local Income Tax Council in favor of this proposed ordinance; and

WHEREAS, pursuant to Indiana Code § 6-3.6-3-10, which only permits a local income tax council to adopt one ordinance adopting, increasing, decreasing, or rescinding a tax per year, and Indiana Code § 6-3.6-3-4, which limits changing a tax rate to once per year, the Monroe County Local Income Tax Council is not adopting, increasing, decreasing, or rescinding a tax, nor is it changing a tax rate, but it is modifying the allocation of a previously imposed Public Safety Tax (at an unchanging percentage of twenty-five hundredths percent (0.25%)) between general public safety and the PSAP; and

WHEREAS, pursuant to Indiana Code § 6-3.6-3-7, before a member of the Monroe County Local Income Tax Council may propose an ordinance or vote on a proposed ordinance, the member must hold a public hearing on the proposed ordinance and: 1) provide notice to the public with the time and place where the public meeting will be held in accordance with Indiana Code 5-3-1 and include the proposed ordinance or resolution to propose an ordinance in that notice; and 2) provide a copy of that notice to all the taxing units in the county at least ten days in advance of the hearing; and

WHEREAS, the Bloomington Common Council has provided notice in accordance with Indiana Code 5-3-1 and Indiana Code § 6-3.6-3-7.

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

SECTION 1. A need now exists in Monroe County, Indiana, to modify the allocation of the previously imposed expenditure rate under Indiana Code 6-3.6-6. As a member of the Monroe County Local Income Tax Council, the Common Council of the City of Bloomington is adopting this resolution in order to propose the ordinance below to the other members of the Monroe County Local Income Tax Council.

**ORDINANCE OF THE MONROE COUNTY LOCAL INCOME
TAX COUNCIL MODIFYING LOCAL INCOME TAX
ALLOCATIONS IN MONROE COUNTY**

- Re: Adjusting the Allocations between the Public Safety Answering Point (PSAP) and General Public Safety Purpose Tax Rates without Changing Other Allocations or the Total Expenditure Tax Rate**

BE IT ORDAINED BY THE LOCAL INCOME TAX COUNCIL OF MONROE COUNTY, INDIANA, THAT:

1. A need now exists to modify the allocation of the portion of the Local Income Tax used for public safety purposes (“Public Safety Income Tax”). At present, the Public Safety Income Tax (0.25%) is divided between the Public Safety Answering Point (0.0807%) and General Public Safety (0.1693%).

2. For the avoidance of doubt, no change to the other existing tax rates is intended or authorized by this Ordinance. Those other existing tax rates include: (1) the special purpose tax rate imposed by the Monroe County Council under Indiana Code § 6-3.6-7-16 (“Juvenile Local Income Tax”) (which is currently ninety five one thousandths percent [0.095%]); (2) the property tax rate under Indiana Code 6-3.6-5 (“Property Tax Relief Rate”) (which is currently five hundred eighteen ten thousandths percent [0.0518%]); (3) the tax rate under Indiana Code § 6-3.6-6-10 (Certified Shares) (which is currently nine thousand four hundred and eighty two ten thousandths percent [0.9482%]); (4) the Economic Development Income Tax Rate (“EDIT”) imposed under Indiana Code § 6-3.6-6-4 (which is currently sixty-nine hundredths percent [0.69%] as of October 1, 2022); and (5) the total tax rate under Indiana Code 6-3.6-6 (“Expenditure Tax Rate”) (which is currently one and eighty-eight hundred and eighty-two ten thousandths percent [1.8882%]).

3. In order to support public safety for all county residents, the Monroe County Local Income Tax Council hereby reallocates the Public Safety Income Tax as follows: The Public Safety Answering Point Rate, which is directed to the public safety answering point, shall be decreased from 0.0807% to 0.0631% and the General Public Safety Rate, which shall be used for other public safety purposes under Indiana Code § 6-3.6-6-8, shall be increased from 0.1693% to 0.1869%. The total Public Safety Income Tax shall remain at 0.25% and the total Local Income Tax Rate shall remain at 2.035%.

4. As a result of the actions in this Ordinance, the Public Safety Income Tax will be divided as follows, beginning on January 1, 2023:

Allocation Rate Category	Existing Rate	Proposed Rate
Public Safety Rate (IC 6-3.6-6)	0.1693%	0.1869%
Local Income Tax Type	Existing Rate	Proposed Rate
Public Safety Answering Point Rate	0.0807%	0.0631%

Further, pursuant to Indiana Code § 6-3.6-6-8, the revenue associated with these rates shall be directed in the following manner. First, these revenues will be directed to the PSAP. Second, the remainder of these revenues shall be directed via the certified distribution to taxing units who are members of the Monroe County Local Income Tax Council as set forth under Indiana Code § 6-3.6-6-8(b).

5. For further avoidance of doubt, no other change in the ordinance adopted in September 2016 is intended or authorized. In that regard, the ordinance affirms and clarifies that, pursuant to Indiana Code § 6-3.6-6-4, the Monroe County Local Income Tax Council continues to retain the right to change the allocation of the existing taxes comprised within the expenditure rate on an annual basis. At this time in Monroe County, the components of the expenditure rate that may be affected by this allocation include the PSAP rate, Public Safety rate, Economic Development rate and Certified Shares rate. Any future change to the allocation of the applicable local income taxes mentioned above must be done via an ordinance of the Monroe County Local Income Tax Council in a manner and with an effective date as set forth Indiana Code § 6-3.6-3-3, as may be amended by the Indiana General Assembly from time to time. Currently, the effective date for an ordinance changing the allocation of the local income tax adopted after August 31st and before November 1st of the current year is January 1st of the following year.

6. This ordinance shall take effect upon passage and in accordance with Indiana Code 6-3.6-3.

7. The Monroe County Auditor shall, pursuant to Indiana Code § 6-3.6-3-5, record all votes taken on this ordinance and not more than ten (10) days after the vote, send a certified copy of the results to the commissioners of the department of state revenue and department of local government finance in an electronic format approved by the commissioner of the department of local government finance.

8. Any provision herein contained which is found by a court of competent jurisdiction to be unlawful or which by operation shall be inapplicable, shall be deemed omitted but the rest and remainder of this legislation, to the extent feasible, shall remain in full force and effect.

SECTION 2. BE IT FURTHER RESOLVED that by adopting this resolution, the City of Bloomington Common Council is casting all of its fifty-six and sixty-six hundredths (56.66) votes as a member of the Monroe County Local Income Tax Council in favor of the proposed ordinance.

SECTION 3. BE IT FURTHER RESOLVED that a public hearing was held on this resolution and the proposed ordinance at a Regular Session on Wednesday, October 19, 2022. Proper notice of the public hearing was provided in accordance with IC 5-3-1 and IC 6-3.6-3-7.

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

Duly adopted by the following vote of the members of said Common Council of the City of Bloomington, Monroe County, on this _____ day of _____, 2022.

<u>Name</u>	<u>(circle one)</u>			<u>Signature</u>
Susan Sandberg, President	Aye	Nay	Abstain	_____
Sue Sgambelluri, Vice President	Aye	Nay	Abstain	_____
Dave Rollo, Parliamentarian	Aye	Nay	Abstain	_____
Jim Sims	Aye	Nay	Abstain	_____
Matt Flaherty	Aye	Nay	Abstain	_____
Kate Rosenbarger	Aye	Nay	Abstain	_____
Isabel Piedmont-Smith	Aye	Nay	Abstain	_____
Stephen Volan	Aye	Nay	Abstain	_____
Ron Smith	Aye	Nay	Abstain	_____

ATTEST:

<u>Name/Office</u>	<u>Date</u>	<u>Signature</u>
NICOLE BOLDEN, CLERK, City of Bloomington	_____	_____

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana upon this _____ day of _____, 2022.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2022.

JOHN HAMILTON, Mayor
City of Bloomington

Attest: _____, Fiscal Officer

SYNOPSIS

Resolution 22-18 proposes an ordinance to the Monroe County Local Income Tax Council that would modify the allocation of tax revenues between two components of the Local Income Tax Expenditure tax rate. This reallocation will affect the public safety answering point (PSAP) and general public safety (Public Safety) allocations authorized under Indiana Code § 6-3.6-6-8, without changing other components of the Expenditure Rate or the Expenditure Rate overall. With adoption of the ordinance, the allocation for the PSAP would decrease to 0.0631% (representing 25.259% of the total), and the allocation for Public Safety would increase to 0.1869% (representing 74.74% of the total). The reallocation follows the recommendation of the Public Safety Local Income Tax Committee of the County Local Income Tax Council and would go into effect on January 1, 2023.

PS LIT
Distribution for 2019 - 2023

Figures from August 9, 2022 Meeting of
PS LIT Committee

		2019			2020			2021			2022			2023			
		Revenue	Tax Rate	% of Revenue	Revenue	Tax Rate	% of revenue	Revenue	Tax Rate	% of revenue	Revenue*	Tax Rate	% of revenue	Revenue estimate	Tax Rate	% of revenue	
	Public Safety Revenue (Tax Rate) = Total of 1) + 2) + 3)	8,240,880	0.250%	100%	8,654,679	0.250%	100%	9,459,193	0.250%	100%	9,025,682	0.250%	100%	10,233,927	0.250%	100%	2023 Estimated Revenue - Per DLGF Report
PSAP	1) PSAP Revenue (Allocation)	3,019,458	0.0916%	36.64%	2,263,238	0.065%	26.150%	2,247,490	0.059%	23.760%	2,913,490	0.081%	32.280%	2,585,000	0.063%	25.259%	PS LIT portion of proposed 2023 Dispatch Budget
PSAP Unappropriated					826												
GENERAL PURPOSE PUBLIC SAFETY	2) Allocation to Qualified Providers	360,000	0.0109%	4.37%	389,461	0.011%	4.50%	0		0.00%	0		0.00%	0		0.00%	
	3) Public Safety Certified Shares	4,861,422	0.1475%	58.99%	6,001,154	0.173%	69.34%	7,211,703	0.191%	76.240%	6,112,192	0.169%	67.72%	7,648,927	0.187%	74.74%	
	Monroe County	2,247,166	46.22%		2,757,687	45.95%		3,308,689	45.88%		2,805,855	45.91%		3,506,268	45.84%		Note: these estimated percentages apply to the Public Safety Certified Shares
	City of Bloomington	2,473,382	50.88%		3,071,734	51.19%		3,696,214	51.25%		3,130,985	51.23%		3,924,664	51.31%		
	Town of Ellettsville	140,013	2.88%		170,688	2.84%		205,552	2.85%		174,401	2.85%		217,230	2.84%		
	Town of Stinesville	861	0.02%		1,046	0.02%		1,246	0.02%		951	0.02%		1,322	0.02%		

*Does not include 2022 Supplemental Distribution

2023 Proposed Budget

Major Category	Account Number	Minor Category
Personnel Services	51120	salaries temporary
	51110	Salaries and Wages - Regular
	51130	Salaries and Wages- Overtime
	51210	FICA
	51220	PERF
	51230	Health and Life Insurance
Total: Personnel Services		
Supplies		
	52110	Office Supplies
	52210	Institutional Supplies
	52310	Building Materials and Supplies
	52340	Other Repairs and Maintenance
	52420	Other Supplies
Total: Supplies		
Other Services and Charges		
	53140	Exterminator Services
	53150	Communications Contract (E911)
	53160	Instruction (E911)
	53210	Telephone
	53410	liability insurance
	53510	Electrical Services
	53530	Water and Sewer
	53610	Building Repairs
		Janitorial (new line)
	53630	Machinery and Equipment Repairs
	53990	Other Services and Charges
Total: Other Services and Charges		
Capital Outlays		
	54510	Other Capital Outlays
Total: Capital Outlays		
Grand Total		

Combined

Operation Budget

COB Proposed
2,289,477
197,000
190,215
353,080
645,000
3,674,772
1,700
2,500
2,000
1,200
22,000
29,400
1,050
650,000
27,000
2,620
15,000
41,500
1,050
26,000
6,000
6,800
4,000
781,020
444,780
444,780
4,929,972

BUDGET BY FUND

CITY PSAP LIT*	CITY RESERVE**	E911	County PSAP LIT RESERVE**
1,096,285	766,571		426,621
	197,000		
190,215			
353,080			
645,000			
2,284,580	963,571	0	426,621
1,700			
2,500			
2,000			
1,200			
22,000			
29,400	0	0	0
1,050			
75,000		575,000	
7,000		20,000	
2,620			
15,000			
41,500			
1,050			
26,000			
6,000			
6,800			
4,000			
186,020	0	595,000	0
	394,780	50,000	
0	394,780	50,000	0
2,500,000	1,358,351	645,000	426,621

Current Reserves

Net Reserves

^----->

*PSAP LIT rate calculated to raise \$2,500,000

**Pursuant to Sections 2 and 3 of the Central Emergency Dispatch Interlocal Cooperation Agreement between the City of Bloomington and Monroe County, in the event that Dispatch Funds are insufficient to cover Dispatch's expenses, the fiscal bodies for each entity authorize the use of Reserve Funds as detailed above.

Note: the highlighted amount does not reflect the additional \$85,000 proposed for Category 1 in the Dispatch budget. See next page for proposed totals for each category.

2023 Proposed Budget

Major Category	Account Number	Minor Category
Total: Personnel Services		
Total: Supplies		
Total: Other Services and Charges		
Total: Capital Outlays		
Grand Total		

Combined

Operation Budget

COB Proposed
3,759,772
29,400
781,020
444,780
5,014,972

Current Reserves

Net Reserves

BUDGET BY FUND

CITY PSAP LIT*	CITY RESERVE**	E911	County PSAP LIT RESERVE**
2,369,580	963,571	0	426,621
29,400	0	0	0
186,020	0	595,000	0
0	394,780	50,000	0
2,585,000	1,358,351	645,000	426,621

1,358,351

1,290,000

984,000

0

645,000

557,379



MEMO FROM COUNCIL OFFICE ON:

Ordinance 22-28 – Final Approval to Issue Economic Development Revenue Notes and Lend the Proceeds for the Renovation of Affordable Housing - Re: Country View Apartments, 2500 S. Rockport Road, Bloomington, Indiana (Country View Housing, LP, Petitioner)

Synopsis

This Ordinance authorizes the City of Bloomington to issue economic development revenue notes pursuant to Indiana Code Chapters 36-7-11.9 and 36-7-12 in an amount not to exceed an aggregate principal amount of Fifteen Million Dollars (\$15,000,000.00). The City would lend the proceeds from the economic development revenue notes to Country View Housing, LP, an Indiana limited partnership and its affiliated partners or limited liability company for the acquisition, renovation, improvement and equipping of the affordable housing development known as the Country View Apartments at 2500 S. Rockport Road in Bloomington. Country View Housing, LP, and its partners would fully indemnify the City and take full responsibility for payment of the note. The City would not bear liability, ongoing obligation, or cost related to the notes—the City would act 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. The renovations to the Country View Apartments are expected to cost approximately \$42,000 per unit including new kitchen cabinets, counter tops, appliances, garbage disposals, kitchen sinks and faucets, new bathroom cabinets, counter tops, sinks, toilets, mirrors and towel bars, new interior doors, new blinds, subfloor repair and mold remediation, new lights throughout the units, new flooring, asphalt and concrete repairs, trash compactor updates, gutter, downspouts, soffit and fascia repair, sanitary main drain and sump pump work, new exterior doors, freeze boards and additional units will be converted to fully accessible ADA compliant units.

Relevant Materials

- Ordinance 22-28
- Staff Memo from Larry Allen, Assistant City Attorney
- Presentation slides
- Economic Development Commission Resolution (forthcoming)
- Financing Documents (in substantially final form), including:
 - Funding Loan Agreement
 - Project Loan Agreement
 - Regulatory Agreement



Summary

Ordinance 22-28 approves the issuance of economic development (ED) bonds in order to provide financing for the renovation of affordable housing at Country View Apartments, located at 2500 S. Rockport Road. This ordinance follows from the Council's inducement resolution, [Resolution 22-01](#), which was adopted in January, 2022 (materials for this resolution area available in the [January 5, 2022, Legislative Packet](#)).

Resolution 22-01 granted preliminary approval for the City to issue bonds for the Country View Housing project. One purpose for the resolution was to induce Country View Housing, LP, (an entity further described in the staff memo and presentation, and referred to as "Borrower") to proceed with the project. The resolution also allowed the Borrower to pursue tax credits for the project with the Indiana Housing & Community Development Authority (IHCDA).

For context, the City previously supported similar projects at the Crestmont Community through a similar mechanism with [Resolution 21-05](#) and [Ordinance 21-33](#). Background materials for these past pieces of legislation can be found in the [February 3, 2021, Legislative Packet](#) and the [September 1, 2021, Legislative Packet](#) respectively.

The Country View Housing project will be financed by the issuance of revenue notes, with the City acting as a conduit for the financing. While stated in the ordinance and in the supporting materials, it bears repeating that the notes would not become a debt or financial obligation of the City and would not affect the City's debt limits.

Ordinance 22-28 does the following:

- recites this financing arrangement and the City's authority to proceed under IC 36-7-11.9 and 12;
- states that the notes shall be issued in an aggregate principal amount not to exceed \$15,000,000 at a fixed or initial variable interest rate of not more than 12% per annum with a maturity date of no later than 40 years from the date of issuance (with optional early redemption);
- approves the Financing Documents (which are included and are in substantially final form) and states that two copies of the documents are on file with the Clerk for public inspection;
- states that the project will be of benefit to the health or general welfare of the City, including promoting a substantial likelihood of creating or retaining opportunities for gainful employment, as well as providing quality, affordable, multifamily housing;
- authorizes the necessary city officers to execute the Financing Documents approved through the ordinance;
- 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);



City of Bloomington Indiana

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- 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;
- 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 does not exceed what is necessary for its feasibility 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 in any 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 staff know if you believe you may have such a pecuniary interest or you have any questions in this regard.*

Contact

Larry Allen, Assistant City Attorney, allenl@bloomington.in.gov, (812) 349-3426

Alex Crowley, Director of Economic & Sustainable Development,
crowleya@bloomington.in.gov, 812-349-3477

ORDINANCE 22-28

**FINAL APPROVAL TO ISSUE ECONOMIC DEVELOPMENT REVENUE NOTES
AND LEND THE PROCEEDS FOR THE RENOVATION OF AFFORDABLE HOUSING
- Re: Country View Apartments, 2500 S. Rockport Road, Bloomington, Indiana
(Country View Housing, 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 notes and refunding revenue bonds and notes 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 and notes may be secured by a trust indenture or financing agreement between an issuer and a corporate trustee; and
- WHEREAS, a representative of Country View Housing, 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 a multifamily housing facility consisting of an apartment complex known as Country View Apartments, containing approximately 206 apartment units located at 2500 S. Rockport Road, Bloomington, Indiana, together with functionally related and subordinate facilities such as carports, garages, parking areas, a clubhouse, and playground and funding costs of issuance and any necessary reserves in connection therewith (the “Project”); and
- WHEREAS, this Ordinance authorizes the City of Bloomington to (i) issue up to \$15,000,000 aggregate principal amount of its City of Bloomington, Indiana Economic Development Revenue Note, Series 2022 (Country View Apartments Project) (the “2022 Notes”) in one or more tax-exempt or taxable series or subseries and (ii) to issue the potential refunding revenue notes, if desirable to the Issuer as directed by the Borrower (the “Refunding Notes,” and with the 2022 Notes, the “Notes”) 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 potential Refunding Transaction (as defined herein) and the Area Plan Commission of the City of Bloomington, Indiana has been given the opportunity to comment thereon; and
- WHEREAS, the Commission in anticipation of a public hearing that was held on or about October 18, 2022, 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 the costs of issuing the Notes and fund reserves, if any, by issuing the Notes in an amount not to exceed \$15,000,000 outstanding in one or more tax-exempt or taxable series or subseries; and
- WHEREAS, the Issuer intends to issue the 2022 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 an initial funding lender selected by the Borrower (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 Project Loan Agreement (the "Project Loan Agreement") with respect to the 2022 Notes between the Issuer and the Borrower, provided, however, that the aggregate principal amount of the Notes shall not exceed \$15,000,000 outstanding; and
- WHEREAS, the Project 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, the Borrower has also requested that the Issuer authorize the potential issuance of the Refunding Notes, if desirable to the Issuer as directed by the Borrower, the proceeds thereof, if any, to be loaned to the Borrower to be used for the refunding and redemption of the 2022 Notes following the placed in service date of the Project in order to refinance the Project, (the "Refunding Transaction") through the Federal Home Loan Mortgage Corporation's Tax-Exempt Loan program; and
- WHEREAS, no member of the Council has any pecuniary interest in any employment, Project 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, Project Loan Agreement, the Regulatory Agreement and the Notes related to the initial financing and the Refunding Transaction (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 October 18, 2022, which Resolution has been transmitted hereto; and
- WHEREAS, the Borrower will be liable for the debt described in the Project 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 and the Refunding Transaction 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 and refinance 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 \$15,000,000 outstanding;

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

SECTION 1. It is hereby found that (i) 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 and (ii) the Refunding Transaction 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 and the Refunding Transaction 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 \$15,000,000 outstanding, for the purpose of procuring funds to loan to the Borrower in order to finance the acquisition, renovation, improvement and equipping of the Project and the Refunding Transaction 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 transactions, 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 transactions, 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 Project Loan Agreement, the Regulatory Agreement 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 Project Loan Agreement related to the initial financing and the Refunding Transaction, 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 Project 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 Project Loan Agreement related to the initial financing and the Refunding Transaction, 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 2022 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 4, Chapter 6, Section 14.

* * *

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this _____ day of _____, 2022.

SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2022.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2022.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This Ordinance authorizes the City of Bloomington to issue economic development revenue notes pursuant to Indiana Code Chapters 36-7-11.9 and 36-7-12 in an amount not to exceed an aggregate principal amount of Fifteen Million Dollars (\$15,000,000.00). The City would lend the proceeds from the economic development revenue notes to Country View Housing, LP, an Indiana limited partnership and its affiliated partners or limited liability company for the acquisition, renovation, improvement and equipping of the affordable housing development known as the Country View Apartments at 2500 S. Rockport Road in Bloomington. Country View Housing, LP, and its partners would fully indemnify the City and take full responsibility for payment of the note. The City would not bear liability, ongoing obligation, or cost related to the notes—the City would act 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. The renovations to the Country View Apartments are expected to cost approximately \$42,000 per unit including new kitchen cabinets, counter tops, appliances, garbage disposals, kitchen sinks and faucets, new bathroom cabinets, counter tops, sinks, toilets, mirrors and towel bars, new interior doors, new blinds, subfloor repair and mold remediation, new lights throughout the units, new flooring, asphalt and concrete repairs, trash compactor updates, gutter, downspouts, soffit and fascia repair, sanitary main drain and sump pump work, new exterior doors, freeze boards and additional units will be converted to fully accessible ADA compliant units.

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. ____, 2022, an ORDINANCE, passed by the Common Council on the ___ day of _____, 2022, by a vote of _____ YEAS and _____ NAYS, which was signed by the Mayor on the ___ day of _____, 2022, 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 _____, 2022.

(SEAL)

Nicole Bolden, Clerk, Common Council



MEMORANDUM

To: Members of the Common Council of the City of Bloomington
From: Larry Allen, Assistant City Attorney
CC: Alex Crowley, Director, ESD
Stephen Lucas, Council Attorney, Common Council
Ash Kulak, Deputy Attorney, Common Council
Date: October 14, 2022
Re: Ordinance 22-28 Approving Economic Development Revenue Bond Issue for the Renovation of Country View Apartments, 2500 S Rockport Road

Ordinance 22-28 authorizes 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 Fifteen Million Dollars (\$15,000,000.00). The City would lend the funds from this Economic Development Revenue Bond to Country View Housing, LP, an Indiana limited partnership, for the acquisition and renovation of the affordable housing development known as the Country View Apartments located at 2500 S. Rockport Road in Bloomington. Country View Housing, LP, and its partners would indemnify the City and be fully responsible for payment of the bond. The City would not bear liability, ongoing obligation, or cost related to the bond—the City would act 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.

This authorization is being considered by the Economic Development Commission (EDC) in a public hearing on October 18, 2022. Upon approval of a recommendation of the EDC, staff will amend this memo and the packet with the EDC's resolution and report on its findings.

Background

Located at 2500 S. Rockport Road, Country View was built in 1970 and added to in 1975. The complex includes 206 apartments. All of the units in Country View are subject to affordability restrictions: half of the units are reserved for individuals and families earning no more than 50% of Area Median Income (AMI) and the other half are restricted to individuals and families earning no more than 60% of AMI. The mix of affordable housing would not change as a result of this Project.

Project

Country View Housing, LP proposes to invest in capital improvements to address significant needs at Country View. The renovations are expected to include new kitchen cabinets, counter tops, appliances, garbage disposals, kitchen sinks and faucets, new bathroom cabinets, counter tops, sinks, toilets, mirrors and towel bars, new interior doors, new blinds, subfloor repair and mold remediation, new lights throughout the units, and new flooring. More units are also expected to be converted to fully accessible ADA-compliant units. Additionally, there are expected to be updates to the property site including asphalt and concrete repairs, trash compactor updates, repairs to the gutter, downspouts, soffit and fascia, new exterior doors, freeze boards, and work on the sanitary main drain and sump pump.

Economic and Sustainable Development Department

During the renovations, Country View Housing, LP, or its successor will pay for temporary moving and relocation services for current residents. The Project is expected to create one (1) new job and retain four (4) current jobs.

Financing Process

To finance this major rehabilitation project, Country View Housing, LP will require the issuance of revenue bonds, in an amount not to exceed Fifteen Million Dollars (\$15,000,000.00). Additionally, Country View Housing, LP will rely on available tax credits from the Indiana Community Housing Development Authority (IHCDA). While Country View Housing, LP, could seek these revenue bonds from the State of Indiana through IHCDA, it would add an additional 1% financing fee to the cost. Instead, it requests 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. Country View Housing, LP, or its successor 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.

Procedure of Housing Bond Transaction

As with similar projects in recent years, Country View Housing, LP, is seeking approval of the financing agreement and authorization to issue 2022 Notes from the Common Council. If approved, Country View Housing will use the proceeds to reimburse the developer for the improvements outlined above. Previously, in Council Resolution 22-01, the Council approved inducement of this process, which enabled Country View Housing, LP, to pursue IHCDA tax credits for the Country View Apartments project.

The following is the status of the public procedure that is required by state law:

1. Common Council passed inducement Resolution 22-01 on January 5, 2022
2. Country View Housing, LP, applied for IHCDA tax credits in February, 2022
3. IHCDA approved Country View Housing, LP's tax credit application in July, 2022
4. EDC holds public hearing on October 18, 2022 to approve financing agreement, issuance of bonds
5. Common Council considers Ordinance 22-28 for approval of financing agreement and issuance of bonds

Presentation to the City of Bloomington Economic Development Commission

Country View Apartments
2022 Economic Development
Revenue Bonds



GLICK®

IceMiller

LEGAL COUNSEL



Where we began

The Gene B. Glick Company was born out of a young WWII veteran's desire to help his fellow GIs build homes for his family.

Eugene (Gene) Glick founded Indianapolis Homes Inc. in 1947 in Indianapolis which became the Gene B. Glick Company, Inc. in 1960.

By 1962, we were the largest builder of single-family homes in Indiana.



Continuing Gene & Marilyn's Legacy

Glick built our first apartment community in 1962 and by the mid-1970s our focus has been solely on multifamily housing development and management.

This year, Glick celebrates its 75th year as one of the largest privately held real estate ownership, development, and management firms in the nation, with more than 20,000 units in 13 states.





Our company's philosophy, "Built to be Home," extends beyond our apartment communities.

Glick Philanthropies has contributed nearly \$200 million to charitable efforts within the state, including Indianapolis' Cultural Trail.



Country View Apartments

2500 S. Rockport Road, Bloomington, IN 47403

The Country View Apartment community is set on 18.64 acres on Bloomington's southwest side.

Country View Apartments

- The property is comprised of 21 residential buildings and one community/leasing office building.
- It features 206 apartment units totaling roughly 178k gross square feet of residential space.
- And it was constructed in two phases - 1970 and 1975



Unit Breakdown

1 Bedroom – 1 Bath	36
2 Bedroom – 1 Bath	48
2 Bedroom – 1 ½ Bath TH	96
3 Bedroom – 1 ½ Bath TH	24
4 Bedroom – 2 Baths	2
Total Units	206

Country View Apartments

- Well situated on Bloomington's near southside with many available nearby amenities for residents to enjoy, including:
 - On-site Bloomington Transit stop
 - The recently completed Switchyard Park complex
 - The B-Line Trail system
 - Summit Elementary and Bloomington South H.S.
 - Many retail and service options



Site Amenities

Category	Facility	Distance
Recreation	RCA Community Playground Park	.18 mi
Recreation	Switchyard Park	.61 mi
Education	Monroe Co. Adult Education	.2 mi
Education	Bloomington South H.S.	.85 mi
Education	Summit Elementary School	.38 mi
Services	Old National Bank	.84 mi
Services	Chase Bank	.8 mi
Grocery/Retail	Woolery Farmers' Market	.75 mi
Retail	Dollar General	.75 mi
Healthcare	Reach High Consulting and Therapy	.5 mi
Healthcare	CVS Pharmacy	.9 mi
Healthcare	Rise Autism Therapy Services	1 mi
Transit	Bloomington Transit (Bus)	0 mi
Transit	B-Line Trail	.57mi

Proposed Project Scope

- Unit renovations include:
 - New HVAC systems in all units
 - New kitchen cabinets and solid surface countertops
 - New energy efficient appliances
 - New bathroom cabinets and vanities
 - And unit conversions of 4 ADA units



Proposed Project Scope

- Site renovations include:
 - Replacement of 100% of windows of the property
 - Replacement of all gutters and downspouts for 22 buildings
 - Conversion of leasing office/community building to ADA compliance
 - Creation of an on-site dog park



Proposed Project Scope

- Each unit renovation will take around 2 days, during which time, residents will be temporarily relocated to a near by hotel, or with a friend or family member.
- Renovations will allow the property to operate more efficiently, preserve its affordability in a desirable market, and improve the quality of life for its residents.



Development Timeline

IHDCA LIHTC Application

February – July 2022

Glick applies for a 4% Low Income Housing Tax Credit application with Indiana Housing and Community Development. IHCD reviews and approves the application at their July board meeting.

Close on all Financing

Est. November 2022

Glick and partners complete closing on all project funding.

Construction Ends

Est. December 2023

All work completed and all units placed in service.



Project Predevelopment

November 2021

The Gene B. Glick Family Housing Foundation purchases 6 properties from the Community Reinvestment Foundation with a plan to rehab the property. Country View is one of those properties.

Final Bond Approval

October 2022

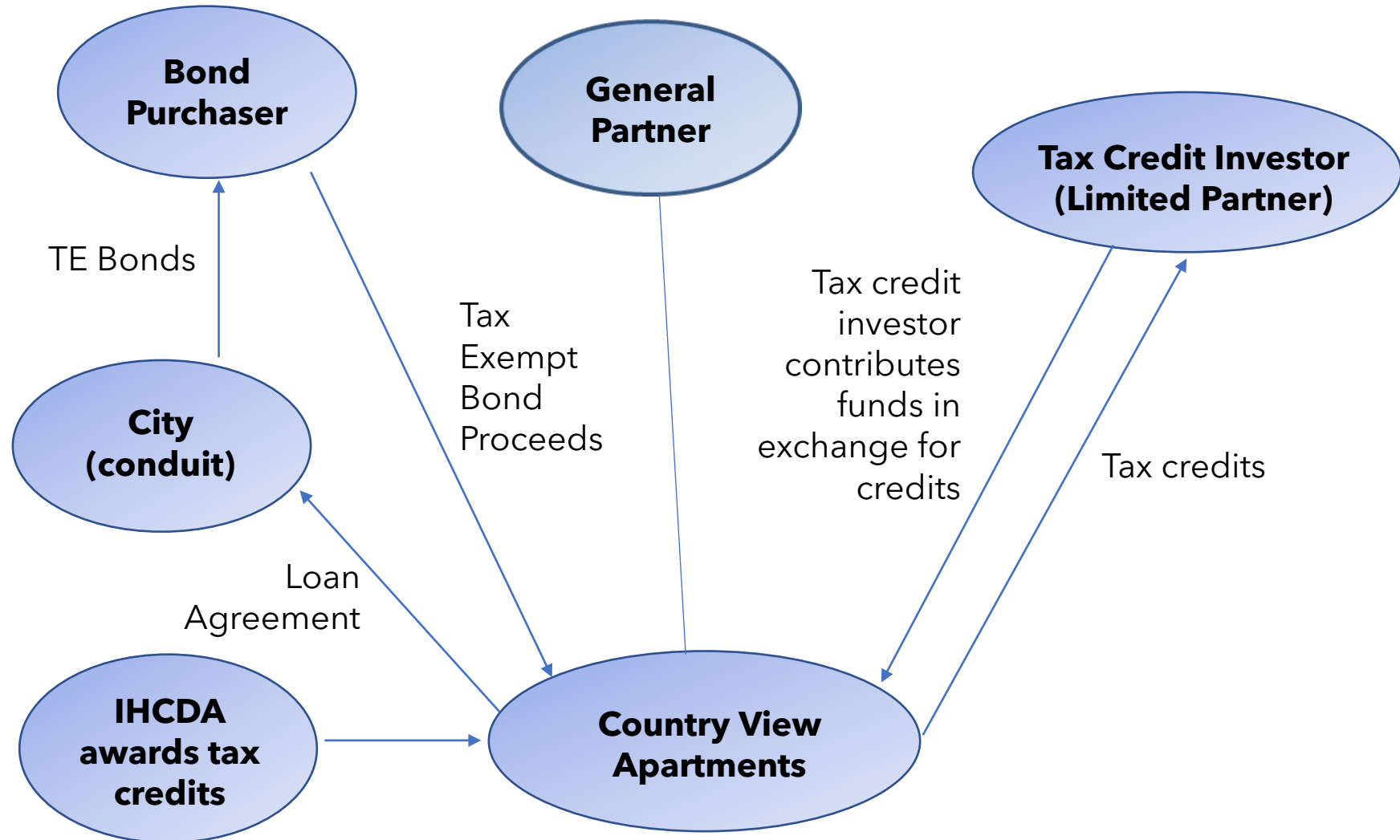
Glick finalizes allocation of economic development bonds with the City of Bloomington for Country View Apartments

Construction Starts

Est. January 2023

We'll work on a few units at a time, doing our utmost to not disrupt the lives of our residents.

Bond and Credit Structure



Bond and Tax Credit Process

Step 1: Inducement Resolution

Required for tax credit application to IHCD; IHCD underwrites/evaluates

Step 2: Negotiation of Bond Terms/ Draft documents

Select lending institution, tax credit investor and perform diligence

Step 3: IHCD Awards volume and tax credits

Permits tax exempt bonds and tax credit equity

Step 4: Final Approval from City

Permits bond issuance; EDC holds hearing and issues project report

Bond and Credit Structure

- Issued pursuant to IC 36-7-12
 - Requires EDC to render project report, hold public hearing, and 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 of bank qualified limit
- City only acts 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

Any
Questions?

Thank you!



FUNDING LOAN AGREEMENT

among

**MERCHANTS BANK OF INDIANA,
as Initial Funding Lender**

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

and

**[FISCAL AGENT],
as Fiscal Agent**

Relating to

**Country View Apartments Project
2500 S. Rockport Road
Bloomington, Indiana 47403**

Maximum Funding Loan Principal Amount: \$[15,000,000]

Dated as of November 1, 2022

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

Section 1.01 Definitions..... 3
Section 1.02 Interpretation..... 15

ARTICLE II

THE FUNDING LOAN

Section 2.01 Terms 15
Section 2.02 Pledged Security 17
Section 2.03 Limited Obligations 18
Section 2.04 Funding Loan Agreement Constitutes Contract 19
Section 2.05 Form and Execution 19
Section 2.06 Authentication..... 19
Section 2.07 Mutilated, Lost, Stolen or Destroyed Governmental Note 19
Section 2.08 Registration; Transfer of Funding Loan; Transferee Representations Letter 20
Section 2.09 TEL Securitization; Allocation of Funding Loan Interest..... 20
Section 2.10 Funding Loan Closing Conditions; Delivery of Governmental Note..... 21
Section 2.11 Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money 22
Section 2.12 Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees..... 23
Section 2.13 Conversion 24

ARTICLE III

PREPAYMENT OF THE FUNDING LOAN

Section 3.01 Prepayment of the Funding Loan Prior to Maturity..... 24
Section 3.02 Notice of Prepayment 25

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 Pledge of Revenues and Assets; Establishment of Funds..... 25
Section 4.02 Project Loan Fund..... 26
Section 4.03 Application of Revenues..... 27
Section 4.04 Application of Loan Payment Fund..... 28
Section 4.05 Application of Loan Prepayment Fund..... 29
Section 4.06 Administration Fund 29
Section 4.07 Reserved..... 30

Section 4.08	Investment of Funds.....	30
Section 4.09	Reserved.....	31
Section 4.10	Accounting Records.....	31
Section 4.11	Amounts Remaining in Funds	31
Section 4.12	Rebate Fund; Compliance with Tax Certificate.....	31
Section 4.13	Cost of Issuance Fund.....	33
Section 4.14	Reports From the Fiscal Agent	33

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01	Payment of Principal and Interest.....	34
Section 5.02	Performance of Covenants.....	34
Section 5.03	Instruments of Further Assurance.....	34
Section 5.04	Inspection of Project Books.....	35
Section 5.05	No Modification of Security; Additional Indebtedness	35
Section 5.06	Damage, Destruction or Condemnation.....	35
Section 5.07	Tax Covenants	35
Section 5.08	Representations and Warranties of the Governmental Lender	37

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

Section 6.01	Events of Default	37
Section 6.02	Acceleration; Other Remedies Upon Event of Default.....	38
Section 6.03	Funding Lender Representative Control of Proceedings	39
Section 6.04	Waiver by Governmental Lender.....	40
Section 6.05	Application of Money After Default.....	40
Section 6.06	Remedies Not Exclusive.....	41
Section 6.07	Fiscal Agent May Enforce Rights Without Governmental Note	41
Section 6.08	Reserved.....	41
Section 6.09	Termination of Proceedings.....	41
Section 6.10	Waivers of Events of Default.....	41
Section 6.11	Interest on Unpaid Amounts and Default Rate for Nonpayment.....	42
Section 6.12	Assignment of Project Loan; Remedies Under the Project Loan	42
Section 6.13	Substitution	42

ARTICLE VII

CONCERNING THE FISCAL AGENT

Section 7.01	Standard of Care	43
Section 7.02	Reliance Upon Documents	44
Section 7.03	Use of Proceeds.....	47
Section 7.04	Reserved.....	47

Section 7.05	Trust Imposed	47
Section 7.06	Compensation of Fiscal Agent.....	47
Section 7.07	Qualifications of Fiscal Agent	48
Section 7.08	Merger of Fiscal Agent	48
Section 7.09	Resignation by the Fiscal Agent	48
Section 7.10	Removal of the Fiscal Agent.....	49
Section 7.11	Appointment of Successor Fiscal Agent.....	49
Section 7.12	Concerning Any Successor Fiscal Agent.....	49
Section 7.13	Successor Fiscal Agent	50
Section 7.14	Appointment of Co-Fiscal Agent or Separate Fiscal Agent	50
Section 7.15	Notice of Certain Events	52
Section 7.16	Reserved.....	52
Section 7.17	Filing of Financing Statements	52
Section 7.18	USA Patriot Act Requirements of the Fiscal Agent	53

ARTICLE VIII

AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01	Amendments to this Funding Loan Agreement	53
Section 8.02	Amendments to Financing Documents Require Consent of Funding Lender Representative.....	53
Section 8.03	Opinion of Bond Counsel Required.....	53

ARTICLE IX

SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

Section 9.01	Discharge of Lien.....	54
Section 9.02	Discharge of Liability on Funding Loan.....	55
Section 9.03	Payment of Funding Loan After Discharge of Funding Loan Agreement	55

ARTICLE X

INTENTIONALLY OMITTED

ARTICLE XI

MISCELLANEOUS

Section 11.01	Servicing of the Loans	56
Section 11.02	Limitation of Rights	56
Section 11.03	Construction of Conflicts; Severability	56
Section 11.04	Notices	56
Section 11.05	Funding Lender Representative	59
Section 11.06	Payments Due on Non-Business Days.....	60
Section 11.07	Counterparts	60
Section 11.08	Laws Governing Funding Loan Agreement	60

Section 11.09 No Recourse..... 60
Section 11.10 Successors and Assigns..... 60

EXHIBIT A FORM OF GOVERNMENTAL NOTE
**EXHIBIT B FORM OF NOTICE OF APPOINTMENT OF FUNDING LENDER
REPRESENTATIVE**
EXHIBIT C FORM OF TRANSFEREE REPRESENTATIONS LETTER
EXHIBIT D COST OF ISSUANCE REQUISITION
EXHIBIT E PROJECT LOAN FUND REQUISITION
EXHIBIT F CONSTRUCTION PHASE INTEREST RATE

FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this “**Funding Loan Agreement**”), is made and entered into as of November 1, 2022, by and among **MERCHANTS BANK OF INDIANA**, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the **CITY OF BLOOMINGTON, INDIANA** (the “**Governmental Lender**”), a municipal corporation of the State of Indiana (the “**State**”), and **[FISCAL AGENT]**, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Indianapolis, Indiana, as Fiscal Agent (the “**Fiscal Agent**”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

RECITALS

A. Pursuant to Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (the “**Act**”) and the Project Loan Agreement dated as of November 1, 2022 (the “**Project Loan Agreement**”), by and among the Governmental Lender, the Fiscal Agent and Country View Housing, LP, an Indiana limited partnership duly organized and existing under the laws of the State (the “**Borrower**”), the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the maximum aggregate principal amount of \$[15,000,000] (the “**Project Loan**”) to provide for the financing of a multifamily rental housing development located at 2500 S. Rockport Road, Bloomington, Indiana and subordinate and related facilities thereto known as Country View Apartments (the “**Project**”).

B. The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the separate loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the maximum aggregate principal amount of \$[15,000,000] (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”). The Funding Loan is evidenced by the City of Bloomington, Indiana Economic Development Revenue Note, Series 2022 (Country View Apartments Project) dated the Delivery Date in the form attached hereto as **Exhibit A** (together with all riders and addenda thereto, the “**Governmental Note**”) delivered by the Governmental Lender to the Initial Funding Lender.

C. The Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to the Project Loan Agreement. The Initial Funding Lender will serve as the initial servicer and will administer the Loans during the Construction Phase in accordance with the Construction Phase Financing Agreement and the other Financing Documents.

D. The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition, renovation and equipping of the Project and, to the extent permitted, to pay certain costs of issuance.

E. The Borrower’s repayment obligations in respect of the Project Loan will be evidenced by a Promissory Note dated the Delivery Date (together with all riders and

modifications thereto, the “**Project Note**”) delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

F. To secure the Borrower’s obligations under the Project Note, the Borrower will execute and deliver to the [[Governmental Lender a Real Estate Mortgage, Security Agreement and Assignment of Leases and Fixture Filing (the “**Security Instrument**”) with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.]]

G. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”) has entered into a commitment with Merchants Capital Corp. (the “**Freddie Mac Seller/Servicer**”) dated [_____], 2022 (the “**Freddie Mac Commitment**”) whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date.

H. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

I. As a Condition to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement.

J. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).

K. Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, this Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. Freddie Mac Seller/Servicer will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

L. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to execute and deliver the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

M. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

NOW, THEREFORE, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“*Act*” means 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.

“*Actual Project Loan Amount*” has the meaning set forth in the Construction Phase Financing Agreement.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Advance Request*” shall mean a request by the Borrower to the Initial Funding Lender that the Initial Funding Lender disburse proceeds of the Funding Loan to the Fiscal Agent as provided hereunder, which request shall be in the form prescribed by the Construction Continuing Covenant Agreement.

“*Advance Termination Date*” means the earliest to occur of (i) the date when the sum of the aggregate advances of the Funding Loan made by the Initial Funding Lender equals the Authorized Amount, (ii) the date that is 3 years after the Delivery Date, (iii) the Conversion Date, (iv) the date of a Determination of Taxability or (v) the occurrence of an Event of Default hereunder; provided that the Advance Termination Date may be adjusted to a later date on the conditions stated in Section 2.01(b) herein.

“*Assignment*” means the Assignment of Real Estate Mortgage, Security Agreement and Assignment of Leases and Fixture Filing dated as of the date hereof by the Governmental Lender assigning its interest in the Security Instrument to the Fiscal Agent.

“*Authorized Amount*” shall mean \$[15,000,000], the maximum principal amount of the Funding Loan authorized under this Funding Loan Agreement.

“*Authorized Officer*” means (a) when used with respect to the Governmental Lender, the Mayor and the Clerk of the Governmental Lender and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any officer, director, official, employee or agent of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“*Bond Counsel*” means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Note and is initially Ice Miller LLP, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

“*Borrower*” means Country View Housing, LP, a limited partnership duly organized and existing under the laws of the State of Indiana, or any of its permitted successors or assigns, as owner of the Project.

“*Borrower Equity Account*” means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“*Borrower Equity Deposit*” means \$[_____], which shall be comprised of sources other than the proceeds of the Project Loan.

“*Business Day*” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“*Certificate of the Governmental Lender*” and “*Request of the Governmental Lender*” mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other

instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“*Code*” means the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

“*Conditions to Conversion*” has the meaning given to that term in the Construction Phase Financing Agreement.

“*Construction Continuing Covenant Agreement*” means the [[Construction Disbursement Agreement]] dated as of the Delivery Date by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“*Construction Loan Documents*” means the Construction Phase Financing Agreement, the Construction Continuing Covenant Agreement, and all other documents to be executed and delivered by Borrower to the Initial Funding Lender or the Fiscal Agent on behalf of the Initial Funding Lender in connection with the Project.

“*Construction Phase*” means the construction phase of the Project Loan, which time period shall commence on the Delivery Date and remain in effect to, but not including, the Conversion Date.

“*Construction Phase Financing Agreement*” means the Construction Phase Financing Agreement dated as of the date hereof by and among the Initial Funding Lender, Freddie Mac, and the Freddie Mac Seller/Servicer, and acknowledged and agreed to by the Borrower, as the same may be amended, modified or supplemented from time to time.

“*Construction Phase Interest Rate*” has the meaning set forth on ***Exhibit F***; provided that upon the occurrence of any Event of Default hereunder, the Construction Phase Interest Rate shall be the Default Rate.

“*Continuing Covenant Agreement*” means (i) prior to the Conversion Date, the Construction Continuing Covenant Agreement, and (ii) from and after the Conversion Date, the Freddie Mac Continuing Covenant Agreement.

“*Conversion*” means conversion of the Project Loan from the Construction Phase to the Permanent Phase on the Conversion Date.

“*Conversion Date*” means the date the Freddie Mac Seller/Servicer purchases the Funding Loan from the Initial Funding Lender upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered.

“*Cost,*” “*Costs*” or “*Costs of the Project*” means costs paid with respect to the Project that (i) are properly chargeable to a 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 United States Treasury Regulations Section 1.103-8(a)(1), (ii) are paid with respect to a qualified residential

rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Note, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in United States Treasury Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (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 (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), “Cost,” “Costs” or “Costs of the Project” shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or 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 acquisition, rehabilitation or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Costs of Issuance*” means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s financial advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel, (d) the Initial Funding Lender and the Initial Funding Lender’s counsel, (e) the Freddie Mac Seller/Servicer and the Freddie Mac Seller/Servicer’s counsel, (f) Freddie Mac and Freddie Mac’s counsel, and (g) the Borrower’s counsel attributable to the funding of the Loans and the Borrower’s financial advisor, if any, and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

“*Costs of Issuance Deposit*” means any deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall be comprised of sources other than the proceeds of the Project Loan.

“*Default Rate*” means (a) during the Construction Phase, an interest rate equal to the lower of (i) the Construction Phase Interest Rate otherwise in effect notwithstanding the default plus [four percent (4%)] per annum or (ii) the Maximum Interest Rate and (b) during the Permanent Phase, an interest rate equal to the lower of (i) the Permanent Phase Interest Rate otherwise in effect notwithstanding the default plus [four percent (4%)] per annum or (ii) the Maximum Interest Rate.

“*Delivery Date*” means [November _____, 2022], the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

“*Determination of Taxability*” shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender 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 (a) or (c) shall be deemed to have occurred if the Governmental 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 (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

“*Electronic Instruction and Notice*” means delivery of written instructions, direction and/or notice signed by an Authorized Officer in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof (if any); provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

“*Event of Default*” or “*event of default*” means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“*Extraordinary Fiscal Agent’s Fees and Expenses*” means all those fees, expenses and reimbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof during any Rebate Year for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

“*Extraordinary Services*” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

“*Fair Market Value*” means 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 (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) 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, (c) 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 (d) 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.

“*Fee Component*” has the meaning set forth in the Project Loan Agreement.

“*Financing Documents*” means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Certificate, the Project Loan Documents, the Construction Loan Documents (during the Construction Phase) and all other documents or instruments evidencing, securing or relating to the Loans.

“*Fiscal Agent*” means [Fiscal Agent] and its successors hereunder.

“*Forward Commitment Maturity Date*” means [_____, 20__], subject to extension by Freddie Mac as provided in the Construction Phase Financing Agreement.

“*Freddie Mac*” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

“*Freddie Mac Commitment*” means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to purchase the Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“*Freddie Mac Continuing Covenant Agreement*” means the Continuing Covenant Agreement to be delivered on the Conversion Date in the form attached to the Construction Phase Financing Agreement by and between the Borrower and the Freddie Mac Seller/Servicer, as the same may be amended, modified or supplemented from time to time.

“*Freddie Mac Purchase Date*” means the date on which Freddie Mac purchases the Funding Loan from the Freddie Mac Seller/Servicer upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Freddie Mac Commitment.

“*Freddie Mac Seller/Servicer*” means Merchants Capital Corp., as Freddie Mac’s seller/servicer under the Freddie Mac Commitment, or any of its successors or assigns under the Freddie Mac Commitment.

“*Funding Lender*” means any Person who is the holder of the Governmental Note.

“*Funding Lender Representative*” means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender. The Freddie Mac Seller/Servicer shall become the Funding Lender Representative upon the occurrence of the Conversion Date, and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

“*Funding Loan*” means the loan in the maximum aggregate principal amount of \$[15,000,000] made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

“*Funding Loan Amortization Schedule*” means the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note.

“*Government Obligations*” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“*Governmental Lender*” means the City of Bloomington, Indiana, a municipal corporation organized and existing under the laws of the State of Indiana.

“*Governmental Note*” means the Economic Development Revenue Note, Series 2022 (Country View Apartments Project) dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Guide*” means the Freddie Mac Multifamily Seller/Servicer Guide, as the same may be amended, modified or supplemented from time to time.

“*Initial Funding Lender*” means, together with its successors and assigns, Merchants Bank of Indiana, as initial holder of the Governmental Note.

“*Interest Payment Date*” means (i) during the Construction Phase, the [[tenth]] day of each calendar month, commencing [December 10, 2022], and during the Permanent Phase, means the first day of each calendar month (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, (iii) the Conversion Date, with respect to the payment of accrued interest at the Construction Phase Interest Rate to but not including the Conversion Date, and (iv) the Maturity Date.

“*Investment Income*” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“*Investor Limited Partner*” means [_____], an Indiana limited liability company, and its successors and/or assigns.

“*Loans*” means, together, the Project Loan and the Funding Loan.

“*Loan Payment Fund*” means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Loan Prepayment Fund*” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Maturity Date*” means the maturity date of the Funding Loan set forth in Section 2.01(e) hereof.

“*Maximum Interest Rate*” means the rate of interest which results in the maximum amount of interest allowed by applicable law.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Net Proceeds*” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“*Notes*” means, together, the Project Note and the Governmental Note.

“*Notice of Conversion*” means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Freddie Mac Seller/Servicer to the Governmental Lender, the Fiscal Agent, the Borrower, the Initial Funding Lender and Freddie Mac (i) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing by Freddie Mac (if a waiver is permitted and is granted by Freddie Mac, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date, (ii) confirming the Conversion Date and (iii) providing for updated amortization schedules for the Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

“*Ordinary Fiscal Agent’s Fees and Expenses*” means the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to (and shall not exceed) \$[_____] and shall be payable annually in advance on the Delivery Date, the Conversion Date and each anniversary of the Conversion Date thereafter.

“*Paying Agent*” means the Person designated to make payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan, to the Funding Lender pursuant to Section 2.12 hereof. Commencing at Conversion, the initial Paying Agent shall be the Servicer.

“*Permanent Phase*” means the permanent phase of the Project Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Project Loan.

“Permanent Phase Interest Rate” means, during the Permanent Phase, the fixed interest rate of [____]% per annum; provided during the continuance of any Event of Default hereunder, the Permanent Phase Interest Rate shall be the Default Rate, in each case computed on the basis of a 360-day year and the actual number of days elapsed.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“Pledged Security” shall have the meaning given to that term in Section 2.02 hereof.

“Pre-Conversion Loan Equalization Payment” means a prepayment of the Project Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Project Loan and the Funding Loan to the Actual Project Loan Amount.

“Prepayment Premium” shall mean any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, no prepayment premium shall be due and owing, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under Section 10 of the Project Note, in each case in connection with a prepayment of the Project Loan.

“Principal Office of the Fiscal Agent” means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

“Project” means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Country View Apartments located at 2500 S. Rockport Road, Bloomington, Indiana, including the real estate described in the Security Instrument and subordinate and related facilities thereto.

“Project Account” means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“Project Loan” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$[15,000,000], as evidenced by the Project Note.

“Project Loan Agreement” means the Project Loan Agreement dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, as amended, supplemented or restated from time to time.

“Project Loan Documents” means the Security Instrument, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“*Project Loan Fund*” means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“*Project Note*” means the Promissory Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Project Loan, which Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Qualified Investments*” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/”A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody’s or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the “highest rating” shall mean a rating of at least “VMIG-1”/”A-1+” for obligations with less than one year maturity; at least “Aaa”/”VMIG-1”/”AAA”/”A-1+” for obligations with a maturity of one year or greater but less

than three years; and at least “Aaa”/”AAA” for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index. Ratings of Qualified Investments shall be determined only at the time of purchase of such Qualified Investments and without regard to ratings subcategories.

“*Rating Agency*” means Moody’s or S&P, as applicable, or any successor rating service thereof.

“*Rebate Analyst*” means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

“*Rebate Fund*” means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Rebate Year*” means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Governmental Note.

“*Requisition*” means, with respect to the Project Loan Fund, the requisition in the form of *Exhibit E* to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of *Exhibit D* to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

“*Resolution*” means the resolution adopted by the Governmental Lender authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

“*Responsible Officer*” means any officer of the Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of the Fiscal Agent and the trusts created hereunder.

“*Revenue Fund*” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Revenues*” means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Note or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all

money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

“*Security Instrument*” means the [[Real Estate Mortgage, Security Agreement and Assignment of Leases and Fixture Filing]] dated as of the Delivery Date, by the Borrower granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Project Loan and related obligations, [[which Security Instrument has been assigned by the Governmental Lender to the Fiscal Agent]] pursuant to the Assignment as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, supplemented or restated.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Servicer*” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. During the Construction Phase, the Servicer shall be the Initial Funding Lender. During the Permanent Phase, the Servicer shall be the Freddie Mac Seller/Servicer.

“*State*” means the State of Indiana.

“*Subordination Agreement*” means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

“*Tax Certificate*” means, collectively, the Certificate of the Issuer Re: Arbitrage and the Tax Representation Certificate of the Borrower, as applicable, each dated the Delivery Date.

“*Tax Regulatory Agreement*” means the Regulatory Agreement dated as of November 1, 2022, among the Governmental Lender, the Fiscal Agent and the Borrower.

“*Transferee Representations Letter*” has the meaning set forth in Section 2.08 hereof.

“*Unassigned Rights*” means all of the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

“*Window Period*” means the three (3) consecutive month period prior to the Maturity Date.

Section 1.02 Interpretation. The words “hereof,” “herein,” “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. Words of the masculine gender shall be deemed and

construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

ARTICLE II

THE FUNDING LOAN

Section 2.01 *Terms.*

(a) The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount. The Funding Loan shall be originated and funded by the Initial Funding Lender to the Governmental Lender in accordance with Section 2.01(b) below. The proceeds of the Funding Loan shall be deposited with Fiscal Agent and disbursed in accordance with this Funding Loan Agreement. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

(b) The Funding Loan shall be originated by the Initial Funding Lender on a draw-down basis. Except as described in Section 2.11(b) hereof, the proceeds of the Funding Loan shall be advanced by the Initial Funding Lender in installments directly to the Fiscal Agent for deposit to the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement and the form of requisition attached as *Exhibit E* hereto. Upon the advancement of the proceeds of the Funding Loan in accordance with the terms hereof, the principal amount of the Governmental Note in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Governmental Lender or the Fiscal Agent. The initial installment of the Funding Loan shall be in the amount of \$[_____] which amount shall be advanced by the Initial Funding Lender and deemed deposited in the Project Loan Fund on the Delivery Date for application as more specifically provided in Section 2.11. 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 the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Fiscal Agent of (i) the prior written consent of the Initial Funding Lender and Freddie Mac and (ii) an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such extension will not adversely affect the tax exempt status of the Governmental Note.

(c) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of the Funding Loan advanced by the Initial Funding Lender from time to time in accordance with the provisions of Section 2.01(b) above (the “**Record of Advances**”). The principal amount due on the Governmental Note shall be only such amount as has been advanced by the Initial Funding Lender as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by the Fiscal

Agent in such regard will be conclusive evidence of the principal amount of the Funding Loan (absent manifest error). The Fiscal Agent shall notify the Governmental Lender, the Freddie Mac Seller/Servicer, Freddie Mac and the Borrower if any advance of the proceeds of the Funding Loan is not made by the Initial Funding Lender when due hereunder.

(d) The Funding Loan shall bear interest payable on each Interest Payment Date at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Funding Loan which has been advanced hereunder and is outstanding as reflected on the Record of Advances.

(e) The Funding Loan shall mature on [_____ 1], 20[___], subject to scheduled monthly principal payments, and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the initial Funding Loan Amortization Schedule provided on the Delivery Date and attached as Schedule 1 to the Governmental Note if the Conversion Date occurs on or prior to the initial Forward Commitment Maturity Date. If the Forward Commitment Maturity Date is changed by Freddie Mac in accordance with the Freddie Mac Commitment and the Construction Phase Financing Agreement, the first principal payment date under the Funding Loan Amortization Schedule may be changed consistent with the terms thereof; provided, however, if the Forward Commitment Maturity Date is extended the Funding Loan Amortization Schedule shall automatically be extended (i) to the first day of the month immediately succeeding the Conversion Date if the Conversion Date occurs on the first calendar day of a month or (ii) the first day of the second month immediately succeeding the Conversion Date if the Conversion occurs on a day other than the first calendar day of the month (in either case with the succeeding principal installments remaining consistent with the original schedule but for them occurring on later dates) and any such change of amortization shall be subject to the receipt by the Fiscal Agent, the Initial Funding Lender, and the Governmental Lender of an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative, the Freddie Mac Seller/Servicer, and Freddie Mac) on or prior to the Conversion Date to the effect that such change of the Funding Loan Amortization Schedule will not adversely affect the tax-exempt status of interest on the Governmental Note. Additionally, in the event the outstanding amount of the Funding Loan on the Conversion Date is less or more than the starting principal amount set forth in the initial Funding Loan Amortization Schedule, a new Funding Loan Amortization Schedule will be generated on the Conversion Date at such lesser or greater outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment, subject to receipt of an Opinion of Bond Counsel as aforesaid. In the event the initial Funding Loan Amortization Schedule is modified in accordance with this Section 2.01(e), a replacement Funding Loan Amortization Schedule will be provided by the Freddie Mac Seller/Servicer which will be attached to the Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(f) Payment of principal of, premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Funding Lender (unless otherwise directed by the Funding Lender).

(g) Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed

to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(h) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the Maximum Interest Rate.

Section 2.02 Pledged Security. To secure the payment of the principal of, premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Note, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the “Pledged Security”) for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Note, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then

these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement to be and shall remain in full force and effect.

Section 2.03 *Limited Obligations. Notwithstanding any other provision of this Funding Loan Agreement to the contrary:*

(a) The obligations of the Governmental Lender with respect to the Governmental Note are not general obligations of the Governmental Lender but are limited obligations of the Governmental Lender payable by the Governmental Lender solely from the Pledged Security.

(b) Nothing contained in the Governmental Note or in this Funding Loan Agreement shall be considered as assigning or pledging any funds or assets of the Governmental Lender other than as provided in this Funding Loan Agreement.

(c) The Governmental Note is not and will not be a debt of the Governmental Lender nor the State or of any other political subdivision, municipality or other local agency, and neither the State, the City, the County, the Governmental Lender nor any other political subdivision, municipality or other local agency is or will be liable for the payment of the Governmental Note and the interest thereon.

(d) Neither the faith nor credit of the Governmental Lender, the State or any other political subdivision are pledged to the payment of the principal of and interest and any premium on the Governmental Note. The Governmental Lender has no taxing power.

(e) No failure of the Governmental Lender to comply with any term, condition, covenant or agreement in this Funding Loan Agreement or in any document executed by the Governmental Lender in connection with the issuance, sale and delivery of the Governmental Note shall subject the Governmental Lender to liability for any claim for damages, costs or other charges except to the extent that the same can be paid or recovered from the Pledged Security.

(f) The Governmental Lender shall not be required to advance any moneys derived from any source other than the Pledged Security for any of the purposes of this Funding Loan Agreement or any of the other Financing Documents, whether for the payment of the principal or redemption price of, or interest on, the Governmental Note, the payment of third party fees or administrative expenses or otherwise.

(g) Each and every covenant made herein by the Governmental Lender is predicated upon the condition that the Governmental Lender will in any event not be liable for the payment of the principal of, premium, if any, or interest on the Governmental Note, or other fees and expenses provided hereunder or the performance of any pledge, security agreement, obligations or

agreement created by or arising under this Funding Loan Agreement or the Governmental Note from any property other than the Pledged Security, and that neither the Governmental Note nor any such obligation or agreement of the Governmental Lender will be construed to constitute an indebtedness of the Governmental Lender within the meaning of any constitutional or statutory provision whatsoever, or as a pledge of the general credit or faith of Governmental Lender, the State or any political subdivision thereof.

(h) Neither the members of the Governmental Lender nor any person executing the Governmental Note shall be personally liable on the Governmental Note or be subject to any personal liability or accountability by reason of the issuance thereof.

(i) The Governmental Note is senior in priority to all other obligations issued by the Governmental Lender for the purpose of financing the Project. The Governmental Note is also senior in priority to the Project Loan which is secured by the Project Note with respect to the Project during the Construction Phase.

Section 2.04 *Funding Loan Agreement Constitutes Contract.* In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

Section 2.05 *Form and Execution.* The Governmental Note shall be in substantially the form attached as *Exhibit A*. The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Mayor of the Governmental Lender, and attested by the manual or facsimile signature of the Clerk of the Governmental Lender sealed with an impression or a facsimile of the seal of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

Section 2.06 *Authentication.* The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in *Exhibit A*, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

Section 2.07 *Mutilated, Lost, Stolen or Destroyed Governmental Note.* In the event the Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in *Exhibit A* in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or

destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where the Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

Section 2.08 *Registration; Transfer of Funding Loan; Transferee Representations Letter.*

(a) The Funding Loan shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loan and any transfers of the Funding Loan as provided herein. The Funding Loan shall initially be registered to the Initial Funding Lender, upon the Conversion Date shall be registered to the Freddie Mac Seller/Servicer, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in an amount of not less than \$1,000,000 of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “Qualified Transferee”) that delivers a letter to the Fiscal Agent substantially in the form attached hereto as **Exhibit C** setting forth certain representations with respect to such Qualified Transferee (the “Transferee Representations Letter”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loan. It shall not be necessary to present, exchange, or re-authenticate the Governmental Note in connection with any sale, assignment or transfer of the Funding Loan, provided that the Funding Lender shall provide the Fiscal Agent with the name and date of registration, address, and employer identification number of the assignee or transferee, so that the Fiscal Agent may maintain the registration records, together with any information necessary to allow the Fiscal Agent to comply with any applicable tax reporting obligations.

Section 2.09 *TEL Securitization; Allocation of Funding Loan Interest.* In accordance with the provisions of Section 2.08 hereof, the Funding Lender may transfer the Funding Loan to a Qualified Transferee in connection with the securitization of the Funding Loan, in which event

the Funding Lender Representative may direct the Fiscal Agent to make all future payments with respect to the Funding Loan to the appointed master servicer for that securitization (or an account designated by such master servicer), and the Fiscal Agent shall accept such direction from the Funding Lender Representative. In the event that the Funding Lender transfers the Funding Loan to a Qualified Transferee in accordance with the provisions of Section 2.08 hereof, the Funding Lender Representative may also give notice to the Fiscal Agent that the Funding Lender has agreed to allow the Servicer to retain a portion of the monthly interest payable on the Funding Loan as additional compensation for the servicing of the Funding Loan ("Additional Servicing Fee"), which Additional Servicing Fee will equal no more than an annual 2 basis points with respect to the unpaid principal balance of the Governmental Note, in which event the Fiscal Agent shall accept and pay to the Funding Lender such lesser amount of interest received from the Servicer and shall consider such payment to be in full compliance with the terms of the Governmental Note, the Project Note and all other Financing Documents with regard to the interest owed on the Funding Loan.

Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Note.* Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, receipt by the Fiscal Agent of the following:

(a) executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate;

(b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the initial advance of the proceeds of the Funding Loan by the Initial Funding Lender in the amount set forth in Section 2.01(b) hereof;

(d) the executed Project Note and an endorsement of the Project Note by the Governmental Lender in favor of the Fiscal Agent;

(e) a copy of the executed Security Instrument, the Assignment, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized,

executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Governmental Note, under laws in effect on the date of such opinion, is excludable from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) a certified copy of the Resolution;

(i) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial Funding Lender upon funding to the Fiscal Agent of the initial advance of proceeds of the Funding Loan; and

(j) receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement.

(k) receipt by the Fiscal Agent of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as *Exhibit C*.

(l) Receipt by the Initial Funding Lender of any other documents or opinions that Initial Funding Lender may require, including without limitation executed originals of the Construction Loan Documents

Section 2.11 *Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.*

(a) The Fiscal Agent shall establish, maintain and hold in trust and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Project Account and a Borrower Equity Account. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) On the Delivery Date, the initial installment of the Funding Loan shall be delivered as set forth in the Settlement Statement of First American Title Insurance Company dated the Delivery Date. Thereafter, the proceeds of the Funding Loan shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender on a drawdown basis as provided for in Section 2.01(b) hereof. Upon receipt, the Fiscal Agent shall deposit such proceeds to the credit of the Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Governmental Lender shall cause the Borrower to deliver from sources other than the Loans to First American Title Insurance Company on or prior to the Delivery Date, the Costs of Issuance Deposit for deposit pursuant to the Settlement Statement described in Section 2.11(b) hereof. The Governmental Lender shall cause the Borrower to deliver from sources other than the Loans to First American Title Insurance Company, on or prior to the Delivery Date, the portion of the Borrower Equity Deposit for deposit pursuant to the Settlement Statement described in Section 2.11(b) hereof, such deposit to be deemed deposited to the credit of the Borrower Equity

Account. The Fiscal Agent shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Loans.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the Fiscal Agent shall make the initial disbursements of amounts in the Project Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof.

Section 2.12 *Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees.*

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Project Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Project Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Ordinary Fiscal Agent's Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Governmental Note is sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Note and all fees due hereunder and under the Project Loan Agreement are being made to the Servicer in accordance with this Section 2.12 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding Lender Representative. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

Section 2.13 Conversion. If the Conversion Notice is issued in the timeframe required under the Construction Phase Financing Agreement, Conversion will occur on the Conversion Date indicated in such Conversion Notice. If the Conversion Notice is not so issued, Conversion will not occur, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligations with respect to the purchase of the Funding Loan or otherwise with respect to the Loans or the Project.

ARTICLE III

PREPAYMENT OF THE FUNDING LOAN

Section 3.01 *Prepayment of the Funding Loan Prior to Maturity.*

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in the Project Note.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Note), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to the Project Note and, if payments are being collected by Fiscal Agent, receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory payment as a result thereof;

(ii) in part, on the Interest Payment Date next following the completion of the acquisition, renovation and equipping of the Project, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;

(iii) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment;

(iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Conversion Notice is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date; or

(v) in whole, upon the occurrence of an Event of Default and receipt by the Fiscal Agent of a written direction by the Funding Lender that the Funding Loan shall be subject to mandatory prepayment as a result thereof.

Section 3.02 *Notice of Prepayment.* Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the

prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.* The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery 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.

In addition to the Project Loan Fund established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund; and
- (f) Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its

discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

Section 4.02 *Project Loan Fund.*

(a) Deposit. The Fiscal Agent shall deposit the proceeds of the Funding Loan into the Project Account of the Project Loan Fund upon receipt of each advance thereof as provided in Section 2.11(b) hereof. The Fiscal Agent shall deposit the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Note), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of paying Costs of the Project. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. The Fiscal Agent shall automatically transfer amounts from the Borrower Equity Account of the Project Loan Fund to the Administration Fund to pay to the appropriate party its accrued fees that are included in the Fee Component that are due and payable as set forth herein or upon receipt of an invoice, without any need for a Requisition or other written direction. Unless the Fiscal Agent is instructed otherwise by the Initial Funding Lender, the Fiscal Agent shall automatically transfer amounts in the Borrower Equity Account of the Project Loan Fund to the Loan Payment Fund to pay interest on the Project Loan and Funding Loan without any need for a Requisition or other written direction. The Fiscal Agent shall make disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer). The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions and provisions of the Construction Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is

then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer 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).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, 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 (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Project Loan Fund following completion of the acquisition, renovation and equipping of the Project in accordance with the Construction Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax exempt status of the Governmental Note; provided, that any amounts in the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the acquisition, renovation and equipping of the Project in accordance with the Construction Continuing Covenant Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

Section 4.03 *Application of Revenues.*

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent pursuant to Section 2.01(b), which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be

transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.12 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

FIRST: to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to the Funding Loan Amortization Schedule); and

SECOND: to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a); and (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

(d) Subject to Section 2.12 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

Section 4.04 *Application of Loan Payment Fund.* Subject to Section 2.12 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

Section 4.05 *Application of Loan Prepayment Fund.* Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

Section 4.06 *Administration Fund.* Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund, together with amounts transferred by the Fiscal Agent from the Project Loan Fund for deposit to the Administration Fund pursuant to Section 4.02. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used FIRST, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses; SECOND, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Project Loan Agreement, upon receipt of an invoice from the Rebate Analyst; THIRD, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; FOURTH, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; FIFTH, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; SIXTH, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and SEVENTH, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

Section 4.07 *Reserved.*

Section 4.08 *Investment of Funds.* The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized and, in such capacity, the Fiscal Agent or such affiliate may charge its ordinary and customary fees for such trades, including account maintenance fees, which fees, for purposes of this Agreement, shall be treated as Extraordinary Fiscal Agent's Fees and Expenses. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter. In no event shall the Fiscal Agent be required to provide supervision, recommendations, or advice with respect to any investment. In the absence of written direction from the Borrower, the Fiscal Agent shall hold amounts on deposit in the funds and accounts established under this Funding Loan Agreement in the [_____] Deposit Account Number [_____].

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the current market price obtainable (but not less than par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Governmental Lender acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Governmental Lender specifically waives compliance with 12 C.F.R. 12 and

hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

Section 4.09 *Reserved.*

Section 4.10 *Accounting Records.* The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

Section 4.11 *Amounts Remaining in Funds.* After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

Section 4.12 *Rebate Fund; Compliance with Tax Certificate.* The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within 55 days of the end of each fifth Rebate Year, the Borrower shall cause the Rebate Analyst to calculate the amount of Rebatable Arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the Rebatable Arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatable Arbitrage**”). Pursuant to Section 2.04 of the Project Loan Agreement, the Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender.

In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within 55 days of the end of each fifth Rebate Year, the Fiscal Agent, at the expense of the Borrower, shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of Rebatable Arbitrage as required herein.

Within 55 days of the end of each fifth Rebate Year, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

(i) Not later than 60 days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and

(ii) Not later than 60 days after the payment in whole of the Funding Loan, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Project Loan Agreement and this Section 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loan and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the

Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage 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 an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

Section 4.13 Cost of Issuance Fund. The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund, if any, to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of **Exhibit D** to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

Section 4.14 Reports From the Fiscal Agent. The Fiscal Agent shall, on or before the fifteenth (15th) day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01 *Payment of Principal and Interest.* The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning thereof.

Section 5.02 *Performance of Covenants.* The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Note and in all proceedings pertaining thereto.

Section 5.03 *Instruments of Further Assurance.* The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, Fiscal Agent or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

Section 5.04 *Inspection of Project Books.* The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

Section 5.05 *No Modification of Security; Additional Indebtedness.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

Section 5.06 *Damage, Destruction or Condemnation.* Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

Section 5.07 *Tax Covenants.*

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an “arbitrage bond” under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the “**Regulations**”) or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(iv) 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 Funding Loan will be excludable from the gross income for federal income tax purposes, of the Funding Lender pursuant to the Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is 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, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent’s Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Governmental Note to be classified as an “arbitrage bond” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, Bond Counsel or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Governmental Note to become an “arbitrage bond,” then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be

a Qualified Investment) or use so as to prevent the Governmental Note from becoming an “arbitrage bond,” and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

Section 5.08 *Representations and Warranties of the Governmental Lender.* The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a municipal corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Note and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors’ rights generally and the application of equitable principles.

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

Section 6.01 *Events of Default.* Each of the following shall be an event of default with respect to the Funding Loan (an “Event of Default”) under this Funding Loan Agreement:

(a) failure to pay the principal of, premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such

default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an “Event of Default” under the Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer, the Borrower, the Investor Limited Partner and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

Section 6.02 *Acceleration; Other Remedies Upon Event of Default.*

Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of

the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Project Loan Agreement, the Tax Regulatory Agreement or any other Financing Document;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Upon the occurrence of an Event of Default under Section 6.01 hereof, the Borrower shall have the same rights to notice and rights to cure as those conferred on the Governmental Lender. Further, the Funding Lender and the Governmental Lender agree that any cure made or tendered by the Investor Limited Partner shall be deemed a cure by the Borrower and shall be accepted or rejected on the same basis if made or tendered by the Borrower. The Investor Limited Partner shall have the right but not the obligation to cure any default or Event of Default hereunder on behalf of the Borrower. The Borrower represents and warrants that the Investor Limited Partner is authorized to act on behalf of the Borrower.

Section 6.03 *Funding Lender Representative Control of Proceedings.* If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the

enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

Section 6.04 *Waiver by Governmental Lender.* Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter 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 through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

Section 6.05 *Application of Money After Default.* All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Note shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

FIRST: to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

SECOND: to the Funding Lender, unpaid principal of and premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Note shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

Section 6.06 Remedies Not Exclusive. No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Note. All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Note or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

Section 6.08 Reserved.

Section 6.09 Termination of Proceedings. In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

Section 6.10 Waivers of Events of Default. The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative (and Funding Lender may choose to waive any Event of Default, or any condition or obligation set forth in the Financing Documents, in its sole discretion). In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights

hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.* In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.*

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other Project Loan Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Project Note to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

Section 6.13 *Substitution.* Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Note and the Security Instrument for a new Project Note and Security Instrument, evidencing and securing a new loan (the "New Project Loan"), which may be executed by a person other than the Borrower (the "New Borrower"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and

modification, in and of itself, shall not affect the excludability, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

ARTICLE VII

CONCERNING THE FISCAL AGENT

Section 7.01 *Standard of Care.* The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement and no implied covenants or obligations should be read into this Funding Loan Agreement against the Fiscal Agent. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs. For the avoidance of doubt, the permissive right of the Fiscal Agent to do things enumerated in this Funding Loan Agreement or the Project Loan Agreement shall not be construed as a duty.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative 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.

When the Fiscal Agent incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 7.02 *Reliance Upon Documents.* Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document in good faith deemed by it to be genuine and correct and to have been signed or sent by the proper party or parties, including any Electronic Instruction and Notice as permitted hereunder or under the Project Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, (i) the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its

agents, custodians, nominees, receivers or attorneys and (ii) the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) concerning all matters of trust hereof and duties hereunder and all other documents delivered in connection with the Loans, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement 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 7.02(k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Fiscal Agent shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Fiscal Agent shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of acting as Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent security or indemnity satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and the Tax Regulatory Agreement and 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 delivery of the Governmental Note and no responsibility for compliance with any state or federal securities laws in connection with the Governmental Note. In acting or omitting to act pursuant to the Project Loan Agreement, the Tax Regulatory Agreement or any other documents executed in connection herewith, the Fiscal Agent shall be entitled to all of the rights, immunities and indemnities accorded to it under this Funding Loan Agreement, including, but not limited to, this Article VII.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

Notwithstanding anything contained herein or in the Security Instrument to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Fiscal Agent to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Fiscal Agent may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all

liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The Fiscal Agent shall not be required to take any action to foreclose or otherwise enforce the Security Instrument unless indemnified to its satisfaction and will not be required to foreclose if doing so will subject it to environmental liability or will require the approval of a governmental regulator that cannot be obtained.

Section 7.03 *Use of Proceeds.* The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan or any other moneys paid over by the Fiscal Agent in accordance with the provisions of this Funding Loan Agreement except as provided herein.

Section 7.04 *Reserved.*

Section 7.05 *Trust Imposed.* All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

Section 7.06 *Compensation of Fiscal Agent.* The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not perform any Extraordinary Services or incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Fiscal Agent's Fees and Expenses or, if applicable, the Extraordinary Fiscal Agent's Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Note or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents,

contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Note or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses (except for matters attributable to the gross negligence or willful misconduct of such persons). The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

Section 7.07 *Qualifications of Fiscal Agent.* There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

Section 7.08 *Merger of Fiscal Agent.* Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

Section 7.09 *Resignation by the Fiscal Agent.* The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or

sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder; provided, however, that after giving notice of resignation, the Fiscal Agent may petition any court of competent jurisdiction for appointment of a temporary Fiscal Agent until a successor Fiscal Agent is appointed. The rights of the Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive the Fiscal Agent's resignation as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

Section 7.10 *Removal of the Fiscal Agent.* The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder. The rights of the Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive the Fiscal Agent's removal as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

Section 7.11 *Appointment of Successor Fiscal Agent.*

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following receipt of the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

Section 7.12 *Concerning Any Successor Fiscal Agent.* Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the

Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within thirty (30) days of such appointment, to the Funding Lender.

Section 7.13 *Successor Fiscal Agent.* In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.* It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law 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 or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies 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 or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent

necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so 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, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate 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 co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co- fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co- fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co- fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co- fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co- fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co- fiscal agent or separate fiscal agent;

(d) any co- fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co- fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co- fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co- fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co- fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co- fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co- fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

Section 7.15 *Notice of Certain Events.* The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

Section 7.16 *Reserved.*

Section 7.17 *Filing of Financing Statements.* The Fiscal Agent shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for financing statements that have been delivered to the Fiscal Agent on which the Fiscal Agent is named as a secured party or additional secured party for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Funding Loan pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions.

Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein

(including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code and unless the Fiscal Agent shall have been notified by the Funding Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 7.17 and in filing any continuation statements in the same filing offices as the initial filings were made.

Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.* To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

ARTICLE VIII

AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01 *Amendments to this Funding Loan Agreement.* Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.* Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative, including entering into the amendments attached as exhibits to the Construction Phase Financing Agreement on the Conversion Date.

Section 8.03 *Opinion of Bond Counsel Required.* No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note, the Security Instrument or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification 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 IX

SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

Section 9.01 *Discharge of Lien.* If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

- (a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or
- (b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or
- (c) by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest and premium, if any, on the Governmental Note, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the

principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

Section 9.02 *Discharge of Liability on Funding Loan.* Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article III provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

Section 9.03 *Payment of Funding Loan After Discharge of Funding Loan Agreement.* Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Note remaining unclaimed for three (3) years after the principal of the Governmental Note has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Funding Loan Agreement) and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon and, to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease.

ARTICLE X

INTENTIONALLY OMITTED

ARTICLE XI

MISCELLANEOUS

Section 11.01 *Servicing of the Loans.* The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement. During the Construction Phase, the Servicer shall be the Initial Funding Lender.

Section 11.02 *Limitation of Rights.* With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

Section 11.03 *Construction of Conflicts; Severability.* Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

Section 11.04 *Notices.*

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given

(unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: City of Bloomington, Indiana
401 N. Morton St.
Bloomington, IN 47404
Attention: City Attorney
Email: [_____]]
Telephone: [_____]]

The Fiscal Agent: [Fiscal Agent]
[_____]]
[_____]]
Attention: [_____]]
Email: [_____]]
Telephone: [_____]]

The Borrower: Country View Housing, LP
c/o Gene B. Glick Company, Inc.
8801 River Crossing Blvd., Suite 200
Indianapolis, Indiana 46240
Attention: Adam Richter
Email: Adam.Richter@glickco.com
Telephone: (317) 469-0400

Funding Lender
Representative
(during the Construction Phase):

Merchants Bank of Indiana
410 Monon Boulevard, 5th Floor
Carmel, Indiana 46032
Attention: Lauren E. Campbell

With a copy to: Dinsmore & Shohl LLP
211 N. Pennsylvania Street
One Indiana Square, Suite 1800
Indianapolis, Indiana 46204
Attention: Tim McKay
Email: Tim.McKay@dinsmore.com
Telephone: (317) 639-6151

Funding Lender (from Conversion Date to Freddie Mac Purchase Date) and Servicer (as of Freddie Mac Purchase Date):

Merchants Capital Corp.
410 Monon Blvd., 5th Floor
Carmel, Indiana 46032
Attention: Michael Dury
Email: mdury@merchantscapital.com
Telephone: (317) 569-7420

Funding Lender Representative (as of Freddie Mac Purchase Date):

Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations - Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive, MS 210
McLean, Virginia 22102
Attention: Managing Associate General Counsel – Multifamily Legal Division
Email: joshua_schonfeld@freddiemac.com
Telephone: (703) 903-2000

Investor Limited Partner:

[_____
c/o [_____
[_____
[_____
Attention: [_____
With a copy to: [_____]

with a copy to:

[_____
[_____
[_____
Attention: [_____
Email: [_____
Telephone: [_____]

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Instruction and Notice pursuant to this Funding Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

Section 11.05 *Funding Lender Representative.*

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Conversion Date, the Freddie Mac Seller/Servicer shall become the Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of **Exhibit B** hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

Section 11.06 *Payments Due on Non-Business Days.* In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such

payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

Section 11.07 Counterparts. This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.08 Laws Governing Funding Loan Agreement. The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

Section 11.09 No Recourse. No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. 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, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

Section 11.10 Successors and Assigns. All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

CITY OF BLOOMINGTON, INDIANA, as
Governmental Lender

By: _____
John Hamilton, Mayor

ATTEST:

By: _____
Nicole Bolden,
Clerk

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO COUNTRY VIEW APARTMENTS PROJECT FUNDING
LOAN AGREEMENT]

MERCHANTS BANK OF INDIANA, as
Initial Funding Lender

By: _____
Philip Daubenmire, Vice President

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO COUNTRY VIEW APARTMENTS PROJECT FUNDING
LOAN AGREEMENT]

Signature Page 2

[FISCAL AGENT], as Fiscal Agent

By: _____
[_____, _____]

[FISCAL AGENT'S SIGNATURE PAGE TO WEST VILLAGE AT COUNTY APARTMENTS PROJECT FUNDING
LOAN AGREEMENT]

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

**Economic Development Revenue Note, Series 2022
(Country View Apartments Project)**

US \$[15,000,000]

[November ____, 2022]

FOR VALUE RECEIVED, the undersigned, CITY OF BLOOMINGTON, INDIANA (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of MERCHANTS BANK OF INDIANA (the “**Funding Lender**”), and its assigns, the maximum principal sum of _____ MILLION _____ DOLLARS (US \$[15,000,000]), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Economic Development Revenue Note, Series 2022 (Country View Apartments Project) (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of the Delivery Date (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), among the Funding Lender, the Obligor and [Fiscal Agent](the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$[15,000,000] (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Country View Housing, LP (the “**Borrower**”) pursuant to the Project Loan Agreement dated as of November 1, 2022 (the “**Project Loan Agreement**”), among the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender under the Funding Loan Agreement and not otherwise prepaid.

1. **Defined Terms.** As used in this Note, (i) the term “Funding Lender” means the holder of this Note, and (ii) the term “Indebtedness” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note or the Funding Loan Agreement. “Event of Default” and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the [tenth] calendar day of each month commencing [_____], 2022 during the Construction Phase and on the first calendar day of each month during the Permanent Phase, interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an “**Interest Payment Date**”). Interest shall accrue on the principal amount

Exhibit A-1

of the Funding Loan which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on [_____, 20__] (the “**Maturity Date**”) and, during the Permanent Phase, in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Funding Loan Amortization Schedule provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender’s discretion. Neither the Funding Lender’s acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender’s right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment.

Exhibit A-2

Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the “**Maximum Interest Rate**”). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Indiana (the “**Property Jurisdiction**”).

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the “**Default Rate**”) equal to the lesser of (i) the Construction Phase Interest Rate or Permanent Phase Interest Rate, as applicable, otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate.

Exhibit A-3

15. **Limited Obligation.** Notwithstanding any other provision of this Note to the contrary:

The obligations of the Obligor with respect to this Note are not general obligations of the Obligor but are limited obligations of the Obligor payable by the Obligor solely from the Pledged Security.

Nothing contained in this Note or in the Funding Loan Agreement shall be considered as assigning or pledging any funds or assets of the Obligor other than as provided in the Funding Loan Agreement.

This Note is not and will not be a debt of the Obligor nor the State or of any other political subdivision, municipality or other local agency, and neither the State, the City, the County, the Obligor nor any other political subdivision, municipality or other local agency is or will be liable for the payment of this Note and the interest thereon.

Neither the faith nor credit of the Obligor, the State or any other political subdivision are pledged to the payment of the principal of and interest and any premium on this Note. The Obligor has no taxing power.

No failure of the Obligor to comply with any term, condition, covenant or agreement in the Funding Loan Agreement or in any document executed by the Obligor in connection with the issuance, sale and delivery of this Note shall subject the Obligor to liability for any claim for damages, costs or other charges except to the extent that the same can be paid or recovered from the Pledged Security.

The Obligor shall not be required to advance any moneys derived from any source other than the Pledged Security for any of the purposes of the Funding Loan Agreement or any of the other Financing Documents, whether for the payment of the principal or redemption price of, or interest on, this Note, the payment of third party fees or administrative expenses or otherwise.

Each and every covenant made herein by the Obligor is predicated upon the condition that the Obligor will in any event not be liable for the payment of the principal of, premium, if any, or interest on this Note, or other fees and expenses provided hereunder or the performance of any pledge, security agreement, obligations or agreement created by or arising under the Funding Loan Agreement or this Note from any property other than the Pledged Security, and that neither this Note nor any such obligation or agreement of the Obligor will be construed to constitute an indebtedness of the Obligor within the meaning of any constitutional or statutory provision whatsoever, or as a pledge of the general credit, faith of Obligor, the State or any political subdivision thereof.

Neither the members of the Obligor nor any person executing this Note shall be personally liable on this Note or be subject to any personal liability or accountability by reason of the issuance thereof.

This Note is senior in priority to all other obligations issued by the Obligor for the purpose of financing the Project. This Note is also senior in priority to the Project Loan which is secured by the Project Note with respect to the Project during the Construction Phase.

Exhibit A-4

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk.

CITY OF BLOOMINGTON, INDIANA

By: _____
John Hamilton, Mayor

ATTEST:

By: _____
Nicole Bolden, Clerk

CERTIFICATE OF AUTHENTICATION

This Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: _____

[FISCAL AGENT]

By: _____
[_____, _____]

Certificate of Authentication

SCHEDULE 1
FUNDING LOAN AMORTIZATION SCHEDULE

EXHIBIT B

**FORM OF NOTICE OF APPOINTMENT
OF FUNDING LENDER REPRESENTATIVE**

Merchants Bank of Indiana
410 Monon Boulevard, 5th Floor
Carmel, Indiana 46032
Attention: Lauren E. Campbell

Country View Housing, LP
8801 River Crossing Blvd., Suite 200
Indianapolis, Indiana 46240
Attention: Adam Richter

City of Bloomington, Indiana
401 N. Morton St.
Bloomington, Indiana 47404

[Fiscal Agent Address]

Re: Country View Apartments

Ladies and Gentlemen:

The undersigned is the holder (the “**Funding Lender**”) of the Economic Development Revenue Note, Series 2022 (Country View Apartments Project) dated the Delivery Date (the “**Governmental Note**”) delivered pursuant to the Funding Loan Agreement dated as of November 1, 2022 (the “**Funding Loan Agreement**”), among Merchants Bank of Indiana, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the City of Bloomington, Indiana (the “**Governmental Lender**”) and [FISCAL AGENT] (the “**Fiscal Agent**”). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be Merchants Bank of Indiana.

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME	SIGNATURE
_____	_____
_____	_____
_____	_____
_____	_____

Exhibit B - 1

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the _____ day of _____, _____.

MERCHANTS BANK OF INDIANA

By: _____

NAME: _____

TITLE: _____

EXHIBIT C

FORM OF TRANSFEREE REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

City of Bloomington, Indiana
401 N. Morton St.
Bloomington, Indiana 47404

[Fiscal Agent Address]

Re: Country View Apartments Project

Ladies and Gentlemen:

The undersigned (the “Funding Lender”) hereby acknowledges receipt of the Multifamily Housing Revenue Note, Series 2022 (Country View Apartments Project) dated the Delivery Date (the “Governmental Note”) delivered pursuant to the Funding Loan Agreement dated as of November 1, 2022 (the “Funding Loan Agreement”), among Merchants Bank of Indiana, in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the City of Bloomington, Indiana (the “Governmental Lender”) and [Fiscal Agent] (the “Fiscal Agent”). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan.

2. The Funding Lender is an “accredited investor” under Regulation D of the Securities Act of 1933 (the “Act”) or a “qualified institutional buyer” under Rule 144(a) of said Act (such “accredited investor” or “qualified institutional buyer”, a “Qualified Transferee”), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan (except as set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a

Exhibit C - 1

trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better [INSERT FOR INITIAL FUNDING LENDER TRANSFEREE REPRESENTATION LETTER;; provided, further, however, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to [NAME OF FREDDIE MAC SELLER/SERVICER] on the Conversion Date and thereafter delivered to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) pursuant to the forward commitment dated [_____] (the “Freddie Mac Commitment”)] [INSERT FOR FREDDIE MAC SELLER/SERVICER TRANSFEREE REPRESENTATION LETTER;; provided, further, however, the Funding Lender is purchasing the Funding Loan with the expectation that the Funding Loan will be sold to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) pursuant to the forward commitment dated _____, 2022 (the “Freddie Mac Commitment”)].

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the State of Indiana or any political subdivision thereof and that the Governmental Lender has no taxing power, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Indiana or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan and the security therefor, and other material factors affecting the security and payment of the Funding Loan. The Funding Lender is aware that the business of the Borrower

involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

[FUNDING LENDER]

By: _____
Name: _____
Title: _____

EXHIBIT D

**COSTS OF ISSUANCE REQUISITION
(Cost of Issuance Fund)**

[Fiscal Agent], as Fiscal Agent

Re: Country View Apartments Project

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of November 1, 2022, by and among Merchants Bank of Indiana, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the City of Bloomington, Indiana and [Fiscal Agent], as Fiscal Agent, securing the Economic Development Revenue Note, Series 2022 (Country View Apartments Project) dated the Delivery Date (the “**Governmental Note**”).

REQUISITION NO.:
PAYMENT DUE TO:
AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of Country View Housing, LP, an Indiana limited partnership duly organized and existing under the laws of the State of Indiana (the “**Borrower**”), certifies that:

- (a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and
- (b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: _____

COUNTRY VIEW HOUSING, LP, an Indiana
limited partnership

By: [_____]

By: [_____]

By: _____
[_____]

Country View Apartments
Funding Loan Agreement
Cost of Issuance Requisition

Exhibit D - 1

EXHIBIT E

**PROJECT LOAN FUND REQUISITION
(Project Loan Fund)**

[Fiscal Agent],
as Fiscal Agent

Re: Country View Apartments Project

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of November 1, 2022, by and among Merchants Bank of Indiana, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the City of Bloomington, Indiana (the “**Governmental Lender**”) and [Fiscal Agent], as Fiscal Agent (the “**Fiscal Agent**”), securing the Economic Development Revenue Note, Series 2022 (Country Meadows Apartments Project) dated the Delivery Date (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ _____ from the Project Account
\$ _____ from the Borrower Equity Account

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to _____, 20__).
3. The undersigned certifies that:
 - a. the conditions precedent to disbursement set forth in the Construction Continuing Covenant Agreement have been satisfied;
 - b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and the Construction Continuing Covenant Agreement;

- c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
- d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
- e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
- f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
- g. with respect to amounts from the Project Account of the Project Loan Fund, not less than 95% of the sum of:
 - (A) the amounts requisitioned by this Requisition; plus
 - (B) all amounts previously requisitioned and disbursed from the Project Account of the Project Loan Fund;
 have been or will be applied by Borrower to pay the Costs of the Project;
- h. Borrower is not in default under the Project Loan Agreement, the Construction Continuing Covenant Agreement or any other Project Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;
- i. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Note or pay debt service with respect to the Loans; and
- j. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower

reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

- 4. Estimated costs of completing the uncompleted construction/rehabilitation as of the date of this Requisition: _____.
- 5. Percent of construction/rehabilitation completed as of the date this request: _____%

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

Date: _____

COUNTRY VIEW HOUSING, LP, an Indiana limited partnership

By: [_____]

By: [_____]

By: _____
[_____]

APPROVED:

MERCHANTS BANK OF INDIANA

By: _____
Name:
Title:

EXHIBIT F

CONSTRUCTION PHASE INTEREST RATE

The Construction Phase Interest Rate shall be determined in accordance with the provisions of the Project Note.

(see Project Note)

PROJECT LOAN AGREEMENT

among

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

**[FISCAL AGENT],
as Fiscal Agent**

and

**COUNTRY VIEW HOUSING, LP,
as Borrower**

Relating to

**Country View Apartments Project
2500 S. Rockport Road
Bloomington, Indiana 47403**

Maximum Project Loan Principal Amount: \$[15,000,000]

Dated as of November 1, 2022

All of the right, title and interest of the **City of Bloomington, Indiana** (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to **[Fiscal Agent]**, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of November 1, 2022 by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.

TABLE OF CONTENTS

	Page
ARTICLE I	DEFINITIONS3
Section 1.01	Definitions.....3
Section 1.02	Interpretation4
ARTICLE II	REPRESENTATIONS, WARRANTIES AND COVENANTS.....4
Section 2.01	Representations, Warranties and Covenants of the Governmental Lender4
Section 2.02	Representations, Warranties and Covenants of the Borrower6
Section 2.03	Representations and Warranties of the Fiscal Agent9
Section 2.04	Arbitrage and Rebate Fund Calculations11
Section 2.05	Tax Covenants of the Borrower11
ARTICLE III	THE PROJECT LOAN13
Section 3.01	Conditions to Funding the Project Loan13
Section 3.02	Terms of the Project Loan; Servicing13
Section 3.03	Deposits.....15
Section 3.04	Pledge and Assignment to Fiscal Agent15
Section 3.05	Investment of Funds15
Section 3.06	Damage; Destruction and Eminent Domain15
Section 3.07	Enforcement of Financing Documents15
ARTICLE IV	LOAN PAYMENTS16
Section 4.01	Payments Under the Project Note; Independent Obligation of Borrower16
Section 4.02	Additional Payments Under the Project Note and this Project Loan Agreement17
Section 4.03	Payments to Rebate Fund.....19
Section 4.04	Prepayment.....19
Section 4.05	Borrower’s Obligations Upon Prepayment.....20
Section 4.06	Limits on Personal Liability.....20
ARTICLE V	SPECIAL COVENANTS OF BORROWER.....20
Section 5.01	Performance of Obligations20
Section 5.02	Compliance With Applicable Laws21
Section 5.03	Funding Loan Agreement Provisions21
Section 5.04	Reserved.....21
Section 5.05	Borrower to Maintain Its Existence; Certification of No Default.....21
Section 5.06	Borrower to Remain Qualified in State and Appoint Agent21

Section 5.07	Sale or Other Transfer of Project	21
Section 5.08	Right to Perform Borrower’s Obligations.....	21
Section 5.09	Notice of Certain Events	22
Section 5.10	Survival of Covenants	22
Section 5.11	Access to Project; Records.....	22
Section 5.12	Tax Regulatory Agreement.....	22
Section 5.13	Damage, Destruction and Condemnation	23
Section 5.14	Obligation of the Borrower To Construct the Project.....	23
Section 5.15	Filing of Financing Statements	23
ARTICLE VI	INDEMNIFICATION.....	23
Section 6.01	Indemnification	23
Section 6.02	Limitation With Respect to the Funding Lender	26
ARTICLE VII	EVENTS OF DEFAULT AND REMEDIES	26
Section 7.01	Events of Default	26
Section 7.02	Remedies on Default.....	27
Section 7.03	No Remedy Exclusive.....	28
Section 7.04	Agreement to Pay Attorneys’ Fees and Expenses	28
Section 7.05	No Additional Waiver Implied by One Waiver	28
Section 7.06	Control of Proceedings.....	28
Section 7.07	Assumption of Obligations	30
ARTICLE VIII	MISCELLANEOUS.....	30
Section 8.01	Notices	30
Section 8.02	Concerning Successors and Assigns	31
Section 8.03	Governing Law	31
Section 8.04	Modifications in Writing.....	31
Section 8.05	Further Assurances and Corrective Instruments	31
Section 8.06	Captions	31
Section 8.07	Severability	32
Section 8.08	Counterparts	32
Section 8.09	Amounts Remaining in Loan Payment Fund or Other Funds.....	32
Section 8.10	Effective Date and Term	32
Section 8.11	Cross References.....	32
Section 8.12	Funding Lender Representative and Servicer as Third-Party Beneficiaries.....	32
Section 8.13	Supplemental Financings	32
Section 8.14	Non-Liability of Governmental Lender	32
Section 8.15	No Liability of Officers.....	33
Section 8.16	Capacity of the Fiscal Agent.....	33
Section 8.17	Reliance.....	33

PROJECT LOAN AGREEMENT

THIS PROJECT LOAN AGREEMENT (this “**Project Loan Agreement**”) is made and entered into as of November 1, 2022, by and among the **CITY OF BLOOMINGTON, INDIANA** (the “**Governmental Lender**”), a municipal corporation duly organized and existing under the laws of the State of Indiana (the “**State**”), **[FISCAL AGENT]**, a national banking association, duly organized and existing under the laws of the United States (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “**Fiscal Agent**”), and **COUNTRY VIEW HOUSING, LP**, a limited partnership duly organized and existing under the laws of the State (together with its successors and assigns permitted hereunder, the “**Borrower**”).

RECITALS

A. Pursuant to Indiana Code Title 36, Article 7, Sections 11.9 and 12 (the “**Act**”) and this Project Loan Agreement, the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the maximum aggregate principal amount of \$[15,000,000] (the “**Project Loan**”) to provide for the financing of a multifamily rental housing development located at 2500 S. Rockport Road, Bloomington, Indiana and subordinate and related facilities thereto known as Country View Apartments (the “**Project**”).

B. The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the loan in the maximum aggregate principal amount of \$[15,000,000] (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”) made to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Funding Loan Agreement**”), by and among Merchants Bank of Indiana, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the Governmental Lender and the Fiscal Agent. The Funding Loan is evidenced by the Governmental Lender’s City of Bloomington, Indiana Economic Development Revenue Note, Series 2022 (Country View Apartments Project) dated the Delivery Date (together with all riders and addenda thereto, the “**Governmental Note**”) delivered by the Governmental Lender to the Initial Funding Lender.

C. The Initial Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower in corresponding installments pursuant to this Project Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Financing Documents.

D. The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition, renovation and equipping of the Project and to pay certain closing costs with respect to the Loans.

E. The Borrower’s repayment obligations in respect of the Project Loan will be evidenced by a [Promissory Note] dated the Delivery Date (together with all riders and

modifications thereto, the “**Project Note**”) delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

F. To secure the Borrower’s obligations under the Project Note, the Borrower will execute and deliver to the [[Governmental Lender a Real Estate Mortgage, Security Agreement and Assignment of Leases and Fixture Filing dated as of the Delivery Date (the “**Security Instrument**”) with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan]].

G. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”) has entered into a commitment with Merchants Capital Corp. (the “**Freddie Mac Seller/Servicer**”) dated [November ____, 2022] (the “**Freddie Mac Commitment**”) whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date.

H. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

I. As a Condition to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement.

J. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).

K. Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. The Freddie Mac Seller/Servicer will act as

Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

NOW, THEREFORE, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

"Additional Loans" is defined in Section 8.13 of this Project Loan Agreement.

"Event of Default" means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

"Fee Component" means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

"Investor Limited Partner" means [_____], an Indiana limited liability company, its successors and assigns.

"Project Loan Agreement" means this Project Loan Agreement, together with any amendments hereto.

"Project Loan Amortization Schedule" means the Project Loan Amortization Schedule to be attached as Schedule 1 to the Project Note on the Conversion Date.

"Project Loan Payment" means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Note and this Project Loan Agreement.

"Project Loan Payment Date" means: (A)(i) during the Construction Phase, the [tenth] day of each calendar month, commencing [December 10, 2022], and (ii) during the Permanent Phase, the first day of each calendar month, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

"Servicing Fee" means during the Construction Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Project Loan and Funding Loan payable monthly

in an amount equal to one twelfth of [[____]]% of the outstanding principal balance of the Project Loan, computed on the basis of a 360-day year and the actual number of days elapsed and during the Permanent Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to one twelfth of [[0.10]]% of the outstanding principal balance of the Project Loan, computed on the basis of a 360-day year and the actual number of days elapsed.

“*Taxes*” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

Section 1.02 Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Project Loan Agreement; the term “heretofore” means before the date of execution of this Project Loan Agreement; and the term “hereafter” means after the date of execution of this Project Loan Agreement.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01 Representations, Warranties and Covenants of the Governmental Lender. The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) The Governmental Lender is a municipal corporation of the State, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) The Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. The execution and delivery of the Governmental Note and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document; (iv) questions the tax-exempt status of the Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificate or the Tax Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Project Loan Agreement, the Tax Certificate and the Tax Regulatory Agreement.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Note, or as to the correctness, completeness or accuracy of such statements.

Section 2.02 Representations, Warranties and Covenants of the Borrower. The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) The Borrower is a limited partnership duly organized, validly existing and in good standing under the laws of the State in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents. All corporate general partners, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of rehabilitation of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) 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, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the excludability from gross income for federal income tax purposes of interest on the Governmental Note.

(g) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction of the Project, will continue to conform in all material respects with the requirements of the Act

as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(h) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(i) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and, except as provided in the Borrower's partnership agreement, there are no outstanding options or rights to purchase or acquire those interests. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(l) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(m) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements,

information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(n) To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(o) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project, except as provided in the Borrower's partnership agreement.

(p) The Project is located wholly within the boundaries of the City of Indianapolis, Indiana.

(q) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the excludability from gross income for federal income tax purposes of the interest on the Governmental Note. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(r) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(s) The Borrower will have a fee simple interest in the land and improvements on which the Project will be constructed, subject only to liens permitted under the Security Instrument.

(t) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

Section 2.03 *Representations and Warranties of the Fiscal Agent.* The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other

Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

Section 2.04 *Arbitrage and Rebate Fund Calculations.* The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

Section 2.05 *Tax Covenants of the Borrower.* The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Note to be included in gross income of the Funding Lender, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such excludability from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the excludability (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Governmental Note;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Governmental Note to be "arbitrage bonds" within the meaning of Section 148 of the Code;

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition

to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer;

(f) The full amount of the disbursements of proceeds of the Project Loan will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account all proposed disbursements, (i) at least 95% of the net proceeds of the Governmental Note (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Governmental Note (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Tax Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement or the Tax Regulatory Agreement;

(j) No proceeds of the Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) within two (2) years of the Delivery Date with respect to such building equal or exceed fifteen percent (15%) of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Funding Loan, will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

ARTICLE III

THE PROJECT LOAN

Section 3.01 *Conditions to Funding the Project Loan.* On the Delivery Date and thereafter, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance with Sections 2.01 and 2.11 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to make the Project Loan, provided that no initial disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Project Note and the Governmental Lender shall have endorsed the Project Note to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the Recorder’s Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent;

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Servicer;

(f) All fees payable in connection with the closing of the Project Loan, together with the initial fees of the Fiscal Agent and Funding Lender, shall have been paid; and

(g) All conditions in any of the Financing Documents to the funding of the initial installment of the Funding Loan shall have been met to the satisfaction of the Funding Lender.

Section 3.02 *Terms of the Project Loan; Servicing.*

(a) The Project Loan shall (i) be evidenced by the Project Note; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of \$[15,000,000]; (iv) bear interest as provided in the Project Note; (v) provide for principal and interest payments in accordance with the Project Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Note. The outstanding principal balance of the Project Loan at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender and deposited by the Fiscal Agent into the Project Loan Fund under the Funding Loan Agreement minus any amounts prepaid with respect to principal in accordance with the terms hereof and the Project Note.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The initial Servicer of the Loans is the Initial Funding Lender. On the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer shall become the Servicer and shall service the Loans as required by the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Servicer services the Loans, the Borrower shall make all payments in connection with the Project Loan to the Servicer, and the Servicer will (i) retain the allocable portion of the monthly Servicing Fee (if any) for its own account, (ii) remit to the Funding Lender all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, together, with any other amounts due to the Funding Lender, (iii) remit to the Fiscal Agent the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent, and (iv) remit to the Governmental Lender any other amounts due to the Governmental Lender. During a period in which there is no Servicer, all notices to be sent to the Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan. The Governmental Lender, the Fiscal Agent and the Borrower further hereby acknowledge and agree with respect to the Servicer

during the Permanent Phase that: (i) the *Guide* is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (ii) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the *Guide*.

Section 3.03 Deposits. On the Delivery Date deposits as detailed in the Settlement Statement dated as of the Delivery Date shall be provided as set forth therein. On each date of an advance of the proceeds of the Funding Loan (other than any advance the proceeds of which are used to pay interest or other amounts due to the Funding Lender as provided in the Construction Continuing Covenant Agreement), such proceeds shall be deposited in the Project Account of the Project Loan Fund. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 2.11(d) of the Funding Loan Agreement.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

Section 3.04 Pledge and Assignment to Fiscal Agent. The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

Section 3.05 Investment of Funds. Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

Section 3.06 Damage; Destruction and Eminent Domain. If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

Section 3.07 Enforcement of Financing Documents. The Fiscal Agent (at the direction of the Funding Lending Representative) or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

ARTICLE IV

LOAN PAYMENTS

Section 4.01 *Payments Under the Project Note; Independent Obligation of Borrower.*

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Permanent Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than five (5) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Note, provided that in all events payments made by the Borrower under and pursuant to the Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Project Note or any provision of the Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Project Note or such provision of the Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Note.

(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Project Note shall be made in immediately available funds to the Servicer on each Project Loan Payment Date or such other date when such payment is due; provided, however, such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

Section 4.02 *Additional Payments Under the Project Note and this Project Loan Agreement.*

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Note include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Initial Funding Lender, its origination fees, together with all third party and out-of-pocket expenses of the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Initial Funding Lender) in connection with the Loans.

(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(iii) [Reserved].

(iv) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Freddie Mac Seller/Servicer, its commitment fees and application fees, together with all third party and out of pocket expenses of the Freddie Mac Seller/Servicer (including but not limited to the fees and expenses of counsel to the Freddie Mac Seller/Servicer, if any) in connection with the Loans.

(v) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$[_____] and the initial Ordinary Fiscal Agent's Fees and Expenses in an amount equal to \$[_____] together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Note.

(vi) To the Fiscal Agent, the Ordinary Fiscal Agent's Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(vii) To the Governmental Lender, any extraordinary expenses not covered by the initial financing fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time.

(viii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(ix) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(x) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(xi) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

Section 4.03 *Payments to Rebate Fund.* The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

Section 4.04 *Prepayment.*

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Project Note.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, as provided in the Project Note. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, in connection with the following:

(i) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment; and

(ii) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Conversion Notice is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date.

(c) **Defeasance of the Funding Loan.** In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “**Defeasance Notice**”) to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “**Defeasance Date**”). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

Section 4.05 *Borrower’s Obligations Upon Prepayment.* In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

Section 4.06 *Limits on Personal Liability.*

(a) Except as otherwise set forth in the Project Note and subsection 4.06(b) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any partner of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower's general partner: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under subsections (b)(ii), (b)(iv), (b)(v), and (b)(vi) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Project Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

ARTICLE V

SPECIAL COVENANTS OF BORROWER

Section 5.01 *Performance of Obligations.* The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

Section 5.02 *Compliance With Applicable Laws.* All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

Section 5.03 *Funding Loan Agreement Provisions.* The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

Section 5.04 *Reserved.*

Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.*

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 60 days after the end of each calendar year, render to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.* The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

Section 5.07 *Sale or Other Transfer of Project.* The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

Section 5.08 *Right to Perform Borrower's Obligations.* In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

Section 5.09 *Notice of Certain Events.* The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.10 *Survival of Covenants.* The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

Section 5.11 *Access to Project; Records.* Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding

Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) after reasonable notice to the Borrower at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

Section 5.12 *Tax Regulatory Agreement.* The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of this Project Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

Section 5.13 *Damage, Destruction and Condemnation.* If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

Section 5.14 *Obligation of the Borrower To Construct the Project.* The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing

Documents) to complete the acquisition, renovation and equipping, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower, together with other loans to the Borrower and equity funds available during construction, are not sufficient to pay the costs of the acquisition, construction, development 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, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower or any other person if for any reason the Project is not completed.

Section 5.15 Filing of Financing Statements. The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

ARTICLE VI

INDEMNIFICATION

Section 6.01 Indemnification.

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower (and with respect to the Governmental Lender, the Borrower's general partner) agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the "**Indemnified Parties**"), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, "**Losses**"), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in

connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project 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, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer 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 Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) Reserved;

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Note or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Note necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Governmental Note or allegations (or regulatory inquiry) that interest on the Governmental Note is includable in gross income for federal income tax purposes;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Note to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) **Procedures.** 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 such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or 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 such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and 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 employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Security Instrument and the Tax Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

Section 6.02 *Limitation With Respect to the Funding Lender.* Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding

Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01 *Events of Default.* The following shall be “**Events of Default**” under this Project Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Project Loan Agreement, the Project Note or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Note and the Security Instrument, as applicable, if such failure continues for three (3) business days after the date when such amount is due;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative's sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative's judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, or impairment of this Project Loan Agreement or any other Financing Document; and

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender

Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents. The Governmental Lender and the Fiscal Agent agree that they will endeavor as a courtesy to the Investor Limited Partner to deliver a copy of a notice described in this Section 7.01 to the Investor Limited Partner, provided however that any failure to provide such courtesy copy notice will not affect the validity or sufficiency of any notice to Borrower, will not affect the Governmental Lender's, the Fiscal Agent's or the Funding Lender's rights and remedies under any of the Financing Documents, nor subject the Governmental Lender, the Fiscal Agent or the Funding Lender to any claims by or liability to the Investor Limited Partner.

Section 7.02 Remedies on Default. Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of 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 Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable) and exercising the other rights available to Funding Lender under the Financing Documents.

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Funding Loan

collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

Section 7.03 *No Remedy Exclusive.* Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, 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 Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.* In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.05 *No Additional Waiver Implied by One Waiver.* In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.06 *Control of Proceedings.*

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing

rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) initiate or 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 Project Loan; or

(iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Section 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;

(ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Section 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a "Related Indemnified Party") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent's right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as

provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause 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.

Section 7.07 Assumption of Obligations. In the event that the Fiscal Agent or the Funding Lender or their respective 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 Project Loan Agreement, the Project Note, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Subject to Section 6.02 hereof, 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 7.08 Investor Limited Partner's Cure Rights. The Investor Limited Partner shall have the right, but not the obligation, to cure any Event of Default arising hereunder or under any Financing Document, for which a cure right is expressly granted to the Borrower hereunder or under any Financing Document, and such cure shall be accepted or rejected by the Governmental Lender, Fiscal Agent, Servicer and Funding Lender on the same basis as if made or tendered by the Borrower.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Notices.

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph,

designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer.

A courtesy copy of any notice or other communication sent to the Borrower shall also be sent to Investor Limited Partner at the following address:

[_____
c/o [_____
[_____
[_____
Attention: [_____
With a copy to: [_____]

With a copy to:

[_____
[_____
[_____
Attention: [_____
Email: [_____
Telephone: [_____]

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Project Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

Section 8.02 Concerning Successors and Assigns. All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the

benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

Section 8.03 *Governing Law.* This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

Section 8.04 *Modifications in Writing.* Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

Section 8.05 *Further Assurances and Corrective Instruments.* The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

Section 8.06 *Captions.* The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

Section 8.07 *Severability.* The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

Section 8.08 *Counterparts.* This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 8.09 *Amounts Remaining in Loan Payment Fund or Other Funds.* It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

Section 8.10 *Effective Date and Term.* This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

Section 8.11 *Cross References.* Any reference in this Project Loan Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project

Loan Agreement, an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

Section 8.12 *Funding Lender Representative and Servicer as Third-Party Beneficiaries.* The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Project Loan Agreement.

Section 8.13 *Supplemental Financings.* The Governmental Lender and the Fiscal Agent each acknowledges that the Funding Lender or, if Freddie Mac is not the Funding Lender, Freddie Mac may make additional loans to the Borrower secured by additional mortgages on the Project (“**Additional Loans**”). The Governmental Lender and the Fiscal Agent each consents to the Additional Loans notwithstanding anything to the contrary in the Project Loan Documents, provided that such loans are subordinate to the repayment of the Project Loan by the Borrower.

Section 8.14 *Non-Liability of Governmental Lender.* The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project 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 or any member is pledged to the payment of the principal (or Prepayment Premium) 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 Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent 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 Premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, 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 premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

Section 8.15 *No Liability of Officers.* No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, 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, shall

be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. 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 incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Note.

Section 8.16 *Capacity of the Fiscal Agent.* The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

Section 8.17 *Reliance.* The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Project Loan Agreement, all as of the date first set forth above.

CITY OF BLOOMINGTON, INDIANA, as
Governmental Lender

By: _____
John Hamilton,
Mayor

ATTEST:

By: _____
Nicole Bolden, Clerk

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO COUNTRY VIEW APARTMENTS PROJECT LOAN AGREEMENT]

S-1

[FISCAL AGENT], as Fiscal Agent

By: _____

Name: _____

Title: _____

[FISCAL AGENT'S SIGNATURE PAGE TO COUNTRY VIEW APARTMENTS PROJECT LOAN AGREEMENT]

S-2

COUNTRY VIEW HOUSING, LP, an Indiana
limited partnership

By: [_____]

By: [_____]

By: _____
[_____]

[BORROWER'S SIGNATURE PAGE TO COUNTRY VIEW APARTMENTS PROJECT LOAN AGREEMENT]

Prepared by and return to:
Tyler J. Kalachnik
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282

REGULATORY AGREEMENT

By and Among

CITY OF BLOOMINGTON, INDIANA

[FISCAL AGENT]

And

COUNTRY VIEW HOUSING, LP

Dated as of November 1, 2022

Relating to

CITY OF BLOOMINGTON, INDIANA
ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2022
(COUNTRY VIEW APARTMENTS PROJECT)

TABLE OF CONTENTS

	Page
Section 1.	Definitions and Interpretation1
Section 2.	Representations, Covenants and Warranties of the Borrower4
Section 3.	Qualified Residential Rental Project.....6
Section 4.	Low Income Tenants; Reporting Requirements8
Section 5.	Tax-Exempt Status of Note.....11
Section 6.	Additional Requirements11
Section 7.	No Compliance Duty11
Section 8.	Modification of Covenants11
Section 9.	Indemnification12
Section 10.	Consideration12
Section 11.	Reliance.....12
Section 12.	Sale or Transfer of the Project13
Section 13.	Term.....14
Section 14.	Covenants to Run With the Land.....14
Section 15.	Burden and Benefit15
Section 16.	Uniformity; Common Plan15
Section 17.	Default; Enforcement.....15
Section 18.	The Fiscal Agent16
Section 19.	Recording and Filing.....17
Section 20.	Payment of Fees18
Section 21.	Governing Law18
Section 22.	Amendments18
Section 23.	Notices18
Section 24.	Severability19
Section 25.	Multiple Counterparts19
Section 26.	Limitation on Liability20
Section 27.	Freddie Mac Rider20
Exhibit A	Description of Project Site
Exhibit B	Verification of Income
Exhibit C	Occupancy Certificate

Exhibit D Compliance Certificate
Exhibit E Freddie Mac Rider

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (as supplemented and amended from time to time, this “Agreement” or this “Regulatory Agreement”) is made and entered into as of November 1, 2022, by and among the CITY OF BLOOMINGTON, INDIANA, a municipal corporation of the State of Indiana (the “State”) created and existing under and by virtue of the laws of the State (together with any successor to its rights, duties and obligations, the “Governmental Lender”), [FISCAL AGENT], a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Indianapolis, Indiana, as Fiscal Agent (the “Fiscal Agent”) and COUNTRY VIEW HOUSING, LP, an Indiana limited partnership (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “Borrower”).

WITNESSETH:

WHEREAS, the Governmental Lender proposes to issue its Economic Development Revenue Note, Series 2022 (Country View Apartments Project) (the “Note”), pursuant to a Funding Loan Agreement, by and among the Governmental Lender, the Fiscal Agent and Merchants Bank of Indiana, of even date herewith (the “Funding Loan Agreement”) in the aggregate principal amount of not to exceed \$[15,000,000] pursuant to and in compliance with Indiana Code Title 36, Article 7, Chapter 11.9 and 12, et. seq. (the “Act”), and will lend the proceeds of the Note to the Borrower pursuant to a Project Loan Agreement, by and among the Governmental Lender, the Borrower and the Fiscal Agent, of even date herewith (as supplemented and amended from time to time, the “Project Loan Agreement”) in order to enable the Borrower to finance the acquisition, renovation and equipping of a 206-unit residential rental development including functionally related and subordinate facilities located on the site described in Exhibit A hereto (the “Project”); and

WHEREAS, in order to assure the Governmental Lender and the owners of the Note that interest on the Note will be excludable from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), and to satisfy the public purposes for which the Note is authorized to be issued under the Act, and to satisfy the purposes of the Governmental Lender in determining to issue the Note, certain limits on the occupancy of units in the Project need to be established and certain other requirements need to be met;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Governmental Lender, the Fiscal Agent and the Borrower hereby agree as follows:

Section 1. Definitions and Interpretation. Unless the context otherwise requires, the capitalized terms used herein shall have the respective meanings assigned to them in the recitals hereto or in this Section 1.

“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“Agreement” or “Regulatory Agreement” means this Regulatory Agreement, as it may be supplemented and amended from time to time.

“Area” means the Bloomington, Indiana Statistical Area.

“Certificate of Continuing Program Compliance” means the Certificate to be filed by the Borrower with the Governmental Lender and the Fiscal Agent pursuant to Section 4(e) hereof, which shall be substantially in the form attached as Exhibit D hereof or in such other form as may be provided by the Governmental Lender to the Borrower.

“Closing Date” means [November ____, 2022].

“Funding Loan Agreement” has the meaning given to that term in the recitals to this Regulatory Agreement.

“Housing Act” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. 14101 et. seq., or its successor.

“Income Certification” means a Verification of Income and an Occupancy Certificate in the forms attached as Exhibit B and Exhibit C hereof, respectively, or in such other form as may be provided by the Governmental Lender to the Borrower.

“Investor Limited Partner” means [_____], a limited liability company and its successors and assigns.

“Low Income Tenant” means any tenant whose Adjusted Income does not exceed limits determined in a manner consistent with determinations of low income families under Section 8 of the Housing Act, except that the percentage of median gross income that qualifies as low income shall be sixty percent (60%) or less of median gross income for the Area with adjustments for family size. If all the occupants of a unit are students not described under Section 42(i)(3)(D) of the Code, such occupants shall not qualify as Low Income Tenants. The determination of a tenant’s status as a Low Income Tenant shall be made by the Borrower upon initial occupancy of a unit in the Project by such tenant, on the basis of an Income Certification executed by the tenant.

“Low Income Units” means the units in the Project required to be rented, or held available for occupancy by, Low Income Tenants pursuant to Section 4(a) hereof.

“Note” means the City of Bloomington, Indiana Economic Development Revenue Note, Series 2022 (Country View Apartments Project) in the original aggregate principal amount of \$[15,000,000].

“Project” means the privately owned or leased real and personal property to be comprised of a multifamily housing complex consisting of 206 units and located on the site described in Exhibit A hereto, consisting of those facilities, including real property, structures, buildings,

fixtures or equipment, described in the Project Loan Agreement, as it may at any time exist, the acquisition, renovation and equipping of which facilities is to be financed, in whole or in part, from the proceeds of the sale of the Note or the proceeds of any payment by the Borrower pursuant to the Project Loan Agreement, and any real property, structures, buildings, fixtures or equipment acquired in substitution for, as a renewal or replacement of, or a modification or improvement to, all or any part of the facilities described in said Exhibit A.

“Project Loan Agreement” has the meaning given to that term in the recitals to this Regulatory Agreement.

“Qualified Project Period” means the period beginning on the first day on which at least 10% of the units in the Project are first occupied, and ending on the later of the following:

- (A) the date which is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied; or
- (B) the first date on which no Tax-Exempt private activity bonds with respect to the Project are outstanding (as that phrase is used in Section 142(d)(2) of the Code); or
- (C) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

“Regulations” means the Income Tax Regulations of the Department of the Treasury applicable under the Code from time to time.

“Tax-Exempt” means with respect to interest on any obligations of a state or local government, including the Note, that such interest is excludable from gross income for federal income tax purposes; however, as the context requires, that such interest may be includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax or environmental tax, under the Code.

“Verification of Income” means a Verification of Income in the form attached as Exhibit B hereto or in such other form as may be provided by the Governmental Lender to the Borrower.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of any gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 2. Representations, Covenants and Warranties of the Borrower.

(a) The Borrower hereby incorporates herein, as if set forth in full herein, each of the representations, covenants and warranties of the Borrower contained in the Tax Certificates (as defined in the Funding Loan Agreement) and the Project Loan Agreement relating to the acquisition, rehabilitation, improvement, installation and operation of the Project.

(b) The Borrower hereby represents and warrants that the Project is located entirely within the Area.

(c) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions contemplated by this Agreement; that it is familiar with the provisions of all of the documents and instruments relating to the Note to which it is a party or of which it is a beneficiary; that it understands the financial and legal risks inherent in such transactions; and that it has not relied on the Governmental Lender for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Governmental Lender in any manner except to issue the Note in order to provide funds to assist the Borrower in acquiring the Project.

(d) As soon as is reasonably possible, the Borrower shall notify the Fiscal Agent and the Governmental Lender of the existence of any situation or the occurrence of any event of which the Borrower has knowledge, the existence or occurrence of which would violate any of the provisions of this Agreement or cause the interest on the Note to become includable in the gross income of the holders thereof for federal income tax purposes, including the provision to the Fiscal Agent of all notices and correspondence from the Governmental Lender or the Internal Revenue Service with respect to compliance with the provisions hereof.

(e) This Agreement shall be recorded in the office of the county recorder of the County of Monroe and shall be recorded in the grantor-grantee index in the name of the Borrower as grantor and to the name of the Governmental Lender as grantee.

(f) The Borrower is a limited partnership organized and existing under the laws of the State of Indiana and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement.

(g) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(h) The execution, delivery and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, note, commitment, agreement or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(i) To the best of the Borrower's knowledge, there is no action, suit, proceeding, inquiry or investigation by or before any governmental agency, public board or body pending or threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit or restrain the issuance, sale or delivery of the Note or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Note or this Regulatory Agreement,

(iii) questions the Tax-Exempt status of the Note, or

(iv) questions the power or authority of the Borrower to own, acquire, rehabilitate, equip, improve or operate the Project or to execute, deliver or perform the Borrower's obligations under this Regulatory Agreement.

(j) The Borrower has and will have a fee simple title with respect to the land and the improvements comprising the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(k) The Project consists and will consist of those facilities described herein, which generally are described as apartment complexes and related facilities situated on the real property described in Exhibit A hereto. The Borrower shall not make any changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Note. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Note in accordance with all applicable federal, state and local laws, rules, and regulations applicable to the Project.

(l) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits and authorizations with respect to the operation of the Project.

(m) Reserved.

(n) The Borrower does not and will not own any portion of the Note except as provided in the Project Loan Agreement and in any documents governing the issuance of any future bonds.

(o) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed except for those other multifamily facilities comprising the Project. The multifamily facilities constituting Country View Apartments were financed under a separate plan of finance with a separate issue (such issue being the Note) under Treasury Regulations Section 1.150-1(c).

(p) The statements made in the various certificates delivered by the Borrower to the Governmental Lender or the Fiscal Agent on the date of issuance of the Note, are true and correct.

(q) Money on deposit with the Fiscal Agent in any fund or account in connection with the Note, whether or not such money was derived from other sources, shall not be used by or under the direction of the Borrower in a manner which would cause the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code, and the Borrower specifically agrees that the investment of money in any such fund shall be restricted as may be necessary to prevent the Note from being an “arbitrage bond” under the Code.

(r) The Borrower (and any person related to it within the meaning of Section 147(a)(2) of the Code) will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the proceeds from the sale of the Note to be applied in a manner contrary to the requirements of the Project Loan Agreement or this Regulatory Agreement.

Section 3. Qualified Residential Rental Project. The Borrower hereby acknowledges and agrees that the Project is to be owned, managed and operated in the same manner as a “qualified residential rental project” (within the meaning of Section 142(d) of the Code) for a term equal to the Qualified Project Period. To that end, and for the term of this Agreement, the Borrower hereby represents, covenants, warrants and agrees as follows:

(a) The Project will be acquired and operated for the purpose of providing multifamily residential rental property. The Borrower will have fee simple title in the land and the improvements comprising the Project and will cause the Project to be managed and operated on a continuous basis as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, each containing at least one dwelling unit and all of which contain dwelling units and facilities functionally related and subordinate thereto, and no other facilities, in accordance with Section 142(d) of the Code, Section 1.103-8(b) of the Regulations and the provisions of the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project will be similarly constructed units, and each dwelling unit in the Project will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping

area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis, or will ever be leased or rented for an initial lease term of less than thirty (30) days, nor will any part of the Project be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, retirement home, hospital, sanitarium, rest home or trailer court or park.

(d) No part of the Project will at any time during the Qualified Project Period be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or use, and the Borrower will not take any steps in connection with a conversion of the Project to condominium ownership resulting in ownership of a unit by an individual natural person during the Qualified Project Period.

(e) All of the dwelling units in the Project (except for not more than one unit set aside for resident manager or other administrative use) will be available for rental during the Qualified Project Period on a continuous basis to members of the general public, on a first-come first-served basis, 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 hereunder or pursuant to a regulatory agreement governing the Project relating to the Borrower's receipt of tax credits under Section 42 of the Code and to the extent dwelling units will be leased in accordance with HUD Section 8 Program constraints and regulations.

(f) The Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street or stream, and (iii) all of the facilities of the Project comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) No dwelling unit in the Project shall be occupied by the Borrower; provided, however, that if the Project contains five or more dwelling units, this provision shall not be construed to prohibit occupancy of not more than one dwelling unit by one or more resident managers or maintenance personnel any of whom may be the Borrower.

(h) No portion of the Project shall be used to provide any 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.

(i) The Project will not include a dwelling unit in a building where all dwelling units in such building are not also included in the Project.

(j) If the Project is converted to condominium or cooperative ownership, then none of the units of the Project will be sold or otherwise transferred such that individual ownership of units results during the Qualified Project Period.

(k) The Note will not be “federally guaranteed,” as defined in Section 149(b) of the Code.

(l) The Project shall at all times be used and operated as “residential housing” as defined in the Act.

(m) The Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(n) The Project is financed by the Loan (as defined in the Project Loan Agreement) or otherwise pursuant to a common plan of financing and consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property functionally related and subordinate in purpose and size to the Project, e.g., parking areas, laundries, swimming pools, tennis courts and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, e.g., heating and cooling equipment, trash disposal equipment or units for residential managers or maintenance personnel.

Section 4. Low Income Tenants; Reporting Requirements. Pursuant to the requirements of the Code, the Borrower hereby represents, warrants and covenants as follows:

(a) For the Qualified Project Period, no less than 40% of the total number of completed units of the Project shall at all times be rented to and occupied by Low Income Tenants. For the purposes of this paragraph, a vacant unit which was most recently occupied by a Low Income Tenant is treated as rented and occupied by a Low Income Tenant until reoccupied, other than for a temporary period of not more than 60 days, at which time the character of such unit shall be redetermined.

(b) No tenant qualifying as a Low Income Tenant shall be denied continued occupancy of a unit in the Project because, after admission, such tenant’s Adjusted Income increases to exceed the qualifying limit for Low Income Tenants. However, should a Low Income Tenant’s Adjusted Income, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for a Low Income Tenant of the same family size, the next available unit of comparable or smaller size must be rented to (or, held vacant and available for immediate occupancy by) a Low Income Tenant. Until such next available unit is rented to a Low Income Tenant the former Low Income Tenant who has ceased to qualify as such shall be deemed to continue to be a Low Income Tenant for purposes of the forty percent (40%) requirement of Section 4(a) hereof until the rental of an available unit of comparable or smaller size to a tenant who is not a Low Income Tenant.

(c) For the Qualified Project Period, the Borrower will obtain, complete, and maintain on file Income Certifications for each Low Income Tenant, including (i) an Income Certification dated immediately prior to the initial occupancy of such Low Income Tenant in the Project, and (ii) thereafter, an annual Income Certification with respect to each Low Income Tenant, within thirty days before or after the anniversary of such tenant's initial occupancy of a unit in the Project. The Borrower will provide such additional information as may be required in the future by the Governmental Lender and by the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to Tax-Exempt obligations. A copy of the most recent Income Certifications for Low Income Tenants commencing or continuing occupation of a Low Income Unit shall be attached to each report to be filed with the Governmental Lender pursuant to paragraph (e) of this Section 4. The Borrower shall make a good faith effort to verify that the income information provided by an applicant in a Verification of Income is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a TRW or other similar search, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration and/or the Indiana Department of Social Services if the applicant receives assistance from either of such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units, and will permit any duly authorized representative of the Governmental Lender, the Fiscal Agent, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units.

(e) During that portion of the term of this Agreement that the Borrower must comply with procedures of the Governmental Lender under Section 42 of the Code, the Borrower shall comply with those procedures as if set forth in this Agreement. During any other portion of the term of this Agreement that also falls within the Qualified Project Period, the Borrower will prepare and submit to the Governmental Lender and the Fiscal Agent, on or before December 31 of each such year until the end of the Qualified Project Period, a Certificate of Continuing Program Compliance executed by the Borrower stating (i) the percentage of the dwelling units of the Project which were occupied or deemed occupied, pursuant to subsection (a) hereof, by Low Income Tenants during the preceding calendar quarter; and (ii) that either (A) no unremedied default has occurred under this Regulatory Agreement or the Project Loan Agreement, or (B) a default has occurred, in which event the certificate shall describe the nature of the default in detail and set forth the measures being taken by the Borrower to remedy such default.

(f) For the Qualified Project Period, all tenant leases shall be subordinate to this Agreement and the Security Instrument (as defined in the Project Loan Agreement) and shall contain clauses, among others, wherein each tenant who occupies a Low Income

Unit: (i) certifies the accuracy of the statements made in the Verification of Income and (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such tenant, that such tenant will comply promptly with all requests for information with respect thereto from the Borrower or the Fiscal Agent on behalf of the Governmental Lender, and that the failure to provide accurate information in the Verification of Income or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such tenant.

(g) Each lease or rental agreement pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the Verification of Income and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease or rental agreement. Each such lease or rental agreement shall also provide that the tenant's income is subject to annual certification.

(h) The Low Income Units will be intermingled reasonably with all other dwelling units and on all floors in the Project and shall be of a quality, and offer a range of sizes and number of bedrooms, comparable to those units which are available to other tenants. Tenants in the Low Income Units in the Project have had and shall continue to have equal access and enjoyment to all common facilities of the Project.

(i) The Borrower will notify the Governmental Lender and the Fiscal Agent, in writing, of the occurrence of any default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event more than ten (10) business days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Fiscal Agent if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(j) During that portion of the term of this Agreement that the Borrower must comply with procedures of the Governmental Lender under Section 42 of the Code, the Borrower shall comply with those procedures as if set forth in this Agreement. During any other portion of the term of this Agreement, the Borrower shall send to the Governmental Lender a written Regulatory Agreement compliance review on or before December 31 of each such year, which describes the procedures performed by the Borrower, and shall indicate whether, based on such procedures, the Borrower is and has been in compliance with the provisions of this Regulatory Agreement for the prior 12-month period (or such shorter period in the case of the first such period) ending on the last day of each December.

Section 5. Tax-Exempt Status of Note. The Borrower and the Governmental Lender, as applicable, each hereby represents, warrants and agrees as follows: the Borrower and the Governmental Lender will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax-Exempt nature of the interest on the

Note and, if either of them should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

Section 6. Additional Requirements. In addition to the requirements set forth above, so long as the Note is outstanding the Borrower hereby agrees that the covenants and conditions of this Agreement shall be binding upon successors in interest of the Borrower.

Section 7. No Compliance Duty. The Governmental Lender, the Fiscal Agent and the Borrower hereby recognize and agree that the Governmental Lender shall have no compliance duty under the terms and conditions of this Regulatory Agreement and shall not be liable for any failure by the Borrower to comply with the covenants contained in this Regulatory Agreement.

Section 8. Modification of Covenants. The Borrower, the Fiscal Agent and the Governmental Lender hereby agree as follows:

(a) To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the Governmental Lender, the Fiscal Agent and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement (unless the less restrictive requirements are grandfathered in), and if such requirements are applicable to the Project, this Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) To the extent that the Act, the Regulations or the Code, or any amendments thereto, shall, in the written opinion of Bond Counsel filed with the Governmental Lender, the Fiscal Agent and the Borrower, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, this Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Governmental Lender, at its sole discretion, the Fiscal Agent and the Borrower, and only upon receipt by the Governmental Lender of the written opinion of Bond Counsel to the effect that such amendment will not affect the Tax-Exempt status of interest on the Note or violate the requirements of the Act, and otherwise in accordance with Section 22 hereof.

(c) The Borrower, the Governmental Lender and, if applicable, the Fiscal Agent, shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary to effectuate the intent of this Section 8, and each of the Borrower and the Governmental Lender hereby appoints the Fiscal Agent as its 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 in writing by Bond Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligations under this subsection (c); provided, however, that unless directed in writing by the Governmental Lender or the Borrower, the Fiscal Agent shall take no action under this subsection (c) without first notifying the Borrower or the Governmental Lender, or both of them, as is applicable, and without first providing the Borrower or the Governmental Lender, or both,

as is applicable, an opportunity to comply with the requirements of this Section 8. Nothing in this subsection (c) shall be construed to allow the Fiscal Agent to execute an amendment to this Agreement on behalf of the Governmental Lender.

Section 9. Indemnification. The Borrower and its general partner hereby covenant and agree that it shall indemnify and hold harmless the Governmental Lender and the Fiscal Agent and their officers, directors, officials, employees and agents as set forth in the Project Loan Agreement.

To the extent not included in the indemnification provisions of the Project Loan Agreement, the Borrower also shall pay and discharge and shall indemnify and hold harmless the Governmental Lender and the Fiscal Agent from (i) any lien or charge upon payments by the Borrower to the Governmental Lender and the Fiscal Agent hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project. 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 Governmental Lender or the Fiscal Agent shall give prompt notice to the Borrower and the Borrower shall have the right to assume the defense thereof, with full power to litigate, compromise or, settle the same in its sole discretion.

In addition thereto, the Borrower will pay upon demand all of the fees and expenses paid or incurred by the Fiscal Agent and/or the Governmental Lender in enforcing the provisions hereof.

The provisions of this Section 9 shall survive the term of the Note and this Agreement.

Section 10. Consideration. The Governmental Lender has agreed to issue the Note to provide funds to lend to the Borrower to finance the acquisition, renovation and equipping of the Project, all for the purpose, among others, of inducing the Borrower to acquire, rehabilitate, equip and operate the Project. In consideration of the issuance of the Note by the Governmental Lender, the Borrower has entered into this Agreement and has agreed to restrict the uses to which this Project can be put on the terms and conditions set forth herein.

Section 11. Reliance. The Governmental Lender, the Fiscal Agent and the Borrower hereby recognize and agree that the representations and covenants made by each party as set forth herein may be relied upon, only to the extent of the representations and covenants made by each party herein, by all persons interested in the legality and validity of the Note, in the exemption from Indiana personal income taxation of interest on the Note and in the Tax-Exempt status of the interest on the Note. In performing their duties and obligations hereunder, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Low Income Tenants, and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent hereunder in good faith and in conformity with such opinion. In determining whether any default or lack of compliance by the Borrower exists under this Agreement, the Fiscal Agent shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any written notice or certificate delivered to the Fiscal Agent by the Borrower or the Governmental

Lender with respect to the occurrence or absence of a default unless it knows that the notice or certificate is erroneous or misleading.

Section 12. Sale or Transfer of the Project. For the Qualified Project Period, the Borrower shall not, except as provided below, sell, transfer or otherwise dispose of the Project, in whole or in part, without the prior written consent of the Fiscal Agent and the Governmental Lender, which consent shall be given as promptly as practicable following (A) the receipt by the Fiscal Agent and the Governmental Lender of evidence acceptable to the Fiscal Agent that (1) the Borrower shall not be in default hereunder or under the Project Loan Agreement (which may be evidenced by a certificate of the Borrower) or the purchaser or assignee undertakes to cure any defaults of the Borrower to the reasonable satisfaction of the Governmental Lender; (2) the continued operation of the Project shall comply with the provisions of this Agreement; (3) either (a) the purchaser or assignee has at least three years' experience in the ownership, operation and management of large mixed-income rental housing projects, without any record of material violations of discrimination restrictions or other state or federal laws or regulations or local government requirements applicable to such projects, or (b) the purchaser or assignee agrees to retain a property management firm with the experience and record described in subclause (a) above; and (4) the person or entity which is to acquire the Project does not have pending against it, and does not have a history of, building code violations or significant and material complaints concerning the maintenance, upkeep, operation, and regulatory agreement compliance of any of its projects as identified by any local, state or federal regulatory agencies; (B) the execution by the purchaser or assignee of any document requested by the Governmental Lender or the Fiscal Agent with respect to the assumption of the Borrower's obligations under this Agreement, including without limitation an instrument of assumption hereof, and delivery to the Governmental Lender and the Fiscal Agent of an opinion of such purchaser or assignee's counsel to the effect that each such document and this Agreement are valid, binding and enforceable obligations of such purchaser or assignee; (C) receipt by the Governmental Lender and the Fiscal Agent of an opinion of Bond Counsel (as defined in the Project Loan Agreement) addressed to the Governmental Lender and the Fiscal Agent to the effect that any such sale, transfer or other disposition will not adversely affect the Tax-Exempt status of interest on the Note; (D) receipt by the Governmental Lender of all fees then currently due and payable to the Governmental Lender; and (E) satisfaction of such other conditions as the Governmental Lender may reasonably impose. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 12 shall be null, void and without effect, shall cause a reversion of title to the Borrower, and shall be ineffective to relieve the Borrower of its obligations under this Agreement. Nothing in this Section shall affect any provision of any other document or instrument between the Borrower and any other party which requires the Borrower to obtain the prior written consent of such other party in order to sell, transfer or otherwise dispose of the Project. Upon any sale or other transfer which complies with this Agreement, the Borrower shall be fully and automatically released from its obligations hereunder to the extent such obligations have been assumed by the transferee of the Project. Any transfer of the Project to any entity, whether or not affiliated with the Borrower, shall be subject to the provisions of this Section 12. For the Qualified Project Period, the Borrower shall not: (1) except pursuant, or subordinate, to the provisions of this Agreement and the Security Instrument (and upon receipt by the Borrower of an opinion of Bond Counsel that such action will not adversely affect the Tax-Exempt status of interest on the Note), or except upon a sale, transfer or other disposition of the Project in accordance with the terms of this Agreement, encumber any of the Project or grant commercial leases of any part thereof, or permit the

conveyance, transfer or encumbrance of any part of the Project (except for apartment leases, garage leases, self-storage leases and utility easements); (2) demolish any part of the Project or substantially subtract from any real or personal property of the Project, except to the extent that what is removed is replaced with comparable property; or (3) permit the use of the dwelling accommodations of the Project for any purpose except rental residences.

Section 13. Term. This Regulatory Agreement and all and several of the terms hereof shall become effective upon its execution and delivery, and shall remain in full force and effect for the period provided herein and shall terminate as to any provision not otherwise provided with a specific termination date and shall terminate in its entirety at the end of the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Note and discharge of the Project Loan Agreement.

The terms of this Agreement to the contrary notwithstanding, the provisions of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of said Sections 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 Closing Date which prevents the Governmental Lender and the Fiscal Agent from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Note is retired or amounts received as a consequence of such event are used to provide a project which meets the requirements hereof; provided, however, that the terms of this Regulatory Agreement shall be reinstated if, at any time subsequent to such termination as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any related person (within the meaning of Section 147(a)(2) of the Code) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure or similar event, neither the Borrower nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Upon the termination of the terms of this Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms.

Section 14. Covenants to Run With the Land. The Borrower and the Governmental Lender hereby subject the Project to the covenants, reservations and restrictions set forth in this Agreement. The Governmental Lender, the Fiscal Agent and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Borrower's successors in title to the Project; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof 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 instruments.

Section 15. Burden and Benefit. The Governmental Lender, the Fiscal Agent and the Borrower hereby declare their understanding and intent that the burdens of the covenants set forth

herein touch and concern the land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Governmental Lender, the Fiscal Agent and the Borrower hereby further declare their understanding and intent that the benefits of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Note was issued.

Section 16. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use of the site on which the Project is located.

Section 17. Default; Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after notice thereof shall have been given by the Governmental Lender or the Fiscal Agent to the Borrower and Investor Limited Partner, or for a period of 60 days from the date the Borrower should, with due diligence, have discovered such default, then the Governmental Lender or the Fiscal Agent, acting on its own behalf or on behalf of the Governmental Lender, shall declare an "Event of Default" to have occurred hereunder; provided, however, that if the default is of such a nature that it can be corrected, but not within 60 days, such default shall not constitute an Event of Default hereunder so long as (i) the Borrower and/or the Investor Limited Partner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected, and (ii) in the opinion of Bond Counsel, the failure to cure said default within 60 days will not adversely affect the Tax-Exempt status of interest on the Note. The Governmental Lender and the Fiscal Agent shall have the right to enforce the obligations of the Borrower under this Agreement within shorter periods of time than are otherwise provided herein if necessary to ensure compliance with the Act or the Code. Following the declaration of an Event of Default hereunder the Governmental Lender or the Fiscal Agent may (in accordance with the Project Loan Agreement, at its option, take any one or more of the following steps, in addition to all other remedies provided by law or equity:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Governmental Lender or the Fiscal Agent hereunder;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;
- (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder; and
- (d) declare a default under the Project Loan Agreement and proceed with any remedies provided therein, including foreclosure under the Security Instrument and prepayment of the Note to the extent permitted by, and in accordance with the provisions of, the Project Loan Agreement.

The Borrower hereby agrees that specific enforcement of the Borrower's agreements contained herein is the only means by which the Governmental Lender may fully obtain the benefits of such agreements made by the Borrower herein, and the Borrower therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower hereunder.

The Investor Limited Partner shall have the right, but not the obligation, to cure any default by the Borrower hereunder, and the Governmental Lender and Fiscal Agent agree to accept any such cure on the same terms as if tendered by the Borrower.

All reasonable fees, costs and expenses of the Fiscal Agent and the Governmental Lender incurred in taking any action pursuant to this Section shall be the sole responsibility of the Borrower.

No breach or default under this Regulatory Agreement shall defeat or render invalid any deed of trust, mortgage or like encumbrance upon the Project or any portion thereof given in good faith and for value.

The Fiscal Agent shall not be deemed to have knowledge of any default hereunder unless a Responsible Officer of the Fiscal Agent shall have been specifically notified in writing of such default by the Governmental Lender, the Paying Agent, the Borrower or by the Owners of at least 25% of the principal amount of Note outstanding.

The Governmental Lender and the Fiscal Agent hereby agree that any cure of any Event of Default hereunder made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower, and shall be accepted or rejected by the Governmental Lender and the Fiscal Agent on the same basis as if made or tendered by the Borrower.

Section 18. The Fiscal Agent. The Fiscal Agent shall act as specifically provided herein and in the Funding Loan Agreement. The Fiscal Agent shall have no duty to act with respect to enforcement of the Borrower's performance hereunder as described in Section 17 unless it shall have actual knowledge of any such default. The Fiscal Agent shall act as the agent of and on behalf of the Governmental Lender, for the benefit of the Funding Lender, and any act required to be performed by the Governmental Lender as herein provided shall be deemed taken if such act is performed by the Fiscal Agent. In connection with any such performance, however, the Fiscal Agent is acting solely as Fiscal Agent under the Funding Loan Agreement, and not in its individual capacity, and all provisions of the Funding Loan Agreement relating to the rights, privileges, powers and protections of the Fiscal Agent, including without limitation those set forth in Article IX thereof, shall apply with equal force and effect to all actions taken (or omitted to be taken) by the Fiscal Agent in connection with this Regulatory Agreement. Neither the Fiscal Agent nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith except for its or their own gross negligence or willful misconduct. The Fiscal Agent may consult with legal counsel selected by it (the reasonable fees of which counsel shall be paid by the Borrower) and any action taken or suffered by it reasonably and in good faith in accordance with the opinion of such counsel shall be full justification and protection to it. The Fiscal Agent's obligation hereunder will terminate on the date the Note is paid in full and the lien of the Funding Loan Agreement is released.

The Fiscal Agent is entering into this Regulatory Agreement in its capacity as the Fiscal Agent under the terms of the Note and the Funding Loan Agreement. The Governmental Lender may, at all times, assume the Borrower's compliance with this Regulatory Agreement unless otherwise notified in writing by the Fiscal Agent (but the Fiscal Agent shall have no obligation to so notify the Governmental Lender), or unless the Governmental Lender has actual knowledge of noncompliance. It is expected that the Note will be discharged and the Funding Loan Agreement will terminate prior to the end of the Qualified Project Period. Following the payment in full and the discharge of the Tax-Exempt obligations and the termination of the Funding Loan Agreement: (i) all obligations, rights, and duties of the Fiscal Agent under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Fiscal Agent will instead be undertaken by the Governmental Lender; (iii) all notices to be delivered to the Fiscal Agent will instead be delivered to the Governmental Lender; and (iv) the Fiscal Agent shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

Section 19. Recording and Filing.

(a) The Borrower shall cause this Agreement and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County of Monroe and in such other places as the Governmental Lender or the Fiscal Agent may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

(b) The Borrower and the Governmental Lender will file of record such other documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Governmental Lender and the Fiscal Agent, in order to ensure that the requirements and restrictions of this Agreement will be binding upon all owners of the Project.

(c) The Borrower hereby covenants to include or reference the requirements and restrictions contained in this Agreement in any documents transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to abide by all requirements and restrictions of this Agreement.

Section 20. Payment of Fees. Notwithstanding any prepayment of the Note and notwithstanding a discharge of the Project Loan Agreement, the Borrower shall reimburse the Fiscal Agent for all expenses reasonably incurred by it in connection therewith, and shall continue to pay (or shall prepay) the Governmental Lender's expenses as provided in the Project Loan Agreement and the Funding Loan Agreement.

Section 21. Governing Law. This Agreement shall be governed by the laws of the State of Indiana.

Section 22. Amendments.

(a) This Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records

of the County of Monroe, Indiana, and only upon receipt by the Governmental Lender of an opinion from Bond Counsel that such amendment will not adversely affect the Tax-Exempt status of interest on the Note and is not contrary to the provisions of the Act.

(b) Anything to the contrary contained herein notwithstanding, the Governmental Lender, the Fiscal Agent and the Borrower hereby agree to amend this Agreement to the extent required, in the opinion of Bond Counsel, in order that interest on the Note remains Tax-Exempt. The parties requesting such amendment shall notify the other parties to this Agreement of the proposed amendment, with a copy of such requested amendment to Bond Counsel and a request that such Bond Counsel render to the Governmental Lender an opinion as to the effect of such proposed amendment upon the Tax-Exempt status of interest on the Note. This provision shall not be subject to any provision of any other agreement requiring any party hereto to obtain the consent of any other person in order to amend this Agreement.

Section 23. Notices. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, or by electronic means which produces receipt of transmission, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

The Governmental Lender: City of Bloomington, Indiana
401 N. Morton St.
Bloomington, IN 47404
Attention: City Attorney
Email: [_____]
Telephone: [_____]

The Borrower: Country View Housing, LP
c/o Gene B. Glick Company, Inc.
8801 River Crossing Blvd., Suite 200
Indianapolis, Indiana 46240
Attention: Adam Richter
Email: Adam.Richter@glickco.com
Telephone: (317) 469-0400

with a copy to: Kuhl & Grant LLP
429 N. Pennsylvania St., Suite 210
Indianapolis, Indiana 46204
Attention: Gareth Kuhl
Email: gkuhl@kuhlgrantlaw.com
Telephone: (317) 423-9407

With a copy to Investor Limited Partner: [_____]
c/o [_____]
[_____]
[_____]

Attention: [_____]
With a copy to: [_____]

with a copy to: [_____]
[_____]
[_____]
Attention: [_____]
Email: [_____]
Telephone: [_____]

The Fiscal Agent: [Fiscal Agent]
[_____]
[_____]
Attention: [_____]
Email: [_____]
Telephone: [_____]

Funding Lender Representative
(during the Construction Phase):
Merchants Bank of Indiana
410 Monon Boulevard, 5th Floor
Carmel, Indiana 46032
Attention: Lauren E. Campbell

The Governmental Lender, the Fiscal Agent, the Investor Limited Partner and the Borrower may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notice shall be deemed given three business days after the date of mailing.

Section 24. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 25. Multiple Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 26. Limitation on Liability. Notwithstanding the foregoing or any other provision or obligation to the contrary contained in this Agreement, (i) the liability of the Borrower under this Agreement to any person or entity, including, but not limited to, the Fiscal Agent or the Governmental Lender and their successors and assigns, is limited to the Borrower's interest in the Project, the Pledged Security (as defined in the Funding Loan Agreement) and the amounts held in the funds and accounts created under the Funding Loan Agreement, or other Loan Documents (as defined in the Funding Loan Agreement) or any rights of the Borrower under any guarantees relating to the Project, and such persons and entities shall look exclusively thereto, or to such other security as may from time to time be given for the payment of obligations arising out of this

Agreement or any other agreement securing the obligations of the Borrower under this Agreement; and (ii) from and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement, any agreement pertaining to any Project or any other agreement securing the Borrower's obligations under this Agreement), shall be rendered against the Borrower, the assets of the Borrower (other than the Borrower's interest in the Project, this Agreement, amounts held in the funds and accounts created under the Project Loan Documents, any rights of the Borrower under the Project Loan Documents or any rights of the Borrower under any guarantees relating to the Project), its officers, directors or members, the partners holding ownership interests in the Borrower, or the officers, directors or employees of the Borrower, or of their heirs, personal representatives, successors, transferees or assigns, as the case may be, in any action or proceeding arising out of this Agreement, the Project Loan Agreement, or any agreement securing the obligations of the Borrower under this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding.

Section 27. Freddie Mac Rider. The provisions of this Agreement are subject to the provisions of the Freddie Mac Rider attached hereto as Exhibit E and made a part hereof.

* * * * *

IN WITNESS WHEREOF, the Governmental Lender, the Fiscal Agent and the Borrower have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

CITY OF BLOOMINGTON, INDIANA

By: _____
John Hamilton,
Mayor

[FISCAL AGENT], as Fiscal Agent

By: _____
[_____, _____]

COUNTRY VIEW HOUSING, LP, an Indiana
limited partnership

By: [_____]

By: [_____]

By: _____

STATE OF INDIANA)
) SS:
COUNTY OF [_____])

I, _____, a Notary Public, do hereby certify that the Honorable John Hamilton, personally known to me to be the same person whose name is, as Mayor 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.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Notary Public in and for said County and State

(SEAL)

My Commission expires: _____

My County of Residence: _____

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

On this ____ day of [_____], 2022, before me appeared [_____] to me personally known, who being by me duly sworn did say that he is an Authorized Officer of [_____], a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Indianapolis, Indiana, and that they are the persons who executed the foregoing instrument as such officers acting for and on behalf of said association, and acknowledged that they executed the same as their free act and deed as such officers of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public in and for said County and State

(SEAL)

My Commission expires: _____

My County of Residence: _____

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 [_____] of Country View Housing, 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.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public in and for said County and State

(SEAL)

My Commission expires: _____

My County of Residence: _____

I affirm under penalties for perjury, that I have undertaken reasonable care to redact each social security number in this document, unless required by law.

Tyler J. Kalachnik

Prepared by and after recording return to: Tyler J. Kalachnik, Ice Miller LLP, One American Square Suite 2900, Indianapolis, Indiana 46282-0200.

EXHIBIT A

DESCRIPTION OF PROJECT SITE

EXHIBIT B

[FORM OF INCOME CERTIFICATION]

VERIFICATION OF INCOME

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Development (“HUD”) Regulations (24 C.F.R. 813). You should make certain that this form is at all times up to date with the HUD Regulations.

RE: Country View Apartments

The undersigned hereby (certify)(certifies) that:

This Certification of Tenant Eligibility is being delivered in connection with the undersigned’s application for occupancy of Apartment #____ in Country View Apartments in Indianapolis, Indiana.

List all the occupants of the apartment, the relationship (if any) of the various occupants, their ages, and indicate whether they are students (for this purpose, a student is any individual who has been, or will be, a full-time student at an educational institution during five months (whether consecutive or not) of the year in which this application is submitted, other than a correspondence school, with regular facilities and students).

	<u>Occupant</u>	<u>Relationship</u>	<u>Age</u>	<u>Student (Yes or No)</u>	<u>Social Security Number</u>
(a)	_____	_____	_____	_____	_____
(b)	_____	_____	_____	_____	_____
(c)	_____	_____	_____	_____	_____
(d)	_____	_____	_____	_____	_____
(e)	_____	_____	_____	_____	_____
(f)	_____	_____	_____	_____	_____

If the occupants are students, are any of the students listed in paragraph 2 described under Section 42(i)(3)(D) of the Internal Revenue Code of 1986?

Yes _____ No _____ Not Applicable _____

The total anticipated income for each person listed in paragraph 2 above during the 12 month period commencing with the date occupancy will begin including:

full amount, before any payroll deductions, of wages, salaries, overtime, commissions, fees, tips, and bonuses; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets); interest and dividends (including income from assets excluded below); the full amount of periodic payments from

social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic payments including any lump sum payment for the delayed start of a periodic payment; payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay; all public assistance income; periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; all regular and special pay and allowances of members of the Armed Forces (whether or not living in the dwelling) who are the head of the family or spouse; and any earned income tax credit to the extent that it exceeds income tax liability;

but excluding:

income from employment of children (including foster children) under the age of 18 years; payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone); lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses; amounts which are specifically for reimbursement of medical expenses; amounts of educational scholarships paid directly to the student or the educational institutions, and amounts paid to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; amounts received under training programs funded by HUD; amounts received under Plan to Attain Self-Sufficiency; amounts for out-of-pocket expenditures incurred in connection with other public assistance programs; resident service stipend (not in excess of \$200 per month); amounts from state or local employment training programs; temporary, nonrecurring or sporadic income (including gifts); reparation payments paid by a foreign government to persons who were persecuted during the Nazi era; earnings in excess of \$480 for each full-time student 18 years old or other (excluding head of family and spouse); adoption assistance payments in excess of \$480 per adopted child; deferred periodic payments of supplemental social security income and benefits received in a lump sum; refunds or rebates of property taxes paid on the unit; payments from state agency to allow developmentally disabled family member to stay home; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charges for the allotments; and payments to volunteers under the Domestic Volunteer Service Act of 1973; is as follows:

Occupant	Anticipated Annual Income	Source of Income or Employer
(a) _____	\$ _____	_____
(b) _____	\$ _____	_____
(c) _____	\$ _____	_____
(d) _____	\$ _____	_____
(e) _____	\$ _____	_____
(f) _____	\$ _____	_____
TOTAL:	\$ _____	_____

(a) Do the persons whose income or contributions are included in Item 4 above have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interest in Indian trust land)?

Yes _____ No _____

(b) Have the persons whose income or contributions are included in Item 4 above disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value?

Yes _____ No _____

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000?

Yes _____ No _____

(d) If the answer to (c) above is yes,
insert the total value of all such assets owned or disposed of
\$_____; and

state:

the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent:

\$_____

the amount of such income, if any, that was included in Item 4 above:

\$_____

Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter, the "Owner"), has any family relationship to the Owner or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member and ownership, direct or indirect, by a partner of the individual.

This Income Certification is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit, and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 4 is reasonable and based upon such investigation as the undersigned deemed necessary.

I/we will assist the Owner in obtaining any information or documents required to verify the statements made therein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement (whether or not intentional) in this Income Certification will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent my/our occupancy of the unit and will be cause for immediate termination of such lease.

The undersigned hereby acknowledge and agree that on or before December 1 (or upon Lease renewal) of each year the undersigned and any other current residents of such apartment will complete and deliver a new Income Certification, in the form then in use, to the Owner and that the undersigned's rent is subject to increase 30 days after written notice is given to the undersigned stating that the undersigned no longer qualifies as a Low Income Tenant under the Regulatory Agreement.

RESIDENTS STATEMENT: I/We certify that the statements are true and complete to the best of my/our knowledge and belief and are given under penalty of perjury. In the event this Income Certification is executed more than five (5) days prior to the date I/we intend to occupy the unit, I/we hereby agree to update and recertify the accuracy of the information herein provided as of the date I/we first occupy the unit:

- (a) _____ Date: _____
- (b) _____ Date: _____
- (c) _____ Date: _____
- (d) _____ Date: _____
- (e) _____ Date: _____
- (f) _____ Date: _____

[The signatures of all persons over the age of 18 years listed in Number 2 above are required]

Calculation of Eligible Income:

Enter the amount entered for entire household in 4 above: \$ _____
 Enter income derived from assets (line 5(d)(2)(a): \$ _____
 Subtract b. from a. \$ _____
 Multiply the amount entered in 5(d)(1) by the current passbook savings rate to determine the total annual earnings on assets [5(d)(1)] if invested in passbook savings.
 Passbook rate _____% X _____ = \$ _____
 Enter the greater of b or d \$ _____

TOTAL ELIGIBLE INCOME (Line e + c) \$ _____
The amount entered in 12(f):

_____ Qualifies the applicant(s) as a (s)
_____ Does not qualify the applicant(s) as (s).
Number of apartment unit assigned:

Bedroom size: _____ Rent: \$ _____

Tenant-paid Utilities:

Water _____ Gas _____ Electric _____

Trash _____ Other (list type) _____

Was this apartment unit last occupied for a period of 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as Low Income Tenants?

Yes _____ No _____

Method used to verify applicant(s) income:

_____ Employer income verification
_____ Social Security Administration verification
_____ Department of Social Services verification
_____ Copies of tax returns
_____ Other (_____)

OWNER'S STATEMENT: Based on the representations herein and upon the proofs and documentation submitted pursuant to paragraph 8 hereof, the family or individual(s) names in paragraph 2 of this Income Certification is/are eligible under the provisions of the Regulatory Agreement to live in a unit in the Project.

Signature of Borrower's Authorized Representative:

(Signature) Date: _____

Name: _____

Title: _____

EXECUTION OF ITEMS 18 AND 19
_____ IS _____ IS NOT NECESSARY.

Initials: _____.

If this Income Certification was executed by me/us more than five (5) days prior to my/our occupancy of the unit, I/we hereby update and recertify the accuracy of the information herein provided as of _____, 20__ and state:

No additional information is required to be provided to make this Income Certification true and correct on the date of this certification.

The following information is provided to update the information previously provided in the Income Certification:

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

(a) _____ Date: _____
(b) _____ Date: _____
(c) _____ Date: _____
(d) _____ Date: _____
(e) _____ Date: _____
(f) _____ Date: _____

OWNER'S STATEMENT: The family or individual(s) named in paragraph 2 of this Income Certification, have, pursuant to paragraph 18 hereof, updated and recertified the information heretofore provided as specifically set forth in paragraph 18 hereof.

Signature of Owner's Authorized Company
Representative

Print Name: _____
Title: _____
Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

INCOME VERIFICATION
(for employed persons)

The undersigned employee has applied for a rental unit located in the Project financed by an issuance of bonds issued by the City of Bloomington, Indiana for persons of low income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual Wages _____

Overtime _____

Bonuses _____

Commissions _____

Total Current Income _____

I hereby certify that the statements above are true and complete to the best of my knowledge.

Signature

Title

Date

I hereby grant you permission to disclose my income to Country View Housing, LP in order that they may determine my income eligibility for rental of an apartment located in their project which has been financed by an issuance of bonds issued by the City of Bloomington, Indiana.

Signature

Date

Please send form to:

Country View Housing, LP
c/o Gene B. Glick Company, Inc.
8801 River Crossing Blvd., Suite 200
Indianapolis, Indiana 46240
Attention: Adam Richter

[INCOME VERIFICATION SIGNATURE PAGE]

INCOME VERIFICATION
(for self-employed persons)

I hereby attach copies of my individual federal and state (if applicable) income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Signature

Date

EXHIBIT C

OCCUPANCY CERTIFICATE

To be filed with a Verification of Income
upon the rental of a unit to any tenant.

Project: Country View Apartments

The tenant identified in the attached Verification of Income has entered into a lease with respect to a unit in the above-described Project.

Such tenant is/is not (circle one) a Low Income Tenant.

The rental of a unit to such tenant will not result in a violation of any of the requirements of the Project Loan Agreement or the Regulatory Agreement to which the Owner is a party.

COUNTRY VIEW HOUSING, LP

Witness

Owner

Date: _____

(*AN OCCUPANCY CERTIFICATE AND A VERIFICATION OF INCOME FORM WITH BACK UP MUST BE INCLUDED FOR EACH)

NO. OF LOW INCOME TENANTS TERMINATING THIS PERIOD: _____

NO. OF VACANT LOW INCOME UNITS: _____

Set forth below are the names of Low Income Tenants who commenced or terminated occupancy during the preceding quarter.

<u>Commenced Occupancy</u>	<u>Terminated Occupancy</u>
1.	1.
2.	2.
3.	3.

The units occupied by Low Income Tenants are of similar size and quality to other units and are dispersed throughout the Project.

Attached is a separate sheet listing the number of each unit and indicating which units are occupied by Low Income Tenants, the size, the number of bedrooms of such units and the number of Low Income Tenants who commenced occupancy of units during the preceding quarter.

COUNTRY VIEW HOUSING, LP

Witness

Owner

PLEASE LIST ALL THE LOW INCOME UNITS BELOW:
(PLACE AN "X" TO INDICATE TENANTS RECEIVING SECTION 8)

SECTION 8	BLDG/UNIT	# OF BDRMS	TENANT NAME	# IN HSHLD	DATE OF OCCUPANCY	INCOME AT OCCUPANCY	INCOME AT RE-CERTIFICATION	INITIAL RENT	CURRENT RENT	VACATE DATE

EXHIBIT D

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned, Authorized Borrower Representative of Country View Housing, LP (the "Borrower"), hereby certifies as follows:

1. Based on Income Computations and Certifications on file with the Borrower, as of the date of this Certificate, the following number of completed residential units in the Project (i) are occupied by Low Income Tenants (as such term is defined in the Regulatory Agreement), or (ii) were previously occupied by Low Income Tenants and have been vacant and not reoccupied except for a temporary period of no more than thirty-one (31) days:

Occupied by Qualifying Tenants: _____ No. of Units

Previously occupied by Qualifying Tenants
(vacant and not reoccupied except for a
Temporary period of no more than 31 days) _____ No. of Units

- 2. The total number of completed residential units in the Project is _____.
- 3. No default has occurred and is continuing under the Regulatory Agreement.

COUNTRY VIEW HOUSING, LP

Owner

EXHIBIT E

FREDDIE MAC RIDER

This Freddie Mac Rider (the “Rider”) is attached to and forms a part of the Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), dated as of November 1, 2022, by and among CITY OF BLOOMINGTON, INDIANA (the “Governmental Lender”), [FISCAL AGENT], as fiscal agent (together with any successor in such capacity, the “Fiscal Agent”), and Country View Housing, LP, (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “Borrower”).

1. Definitions. Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

“**Freddie Mac**” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States.

“**Funding Lender**” means the holder of the Governmental Note, initially Merchants Bank of Indiana, as Funding Lender, and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

“**Funding Loan Agreement**” means the Funding Loan Agreement dated as of November 1, 2022 by and among the Governmental Lender, the Initial Funding Lender set forth therein and the Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

“**Governmental Note**” and “**Note**” means the City of Bloomington, Indiana Economic Development Revenue Note, Series 2022 (Country View Apartments Project) dated the Delivery Date, delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

“**Project Loan**” means the loan to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Fiscal Agent.

“**Project Loan Agreement**” means the Project Loan Agreement dated as of November 1, 2022, among the Borrower, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreement may from time to time be amended or supplemented.

“**Project Loan Documents**” means the Security Instrument, the Project Note, the Project Loan Agreement, the Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“**Project Note**” means the Project Note, including applicable addenda, to be executed by the Borrower in favor of the Fiscal Agent, evidencing the Borrower’s financial

obligations under the Project Loan, as the same may be amended, modified, supplemented or restated from time to time.

“Security Instrument” means the [[Multifamily Mortgage, Assignment of Rents Security Agreement and Fixture Filing]], together with all riders thereto, securing the Project Note, to be executed by the Borrower with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

“Servicer” means Merchants Capital Corp., or any successor Servicer selected by Freddie Mac.

2. Applicability. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. Indemnification. Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender’s liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. Sale or Transfer. Restrictions on sale or transfer of the Project or of any interest in the Borrower, the Governmental Lender and/or the Fiscal Agent consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement for the period prior to any such transfer. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower,

excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an Event of Default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an Event of Default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument. No person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Borrower, the Servicer and the Funding Lender, inform the Borrower, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3 and 4 of the Regulatory Agreement, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in

the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

Merchants Capital Corp.
410 Monon Blvd., 5th Floor
Carmel, Indiana 46032
Attention: Michael Dury
Email: mdury@merchantscapital.com
Telephone: (317) 569-7420

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations - Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive, MS 210
McLean, Virginia 22102
Attention: Managing Associate General Counsel –
Multifamily Legal Division
Email: guy_nelson@freddiemac.com
Telephone: (703) 903-2000

MEMO FROM COUNCIL OFFICE ON:

Ordinance 22-29 – Ordinance Authorizing and Approving a Payment in Lieu of Taxes (“PILOT”) Agreement With Country View Housing Limited Partnership for Country View Apartments

Synopsis

Country View Housing, LP, or its existing or to-be-formed affiliate (“Developer”) desires to rehabilitate and renovate Country View Apartments and continue its use as affordable housing within the City of Bloomington. In order to make this development financially feasible, Developer wishes to enter into an agreement to make payments in lieu of taxes (“PILOT Agreement”). This Ordinance authorizes and approves the PILOT Agreement with the Developer.

Relevant Materials

- Ordinance 22-29
- Staff Memo from Larry Allen, Assistant City Attorney – *Please note: staff intends to supplement this memo with additional information as soon as possible.*
- Payment in Lieu of Taxes (PILOT) Agreement (forthcoming)

Summary

Ordinance 22-29 approves of a Payment in Lieu of Taxes (PILOT) agreement with Country View Apartments to stabilize its property tax rate over the next twenty-five years. Country View Apartments is applying for a low income housing project property tax exemption and accompanying PILOT agreement—in tandem with its request for economic development (ED) bonds—in order to fund a renovation project of all 206 of its rental units across twenty-seven (27) buildings.

Low income housing projects qualify for an exemption from all or part of its property taxes if all of the following are met: (1) the low income housing development constructed, rehabilitated, or acquired improvements to the real property for the purpose of providing housing to income eligible residents under federal law, (2) the real property is subject to an extended use agreement by the IHCDA, and (3) the owner has entered into an agreement to make payments in lieu of taxes. Ind. Code 6-1.1-10-16.7.

Country View Apartments is requesting Council action to approve a PILOT agreement so that it may meet the third requirement to qualify for this exemption. Under state law (IC 36-1-8-14.3), PILOTs under this third requirement are to be imposed by ordinance and with approval from the property owner. The ordinance authorizes a PILOT agreement, which will set forth the details of the agreement, the fixed amount to be paid, and how often it is to be paid. The ordinance remains in force until repealed or modified by the governing body, subject to approval by the property owner.

State code requires that the amount of payment in lieu of taxes must be agreed upon by both the governing body and the property owner; and that amount cannot be more than what would be levied if the property were not exempt, but it can be less. IC 36-1-8-14.3. PILOTs are treated like property taxes for all intents and purposes, including imposition based on the assessed value and bearing interest if unpaid. The amounts collected are to be deposited in the affordable housing fund established by IC 5-20-5-15.5.

Country View Apartments is seeking this property tax exemption and subsequent PILOT in tandem with its request for economic development bonds in order to fund a renovation project for its low income housing units. Country View Apartments and the City are working to finalize a PILOT agreement and are seeking authorization for this agreement to be finalized and executed.

Please note that PILOTs are separate from tax abatements, which require the designation of an economic revitalization area. State code defines what an economic revitalization area is (I.C. 6-1.1-12.1-1) and provides other required and discretionary limitations to that definition (I.C. 6-1.1-12.1-2 & -3). With a PILOT agreement, no such designation is required. The City is authorized to enter into PILOT agreements with low income housing projects that apply for property tax exemptions pursuant to code sections 6-1.1-10-16.7 and 36-1-8-14.3.

Contact

Larry Allen, Assistant City Attorney, allenl@bloomington.in.gov, (812) 349-3426
Alex Crowley, Director of Economic & Sustainable Development,
crowleya@bloomington.in.gov, 812-349-3477

ORDINANCE 22-29

**ORDINANCE AUTHORIZING AND APPROVING A PAYMENT IN LIEU OF TAXES
("PILOT") AGREEMENT WITH COUNTRY VIEW HOUSING LIMITED
PARTNERSHIP FOR COUNTRY VIEW APARTMENTS**

WHEREAS, the City of Bloomington, Indiana ("City") is a duly organized municipal corporation and political subdivision under the laws of the State of Indiana, governed by its duly elected Common Council (the "Council"); and

WHEREAS, Country View Housing, LP, an Indiana limited partnership ("Developer") wishes to rehabilitate, renovate, and operate a 206-unit affordable housing development located at 2500 S. Rockport Road, Bloomington, Indiana (the "Property"), known as Country View Apartments (the "Project"); and

WHEREAS, the Project will be improved, renovated, and operated for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program in 26 U.S.C. 42 ("Low Income Housing Tax Credit Property"); and

WHEREAS, the Project, as a Low Income Housing Tax Credit Property, will be subject to an extended use agreement under 26 U.S.C. 42 (the "Extended Use Agreement") as administered by the Indiana Housing and Community Development Authority (the "IHCDA") for a period of at least thirty (30) years; and

WHEREAS, pursuant to the Extended Use Agreement, the Project, as a Low Income Housing Tax Credit Property, will only be permitted to rent to residents whose incomes are 60% or less of the area median gross income (the "Restricted Residents"); and

WHEREAS, pursuant to the Extended Use Agreement, the Project, as a Low Income Housing Tax Credit Property, will be limited to charging rents as determined in accordance with the Extended Use Agreement (the "Restricted Rents"); and

WHEREAS, the Developer will qualify as a "property owner" under Indiana Code § 36-1-8-14.3(d) of real property; and

WHEREAS, Indiana Code § 6-1.1-10-16.7 provides for a property tax exemption for a project where (1) the improvements on the real property qualify as Low Income Housing Tax Credit Property; (2) the property is subject an Extended Use Agreement; and (3) the owner of the property has entered into an agreement to make payments in lieu of taxes under Indiana Code § 36-1-8-14.3; and

WHEREAS, the Developer has agreed to make certain payments in lieu of taxes pursuant to Indiana Code § 36-1-8-14.3, and the City and Developer have documented that agreement in a written agreement (the "PILOT Agreement"); and

WHEREAS, pursuant to Indiana Code § 36-1-8-14.3(h), any payments received under the PILOT Agreement shall be deposited in the City's affordable housing fund; and

WHEREAS, the PILOT Agreement is attached to this Ordinance as Exhibit A; and

WHEREAS, the City is authorized to enter into this PILOT Agreement pursuant to Indiana Code 36-1-3 and Indiana Code § 36-1-8-14.3; and

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

SECTION 1. The Common Council hereby authorizes and approves the PILOT Agreement and authorizes its execution by the Mayor on behalf of the City after it has been finalized by the City and Developer.

SECTION 2. In accordance with Indiana Code § 36-1-8-14.3(f)(2), the Developer has consented to this ordinance and the PILOT Agreement, which shall be illustrated by the City and Developer executing the PILOT Agreement in substantially the same form of the attached, subject to necessary and appropriate updates and revisions agreed to by the City and the Developer.

SECTION 3. The City Clerk is hereby directed to record an executed copy of this Ordinance and a copy of the executed PILOT Agreement with the Monroe County Recorder's Office.

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

SECTION 5. By adopting this ordinance, authorizing the City and Mayor to finalize and execute the PILOT Agreement and authorizing the payments contemplated by the PILOT Agreement, the City has undertaken all required action contained within Indiana Code § 36-1-8-14.3.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this _____ day of _____, 2022.

SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2022.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2022.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

Country View Housing, LP, or its existing or to-be-formed affiliate (“Developer”) desires to rehabilitate and renovate Country View Apartments and continue its use as affordable housing within the City of Bloomington. In order to make this development financially feasible, Developer wishes to enter into an agreement to make payments in lieu of taxes (“PILOT Agreement”). This Ordinance authorizes and approves the PILOT Agreement with the Developer.



MEMORANDUM

To: Members of the Common Council of the City of Bloomington
From: Larry Allen, Assistant City Attorney
CC: Alex Crowley, Director, ESD
Stephen Lucas, Council Attorney, Common Council
Ash Kulak, Deputy Attorney, Common Council
Date: October 14, 2022
Re: Ordinance 22-29 Approving Payment in Lieu of Taxes (PILOT) for Country View Apartments, 2500 S Rockport Road – Country View Housing, LP

The Indiana General Assembly has made certain low income housing developments eligible for tax exemption if they enter into a payment in lieu of taxes (PILOT) with the City under Indiana Code § 36-1-8-14.3 (eff. Jan 1, 2022). Country View Housing, LP has acquired Country View Apartments, and affordable housing development in Bloomington, which the plan to rehabilitate and renovate. Country View Housing, LP will qualify for the property tax exemption under Ind. Code § 6-1.1-10-16.7 as long as the City Council approves the PILOT agreement as part of this ordinance.

The Low Income Housing Exemption

In order to receive a property tax exemption for a low income housing development, the development must establish (to the satisfaction of the County) that:

- (1) The improvements on the real property were constructed, rehabilitated, or acquired for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under 26 U.S.C. 42;
- (2) The real property is subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana Housing and Community Development Authority; and
- (3) The owner of the property has entered into an agreement to make payments in lieu of taxes under Indiana Code § 36-1-8-14.3.

This third requirement—an agreement to make payments in lieu of taxes—requires the Council’s approval in the form of an Ordinance. *See* Ind. Code § 36-1-8-14.3. This process substantially mirrors a prior statute, which enabled municipalities to enter into PILOT agreements. The City entered into such an agreement most recently for the development of Evergreen Village on the City’s southeast side.

Project

Country View Apartments, located at 2500 S. Rockport Road, were built in 1970 and added to in 1975. The complex includes 206 apartments. All of the units in Country View are subject to affordability restrictions: half of the units are reserved for individuals and families earning no more than 50% of Area Median Income (AMI) and the other half are restricted to individuals and families earning no more than 60% of AMI. The mix of affordable housing would not change as a result of this Project.

Country View Housing, LP proposes to invest in capital improvements to address significant needs at Country View. The renovations are expected to include new kitchen cabinets, counter tops, appliances, garbage disposals, kitchen sinks and faucets, new bathroom cabinets, counter tops, sinks, toilets, mirrors and towel bars, new interior doors, new blinds, subfloor repair and mold remediation, new lights throughout the units, and new flooring. More units are also expected to be converted to fully accessible ADA-compliant units. Additionally, there are expected to be updates to the property site including asphalt and concrete repairs, trash compactor updates, repairs to the gutter, downspouts, soffit and fascia, new exterior doors, freeze boards, and work on the sanitary main drain and sump pump.

During the renovations, Country View Housing, LP, or its successor will pay for temporary moving and relocation services for current residents. The Project is expected to create one (1) new job and retain four (4) current jobs.

As part of the renovation, Country View Housing, LP has applied for and were awarded tax credits from the Indiana Community Housing Development Authority (IHCDA). They are also financing the project through economic development bonds issued through the City in the amount of \$15,000,000, which is the subject of proposed Ordinance 22-28.



MEMO FROM COUNCIL OFFICE ON:

Ordinance 22-31 - To Amend Title 15 of the Bloomington Municipal Code Entitled "Vehicles and Traffic" - Re: Amending Section 15.12.010 (Stop Intersections) to change a stop intersection location to a multi-stop intersection location

Synopsis

This ordinance amends Title 15 ("Vehicles and Traffic") of the Bloomington Municipal Code and is sponsored by Councilmembers Rollo, Sandberg, and Smith. The ordinance changes a stop intersection on Sheridan Drive, which stops for traffic on Maxwell Lane, to a four-way stop intersection at Maxwell Lane and Sheridan Drive.

Relevant Materials

- Ordinance 22-31
- Aerial map and photographs of intersection
- Staff report re: all-way stop control at intersection - prepared for July 27, 2022 meeting of the Traffic Commission
- Minutes from the July 27, 2022 Traffic Commission meeting

Summary

Ordinance 22-31 proposes to amend Section 15.12.010 within Title 15 ("Vehicles and Traffic") of the Bloomington Municipal Code, accessible online here:

https://library.municode.com/in/bloomington/codes/code_of_ordinances?nodeId=TIT15_VETR_CH15.12STYISIIN_15.12.010STIN.

The ordinance, sponsored by Cms. Rollo, Smith, and Sandberg, proposes removing one location from the list of stop intersections and adding the same location to the list of multi-stop intersections within local code to turn the existing two-way stop intersection at Maxwell Lane and Sheridan Drive into a four-way stop intersection.

The Traffic Commission considered a request for a four-way stop at this location at its July 27, 2022 meeting. At that meeting, several members of the public spoke in favor of converting the intersection to a four-way stop. The comments provided at this meeting were summarized in the Commission's July 27th meeting minutes and have been included in this packet.

City engineering staff prepared a report and recommendation on the request for the Traffic Commission, which has also been included in this packet. In the report, staff acknowledged the unique traffic pattern at the intersection and said there were not significant concerns over the addition of an all-way stop. However, staff suggested that reducing speeding on Maxwell Lane, perhaps through the installation of traffic calming devices, would be more appropriate as the intersection does not meet the Indiana Manual on Uniform Traffic



City of Bloomington Indiana

City Hall | 401 N. Morton St. | Post Office Box 100 | Bloomington, Indiana 47402

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Control Devices (MUTCD) guidelines for an all-way stop. The staff memo explains these MUTCD guidelines as applied to the intersection in question.

Engineering staff provided a rough cost estimate of \$1,000 for the installation of all-way stop controls. Staff also noted that a cost estimate for traffic calming devices is difficult to provide without knowing the type or design of traffic calming that might be installed.

Contact

Cm. Dave Rollo, 812-349-3409, rollod@bloomington.in.gov

Cm. Ron Smith, 812-349-3409, ron.smith@bloomington.in.gov

Cm. Susan Sandberg, 812-349-3409, sandbers@bloomington.in.gov

ORDINANCE 22-31

**TO AMEND TITLE 15 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“VEHICLES AND TRAFFIC”**

**- Re: Amending Section 15.12.010 (Stop Intersections) to change a stop intersection location
to a multi-stop intersection location**

WHEREAS, the Bloomington Common Council believes certain changes are warranted in Title 15 of the Bloomington Municipal Code entitled “Vehicles and Traffic,”

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

SECTION 1. Bloomington Municipal Code Section 15.12.010, entitled “Stop Intersections,” shall be amended by deleting and adding the following:

Delete from Schedule A:

STOP INTERSECTIONS

TRAFFIC ON	SHALL STOP FOR TRAFFIC ON
Sheridan Drive	Maxwell Lane

Add to Schedule B:

MULTI-STOP INTERSECTIONS

Maxwell Lane & Sheridan Drive	4-Way
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SECTION 2. If any section, sentence or provision of this ordinance, 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 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 3. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and the approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2022.

SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2022.

NICOLE BOLDEN, Clerk
City of Bloomington

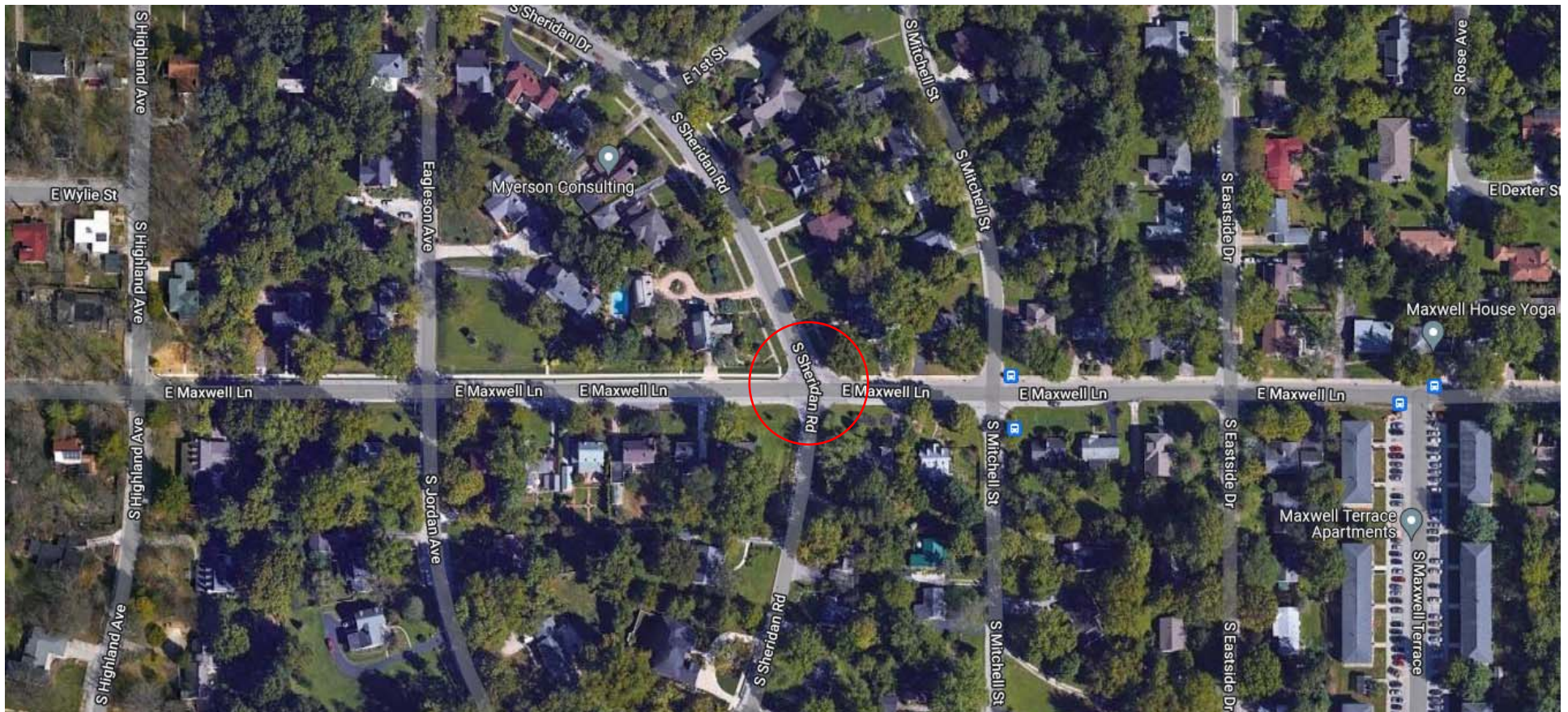
SIGNED and APPROVED by me upon this _____ day of _____, 2022.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Title 15 (“Vehicles and Traffic”) of the Bloomington Municipal Code and is sponsored by Councilmembers Rollo, Sandberg, and Smith. The ordinance changes a stop intersection on Sheridan Drive, which stops for traffic on Maxwell Lane, to a four-way stop intersection at Maxwell Lane and Sheridan Drive.

Adding a multi-stop intersection at Maxwell Lane and Sheridan Drive



Imagery ©2022 IndianaMap Framework Data, Maxar Technologies, USDA/FPAC/GEO, Map data ©2022 100 ft



W. SHREVE ROAD



800 S Meridan Dr

STOP

S Maxwell



**TRAFFIC COMMISSION
STAFF REPORT**

Case #: TC-22-09
Date: July 27, 2022

FROM: Neil Kopper, PE, Engineering Department

REQUEST: All-Way Stop Control at Maxwell Lane/Sheridan Road Intersection

Location: Maxwell Lane at Sheridan Road

Description and purpose:

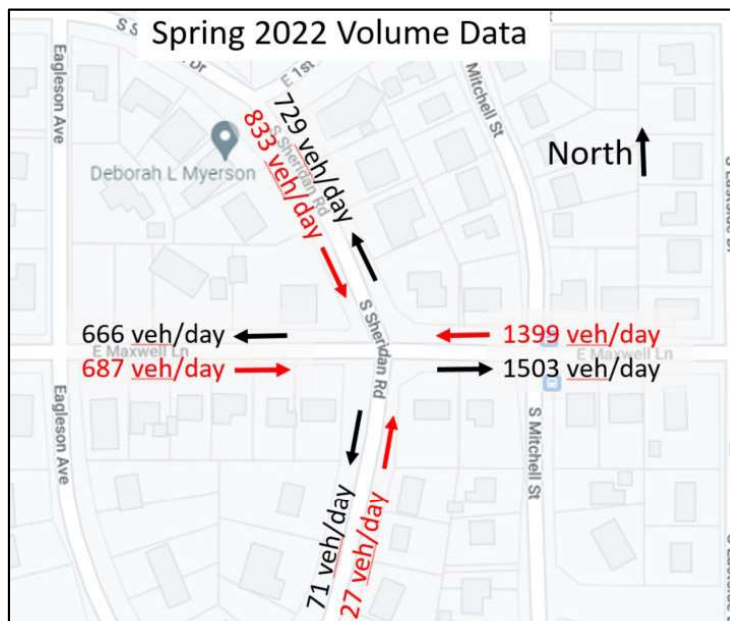
Residents living near this intersection have contacted the City to request an all-way stop at this intersection. The primary reasons stated for the request are that drivers are speeding on Maxwell Lane and that there is limited sight distance when entering or crossing Maxwell Lane from Sheridan Road.

City staff advised the residents that traffic calming would be a more appropriate solution to the issues described. Staff recommended that the residents submit an application to the City's resident-led traffic calming program. A resident started the process for the resident-led traffic calming process, but an application was not submitted after soliciting input from neighbors and finding many residents stated that they do not want speed humps.

City staff evaluated the sight distance at the intersection. There is a vertical crest to the west of the intersection which limits visibility. Standard practice is to evaluate sight distance based on the posted speed limit and, if the data is available, based on the actual 85th percentile speed¹ of traffic. This intersection exceeds the desired minimum stopping sight distance based on both the posted speed limit of 25mph and the measured operating speeds of approximately 30mph. Sufficient stopping sight distance is not available for some of the fastest measured vehicle speeds on Maxwell Lane (less than 1% of traffic), and local residents have noted that they do not know when one of these extreme speeders may be approaching. These speeding vehicles increase crash risk not just at this intersection, but also throughout the corridor.

The following two figures show relevant speed and volume data for the area. The red text indicates data for traffic approaching the intersection, and the black text indicates data for traffic leaving the intersection.

¹ 85th percentile speed is the speed at which 85 percent of drivers are traveling at or below. This value is frequently used in transportation evaluations.



The Indiana Manual on Uniform Traffic Control Devices (MUTCD) includes specific criteria that should be followed for all-way stop installations. There are multiple reasons that stop signs are only recommended if they meet the MUTCD guidelines:

- Unwarranted stop signs are frequently violated (have low compliance rates). Drivers might come to a full stop initially, but then they may begin rolling through the stop or even completely ignoring it because they rarely see what they believe to be a reason to stop. This behavior is problematic at the intersection with the all-way stop (for example, a pedestrian crossing the street thinks that traffic will stop at the stop sign, but a driver approaching the stop sign is used to simply slowing down a little bit and doesn't notice the pedestrian) and also at other intersections (as drivers lose respect for stop signs in general). There are multiple existing all-way stop intersections in town for which the City regularly receives complaints and safety concerns about drivers who do not stop.
- Studies show that stop signs are not an effective tool for reducing speeds. Stop signs generally reduce speeds right at the location where they are installed, but do not reduce speeds midblock or along the rest of a corridor. In fact, studies show that drivers tend to increase their speed between stop signs. Numerous references, including documents from the Institute of Transportation Engineers (ITE) and the National Association of City

Transportation Officials (NACTO), explicitly recommend against using stop signs as a tool for speed reduction.

- Unwarranted stop signs are not conducive to efficient traffic flow for vehicles (including bicycles, cars, and transit), particularly on collector or arterial streets. If, for example, Maxwell Lane had a stop sign at every single block, then it would no longer be functional as a collector street. The current resident request is only for a single additional stop sign on Maxwell Lane. If installed, then the nearest stop sign to the west would be approximately 850 feet away and the nearest stop sign to the east would be approximately 1,700 feet away. However, it is important to consider why a stop sign might be installed at this intersection and not also at others.

MUTCD guidance for all-way stop installations states that intersections should meet one of the following:

- As an interim measure while awaiting traffic signals (*Not applicable.*)
- Five or more reported crashes in a 12-month period that are susceptible to correction by a multi-way stop. (*Not met. there have been zero reported crashes in the last 5 years.*)
- Minimum volume thresholds (*Not met. The intersection volumes are significantly below volume guidance.*)
- Meeting a combination of the above criteria to at least 80% of values (*Not met.*)

The MUTCD also allows that the following criteria may be considered as a part of an engineering study regarding all-way stop control:

- The need to control left-turn conflicts (*Not applicable.*)
- The need to control vehicle/pedestrian conflicts near locations that generate high pedestrian volumes (*Not applicable.*)
- Locations where a road user, after stopping, cannot see conflicting traffic (*Relevant, but not met. Visibility is limited to the west of the intersection, but sufficient stopping sight distance exists.*)
- An intersection of two residential neighborhood collector (through) streets of similar design and operating characteristics where multi-way stop control would improve traffic operational characteristics of the intersection (*Relevant, but with the existing traffic volumes it is unlikely that operations would be improved.*)

The following image shows the Roadway Functional Classifications for this area. The “primary collector” route turns at the intersection of Maxwell Lane and Sheridan Road. This change in classification is supported by the traffic volume data shown previously. The traffic volumes on Maxwell Lane to the east of this intersection split between the western leg of Maxwell Lane and the northern leg of Sheridan Road. More than half of the traffic from Maxwell Lane east of this intersection turn to or from the northern leg of Sheridan Road. This traffic pattern does not require an all-way stop, but it is a logical factor to consider in the evaluation because more than half of the traffic at this intersection is already stopping or slowing down to turn.



Title 15 Changes: In order for all-way stop control to be implemented, Section 15.12.010, Schedule B "Multi-Stop Intersections" would need to be edited to include this intersection.

Recommendation:

Staff acknowledges the unique traffic pattern at this intersection and does not have significant concerns if an all-way stop is installed. However, this intersection does not meet the MUTCD guidelines for all-way stop control, and staff has concerns with the potential of establishing a pattern of installing all-way stop control at locations that do not meet the guidelines. With relatively low traffic volumes and zero reported crashes in the last five years, staff does not recommend installation of all-way stop control. Reducing illegal speeding on Maxwell Lane would be a more appropriate resolution for the concerns raised by residents and would have benefits beyond this single intersection.

**BLOOMINGTON TRAFFIC COMMISSION
MINUTES**

July 27, 2022

**4:30 P.M. –In-person and Virtual Hybrid meeting
City Hall, Council Chambers**

Online link: <https://bloomington.zoom.us/j/82065735347>

Meeting ID: 820 6573 5347

Dial in: +1 312 626 6799, 820 6573 5347# US (Chicago)

- I. Call to Order: 4:35pm**
Members present in-person: Sarah Ryterband, Ryne Shadday, Andrew Cibor, Steven Reynolds, Greg Alexander
Members present remotely: David Hoff, Freddie Love
Staff present: Beth Rosenbarger, Neil Kopper, Hamid Matinkhah

- II. Approval of Minutes – May 25, 2022**
Move to approve minutes from May 25, 2022 with the addition of the word “in-person” after “members present: Ryterband Second: Cibor
Yea: Ryterband, Shadday, Cibor, Reynolds, Alexander, Hoff, Love
Nay: -
Approved: 7-0

- III. Communications from Commission**
 - A. Report from Director of Engineering:** City Engineer, Andrew Cibor, presented about a Safe Systems approach and two fatal crashes in Bloomington in 2022. Commission members asked several questions. Cibor reported on construction projects.

- IV. Public Comment* - none**

- V. Reports from Staff**
Rosenbarger noted that in reference to the safety conversation, there are advancements that the automobile industry could be pursuing, such as lower speeds, speed governors, gps-automated speed governors, and cellphone disabling technology.

- VI. Old Business* - none**

- VII. New Business***
 - A. TC-22-09: All-way stop analysis for Maxwell Lane and Sheridan Road –Neil Kopper, PE, Senior Project Engineer**
Kopper presented for staff. Ryterband: it says in the report, that members of the neighborhood are opposed to traffic calming, do we understand what that opposition is? Are tiny traffic circles an options? Kopper: that

would best be answered by residents who are here to comment. Tiny traffic circles could be an option within traffic calming.

Petitioner: Stephanie Hattan: presented.

Teresa Swift: I live in this area. The demographics of the area have shifted. We have a lot of retired people and a lot of older people. I have been crossing the street with my dogs, people start driving faster, and honk at me to speed up. People want you out of the way, and they make it clear that it is their road. With no sidewalks on the southside of the street you don't feel safe. You can't see a fast-moving vehicle. And if you're hearing impaired, you might not hear that car coming. I want to know if the crash data took into consideration crashes involving bicyclists. You just don't feel safe here. In this neighborhood, you don't expect 70 year olds to hop on bicycles. They walk. We want to take advantage of our lovely city, and that particular intersection feels very dangerous. I will comment about why residents are opposed to speed bumps. Any residents with spinal issues, speed bumps are painful for those residents.

Virginia Metzger: I live nearby. I cross that intersection with my dogs. We constantly have to run across. It is very dangerous. I think in the presentation, there was a lot of concern about the driver's attitude, that they won't see the pedestrian, that they won't stop, and whether they can stop. It concerns me with the 1% of the drivers who are going so fast, that they won't stop. If I am going to dodge a car, I would rather dodge a car rolling through a stop sign, than a car speeding through. There is a stop sign on Highland. And they qualify for an all-way stop and we don't. One more note, it's Sheridan Drive, not Sheridan Road.

Devonia Stein: I have lived at this intersection since 1973. No one has lived there as long as I have. I am elderly. I had back surgery a year ago. I'm supposed to walk daily. I try to get across the street, but cars come whipping around there, and they are there before I know what I'm doing. If you don't do something about this. We're a walking neighborhood, and we need this stop sign. Thank you.

Geoffrey Bingham: I urge you to listen to the presentation. I can attest to the speeding. Flying down that hill. I hear it, I see it. I see lots of people walking. People practically run me down when I walk down the street. I hear a lot of criticism of stop signs, and no criticism of speed humps. And it doesn't make sense to me. It is expensive, really expensive. And it's our dollars paying for it. Stop signs are much cheaper. Why isn't it being done? It's a simple request. We need it.

Hunter Rackly: I live one block from the intersection of Sheridan. I have three children. There are many speeding cars through this residential area. We sit on our front porch, and watch. I invite you to come sit and watch,

too. Speed data was only taken north and west of the intersection. I live east of the intersection, and I am quite sure the average and 85th percentile of speeds would be higher if they were measured east of Sheridan. I have witnessed three crashes at the intersection (of Maxwell) and Mitchell, although I don't think that's the best place to put a stop sign. Issues we've talked about is the intersection is very wide. There's no sidewalk buffer, and it scares me as a parent. If my kid is bicycling and falls, it is scary. I am open to multiple things, and I would be supportive of a stop sign at Sheridan as one option.

Jane Benjamin: I've used this corner in question here for many years. I worked at the university, and I used this intersection frequently. The hill coming over Maxwell and intersecting with Sheridan is just extremely dangerous. Thankfully, I know this as I've used it for 18 years. I would use the left lane as a safety space. I am here to support any form of slowing down the traffic. Especially where motorists are coming over the hill. They come flying over there. I was fortunate never to have been involved in an accident because I knew to be particularly aware of this dangerous area. Some people are new, and they don't know about how dangerous it is yet. Maybe an accident has not happened, but an accident will happen. Thank you.

Steve Benjamin: It doesn't make sense to me that if we install a four-way stop there, almost every driver would come to some form of a stop, maybe a rolling stop. It defies logic to think that installing a stop will make people speed up in other parts of the street. That's not my behavior. The presentation earlier was very good about the fatal accidents. Also the data presented, that there were no accidents in the last five years. In the presentation, it said we should be proactive, not wait until we have 3, 4, or 5 accidents here. Maybe this is an area where an accident is going to happen, and perhaps we have a chance to overcome that here. I went to visit recently, and as I back out of the driveway onto Maxwell, it is a game of roulette every time. I look carefully. I know there are guidelines and rubrics, but those are not laws you must follow. The two things that are the most critical, it's about the hill and it's about the intersection.

Dave Rollo: This intersection is in district four. It is unique and it deserves unique consideration. I'm an advocate for an all-way stop at Sheridan and Maxwell for safety reasons. As the data indicates in your packet, there's a lot of traffic. A primary hazard that I experience concerns southbound traffic on Sheridan; one southbound on Sheridan cannot see eastbound traffic on Maxwell. Nor can one perceive the speed. If you're stopped at that stop sign, drivers accelerate due to the possibility of cars driving eastbound that might appear. There is a crosswalk nearby, but cars are rushing toward them. It seems that a stop sign on Maxwell would do much to alleviate that problem. I'm willing to sponsor the ordinance and put it on

Council's agenda. I'd appreciate commission members consideration and support.

Deborah Myerson: I concur that it is a challenging and difficult place to be a pedestrian. I would like to share the perspective of two of my sons. I have a son with an intellectual disability who has to scurry across this intersection. I am always terrified. My middle son will be a sophomore at south next year, and he walks to school most days. He told me it is difficult to cross, and luckily he can do that relatively safely. I'd love to see a four-way stop at that intersection, and I'd love to see that intersection narrowed. I realize it's a bus route, and I love that it's a bus route.

Regina Moore: I have lived here for many years. Ms. Hattan's presentation provided a good opportunity for you all to experience the space. I am sharing comments from other neighbors. First from Kerry Thompson, people speed down this street; we have witnessed crashes. Anyone under 12 needs to have an adult with them. From Mary Wintersong Philips: I am very much in favor of an all-way stop at this intersection. Visibility for cars turning east down Sheridan is very difficult. Visibility for people exiting driveways is very difficult. Over the years, I've witnessed crashes in that stretch of road. An all-way stop sign at Sheridan and Maxwell would immensely help that situation.

Chuck Livingston: I live across from this intersection. I cross this intersection daily on my morning walk. There is only one intersection nearby that comes close to having ADA accessible sidewalks. People who are handicap who have walking trouble, they are all channeled to Maxwell. The other point I want to raise is that this conversation is much like a conversation from 35 years ago. We wanted a stop sign at Maxwell and Grimes. It didn't happen until a boy was hit. There was another instance that the neighborhood asked for a stop sign. The City didn't approve it, and then a neighbor was hit. He died five months later. Then, a traffic light was installed. I hope you vote in favor of putting a stop sign at this intersection

Eric Ost: the neighborhood is asking for a stop sign in order to stop traffic. Stop signs do stop traffic. A majority of residents do not want traffic calming for reasons they have shared. I support an all-way stop. I am sharing a comment from a neighbor named Holly: this is a dangerous intersection, I wish you luck in addressing the danger. Another neighbor said this intersection does not support the pedestrian-friendly goals of Bloomington. Listening for an oncoming vehicle is not a reliable way to identify that a vehicle is coming. Turning from Sheridan onto Maxwell, I had to speed up through the turn because a car was speeding down the hill. Mr. Ost shared comments from other neighbors in support of a stop sign.

Brian Hattan: I support this stop sign. If you want to wait for something to happen, something is going to happen at this intersection. If you want to wait, something is going to happen.

Natalia Galvin: I live in the Near Westside, and I live at an intersection that has a traffic circle that Ms. Ryterband cited. I support Ms. Hattan's advocacy. I have walked this intersection many times. I believe in Ms. Hattan and I believe in her and her neighborhood's lived experience. I look forward to supporting her further.

Commission member comments: Alexander: I support slowing speeds and I support geometric changes here. I do not think a stop sign achieves what you want. Ryterband: there aren't sidewalks here. The proactive thing that would work is traffic calming. We see traffic calming working in many places across the city. Change the stupid turning radius at that intersection, don't allow it to remain ridiculously big. We heard from the Council Member that he will move this forward and endorse it whether we support it or not. But I can't endorse it because it won't solve the problem. Cibor: I think this is a tough intersection. I appreciate everyone who came to share input. I support something happening here. Reynolds: it bothers me there is no enforcement. I thank you all for explaining your concerns. The detail in the presentation was wonderful. Hoff: I think we can all agree there is a problem here. I think that there is a solution on the table, but if we don't like it, we need to come up with another solution, and we haven't done that. The appeal of the idea of slowing down traffic is great, but do we have a credible alternative on the table? I don't see a credible alternative. Love: I think we could consider speed cushions, I see them around the City, and they seem to work well. A 4-way stop could work, but I think it needs to be more than just that. Shadday: I am interested to see what else is on the table.

Ryterband: I move to support the recommendations of the Engineering department in TC-22-09, to reject the 4-way stop at Sheridan and Maxwell, Alexander seconded.

Yea: Love, Ryterband, Alexander, Cibor, Shadday

Nay: Hoff, Reynolds

Vote: 5-2

- B. TC-22-10: Adding no-parking areas to Strong Drive –Hamid Matinkhah, Engineering Technician:** - not presented, tabled for August 24
- C. TC-22-11: Resolution to amend Title 12 to define “right-of-way” – Greg Alexander, Commission Member** – not presented, table for August 24

VIII. Traffic Inquiries - none

IX. Adjournment – 6:58 pm

Next meeting – August 24, 2022

**Action Requested/Public comment prior to any vote (limited to five minutes per speaker)*

Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call (812) 349-3429 or e-mail human.rights@bloomington.in.gov.