



City of Bloomington Common Council

Legislative Packet

Containing legislation and materials related to:

Wednesday, 02 November 2022

Regular Session at 6:30pm



CITY OF BLOOMINGTON COMMON COUNCIL

AGENDA:
REGULAR SESSION
WEDNESDAY | 6:30 PM
2 November 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/88191777483?pwd=UTFiaIFRT2MvbjRFakkxWUq1M3A0dz09>

- I. **ROLL CALL**
- II. **AGENDA SUMMATION**
- III. **APPROVAL OF MINUTES**
 - A. May 04, 2021 (Special Session)
 - B. May 05, 2021 (Special Session)
 - C. May 06, 2021 (Special Session)
 - D. May 12, 2021 (Special Session)
 - E. May 13, 2021 (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. Commission on Hispanic and Latino Affairs - Annual Report
 - b. Status report on Plexes/ADUs per Ordinance 21-23
 - C. **Council Committees**
 - D. **Public***
- V. **APPOINTMENTS TO BOARDS AND COMMISSIONS**
- VI. **LEGISLATION FOR SECOND READINGS AND RESOLUTIONS**
 - 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)

Committee recommendation: N/A

(over)

* 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.

Posted: 28 October 2022

- 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

Committee recommendation: N/A

- 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

Committee recommendation (10/26/2022): Do Pass 5-1

- D. Ordinance 22-15 – To Vacate a Public Parcel – Re: A 12-Foot Wide Alley Segment Running East/West between the B-Line Trail and the First Alley to the West, North of 7th Street and the South of 8th Street (Peerless Development, Petitioner)

Committee recommendation (05/25/2022): Do Pass 0-2-3

Note: This item was last discussed at the July 20, 2022 Regular Session, when the Council adopted a motion to table the ordinance. It appears on tonight’s agenda in anticipation of a motion to take the ordinance from the table and place it back in front of the Council for consideration.

VII. LEGISLATION FOR FIRST READINGS

- A. Ordinance 22-33 – To Amend Title 10 of the Bloomington Municipal Code Entitled “Wastewater” (Rate Adjustment)
- B. Ordinance 22-34 – To Amend Title 10 of the Bloomington Municipal Code Entitled “Wastewater”(Stormwater Rate Adjustment)

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, 02 November 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/88191777483?pwd=UTFialFRT2MvbjRFakkxWUg1M3A0dz09>

Meeting ID: 881 9177 7483

Passcode: 402749

One tap mobile

+13126266799,,88191777483# US (Chicago)

+16469313860,,88191777483# US

Find your local number: <https://bloomington.zoom.us/j/kez0F7miPY>

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

04 May 2021 | 05 May 2021 | 06 May 2021
12 May 2021 | 13 May 2021

In Bloomington, Indiana on Tuesday, May 04, 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
May 04, 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 [6:33pm]

Clerk’s Note: On May 4, 2021, the Common Council called to order a Special Session, which began the Council’s consideration of Ordinance 21-23 and Ordinance 21-24 to be completed over a series of meetings including May 05, May 06, May 12, and May 13 of 2021.

Council President Jim Sims summarized the agenda.

AGENDA SUMMATION [6:33pm]

Sims summarized the conduct of deliberations for the Special Session.

CONDUCT OF DELIBERATIONS
[6:34PM]

Flaherty clarified that the time limits for councilmember comments during debate was for any given amendment, and the time limit per member of the public was for all amendments and ordinances as amended.

Flaherty moved and it was seconded to suspend the rules to structure the Special Session to recess no later than 11:00 pm on any night the Special Session takes place, to set public comment period per individual for three minutes, and to set a limit of three minutes per councilmember per comments during debate. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to suspend the rules
[6:40pm]

Flaherty moved and it was seconded that Ordinance 21-23 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Deputy Clerk Susan Stoll read the legislation by title and synopsis.

ORDINANCE 21-23 [6:42pm]

Ordinance 21-23 - To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code – Re: Regulations Related to Dwelling, Duplex; Dwelling, Triplex, and Dwelling, Fourplex Set Forth in BMC 20.03 and 20.04

Flaherty moved and it was seconded that Ordinance 21-23 be adopted.

Jackie Scanlan, Development Services Manager of the Planning and Transportation Department, presented the legislation including the proposal from the Plan Commission, and use-specific standards for duplexes, triplexes, and fourplexes.

Sandberg moved and it was seconded that Amendment 01 to Ordinance 21-23 be adopted.

Amendment 01 to Ordinance 21-23

Amendment 01 Synopsis: This amendment is sponsored by Councilmembers Sandberg, Rollo, and Smith. It removes “Dwelling, duplex” as a permitted use from the R1, R2, and R3 zones by deleting the “P*” for each of those zones within the Allowed Use Table. It also makes changes to other passages to account for this change. Areas zoned R1, R2, and R3 in the proposed zoning map are located primarily in areas identified by the Comprehensive Plan Future Land Use Map as either Neighborhood Residential or Mixed Urban Residential districts. The “Dwelling, duplex” use is more appropriately allowed in the R4, RM, and RH residential zoning districts, as well as in several mixed-use districts.

Rollo presented Amendment 01 and explained that it was in reaction to the Plan Commission's revision which allowed plexes in R1, R2, and R3 districts. Cms. Sandberg and Sims were cosponsors.

Amendment 01 to Ordinance 21-23 (cont'd)

Sandberg explained that the sponsors were not in opposition to plexes, and that it was a matter of location. She said that Amendment 01 included a concept plan, from the Comprehensive Plan, describing where density could be added without harm to the core neighborhoods. It included R4 districts, major corridors, and transportation hubs.

Sims stated that public comment would commence with written comments that were intended to be read at the previous Committee of the Whole meeting, and would be read by council staff.

Heather Lacy, Deputy Attorney/Administrator for the Common Council, read the following written statements:

Public comment:

- Mark Fetterson commented on the housing crisis and urged council to vote to reject a social experiment that affected core neighborhoods.
- Carol Canfield wrote in favor of Amendment 01.
- Diane Jung supported Amendment 01.
- Carissa Carmen supported Amendment 01.
- Jerry [no last name] wrote against plexes.

There was brief council discussion regarding public speakers.

Patrick Murray spoke in support of Amendment 01.

Marc Cornett discussed zoning.

Jim Rosenbarger supported Amendment 01.

Andrew Ruff spoke in favor of Amendment 01.

Janet Sorby supported Amendment 01.

Barbara Moss was in favor of Amendment 01.

Abby Stemler spoke against Amendment 01.

Tom Shafer spoke in favor of Amendment 01.

Jon Lawrence urged council to support Amendment 01.

Karen Duffy supported Amendment 01.

Eric Ellis spoke in favor of Amendment 01.

Vita Stanfield spoke against plexes in core neighborhoods.

Diane Legomsky supported Amendment 01.

Barbara Letner spoke against plexes in core neighborhoods.

Mara-Lea Rosenbarger discussed her support of Amendment 01.

Sarah Mitchell supported Amendment 01.

Carol McGarry spoke against plexes in core neighborhoods.

Robert Schneider spoke in favor of Amendment 01.

Jill Crawford commented against plexes in core neighborhoods.

Amendment 01 to Ordinance 21-23 (cont'd)

Natalie Levin spoke in favor of plexes in core neighborhoods and against Amendment 01.

Public comment:

Cory Ray spoke in favor of density in core neighborhoods and urged council to reject Amendment 01.

Constance Glen spoke against upzoning.

Glenda Murray supported Amendment 01.

Iris Kiesling spoke in support of Amendment 01.

Ann Kreilkamp was against plexes in core neighborhoods.

Lois Sabo-Skelton supported Amendment 01.

Jeff Richardson favored Amendment 01.

Elizabeth Gallman spoke in support of Amendment 01.

Rick Well was in favor of Amendment 01.

Janet Stavropoulos supported Amendment 01.

Sandi Clothier discussed her support for Amendment 01.

Judy Fulford spoke against plexes in core neighborhoods.

Kathleen Myers supported Amendment 01.

Eric Sader spoke in favor of density in core neighborhoods.

Judy Berkshire was in support of Amendment 01.

Rachell Dinga commented in favor of Amendment 01.

Margaret Clements approved of Amendment 01.

Olivia Dorfman discussed her rejection of plexes in core neighborhoods.

Jenny Stephens spoke in support of Amendment 01.

Owen Rogers spoke in support of plexes in core neighborhoods.

Marcia Baron supported Amendment 01.

Jenny Bass discussed reasons in support of Amendment 01.

Michael Hamburger was in favor of addressing the housing crisis with density and urged council to support Amendment 01.

Kevin Romanak supported Amendment 01.

Sharon Yarber spoke in favor of Amendment 01.

Jami Scholl commented on homeownership.

Teal Bingham discussed harm done and in support of density and plexes.

Amendment 01 to Ordinance 21-23 (cont'd)

Frederick Luehring commented against Amendment 01.

Public comment:

Jack Horton supported Amendment 01.

Lesa Huber also supported Amendment 01.

Hank Ruff spoke about affordable housing, student living, and in support of Amendment 01.

Solomon Bogdanoff commented on housing and commuting in Bloomington.

David Bowden supported Amendment 01 and provided reasons.

Amy Berndtson spoke in support of Amendment 01.

Wendy Bricht discussed her support of Amendment 01.

John Kennedy stated his support for Amendment.

Steven Layman commented on his support for Amendment 01.

Peter Bogdanoff asked council to vote in favor of Amendment 01.

Russ Lyons supported Amendment 01.

Tom Payne was in favor of Amendment 01 and stated reasons.

William Pupil voiced his support for Amendment 01.

Rubia Higgins asked council to vote in favor of Amendment 01.

Shelly Fratiani supported Amendment 01.

Melissa Dinverno spoke in support of Amendment 01.

Gregory Stone questioned housing demand, and said it was best to delay the vote.

Susan Buzan supported Amendment 01 and not further density in core neighborhoods.

Lacy read a comment from Michael McCafferty, submitted via Zoom chat, that spoke about affordable housing and student living.

Rollo said that the changes proposed by the Plan Commission affected every neighborhood in Bloomington, and incentivized the conversion of single family homes into rentals. He spoke about Accessory Dwelling Units (ADUs) which were allowed by right but required owner-occupancy, while duplexes did not. The economic incentive affected the zoning landscape in Bloomington and was especially true for neighborhoods near downtown and the university campus. Rents and costs of homes would rise. He further commented on by-right, and conditional use. He referenced the Comprehensive Plan and its direction on where purposeful density should be located in order to facilitate village centers. Supporters of duplexes in all neighborhoods should have advocated a change in the Comprehensive Plan first, resulting in a robust community

Council comment:

discussion. He opined that the process had instead resulted in a top-down approach for expediency. He agreed with the administration in that allowing duplexes in all districts was experimental and provided reasons against that allowance citywide. He urged council to support Amendment 01.

Amendment 01 to Ordinance 21-23 (cont'd)

Council comment:

Sgambelluri stated that the process, which was imperfect, especially during a pandemic, was adequate. The information presented was available to all and the opportunity for public input was sufficient. She commented on the housing crisis and said that homeownership was essential. She explained constraints, like the inability to require that plexes be owner-occupied, and that incentives were the only option. She believed that in a university town, rental properties and owner-occupied properties had different impacts. She further commented on impacts on neighborhoods, impacts of proposed plexes, staff's recommendations, the Plan Commission, public input regarding plexes, and conditional zoning regarding plexes. She stated that she would be supporting Amendment 01 and not Amendment 02.

Smith spoke about the public's support for Amendment 01. He discussed his discomfort of the proposed Unified Development Ordinance (UDO) being put before council again, including plexes. He talked about potential harm, and the vagueness of the proposal. He would like to see more affordable housing for low-income populations, and provided examples of how the city could assist with that. Many were unclear what the administration wanted by allowing plexes in all districts.

Piedmont-Smith thanked the public for engaging in the process and providing feedback. She commented on some of her constituents' neighborhoods which included multi-family complexes in District 5, none of whom she had heard from. That there were many public speakers voicing their support for Amendment 01 did not mean that council was hearing from a vast majority. She said council was hearing from those who were engaged and had the time and energy to speak at a council meeting. She represented all residents in her district, regardless of the duration of time they resided in Bloomington. She was opposed to Amendment 01 because more housing was needed. One efficient and environmentally-sound way to have more housing in older neighborhoods where people did not have to drive everywhere. Greater density enabled transit to be more feasible, and it was more sustainable to have more units closer to where people worked and engaged in social activities. She said that duplexes were a historic housing form that had been included for decades. She commented that the UDO was a living document, and that it was natural to revisit policies, issues, et cetera. When Piedmont-Smith voted in favor of not having plexes in core neighborhoods, she had been considering apartment buildings like four or five story student living buildings.

Flaherty thanked everyone for the input and discussions on the UDO and its policies. He supported the approach in Amendment 01 to enhance and plan for multiple economic and cultural hubs around the city, including walkable nodes of activity around centers. He said the concept plan in Amendment 01 misapplied the form base idea of transect, regarding walkable village centers. It also missed the historic context of Bloomington's neighborhoods, which had always included small-scale attached housing like plexes. That had resulted in more affordable housing and also welcomed more individuals into neighborhoods. Ordinance 21-23 was to be complimentary to

the Comprehensive Plan and not contradictory. After having read the Comprehensive Plan numerous times, he agreed with staff in that Amendment 01 was not consistent with the city's adopted goals and plans. He would vote against Amendment 01.

Amendment 01 to Ordinance 21-23 (cont'd)

Council comment:

Rosenbarger thanked everyone for their participation and feedback. She commented on the process and said that plexes were good housing options that created community with shared spaces and helped mitigate climate change and equity issues. She discussed the compromise of allowing duplexes in R1, R2, and R3 and appreciated that adaptation. She was also appreciative of the willingness to compromise by those supporting plexes, and disappointed by the unwillingness to compromise by those opposing plexes. Out of around 80,000 community members in Bloomington, only about 1-2% had participated, so council had not heard from a vast majority. Rosenbarger referred to the Comprehensive Plan and made evidence- and research-based decisions. She commented that allowing plexes in neighborhoods had overwhelming support in the country, including by the Brookings Institute, Strong Towns, Smart Growth America, the Biden administration, Pete Buttigieg, Marcia Fudge, Elizabeth Warren, and more. She referenced numerous books that guided her decisions.

Volan said that to his knowledge, the proverbial upzoning had never been attempted in Bloomington, and that the city had been a constant state of downsizing for the past fifty years. The city's most recent significant change in zoning law was limiting a unit to three unrelated adults. The permissibility of duplexes was not a reversal of that policy. He referenced zoning during former councilmember Charlotte Zietlow's tenure where council would "spotzone" different areas. He further referenced the city's historical process on passing legislation which did not allow for debate or public discourse. Volan said he would be in favor of revisiting the Comprehensive Plan of 2018 because it missed some points, and he read some examples from the plan. He said that most opponents of plexes were focused on one sentence in one policy within the plan. He explained the Comprehensive Plan's history, pertaining to Amendment 49 to Ordinance 17-28. He said that was counter to rest of the policy which called for increased residential densities, and housing types as suggested by staff. He commented further on policy and code updates. Volan represented a district comprised mainly of students, who were not transient, and who were counted by the census.

Sims thanked the community for participating in the discussion. He hoped community members would be civil while agreeing to disagree. He commented on his question that was referenced by other councilmembers which asked where people would go if they had to move. He had been referring to the missing middle, the workforce housing element, and the low housing inventory. He pointed out that community members could buy a starter home, sell it, and then move up to another home. That was how the core neighborhoods became the affordable neighborhoods. He understood that some needed to remain in the more affordable home. He referenced redlining, gentrification, equity issues, and said there were many factors involved. By adding duplexes, it mitigated the housing crisis as one tool in the city's toolbox.

Sandberg thanked the cosponsors of Amendment 01. She was concerned that it might not be adopted. She reassured the public that she was listening and would continue to be vigilant of their

concerns throughout the remainder of the process. She had nothing to add to the public’s appeals. The cogency of an argument was what mattered. Neighborhoods were important and she would always stand for their wellbeing, and for those who had invested in their homes there. She had been willing to compromise, via Amendment 01, to allow plexes in the R4 district. She encouraged the public to stay engaged and to hold council accountable.

Amendment 01 to Ordinance 21-23 (cont’d)

Council comment:

Flaherty noted that it was important to be mindful of language while disagreeing. He too supported the health of neighborhoods even though he opposed Amendment 01. He explained that historic housing types were important, and that some in the missing middle housing forms felt unwelcome based on language used in the meeting. He urged everyone to not coopt language and to acknowledge that most loved Bloomington, their neighborhoods, and valued sustainability, equity, and inclusion. He said there was disagreement in the nuances and details of policy.

Rollo responded to Volan’s comment and said there were eleven references in the supporting materials for Amendment 01 from the Comprehensive Plan. He said that the Land Use map specifically directed where to place the housing types.

Volan commented that the sentence he referenced had been added by former Councilmember Chris Sturbaum, and lobbied for by the Council of Neighborhood Associations (CONA) activists. It was supported in 2017 for comity and unity when there were no stakes. He disagreed that was the only important concept in the Comprehensive Plan.

The motion to adopt Amendment 01 to Ordinance 21-23 received a roll call vote of Ayes: 4 (Sgambelluri, Smith, Sandberg, Rollo), Nays: 5, Abstain: 0. FAILED.

Vote to adopt Amendment 01 to Ordinance 21-23 [10:44pm]

Flaherty moved and it was seconded to recess the Special Session to meet again on May 5, 2021. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

RECESS [10:47pm]

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, May 05, 2021 at 7:30pm, 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
May 05, 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 [7:32pm]

Clerk's Note: On May 4, 2021, the Common Council called to order a Special Session, which began the Council's consideration of Ordinance 21-23 and Ordinance 21-24 to be completed over a series of meetings including May 05, May 06, May 12, and May 13 of 2021.

Council President Jim Sims summarized the agenda.

AGENDA SUMMATION [7:32pm]

Sims summarized the conduct of deliberations.

CONDUCT OF DELIBERATIONS

ORDINANCE 21-23 [7:35pm]

Piedmont-Smith moved and it was seconded to adopt Amendment 02 to Ordinance 21-23. Piedmont-Smith presented Amendment 02. Sims added that Amendment 02 was a compromise and spoke about conditional use and community feedback.

Ordinance 21-23 – To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code – Re: Regulations Related to Dwelling, Duplex; Dwelling, Triplex, and Dwelling, Fourplex Set Forth in BMC 20.03 and 20.04

Amendment 02 Synopsis: This amendment is sponsored by Councilmembers Piedmont-Smith and Sims. It presents a compromise by allowing some carefully reviewed duplexes in residential neighborhoods. The text amends the allowed use table to allow "Dwelling, duplex" as a conditional use in the R1, R2, and R3 zoning districts. It also makes changes to the conditional use permit process to require that conditional use permit petitions for the "Dwelling, duplex" use in the R1, R2, or R3 zones include a pre-submittal neighborhood meeting and are reviewed by the Board of Zoning Appeals.

Amendment 02 to Ordinance 21-23

Jackie Scanlan, Development Services Manager in the Planning and Transportation Department, reviewed conditional use and its approval process.

Piedmont-Smith clarified specific points that the Board of Zoning Appeals (BZA) needed to consider.

Rollo asked the sponsors to describe the process and requirements for the meeting between the petitioner and the neighborhood.

Council questions:

Scanlan responded that the petitioner was required to reach out to the primary contact of the neighborhood association. If the neighborhood association preferred that the petitioner appear at a meeting, then a staff member would also attend.

Rollo questioned how this process was verified.

Scanlan stated that staff attended the meeting.

Rollo said that there were no expectations other than the meeting occur and there was no defined outcome other than notification.

Scanlan said that in her experience, staff would take all of the materials that went to the BZA, to the neighborhood association meeting. Sometimes the neighborhood association would not engage, and other times they would and would work with the petitioner on issues.

Rollo stated that the process legislated courtesy.

Scanlan explained that it was a requirement and not a courtesy.

Sandberg asked if things like traffic flow, congestion, parking conflicts, and more could be raised as concerns at the neighborhood association meeting, and for the BZA to consider, or if it was better addressed in the ten criteria list of concerns.

Scanlan stated that any concerns could be raised for consideration, though she did not believe that parking was specifically listed in the ten criteria list of concerns.

Sandberg asked if it was ideal to add parking to the ten criteria list in order to allow for meaningful change to a project.

Scanlan explained that uses that were expected to have an outsized amount of parking were addressed within the Unified Development Ordinance (UDO). One additional unit on a lot was not addressed when Accessory Dwelling Units (ADUs) were added.

Sandberg asked if staff objected to amending the criteria.

Scanlan clarified that the criteria was tied to providing adequate services and that parking might be already included in the street portion.

Smith asked if duplexes in a smaller neighborhood would be considered a nuisance by the BZA.

Scanlan explained that it would be up to the BZA to determine that. She added that there were already some restrictions in place; duplexes could not get parking permits in any areas that had residential neighborhood passes and also could not park on the street. Those duplexes would not be built in those areas if parking was not on site.

Smith asked about the proximity of the duplexes within a small neighborhood with smaller streets.

Scanlan said it would be related to the ability to provide adequate public facilities, and not the proximity of a duplex.

Sgambelluri asked about conditional use from the perspective of a resident. She asked what someone should expect if they lived two doors down from a proposed duplex.

Scanlan said that a notice would arrive in the mail, including the description of the request, as well as information about a meeting. Passing the lot, one would also see signs posted in the yard with contact information. If one did not live within three-hundred feet of the proposal, then it would be up to the neighborhood association to disseminate that information.

Sgambelluri asked about neighborhoods that did not have neighborhood associations.

Scanlan replied that there had been projects that had ad hoc neighborhood groups. The UDO was not specific that it had to be a neighborhood association. She said that if Amendment 02 passed, staff would include those ad hoc groups.

Sgambelluri stated that, in the absence of a neighborhood association, a gathering could be convened, or a homeowner could contact the petitioner based on the mailing received.

Scanlan confirmed that was correct, and that they could also contact staff.

Sgambelluri questioned the BZA's ability to make a judgement call on noise and other nuisances prior to knowing who the occupants were.

Scanlan responded that it was rare that there was not an abundance of information about the petition informing staff and the BZA on which to base their decisions.

Rollo asked if it was historically correct that BZA approvals were typically granted if code was met.

Amendment 02 to Ordinance 21-23 (cont'd)

Council questions:

Scanlan confirmed that was correct. Staff discussed many more projects with petitioners than those that went to the BZA. She said that staff would let petitioners know if their proposal was not likely to be approved in an effort to be efficient.

Amendment 02 to Ordinance 21-23 (cont'd)

Council questions:

Flaherty asked about conditional use of a duplex, which was approved and met code and included a good faith requirement to address concerns of neighboring property owners. He asked if the BZA had the authority to deny the petition if no good faith effort was made.

Scanlan confirmed that was correct.

Smith questioned if property owners had the right to appeal the BZA's approval.

Mike Rouker, City Attorney, clarified that they would be able to appeal to the Monroe County Circuit Court.

Smith asked for clarification.

Rouker said that a stay could be granted. He said that the property owner would file an action/petition that the BZA did not make a proper finding, or use another legal theory.

Volan asked if there were any cases where a decision by the BZA was overturned by the court.

Rouker said he was not aware of any in Bloomington, but there were cases in other counties. He said he had seen cases where the BZA had denied a petition and the petitioner appealed to the court.

Volan asked if in those cases the BZA's decision had been overturned, and if any were in Monroe County.

Rouker said he had seen BZA decisions upheld and overturned, but not in Monroe County.

Volan reiterated that the petitions that were likely to be approved were sent to the BZA.

Scanlan clarified that any petitioner could take a proposal to the BZA, but that staff preferred to be up front with the petitioner about the proposal. She said that typically, if a petitioner did not believe their proposal would be approved, they would not file.

Volan asked if the number of pre-submittal meetings, and then submitted proposals to the BZA, were tracked.

Scanlan said it was not tracked, and explained the process.

Smith asked who was informed about the BZA's decision.

Scanlan said that a letter with the findings of fact and decision was sent to the petitioner.

Smith wondered if the notification included information about appealing.

Scanlan said a petitioner would typically only appeal if their proposal was denied.

Smith asked if there was a way to include that information in the notice.

Scanlan said that communication from staff continued after the notice, and staff provided the petitioner with options.

Rouker said that there had been many types of appeals, not just in the conditional use context, and frequently there were lawyers involved who knew how to appeal.

Scanlan added that information on how to appeal was included in the Administrative Manual in the UDO.

Sandberg asked if duplexes provided housing for a mix of incomes.

Piedmont-Smith referenced the two policies from the Comprehensive Plan. She explained that it focused on different price-points and diversity of housing types.

Sandberg asked about household income levels and affordability.

Piedmont-Smith responded that duplexes, by nature, were half the size of a single family home, and would have a lower price for renting or buying.

Amendment 02 to Ordinance 21-23 (cont'd)

Council questions:

Sgambelluri asked about petitions that were approved by the BZA, and a neighbor wanting to appeal that approval.

Rouker said it was on a case-by-case basis, and there had been cases in Indiana where neighbors had legal standing.

Sgambelluri asked if the appeal was at the neighbors' expense.

Rouker confirmed that it was.

Sarah Mosier supported Amendment 02 and duplexes.

Public comment:

Jessika Griffin spoke in support of Amendment 02 and plexes as conditional.

Jim Rosenbarger discussed the BZA approval process and the Comprehensive Plan. He supported caps for plexes.

Janet Sorby commented on concerns with parking and plexes.

Anna Maria Mecca spoke about plexes, neighborhood meetings, and diversity in housing, and against Amendment 02.

Dave Warren thanked staff and spoke in support of Amendment 02.

Cathi Crabtree supported duplexes and provided reasons why.

Peter Dorfman spoke about permitted, conditional, and by right uses of plexes and against plexes in neighborhoods.

Andrew Guenther spoke about the cost of homes, and renting, and in favor of plexes.

David Keppel commented on sustainable housing, and his support for Amendment 02.

Greg Alexander spoke about problems with conditional use and in favor of duplexes.

Matthew Klauss supported Amendment 02 and commented that the BZA could require union labor, and on parking.

Ed Bernstein discussed conditional use, caps, parking, and against plexes.

Wendy Bernstein commented on the rhetoric of council meetings, the generational divide, and strengthening Amendment 02 and conditional use.

Cory Ray spoke in support of Amendment 02 and thanked staff and council for listening to public input.

Chris Sturbaum conditionally supported Amendment 02 and said that conditional use was ideal. He commented on the BZA process.

Jean Simonian did not have faith in the conditional use, and the BZA, processes.

Richard Lewis spoke in favor of Amendment 02 and thanked council.

Amendment 02 to Ordinance 21-23(cont'd)

Leslie Skooglund supported duplexes in core neighborhoods and Amendment 02. She commented on affordable housing, and her experience as a social worker in Bloomington.

Public comment:

Rachel Fleischmann spoke in support of Amendment 02 and commented on renting, affordable housing, and equity.

Doug Moore commented on sanitation truck requirements and parking.

Sarah Waters discussed the affordable housing crisis, and the regressive comments by some members of the public regarding housing.

Cynthia Bretheim spoke about parking concerns, and noise nuisances in neighborhoods. She commented on plexes and covenants.

Michelle Henderson supported Amendment 02 but said it did not go far enough regarding affordable housing.

Barbara Moss said the real issue was affordable housing and upzoning was not ideal. She spoke about home ownership and interest rates and that Amendment 02 did was not strong.

Richard Durson commented that opening housing up to the free market was not good, and affordability was needed and conditional use needed to be more stringent.

Jerrett Alexander supported Amendment 02 and favored by-right.

Wendy Bricht spoke about housing and affordability, and renting and market pressures.

Rob Schneider said that plexes did not lead to affordability. He discussed caps on the experiment of plexes.

Joe Lee said stringent conditions were necessary for plexes.

Karen Duffy supported Amendment 02 and commented on the cooperative housing in the Near Westside Neighborhood.

Stephen Layman said that Amendment 02 would not make a difference and was too vague. He spoke about density and infrastructure.

Mara-Lea Rosenbarger commented that the process for plexes and upzoning had been rushed. She commented on climate change and housing.

Jami Scholl spoke about leadership and supported density and caps. She said Amendment 02 did not go far enough.

Andy Ruff said that Amendment 02 was not a compromise. He discussed ways to implement stringent conditions.

Deborah Myerson supported Amendment 02 as a compromise. She said that density was needed and current zoning limited areas to single family homes which was inequitable.

Jean Linen discussed conditional use and said it was worth considering.

Amendment 02 to Ordinance 21-23(cont'd)

Public comment:

Russ Skibo spoke against plexes and upzoning, and about housing affordability and home ownership.

Vauhxx Booker thanked the Planning Department, the engaged public, and council. He commented that most in opposition to plexes had been in their homes for decades, and that times had changed.

Victoria Witty said that conditional use was better than nothing, but that the BZA needed more specific criteria to consider. She spoke in favor of caps and against plexes.

Heather Lacy, Deputy Council Attorney/Administrator, read the following comments submitted via Zoom chat.

- Ramsey Harik remained silent on Amendment 02 so as to draw Piedmont-Smith's attention.
- Dave Stewart commented against Amendment 02 and plexes in core neighborhoods.
- Linda Stewart also commented against plexes and Amendment 02.
- Betty Rose Nagle urged council to vote against Amendment 02.
- Patrick Steine commented on affordable housing, home ownership, starter homes, and condos.

Tom Millen discussed infrastructure needs with increasing density.

Lacy read a comment submitted via Zoom chat by Carol Handfeld which stated, "No plexes."

Sandberg asked about the process for introducing an amendment to Amendment 02 that was in draft form.

Flaherty said it could be introduced as an amendment to Amendment 02 for consideration. He said it could also be considered as a separate amendment at a later date. There was brief council discussion on amending Amendment 02 or bringing forward an amendment at a future meeting.

Council comments:

Rollo said that he would support Amendment 02 because it was incrementally better. He commented that all proposals that met code were approved.

Sims commented on the housing crisis in Bloomington and that Amendment 02 was a middle ground for duplexes. He further commented on the approval process for ADUs, the BZA approval process, and housing affordability. He urged council to pass Amendment 02.

Sandberg spoke about conditional use versus by right, and said she would support Amendment 02. She referenced future amendments to address concerns regarding plexes, parking, and more that she would bring to council for consideration.

Volan discussed the concerns regarding plexes, including parking and an increase in traffic. He said that neighborhood parking zones were the way to control parking issues. Volan commented on ways

to address concerns of those opposed to an increase in density. He also commented on Indiana University and the influx of students.

Amendment 02 to Ordinance 21-23(cont'd)

Smith spoke about conditional use, the housing crisis, affordability with housing, and the need to have control on the free market regarding housing in Bloomington. He commented that the city should spend some federal monies to help community members become homeowners.

Council comments:

Flaherty thanked council, staff, and the public for their input. He commented on compromise, the Comprehensive Plan, and plexes. He said that the best way to add housing was to have permitted use, and by right housing, as was supported by empirical research in the urban planning field. He further commented on restrictions for plexes and said he would support Amendment 02.

Sgambelluri thanked everyone for their feedback. She disagreed that allowing plexes by right was ideal, and preferred conditional permitting, and then adding additional restrictions later, as was discussed that evening. She spoke about the conditional use approval process, outside developers, affordable housing, and concerns about amending the UDO.

Piedmont-Smith said that more housing was necessary in Bloomington, and that allowing duplexes in single family neighborhoods was an incremental step. She commented on reporting requirements, and affordable housing including the hospital site. She said Amendment 02 required proposals to go before the BZA which allowed for the monitoring of plexes in the community.

Rosenbarger thanked everyone for their input, and said she supported by right plexes in neighborhoods and that use-specific standards would address concerns. She commented on housing density, social equity, affordability, and the cost of renting a duplex versus a single family home. She supported Amendment 02.

The motion to adopt Amendment 02 to Ordinance 21-23 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to adopt Amendment 02 to Ordinance 21-23 [10:38pm]

Sims recessed the meeting.

RECESS [10:44pm]

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 Thursday, May 06, 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
May 06, 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]

Clerk's Note: On May 4, 2021, the Common Council called to order a Special Session, which began the Council's consideration of Ordinance 21-23 and Ordinance 21-24 to be completed over a series of meetings including May 05, May 06, May 12, and May 13 of 2021.

Council President Jim Sims summarized the agenda.

AGENDA SUMMATION [6:32pm]

Sims summarized the conduct of deliberations.

CONDUCT OF DELIBERATIONS
[6:33pm]

ORDINANCE 21-23 [6:34pm]

Rollo moved and it was seconded to adopt Amendment 03 to Ordinance 21-23. Rollo presented Amendment 03 and referenced that it was Attachment A to ZO-09-21.

Ordinance 21-23 - To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code – Re: Regulations Related to Dwelling, Duplex; Dwelling, Triplex, and Dwelling, Fourplex Set Forth in BMC 20.03 and 20.04

Amendment 03 Synopsis: This Amendment is sponsored by Councilmember Rollo and Councilmember Sandberg. This Amendment places a 150 foot buffer around a duplex dwelling in the R1, R2, and R3 zoning districts. This Amendment also limits the total number of duplexes to not more than 10 each year.

Amendment 03 to Ordinance 21-23

Sandberg added that the proposal was a major housing policy change and that buffers were a necessary safe-guard.

Jackie Scanlan, Director of Development Services in the Planning and Transportation Department, said that staff was fine with the separation and time limit. She said that staff did not believe caps were necessary.

Flaherty asked if it was correct that the buffer requirement would only apply to new builds or converted homes.

Council questions:

Scanlan confirmed that was correct.

Flaherty asked what happened if someone had a non-conforming use structure and wanted to expand by adding a bedroom.

Scanlan said that if someone had a lawful non-conforming duplex, they would remain lawful. If they wanted to expand, they would have to go through the conditional use process and would be regulated.

Piedmont-Smith asked how the sponsors arrived at fifteen for the cap.

Rollo said it was determined by council and staff as a rough estimate and a moderate number.

Scott Robinson, Director of the Planning and Transportation Department, clarified that staff had looked at the Board of Zoning Appeals (BZA) case load, and that fifteen was a reasonable number.

Sgambelluri questioned the one hundred and fifty feet buffer because it meant different things in different neighborhoods.

Scanlan stated that staff had discussed having different buffers in different districts based on the average lot width. The buffer was determined as the distance where someone might be disturbed by something their neighbor was doing. She further explained some differences between neighborhoods in Bloomington.

Sgambelluri asked if the next nearest residence was more than one hundred and fifty feet away would be included in the notice.

Scanlan confirmed that was correct because it included properties and not homes.

Volan asked for clarification about the number of petitions that had been filed since the Unified Development Ordinance (UDO) was adopted.

Scanlan had referenced the number of petitions that included duplexes. She said that with the new code, and in districts where duplexes were allowed, some properties became eligible to become duplexes. There were one hundred and seventy eight houses and none had requested to be converted. She explained where those houses were.

Volan presented maps and discussed areas that could have converted to plexes since the previous year, but that there had been no petitions. He discussed allowed uses in residential zones and identified houses that could have been converted to plexes that were not. Volan asked the sponsors for clarity on the presumed urgent problem of plexes.

Rollo said that Volan had picked certain areas for review, and that the pandemic had also affected petitioners. He said that there was a need for a safe guard, and that the cap of fifteen was appropriate.

Volan clarified that he had looked at areas that were primarily student housing, where no one would object to the houses being converted to plexes, yet none had been converted. The number of bedrooms built in 2020 exceeded the previous years including multifamily and single family. That clearly showed that the pandemic did not stop construction.

Rollo said that since plexes were allowed in all residential zones, one could not just analyze one area of the city. It was unknown what would happen and that moving forward, the conversions would be between zero and fifteen with Amendment 03.

Flaherty appreciated the intent of Amendment 03 but was concerned about the inequitable distribution of rights for community members. Zoning created rules that should be applied equally and fairly to all. He explained that there was a perceived first-come, first served process. Those who had the ability and financial means to build a duplex, might be incentivized to convert a home versus a lower income homeowner with less financial means. He said that if someone filed first, another property owner would be denied that same right, which favored those with more capital. He asked if the sponsors were concerned about the equitable distribution of rights, and if it had been discussed with staff.

Sandberg responded that when she and Rollo had initially discussed caps, they had looked at how to make it equitable in neighborhoods. There was not a suitable formula to use and they discussed how they arrived at a single number as a safe guard so as to not saturate core neighborhoods that needed to adjust to the new code. Sandberg said that there might not be a big rush to make the conversions. She explained that the cap was determined in response to constituent concerns and feedback.

Flaherty said he was more concerned about the buffer than the cap in regards to the inequitable distribution of rights.

Amendment 03 to Ordinance 21-23 (cont'd)

Council questions:

Scanlan explained that staff had discussed options, and with the Plan Commission, but that it was difficult to determine due to how Bloomington was laid out. Including the two year criteria, addressed the first-come, first-served concern while also addressing the concern of too many plexes in a neighborhood.

Amendment 03 to Ordinance 21-23 (cont'd)

Council questions:

Piedmont-Smith asked about a time limit for construction of a duplex once there was a BZA approval.

Scanlan said that a conditional use approval was for three years.

Ryan Robling, Zoning Planner in the Planning and Transportation Department clarified that it was a two year limit if there was not a building permit.

Piedmont-Smith asked about a limit to building permits.

Scanlan confirmed there was also a limit that was set by the Monroe County Building Department that also allowed extensions. It was typically one year, but there were exceptions.

Rosenbarger questioned if the sponsors of Amendment 03 also consulted with pro-plex community members, along with anti-plex constituents.

Rollo said he rejected the categorization of pro-plex and anti-plex and that he was pro-plex in appropriate areas as determined by the Comprehensive Plan.

Sandberg clarified that they were not against plexes which were acceptable housing forms. Many who reached out to her felt that plexes belonged in neighborhoods outside of the core ones which were already diverse and dense. Constituents had expressed concerns about upzoning. The goal was to make suitable housing.

Rosenbarger asked if the sponsors of Amendment 03 had spoken with residents who wanted plexes in core neighborhoods. She said that talking with individuals who already owned plexes was problematic because they may not want others to have plexes.

Sandberg stated that they had spoken with a robust group of residents and the goal was to provide conditions to alleviate concerns.

Flaherty wondered if the sponsors of Amendment 03, or staff, had a plan for revisiting and reviewing the cap of fifteen, and other factors. He referenced the Accessory Dwelling Unit (ADU) phase-in which mirrored the current conversation.

Sandberg explained that everyone was looking to see how plexes would roll out, and could identify where there were stressors.

Rollo said that there would be reporting every six months to review the numbers and the effects on individual neighborhoods. He spoke about achieving village centers, which was a great opportunity for sustainability.

Flaherty clarified his question and said that he too supported village centers. He stated that he was referring to the caps specifically, and for example, if someone was number sixteen.

Rollo said that person could wait a few months.

Scanlan said that the six month reporting was built into Ordinance 21-23 and included the number of requests, locations, units built, and more. If there were fifteen, staff would report on that. She also commented on village centers which were dictated by commercial and mixed use zoning in the Comprehensive Plan.

Flaherty expressed the importance of considering all the potential outcomes, including the number built and if a homeowner lined up in the queue or waitlist. He referenced his concerns regarding equity for those who had less capital.

Scanlan said that if there was a lot of interest in duplexes that staff would report the details to council and the administration, and the cap could be reviewed then.

Sandberg added that the city could not control who would be doing the conversions to duplexes, and that was why it was important to include safeguards.

Rollo asked for clarification on village centers, housing, and zoning.

Scanlan read the definition of village centers from the Comprehensive Plan. She said it included multifamily and commercial uses which supported the surrounding neighborhood.

Rollo said that higher density would occur at the village centers.

Volan referenced previous discussions about the UDO as a policy that remained in place for several years, but the sponsors of Amendment 03 were now amenable to reviewing caps within six months. He asked how that reconciled.

Sandberg said that once buildings were modified, they could not be reversed. She said that new changes in policy could be adjusted as needed.

Volan said that the sponsors of Amendment 03 were willing to revisit the caps, and should be also willing to revisit the UDO.

Chris Sturbaum spoke about the buffer, ADUs, plexes, and upzoning.

Amendment 03 to Ordinance 21-23 (cont'd)

Council questions:

Public comment:

Mark Burnett supported Amendment 03.

Beau Balance strongly supported Amendment 03.

Patricia Foster urged council to pass Amendment 03.

Victoria Hilkevitch expressed her concerns about the caps and buffers as constraining duplexes as conditional use.

Richard Lewis supported Amendment 03.

Janice Sorby spoke in favor of Amendment 03.

Ramsey Harik commented on compromise, conditional use, the BZA process, and upzoning. He urged council to support Amendment 03.

Joe Lee also urged council to vote to pass Amendment 03.

Sita Cohen spoke against plexes and in favor of Amendment 03.

Jim Rosenbarger expressed his support for Amendment 03 and caps.

Cathi Crabtree urged council to vote against Amendment 03.

Dave Warren asked council to not support Amendment 03.

Lori Hoeverer urged council to support Amendment 03.

Sarah Kay Helane requested council vote against Amendment 03.

Ed Bernstein supported Amendment.

Wendy Bernstein was offended to be called a racist and classist. David Hill spoke in favor of Amendment 03.

Daniel Bingham commented in support of plexes and multifamily neighborhoods.

Amendment 03 to Ordinance 21-23 (cont'd)

Greg Alexander asked council to vote against Amendment 03.

Public comments:

Renee Miller opposed Amendment 03.

[Unknown] Weaver spoke against Amendment 03, buffer zone, caps, and conditional use.

Greg Rago spoke in favor of Amendment 03.

Patty Ingham commented in favor of Amendment 03.

Jerrett Alexander urged the council to reject Amendment 03.

Jeff Richardson supported Amendment 03.

Jean Simonian summarized an analysis she did on the impact of upzoning properties adjacent to her home.

John Lawrence asked council to support Amendment 03.

Carrie Thompson supported Amendment 03.

Andrew Guenther spoke against Amendment 03.

Margaret Clements spoke in favor of Amendment 03.

Tom Millen commented in favor of Amendment 03.

Teal Bingham provided reasons for council to vote against Amendment 03.

Andy Ruff supported Amendment 03 which started to address concerns about plexes.

Rob Schneider commented on the unknown impacts of plexes in core neighborhoods.

Gail Schreiber Weaver provided reasons for her support for Amendment 03.

Steve Acres supported Amendment 03 as a guardrail for duplexes.

Amir Rebuschati supported plexes by right and opposed Amendment 03.

Betty Rose Nagle supported Amendment 03 and provided reasons.

Rachel Fleischman urged council to vote against Amendment 03.

Charles Trazinka supported Amendment 03 and provided reasons.

Kathleen Myers urged council to pass Amendment 03.

Sarah Copper spoke against Amendment 03.

Sarah Mitchell commented on landlords, Section 8, and neighborhoods.

Jenny Stephens supported Amendment 03.

Eric Ost urged council to adopt Amendment 03.

Diane Jones supported Amendment 03.

Matthew Klauss talked about his opposition to Amendment 03.

Barry Klapper discussed her support for Amendment 03.

Russ Skibo urged council to support Amendment 03.

Wendy Bricht spoke about her experience with housing, student housing, and rentals.

David Keppel commented on needed housing patterns, density, diversity, and the addition of duplexes favored that path.

Cynthia Brethiem urged council to approve Amendment 03.

Brian DeLong opposed Amendment 03 and provided reasons.

Solomon Bogdanoff supported Amendment 03 as a start.

Peter Bogdanoff commented against plexes and against councilmembers in favor of plexes.

Steve Layman spoke in favor of Amendment 03.

Patrick Siney discussed support for Amendment 03.

Heather Lacy, Deputy Attorney, read the following comments that were submitted via Zoom chat:

- Daryl Hayle supported Amendment 03.
- Julia Livingston also supported Amendment 03.
- Ann Kreilkamp commented in favor of Amendment 03.
- David Lawler strongly supported Amendment 03.
- Carlen Greese opposed the actions of council that week.
- David Fisher supported Amendment 03.
- Gabriel Price implored the council to vote in favor of Amendment 03.
- Richard Dursen supported Amendment 03.
- Martha Shedd asked council to support Amendment 03.
- Anna Maria Mecca urged council to vote in favor of Amendment 03.
- John Crushne commented against the buffer.
- Diana Lamb supported Amendment 03.
- Victoria Nelson was in favor of Amendment 03.
- Vita Stanfield urged council to support Amendment 03.
- Daryl Stone commented in favor of Amendment 03.
- Kelly Sacks discussed reasons in favor of Amendment 03.
- Janet Stravopolous supported Amendment 03.
- Rebecca Fassman was opposed to Amendment 03.
- Ann Stephenson supported Amendment 03.
- Sara Jones was in support of Amendment 03.
- Kathleen Zideli strongly supported Amendment 03.
- Annette [unknown] commented in favor of Amendment 03.
- Ollette Linenstroff asked council to support Amendment 03.
- EMNSDOR urged council to pass Amendment 03.
- David Stewart asked council to pass Amendment 03.

Amendment 03 to Ordinance 21-23 (cont'd)

Public comments:

- Sandra Takarski supported Amendment 03.
- Linda Stewart commented in favor of Amendment 03.
- J.A. Klein was in support of Amendment 03.
- Patrick Murray supported Amendment 03.
- Michael McLafferty commented in favor of Amendment 03.
- Margaret Pea supported Amendment 03.
- Drew Meadows asked council to vote for Amendment 03.
- Barbara Moss urged council to vote for Amendment 03.
- Tim Kennedy supported Amendment 03.
- Constance Glenn asked council to vote for Amendment 03.
- Jack Horton supported Amendment 03.
- Perry Hodges commented against plexes.
- Bess [unknown last name] supported Amendment 03.
- Derek Richey commented in favor of Amendment 03.
- Jamie Sholl supported Amendment 03.
- Karen Duffy asked council to support Amendment 03.
- Deborah Piston commented in support of Amendment 03.
- Marcia Baron urged council to pass Amendment 03.
- Herbert Marks supported Amendment 03.
- Stella Hooker Klauss urged council to support Amendment 03.

Amendment 03 to Ordinance 21-23 (cont'd)

Public comments:

Flaherty commented on concerns about the buffer zone and asked if information about the buffer could be included in the six month report.

Council comments:

Scanlan confirmed that information would be tracked and included in the report.

Rollo thanked council and Robinson. He said that council was considering a massive change in zoning policy that affected every neighborhood in Bloomington. There were unknown outcomes and a historical precedence for upzoning that should give caution. There were strong profit incentives for converting homes to duplexes and Amendment 03 provided a safe guard against probable harm, and allowed for the observation of impacts. He asked council to support Amendment 03.

Flaherty appreciated the input from members of the public. There were concerns regarding Amendment 03 and there were different point of views between differing socioeconomic status community members. Compromising added value to the process, and conditional use and duplexes provided additional housing, as prescribed in the Comprehensive Plan. The idea of safeguards was based on the assumption that duplexes were bad. He iterated that the restrictions on duplexes were not imposed on single family homes. He would support Amendment 03.

Smith said that Amendment 03 was good and it did not stop the development of duplexes. It put controls in place to measure and gauge the change in policy. He thanked Rollo and Sandberg for their work on Amendment 03, and commented on the public input and thanked the public speaker.

Rosenbarger thanked everyone involved in the debate. She struggled with Amendment 03 beings a compromise because a compromise had already been attained by changing policy from allowing all plexes by right, to only conditional use duplexes. She commented on what was really a compromise. Conditional use was not the same as by right and referred to ADUs. The first come, first serve buffer was difficult to accept, and could pit neighbors against

each other. She referenced Volan's presentation on the lack of duplexes built in a highly, student-oriented area. She was undecided on her support of Amendment 03.

Amendment 03 to Ordinance 21-23 (cont'd)

Sgambelluri commented on the cap, which covered all R1, R2, and R3 areas and did not set a cap for each individual area, which could lead to a concentration of duplexes in the areas with the greatest profit potential. That led her to prefer a more cautious cap though she would compromise for fifteen. She said that if Ordinance 21-23 passed, that it was a significant change in zoning policy and needed to be monitored. She referenced community members' concerns and commented on the cap. She would support Amendment 03.

Council comments:

Volan spoke about the data on conversions to plexes in student housing areas of Bloomington. The conversion to plexes had been allowed for one year, but not one homeowner had converted a house to a quadplex. He questioned the argument that the developers were greedy and eager to convert to plexes. He said that rents had never been higher yet hundreds, or thousands, of new units were needed. He further commented on the deregulation of housing in April 2020 and said that it was incredibly challenging to build missing middle housing. He said that those in favor of Amendment 03 based their support on irrational anecdotes. He commented on those selling their homes to landlords versus homeowner occupied.

Piedmont-Smith opposed Amendment 03 because it added arbitrary and inequitable limits on duplexes in residential neighborhoods. Additional criteria could be added to improve the conditional use process. She said that she was motivated by what was in the best, long-term interest of Bloomington, and that adding housing density was the best thing to do. Adding housing reduced greenhouse gas emissions in the transportation and energy sectors. Affordable housing incentives still needed to be addressed. Piedmont-Smith listened to her constituents and reiterated that there were many that she had not heard from. She commented on her goals and ideals, and said a priority in her campaign for election had been sustainability and climate action. She would vote against Amendment 03.

Sandberg thanked the public for their engagement and said that public service was hard. She expressed pride in the process of public input and said she was grateful to be a public servant.

Sims thanked the sponsors of Amendment 03, and said that compromise was involved in the process. He commented on compromise and the middle ground. He also commented on the concerns of the members of the public including overdevelopment and outside developers. The bottom line was to increase the housing inventory.

Rollo respected Piedmont-Smith's concern about climate change and said that density may not be the solution. He said that if students occupied plexes, in core neighborhoods, and left the highest density, high-rise buildings, it would promote families to flee to the suburbs, which lowered density. He also commented that the areas that Volan referred to were already dense, including five-person rentals that were grandfathered in.

Smith thanked Sims, Lacy, and everyone who spoke.

Volan commented on Smallwood and said housing density was relative. He lamented that his constituents in District 6 were discounted because they were students.

Amendment 03 to Ordinance 21-23 (*cont'd*)

The motion to adopt Amendment 03 to Ordinance 21-23 received a roll call vote of Ayes: 7, Nays: 2 (Volan, Piedmont-Smith), Abstain: 0.

Vote to adopt Amendment 03 to Ordinance 21-23 [10:48pm]

Sims called a Special Session on May 12, 2021 at 6:30pm and on May 13, 2021 at 6:30pm, if needed.

COUNCIL SCHEDULE [10:57pm]

Volan moved and it was seconded to recess the meeting. The motion was approved by unanimous consent.

RECESS [10:50pm]

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 Bloomington, Indiana on Wednesday, May 12, 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
May 12, 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 [6:36pm]

Clerk's Note: On May 4, 2021, the Common Council called to order a Special Session, which began the Council's consideration of Ordinance 21-23 and Ordinance 21-24 to be completed over a series of meetings including May 05, May 06, May 12, and May 13 of 2021.

Council President Jim Sims summarized the agenda.

AGENDA SUMMATION [6:36pm]

Sims summarized the conduct of deliberations for the Special Session.

CONDUCT OF DELIBERATIONS
[6:37pm]

Flaherty moved and it was seconded that the Regular Session scheduled for August 4, 2021 begin at 3:00pm. Flaherty explained that the meeting was for consideration of legislation for the updates to fiscal plans for each of the areas of annexation. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to schedule Regular Session
[6:41pm]

ORDINANCE 21-23 [6:41pm]

Rollo moved and it was seconded to adopt Amendment 04 to Ordinance 21-23. Sandberg presented Amendment 04. Rollo referenced information from the Comprehensive Plan that supported Amendment 04. Sandberg iterated that Amendment 04 only pertained to R1, R2, and R3 districts.

Ordinance 21-23 - To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code – Re: Regulations Related to Dwelling, Duplex; Dwelling, Triplex, and Dwelling, Fourplex Set Forth in BMC 20.03 and 20.04

Amendment 04 Synopsis: This Amendment is sponsored by Councilmember Sandberg and Councilmember Rollo. The Amendment changes the number of bedrooms allowed in a duplex from a total of six (three in each unit) to two (one in each unit). The Amendment adds a third tier of projects that would qualify for incentives under the Affordable Housing Incentive section, and adds a third tier of Affordable Housing Incentives. Specifically, the Amendment states that for projects where both units in a duplex are income restricted permanently to below 120 percent of the HUD AMI for Monroe County, Indiana, or for projects where one unit in a duplex is income restricted permanently to below 80 percent of the HUD AMI for Monroe County, Indiana, the number of bedrooms per unit may be increased to three (six total).

Amendment 04 to Ordinance 21-23

Piedmont-Smith asked to hear from staff.

Scott Robinson, Director of the Planning and Transportation Department, thanked Sandberg and Rollo for introducing Amendment 04. He emphasized the importance of having affordable housing in Bloomington and referenced current voluntary incentives in the Unified Development Ordinance (UDO) and other tools for affordable housing used in the nation. The administration supported affordable housing tools like the Recover Forward mortgage assistance program through the Housing and Neighborhood Development Department (HAND), the reuse of the Kohr Administration building on the former hospital site, and exploring opportunities for low-income housing tax credits, and

federal stimulus funds. Robinson did not believe that the meeting was the correct venue to discuss all the options. Staff did not support Amendment 04 and provided various reasons. He explained the tradeoffs of the incentives and said he was cautiously optimistic that incentives established the right criteria. At a recent Plan Commission meeting, Trinitas had presented their plan for the former K-Mart site which included 340 units, 906 bedrooms, and did not consider the affordable housing incentives, nor the sustainable development incentives. Amendment 04, and duplexes, did not propose enough units or bedrooms to provide a real incentive for leveraging affordable housing, units, or bedrooms. The cap and buffer might hinder future affordable units. He commented on the difficulty with incentivizing affordable units. Robinson had asked Clarion and Associates, the UDO consultants, to review Amendment 04. The consultants said that Amendment 04 would not provide a variety of housing, nor create affordable units.

Jackie Scanlan, Development Services Manager in the Planning and Transportation Department, reiterated that staff was opposed to Amendment 04. The purpose of adding the option for plexes was to add more housing types. Amendment 04 was written under the assumption that the duplexes would be rentals because the permanent affordability policy could not be applied to home ownership. Staff did not want duplexes to be exclusively rentals, which would exclude the missing middle, many families with children, and would completely remove the option of homeownership of three bedroom duplexes for families that made more than 120% of the Area Median Income (AMI) and needed more than two bedrooms. Permanent affordability at that scale restricted future sale of the unit resulting in the inability to build equity. The permanent affordability, without companion programs, would not result in homeownership but would result only in rentals. Amendment 04 was similar to the model staff used for much larger-scale rental developments. Amendment 04 also limited the ability for existing units, that had two or more bedrooms on each side, to remodel. She commented on existing and recently passed restrictions and standards. There were 12,430 parcels in the R1, R2, and R3 districts, so with the cap of fifteen duplexes per year, the result was that only 0.1% of the units in those districts could add one unit. She said that additional regulations were not needed and that current regulations already were incremental steps.

Piedmont-Smith asked the sponsors of Amendment 04 how they envisioned it applying to owner-occupied units.

Council questions:

Sandberg said that an owner who wished to convert their home into a duplex, could do so and could use the affordability incentives if they wanted, too.

Piedmont-Smith asked for clarification for on the 'in perpetuity' of Amendment 04 and what would happen if the homeowner wished to sell.

Sandberg explained that if Amendment 04 passed, then the requirement would pass on to the new homeowner, unless council made a change in the future. Bringing duplexes into core neighborhoods was an experiment and having an option for lower-than-market rate was an advantage.

Rollo said that one had the ability to subdivide their home via the Accessory Dwelling Units (ADUs).

Piedmont-Smith noted that the size of the ADU was limited.

Sandberg said that the home would need to be deeded as two separate properties to sell as two owner-occupied units.

Volan asked if the sponsors consulted with anyone who had built a house or a duplex in Bloomington.

Amendment 04 to Ordinance 21-23 (cont'd)

Sandberg confirmed that they had and that Amendment 04 still allowed for a profit, and did not restrict the conversion of a home to a duplex.

Council questions:

Volan asked if Rollo or Sandberg read the letter from Dave Hardstead sent that afternoon.

Sandberg stated that they had and also had another pro forma indicating how it could be profitable to convert one's home. She commented that Jan Sorby and Kerry Thompson were in the meeting and could speak to certain questions. She said the letter included information for building a new unit, and that there were significant differences in the R1, R2, and R3 zones.

Smith asked if the sponsors of Amendment 04 wanted to respond to staff's comments.

Sandberg said that she and Rollo respected staff's opposition to Amendment 04 and that councilmembers would consider their input during debate. The program was not new and had worked for larger apartment complexes. Amendment 04's purpose was to be a tool for more affordable housing in the core neighborhoods. Sandberg wanted to have a public discussion on using the available tools to bring rent costs down in the newer forms of housing.

Rollo stated that Amendment 04 promoted affordability for the workforce population. He disagreed with staff regarding homeownership. He emphasized that it was one tool and the Comprehensive Plan called for using all available tools.

Sandberg mentioned that reviewing the process in six months provided more data to consider and council could make adjustments as needed. The purpose was to make the very desirable neighborhoods affordable for a variety of incomes.

Flaherty spoke about using a program currently in place for large scale developments, for much smaller scale developments. He asked if the sponsors supported changing the UDO to set a two-bedroom maximum for all detached single family homes, with the option to have more than two bedrooms only if rental or future sales, in perpetuity, were restricted to an affordability level of 120% AMI.

Sandberg stated that she would not support that change because detached single family homes were different and were a valuable housing stock in a community that had 66% rental properties.

Sgambelluri asked what the percentage of rentals were owned by local residents.

Scanlan responded that it was around 67%.

Sgambelluri asked if that meant that 67% of rental owners lived in Bloomington.

Scanlan clarified that among rental properties in the three districts [R1, R2, and R3], about 67% of the owners had addresses that were in Bloomington. Around 50% were owners who owned one-to-five units.

Sims stated that the sponsors mentioned that Amendment 04 would leverage more affordable housing in the core neighborhoods, and that it was not intended for Section 8 housing. He asked for clarification and if the lowest income levels were excluded.

Sandberg said that after researching, and conferring the Legal Department, requiring Section 8 on one side of the duplex was not allowed by the Indiana General Assembly. She had inquired about Section 8 and inclusionary zoning. She explained the percentages chosen in Amendment 04.

Sims commented that council and many others were aware of the available tools to leverage more affordable housing. The UDO legislation pertained to zoning and increasing the housing inventory. He did not recall that the intent was legislation for affordable housing to depress the housing market costs.

Amendment 04 to Ordinance 21-23 (cont'd)

Council questions:

Sandberg commented that early discussions about duplexes in the core neighborhoods were focused on contributing to affordability. Then, the assumption was challenged and the discussion shifted to environmental considerations and increasing the housing stock to drive costs down. There was confusion among the public about housing density in core neighborhoods. She and Rollo were in favor of using every possible tool to leverage affordability.

Piedmont-Smith said that Sandberg had stressed that affordability incentives in the UDO were not new. Amendment 04 included owner-occupied properties and rentals, but current affordability incentives were applied only to rentals. She explained that Robinson had mentioned that current incentives included the requirement that 15% of units be affordable, while Amendment 04 called for 50-100% of the units be affordable. She asked the sponsors to address the differences.

Sandberg explained that applying the incentives to large-multiplex apartment building was different. The goal of Amendment 04 was to apply a novel entrance of duplexes into core neighborhoods by converting single family homes. The Trinitas proposal had no affordability component to the project, and the primary reason was because of the change in the UDO. Trinitas decided that they could build by right and did not have to take advantage of the affordability incentives. She explained that deregulation would happen and Amendment 04 could address that. HAND could apply that model to smaller scale units with the intent of increasing housing and housing affordability.

Piedmont-Smith asked if Sandberg had reached out to HAND about tracking owner-occupied housing.

Sandberg responded that she had contacted John Zody, Director of HAND, but that they had not had a chance to speak yet. She said there were some concerns about how to adapt the current process to duplexes, but that it was council's responsibility to consider a change that might require staff to adapt the current formula.

Volan commented that the Trinitas project, if required to include affordable housing at 15%, would have been about 52 units or 136 affordable bedrooms. He asked how many bedrooms were expected to be built as a result of Amendment 04.

Sandberg clarified that because it was new, that number was unknown.

Volan asked about the data collected so far regarding ADUs which had been approved four years ago.

Sandberg responded that ADUs were the best way to increase density in the R1, R2, and R3 districts. And that information would continue to be tracked and encouraged.

Volan asked more specifically if there had been adequate numbers for ADUs.

Sandberg stated that some would say no and could be analyzed to see why people were not taking advantage of that option.

Rollo added that Trinitas was not going to add affordable housing, and that Amendment 04 would allow for at least some.

Volan asked staff if, originally, ADUs were limited to thirty units and that as of 2021 only twenty had been approved or built.

Scanlan clarified that there was not a cap for ADUs and explained the changes. Only twenty had been approved or built, more recently than in the beginning.

Amendment 04 to Ordinance 21-23 (cont'd)

Volan asked how many were approved or built in the last year. Scanlan believed that six were approved last year.

Council questions:

Sgambelluri asked how many bedrooms would be allowed if a homeowner with three bedrooms wanted to convert to a duplex.

Scanlan said that if Amendment 04 passed, that homeowner would not be allowed to convert their home into a duplex, in the R1, R2, and R3 districts, unless they were willing to make one or both of the units as permanent affordability.

Piedmont-Smith asked the sponsors if it was problematic that lower-income owner-occupants would not be able to build equity through homeownership.

Sandberg asked for clarification.

Piedmont-Smith clarified that her question was in regards to someone owning a duplex, either through conversion or building new, and wanting to have three bedrooms on one of the sides, and having to maintain affordability in perpetuity. She asked what happened if a family purchased that home and could not build equity because they could not later sell at the market rate.

Sandberg stated that she wished that Kerry Thompson could have been part of the presentation. Sandberg said that conditional variances could be considered too.

Scanlan had researched the question with current affordable housing staff in the community. One example, the Habitat for Humanity mortgage model, was limited by a certain number of years. If the family were to sell the home, in most cases, Habitat for Humanity would purchase the home, so the family could benefit from the equity of having owned that home. Then Habitat for Humanity would resell to another family at a limited rate. Scanlan said that if affordability in perpetuity was required, then Habitat for Humanity would not be able to build duplexes in those districts. She added that variances could not be granted based on a person's situation. She also said that only the homeowner would gain equity for an ADU.

Eoban Binder urged council to vote against Amendment 04.

Public comment:

Greg Alexander opposed Amendment 04.

Richard Lewis spoke in favor of Amendment 04.

Sarah Kehling spoke against Amendment 04.

Dave Warren asked council to vote against Amendment 04.

Jessika Griffin requested council to vote no on Amendment 04.

Cathi Crabtree spoke about duplexes and against Amendment 04.

Jan Sorby hoped council supported Amendment 04.

Peter Dorfman discussed housing and rentals, and in support of Amendment 04.

Ed Bernstein spoke in favor of Amendment 04.

Wendy Bernstein supported Amendment 04.

Patrick Murray asked council to vote for Amendment 04.

Jenny Southern spoke in support of Amendment 04.

Pam Weaver urged council to vote against Amendment 04.

Dave Weaver also urged council to vote no on Amendment 04.

Chris Sturbaum spoke about housing and rental costs.

Margaret Clements commented on housing.

John Lawrence addressed the costs of converting a home into a duplex.

Kerry Thompson spoke in favor of Amendment 04.

Barbara Moss discussed her support of Amendment 04.

Joe Lee asked council to vote for Amendment 04.

Orien Day commented on housing density and affordability.

Wendy Bricht spoke in support of Amendment 04.

Bari Klapper asked council to vote for Amendment 04.

Betty Rose Nagle spoke in favor of Amendment 04.

Jami Sholl commented on housing and community needs.

Jeff Richardson supported Amendment 04.

Cynthia Bretheim spoke in support of Amendment 04.

Russ Skibo urged council to support Amendment 04.

Mark Cornett supported Amendment 04.

Eric Ost asked council to vote in favor of Amendment 04.

Richard Durson urged council to vote for Amendment 04.

Steve Layman discussed his support for Amendment 04.

Lois Sabo-Skelton supported Amendment 04.

Tom Millen also supported Amendment 04.

Diedre Todd spoke in favor of Amendment 04.

Peter Bogdanoff commented in favor of Amendment 04.

Heather Lacy, Deputy Attorney/Administrator, read the following comments that were submitted via Zoom chat:

- Janet Stavrapoulos asked council to support Amendment 04 and 05.
- James Allison urged council to vote for Amendment 04.
- Bo [Unknown last name] supported Amendment 04.
- Kathleen Myers supported Amendment 04.

Amendment 04 to Ordinance 21-23 (cont'd)

Public comment:

- Dave Stewart commented in favor of Amendment 04.
- Linda Stewart stated her support for Amendment 04.
- Sandra Takarski urged council to vote for Amendment 04.
- Veta Stanfield asked council to support Amendment 04.
- Michelle Henderson commented in favor of Amendment 04.
- Kathleen Sideli supported Amendment 04.
- Marcia Baron stated her support for Amendment 04.
- Marsha Campbell supported Amendment 04.

Amendment 04 to Ordinance 21-23 (cont'd)

Public comment:

Vauhxx Booker spoke against Amendment 04.

Rollo commented that Amendment 04 was the only tool for housing affordability regarding duplexes. He pointed to the recent Trinitas petition that had no affordable units. Kerry Thompson, who had a twenty-year career with Habitat for Humanity, had vetted and assisted with Amendment 04. She believed it was workable, it was profitable, and was for workforce housing. He conceded that it limited duplexes to having two bedrooms on each side, which coincided with many homes in the core neighborhoods. If Amendment 04 failed, then the experiment could be revisited every six months. He urged council to support Amendment 04.

Council comments:

Sandberg asked Kerry Thompson to correct a quote attributed to her by Scanlan in her comment about Habitat for Humanity.

There was brief council discussion.

Thompson clarified that Habitat for Humanity homeowners were not required to sell the home back to Habitat for Humanity and could sell on the open market. There were shared equity agreements for a number of years, but that after that the homeowner had full equity of the house.

Flaherty said that he would not support Amendment 04 and concurred with Robinson and Scanlan based on their expertise in urban planning. Amendment 04 was bad public policy that would not accomplish the sponsors' stated goals, but would instead limit the likelihood of duplexes being added as housing options, and would potentially exclude families from living in a duplex. If the sponsors were serious about housing affordability, then the incentives would include single family, detached homes. The members of the public who favored a ban of duplexes had also not been interested in housing affordability in previous meetings. Flaherty spoke about affordability, and missing middle housing types like duplexes, which provided greater market-rate affordability and supported lower income households. It was universally true when comparing similar homes. That was why urban planners and housing economists supported allowing [duplexes] in historic homes in residential areas, without restrictions. He referenced national data and income in different housing types, which should be encouraged within Bloomington.

Piedmont-Smith disagreed with the notion that if she cared about affordable housing, then she would support Amendment 04. As Flaherty and many studies pointed out, duplexes were more affordable, and energy efficient. She saw Amendment 04 as misguided and referenced the sponsors' previous complete rejection of duplexes in single family neighborhoods. She commented on the passing of Amendment 03 which capped duplexes at fifteen per year. Amendment 04 was more bureaucracy in order to discourage duplexes. She supported affordable housing

and had negotiated with developers to include it in their projects. Trinitas was not the only example to use for comparison. She pledged to continue working on affordable housing.

Amendment 04 to Ordinance 21-23 (cont'd)

Sims explained that since Thompson was able to speak during final council comments that it was only appropriate to allow Scanlan a chance to respond.

Council comment:

Eric Greulich, Senior Zoning Planner, stated that Scanlan was not available at the moment. He clarified that Scanlan did not recall saying that Habitat for Humanity homeowners were required to resell their homes to the organization. He said that staff did not have concerns with that statement.

Smith said he would support Amendment 04 because it was proactive. Trends across the country showed that individuals could not afford to live in the city where they worked. He commented that local police officers and firefighters could not afford to buy a home in Bloomington, and thus lived in Ellettsville. Amendment 04 was reasonable and could be revisited. He did not understand how one could oppose Amendment 04 and not support affordable housing.

Rosenbarger stated that she would not support Amendment 04 and agreed with staff's presentation. More housing types were needed, especially in the missing middle. She commented on the restrictions for plexes that had already passed and said that she did not want more restrictions. Flexibility was necessary with plexes, including space for aging parents, large families, a homeowner's ability to build equity, and having a wide variety of units, both owner-occupied and rentals. Plexes were cheaper to own than a single family home. She supported applying the same restrictions to single family homes. Rosenbarger appreciated everyone who spoke at the meeting, including presenters.

Volan commented on public comments and issues with their arguments. He said that no one would flip a house into rentals in Somax that sold for \$1.7 million. He further commented on the concerns of those in support, and in opposition, of Amendment 04 and the words that had been used. The Herald Times had reached out regarding inquiries from readers about whether councilmembers were landlords and/or lived in neighborhoods in the proposal. He further commented on rhetorical techniques, divisiveness, and misattributions about what he had said. He explained that he was not always in support of the opinion of staff, and even disagreed with staff and the administration, like with Ordinance 21-06. He criticized the way the UDO had been handled and its contribution to the toxicity of the debate. Planning staff and the Mayor were human beings attempting to do what was right, much like many others.

Sgambelluri thanked her colleagues and the public. She noted that council was obligated to observe how neighborhoods had developed to date, and to examine how plexes would play out in Bloomington, a university town with over 60% rentals, with developers eager to build more, and with a low income population. There were not enough tools in place to dissuade the creation of more market-rate student rentals. As planning staff pointed out, there were controls to ensure that plexes were within the character of the neighborhood. Amendment 04 would help with housing affordability, and she was willing to support it. She looked forward to reviewing things in the coming year.

Sandberg stated that her earnest intent with Amendment 04 was to promote housing affordability, and that it was not an effort against duplexes, but rather against some of the proposed locations. As an At-Large councilmember, she represented the majority of the community members, and not only the ones that had made a public comment or reached out to her. The issue of plexes had already been decided and therefore she and Rollo had drafted Amendment 04 to mitigate potential problems in the R1, R2, and R3 districts. It was a protective measure. Sandberg explained that it was also an effort to speak to her record of championing affordable housing.

Amendment 04 to Ordinance 21-23 (cont'd)

Council comment:

Sims said there were multiple tools to use to work towards affordable housing, and that Amendment 04 was not one of those tools. There was a housing crisis, as well as affordability crisis. He commented that something foundational could be done, possibly with the American Rescue Plan Act (ARPA) funds, to promote home ownership. He wanted to increase all types of housing and commented on Amendment 02, which he and Piedmont-Smith cosponsored, that had passed as a compromise. Seeking middle ground was important but Amendment 04 went beyond to create barriers to duplexes. He said that supply must commensurate with demand which needed to be addressed with the housing stock.

There was brief council discussion on the debate process.

Rollo clarified that he and Sandberg were not against plexes, and they were not resisting plexes in the R4 district. They wanted to adhere to the Comprehensive Plan. He was not excited about plexes in all neighborhoods and believed it would further drive up the housing prices because developers would be bidding against home buyers. He referenced Trinitas as an example that the market did not produce affordable housing. Amendment 04 was an incentive.

The motion to adopt Amendment 04 to Ordinance 21-23 received a roll call vote of Ayes: 4 (Rollo, Sgambelluri, Smith, Sandberg), Nays: 5, Abstain: 0. FAILED

Vote to adopt Amendment 04 to Ordinance 21-23 [9:47pm]

Sandberg moved and it was seconded to adopt Amendment 05 to Ordinance 21-23. Rollo presented Amendment 05.

Amendment 05 to Ordinance 21-23

Amendment 05 Synopsis: This Amendment to Ordinance 21-23 is brought by Councilmembers Sandberg and Rollo and seeks to add two additional findings to the Conditional Use Approval Criteria for duplexes.

Sandberg clarified that Amendment 05's language came from a previous UDO and would be added for the BZA's consideration during the approval process. One of the concerns about adding plexes into core neighborhoods pertained to traffic.

Volan asked for staff's response to Amendment 05.

Scanlan stated that Planning and Transportation Department staff was opposed to Amendment 05 because the language was borrowed from the previous UDO for general regulations. When the new UDO was reviewed and adopted, those requirements were consolidated and applied to all conditional uses and were not specific to duplexes. If Amendment 05 passed then duplexes would be regulated much more stringently than the other fifty-five uses. Scanlan provided examples and said that duplexes were the most innocuous of conditional uses. She commented on parking issues concerns regarding duplexes. Current code required that adequate

city services and facility capacities be maintained at the time of the proposal, including streets and traffic. Scanlan said that Amendment 05 added general provisions to, and overregulated, one specific use. She commented on concerns regarding conditional use, the BZA process, and adjoining property owners.

Amendment 05 to Ordinance 21-23 (cont'd)

Volan asked the sponsors of Amendment 05 to define "undue traffic on residential streets."

Council questions:

Rollo responded that it was the discretion of the BZA members upon hearing testimony of the public and inspecting the neighborhood. Traffic congestion presented a problem and needed to be considered and included.

Sandberg stated that the language was from a previous UDO as criteria to be considered and would be discussed in the required neighborhood meetings.

Rollo asked Scanlan if staff objected to applying the criteria to only one specific use.

Scanlan explained that staff objected to adding the regulation and that current conditional use criteria was adequate. If council or community members felt otherwise, that the appropriate process was to discuss changing the general provisions and not adding something for only one use.

Piedmont-Smith asked how a petitioner would prove that a development would not cause undue traffic congestion. She asked if they would need to do a traffic study.

Sandberg stated that a traffic study was one option and that it would be discussed at the neighborhood meeting.

Scanlan clarified that the neighborhood meeting was already required.

Piedmont-Smith asked about the cost of a traffic study.

Rollo responded that a traffic study was not required, but what could be considered was knowing the neighborhood and its traffic and parking situation. He provided other details about observing traffic and parking on a street.

Piedmont-Smith asked if requiring adequate capacity for facilities and services did not address the concern.

Rollo said the concerns were from neighborhoods that were already dense and had a lot of rentals. He said that Amendment 05 was constituent driven and provided greater specificity.

Piedmont-Smith quoted language from current code including streets, potable water, sewer, and vehicle and pedestrian connections.

Rollo said Amendment 05 was specific to traffic.

Sims commented on the definitions of "undue traffic," "adverse impacts," and "character of the area." He asked if those terms were defined or codified.

Sandberg understood the concern and explained that it was different for each neighborhood, and would be discussed in the required meeting.

Rollo said that the core neighborhoods had a history of adverse impacts from high rentals driven by the student market, including noise, traffic congestion, and more. Amendment 05 codified that the BZA would be looking at those types of adverse impacts. Rollo did not think Amendment 05 was controversial.

Sgambelluri asked for clarification on the three conditions; pre-submittal meeting, traffic congestion, and undue adverse impacts.

She asked Scanlan if those topics were already defined and covered in current code.

Scanlan explained that they were in the particular approval criteria for conditional uses. She said the very specific terms were omitted in the new UDO because they were difficult to define and were unknown prior to an approval.

Sgambelluri asked if the burden of proof rested with the petitioner.

Scanlan believed that was accurate.

Volan said that the most egregious example of traffic congestion was the residents of Blue Ridge who were concerned that the closure of Lower Cascades would restrict them during Indiana University (IU) home games. He said that was a legitimate concern and asked the sponsors how that compared to adding one duplex.

Sandberg said that if the occupancy of a single family home was doubled with a duplex, and one could predict traffic congestion, especially in neighborhoods that were already congested.

Volan asked if the potential result of a traffic study would be to require a duplex to have more off street parking. He asked if that could be a potential outcome, or if it would affect the approval.

Sandberg said that the point of the neighborhood meetings was to discuss any concern that could be solved prior to the approval. It allowed the neighbors to voice their concerns and developers to solve a potential problem.

Flaherty asked if the sponsors felt that the traffic impacts of one additional unit were case sensitive depending on the block.

Sandberg stated that was correct and it was also different for residents on the same block.

Flaherty stated that the sponsors agreed that adding one additional unit could create adverse impacts, and asked if the sponsors supported changing the regulation of detached single family homes to conditional use too to address traffic concerns. He explained that the addition of one single family home, on a vacant lot, was similar to adding a one duplex.

Sandberg said that was not what Amendment 05 was addressing at the time.

Rollo said no because it was a student-driven rental market, and there were impacts that neighborhoods had endured in the past. He said that affordability was not going to be an outcome of duplexes.

Flaherty clarified that there were two situations where one additional housing unit would go in, and the sponsors supported conditional use in one of the situations but not in the other. The sponsors stated that was because in one case the occupants would be students and not in the other.

Sandberg said she was having a difficulty imagining a single family home being built on a vacant lot, versus a home being converted to a duplex which would double the occupancy. She said that was the main difference, and that it was a new concept to introduce duplexes into core neighborhoods. She explained that Amendment 05 was in response to community members' concerns. Other concerns included the addition of trash cans.

Rollo pointed out that the economic incentive was so great, it would outweigh the incentive to build a single family detached home on a single lot.

Flaherty clarified his question and said that in both cases it was the addition of one incremental housing unit.

Amendment 05 to Ordinance 21-23 (cont'd)

Council questions:

Piedmont-Smith asked who determined the character of the area and if it ever changed.

Rollo said it could be determined by the experience of the residents in the neighborhood, and that it could change.

Sandberg added that it would be up to the BZA to determine the character of an area but that neighbors could bring information to discuss too.

Piedmont-Smith said that the term was very vague.

Rollo responded that it could be determined at the pre-submittal meeting. He said that the point was to direct the BZA to understand the nature of the concerns of the neighborhood residents.

Dave Warren asked council to vote against Amendment 05.

Greg Alexander opposed Amendment 05.

Peter Dorfman hoped council would support Amendment 05.

Eoban Binder asked the sponsors of Amendment 05 to withdraw it.

Pam Weaver asked the sponsors of Amendment 05 to withdraw it.

Dave Weaver urged council to vote against Amendment 05.

Richard Lewis supported Amendment 05.

Tom Millen spoke in support of Amendment 05.

Cynthia Brethiem asked council to support Amendment 05.

Jeffrey Bunde supported Amendment 05.

Cathi Crabtree spoke against Amendment 05.

Chris Sturbaum commented in favor of Amendment 05.

Margaret Clements discussed her support of Amendment 05.

Jan Sorby spoke on the concerns addressed by Amendment 05.

Wendy Bernstein spoke in support of Amendment 05.

Volan moved and it was seconded to recess. Sims recessed the Special Session to reconvene on May 13, 2021 at 6:30pm.

Amendment 05 to Ordinance 21-23 (cont'd)

Council questions:

Public comment:

RECESS [10:59pm]

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 Thursday, May 13, 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
May 13, 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 [6:31pm]

Clerk's Note: On May 04, 2021, the Common Council called to order a Special Session, which began the Council's consideration of Ordinance 21-23 and Ordinance 21-24 to be completed over a series of meetings including May 05, May 06, May 12, and May 13 of 2021.

Council President Jim Sims summarized the agenda.

AGENDA SUMMATION [6:32pm]

Sims summarized the conduct of deliberations for the Special Session.

CONDUCT OF DELIBERATIONS
[6:37pm]

ORDINANCE 21-23 [6:41pm]

Ordinance 21-23 - To Amend Title 20 (Unified Development Ordinance) of the Bloomington Municipal Code – Re: Regulations Related to Dwelling, Duplex; Dwelling, Triplex, and Dwelling, Fourplex Set Forth in BMC 20.03 and 20.04

Continued consideration of Amendment 05 to Ordinance 21-23.

Amendment 05 to Ordinance 21-23

Amendment 05 Synopsis: This Amendment to Ordinance 21-23 is brought by Councilmembers Sandberg and Rollo and seeks to add two additional findings to the Conditional Use Approval Criteria for duplexes.

Renee Miller commented on the need for anti-racist and anti-classist policy and against Amendment 05.

Public comment:

John Lawrence spoke in favor of Amendment 05, and about the cost of building a duplex.

Wendy Bright discussed reasons in support of Amendment 05.

Russ Skibo supported Amendment 05.

Tomi Allison spoke about public comment, conditional use, parking, and in support of Amendment 05.

Jessika Griffin commented on traffic, parking, renting, and against Amendment 05.

Karen Duffy discussed language in and her support for Amendment 05.

Barbara Moss supported Amendment 05.

Eric Ost spoke about infrastructure, parking, duplexes, and in favor of Amendment 05.

Alex Goodlad commented on plexes, and on applying Amendment 05 consistently.

Amendment 05 to Ordinance 21-23 (cont'd)

Heather Lacy, Deputy Attorney/Administrator, read the following written comments submitted via Zoom chat:

Public Comment:

- Jolene [last name unknown] commented on infrastructure and in support of Amendment 05.
- Dave Stewart supported Amendment 05.
- Linda Stewart supported Amendment 05.

Steve Layman spoke in support of Amendment 05.

Sharon Yarber discussed her support for Amendment 05.

Ed Bernstein supported Amendment 05.

Victoria Witty asked council to vote in favor of Amendment 05.

Peter Bogdanoff commented in favor of Amendment 05.

Rollo stated that Amendment 05 did not preclude other uses and could always be revisited. Amendment 05 restored language that had been removed. Rollo said that Scanlan implied that duplexes were trivial and he disagreed. Eliminating single family zoning for all of Bloomington was broad-sweeping and transformative. He said the impact may be significant, especially in the core neighborhoods. He commented further about the core neighborhoods. It was important to codify the language in Amendment 05. He urged council to support Amendment 05.

Council comment:

Piedmont-Smith said that in the discussion of Amendment 03, she commented that conditional use criteria was more appropriate for protecting against negative impacts. After reviewing the specific text of Amendment 05, she was now opposed to it because it created conditional use criteria only for duplex dwellings in R1, R2, and R3. The concerns were applicable to the other conditional uses in the Unified Development Ordinance (UDO). If the concerns were universal, the criteria should be applied to all uses by asking the Plan Commission to consider making changes. She commented on the pre-submittal neighborhood meeting, which had already been accepted in Amendment 03. She also commented on the part of Amendment 05 that addressed traffic congestion and said that in the previous UDO, that condition was invoked in non-residential uses where drivers had to go through residential neighborhoods. She further commented on some redundancy and vague language in Amendment 05. She opposed Amendment 05.

Volan clarified that, during the previous debate, he should have limited his critique to certain public comments by proponents of Amendment 04. He understands the sincerity of the sponsors of Amendment 05. The sponsors and supporters of Amendment 05 did not see how they framed single family houses as equating to homeowners despite thousands being rentals. They equated duplexes with students, which should be separated. He referenced the sponsors' response that a single family home on a vacant lot would not cause undue burden, but a duplex would. He said it was bad policy. He commented on traffic, parking, and cars. He pointed out that more off-street parking should not be advocated for in consideration of environmental concerns. Conducting a traffic study was not ideal for a duplex. He said the remedy was to regulate the

demand for parking with a neighborhood parking zone. He could not support Amendment 05 as written.

Amendment 05 to Ordinance 21-23 (cont'd)

Flaherty stated that he would not support Amendment 05 because it introduced arbitrariness and subjectivity which was bad public policy. It resulted in disparate outcomes in similarly situated home builders. Fair, equitable policies, clear and fair rules, and aiming to eliminate ambiguity should be the goal. He discussed parking constraints and concerns, and the appropriate process to address those issues. He commented on treating duplexes and single family homes differently when the impact was similar or the same, and giving the privilege to the single family home and not the duplexes. He listened to all constituents and addressed their concerns. He said it was a complex process when there were diverse and sometimes incompatible constituent concerns on things like the missing middle housing. All nine councilmembers cared deeply about Bloomington, its neighborhoods and residents, and voted in line with their level-best assessment of what was ideal for the city.

Council comment:

Smith echoed Flaherty on councilmembers' attempt to do what was best for the community. He questioned why the language was removed from the UDO in the first place. Effectively, Planning [Department] was limiting the influence of the BZA by taking away some of the criteria and causing an undue burden to the community, like traffic congestion. Smith also echoed Rollo and said that it could be revisited, and so could the types of uses. Amendment 05 helped the BZA respond to concerned neighbors. He would support Amendment 05.

Sandberg reiterated that Amendment 05 was a good faith effort on her and Rollo's part to address constituent concerns. It was the only recourse to add the language back in to the criteria for a duplex. She explained that parts B and C were the only new points, and that part A was already in as a pending matter via Amendment 02. She also explained the role of members of the Plan Commission and the BZA as arbiters of code and the rules, and they had to consider if the petition suited the city code. It was different than the duties of councilmembers. She and Rollo were trying to return the helpful language to the UDO and were not intending to be divisive. She commented on her role as a BZA member. She said that the discussion had been helpful.

Sgambelluri commented on the rhetoric in the discussion that evening. It was unhelpful to have councilmembers' personal motives questioned or written off. She said that a lot of knowledgeable, well-informed, and skilled residents were concerned and others were not. Sgambelluri's vote hinged on where to include protections, in the UDO, when adding duplexes to neighborhoods. She reviewed Section 20.06 of the UDO, and considered if that language adequately addressed concerns about duplexes. She believed it would, and she would not support Amendment 05.

Sims referenced the neighborhood meeting, as required in the pre-submittal process. Concerns of the public needed to be addressed and not dismissed. He said the public's concerns were not dismissed during the discussion. He commented on the outreach to him.

Rollo responded to Flaherty's comment regarding not applying the criteria in Amendment 05 to single family homes, and said that it was a false equivalence. A single family home would occupy a vacant lot and have little effect on the community. He reiterated that there

was a sweeping change of eliminating single family zoning to allow plexes which was bound to increase density and could have a significant effect. Increasing density was one of the motivations of the proponents of plexes. Plexes were different than single family homes which was why plexes were included in Amendment 05.

Amendment 05 to Ordinance 21-23 (*cont'd*)

Council comment:

Volan said that Rollo's argument would be more amenable if Amendment 03 had not passed, which limited duplexes to fifteen per year. He commented that made the impact negligible despite there being 35,000 housing units in the city.

The motion to adopt Amendment 05 to Ordinance 21-23 received a roll call vote of Ayes: 3 (Rollo, Sandberg, Smith), Nays: 6, Abstain: 0. FAILED

Vote to adopt Amendment 05 to Ordinance 21-23 [7:43pm]

Rollo asked Scanlan about her comment on existing duplexes in the city.

Ordinance 21-23 as amended

Scanlan stated that it was plexes and that she would share that information with council.

Council questions:

Volan asked staff for a brief explanation of current plexes in the city as well as their opinion on Ordinance 21-23 as amended.

Scanlan explained that the current plexes were only mapped, but did not contain information about bedrooms. She would forward the current information to council. The changes to Ordinance 21-23 that were made by council aligned with what staff brought forward to the Plan Commission. She provided additional details regarding the changes.

Smith asked Scanlan for clarity on the report regarding duplexes.

Scanlan said staff would track the proposals for that use, why they were approved or not, the location, and more. If staff noticed the same types of issues came up, like what was done with ADUs, that staff would note that.

Smith asked if council would be notified if there were more applications for duplexes than the cap allowed.

Scanlan confirmed that was correct.

Piedmont-Smith asked if staff would also keep track of the bedrooms in duplexes.

Scanlan said yes.

Rollo asked Scanlan about the annexation areas and if homeowners would receive notice of the changes in the UDO that would apply to their neighborhoods, like eliminating single family zoning.

Scanlan said that Planning staff was not spearheading annexation, but that homeowners in the annexation areas would receive the required notification. The rezone would happen at that time, and staff expected there would be questions then. She also noted that duplexes were an option and were not the rule.

Rollo responded that he meant to say that duplexes were an option in all areas.

Volan asked staff about how zoning officers interpreted terms like "undue" or "character of the neighborhood."

Scanlan said that the Hearing Officer would not be seeing duplex requests because per code, those requests go through the BZA. If the term was defined in the UDO, then that was what was used. If not, then the plain definition. She suspected that it was recommended to remove that language was because it was too stringent or difficult to interpret.

Dave Warren asked council to vote yes for Ordinance 21-23 as amended and provided reasons.

Ordinance 21-23 as amended
(cont'd)

Jessika Griffin urged council to vote in favor of Ordinance 21-23.

Public comment:

Richard Lewis thanked council and staff, and commented on affordability.

Joe Lee spoke in favor of affordable and sustainable housing and expressed concern about where density should go.

Bess Lee commented on what had been lost during the discussion and impacts of upzoning and community members not being heard.

Alex Goodlad advised council to vote for the UDO as amended. He commented on the process.

Greg Alexander thanked council for their patience during the process of considering Ordinance 21-23.

Cathi Crabtree said that Ordinance 21-23 as amended was a step in the right direction for Bloomington. She commented on affordable housing.

Barbara Moss urged council to vote no on the UDO. She referenced a petition by community members.

Margaret Clements also referenced two petitions and begged council to listen to the community.

Betty Rose Nagle commented on an article in the newspaper regarding anti-racism training. She wondered why the administration did not use local experts.

Pam Weaver asked council to support the amended language and said it did not go far enough. She said she would like to see twice as many people in neighborhoods.

Jan Sorby spoke about plexes with restrictions and provided examples and urged council to vote against the changes.

Steve Layman asked council to reject the amended UDO because there too many issues with it.

Jean Simonian commented that the administration was selling more and more of Bloomington. She said that more of the wrong type of housing was continued to be built.

Leslie Skooglund hoped council would vote yes on the amended UDO. She thanked council for their time and work.

Renee Miller asked council to vote in favor of Ordinance 21-23. She commented on the rhetoric of public speakers.

Chris Sturbaum commented that the duplex amendment was not ready in 2019 nor at the present time. He said no one had suggested eliminating single family housing.

Matthew Klauss spoke about the process and said that it was important to know that people cared. He urged council to vote yes.

Steve Acres asked council to vote no on the UDO. He said he was discouraged on the laborious process.

Ordinance 21-23 as amended
(cont'd)

Lacy read the following comments that were submitted via the Zoom chat:

Public comment:

- Dave Stewart wrote against upzoning and said that the purpose had not been about affordability.
- Linda Stewart said she was against plexes in core neighborhoods.
- Constance Glenn echoed that the process never should have happened and urged council to vote against the UDO.

Mark Cornett spoke about his urban design experience and experiencing Bloomington as a pedestrian. He commented on zoning.

Lawrence Levy said that upzoning was madness and against duplexes. He spoke about the process and councilmembers' positions and developers.

Wendy Bernstein said the top-down approach by the mayor was disenfranchising. She said the UDO process was not done properly.

Jeff Richardson observed the thoughtful comments by Volan regarding divisiveness. He commented on engagement, listening, and processes.

Wendy Bricht spoke about distrust, fear, rental, and higher housing costs for neighborhoods that were already transitioning. She commented on density and affordable housing.

Russ Skibo thanked the councilmembers who had considered community members' concerns. He questioned why the proposal was reintroduced when it had been rejected the prior year.

Eric Ost urged council and the administration use the expertise of the community to resolve housing concerns.

Peter Bogdanoff asked council to consider the concerns of the community and to not ignore lessons of the past.

Dave Weaver urged council to vote yes to the amended language and to move on towards adding density to Bloomington. He thanked everyone for their hard work.

Flaherty stated that he had already shared his views on Ordinance 21-23 and its amendments. He had many conversations with community members and thanked them for their engagement, as well as city staff, the Plan Commission, council, and clerk staff. Re-allowing some small-scale missing middle housing that matched the historic character of Bloomington was important. It was an incremental step forward though it had been reduced from the initial proposal of the Planning Department. There was strong empirical evidence indicating that many housing types played a role in facilitating sustainability, affordability, and inclusion goals. He commented on affordability statistics that showed the benefit of providing middle income housing. He further commented on engagement with the community, available tools for housing, and challenges. He looked forward to working on housing policies and solutions, as the representative on the Council's Housing Committee. The incremental change was a middle ground amongst

Council comment:

diverse community views, and was well supported by the Climate Action Plan and the Comprehensive Plan. He would be voting yes on Ordinance 21-23.

Ordinance 21-23 as amended
(cont'd)

Council comment:

Piedmont-Smith said that the discussion had been difficult and that she heard legitimate arguments from both sides. She respected that everyone had the best interest of the community at heart. Her research showed that duplexes were a good idea in residential neighborhoods, and that Ordinance 21-23 was a good step forward in allowing duplexes and not favoring the most expensive type of housing; single family detached homes. She commented on the amendment process which modified the proposal from the Planning Department, and explained the changes. She would be voting for Ordinance 21-23.

Smith commented the difficult yet productive discussion regarding Ordinance 21-23, and the housing crisis for the missing middle and low income individuals. He supported affordable housing and thought that the UDO had become better than before. He was stunned that the mayor brought the debate back, after it had been defeated at the end of 2019. He was also stunned by the actions of the Plan Commission. He explained that council sometimes voted against the wishes of their constituents. There were too many rentals already in Bloomington and he expressed concern about having more rentals, which would not turn in to home ownership. He further commented about the former Kmart development, affordability, and the missing middle. He said that the city could devote a large portion of the \$23 million of the ARPA funds to affordable housing. About 80% of the constituents who had spoken, expressed their disdain for the proposal. He could not support Ordinance 21-23.

Clerk's Note: Cms. Rosenbarger, Sgambelluri, and Sandberg commented but per Community Access Television Services (CATS), "Audio missing due to technical difficulties-please stand by." For approximately six minutes, there was no audio in the recording.

Rollo said that the UDO proceedings had been a broken process. The primary flaw was deviating significantly from the Comprehensive Plan, which was the guiding document for zoning and development. He commented that the argument that the Comprehensive Plan supported plex-zoning in all single family zones was not accurate and referenced Section 6 which explicitly discouraged plexing within neighborhoods and provided examples. No document specified that single family zoning should be removed from the city. The Comprehensive Plan directed where to use density; along corridors, and arterials adjacent to village centers. He questioned why the administration did not seek to amend the Comprehensive Plan first, and suspected that it was because it would be onerous to do so. It was good that there were some restrictions and it was bad that affordability was not implemented since there were already too few tools for that. He said that affordability was abandoned in favor of converting single family homes into duplexes which would become rentals. He said that would drive costs up further. Rollo said there were many questions left unanswered and provided examples.

Volan valued the feedback from those who had lived in the city for many years, and also those new to the city, including students. He understood that it was not possible to vet all of the public comments, or the credentials of those making claims. He commented on process. Opponents of the changes were not ignored,

but were disagreed with. Many agreed on a variety of issues, but came to differing conclusions relating to the discussion. Volan explained that those opposing the changes were unprepared for being disagreed with and resorted to false equivalencies and feeling attacked. The community was not limited to those who showed up to council meetings. He said it was incumbent on council to avoid appeals to emotion. He commented on the process including Robert's Rules, the city's having followed the process prescribed by state statute, Plan Commission, and council's role. Opponents claimed to have been disenfranchised by the process, which was representative democracy, and not direct democracy where referendums were proposed and those who could show up, would. He would be supporting Ordinance 21-23.

Ordinance 21-23 as amended
(cont'd)

Council comment:

Sims said he would support Ordinance 21-23 as amended. From the beginning, he strived to be collaborative and compromising. He was glad there would be an opportunity to review the results of the decisions. He thanked the Council Attorney and council staff, City Clerk and clerk staff, Planning and Transportation staff, and council for their time and effort throughout the process. He thanked the participating public regardless of their level of participation. He commented on the public comments regarding the culture of Bloomington and hoped that it was being seen through the lens of multicultural populations.

The motion to adopt Ordinance 21-23 as amended received a roll call vote of Ayes: 6, Nays: 3 (Rollo, Sandberg, Smith), Abstain: 0.

Vote to adopt ordinance 21-23 as amended [9:32pm]

ORDINANCE 21-24 [9:33pm]

Flaherty moved and it was seconded that Ordinance 21-24 be introduced and read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Clerk Nicole Bolden read the legislation by title and synopsis.

Ordinance 21-24 - To Repeal and Replace the Official Zoning Map within Title 20 of the Bloomington Municipal Code Entitled "Unified Development Ordinance"

Flaherty moved and it was seconded that Ordinance 21-24 be adopted.

Scanlan presented Ordinance 21-24 which updated the Official Zoning Map (OZM) in order to best apply the updated UDO regulations. It also located the new Mixed Student Housing (MS), Parks and Open Space (MO), R1, and R4 districts, aligned the OZM with the goals of the Comprehensive Plan, rezoned parcels to correct split zoned lots, rezoned parcels that no longer matched the existing of likely future uses on the site, rezoned 102 Planned Unit Developments (PUDs) to base zoning districts, rezoned the MH district to match the Bloomington Hospital Site Redevelopment Master Plan Report, and rezoned most EM parcels to ME. She displayed the available proposed maps and stated that the maps had been available online for a while, and highlighted some important changes. Scanlan reviewed the process and steps council could take at the meeting.

Rollo asked about PUDs which required a demonstrable public good, and provided the council with leverage to, for instance, preserve environmental features, include affordable housing, or have commercial uses. He had been suspicious of council giving up that ability. Trinitas, for example, was moving forward by-right, and the initial proposal had included affordable housing, but now did not. It would be multifamily and most likely student housing.

Ordinance 21-24 (cont'd)

Council questions:

Scanlan said there were differences, and that PUDs provided council the ability to leverage common good. There was a time limit on how long PUDs should be in place. Council would still have the ability to leverage common good with PUDs when new petitions were proposed. Scanlan explained that Trinitas had looked through the new code, and decided to build within those parameters which was different from their original proposal. Council approved some of the administration's proposed changes to lower the thresholds to allow by-right construction to meet goals through incentives, or through the PUD option. She commented on already built PUDs that were already built out. Renwick was one PUD that had not already been built out.

Rollo asked what the expiration time was for PUDs.

Scanlan would confirm that information and let council know.

Flaherty commented on not being able to map Renwick to a base zoning district in the UDO. Staff likely looked at existing PUDs and attempted to map the best matching base zoning district. He asked what happened with discrepancies and if there were uses in the PUDs, proposed to be rezoned, to base districts with lawful, non-conforming uses.

Scanlan said that if there were current uses, or dimensional standards, that did not meet the base zoning district, then they would become lawful, non-conforming.

Flaherty asked if that was concerning, or if it was not very extensive.

Scanlan explained that staff did not believe it would be extensive based on the research that staff was able to do. When PUDs were written, they identified base zoning districts from code, from the time they were proposed. Over time, those districts had stayed very similar. Unless there were PUDs that had very specific use restrictions, staff had been able to match zoning districts for most.

Smith wondered about negative impacts, and asked what the pros and cons were of changing the zoning from PUDs to a zone.

Scanlan responded that newly lawful, nonconforming uses could remain in perpetuity but could not expand the use. Staff had heard from current property owners, mostly commercial properties, and had worked with them on districts that were appropriate for anticipated future development and that also met the Comprehensive Plan. She provided some examples. The main pro was regularity and predictability for current and future property owners. She clarified that if the property owner wanted to build outside the standards, then they could propose a PUD to council.

Sgambelluri was impressed with staff's work on existing PUDs and asked what happened with the rest of the PUDs that were not included.

Scanlan responded and stated that she was also responding to Rollo's earlier question regarding the timeline of PUDs. The preliminary plan was considered abandoned if after three years, no final plan was in place, or ten years after the approval of the preliminary plan had started but was not completed. For existing PUDs, staff would monitor them, and provided examples. She said that existing PUDs could be rezoned via council action.

Sgambelluri asked if the monitoring was ongoing.

Scanlan confirmed that staff tracked them annually.

Sgambelluri asked about existing PUDs being split up.

Scanlan stated that staff was advised by counsel to not recommend splitting up PUDs. She commented on the Thompson

PUD, which was large, and had recent development. Staff would entertain rezones with property owners.

Ordinance 21-24 (cont'd)

Sgambelluri asked if rezoning made the city become “PUD-averse.”

Council questions:

Scanlan was not sure because most of the PUDs were older, though there were some new ones. It would be ideal to look at the PUD regulations to determine the answer. Scanlan said that PUDs were supposed to be for interesting, mixed-use developments. In Bloomington, PUDs were a tool for single use. Scanlan said that now, PUDs were being used in a different way and provided examples.

Rollo commented on the PUD utility like Hillside and Henderson village center. In 2019, when the R4 district was first proposed, former councilmember Chris Sturbaum had asked that district and if it would include core neighborhoods. Rollo said that the consultant had stated that R4 would not include core neighborhoods. He asked if the R4 designation had changed in consideration of what planning staff had put forward and what the consultant had stated.

Scanlan said nothing had changed. Some people believed that R4 districts would only be used for new developments, but Scanlan clarified that there was no indication of that in the purpose of the R4 district. She explained that was the language that went into code and was used by the consultant. When staff put out the proposed map, staff started with a proposal for R4 that was based on an analysis with the goal of getting feedback. She further explained that staff had made changes based on feedback and provided examples. She said R4 districts were intended to be transitions between mixed-use and single family home neighborhoods.

Greg Alexander said there were many great aspects to the proposed maps but also commented on his concerns with it, limitations in his neighborhood, and the inability to subdivide some lots to increase density.

Public comment:

Jean Simonian echoed Rollo’s recollection regarding the consultant’s statement that R4 would be for undeveloped land. She commented on high profitability of rentals, streets, and residential neighborhoods.

Cheyenne Riker represented several properties along 1st Street which were zoned MH and the proposal would rezone only what his company owned. He explained that the properties had been purchased with the intent to rezone for medical uses. The proposal would significantly reduce the value of their investment.

Jean Linen supported R4 in the arterial areas and that increasing density up to quadplexes was not problematic, but that larger units did not fit the character of the area.

Pam Weaver was disappointed in the limitations of R4 districts. She said that Rollo highlighted a village center at Henderson and Hillside but seemed to be against creating more through housing density. She wished R4 was included in more areas in the Elm Heights area.

Sarah Mosier supported adding housing density to core neighborhoods like her neighborhood, Prospect Hill. She commented that it now seemed like a double compromise.

Volan asked staff to explain council’s ability to amend the map.

Council comment:

Robinson said there were three options for council that evening; adopt the proposed maps, reject the proposed maps which would

mean that no changes would be made to the districts, or take no action thus resulting in the proposed maps being adopted in ninety days. Council could not amend the maps. Plan Commission had the ability to at their review and did not amend the maps.

Volan asked for verification that normally, something from Plan Commission could be amended by council, and then it would go back to the commission. But it was not the case with mapping.

Robinson confirmed that was correct because state laws were different for the maps than the text language for the UDO.

Volan asked if if the administration would have to start over with mapping if council rejected the proposed map.

Robinson confirmed that was correct and provided examples and consequences.

Volan asked for clarification on how rejecting the proposed maps would affect the low income building, like the Kohr building.

Robinson explained the process for the low-income tax credit, including proposals, criteria, zoning requirements, the application process, and the timeline involved in the project.

Flaherty followed up on the public comment regarding the property owner along 1st Street, and asked if the concerns had been brought up before the Plan Commission, and what recourse the property owner had.

Robinson said that part of the delay in the mapping process was contingent on the hospital redevelopment planning process. The recommendations of that study were included in the proposed zoning map. There had been a lot of outreach and feedback during that process. He explained that anyone could request a rezone.

Volan said that the last time he voted on a proposed map was in 2006 and it had been complex. In contrast, the current proposed map was not as complicated. Staff had done an excellent job summarizing the changes, the presentations, and in drafting a coherent new map. He agreed with some public speakers who said there was not enough R4 districting but that it was a good start. The new UDO provided better ability to address property owners' concerns. Volan stated that the UDO should be updated on a more frequent basis. He reiterated that it was a duly prescribed process by state statute. He was confident that if changes were needed, it could be done through rezoning.

Flaherty thanked staff, Plan Commission, and members of the public. He acknowledged that the management of PUDs was an administrative burden on staff's resources so updating them to base zoning was ideal. He said that Rollo brought up good points and that it was important to strike a balance in having certainty for developers as well as strategically using the PUD process to address gaps. Flaherty said that Greg Alexander's points were valid and provided reasons including that lots would be developed into luxury single family homes and not affordable housing types. That, and other concerns, could be addressed in the future. He noted the validity of Pam Weaver's comment concerning village centers in the context of the map as well as in the future. Examining pedestrian sheds surrounding village centers could provide good data on enhancing those areas. He looked forward to revisiting the language of the UDO as well as maps on a more frequent basis.

Rollo referenced that the original R4 district, which was undesignated, excluded core neighborhoods. It had been expanded in the first draft of the proposed map, and was scaled back to be about one-quarter of the original proposal but came with

Ordinance 21-24 (cont'd)

Council comment:

conditional use in R1, R2, and R3. He said there was a decision to repeal the council’s resolve in 2019 to not use upzoning in a broad and reckless fashion. He commented on the process of amending the maps by sending it back to the Plan Commission. He said he may vote yes, but was not decided yet.

Ordinance 21-24 (cont’d)

Council comment:

The motion to adopt Ordinance 21-24 received a roll call vote of Ayes: 8, Nays: 1 (Rollo), Abstain: 0.

Vote to adopt Ordinance 21-24 [10:37pm]

Lacy reviewed the upcoming council schedule.

COUNCIL SCHEDULE [10:37pm]

Flaherty moved and it was seconded to adjourn the meeting. Sims adjourned the meeting.

ADJOURNMENT [10:39pm]

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



May 25, 2022

Commission on Hispanic and Latino Affairs (CHLA) Annual Report 2020-2021

On behalf of all the members of the commission, we would like to thank Mayor John Hamilton and the City Council for supporting our efforts on behalf of the Latino community in our city.

The Commission on Hispanic and Latino Affairs works to identify and address issues that impact the Hispanic and Latino populations in Bloomington, especially in the areas of health, education, public safety, and cultural competency.

In the area of health, the commission worked in collaboration with Monroe County Health Department and other local agencies to bring COVID 19 awareness and resources to Spanish-speaking community members in Spanish language. The commission also participated in an all-Spanish language COVID19 vaccine clinic that took place at the convention center on 2 separate dates so the community could take their first and second dose of Moderna vaccine. Commission members assisted at the clinic by welcoming members to the clinic, interpreting, and as needed. Approximately 52 community members received their 1st and 2nd dose of the Moderna vaccine.

In the area of education, the commission invited new MSSCS Superintendent Dr. Jeff Hauswald to one of our regular meetings. The commission also met with the principal from Summit Elementary to discuss the issue of transportation. During this meeting, we discussed ways to bridge the gap of transportation to/from school for Dual Language Program students. Finally, the commission invited and met students of the Amigos Club from both North and South High School.

In the area of cultural competency, the commission continues to be involved in the Black y Brown Arts Festival. The Festival is a celebration of African and Latino creative arts and artists that seeks to affirm community space, preserve arts appreciation, and enhance pride in the spirit of diversity of the local Bloomington community. The commission also continued its involvement with the Fiesta del Otoño 2021 by hosting a table at the event. The commission also provided support to El Mercado, a community effort to create an inclusive Bloomington and to make resources available to underserved communities, by sharing their events on social media.

Finally, the commission participated in the State of the Latino Community event, a collaborative effort that sought to highlight the challenges and achievements of the Latino community in health, immigration, and education.

Report on Ordinance 21-23 Memo

To: Bloomington Common Council

From: Planning and Transportation Department
Jackie Scanlan, AICP Development Services Manager

Date: September 21, 2022

Re: Report on Progression of Ordinance 21-23

Council approved a change to the UDO related to duplexes and triplexes in May of 2021, which was signed into law by Mayor Hamilton on July 12, 2021. The Ordinance contained the language: “The Planning and Transportation Department will track requests and approvals for the uses amended in this Ordinance, and report those findings to the Plan Commission, Administration, and Common Council every six months from the effective date.” The Ordinance made duplexes Conditional in R1-R3 and triplexes Conditional in R4. It also required that the conditional use approvals related to R1-R3 need to include a neighborhood meeting and be seen by the Board of Zoning Appeals. The Council also placed a 150-foot buffer around newly approved duplex dwellings, around which new approvals cannot be sought for 2 years. The Council also placed a cap of 15 per year on the use in those districts.

At the February 2022 report, The Planning and Transportation Department had spoken with 13 people about possible duplexes in R1-R3 (4 before legislation was passed, 9 since then) (One stopped by NOV). We had not had any Conditional Use filings for duplexes in R1-R3 or triplexes in R4.

Since February 2022, we have spoken to 14 parties about possible duplexes. These range from basic questions about whether or not one is allowed to process questions to proceeding with filing. A conditional use approval was granted by the Board of Zoning Appeals in August 2022 for a dwelling, duplex in the R3 zoning district, stemming from one of the 14 contacts since February 2022. The approved duplex location is going through the permitting process. Additionally, one of the 14 inquiries cannot go forward because it is within the buffer of the approved duplex.

We have received 4 ADU permit filings in 2022, amounting to roughly 30 permits total over time.



**MEMO FROM COUNCIL OFFICE ON:
(Updated October 28, 2022)**

**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
- [new material] Economic Development Commission Resolution 22-04
- Financing Documents (in substantially final form), including:
 - Funding Loan Agreement
 - Project Loan Agreement
 - Regulatory Agreement



Update

The Economic Development Commission passed its Resolution 22-04 on October 18, 2022, which recommends that the Common Council approve Country View Housing, LP's request for economic development bonds to undertake its renovation project. The Resolution has been included in this packet.

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);
- 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.



GLICK®





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

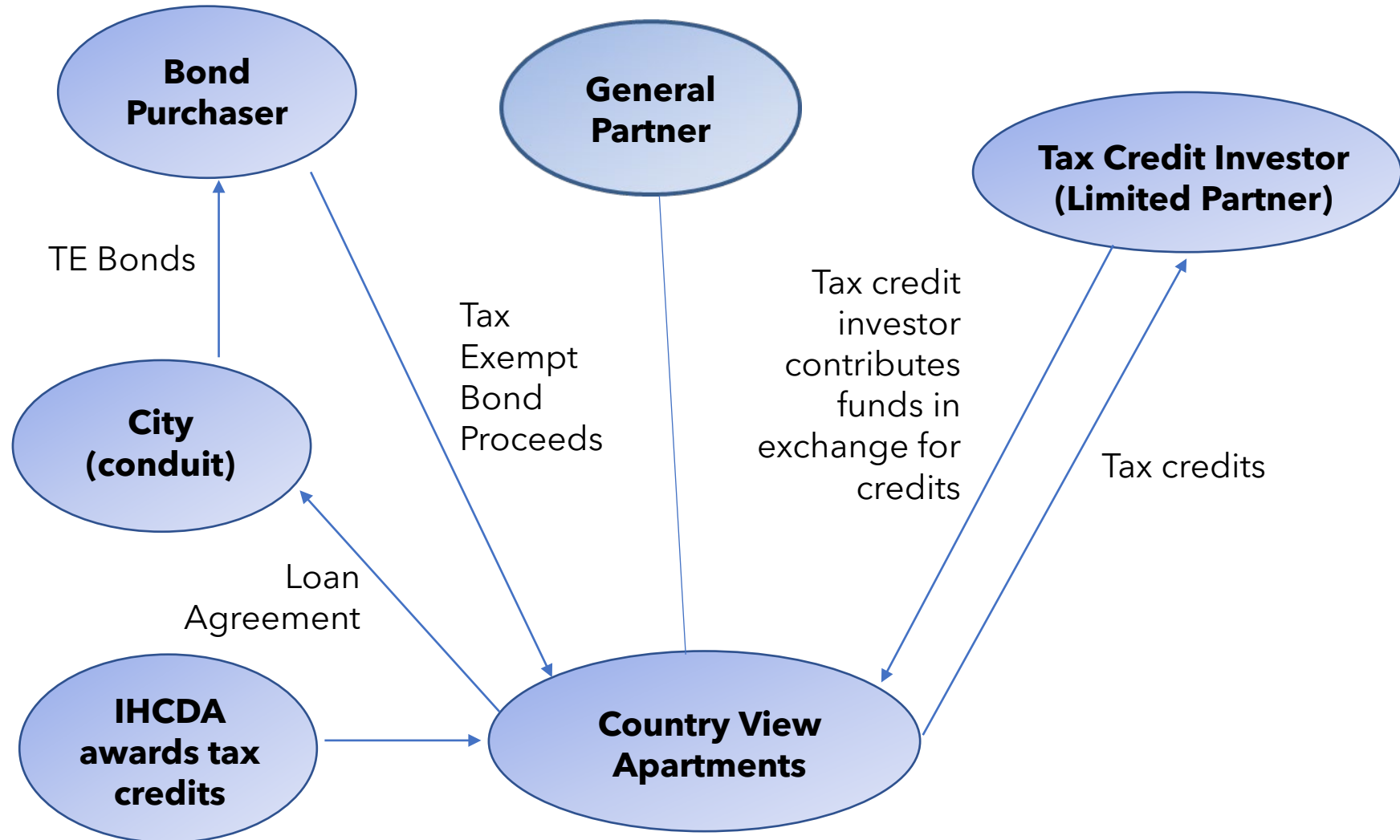
Glick finalizes allocation of economic development bonds with the City of Bloomington for Country View Apartments

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



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!



**RESOLUTION 22-04
OF THE
CITY OF BLOOMINGTON
ECONOMIC DEVELOPMENT COMMISSION**

- WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and
- WHEREAS, the Act provides that an issuer may, pursuant to the Act, issue revenue bonds and 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 in or near such issuer; and
- WHEREAS, the Act provides that such bonds 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, the creation or retention of opportunities for gainful employment and the provision of quality, affordable, multifamily housing to be achieved by the acquisition, renovation, improvement and equipping of the Project will be of public benefit to the health, safety and general welfare of the Issuer and its citizens; and
- WHEREAS, it would appear that the acquisition, renovation, improvement and equipping of the Project would be of benefit to the health or general welfare of the Issuer and its citizens; and
- WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to acquire, renovate, improve and equip the Project and to pay the costs of issuing the Notes (as defined herein) and fund reserves, if any, by issuing not to exceed \$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

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 outstanding Notes (as defined herein) shall not exceed \$15,000,000; and

WHEREAS, the Project Loan Agreement provides for the repayment by the Borrower of the loan of the proceeds of the 2022 Notes pursuant to which the Borrower will agree to make payments sufficient to pay the principal and interest on the 2022 Notes as the same become due and payable and to pay administrative expenses in connection with the 2022 Notes; and

WHEREAS, the Borrower has also requested that the Issuer authorize the potential issuance of refunding revenue notes, if desirable to the Issuer as directed by the Borrower (the "Refunding Notes," and with the 2022 Notes, the "Notes"), 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, in connection with the adoption of this Resolution, the Commission has considered whether the acquisition, renovation, improvement and equipping of the Project may have an adverse competitive effect on similar facilities operating in the City of Bloomington, Indiana; and

WHEREAS, there has been submitted to the Commission for its approval of substantially final forms of the Funding Loan Agreement, 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 the proposed form of ordinance which are by this reference incorporated herein;

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

SECTION 1. It is hereby found that the acquisition, renovation, improvement and equipping of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Notes, in an aggregate principal outstanding amount not to exceed \$15,000,000, and the loan of the net proceeds thereof to the Borrower for the purposes of acquiring, renovating, improving and equipping the Project, and the repayment of said loan by the Borrower and 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 Commission hereby recommends (i) the Issuer issue its 2022 Notes as described above, in the aggregate principal amount outstanding not to exceed \$15,000,000 for the purpose of procuring funds to loan to the Borrower in order to acquire, renovate, improve and equip the Project, which Notes will be payable as to principal and interest solely from the payments made by the Borrower pursuant to the Financing Documents to evidence and secure said loan and as otherwise provided in the above-described Financing Documents and (ii) authorizes the potential Refunding Transaction. The Notes shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the Issuer.

SECTION 4. The Commission further recommends that the Issuer authorize the Clerk and City Controller to sell such Notes to the purchasers thereof at a price not less than 97% of the aggregate principal amount thereof (excluding any original issue premium or discount), plus accrued interest, if any, and at a fixed or initial variable rate of interest not to exceed 12% percent per annum. The Commission further recommends that the Issuer authorize the optional redemption of the Notes within 20 years of the date of issuance thereof at a price of 100% of the principal amount thereof.

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

SECTION 6. The Commission approves the form of and recommends the adoption of the ordinance by the Common Council of the Issuer. The provisions of such ordinance, if and when adopted, and the Financing Documents shall constitute a contract binding between the Issuer and the holder or holders of the Notes and after the issuance of said Notes, the special resolution shall

not be repealed or amended, in any respect which would adversely affect the right of such holder or holders so long as said Notes or the interest thereon remains unpaid.

SECTION 7. The Commission finds and determines that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Commission has relied solely upon representations of the Borrower. The foregoing determination shall not be construed to be a representation or warranty by the Commission as to the feasibility or viability of the Project. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan.

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

* * *

Adopted this 18th day of October, 2022.

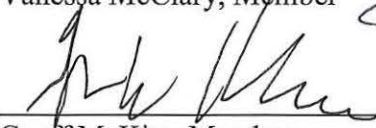
CITY OF BLOOMINGTON ECONOMIC
DEVELOPMENT COMMISSION



Kurt Zorn, President



Vanessa McClary, Member



Geoff McKim, Member



Matt Flaherty, Member



Malcolm Webb, Member

October 18, 2022

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

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

Dear Mr. Wisler:

Enclosed is a copy of a report of the Economic Development Commission (the "Commission") of the City of Bloomington, Indiana with respect to the financing of an economic development facility located within your jurisdiction for Country View Housing, LP (the "Project").

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

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

Sincerely,

CITY OF BLOOMINGTON, INDIANA
ECONOMIC DEVELOPMENT COMMISSION



~~Kurt Zorn, President~~ Malcolm Webb, Vice President

Enclosure

REPORT OF THE CITY OF BLOOMINGTON, INDIANA ECONOMIC DEVELOPMENT
COMMISSION CONCERNING THE PROPOSED FINANCING OF
ECONOMIC DEVELOPMENT FACILITIES FOR
COUNTRY VIEW HOUSING, LP, AN INDIANA
LIMITED PARTNERSHIP


The City of Bloomington Economic Development Commission (the "Commission") proposes to recommend to the Common Council of the City of Bloomington, Indiana, that it provide funds for the acquisition, renovation, improvement and equipping of economic development facilities for Country View Housing, LP, an Indiana limited partnership. Such economic development facilities consist of 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"). The total cost for the acquisition, renovation, improvement and equipping of the Project is presently estimated to be in an amount of approximately \$27,000,000, including incidental costs of issuance of the economic development revenue notes and funding any necessary reserves in connection therewith.

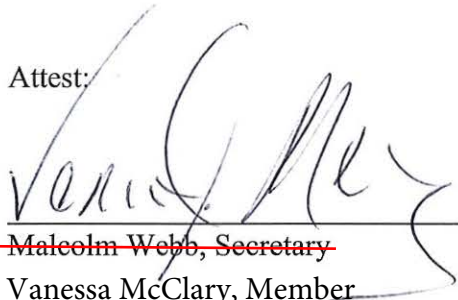
No public facilities to be paid for by the government will be made necessary on account of the acquisition, renovation, improvement and equipping of the Project.

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

It is estimated that upon the acquisition, renovation, improvement and equipping of the Project, the operation will create 1 job and 4 existing jobs will be retained, with an estimated total payroll of approximately \$350,000 annually.

Adopted this 18th day of October, 2022.


~~Kurt Zorn, President~~ Malcolm Webb, Vice President

Attest:

~~Malcolm Webb, Secretary~~
Vanessa McClary, Member

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

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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.

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

Exhibit A-6

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: _____
[_____, _____]

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
_____	_____
_____	_____
_____	_____
_____	_____

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.

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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)

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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”).

W I T N E S S E T H:

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: _____

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

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:
(Updated October 28, 2022)**

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
- [updated] Staff Memo from Larry Allen, Assistant City Attorney
- [new material] Payment in Lieu of Taxes (PILOT) Agreement (draft)

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 28, 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.

PILOT Agreement

As part of the PILOT, the City enters into a PILOT agreement with Country View Housing, LP. The agreement memorializes the terms of the PILOT payment and the base payment amount, which is set at \$61,203.51 for 30 years. That payment is payable similar to property taxes in biannual payments due on May 10th and November 10th of each year of the agreement. As part of receiving credits through the IHCDA, Country View LP is required to record the IHCDA Extended Use Agreement, which ensures that the property will remain affordable for at least 30 years. Additionally, the general partner in Country View Housing, LP, is a 501(c)(3), and in order for the organization to continue as part of the partnership, Country View Apartments must remain affordable housing. This PILOT Agreement also serves an integral part of the financing of the overall renovation project and is reviewed and approved by the City, Country View, LP, and the financing body for the project.

City staff has analyzed the financial value of the PILOT incentive on a per unit basis and staff has determined that the value falls well within the parameters the City has previously deemed acceptable to incentivize the retention or development of affordable housing. The analysis was taken by subtracting the base amount from the estimated total taxes that could be assessed over the period of the PILOT. Using a 3% discount rate, that number was turned into an estimated net present value (NPV) and divided by the total number of units (206). The estimated NPV of the PILOT per unit is approximately \$9,828, which represents a significant reinvestment into the renovations of each affordable apartment in Country View.

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this “PILOT Agreement”) is entered into as of this ____ day of _____, 2022 (the “Effective Date”), by and among the CITY OF BLOOMINGTON, INDIANA, (the “City”), and COUNTRY VIEW HOUSING, LP, and its permitted successors and assigns (“Owner”).

RECITALS

WHEREAS, Owner owns certain real estate in Bloomington, Indiana, located at 2500 S. Rockport Road, Bloomington, Indiana, and identified as Parcel Number 53-08-08-303-117.000-009 (the “Real Estate”), and upon which Owner desires to rehabilitate a 206-unit affordable apartment community (collectively with the Real Estate, the “Project”), which Owner has represented will be owned and operated as an affordable housing facility pursuant to the federal low income housing tax credit program under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”) and the applicable State of Indiana Qualified Allocation Plan; and

WHEREAS, pursuant to Indiana Code (“IC”) 6-1.1-10-16.7, Owner will be exempt from the requirement to pay property taxes on real property included in the Project if the following requirements are satisfied: (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 IC 36-1-8-14.3;

WHEREAS, the Owner anticipates that the improvements on the Real Estate will be rehabilitated utilizing the federal low-income housing tax credit program under 26 U.S.C. 42 and furthermore that the Project will be subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana Housing and Community Development Authority;

WHEREAS, this Agreement has been drafted to comply with the requirements under IC 36-1-8-14.3 (the “PILOT Statute”);

WHEREAS, the City represents that it has or will undertake all necessary and appropriate actions contained within IC 36-1-8-14.3 to ensure this PILOT Agreement satisfies all necessary requirements of the PILOT Statute so as to permit the Owner to successfully obtain property tax exemption under IC 6-1.1-10-16.7;

WHEREAS, Owner represents that it has timely filed or will timely file its application (the “Property Tax Exemption Application”) with the Monroe County Assessor requesting an exemption pursuant to IC 6-1.1-10-16.7, from its obligation to pay real property taxes and that it will timely file any applications to renew any exemption if required by law to do so; and

WHEREAS, Owner has agreed (i) to make payments in lieu of taxes to the City; (ii) and ensure the Project is properly maintained; and

WHEREAS, City and Owner have agreed that, if the real property contained on Real Estate becomes fully exempt from the payment of property taxes under IC 6-1.1-10-16.7, Owner will make payments to the City pursuant to the terms of this PILOT Agreement; and

NOW, THEREFORE, in consideration of the foregoing premises, mutual covenants and the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

Section 1. Payments in Lieu of Taxes.

Section 1.1. (a) Owner represents and warrants that it has or will undertake all appropriate action for the real property of the Real Estate to be exempt under IC 6-1.1-10-16.7, and during the term of this Agreement, Owner covenants and agrees it shall at all times comply with the requirements of IC 6-1.1-10-16.7, as applicable to Owner and the Project.

(b) Owner agrees to maintain the Project as an affordable housing facility consisting of a 206-unit affordable apartment community.

(c) Owner agrees to maintain a clean premises in accordance with applicable local, state, and federal codes, rules, and regulations at the Project.

(d) Owner acknowledges that this PILOT Agreement does not confer any property tax exemption on the Project and that in order to obtain any such property tax exemption or partial exemption, Owner must timely file its Property Tax Exemption Application, including renewal applications, if any are required, with the Monroe County Assessor requesting an exemption pursuant to IC 6-1.1-10-16.7 from Owner's obligation to pay all or a portion of its property taxes on the Project. The City agrees to use best efforts to assist the Owner in ensuring the real property at the Project is fully exempt from property tax if the Owner has satisfied all requirements to obtain exemption under IC 6-1.1-10-16.7.

Section 1.2. Owner shall annually pay an amount equal to \$61,203.51 (the "Base Amount") in accordance with Section 1.4 for each assessment year after the closing of the Project, which is anticipated to be in the fourth quarter of 2022. Notwithstanding the foregoing and pursuant to IC 36-1-8-14.3(f)(3), to the extent that the amount of real property taxes that would have been received by the City for the Project had the Project not been exempt from property tax pursuant to IC 6-1.1-10-16.7 is less than the Base Amount, then the Base Amount shall be reduced for the applicable assessment year to the amount that would have been received by the City had the Project not been exempt from real property tax.

Section 1.3. The payments referenced under Section 1.2 shall each be referred to as a "PILOT Payment." The PILOT Payment shall be paid in lieu of property taxes for the tax year in question that would have been payable by Owner if Owner was a non-exempt taxpayer.

Section 1.2. If Owner fails to satisfy the requirements of Section 1.1 and/or Section 1.4 (a “Noncompliance Event”), Owner shall pay to the City an additional ten percent (10%) of the PILOT Payment due and payable for the applicable year (the “Supplemental Payment”) no later than December 31st in the calendar year in which the Noncompliance Event occurs. Owner shall only be liable for the Supplemental Payment once per year for all Noncompliance Events.

Section 1.3. The PILOT Payment and Supplemental Payment shall only become due if all the real property at the Project has been exempt from property tax under IC 6-1.1-10-17. To the extent that the real property at the Project is not fully exempt in any year of the Payment Period, the Owner shall have no obligation to make the PILOT Payment or Supplemental Payment for such year.

Section 1.4. The annual PILOT Payment shall be payable in two equal installments due and payable on or before May 10th and November 10th of each successive calendar year following the applicable assessment date, commencing with the first semi-annual installment due and payable on or before the first May 10th after the requirements of Section 1.2 are satisfied (each an “In Lieu of Payment”) and continuing for thirty (30) years thereafter (the “Payment Period”). For purposes of clarity and avoidance of doubt, the Project is anticipated to close in the fourth quarter of 2022, and therefore under such circumstances, the PILOT Payment would first be due for the January 1, 2023 Assessment Year and accordingly the first In Lieu of Payment would be due and payable on or before May 10, 2024.

Section 1.5. Owner hereby reserves the right to contest and to appeal the amount of any tax assessment of the Project. Any such challenge will not affect the timely payment of the annual In Lieu of Amount described in Section 1.2.

Section 1.6. Owner shall be liable for prompt payment of all In Lieu of Payments when due. Owner shall be liable for all penalties, costs and expenses imposed under IC 6.1.1-22-1 *et seq.* and IC 6-1.1-37-1 *et seq.* or any statute which amends or replaces them for delinquent In Lieu of Payments.

Section 2. Obligation Subordination.

Section 2.1. The obligation of Owner to pay In Lieu of Payments shall be in all respects subordinate to any Mortgage to be held by the bondholders or senior lender in connection with financing procured to fund development and construction of the Project and any subsequent refinancing thereof. The City agrees to execute any documents necessary that any lender to Owner now or in the future may require which are commercially reasonable in order to confirm the foregoing subordination.

Section 3. Termination.

Section 3.1. This PILOT Agreement shall automatically terminate, by no action of the parties, and shall be of no force or effect between or among the parties upon the expiration of the Payment Period and the remittance of all In Lieu of Payments due and payable pursuant to Section 1.3 hereof. Notwithstanding the foregoing, the City and Owner may mutually agree to extend this PILOT Agreement

prior to the expiration of the Payment Period. Furthermore, the Owner may terminate this PILOT Agreement to the extent that the real property at the Project is not fully exempt in any year of the Payment Period.

Section 3.2. Upon conveyance of Owner's title to the Project to any party which meets the requirements of IC 6-1.1-10-16.7, the PILOT Agreement shall remain in full force and effect. The City acknowledges and agrees the Owner may assign this PILOT Agreement and the obligations thereunder as a part of the sale of the Project. The Owner's obligation to pay In Lieu of Payments and Supplemental Payments shall terminate upon Owner's conveyance of its title to the Project. Upon conveyance of fee title to the Project to any other entity that does not meet the requirements of IC 6-1.1-10-16.7, this PILOT Agreement shall become null and void and of no further force or effect; provided, however, Owner shall remain obligated for payment of the applicable pro rata amount of the In Lieu of Payments with respect to the Project up to the date when a purchaser either assumes the obligations hereunder or the real property is no longer exempt under IC 6-1.1-10-16.7.

Section 3.3. In the event the City determines that Owner has failed to satisfy the requirements of Section 1.1 and/or Section 1.4, the City shall notify Owner in writing of such default. Owner shall have sixty (60) days from the effective date of the notice to cure the reason for default (the "Cure Period"). The City may in its sole discretion elect to extend the Cure Period. Following the Cure Period, this PILOT Agreement shall automatically terminate upon written notice from the City to the Owner that such default has not been cured within the Cure Period.

Section 3.4. The parties hereto may mutually agree to terminate this PILOT Agreement. Such termination agreement shall be in writing and executed by all parties hereto. Upon mutual termination pursuant to this Section 3.4, this PILOT Agreement shall become null and void, and of no further force or effect between or among the parties; provided, however, Owner shall pay the applicable pro rata amount of In Lieu of Payments for the year in which such termination occurs to the extent that the real property remains fully exempt from property tax under IC 6-1.1-10-16.7.

Section 3.5. Upon termination of this PILOT Agreement, Owner shall pay the applicable pro rata amount of In Lieu of Payments for the year in which such termination occurs up to the date of termination to the extent that the real property remains fully exempt from property tax under IC 6-1.1-10-16.7 for such year, and receive a credit for all In Lieu of Payments already paid for such year. Upon termination of this PILOT Agreement, the parties hereto agree that that all other provisions of this PILOT Agreement, except for this Section 3.5, shall become null and void, and of no further force or effect between the parties.

Section 4. General Provisions.

Section 4.1. Captions; Incorporation and Exhibit. The captions and headings of various Articles, Sections and Exhibits referenced herein are for convenience only and are not to be considered as defining or limiting in any way, the

scope or intent of the provisions hereof. Notwithstanding the foregoing, each of the Recitals referenced herein are incorporated and expressly made a part hereof.

Section 4.2. Entire PILOT Agreement. This PILOT Agreement constitutes the entire agreement of the parties, and all prior discussions, negotiations and document drafts are merged herein.

Section 4.3. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered (effective upon delivery), if sent by reputable overnight courier, charges prepaid (effective the business day following delivery to such courier) or if mailed by United States registered or certified mail, postage prepaid, return receipt requested (effective two business days after mailing):

If to Owner:

Country View Housing, LP
c/o Gene B. Glick Housing Foundation, Inc.
8801 River Crossing Blvd #200
Indianapolis, IN 46240

If to City:

City of Bloomington
c/o Director, Economic & Sustainable Development
Department
401 North Morton Street, Suite 150
Bloomington, Indiana 47404

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other manner shall be deemed effective only upon receipt.

Section 4.4. Modification, Amendment or Waiver. No modification, waiver, amendment, discharge or change of this PILOT Agreement shall be valid unless the same is in writing and signed by all parties to this PILOT Agreement.

Section 4.5. Governing Law. This PILOT Agreement shall be governed by and construed under the laws of the State of Indiana, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this PILOT Agreement. Any action or proceeding arising out of this PILOT Agreement will be litigated in the courts located in Monroe County, Indiana. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Monroe County, Indiana.

Section 4.6. Time is of the Essence. Time is hereby declared to be of the essence of this PILOT Agreement and of every part hereof.

Section 4.7. Counterparts. This PILOT Agreement and any amendments hereof may be executed in one or more counterparts, each of which when

so executed and delivered shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

Section 4.8. Severability. If any provision of this PILOT Agreement is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this PILOT Agreement will not be affected thereby. It is the intention of the parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable. Notwithstanding the foregoing, to the extent that the real property is not fully exempt from property tax, this Section 4.9 is null and void.

Section 4.9. No Joint Venture. Nothing contained in this PILOT Agreement will be construed to constitute any party as a joint venturer with the City or to constitute a partnership between any party and the City.

Section 4.10. Construction. The parties acknowledge that each party and each party's counsel have reviewed and revised this PILOT Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this PILOT Agreement or any amendments or exhibits hereto.

Section 4.11. Authorization. The persons executing and delivering this PILOT Agreement on behalf of the parties hereto represent and warrant to the other party that such person is duly authorized to act for and on behalf of said party, and execute and deliver this PILOT Agreement in such capacity as is indicated below.

Section 4.12. Assignment/Successor. This PILOT Agreement shall be binding upon City, and Owner, and all successor, grantees or assignees of Owner with respect to the Project (or any portion thereof) which would otherwise be entitled to claim an exemption for real property taxes imposed on the Project.

Section 4.13. Recording. The City will cause, at Owner's expense, this PILOT Agreement and any other instruments of further assurance to be promptly recorded, filed and registered, and at all times to be recorded, filed and registered, in such manner and in such places as may be required by law to preserve and protect fully the rights of the City hereunder as to all of the mortgaged property.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned parties have caused the execution of this PILOT Agreement by their duly authorized officers as of the Effective Date.

CITY OF BLOOMINGTON, INDIANA

By: _____
John Hamilton, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public, in and for said County and State, personally John Hamilton, acting for and behalf of the City of Bloomington, Indiana, who acknowledged the execution of the foregoing instrument as the Mayor of the City of Bloomington and who, having been duly sworn, stated that any and all representations and warranties contained therein are true and correct in all material respects.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

[Executions Continued on Following Page]

COUNTRY VIEW HOUSING, LP

By: _____
Name: _____
Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally _____, who acknowledged the execution of the foregoing instrument as _____, and who, having been duly sworn, stated that any and all representations and warranties contained therein are true and correct in all material respects.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:



**MEMO FROM COUNCIL OFFICE ON:
(Updated on October 28, 2022)**

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
- [*new material*] Presentation slides shown at Oct. 26, 2022 Committee of the Whole meeting

Update after October 26, 2022 Committee of the Whole meeting

This item was considered by the Committee of the Whole on October 26, 2022. At that meeting, the councilmember sponsors presented the proposal and invited a member of the community, Stephanie Hatton, to speak in more detail about the request for a four-way stop. Hatton presented slides (included herein) and explained the reasons she and other nearby residents had requested that a four-way stop be added to the intersection. Councilmembers asked questions, heard public comment, and provided their own comments on the ordinance. The Committee voted to recommend that the Council adopt the ordinance by a vote of 5 in favor and 1 opposed.

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 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
-------------------------------	-------

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

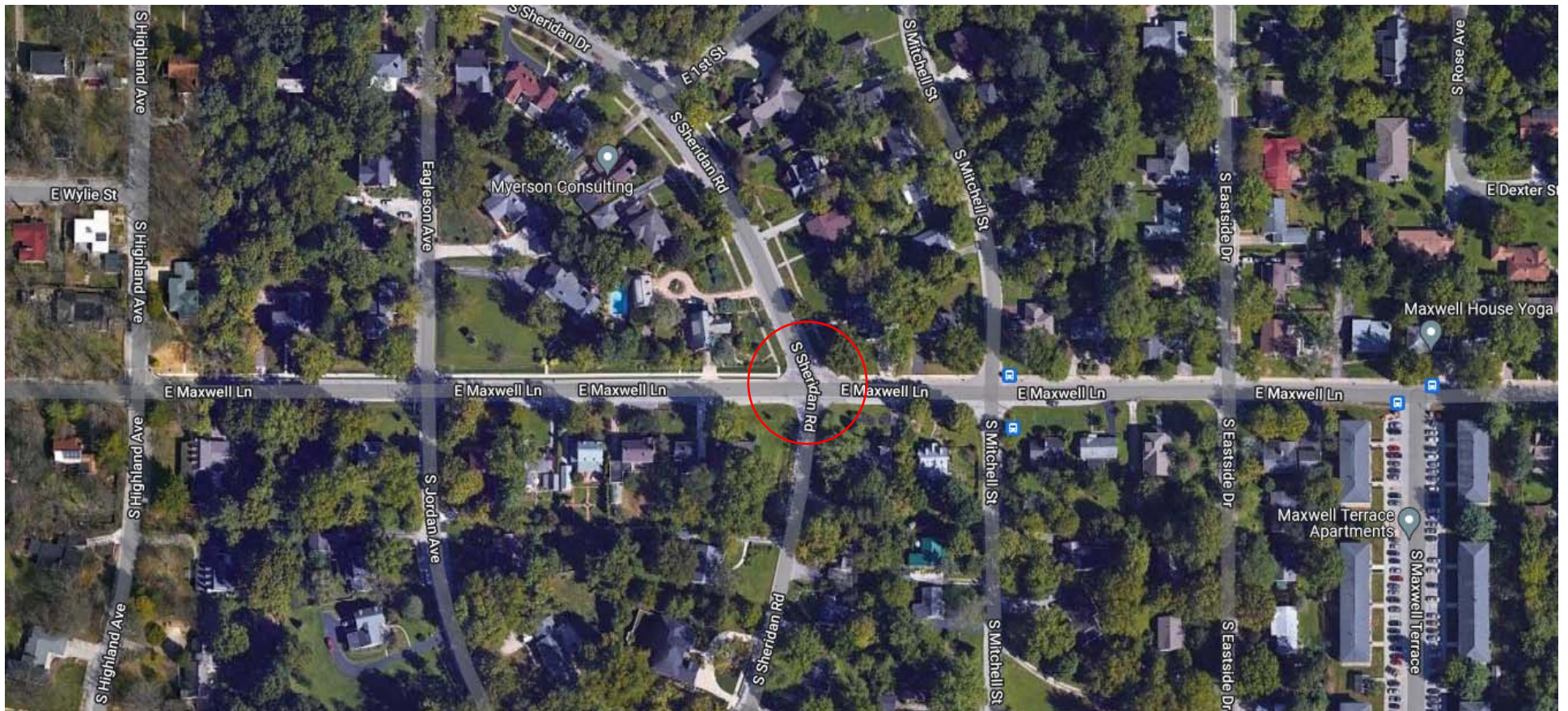
SIGNED and APPROVED by me upon this _____ day of _____, 2022.

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. SHIPMAN

800 S
Meridan Dr

STOP



**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:

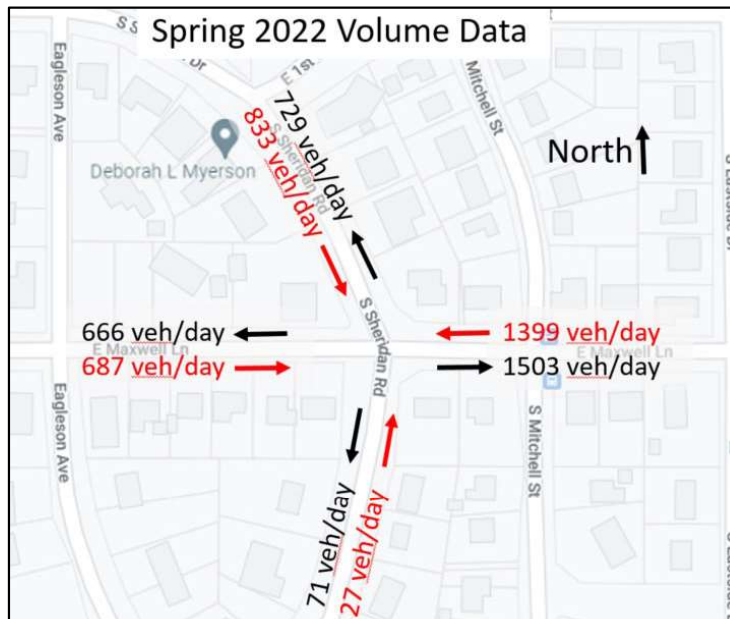
Residents living near this intersection have contacted the City to request an all-way stop at this intersection. The primary reasons stated for the request are that drivers are speeding on Maxwell Lane and that there is limited sight distance when entering or crossing Maxwell Lane from Sheridan Road.

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.

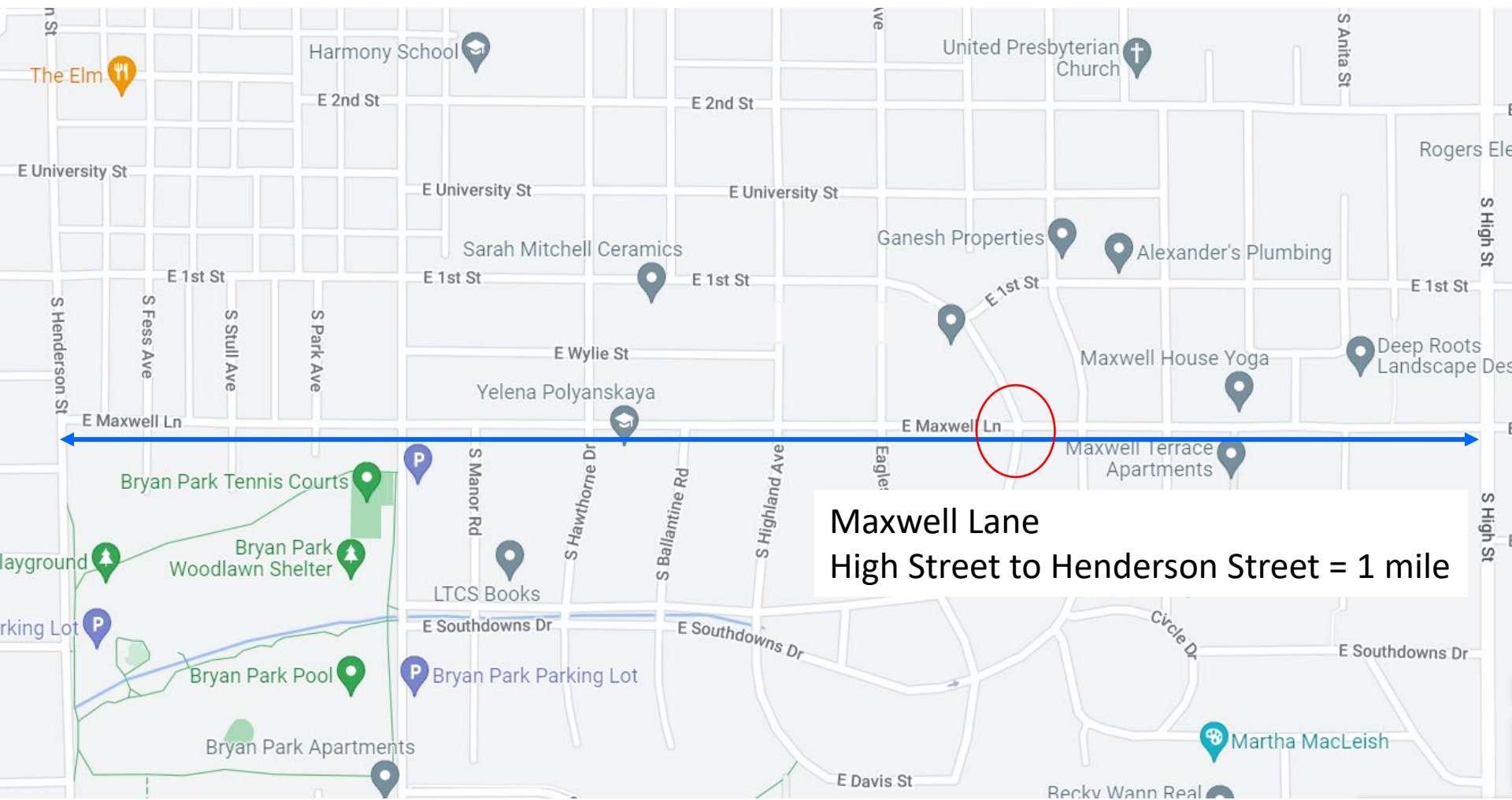


Maxwell Lane & Sheridan Drive

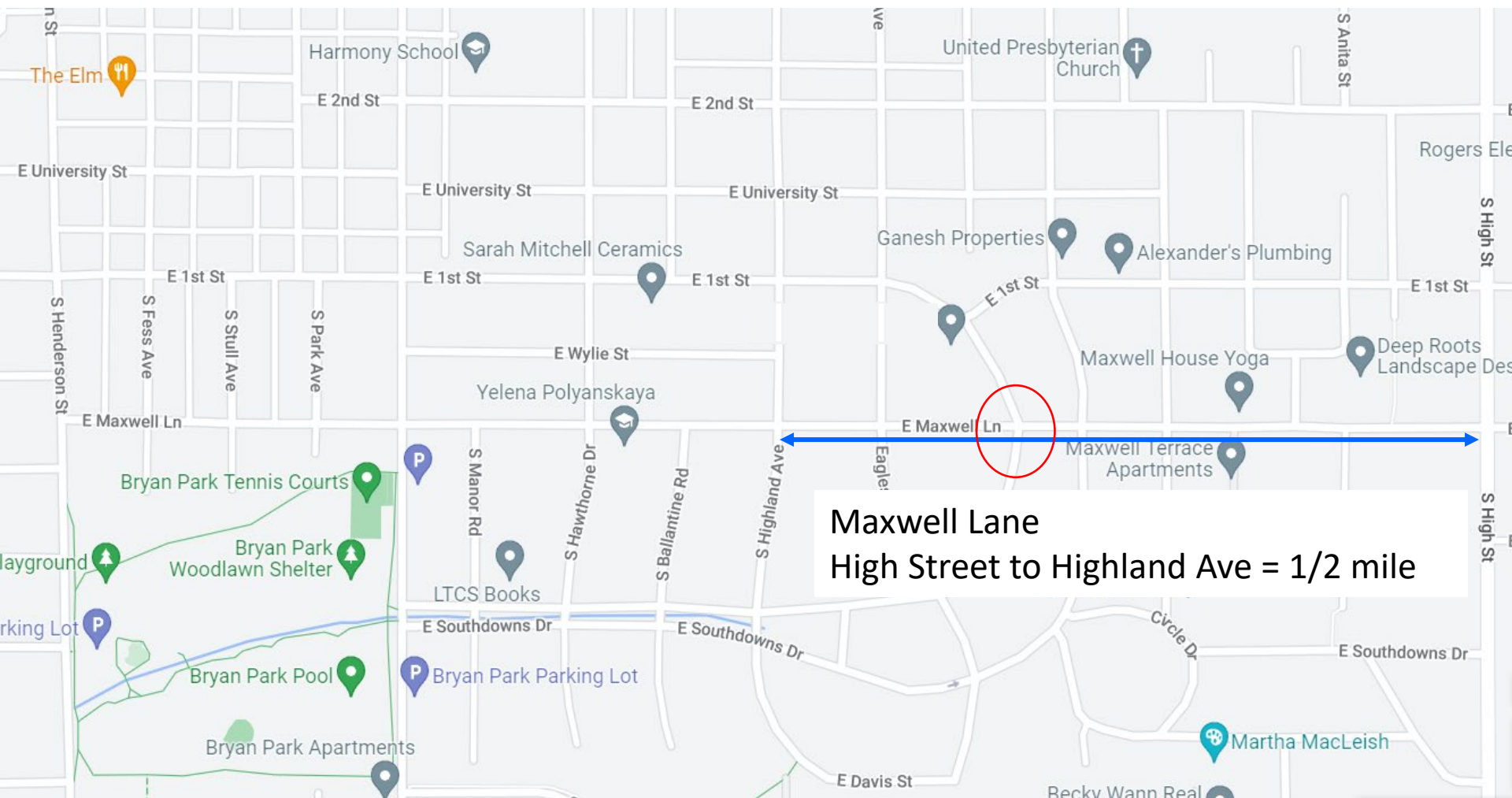
All-Way Stop Proposal

10.26.2022

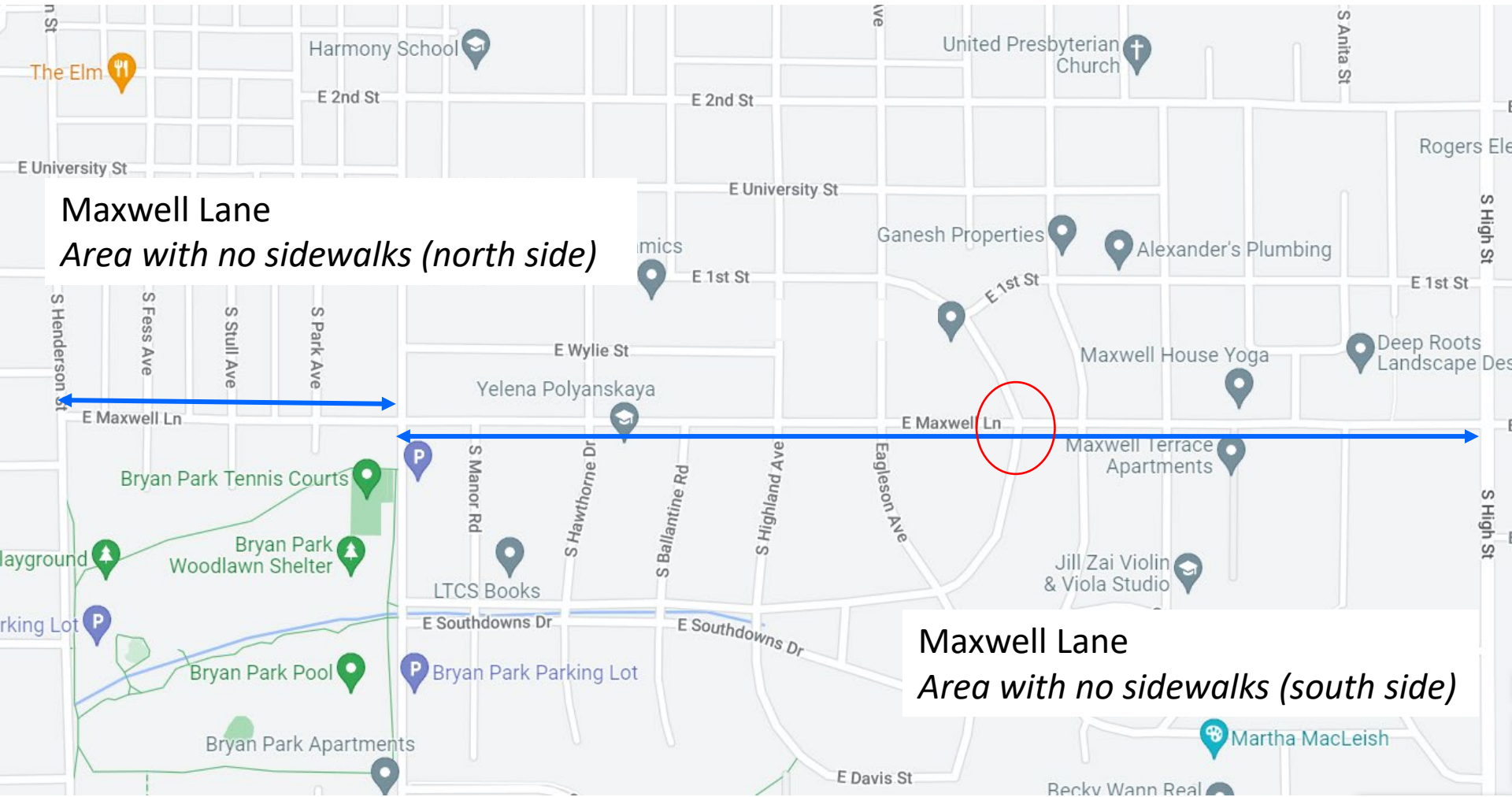
Area of Focus



Area of Focus: *Unencumbered*



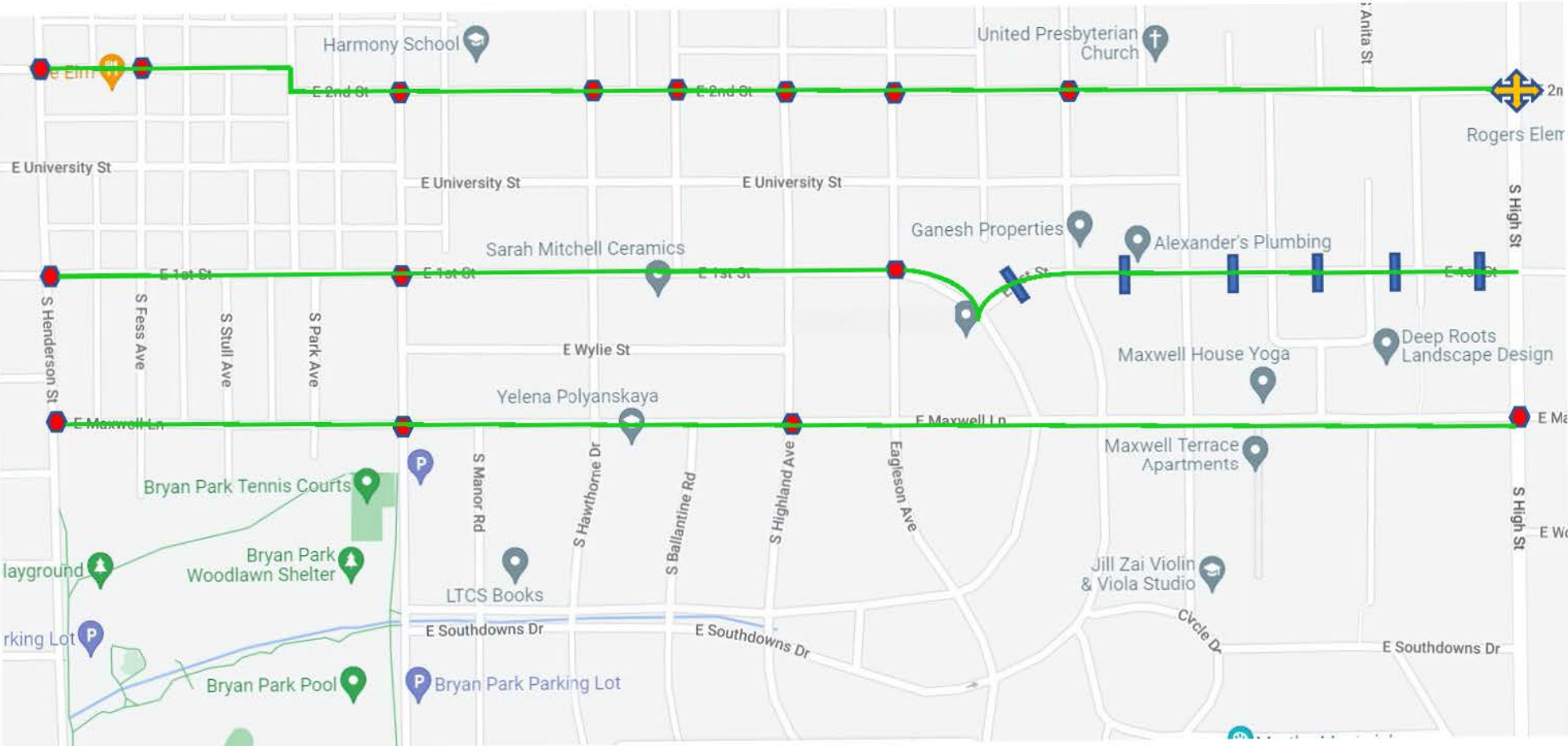
Area of Focus: Sidewalks




Maxwell Lane
Area with no sidewalks (north side)

Maxwell Lane
Area with no sidewalks (south side)

East-West Corridors: Traffic Features



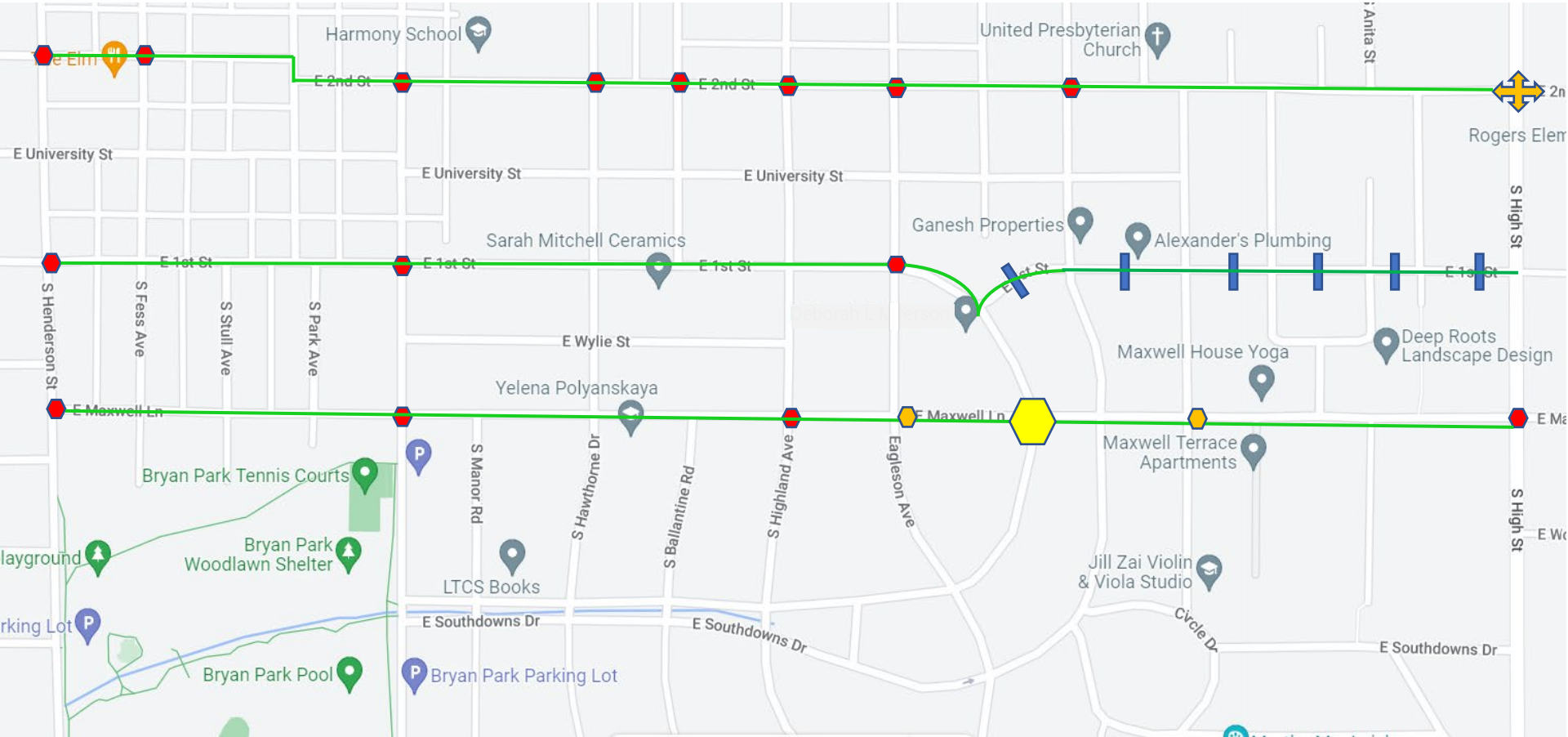
 Current all-way stop sign location







 Current traffic signal location

 Roadway

 Current speed bump location

East-West Corridors: *Traffic Features*



-  Current all-way stop sign location
-  Current traffic signal location
-  Current speed bump location
-  Proposed all-way stop sign location
-  Proposed location for "Stop Sign Ahead" warning
-  Roadway



Rogers Rd. & Snoddy Rd. Intersection:

500 FEET & 300 FEET “Stop Sign Ahead”
warning signs

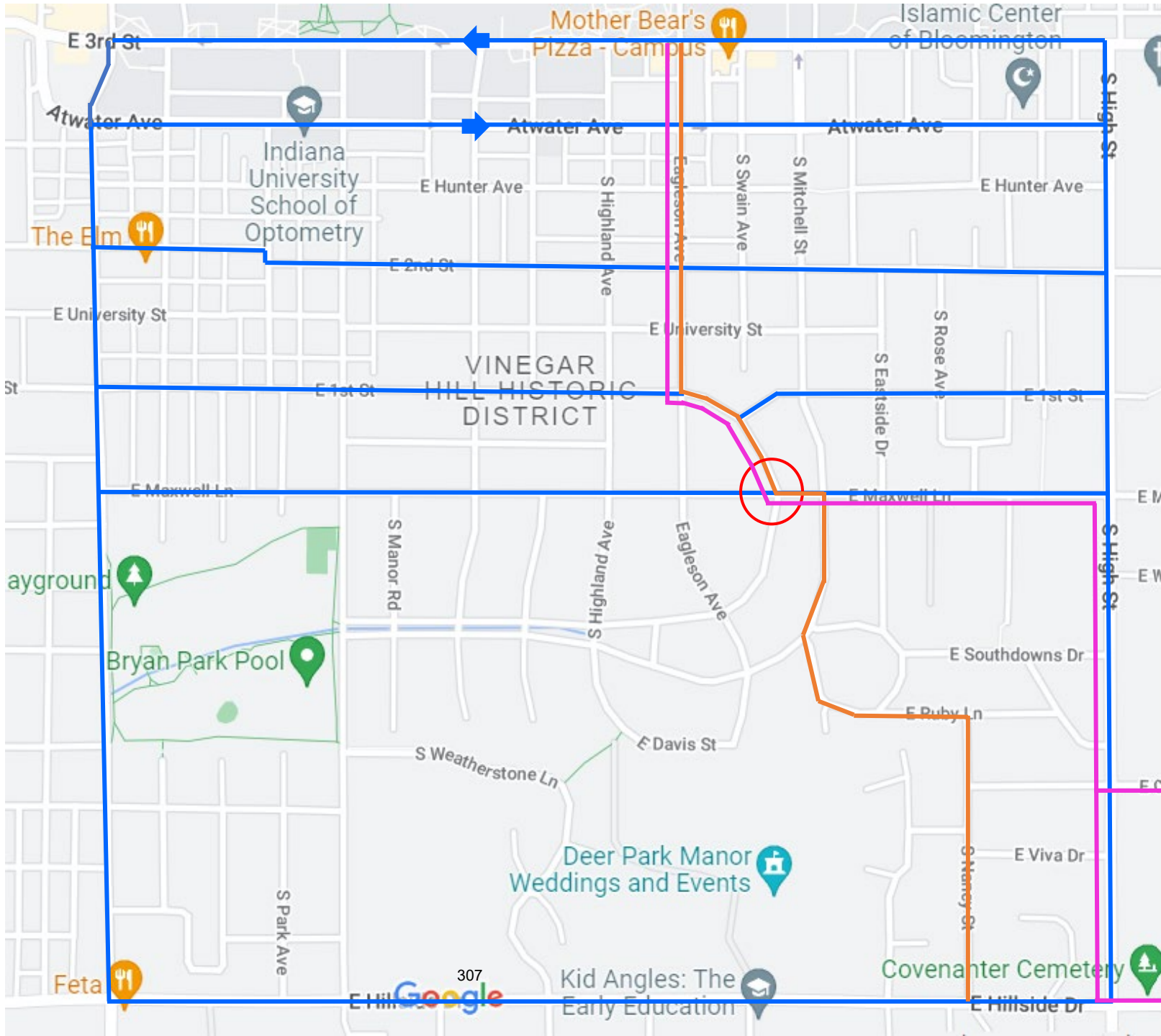
**North/South
&
East/West
Corridors
Shortcut**



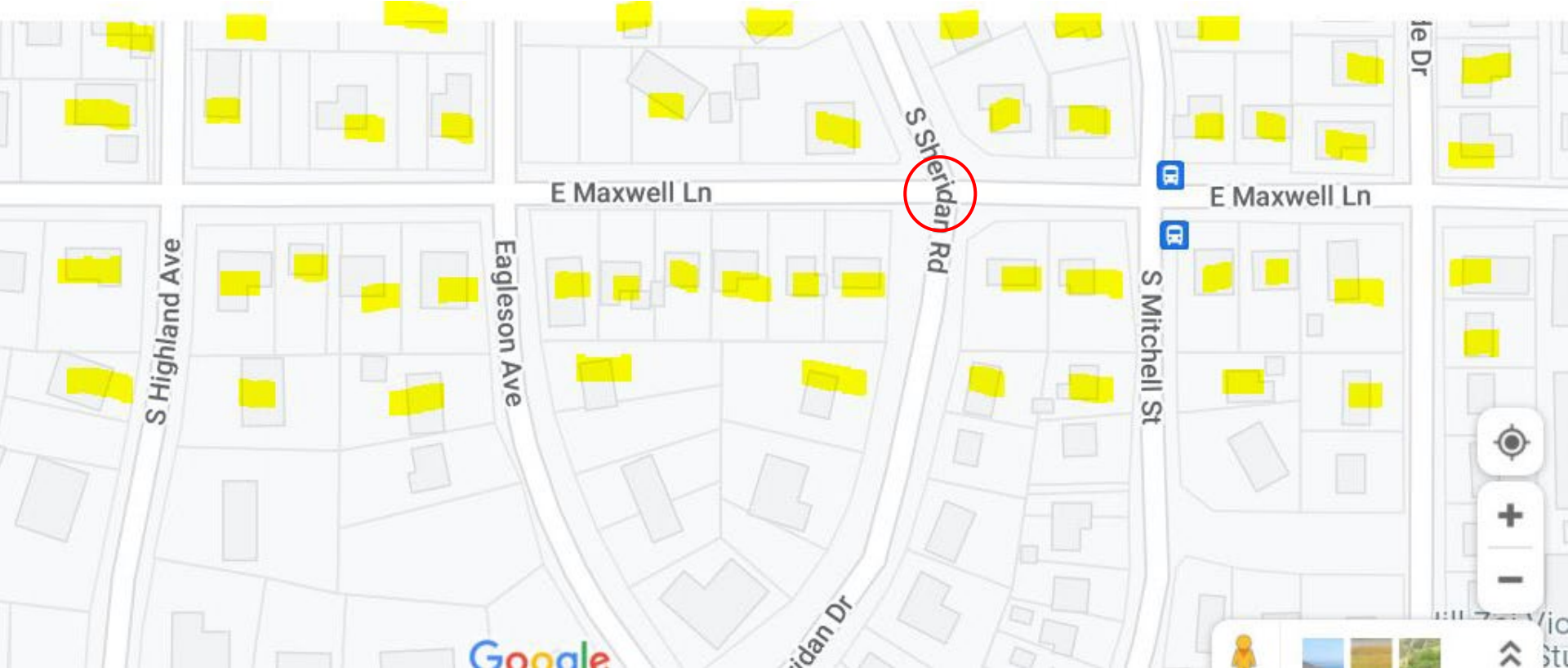
**North/South
Shortcut**



**Campus/East
Shortcut**



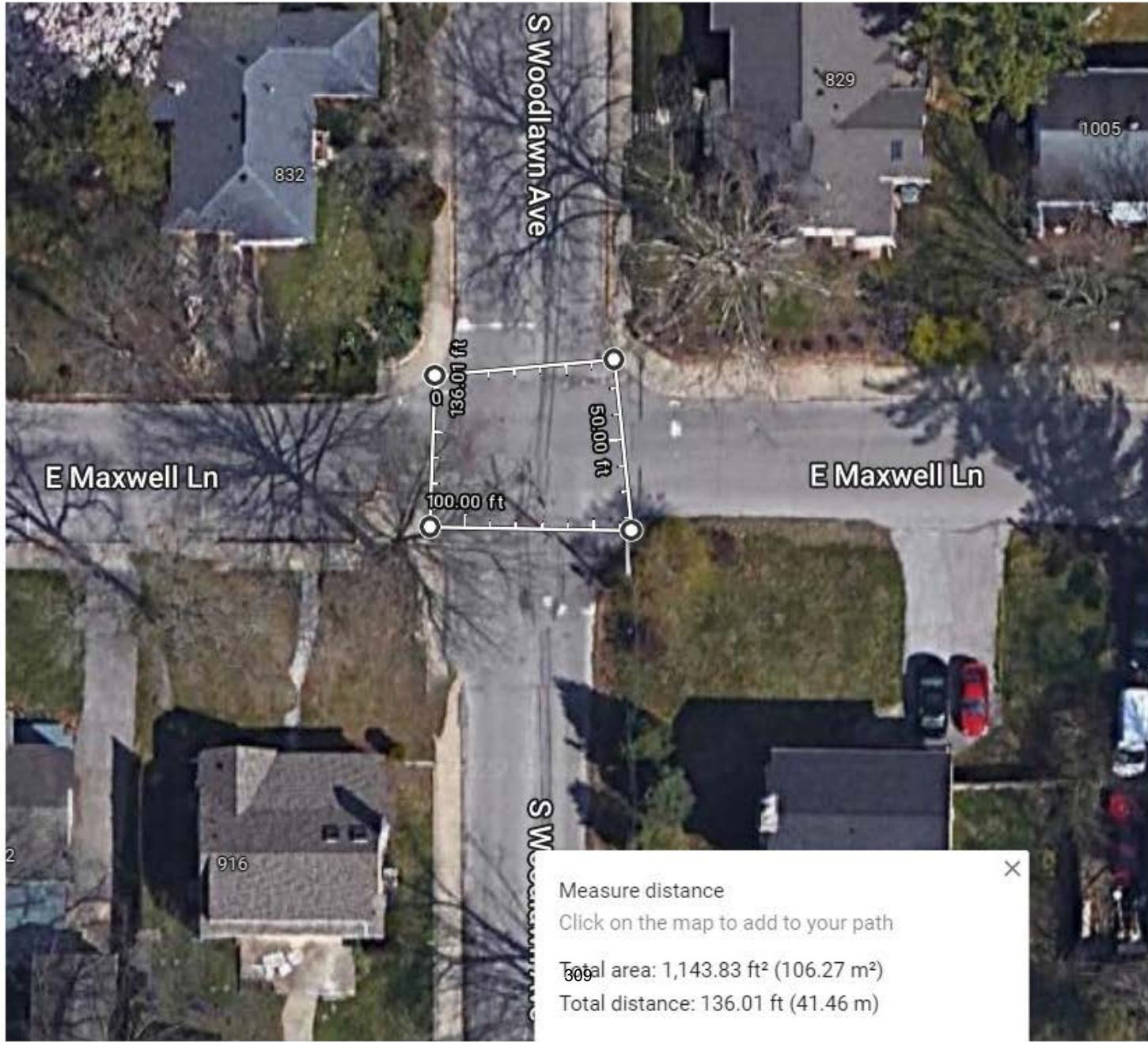
Affected Housing Units (AHUs): 48



AHUs with children under 18:	9
AHUs with adults 65+ :	16
AHUs with disabled/mobility challenged individuals:	4
AHUs with pets:	6

actual results may be higher - these results represent the minimum to my knowledge

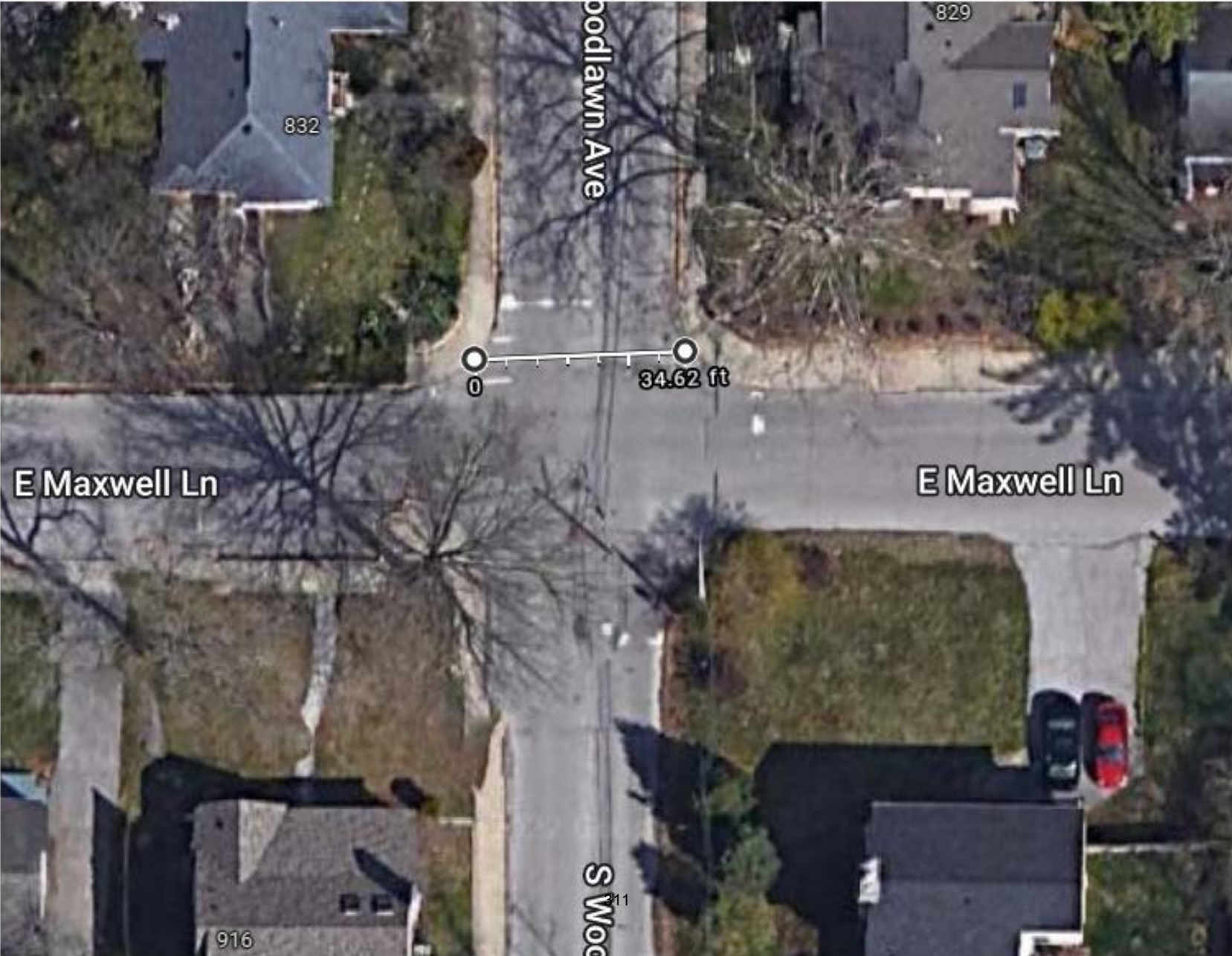
Total Area: Maxwell Ln. & Woodlawn Ave. Intersection



Total Area: Maxwell Ln. & Sheridan Dr. Intersection



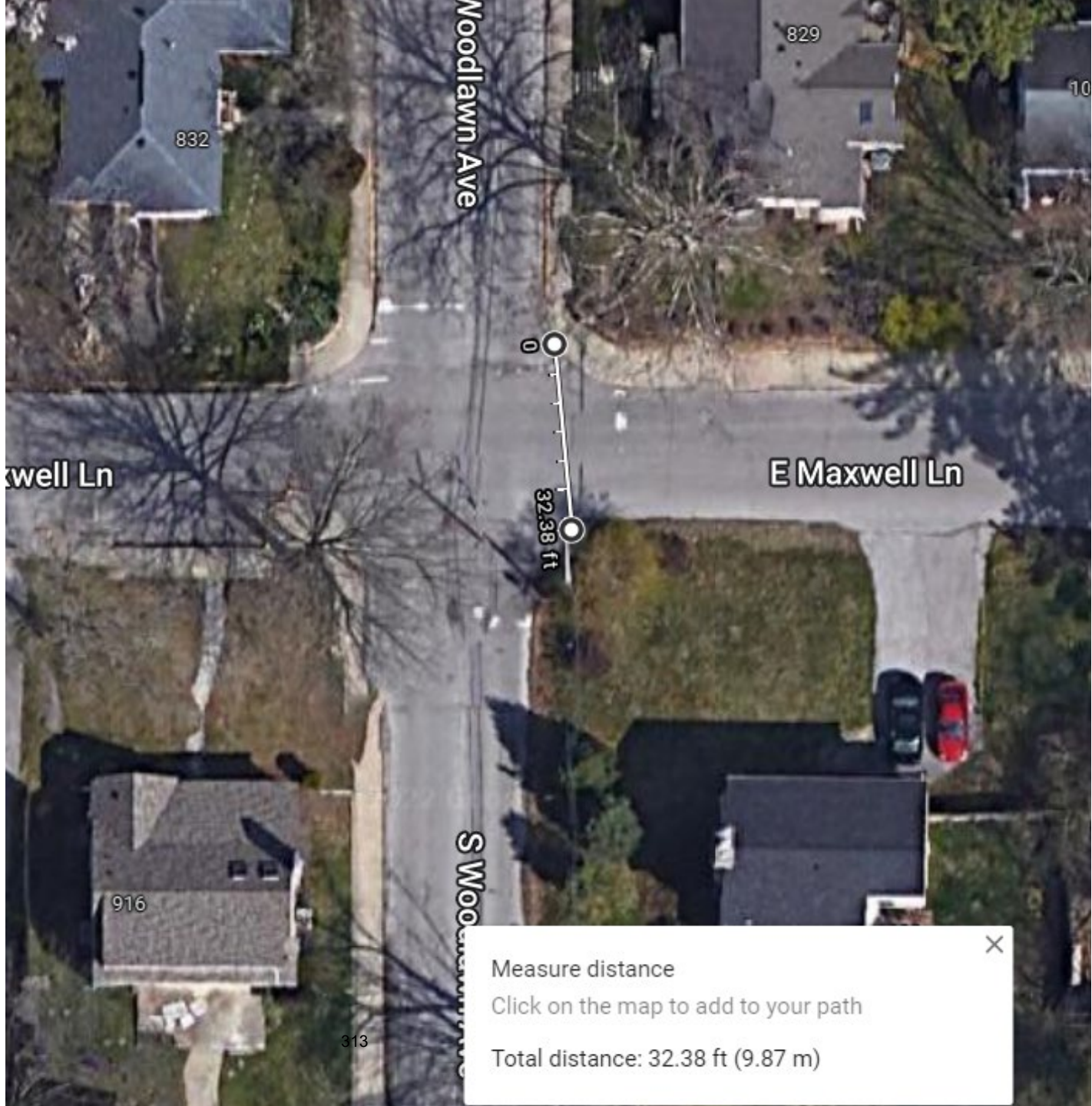
Crossing Distance: Maxwell Ln. & Woodlawn Ave. Intersection (west to east)



Crossing Distance: Maxwell Ln. & Sheridan Dr. Intersection (west to east)

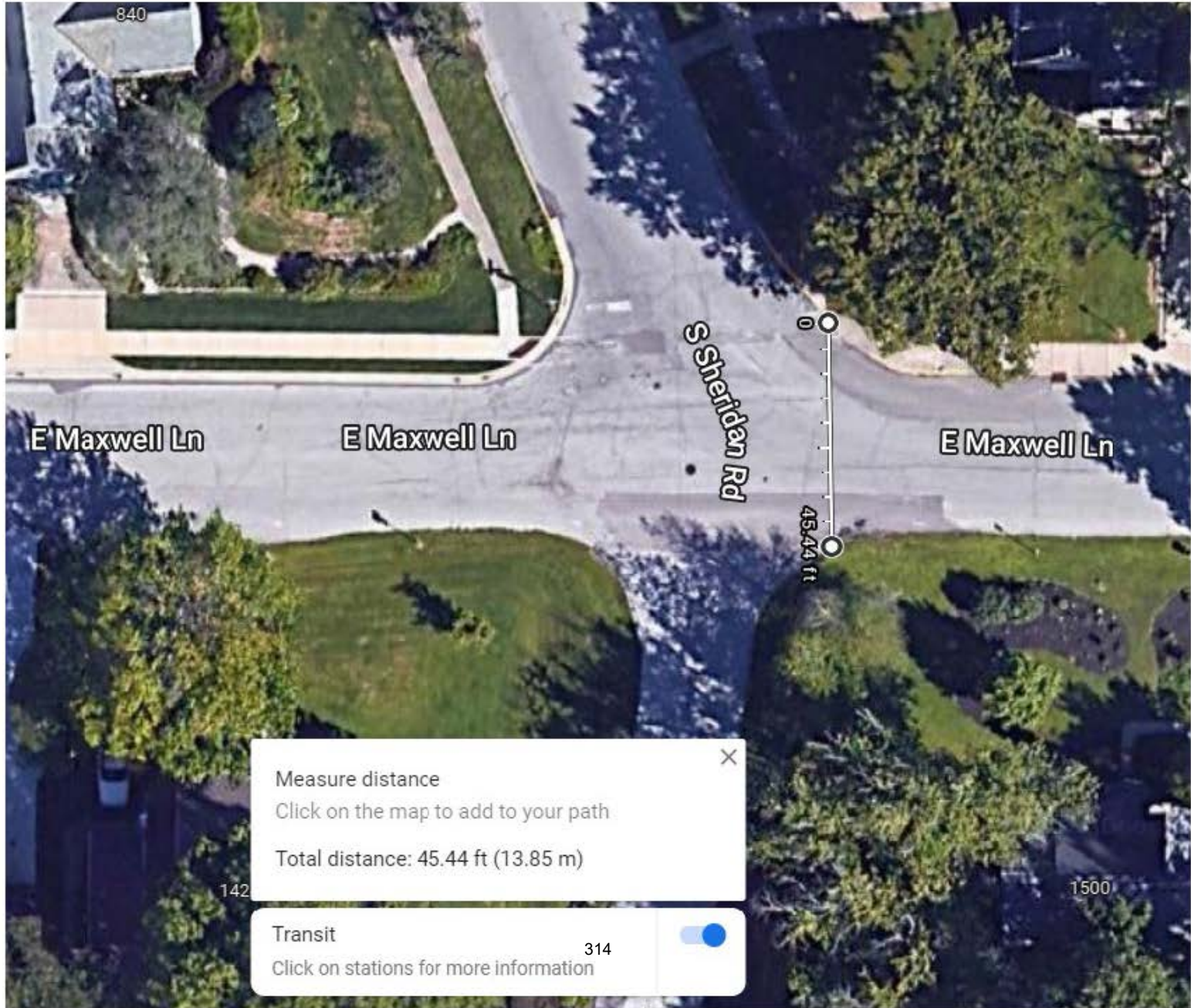


**Crossing Distance:
Maxwell Ln. &
Woodlawn Ave.
Intersection
(north to south)**

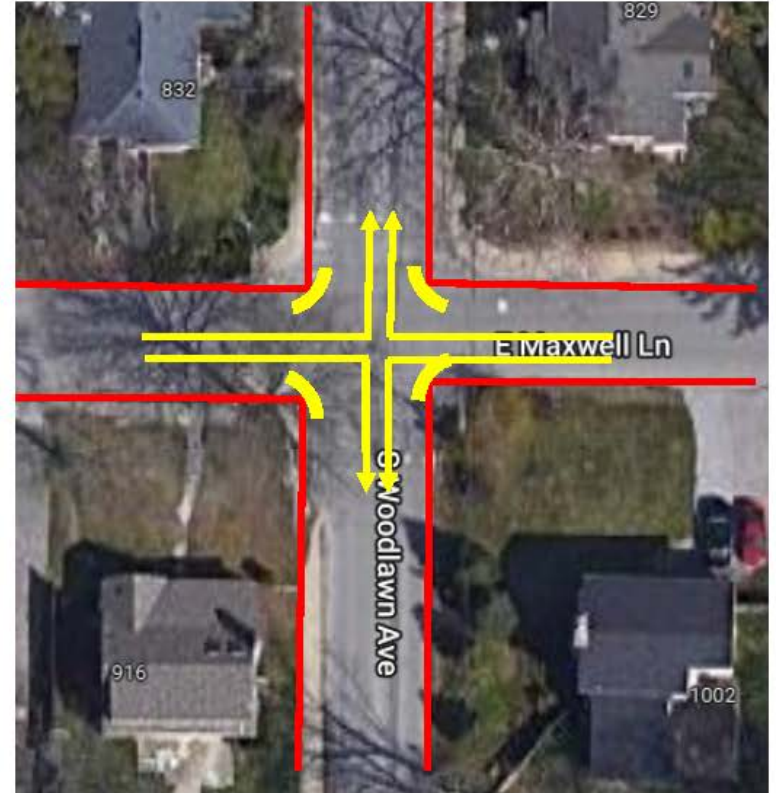
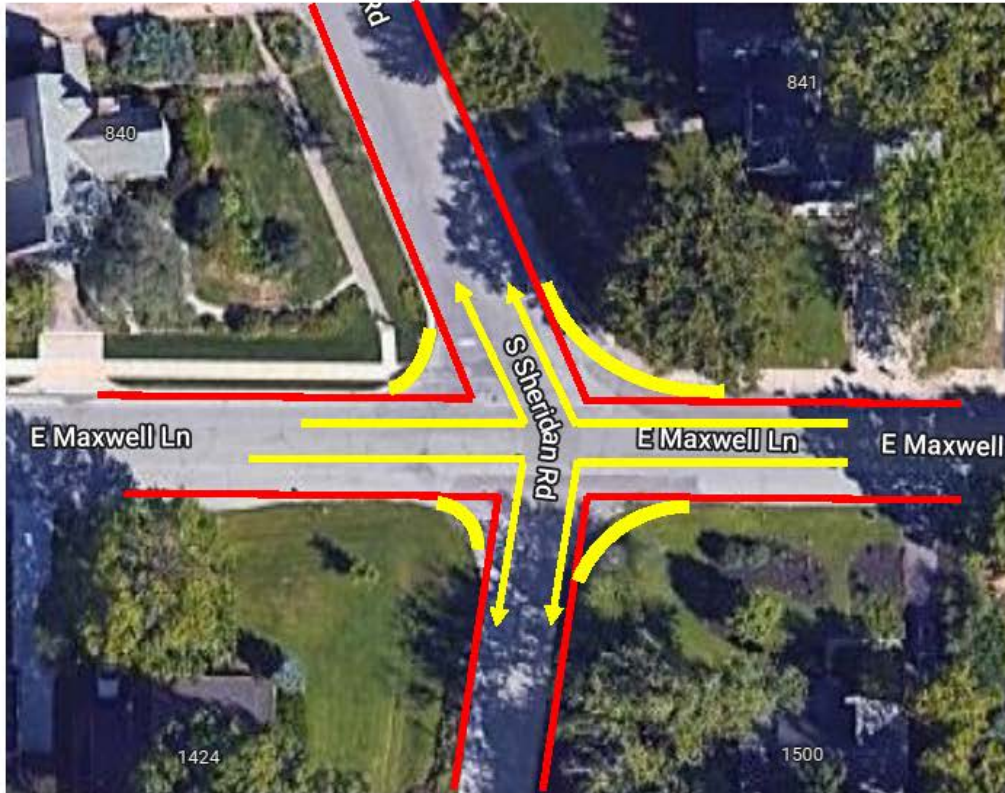


Measure distance ✕
Click on the map to add to your path
Total distance: 32.38 ft (9.87 m)

Crossing Distance: Maxwell Ln. & Sheridan Dr. Intersection (north to south)



Physical Characteristics: Maxwell Ln & Sheridan Dr. versus Maxwell Ln. & Woodlawn Ave.



800 S WOODLAWN AVE



Maxwell (west)

Woodlawn (north)

Stella the
Sheepadoodle



Maxwell (west)

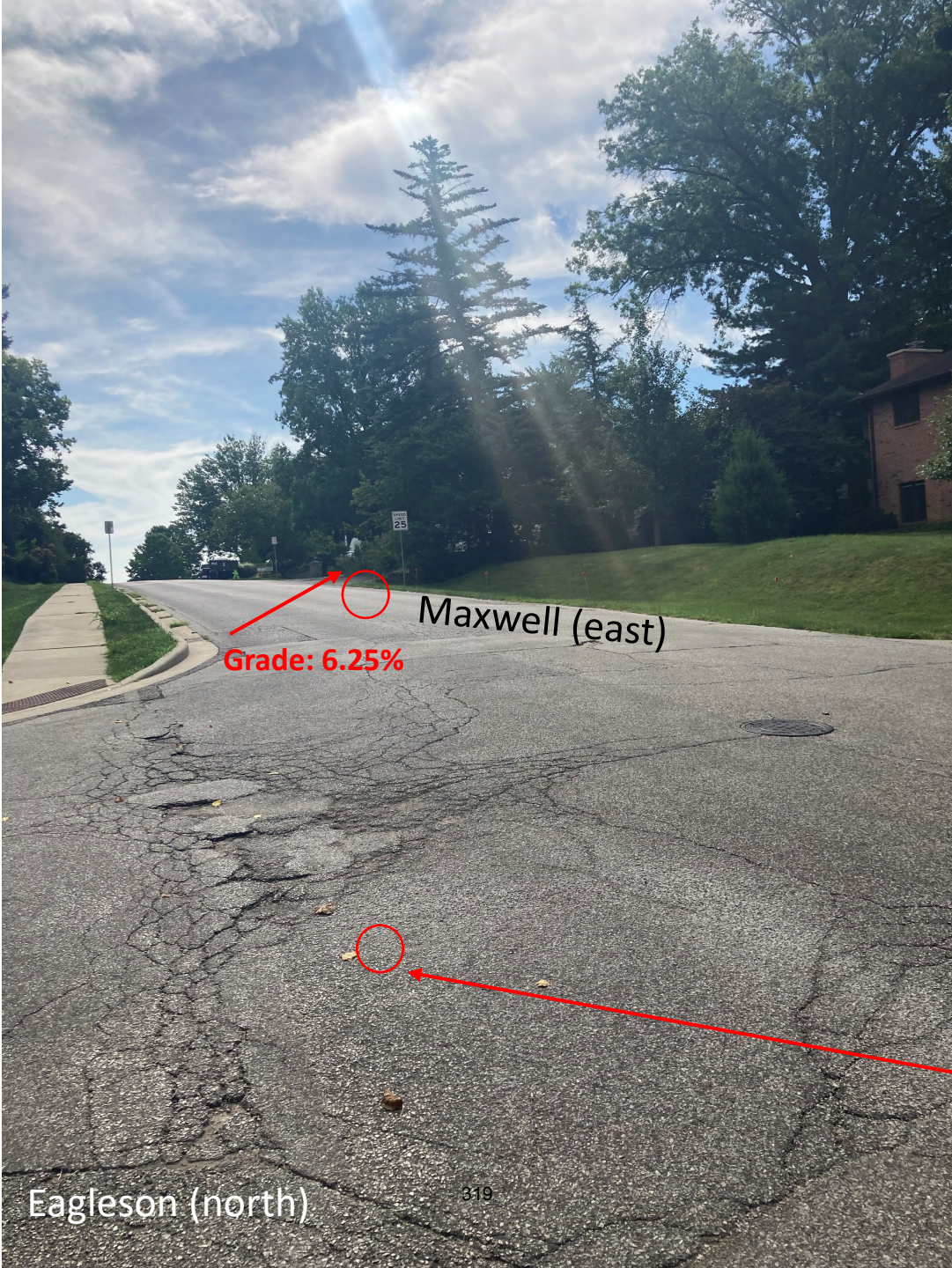
Sheridan (north)



Grade: 8.3%

Maxwell (east)





Maxwell (east)

Grade: 6.25%

Grade: 7.3%

Eagleson (north)

319



Grade: 5.2%

Maxwell (east)



Maxwell (west)

Grade: 5.2%

800 S Sheridan Dr

Maxwell



Grade: 6.25%

Maxwell (east)

Sheridan (north)

Maxwell (looking west); car cresting the hill from the pedestrian's point of view



Manual on Uniform Traffic Control Devices (MUTCD): “Guidance”

The MUTCD guidance for all-way stop installations states that intersections “should” meet one of the following:

1. An interim measure while awaiting traffic signals (not applicable)
2. Five or more reported crashes in a 12-month period that are susceptible to correction by a multi-way stop*
 - “Reported Crashes”
 - Proactive vs. reactive approach
3. Minimum volume thresholds*
 - Conditions warranted by MUTCD vs. residential reality
 - Pedestrian, bicycle and vehicular
4. Meeting a combination of the above criteria to at least 80% of values

** indicated by Engineering as not applicable in the July 27th report*

Manual on Uniform Traffic Control Devices (MUTCD): “Guidance”

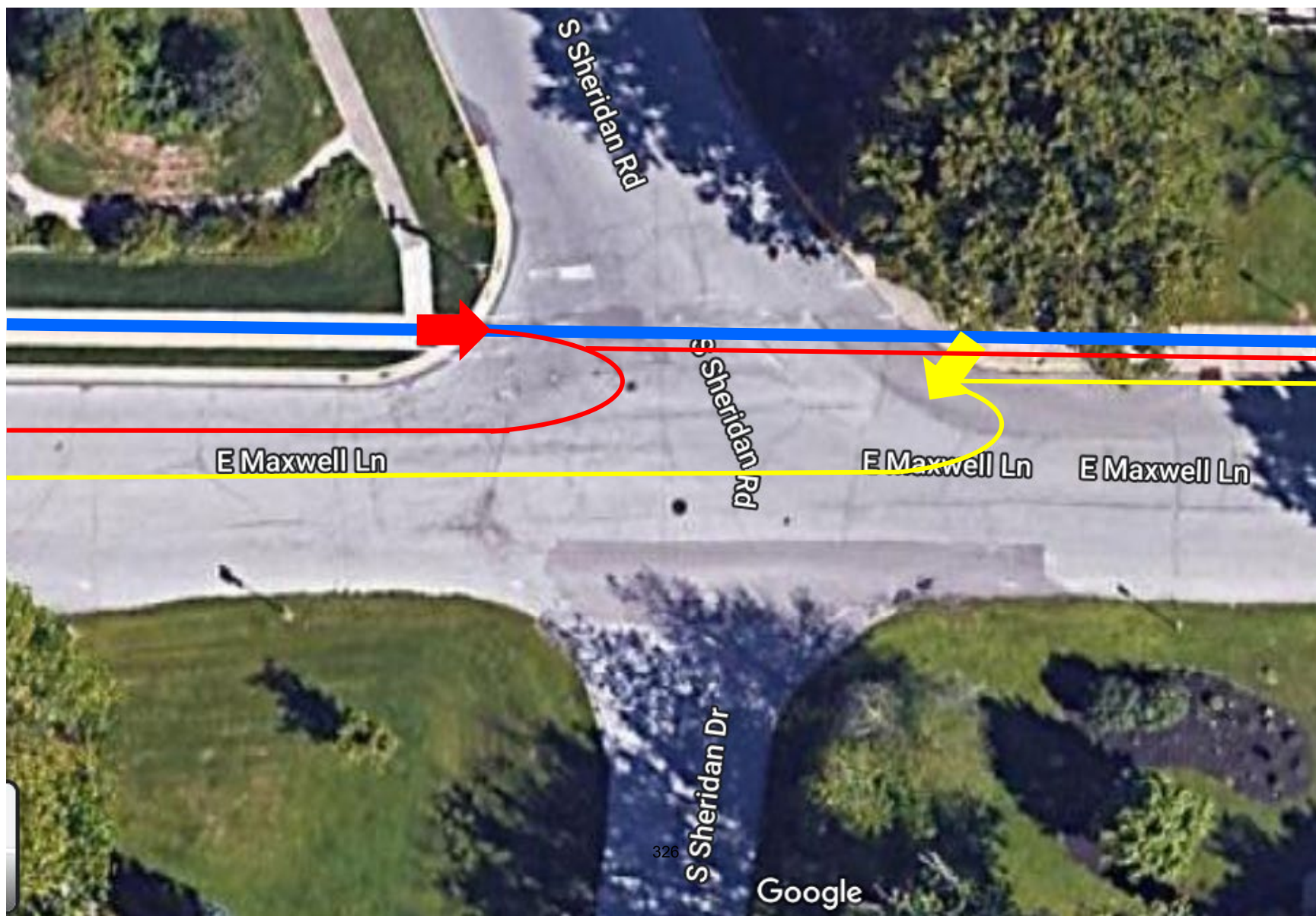
The MUTCD lists several considerations that “might” influence the decision regarding the appropriate street upon which to install a STOP sign where two streets with relatively equal traffic volumes and/or characteristics intersect. These include:

1. Stopping the direction that conflicts the most with established pedestrian crossing activity or school walking routes ^
2. Stopping the direction that has obscured vision, dips, bumps that already require drivers to use lower operating speeds ^
3. Stopping the direction that has the longest uninterrupted flow approaching the intersection ^
4. High speeds or restricted view indicate a need for control by the stop sign ^
5. The need to control vehicle-pedestrian conflicts near locations that generate high pedestrian volumes *
6. Locations where a road user, after stopping, cannot see conflicting traffic and is not able to reasonably safely negotiate the intersection unless conflicting cross traffic is also required to stop *
7. The need to control left-turn conflicts *

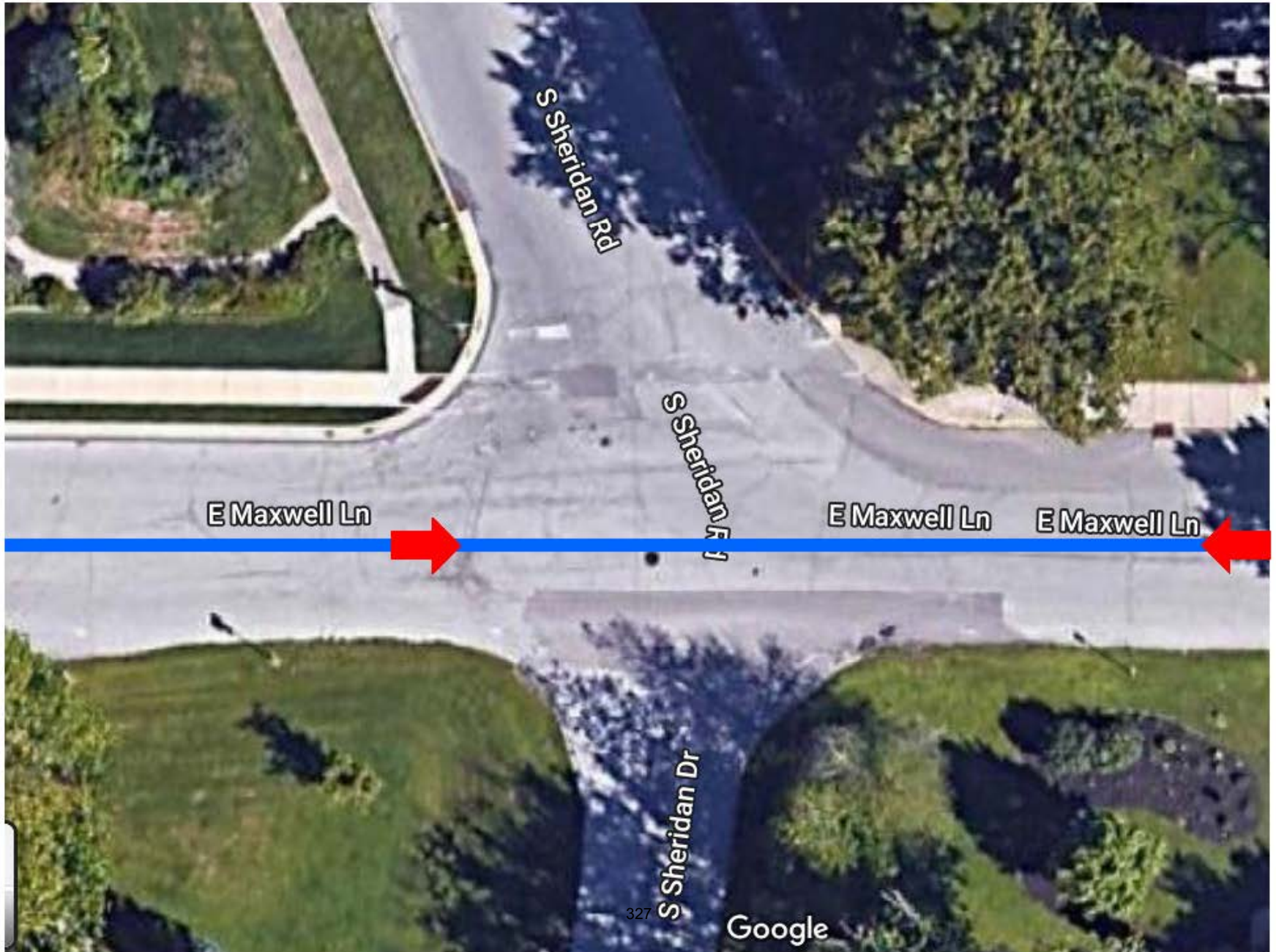
^ not acknowledged by Engineering in the July 27th report

** indicated by Engineering as not applicable in the July 27th report*

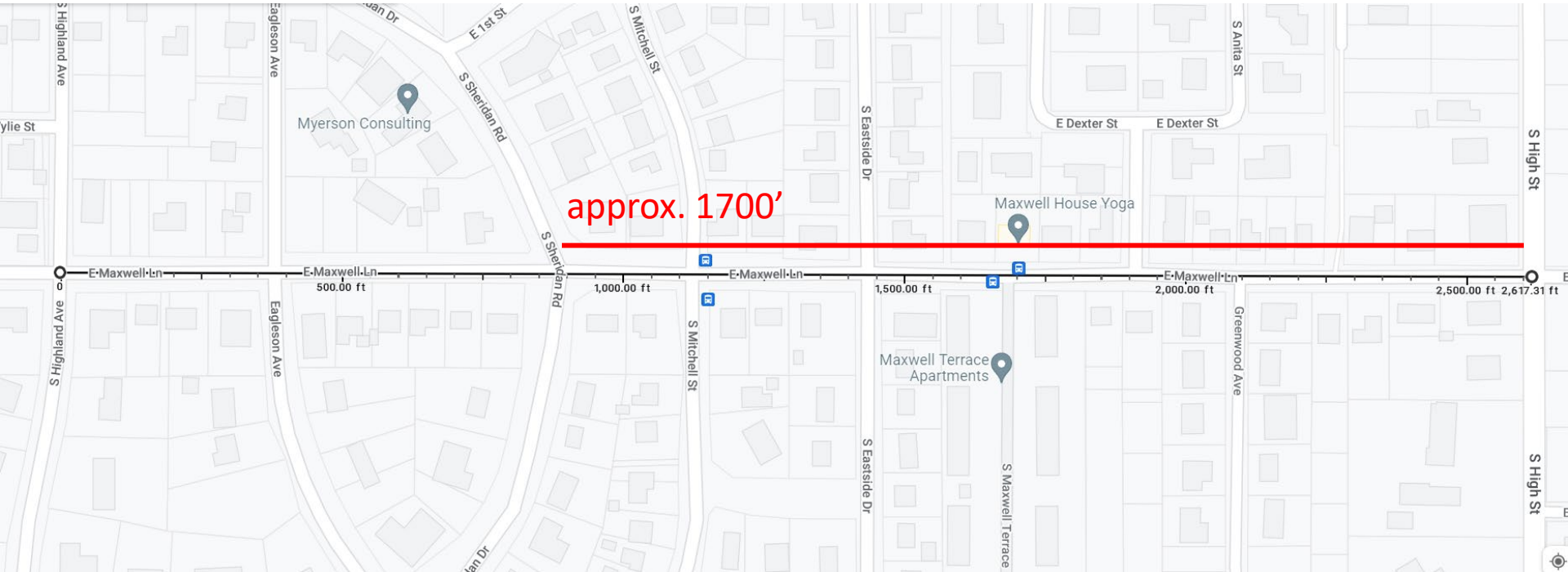
- *Stopping the direction that conflicts the most with established pedestrian crossing activity or school walking routes ^*
- *The need to control vehicle-pedestrian conflicts near locations that generate high pedestrian volumes **



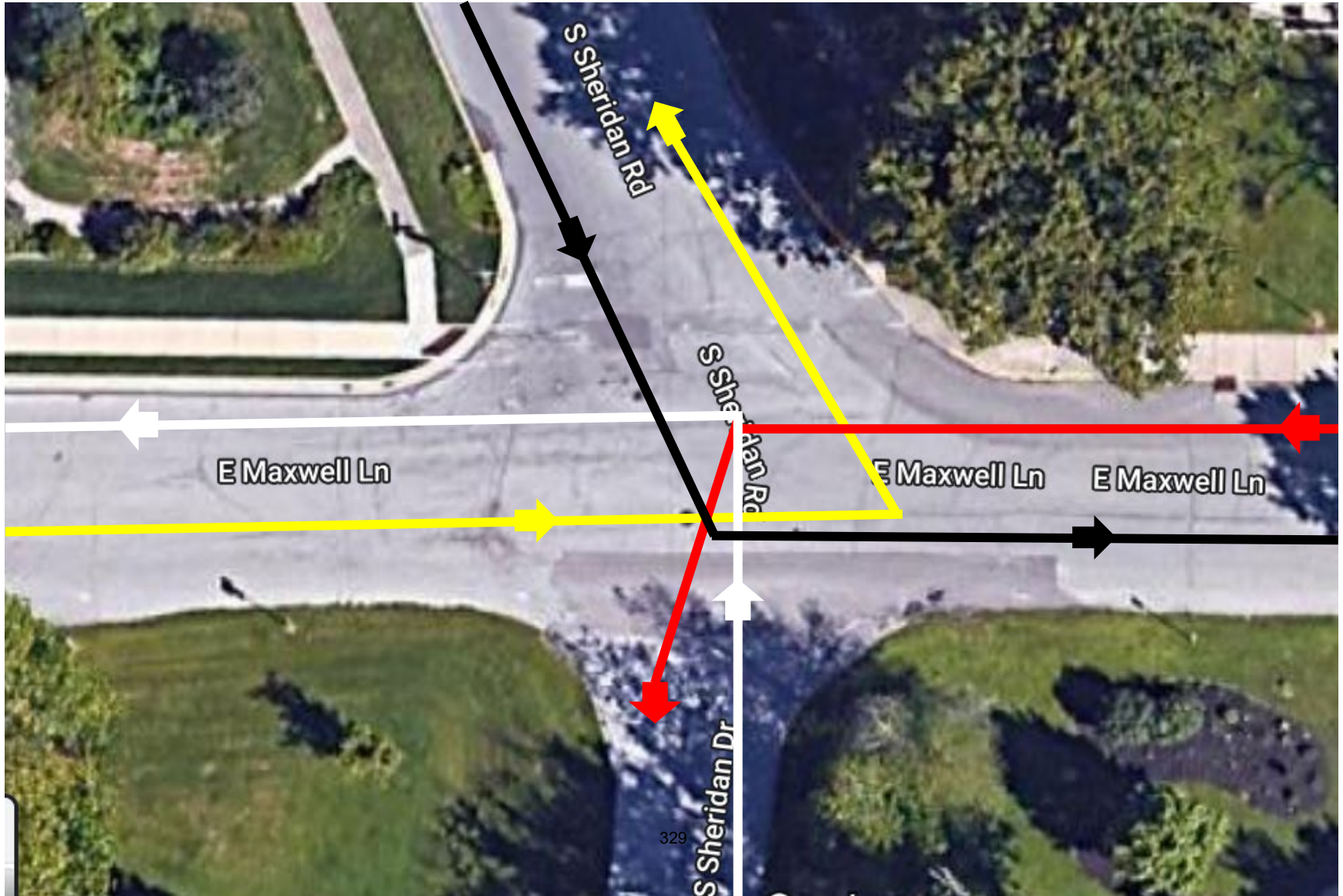
Stopping the direction that has obscured vision ^



Stopping the direction that has the longest uninterrupted flow approaching the intersection ^



- *Locations where a road user, after stopping, cannot see conflicting traffic and is not able to reasonably safely negotiate the intersection unless conflicting cross traffic is also required to stop **
- *The need to control left-turn conflicts **



Considerations: visual narrowing with paint



2nd St. & Washington St.



Sheridan Dr. between
Ballantine Rd. & Hawthorne Dr.

Considerations: additional signage





S. Rogers St. (opposite
Batchelor Middle School)

Posted Speed Limit: 30MPH

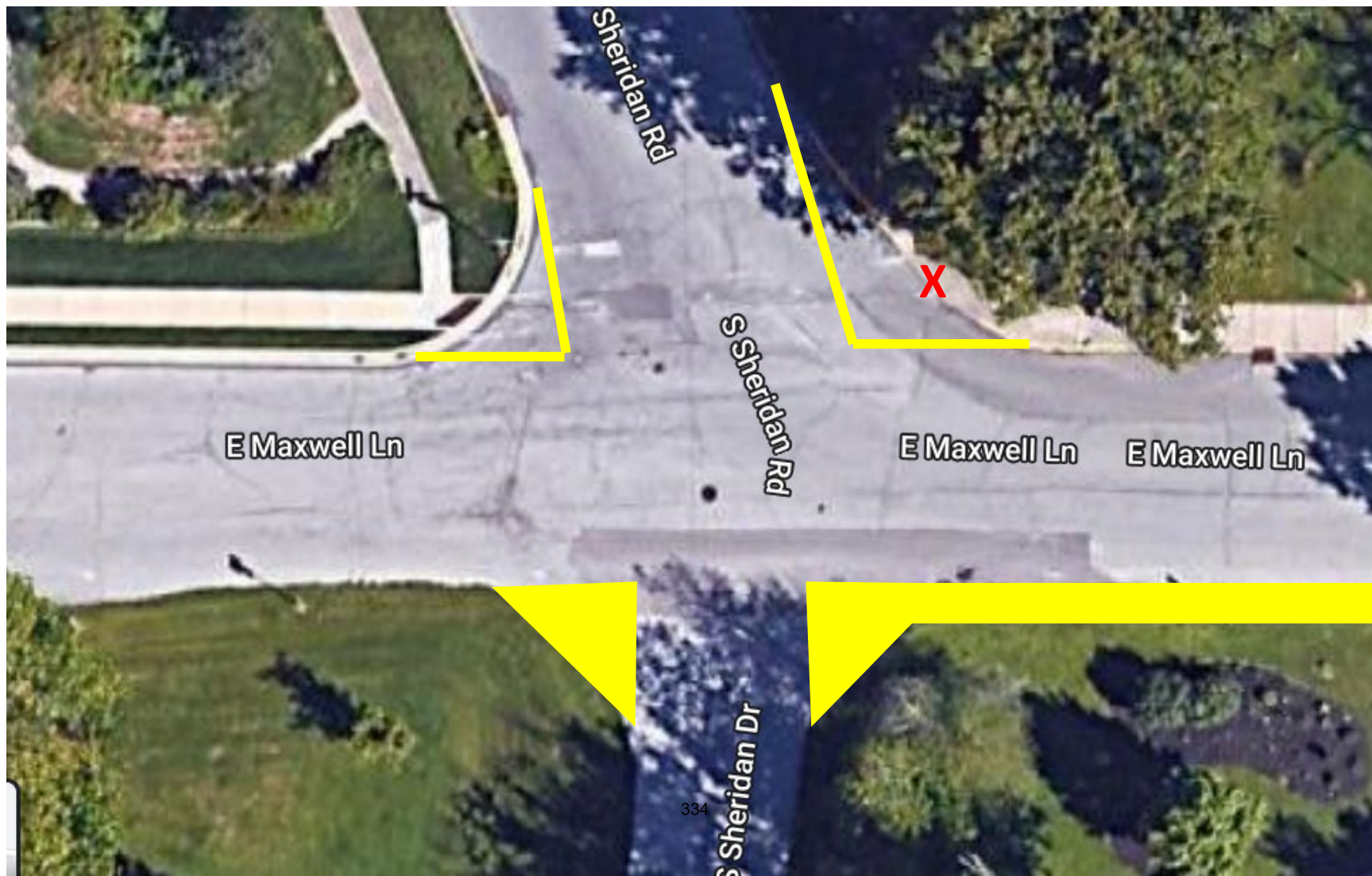
Considerations: “Your Speed” Signs



2nd St. opposite
Rogers/Binford Elementary

Considerations: Potential Re-Engineering of the Intersection

- New design for bisection
- Crosswalk apron on south-east (and potentially south-west) corner
- New sidewalk on south-east to join to Mitchell St.
- ADA ramp compliance





Moore's Pike & Smith Rd.



W. Kirkwood Ave. & W. 3rd St.





**MEMO FROM COUNCIL OFFICE ON:
(Updated October 28, 2022)**

Ordinance 22-15 – To Vacate a Public Parcel - Re: A 12-Foot Wide Alley Segment Running East/West between the B-Line Trail and the First Alley to the West, North of 7th Street and South of 8th Street (Peerless Development, Petitioner)

Synopsis

The petitioner, Peerless Development, requests vacation of a segment of an alley running east/west between the B-Line Trail and an alley to the west and situated north of 7th Street and south of 8th Street in order to continue using the right-of-way as part of the Johnson's Creamery site and to allow for a proposed development at 335 W. 8th Street.

Relevant Materials

- Ordinance 22-15
- Staff Report from Planning and Transportation
- Petition for Vacation of Public Right-of-Way
 - Pre-Petition Review Request Letter from Peerless Development
 - Legal Description
 - ALTA/NSPS Land Title Survey
 - 1940 Company Site Plan
 - 1993 Demolition Plan
 - Aerial photos of site circa 1993
- Conceptual Rendering and Site Plan for potential development
- Aerial Map with Alley Segment Highlighted
- Current photos of site and alley
- Presentation slides used by Administration to detail suggested requests to be made of Petitioner
- [*new material*] Petitioner's Statement dated October 26, 2022 re: Request for Alley Vacation at Johnson's Creamery site 400 W. 7th Street, Bloomington, Indiana

Update

This item was introduced for first reading on May 18, 2022 and was subsequently considered by the Council at meetings on May 25th, June 1st, June 15th, and July 20th. On July 20, 2022, the ordinance was tabled by the Council in order to provide the Petitioner time to pursue relocating the alley in question. Council staff suggested that the Petitioner work with city administration staff to determine the best method for accomplishing this relocation. The ordinance now appears on the Council's November 2nd Regular Session agenda in anticipation of a motion to take the item from the table in order to place it back in front of the Council for consideration and possible final action.



The Petitioner has provided a statement (included herein) explaining efforts undertaken after the July 20th meeting to pursue a relocation of the alley through dedication of new right-of-way to the south of the existing alley. This mechanism would entail action by both the Common Council to vacate the existing alley and the Board of Public Works to accept the dedication of new public right-of-way. The Petitioner's statement explains that they feel somewhat caught in the middle of a process that would require approvals from both the City Council and the Board of Public Works, with each seemingly wanting some response from the other entity before taking final action.

Because of this, the Petitioner has inquired about the Council's ability to vote on the proposed alley vacation first but, in doing so, to either condition approval of Ordinance 22-15 or make it so the decision is reversible in the event a new alley is not accepted by the Board of Public Works. While the Petitioner's statement references an understanding or agreement with Council staff in this regard, please know that Council staff is still researching these questions and will update the Council and Petitioner as soon as possible.

Summary

Ordinance 22-15 proposes to vacate a 12-foot wide alley segment that bifurcates 400 W. 7th Street. The Petitioner, Peerless Development, owns the property surrounding this public right-of-way and is requesting the vacation to allow the site to be developed. Petitioner argues that the right-of-way has been informally vacated going back at least 80 years, as it had been occupied by Johnson Creamery buildings for decades and has been utilized as part of the Johnson Creamery Company property. The Plan Commission considered a major site plan approval for this property at its October 18, 2021 meeting (meeting packet available [here](#)).

Vacations of rights-of-way are governed by procedures contained in state law (IC § 36-7-3-12 and following statutes). In addition to state law requirements, Bloomington has adopted local procedures and criteria for public right-of-way vacations. In Bloomington, the process typically begins with a pre-petition review of an application submitted to the Planning and Transportation Department. Pre-petition materials submitted by the petitioner are reviewed, and all utility services, safety services, and the Board of Public Works are notified of the proposed action. Upon completion of the pre-petition review, staff and (typically) the Board of Public Works each make a recommendation on the request. Note that the Board of Public Works has not considered this petition. The Petitioner then submits the request to the Council Office, and, upon receipt of the petition, a date is set for the required public hearing, where remonstrances and objections must be heard. The public hearing for Ordinance 22-15 was held on June 1, 2022 at 6:30 p.m. The City Clerk must assure that owners of property abutting the right(s)-of-way (if any) are notified by certified mail of the proposed action. The Clerk must also advertise the hearing wherein the public may offer the Council its comments and objections.



In response to a question about the fiscal impact of this ordinance, Planning and Transportation Director Scott Robinson wrote that the act of vacating the ROW would not have a cost or impact to the city.

Senior Zoning Compliance Planner Elizabeth Carter also shared that relevant utilities were notified of the vacation request. The two responses she received are included below:

City of Bloomington Utilities: No concerns
Comcast: No issues with the ROW vacation

If additional utilities respond, those responses will be provided to the Council and made public.

Objections or grounds for remonstrance are generally limited by statute to questions of access, use of public ways, and the orderly development of the neighborhood or unit as a whole. (See IC § 36-7-3-13). Aside from a failure of notice or an instance of impropriety, there is little recourse for those who object to the denial of vacation of right-of-way. Under IC § 36-7-3-15, after the termination of a vacation proceeding, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two (2) years.

The Council's action to vacate a right-of-way must be done in the public interest, and the Council may consider whether there is a public benefit to granting the vacation. In [Resolution 87-02](#), the Council adopted the following criteria to guide its review of a request for right-of-way vacation:

1. Current Status – Access to Property: the current utilization of the right-of-way in question – as a means of providing vehicular or pedestrian access to private property, churches, schools, or other public places, for public utility or drainage purposes, or for other public purpose.
2. Necessity for Growth of the City:
 - a. Future Status – the future potential for public utilization, possible future need for the right-of-way due to future changes in land use;
 - b. Proposed Private Ownership Utilization – the proposed utilization of parcel in question if it reverts to private ownership, potential for increased benefit to the City under private ownership (does the proposed use contribute to the orderly growth of the City);
 - c. Compliance with regulations – the effect of vacation upon compliance with all applicable regulations: subdivision, zoning, access control, off-street parking (does the vacation present a non-compliance problem or hinder future compliance upon anticipated development or change of use?);



City of Bloomington Indiana

City Hall | 401 N. Morton St. | Post Office Box 100 | Bloomington, Indiana 47402

Office of the Common Council | (812) 349-3409 | Fax: (812) 349-3570 | email: council@bloomington.in.gov

- d. Relation to Plans – the relationship of vacation with the Master Plan, Thoroughfare Plan, Neighborhood Plans, or any special studies that might apply.

In the event the Council adopts Ordinance 22-15, the Clerk must then file a copy with the County Recorder and the County Auditor.

Contact

Scott Robinson, Director, Planning and Transportation, robinsos@bloomington.in.gov, (812) 349-3566

Eric Greulich, Senior Zoning Planner, Planning and Transportation, greulice@bloomington.in.gov, (812) 349-3526

ORDINANCE 22-15

TO VACATE A PUBLIC PARCEL -

Re: A 12-Foot Wide Alley Segment Running East/West between the B-Line Trail and the First Alley to the West, North of 7th Street and South of 8th Street (Peerless Development, Petitioner)

WHEREAS, Ind. Code § 36-7-3-12 authorizes the Common Council to vacate public ways and places upon petition of persons who own or are interested in lots contiguous to those public ways and places; and

WHEREAS, the petitioner, Peerless Development, has filed a petition to vacate a parcel of City property more particularly described below;

WHEREAS, pursuant to I.C. § 36-7-3-16, the City received written communications from utility services regarding their interests in the right-of-way and those communications are on file and available for inspection at the City Planning and Transportation Department and the Clerk and Council Office at 401 North Morton Street, Bloomington, Indiana (47402); and

WHEREAS, pursuant to I.C. § 36-7-3-12(c), the City Clerk has provided notice to the owners of abutting property, if any, and published notice to the general public of the petition and public hearing on this matter, which will be held during the Common Council Regular Session on Wednesday, June 1st, 2022 at 6:30 p.m. in the Council Chambers, Room 115, of City Hall, 401 North Morton Street; and

WHEREAS, pursuant to I.C. § 36-7-3-12, upon vacation the City Clerk shall furnish a copy of this ordinance to the County Recorder for recording and to the County Auditor;

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

SECTION 1. Through the authority of I.C. § 36-7-3-12, one portion of City owned property shall be vacated as described below:

Being a part of a 12 foot public alley in the original plat of the Town of Bloomington, as shown in the plat thereof, recorded in Plat Book A, Page 5, in the Office of the Recorder of Monroe County, Indiana, described as follows:

Beginning at the Northwest corner of Inlot 295, thence North 00 degrees 21 minutes 11 second East, (Indiana State Plane, West Zone) 12.00 feet to the Southwest corner of Inlot 294; thence along the South line thereof North 89 degrees 42 minutes 40 seconds East 132.00 feet to the Southeast corner of said Inlot 294; thence South 00 degrees 21 minutes 11 seconds West 12.00 feet to the Northeast corner of said Inlot 295; thence along the North line thereof South 89 degrees 42 minutes 40 seconds West 132.00 feet to the point of beginning, containing 0.036 acres, more or less.

SECTION 2. If any section, sentence of 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 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
City of Bloomington

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

The petitioner, Peerless Development, requests vacation of a segment of an alley running east/west between the B-Line Trail and the first alley to the west and situated north of 7th Street and south of 8th Street in order to continue using the right-of-way as part of the Johnson's Creamery site and to allow for a proposed development at 335 W. 8th Street.

Note: This ordinance was revised after distribution in the Legislative Packet but before introduction at the May 18, 2022 Regular Session. The revision corrected the legal description of the property in question.



Planning & Transportation

Peerless Development Right- of-Way Vacation

Memorandum

To: Members of the City of Bloomington Common Council
From: Scott Robinson, Director of Planning & Transportation
Re: Peerless Development/Johnson Creamery Right of Way Vacation Request
Date: May 13, 2022

The Plan Commission approved Site Plan SP-27-21 at its October 18, 2021 meeting with a vote of 9 (for) to 0 (against). There is a condition of approval that the east-west alley between the Johnson Creamery and the proposed building be vacated. At the time of the hearing, staff was waiting for a final determination on if this alley had been previously vacated or not, thus this condition of approval was included.

Since then, there has been on-going discussions regarding the historic preservation of the Johnson Creamery site and safety issues with the iconic smokestack – unrelated to the approved site plan. Council has adopted a local historic district for the Johnson Creamery building and smokestack. Peerless Development is progressing towards smokestack modifications and safety improvements, but is waiting for AT&T to remove equipment. Now that the safety and historic preservation items have been addressed, this request can be considered.

Typically, this process includes a recommendation from the Board of Public Works. The Board of Public Works did not review or provide a recommendation to this request. It was decided to bring this before Council without this advisory step in the process. Peerless Development has expressed interest to have a decision on their request as soon as possible. They are in conversations with P&T staff about modifying their approved site plan, which would require the Plan Commission to consider these changes (the only change would be with the sustainable development incentives that are being used – changing from solar panels to low impact storm water management improvements). This is tentatively placed on the June 13th Plan Commission agenda pending a decision on this right of way request.

Technically, the alley may not have been fully utilized over time because of the railroad - today it is the B-line Trail - and the location of the iconic smokestack within the alley, which likely hindered access from the east. There are no public utilities within the alley. However, like any public land, this alley is a public asset/benefit. Given the proximity to the B-Line Trail, the historic Johnson Creamery Site, and potentially a new multifamily development with 60 units, the value of this alley may not serve public access needs, but its value to the area and context should be considered.

Staff recommends to vacate the alley upon Council's full discretion to consider both the technical benefits of the alley balanced with today's contextual needs of the area that support quality urban design and development.



City of Bloomington
Planning and Transportation Department

PETITION FOR VACATION OF PUBLIC RIGHT-OF-WAY

02/02/2022 (with Planning staff)
Filing Date 05/10/2022 (with Council Office) Ordinance # 22-15
Filing Fee Paid Yes BPW Resolution # N/A

1st Reading May 18, 2022
Committee May 25, 2022
Final Hearing June 1, 2022

Address of Property 400 W. 7th St. Bloomington, IN 47404

Applicant's Name Peerless Development - Michael Cordaro

Address 105 S. York St. Suite 350 Elmhurst, IL 60126 Phone (630) 712-2400
E-Mail mike@peerlesscap.com

Counsel or Consultant

Address Phone
E-Mail

This application must be accompanied by all required submittals as stated in the information packet for vacation of public right-of-way. Staff reserves the right to schedule hearing dates for petitions subject to complete submittals. Notices to adjacent property owners should not be mailed until hearing dates have been confirmed.

The undersigned agree that the applicant will notify all adjacent property owners by certified mail at the applicant's expense.

I (we) further agree that the applicant will cause a legal notice of this application to be published in a paper having general circulation in Bloomington at the applicant's expense.

I (we) certify that all foregoing information is correct and that I (we) are the owners (legal agents for owners) of property adjacent to the proposed vacation of public right-of-way which is the subject of this application.

Signature: [Handwritten Signature]

PUBLIC RIGHT-OF-WAY VACATIONS

PROCEDURE AND CRITERIA FOR COMMON COUNCIL REVIEW

Persons who own or have an interest in any lots or parts of lots contiguous to a public way or place in the City of Bloomington may file a petition for vacation of the public way or place with the Common Council of the City of Bloomington. This information packet contains instructions regarding the procedures and criteria for right-of-way vacation petitions.

The Common Council strongly advises petitioners to utilize the pre-petition review process. Because Indiana Statute requires a public hearing within thirty (30) days of petition to the Council, early submittals prior to review and notice to utilities and other owners may subject the petitioner to unnecessary continuances or denials. These problems can be avoided by the pre-petition review process.

CRITERIA

The criteria which the Common Council utilizes when reviewing a public right-of-way vacation request are as follows:

CURRENT STATUS-ACCESS TO PROPERTY:

The current utilization of the right-of-way in question--as means of providing vehicular or pedestrian access to private property, churches, schools, or other public places, for public utility or drainage purposes, or for other public purpose.

NECESSITY FOR GROWTH OF THE CITY:

Future Status: The future potential for public utilization, possible future need for the R.O.W. due to future changes in land use;

Proposed Private Ownership Utilization: The proposed utilization of parcel in question if it reverts to private ownership, potential for increased benefit to the City under private ownership (Does the proposed use contribute to City growth);

Compliance with Regulations: The effect of vacation upon compliance with all applicable regulations: subdivision, zoning, access control, off-street parking (Does the vacation present a non-compliance problem or hinder future compliance upon anticipated development or change-of-use);

Relation to Plans: The relationship of vacation with the Master Plan, Thoroughfare Plan, Neighborhood Plans, or any special studies that might apply.

PROCEDURE

The procedure for right-of-way vacation petitions involves two basic steps. First, a pre-petition review of the petition by Planning and Transportation Department staff; second, review and action by the Common Council. This procedure is detailed as follows:

I. Pre-petition Review by Planning and Transportation staff

- A. Petitioner should submit the following information to the Planning and Transportation staff:
 - 1. A letter requesting pre-petition review, explaining and justifying the proposed utilization of the right-of-way and addressing, in detail, the criteria for vacation;
 - 2. An accurate legal description of the proposed vacation;
 - 3. A site plan or sketch map, drawn to scale, showing the right-of-way for which vacation is requested, and the adjoining properties;
 - 4. A list of the names and addresses of owners of all property abutting the proposed vacation.
- B. The Planning and Transportation staff will then commence review of the submitted information and will consult with the various utilities (List is included in this packet) who may use the right-of-way. A recommendation will be made and petitioner will be notified that Planning and Transportation review is completed. Please allow 2-3 weeks for this review. The petition for vacation should be filed, by the petitioner, with the Common Council office following completion of this review by the Planning and Transportation staff.
- C. If easements for utilities within the right-of-way to be vacated are needed, the Planning and Transportation Department will contact the petitioner so that the documents can be prepared prior to petition to the Common Council.

II. Common Council Review and Action

- A. The petitioner should submit the following to the Common Council Office following completion of review by the Planning and Transportation staff:
 - 1. A completed petition for vacation of right-of-way;
 - 2. The Planning and Transportation staff will forward additional information provided by the petitioner and the Planning and Transportation staff recommendation to the Council Office.
- B. Upon submission of the above petition, the Council Office will set a date for the public hearing. This date will likely be a committee meeting following first reading of the vacation ordinance. Following first reading and committee/public hearing,

ordinance is scheduled for second reading and vote. At that meeting, the Council may vacate the public way or place, in which case the City Clerk shall furnish a copy of the vacation ordinance to the County Recorder and the County Auditor.

III. Appeal

Any person aggrieved by a vacation of public right-of-way may appeal the vacation to the Monroe County Circuit Court within (30) days of adoption of the ordinance.

ATTACHMENT A

UTILITIES AND CITY SERVICES TO BE NOTIFIED OF VACATION REQUESTS

Board of Public Works

812-349-3410
Director
P.O. Box 100
Bloomington, IN 47402

Fire & Ambulance

812-332-9763
Fire Chief
P.O. Box 100
Bloomington, IN. 47402

Vectren Gas Co.

812-330-4008
1-800-666-2853
Superintendent
205 S. Madison St.
P.O. Box 966
Bloomington, IN. 47402

Duke Energy

812-336-6371
Manager
P.O. Box 1028
Bloomington, IN. 47402

Comcast

812-332-4152
2051 W. Vernal Pike
Bloomington, IN. 47401

Utilities Department

812-339-1444 (Ext. #206)
Utility Engineer
P.O. Box 100
Bloomington, IN 47402

Police Department

812-349-4477
Chief of Police
P.O. Box 100
Bloomington, IN 47402

TCl of Indiana, Inc.

812-332-9185
1600 W. 3rd St.
P.O. Box 729
Bloomington, IN 47402

AT&T Indiana Bell

812-334-4597
Engineering Dept.
4517 E. Indiana Bell Ct.
Bloomington, IN 47402

ITS

812-349-3454
Director
P.O. Box 100
Bloomington, IN 47402

Peerless Development
105 South York Street
Suite 450
Elmhurst, IL 60126



May 13, 2022

Planning and Transportation Department
Bloomington, IN

RE: 400 W. 7th St. / 335 W. 8th St. - Alley Vacation: Pre-Petition Review Request – Revis. 1

Dear Planning and Transportation Department,

As part of the Petition for the Vacation of a Public Right-of-Way, we are providing this letter to serve as a Pre-Petition Review Request for the Planning and Transportation Departments use and reference.

The Legal description for the Right-of-Way in question is provided in the attached Exhibit A dated 5/12/22.

This Right-of-Way is currently used as a drive aisle for vehicular access to the rear parking lot of the building located at 400 W. 7th St. (The Johnson Creamery Building). This Right-of-Way also currently houses the Johnson Creamery Smokestack structure and associated brick maintenance & equipment building for the Johnson Creamery building and provides access to these structures for repair and maintenance. These structures have been located within this Right-of-Way since approximately 1949. In addition to these structures, there was formerly a pair of one-story brick buildings with served as loading docks and service/maintenance garages for the Johnson Creamery business. These buildings were in place as early as 1940 (See attached Johnson Creamery Company site plan dated September 1940 for reference) and were demolished in approximately 1993 (See attached Demolition Plan drawing dated 10/25/93 and aerial photos for reference). For all intents and purposes, this Right-of-Way has been informally vacated since at least 1940 and utilized as part of the Johnson Creamery Company property.

We are requesting that this Right-of-Way be formally vacated by the City of Bloomington to allow it to continue to be utilized as it has for the past 80+ years as part of the Johnson Creamery Company site. We do not believe that the act of vacating this Right-of-Way will in any way impact current subdivision, zoning, access control, or parking regulations to the best of our knowledge.

Peerless Development
105 South York Street
Suite 450
Elmhurst, IL 60126



Currently, there is only (1) property owners that relate to the Right-of-Way in question, since it bifurcates the single property located at 400 W. 7th St. That Owner entity is as follows:

400 W 7th LLC
Michael Cordaro (Sole Mbr)
C/O Peerless Development
105 S. York St.
Suite 350
Elmhurst, IL 60126

Please do not hesitate to call or email with any questions you might have regarding this topic.

Thank you
Joseph Patrick

Director of Development
Peerless Development

Attachment: Exhibit A, 5/12/22

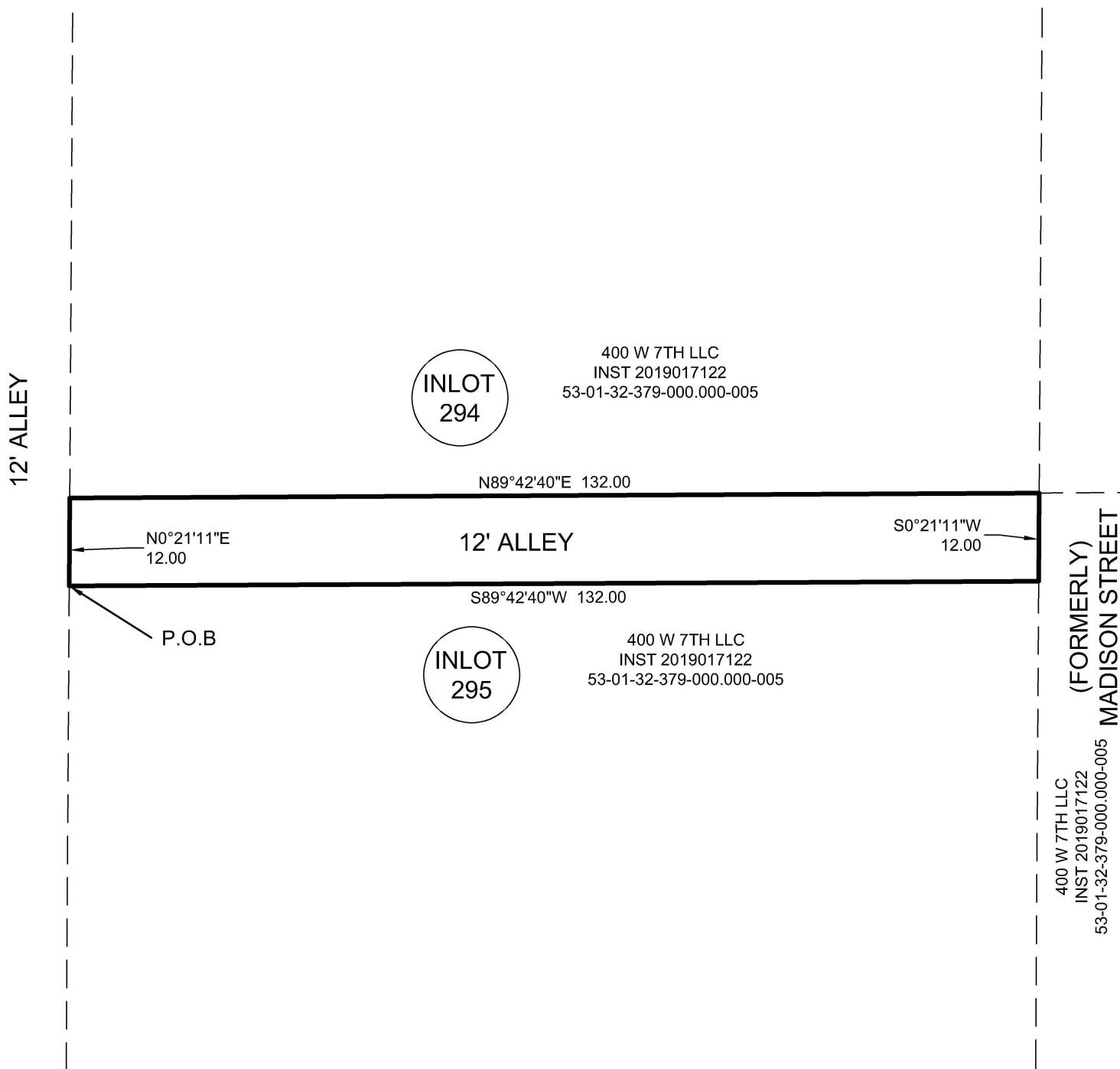
EXHIBIT 'A'

12' ALLEY

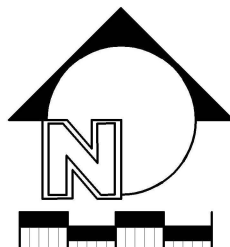
LEGAL DESCRIPTION

BEING A PART OF A 12 FOOT PUBLIC ALLEY IN THE ORIGINAL PLAT OF THE TOWN OF BLOOMINGTON, AS SHOWN IN THE PLAT THEREOF, RECORDED IN PLAT BOOK A, PAGE 5, IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF INLOT 295, THENCE NORTH 00 DEGREES 21 MINUTES 11 SECONDS EAST (INDIANA STATE PLANE, WEST ZONE) 12.00 FEET TO THE SOUTHWEST CORNER OF INLOT 294; THENCE ALONG THE SOUTH LINE THEREOF NORTH 89 DEGREES 42 MINUTES 40 SECONDS EAST 132.00 FEET TO THE SOUTHEAST CORNER OF SAID INLOT 294; THENCE SOUTH 00 DEGREES 21 MINUTES 11 SECONDS WEST 12.00 FEET TO THE NORTHEAST CORNER OF SAID INLOT 295; THENCE ALONG THE NORTH LINE THEREOF SOUTH 89 DEGREES 42 MINUTES 40 SECONDS WEST 132.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.036 ACRES, MORE OR LESS.



NOTE:
THIS EXHIBIT WAS PREPARED BASED UPON DOCUMENTS OBTAINED FROM THE OFFICE OF THE RECORDER OF MONROE COUNTY, AND OTHER SOURCES AND IS NOT INTENDED TO BE REPRESENTED AS A RETRACEMENT OR ORIGINAL BOUNDARY SURVEY, A ROUTE SURVEY OR A SURVEYOR LOCATION REPORT.



**SMITH
DESIGN
GROUP**

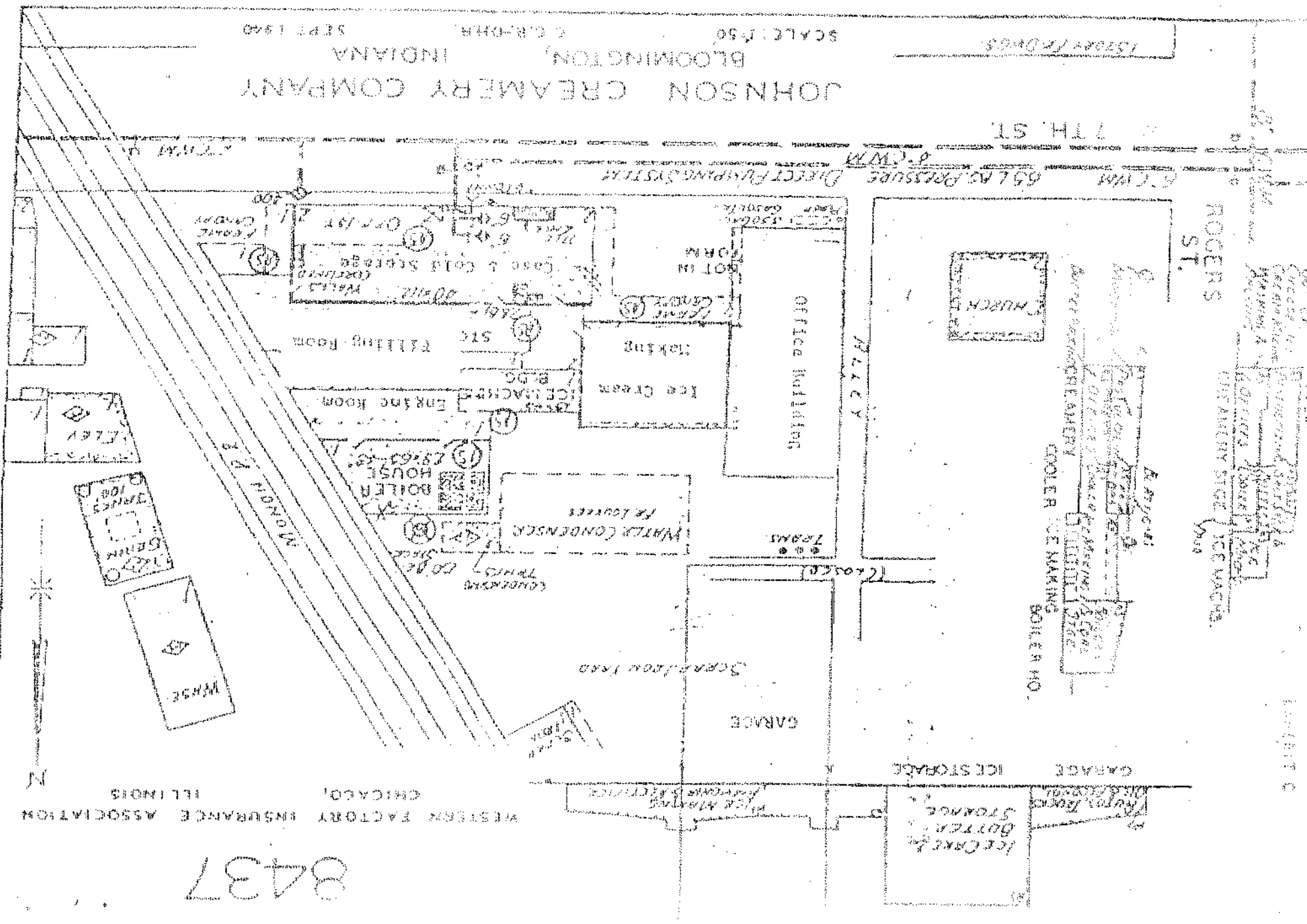
CIVIL ENGINEERING - LAND SURVEYING
2755 E Canada Dr Suite 101 Bloomington, IN 47401
(812) 336-6536 - smithdgroup.com
JOB:6028 DATE:05/12/2022 PAGE: 1/1

JOHNSON CREAMERY COMPANY
 BLOOMINGTON, INDIANA
 SCALE 1" = 50'
 E. C. BROWN
 SEPT 1940

157084 (P. DWG. 5)

77TH ST.

ROGERS ST.



WESTERN FACTORY INSURANCE ASSOCIATION
 CHICAGO, ILLINOIS

8437



SCALE : 1" = 20'

BENCHMARK

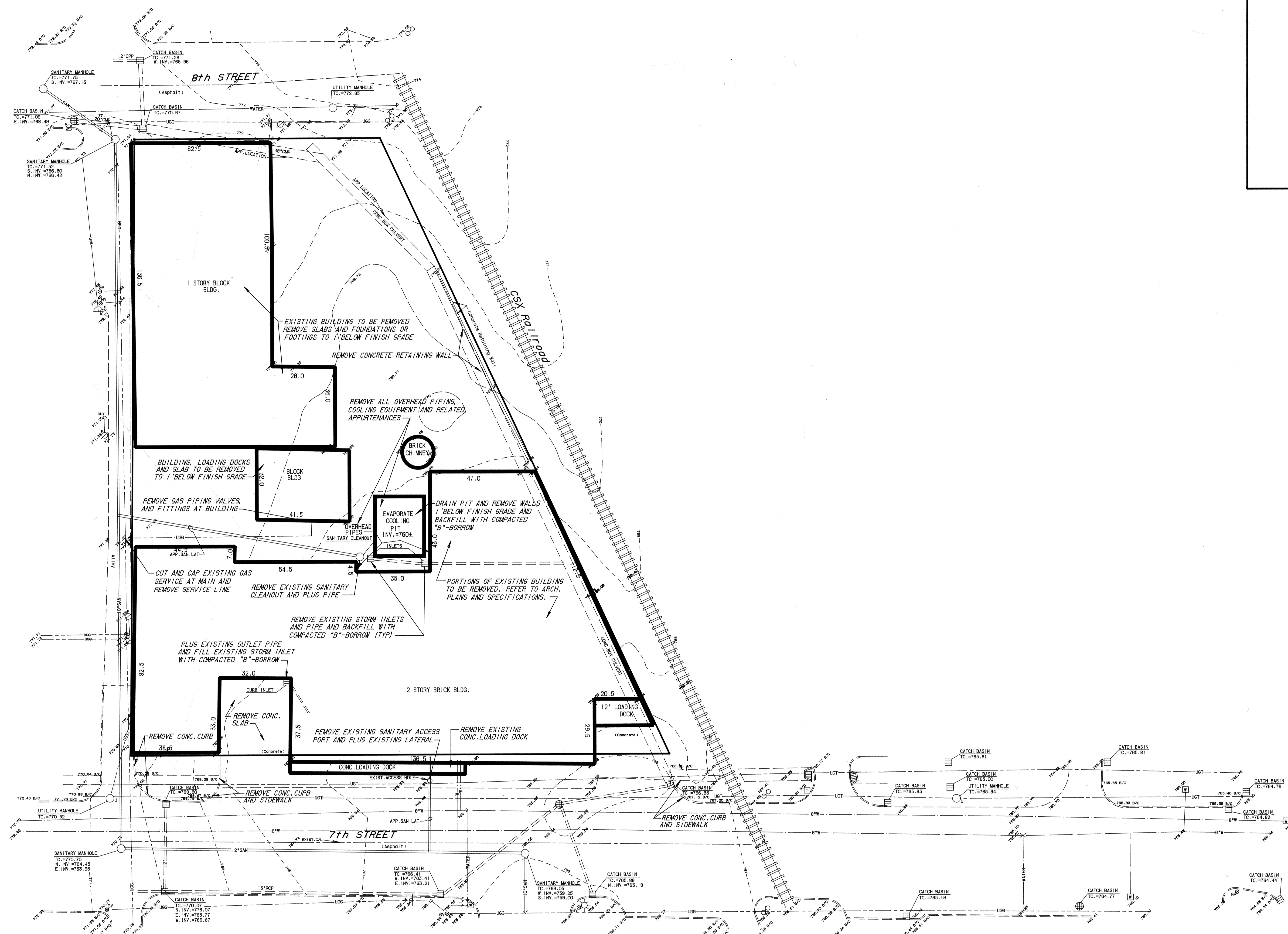
TBM= TOP OF CASTING OF SANITARY MANHOLE
IN C/L OF 7th STREET AT INTERSECTION
OF 7th STREET AND ALLEY. ELEV.=770.70

LEGEND

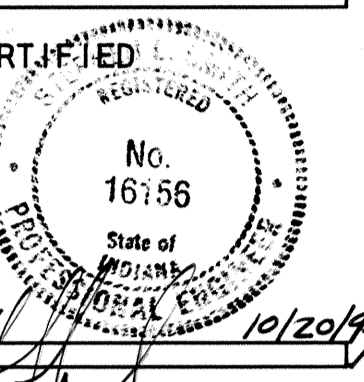
- Contour Line
- Concrete Curb
- ⊙ Light Pole
- ⊙ Ornamental Light
- ⊙ Catch Basin
- ⊙ Fire Hydrant
- ⊙ Water Meter
- ⊙ Water Valve
- ⊙ Parking Meter
- ⊙ Large Info Sign
- ⊙ Street Sign
- ⊙ Gas Meter
- ⊙ Gas Valve
- ⊙ Railroad Crossing Sign
- ⊙ Power Pole
- ⊙ Guy Anchor
- ⊙ Telephone Riser

GENERAL NOTES:

- 1) SEE SPECIFICATION BOOK FOR DEMOLITION INSTRUCTIONS.
- 2) ALL SIGNS (POSTS AND FOUNDATIONS) IN THE CONSTRUCTION ZONE ARE TO BE REMOVED BY THE CONTRACTOR AND REPLACED BY THE CITY OF BLOOMINGTON.



THIS INSTRUMENT PREPARED BY:
Smith Quilman Associates Inc.
4625 Morrisville Drive, Bloomington, IN 47402
(812) 330-6536



CERTIFIED
No. 15156
10/20/94
THE ODLE MCGUIRE & SHOOK CORPORATION
ARCHITECTURE ENGINEERING LANDSCAPE ARCHITECTURE INTERIOR DESIGN
8276 ALLIUM POINTE TRAIL, POST OFFICE BOX 56281, INDIANAPOLIS, INDIANA 46250, 317/946-0000

REVISIONS
1. REVISIONS FROM ALTERNATE NUMBER 12/24/93
01/05/94

JOHNSON'S CREAMERY
BUILDING RENOVATION
EIGHTH STREET DEVELOPMENT CORPORATION
INDIANA
BLOOMINGTON

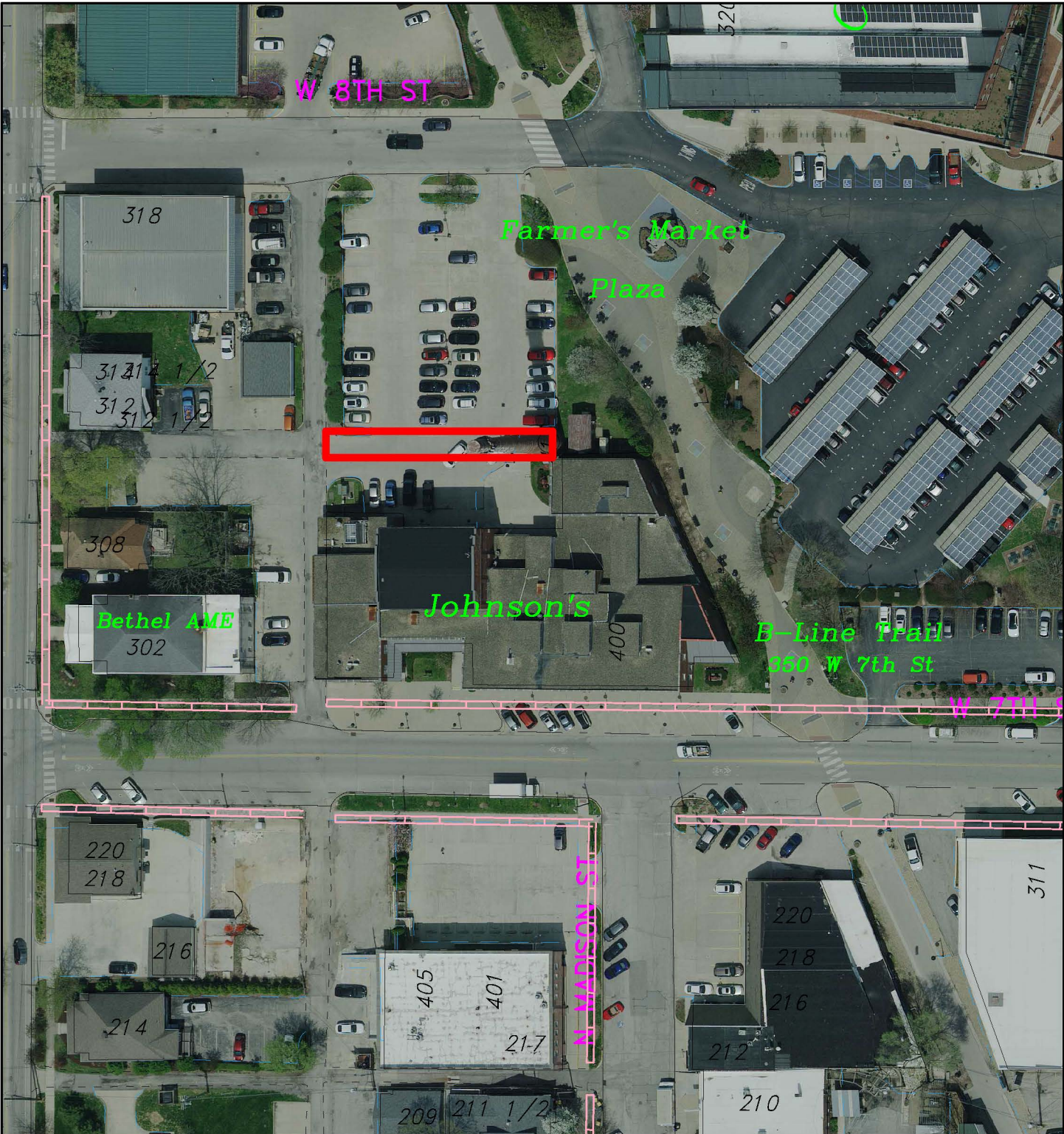
PROJECT NO. 93068
DATE: 10/25/93
drawn by: JAH
checked by: SAB

C-100
DEMOLITION PLAN

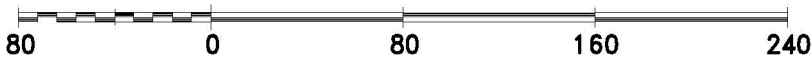






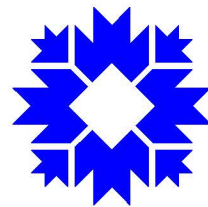


By: lucass
11 May 22



For reference only; map information NOT warranted.

City of Bloomington
Council Office



Scale: 1" = 80'





Peerless ROW Vacation Petition

Beth Cate
Corporation Counsel

May 25, 2022

The Administration recommends that Council obtain the following for the ROW vacation:

- \$250,000-\$300,000 to fund and maintain public art celebrating the historic Johnson Creamery district and stack
- Easement to allow installation
- Donation of bricks

Mechanism

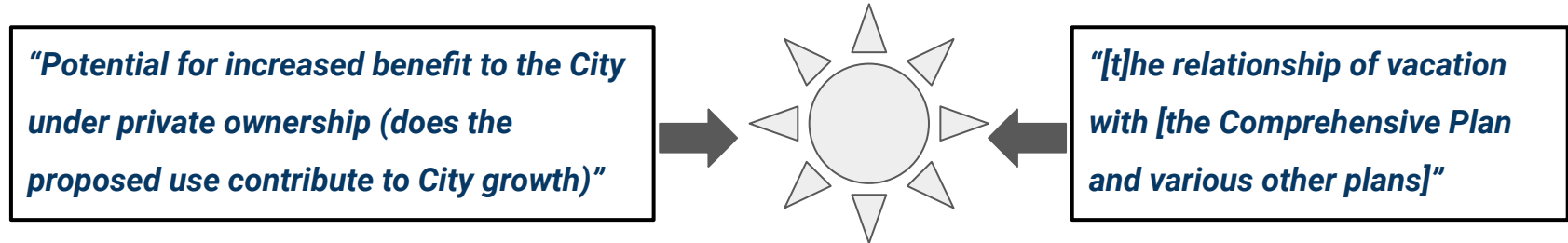
- Peerless and City draft agreement – donations and easement in exchange for ROW vacation
- Council ordinance approves agreement and approves vacation of right of way effective upon execution of agreement
- Peerless and City execute agreement and easement documentation
- Copy of ordinance, agreement, and easement documentation with County Recorder and County Auditor
- Peerless gets ROW with clear title because condition is met that same day and reflected in documentation with Recorder

Warranted

- ROW provides substantial commercial benefit to Peerless
 - \$10M project, >\$800,000 annual rent (conservative)
- Building 9' into 12' ROW heightens public concerns about integrating new building with historic structures
- Creamery and smokestack are iconic – deserve world-class project
- Amount in line with other recent art projects (Graduate Hotel \$400-\$500K)
- Amount reasonable per Peerless rents – not quite $\frac{1}{3}$ of one year's rent
 - Plus – Peerless income from Creamery tenants and AT&T
- Fixed, definite commitment – not open-ended

Permissible

- Like all Council decisions, must be done in the public interest
- State code places decision within Council discretion
- Council guidelines reflect concern with public benefit, e.g.:



2018 Comprehensive Plan goals and policies

- Goal 2.1 Public Space for Culture
 - *Policy 2.1.2*
 - *Policy 2.1.3*
 - *Policy 2.1.4*
- Goal 2.2 Preservation
 - *Policy 2.2.1*
- Program suggestion: incorporate works of public art in high-traffic areas
- Outcomes and Indicators: historic and culturally significant places are preserved and celebrated

THANK YOU.

Questions?



October 26, 2022

Joseph Patrick
Director of Development
Peerless Development

**Petitioner's Statement – Request for Alley Vacation at Johnson's Creamery site
400 W. 7th Street, Bloomington, Indiana**

The intent of this Petitioners Statement is to provide a brief summary of the circumstances surrounding this proposed request for the vacation of the existing, dead-end, east-west alley in the midst of the Johnson's Creamery site at 400 W. 7th St. Based on these circumstances, we are requesting a vacation of the existing alley in question.

The proposed development at 335 W. (the address given to the north half of the 400 W. 7th St. parcel) Street previously approved by the Plan Commission on October 18, 2021. As part of the Recommendation for approval of this project, a Condition was noted that we provide "Verification of the east/west alley vacation must be submitted prior to issuance of a grading permit".

Subsequent to this meeting, and after significant research at the City and County level by multiple parties involved, we were unable to find evidence of the formal vacation of the east/west alley. At that point, we were informed by the Plan Commission that in order for the project to proceed as approved, we would be required to submit a new request for the vacation of the east/west alley in question. This new alley vacation request would need to be reviewed by the Board of Public Works first and then formally approved by the City Council.

This request for alley vacation was presented to City Council on various occasions in the past, each being continued. The last such presentation was at the July 20, 2022 City Council meeting. During that meeting, a supplemental proposal was made by Peerless Development to Council. This supplement proposal suggested that Peerless Development would offer to dedicate a new alley, of similar length and width and with the same dead-end feature, to the City of Bloomington in exchange for the requested vacation of the existing alley. This newly proposed alley would be just south of the existing alley, yet still accessible from the existing north-south alley on that block. This proposed exchange of land was supported by staff and legal counsel, and appeared to have been met with positive response from the Council. It was requested by Council that Peerless Development present this suggested alley dedication / alley vacation exchange to the Board of Public Works first, to ensure that there were no concerns regarding utilities or other aspects related to BPW purview.



Over the past few months, we have been in contact with the BPW and their staff regarding this request and their anticipated review of the proposed exchange of land. After a number of conversations with BPW staff, we were informed that staff could not make a favorable recommendation for this proposed exchange of land, without first knowing that the City Council would definitely intend to grant approval of the requested alley vacation and with a comfort level that the applicant, Peerless Development, intended to record the official land dedication if the BPW had voted in favor of the request. We have requested a “preliminary” review of the requested alley dedication as well, to at least get an understanding of any potential concerns that BPW might have with this request, but we were informed that there is not a procedure currently in place to provide this type of response without coming for a formal vote with BPW; which we were not comfortable requesting knowing that staff was not currently recommending this dedication. With this response by BPW, we are somewhat caught in the middle, between required approvals from both the City Council and the BPW, each wanted a response from the other entity first.

Based on this challenge, we have once again reviewed the proposed request with City Council legal counsel, Stephen Lucas. Based on those discussions, we are requesting a vote by City Council on the proposed alley vacation first, with the understanding that the official record of the vote can be withheld for a certain period of time (yet to be determined by legal counsel at the time of drafting this petition). During this waiting period, Peerless Development would then present the proposed alley dedication to the Board of Public Works, now with the anticipated approval from the City Council regarding the requested alley vacation in hand. If there are any concerns or problems with the requested alley dedication during the BPW review process, then the previously approved alley vacation would become null and void, having not yet been officially recorded, being purposely delayed per our understanding and agreement with City Council legal counsel.

Based on the circumstances summarized in the statement above, we believe it is apparent that this is a unique request, requiring a unique solution. With this understanding, we are requesting a vacation of the existing alley, with the understanding / condition that final approval and recording is pending the Board of Public Works on the related alley dedication.

We appreciate the opportunity to work in the Bloomington community and would like to thank the Council for its consideration in this matter.

Sincerely,

Joseph Patrick
Director of Development
Peerless Development

MEMO FROM COUNCIL OFFICE ON:

Ordinance 22-33 – To Amend Title 10 of the Bloomington Municipal Code Entitled “Wastewater” (Rate Adjustment)

Synopsis

This ordinance amends the rates and charges in Title 10 of the Bloomington Municipal Code, entitled “Wastewater”, to meet revenue requirements for operation and maintenance expenses, on-going debt service payments, and capital improvements to the wastewater collection and treatment system including ongoing modernization and efficiency improvements and mechanical screen replacement at the Dillman Wastewater Treatment Plant, mechanical rehab and replacements, plant hydraulic expansion and end of life equipment replacement at Blucher Poole Wastewater Treatment Plant, and on-going system improvements throughout the collection system including installation of additional lift stations and interceptors, I&I reduction and the on-going 5 sewer lining project. The rate adjustment will be implemented in two phases as follows: A 12% increase effective January 1, 2023 and a 6% increase effective January 1, 2025.

Relevant Materials

- Ordinance 22-33
- Staff Memo from Chris Wheeler, Assistant City Attorney, City Legal
- Utility Service Board Resolution No. 2022-08
- Report from Crowe, LLP (applicable to both Ordinance 22-33 and Ordinance 22-34)
- Wastewater Capital Improvement Plan

Summary

Ordinance 22-33 increases the rates for wastewater services for both metered and non-metered users and also special service rates. This increase comes at the suggestion of the Utilities Service Board after reviewing a study by Crowe LLP. The rate increase will occur in two phases, the first beginning January 1, 2023, and the second January 1, 2025.

State law grants municipalities the authority to regulate sewage works under Indiana Code 36-9-23-2. Fees for rates of service are to be established by ordinance by the municipal legislative body (I.C. 36-9-23-25). The statute requires that the fees be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;
- (2) provide the sinking fund required by section 21 of [applicable state code];
- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Factors that can be used in establishing fees per I.C. 36-9-23-5(d) are among the following:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of the owner's property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.
- (9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.
- (10) Any other factors the legislative body considers necessary.

Here, wastewater rates are based upon two factors – the amount of water used by the customer and the treatments required to neutralize pollutants related to wastewater coming from industrial customers.

Under statute, rates and charges must produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service, or else they are unlawful. I.C. 8-1.5-3-8(d). For changing or adjusting rates that were already determined by ordinance in the past, state law permits the municipal legislative body to change or readjust the fees in the same manner by which they were established. I.C. 36-9-23-26(d).

State law requires, after the initial introduction of the ordinance but before the fees can be adopted, notice and a public hearing to be held. I.C. 36-9-23-26. The notice must set forth the proposed fee schedule, conform to state publication procedures under Indiana Code 5-3-1, and be mailed to owners of vacant property and users for service to property outside city limits.

The public hearing presents an opportunity for users of sewage works, owners of property served by sewage works, and other members of the public may be heard regarding the proposed fees. I.C. 36-9-23-26. After the hearing, the legislative body must adopt the ordinance, as originally introduced or as modified. A copy of the fee schedule must be available for public inspection. Fees established after notice and hearing are presumed just and equitable. I.C. 36-9-23-25(b). The public hearing for the rate changes to Wastewater in Ordinance 22-33 is set for November 16, 2022.

Contact

Chris Wheeler, Assistant City Attorney, wheelech@bloomington.in.gov, (812)-349-3426
Vic Kelson, Utilities Director, kelsonv@bloomington.in.gov, (812)-349-3650

ORDINANCE 22-33

**TO AMEND TITLE 10
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“WASTEWATER”
(Rate Adjustment)**

- WHEREAS, the City of Bloomington, Indiana (the “City”) has established, acquired, and financed its sewage works pursuant to Indiana Code 36-9-23, as amended (the “Act”), for the purpose of providing for the collection, treatment and disposal of sewage from inhabitants in and around the City; and
- WHEREAS, the current rates and charges of the sewage works of the City were established by Common Council under Ordinance 19-16 on September 18, 2019, with said rate adjustment taking effect on January 1, 2020; and
- WHEREAS, the City, through its Utilities Service Board, recommends necessary construction of additions and improvements to the sewage works, including Dillman Wastewater Treatment Plant modernization, efficiency and capacity improvements, Blucher Poole Wastewater Treatment Plant waste storage building, continued reduction of I&I, and southeast and southcentral interceptor design work; and
- WHEREAS, the City, through its Utilities Service Board, engaged the services of Crowe LLP, to conduct a thorough study of the revenue requirements for continued maintenance, improvement and expansion of the wastewater system; and
- WHEREAS, Crowe LLP prepared a rate and financing report concerning the current rates and charges of the sewage works (the “Report”); and
- WHEREAS, the City, through its Utilities Service Board, upon consideration of the study prepared by Crowe LLP, accepts said report and recommends that the Common Council approve an increase over two phases in the rates and charges of the sewage works with a 12% increase in phase I and a 6% increase in phase II; and
- WHEREAS, based upon the Report, and the recommendations of the Utility Service Board, the Common Council of the City (the “Council”) finds that the current rates and charges for the use of and service rendered by the sewage works do not produce sufficient revenues to pay all the legal and necessary expenses incidental to the operation of such sewage works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the sewage works, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and
- WHEREAS, the Council finds that the current rates and charges do not produce an income sufficient to maintain the sewage works property in a sound physical and financial condition to render safe, adequate and efficient service; and
- WHEREAS, the Council finds that the current rates and charges for the use of and service rendered by the sewage works must be increased in order to provide sufficient revenue to meet such requirements; and
- WHEREAS, the Council finds that the rates and charges set forth herein are nondiscriminatory, reasonable and just and are based upon the cost of providing service to the customers of the sewage works and will enable the City to meet its legal revenue requirements for the sewage works; and
- WHEREAS, the Council caused notice of a public hearing on the rates and charges set forth herein to be duly advertised and mailed, and held a public hearing thereon, all pursuant to the Act.

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

SECTION 1. Section 10.08.040 of the Bloomington Municipal Code (the “Code”), entitled “Rates—Metered water users”, is hereby amended and restated to read as follows:

“General service rates shall be applicable to all metered water users, except those with other than average strengths of BOD and suspended solids. The general service rates shall be determined as follows:

	Phase I	Phase II
Monthly service charge (per meter)	\$ 9.17	9.72
User Charge		
Charge per 1,000 gallons per month for all billable usage:		
Residential ^(a)	\$ 8.95	9.49
Commercial	\$ 8.95	9.49
Indiana University	\$ 8.95	9.49
Industrial ^(b)	\$ 8.95	9.49

For service rendered to lots, parcels of real estate or buildings located outside the corporate limits of the city, there shall be a 12% surcharge imposed in addition to the general service rates established in this section.

Notes:

- (a) Residential summer rates for billings issued during the months of June, July, August, and September shall be based upon the average metered water consumption for billings issued during the months of April and May or actual usage, whichever is less. In order to more accurately reflect the actual wastewater usage of these customers, the Utilities Service Board may, by the adoption of a resolution, change the months used to set the summer rates and the length of time the summer rates are in effect. All other users shall be charged on the basis of one hundred percent of metered water consumption subject to user proof of lower wastewater use.
- (b) Industrial user rates and charges shall be based on the quantity of water used as well as any special service rates that may apply.”

SECTION 2. Section 10.08.070 of the Code, entitled “Rates—Nonmetered users”, is hereby amended and restated to read as follows:

“The minimum rate or charge for any service where the user is not a metered water user shall be eight hundred ninety two dollars and thirty five cents (\$892.35) per year for phase one, and nine hundred forty five dollars and eighty nine cents (\$945.89) per year for phase two, payable monthly. At the request of the utility or user, a meter which measures either the water use of the customer or the discharge into the sanitary sewer system shall be installed at the user’s expense. Where a meter has been installed or the customer’s water use records are available at no charge from the water supplier, the charge for service shall be computed on the basis of water usage plus monthly service charge, just as it is with a metered user, subject to the annual minimum charge.

For service rendered to lots, parcels of real estate or buildings located outside the corporate limits of the city, there shall be a 12% surcharge imposed in addition to the general service rates established in this section.”

SECTION 3. Subsection (b) of Section 10.08.110 of the Code, entitled “Special service rates”, is hereby amended and restated to read as follows:

“Special service rates shall be determined as follows:

		Phase I	Phase II
Monthly service charge (per meter)	Inside City	\$ 8.95	9.49
Monthly service charge (per meter)	Outside City	\$ 10.02	10.63

Special laboratory analysis monthly charge		
Strength of BOD and SS sampling charge	\$ 192.54	204.09
Grease and oil sampling charge	\$ 180.48	191.31
Metal sampling charge (per metal per test)	\$ 40.11	42.52
User Charge		
Charge per 1,000 gallons per month for all billable usage inside city:		
Non-excessive strength rate	\$ 8.95	9.49
Charge per 1,000 gallons per month for all billable usage outside city:		
Non-excessive strength rate	\$ 10.02	10.63
Extra Strength Charge		
Charge per pound per month for all strength in excess of 300 ppm:		
BOD	\$ 0.438	0.464
Suspended Solids	\$ 0.357	0.378

SECTION 4. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, and to this end the provisions of this ordinance are declared to be severable.

SECTION 5. This ordinance shall be in full force and effect upon its passage by the Common Council of the City of Bloomington, Monroe County, Indiana, and approval of the Mayor; provided, however, that the rates and charges herein approved shall not take effect until January 1, 2023, for phase I and January 1, 2025, for phase II.

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

 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.

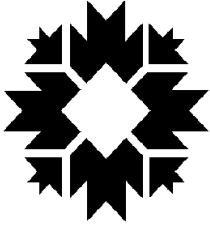
 NICOLE BOLDEN, Clerk
 City of Bloomington

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

 JOHN HAMILTON, Mayor
 City of Bloomington

SYNOPSIS

This ordinance amends the rates and charges in Title 10 of the Bloomington Municipal Code, entitled "Wastewater", to meet revenue requirements for operation and maintenance expenses, on-going debt service payments, and capital improvements to the wastewater collection and treatment system including ongoing modernization and efficiency improvements and mechanical screen replacement at the Dillman Wastewater Treatment Plant, mechanical rehab and replacements, plant hydraulic expansion and end of life equipment replacement at Blucher Poole Wastewater Treatment Plant, and on-going system improvements throughout the collection system including installation of additional lift stations and interceptors, I&I reduction and the on-going sewer lining project. The rate adjustment will be implemented in two phases as follows: A 12% increase effective January 1, 2023 and a 6% increase effective January 1, 2025.



**CITY OF BLOOMINGTON
LEGAL DEPARTMENT
MEMORANDUM**

TO: City of Bloomington Common Council Members
FROM: Christopher J. Wheeler, Assistant City Attorney
RE: Proposed Ordinance 22-33 to Amend Title 10 of the Bloomington Municipal Code Entitled “Wastewater” (Rate Adjustment)
DATE: October 26, 2022

This ordinance amends the rates and charges in Title 10 of the Bloomington Municipal Code, entitled “Wastewater”, to meet revenue requirements for operation and maintenance expenses, on-going debt service payments, and capital improvements to the wastewater collection and treatment system including ongoing modernization and efficiency improvements and mechanical screen replacement at the Dillman Wastewater Treatment Plant, mechanical rehab and replacements, plant hydraulic expansion and end of life equipment replacement at Blucher Poole Wastewater Treatment Plant, and on-going system improvements throughout the collection system including installation of additional lift stations and interceptors, I&I reduction and the on-going sewer lining project. The rate adjustment will be implemented in two phases as follows: A 12% increase effective January 1, 2023 and a 6% increase effective January 1, 2025.

If you have any questions regarding this proposed ordinance, please feel free to contact me by calling City Legal at 812.349.3549 or e-mailing me at wheelech@bloomington.in.gov.

**UTILITY SERVICE BOARD
OF THE CITY OF BLOOMINGTON, INDIANA
RESOLUTION NO. 2022-08**

**RE: THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF
IMPROVEMENTS AND EXTENSIONS TO THE CITY'S SEWAGE WORKS UTILITY, AND
APPROVING THE FORMS OF ORDINANCES ADJUSTING THE RATES AND CHARGES
FOR THE USERS OF THE SEWAGE WORKS UTILITY AND RECOMMENDING ITS
ADOPTION TO THE COMMON COUNCIL OF THE CITY**

WHEREAS, the City of Bloomington, Indiana (the "City"), has previously established and constructed and now owns and operates through its Utility Service Board (the "Board"): (i) a sewage works (the "Sewage Works"), for the collection, treatment and disposal of sewage and other wastes from inhabitants and entities in and around the City of Bloomington pursuant to Indiana Code 36-9-23, as amended through the City of Bloomington Utilities Department ("CBU") ; and

WHEREAS, CBU staff recommend necessary construction of additions and improvements to the Sewage Works, including Dillman Wastewater Treatment Plant modernization, efficiency and capacity improvements, Blucher Poole Wastewater Treatment Plant waste storage building, continued reduction of I&I, and southeast and southcentral interceptor design work; and

WHEREAS, CBU, through this Board, engaged the services of Crowe LLP, to conduct a thorough study of the revenue requirements for continued maintenance, improvement and expansion of the Sewage Works; and

WHEREAS, Crowe LLP prepared a rate and financing report concerning the current rates and charges of the Sewage Works (the "Report"); and

WHEREAS, CBU staff accepts the Report and recommends that this Board approve an increase in the rates and charges of the Sewage Works; and,

WHEREAS, based upon the Report, and the recommendations of CBU staff and Crowe LLC, this Board finds that the current rates and charges for the use of and service rendered by the Sewage Works do not produce sufficient revenues to pay all the legal and necessary expenses incidental to the operation of such Sewage Works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the Sewage Works, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and

WHEREAS, this Board finds that the current rates and charges do not produce an income sufficient to maintain the Sewage Works property in a sound physical and financial condition to render safe, adequate and efficient service; and

WHEREAS, this Board finds that the current rates and charges for the use of and service rendered by the Sewage Works must be increased in order to provide sufficient revenue to meet such requirements; and

WHEREAS, this Board finds that the rates and charges set forth herein are nondiscriminatory, reasonable and just and are based upon the cost of providing service to the customers of the Sewage Works and will enable the City to meet its legal revenue requirements for the Sewage Works; and

WHEREAS, the proposed sewage works rate ordinance (the “Ordinance”) has been duly considered by this Board and found satisfactory, a copy of which is attached hereto, marked as **Exhibit “A”** and incorporated herein; and


WHEREAS, this Board desires to recommend the adoption of the proposed Ordinance to the Bloomington Common Council.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITY SERVICE BOARD OF THE CITY OF BLOOMINGTON, INDIANA, AS FOLLOWS:

1. The Board requests the Common Council authorize the modification of the rates and charges for the users of the Sewage Works as set forth in the proposed form of the Ordinance presented at this meeting, by the adoption of the proposed Ordinance, in substantially the form attached hereto as **Exhibit “A”**.
2. The Secretary of the Board is hereby directed to present a copy of this Resolution to the Bloomington City Clerk for presentation to the Bloomington Common Council as soon as may be done.
3. This Resolution shall be in full force and effect after its adoption by the Board.

PASSED AND ADOPTED THIS 26 DAY OF October, 2022.

CITY OF BLOOMINGTON, INDIANA
By and Through its Utility Service Board


Jeffrey L. Ehman (Oct 25, 2022 14:00 EDT)

Jeff Ehman, President

ATTEST:


LaTreana Teague (Oct 26, 2022 08:30 EDT)

LaTreana Teague, Secretary

ORDINANCE 22-33

**TO AMEND TITLE 10
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“WASTEWATER”
(Rate Adjustment)**

WHEREAS, the City of Bloomington, Indiana (the “City”) has established, acquired, and financed its sewage works pursuant to Indiana Code 36-9-23, as amended (the “Act”), for the purpose of providing for the collection, treatment and disposal of sewage from inhabitants in and around the City; and

WHEREAS, the current rates and charges of the sewage works of the City were established by Common Council under Ordinance 19-16 on September 18, 2019, with said rate adjustment taking effect on January 1, 2020;

WHEREAS, the City, through its Utilities Service Board, recommends necessary construction of additions and improvements to the sewage works, including Dillman Wastewater Treatment Plant modernization, efficiency and capacity improvements, Blucher Poole Wastewater Treatment Plant waste storage building, continued reduction of I&I, and southeast and southcentral interceptor design work; and,

WHEREAS, the City, through its Utilities Service Board, engaged the services of Crowe LLP, to conduct a thorough study of the revenue requirements for continued maintenance, improvement and expansion of the wastewater system; and

WHEREAS, Crowe LLP prepared a rate and financing report concerning the current rates and charges of the sewage works (the “Report”); and

WHEREAS, the City, through its Utilities Service Board, upon consideration of the study prepared by Crowe LLP, recommends that the Common Council approve an increase over two phases in the rates and charges of the sewage works with a 12% increase in phase I and a 6% increase in phase II; and,

WHEREAS, based upon the Report, and the recommendations of the Utility Service Board, the Common Council of the City (the “Council”) finds that the current rates and charges for the use of and service rendered by the sewage works do not produce sufficient revenues to pay all the legal and necessary expenses incidental to the operation of such sewage works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the sewage works, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and

WHEREAS, the Council finds that the current rates and charges do not produce an income sufficient to maintain the sewage works property in a sound physical and financial condition to render safe, adequate and efficient service; and

WHEREAS, the Council finds that the current rates and charges for the use of and service rendered by the sewage works must be increased in order to provide sufficient revenue to meet such requirements; and

WHEREAS, the Council finds that the rates and charges set forth herein are nondiscriminatory, reasonable and just and are based upon the cost of providing service to the customers of the sewage works and will enable the City to meet its legal revenue requirements for the sewage works; and

WHEREAS, the Council caused notice of a public hearing on the rates and charges set forth herein to be duly advertised and mailed, and held a public hearing thereon, all pursuant to the Act.

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

SECTION 1. Section 10.08.040 of the Bloomington Municipal Code (the “Code”), entitled “Rates—Metered water users”, is hereby amended and restated to read as follows:

“General service rates shall be applicable to all metered water users, except those with other than average strengths of BOD and suspended solids. The general service rates shall be determined as follows:

	Phase I	Phase II
Monthly service charge (per meter)	9.17	9.72
User Charge		
Charge per 1,000 gallons per month		
for all billable usage:		
Residential ^(a)	8.95	9.49
Commercial	8.95	9.49
Indiana University	8.95	9.49
Industrial ^(b)	8.95	9.49

For service rendered to lots, parcels of real estate or buildings located outside the corporate limits of the city, there shall be a 12% surcharge imposed in addition to the general service rates established in this section.

Notes:

(a) Residential summer rates for billings issued during the months of June, July, August, and September shall be based upon the average metered water consumption for billings issued during the months of April and May or actual usage, whichever is less. In order to more accurately reflect the actual wastewater usage of these customers, the Utilities Service Board may, by the adoption of a resolution, change the months used to set the summer rates and the length of time the summer rates are in effect. All other users shall be

charged on the basis of one hundred percent of metered water consumption subject to user proof of lower wastewater use.

(b) Industrial user rates and charges shall be based on the quantity of water used as well as any special service rates that may apply.”

SECTION 2. Section 10.08.070 of the Code, entitled “Rates—Nonmetered users”, is hereby amended and restated to read as follows:

“The minimum rate or charge for any service where the user is not a metered water user shall be eight hundred ninety two dollars and thirty five cents (\$892.35) per year for phase one, and nine hundred forty five dollars and eighty nine cents (\$945.89) per year for phase two, payable monthly. At the request of the utility or user, a meter which measures either the water use of the customer or the discharge into the sanitary sewer system shall be installed at the user’s expense. Where a meter has been installed or the customer’s water use records are available at no charge from the water supplier, the charge for service shall be computed on the basis of water usage plus monthly service charge, just as it is with a metered user, subject to the annual minimum charge.

For service rendered to lots, parcels of real estate or buildings located outside the corporate limits of the city, there shall be a 12% surcharge imposed in addition to the general service rates established in this section.”

SECTION 3. Subsection (b) of Section 10.08.110 of the Code, entitled “Special service rates”, is hereby amended and restated to read as follows:

“Special service rates shall be determined as follows:

		Phase I	Phase II
Monthly service charge (per meter)	Inside City	\$ 8.95	9.49
Monthly service charge (per meter)	Outside City	\$ 10.02	10.63
Special laboratory analysis monthly charge			
	Strength of BOD and SS sampling charge	\$ 192.54	204.09
	Grease and oil sampling charge	\$ 180.48	191.31
	Metal sampling charge (per metal per test)	\$ 40.11	42.52
User Charge			
Charge per 1,000 gallons per month for all billable usage inside city:			
	Non-excessive strength rate	\$ 8.95	9.49
Charge per 1,000 gallons per month for all billable usage outside city:			
	Non-excessive strength rate	\$ 10.02	10.63
Extra Strength Charge			
Charge per pound per month for all strength in excess of 300 ppm:			
	BOD	\$ 0.438	0.464
	Suspended Solids	\$ 0.357	0.378

SECTION 4. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, and to this end the provisions of this ordinance are declared to be severable.

SECTION 5. This ordinance shall be in full force and effect upon its passage by the Common Council of the City of Bloomington, Monroe County, Indiana, and approval of the Mayor; provided, however, that the rates and charges herein approved shall not take effect until January 1, 2023, for phase I and January 1, 2025, for phase II.

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 the rates and charges in Title 10 of the Bloomington Municipal Code, entitled "Wastewater", to reflect increased costs of supplying wastewater services to customers, and to make debt service payments on bond financing for required capital improvements.

ORDINANCE 22-33

**TO AMEND TITLE 10
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“WASTEWATER”
(Rate Adjustment)**

WHEREAS, the City of Bloomington, Indiana (the “City”) has established, acquired, and financed its sewage works pursuant to Indiana Code 36-9-23, as amended (the “Act”), for the purpose of providing for the collection, treatment and disposal of sewage from inhabitants in and around the City; and

WHEREAS, the current rates and charges of the sewage works of the City were established by Common Council under Ordinance 19-16 on September 18, 2019, with said rate adjustment taking effect on January 1, 2020;

WHEREAS, the City, through its Utilities Service Board, recommends necessary construction of additions and improvements to the sewage works, including Dillman Wastewater Treatment Plant modernization, efficiency and capacity improvements, Blucher Poole Wastewater Treatment Plant waste storage building, continued reduction of I&I, and southeast and southcentral interceptor design work; and,

WHEREAS, the City, through its Utilities Service Board, engaged the services of Crowe LLP, to conduct a thorough study of the revenue requirements for continued maintenance, improvement and expansion of the wastewater system; and

WHEREAS, Crowe LLP prepared a rate and financing report concerning the current rates and charges of the sewage works (the “Report”); and

WHEREAS, the City, through its Utilities Service Board, upon consideration of the study prepared by Crowe LLP, recommends that the Common Council approve an increase over two phases in the rates and charges of the sewage works with a 12% increase in phase I and a 6% increase in phase II; and,

WHEREAS, based upon the Report, and the recommendations of the Utility Service Board, the Common Council of the City (the “Council”) finds that the current rates and charges for the use of and service rendered by the sewage works do not produce sufficient revenues to pay all the legal and necessary expenses incidental to the operation of such sewage works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the sewage works, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and

WHEREAS, the Council finds that the current rates and charges do not produce an income sufficient to maintain the sewage works property in a sound physical and financial condition to render safe, adequate and efficient service; and

WHEREAS, the Council finds that the current rates and charges for the use of and service rendered by the sewage works must be increased in order to provide sufficient revenue to meet such requirements; and

WHEREAS, the Council finds that the rates and charges set forth herein are nondiscriminatory, reasonable and just and are based upon the cost of providing service to the customers of the sewage works and will enable the City to meet its legal revenue requirements for the sewage works; and

WHEREAS, the Council caused notice of a public hearing on the rates and charges set forth herein to be duly advertised and mailed, and held a public hearing thereon, all pursuant to the Act.

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

SECTION 1. Section 10.08.040 of the Bloomington Municipal Code (the “Code”), entitled “Rates—Metered water users”, is hereby amended and restated to read as follows:

“General service rates shall be applicable to all metered water users, except those with other than average strengths of BOD and suspended solids. The general service rates shall be determined as follows:

	<u>Phase I</u>	<u>Phase II</u>
Monthly service charge (per meter)	\$8.19 <u>9.17</u>	<u>9.72</u>
User Charge		
Charge per 1,000 gallons per month		
for all billable usage:		
Residential ^(a)	\$7.99 <u>8.95</u>	<u>9.49</u>
Commercial	\$7.99 <u>8.95</u>	<u>9.49</u>
Indiana University	\$7.99 <u>8.95</u>	<u>9.49</u>
Industrial ^(b)	\$7.99 <u>8.95</u>	<u>9.49</u>

For service rendered to lots, parcels of real estate or buildings located outside the corporate limits of the city, there shall be a 12% surcharge imposed in addition to the general service rates established in this section.

Notes:

(a) Residential summer rates for billings issued during the months of June, July, August, and September shall be based upon the average metered water consumption for billings issued during the months of April and May or actual usage, whichever is less. In order to more accurately reflect the actual wastewater usage of these customers, the Utilities Service Board may, by the adoption of a resolution, change the months used to set the summer rates and the length of time the summer rates are in effect. All other users shall be

charged on the basis of one hundred percent of metered water consumption subject to user proof of lower wastewater use.

(b) Industrial user rates and charges shall be based on the quantity of water used as well as any special service rates that may apply.”

SECTION 2. Section 10.08.070 of the Code, entitled “Rates—Nonmetered users”, is hereby amended and restated to read as follows:

“The minimum rate or charge for any service where the user is not a metered water user shall be ~~seven hundred and ninety-six dollars and seventy-four cents (\$796.74) per year~~ eight hundred ninety two dollars and thirty five cents (\$892.35) per year for phase one, and nine hundred forty five dollars and eighty nine cents (\$945.89) per year for phase two, payable monthly. At the request of the utility or user, a meter which measures either the water use of the customer or the discharge into the sanitary sewer system shall be installed at the user’s expense. Where a meter has been installed or the customer’s water use records are available at no charge from the water supplier, the charge for service shall be computed on the basis of water usage plus monthly service charge, just as it is with a metered user, subject to the annual minimum charge.

For service rendered to lots, parcels of real estate or buildings located outside the corporate limits of the city, there shall be a 12% surcharge imposed in addition to the general service rates established in this section.”

SECTION 3. Subsection (b) of Section 10.08.110 of the Code, entitled “Special service rates”, is hereby amended and restated to read as follows:

“Special service rates shall be determined as follows:

			<u>Phase I</u>	<u>Phase II</u>
Monthly service charge (per meter)	Inside City	\$	7.95 <u>8.95</u>	<u>9.49</u>
<u>Monthly service charge (per meter)</u>	<u>Outside City</u>	\$	<u>10.02</u>	<u>10.63</u>

Special laboratory analysis monthly charge

Strength of BOD and SS sampling charge	\$166.90	<u>192.54</u>	<u>204.09</u>
Grease and oil sampling charge	\$156.45	<u>180.48</u>	<u>191.31</u>
Metal sampling charge (per metal per test)	\$ 34.77	<u>40.11</u>	<u>42.52</u>

User Charge

Charge per 1,000 gallons per month for all billable usage inside city:

Non-excessive strength rate	\$7.76	<u>8.95</u>	<u>9.49</u>
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Charge per 1,000 gallons per month for all billable usage outside city:

<u>Non-excessive strength rate</u>	<u>\$ 8.95</u>	<u>10.02</u>	<u>10.63</u>
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Extra Strength Charge

Charge per pound per month for all strength in excess of 300 ppm:

BOD	\$0.380	<u>0.438</u>	<u>0.464</u>
Suspended Solids	\$0.310	<u>0.357</u>	<u>0.378</u>

SECTION 4. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, and to this end the provisions of this ordinance are declared to be severable.

SECTION 5. This ordinance shall be in full force and effect upon its passage by the Common Council of the City of Bloomington, Monroe County, Indiana, and approval of the Mayor; provided, however, that the rates and charges herein approved shall not take effect until January 1, 2023, for phase I and January 1, 2025, for phase II.

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 the rates and charges in Title 10 of the Bloomington Municipal Code, entitled “Wastewater”, to reflect increased costs of supplying wastewater services to customers, and to make debt service payments on bond financing for required capital improvements.

Preliminary Rate and Financing Report

Bloomington Municipal Sewage Works and
Bloomington Municipal Stormwater Utility

October 21, 2022

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Purpose of the Report

Crowe LLP (“Crowe” or “we”) has performed a study and analysis of the operating and financial reports, budgets, and other data pertaining to City of Bloomington Municipal Sewage Works (the “Sewage Works”) and City of Bloomington Municipal Stormwater Utility (the “Stormwater Utility”) (together the “Utilities”). The results of our analysis are contained in this Preliminary Rate and Financing Report (“Report”). While presented in one report, we analyzed the Utilities separately for the purpose of calculating rates and charges for each of the Utilities that would recover the respective revenue requirements of each utility.

The purpose of this Report is to estimate each utility’s on-going revenue requirements for operation and maintenance expenses, proposed debt service payments, and capital improvements to the Utilities’ systems. This Report is based on data for the twelve months ended April 30, 2022 (“Test Year”). The historical information used in this Report was taken from the books and records of the Utilities and was adjusted as necessary for fixed, known, and measurable items as disclosed in the exhibits and schedules of this Report.

In the course of preparing this Report, we have not conducted an audit of any financial or supplemental data used in the accompanying exhibits and schedules. We have made certain projections based on assumptions provided by the Utilities that may vary from actual results because events and circumstances frequently do not occur as estimated and such variances may be material. We have no responsibility to update this Report for events and circumstances occurring after the date of this Report.

If you have any questions regarding this Report, please call Jennifer Wilson at (317) 269-6699.

Crowe’s services are conducted in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants, and Crowe’s deliverables and other work product are based on underlying assumptions and other information determined by Client. Crowe’s services, deliverables and other work product do not constitute a forecast or projection of any kind. With no relevant precedent for the COVID-19 pandemic, it is impossible to predict with accuracy the economic repercussions of the COVID-19 pandemic, and therefore Crowe’s services, deliverables and other work product must not be relied upon for predicting such repercussions. Crowe’s services, deliverables and other work product are intended solely for the use of Crowe’s Client, and no other person or entity may rely on Crowe’s services, deliverables or other work product for any purpose. Crowe LLP disclaims any obligation to update this work product.

Financial Statements

Balance Sheets as of April 30, 2022, December 31, 2021, and December 31, 2020

ASSETS AND OTHER DEBITS	April 30, 2022	December 31, 2021	December 31, 2020
<u>Utility Plant - Sewage Works</u>			
Utility Plant in Service	\$ 186,861,948	\$ 186,876,435	\$ 175,261,884
Less: Accumulated Depreciation	(102,128,299)	(102,128,299)	(98,438,414)
Net Utility Plant in Service	84,733,649	84,748,136	76,823,470
Add: Construction Work in Progress	47,753,539	44,304,025	26,434,416
Net Utility Plant - Sewage Works	132,487,188	129,052,161	103,257,886
<u>Utility Plant - Stormwater Utility</u>			
Utility Plant in Service	19,107,169	19,107,169	19,064,363
Less: Accumulated Depreciation	(3,872,199)	(3,872,199)	(3,591,518)
Net Utility Plant in Service	15,234,970	15,234,970	15,472,845
Add: Construction Work in Progress	1,742,714	1,843,332	980,542
Net Utility Plant - Stormwater Utility	16,977,684	17,078,302	16,453,387
<u>Restricted Assets</u>			
Sinking Fund	1,659,177	211	7,518
Debt Service Reserve Fund	4,990,262	4,990,262	5,270,319
Bond and Interest Fund	745,528	4,909,089	5,538,224
Improvement Fund - Sewage Works	-	-	549,742
Improvement Fund - Stormwater Utility	600,000	600,000	-
Construction Fund - Sewage Works	-	932,164	16,926,703
Construction Fund - Stormwater Utility	3,043,790	5,069,159	13,184,000
Total Restricted Assets	11,038,757	16,500,885	41,476,506
<u>Current and Accrued Assets</u>			
Operation and Maintenance			
Fund - Sewage Works	6,373,264	8,471,358	3,773,649
Operation and Maintenance			
Fund - Stormwater Utility	1,774,862	2,977,115	1,293,415
Accounts Receivable - Net	1,364,981	616,201	1,347,693
Total Current and Accrued Assets	9,513,107	12,064,674	6,414,757
<u>Deferred Debits</u>			
Unamortized Bond Issuance Costs	125,064	125,064	155,929
Unamortized Bond Discount	189,043	189,043	201,800
Deferral Loss on Advance Refunding	256,212	256,212	341,617
Total Deferred Debits	570,319	570,319	699,346
Total Assets and Other Debits	\$ 170,587,055	\$ 175,266,341	\$ 168,301,882

Data Source: Utility trial balances

Balance Sheets as of April 30, 2022, December 31, 2021, and
 December 31, 2020 (Continued)

LIABILITIES AND OTHER CREDITS	April 30, 2022	December 31, 2021	December 31, 2020
<u>Equity Capital</u>			
Unappropriated Retained Earnings	\$ 66,261,212	\$ 57,188,525	\$ 50,253,800
Current Year Earnings	3,493,755	9,072,687	6,923,533
Total Equity Capital	<u>69,754,967</u>	<u>66,261,212</u>	<u>57,177,333</u>
<u>Long Term Debt</u>			
Revenue Bonds Payable	42,626,000	45,957,400	49,816,000
Capital Lease Obligations	3,966,000	4,503,000	5,022,000
Compensated Absences - Long Term	217,427	217,427	234,692
Total Long Term Debt	<u>46,809,427</u>	<u>50,677,827</u>	<u>55,072,692</u>
<u>Current and Accrued Liabilities</u>			
Accounts Payable	(8,228)	4,627,233	1,403,730
Revenue Bonds - Current	3,331,400	3,278,600	4,320,700
Capital Lease Obligations - Current	270,000	-	-
Accounts Payable to Associated Company	10,803	8,957	9,875
Unearned Revenue	1,939,477	1,933,303	1,972,683
Accrued Payroll	101,460	101,460	78,747
Compensated Absences Payable - Short Term	96,892	96,892	86,600
Total Current and Accrued Liabilities	<u>5,741,804</u>	<u>10,046,445</u>	<u>7,872,335</u>
<u>Deferred Credits</u>			
Unamortized Bond Premium	6,654,738	6,654,738	6,544,292
Other Deferred Liabilities	19,000	19,000	19,000
Total Deferred Credits	<u>6,673,738</u>	<u>6,673,738</u>	<u>6,563,292</u>
Contributions in Aid of Construction	<u>41,607,119</u>	<u>41,607,119</u>	<u>41,607,119</u>
Prior Period Adjustments	<u>-</u>	<u>-</u>	<u>9,111</u>
Total Liabilities and Other Credits	<u>\$ 170,587,055</u>	<u>\$ 175,266,341</u>	<u>\$ 168,301,882</u>

Data Source: Utility trial balances

Sewage Works Combined Outstanding Debt

Pay Year	2006 A-1 Bonds (1)	2013 Refunding Bonds	2017 Bonds	2019 Refunding Bonds	2020 Bonds (1)	2021 Refunding Bonds	Total
2022	\$ 129,000	\$ 1,181,232	\$ 457,300	\$ 1,021,800	\$ 446,000	\$ 775,904	\$ 4,011,236
2023	130,272	1,191,296	461,300	1,023,200	446,000	778,150	4,030,218
2024	130,116	1,190,826	460,100	1,022,200	446,000	779,400	4,028,642
2025	128,770		463,800	1,022,000	446,000	785,050	2,845,620
2026	131,244		467,300	613,600	846,000	784,950	2,843,094
2027			467,250		2,023,000	789,250	3,279,500
2028			471,900		2,024,600	777,800	3,274,300
2029			471,100		2,528,600	276,050	3,275,750
2030			475,000		2,529,800	273,700	3,278,500
2031			473,450		1,482,400	281,200	2,237,050
2032			476,600		1,483,200	283,250	2,243,050
2033			479,300		1,486,800		1,966,100
2034			486,550		1,483,000		1,969,550
2035			488,200		1,482,000		1,970,200
2036			494,400		1,483,600		1,978,000
2037					1,482,600		1,482,600
2038					1,484,000		1,484,000
2039					1,482,600		1,482,600
2040					1,483,400		1,483,400
Totals	\$ 649,402	\$ 3,563,354	\$ 7,093,550	\$ 4,702,800	\$ 26,569,600	\$ 6,584,704	\$ 49,163,410
Maximum Annual Debt Service							<u>\$ 4,030,218</u>

(1) Amounts shown are net of the Stormwater Utility portion of debt service.

Sewage Works Revenue Bonds of 2006, Series A-1 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Less: Stormwater (1)	Sewage Works Fiscal Total
7/1/22			\$ 59,400	\$ 59,400			
1/1/23	\$ 446,400	4.80 %	59,400	505,800	\$ 565,200	\$ (436,200)	\$ 129,000
7/1/23			48,686	48,686			
1/1/24	469,100	4.83	48,686	517,786	566,472	(436,200)	130,272
7/1/24			37,358	37,358			
1/1/25	491,600	4.83	37,358	528,958	566,316	(436,200)	130,116
7/1/25			25,485	25,485			
1/1/26	514,000	4.83	25,485	539,485	564,970	(436,200)	128,770
7/1/26			13,072	13,072			
1/1/27	541,300	4.83	13,072	554,372	567,444	(436,200)	131,244
Totals	<u>\$2,462,400</u>		<u>\$ 368,002</u>	<u>\$2,830,402</u>	<u>\$2,830,402</u>	<u>\$(2,181,000)</u>	<u>\$ 649,402</u>

- (1) The Stormwater Utility transfers \$36,350 monthly to the Sewage Works for its portion of projects from the 2006 A-1 Bonds, as provided by Management of the Utility.

Note: The 2006 A-1 Bonds were issued through the Indiana Bond Bank. The amortization schedule was amended March 26, 2015, and resulted in a reduction in the overall payments of approximately \$720,000.

Source: Sewage Works Revenue Bonds of 2006, Series A-1 Amended Qualified Entity Purchase Agreement as recalculated by Crowe.

Sewage Works Refunding Revenue Bonds, Series 2013 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/22			\$ 30,616	\$ 30,616	
1/1/23	\$ 1,120,000	1.78 %	30,616	1,150,616	\$ 1,181,232
7/1/23			20,648	20,648	
1/1/24	1,150,000	1.78	20,648	1,170,648	1,191,296
7/1/24			10,413	10,413	
1/1/25	<u>1,170,000</u>	1.78	<u>10,413</u>	<u>1,180,413</u>	1,190,826
Totals	<u>\$ 3,440,000</u>		<u>\$ 123,354</u>	<u>\$ 3,563,354</u>	

Source: Sewage Works Refunding Revenue Bonds, Series 2013 Final Private Placement Memorandum, as recalculated by Crowe.

Sewage Works Revenue Bonds of 2017 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/22			\$ 78,650	\$ 78,650	
1/1/23	\$ 300,000	2.00 %	78,650	378,650	\$ 457,300
7/1/23			75,650	75,650	
1/1/24	310,000	2.00	75,650	385,650	461,300
7/1/24			72,550	72,550	
1/1/25	315,000	2.00	72,550	387,550	460,100
7/1/25			69,400	69,400	
1/1/26	325,000	2.00	69,400	394,400	463,800
7/1/26			66,150	66,150	
1/1/27	335,000	3.00	66,150	401,150	467,300
7/1/27			61,125	61,125	
1/1/28	345,000	3.00	61,125	406,125	467,250
7/1/28			55,950	55,950	
1/1/29	360,000	3.00	55,950	415,950	471,900
7/1/29			50,550	50,550	
1/1/30	370,000	3.00	50,550	420,550	471,100
7/1/30			45,000	45,000	
1/1/31	385,000	3.00	45,000	430,000	475,000
7/1/31			39,225	39,225	
1/1/32	395,000	3.00	39,225	434,225	473,450
7/1/32			33,300	33,300	
1/1/33	410,000	3.00	33,300	443,300	476,600
7/1/33			27,150	27,150	
1/1/34	425,000	3.00	27,150	452,150	479,300
7/1/34			20,775	20,775	
1/1/35	445,000	3.00	20,775	465,775	486,550
7/1/35			14,100	14,100	
1/1/36	460,000	3.00	14,100	474,100	488,200
7/1/36			7,200	7,200	
1/1/37	<u>480,000</u>	3.00	<u>7,200</u>	<u>487,200</u>	494,400
Totals	<u>\$ 5,660,000</u>		<u>\$ 1,433,550</u>	<u>\$ 7,093,550</u>	

Source: Sewage Works Refunding Revenue Bonds, Series 2017 Final Official Statement, as recalculated by Crowe.

Sewage Works Refunding Revenue Bonds, Series 2019 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/22			\$ 78,400	\$ 78,400	
1/1/23	\$ 865,000	3.88 % (1)	78,400	943,400	\$ 1,021,800
7/1/23			61,600	61,600	
1/1/24	900,000	3.44 (1)	61,600	961,600	1,023,200
7/1/24			46,100	46,100	
1/1/25	930,000	3.25 (1)	46,100	976,100	1,022,200
7/1/25			31,000	31,000	
1/1/26	960,000	4.00	31,000	991,000	1,022,000
7/1/26			11,800	11,800	
1/1/27	<u>590,000</u>	4.00	<u>11,800</u>	<u>601,800</u>	613,600
Totals	<u>\$ 4,245,000</u>		<u>\$ 457,800</u>	<u>\$ 4,702,800</u>	

(1) The below maturities were sold with split coupons payments. The amount shown in the schedule is the weighted average of the below amounts.

<u>1/1/2023</u>			
	100,000	3.00 %	
	765,000	4.00	
	<u>865,000</u>	<u>3.88</u> %	
<u>1/1/2024</u>			
	250,000	2.00 %	
	650,000	4.00	
	<u>900,000</u>	<u>3.44</u> %	
<u>1/1/2025</u>			
	350,000	2.00 %	
	580,000	4.00	
	<u>930,000</u>	<u>3.25</u> %	

Source: Sewage Works Refunding Revenue Bonds, Series 2019 Final Official Statement, as recalculated by Crowe.

Sewage Works Revenue Bonds of 2020 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Less: Stormwater (1)	Sewage Works Fiscal Total
7/1/22			\$ 484,900	\$ 484,900			
1/1/23			484,900	484,900	\$ 969,800	\$ (523,800)	\$ 446,000
7/1/23			484,900	484,900			
1/1/24			484,900	484,900	969,800	(523,800)	446,000
7/1/24			484,900	484,900			
1/1/25			484,900	484,900	969,800	(523,800)	446,000
7/1/25			484,900	484,900			
1/1/26			484,900	484,900	969,800	(523,800)	446,000
7/1/26			484,900	484,900			
1/1/27	\$ 400,000	2.00 %	484,900	884,900	1,369,800	(523,800)	846,000
7/1/27			480,900	480,900			
1/1/28	1,585,000	4.00	480,900	2,065,900	2,546,800	(523,800)	2,023,000
7/1/28			449,200	449,200			
1/1/29	1,650,000	4.00	449,200	2,099,200	2,548,400	(523,800)	2,024,600
7/1/29			416,200	416,200			
1/1/30	2,220,000	4.00	416,200	2,636,200	3,052,400	(523,800)	2,528,600
7/1/30			371,800	371,800			
1/1/31	2,310,000	4.00	371,800	2,681,800	3,053,600	(523,800)	2,529,800
7/1/31			325,600	325,600			
1/1/32	1,355,000	4.00	325,600	1,680,600	2,006,200	(523,800)	1,482,400
7/1/32			298,500	298,500			
1/1/33	1,410,000	4.00	298,500	1,708,500	2,007,000	(523,800)	1,483,200
7/1/33			270,300	270,300			
1/1/34	1,470,000	4.00	270,300	1,740,300	2,010,600	(523,800)	1,486,800
7/1/34			240,900	240,900			
1/1/35	1,525,000	4.00	240,900	1,765,900	2,006,800	(523,800)	1,483,000
7/1/35			210,400	210,400			
1/1/36	1,585,000	4.00	210,400	1,795,400	2,005,800	(523,800)	1,482,000
7/1/36			178,700	178,700			
1/1/37	1,650,000	4.00	178,700	1,828,700	2,007,400	(523,800)	1,483,600
7/1/37			145,700	145,700			
1/1/38	1,715,000	4.00	145,700	1,860,700	2,006,400	(523,800)	1,482,600
7/1/38			111,400	111,400			
1/1/39	1,785,000	4.00	111,400	1,896,400	2,007,800	(523,800)	1,484,000
7/1/39			75,700	75,700			
1/1/40	1,855,000	4.00	75,700	1,930,700	2,006,400	(523,800)	1,482,600
7/1/40			38,600	38,600			
1/1/41	1,930,000	4.00	38,600	1,968,600	2,007,200	(523,800)	1,483,400
Totals	<u>\$24,445,000</u>		<u>\$12,076,800</u>	<u>\$36,521,800</u>	<u>\$36,521,800</u>	<u>\$ (9,952,200)</u>	<u>\$26,569,600</u>

(1) The Stormwater Utility transfers \$33,650 monthly to the Sewage Works for its portion of projects from the 2020 Bonds, as provided by Management of the Utility.

Source: Sewage Works Revenue Bonds of 2020 Final Official Statement, as recalculated by Crowe.

Sewage Works Refunding Revenue Bonds of 2021 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/22			\$ 90,329	\$ 90,329	
1/1/23	\$ 600,000	3.00 %	85,575	685,575	\$ 775,904
7/1/23			76,575	76,575	
1/1/24	625,000	3.00	76,575	701,575	778,150
7/1/24			67,200	67,200	
1/1/25	645,000	3.00	67,200	712,200	779,400
7/1/25			57,525	57,525	
1/1/26	670,000	3.00	57,525	727,525	785,050
7/1/26			47,475	47,475	
1/1/27	690,000	3.00	47,475	737,475	784,950
7/1/27			37,125	37,125	
1/1/28	715,000	3.00	37,125	752,125	789,250
7/1/28			26,400	26,400	
1/1/29	725,000	3.00	26,400	751,400	777,800
7/1/29			15,525	15,525	
1/1/30	245,000	3.00	15,525	260,525	276,050
7/1/30			11,850	11,850	
1/1/31	250,000	3.00	11,850	261,850	273,700
7/1/31			8,100	8,100	
1/1/32	265,000	3.00	8,100	273,100	281,200
7/1/32			4,125	4,125	
1/1/33	<u>275,000</u>	3.00	<u>4,125</u>	<u>279,125</u>	283,250
Totals	<u>\$ 5,705,000</u>		<u>\$ 879,704</u>	<u>\$ 6,584,704</u>	

Source: Sewage Works Refunding Revenue Bonds of 2021 Final Official Statement, as recalculated by Crowe.

ESG Solar Lease Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Sewer Portion (1)
6/30/22	\$ 279,263	2.97 %	\$ 168,352	\$ 447,615		
12/30/22	283,410	2.97	164,205	447,615	\$ 895,230	\$ 394,287
6/30/23	287,619	2.97	159,996	447,615		
12/30/23	291,890	2.97	155,725	447,615	895,230	394,287
6/30/24	296,225	2.97	151,390	447,615		
12/30/24	300,623	2.97	146,991	447,614	895,229	394,286
6/30/25	305,088	2.97	142,527	447,615		
12/30/25	309,618	2.97	137,997	447,615	895,230	394,287
6/30/26	314,216	2.97	133,399	447,615		
12/30/26	318,882	2.97	128,733	447,615	895,230	394,287
6/30/27	323,618	2.97	123,997	447,615		
12/30/27	328,423	2.97	119,192	447,615	895,230	394,287
6/30/28	333,300	2.97	114,315	447,615		
12/30/28	338,250	2.97	109,365	447,615	895,230	394,287
6/30/29	343,273	2.97	104,342	447,615		
12/30/29	348,371	2.97	99,244	447,615	895,230	394,287
6/30/30	353,544	2.97	94,071	447,615		
12/30/30	358,794	2.97	88,821	447,615	895,230	394,287
6/30/31	364,122	2.97	83,493	447,615		
12/30/31	369,529	2.97	78,086	447,615	895,230	394,287
6/30/32	375,017	2.97	72,598	447,615		
12/30/32	380,586	2.97	67,029	447,615	895,230	394,287
6/30/33	386,237	2.97	61,377	447,614		
12/30/33	391,973	2.97	55,642	447,615	895,229	394,286
6/30/34	397,794	2.97	49,821	447,615		
12/30/34	403,701	2.97	43,914	447,615	895,230	394,287
6/30/35	409,696	2.97	37,919	447,615		
12/30/35	415,780	2.97	31,835	447,615	895,230	394,287
6/30/36	421,954	2.97	25,661	447,615		
12/30/36	428,220	2.97	19,395	447,615	895,230	394,287
6/30/37	434,580	2.97	13,035	447,615		
10/30/37	<u>443,227</u>	2.97	<u>4,388</u>	<u>447,615</u>	895,230	394,287
Totals	<u>\$ 11,336,823</u>		<u>\$ 2,986,855</u>	<u>\$ 14,323,678</u>		
Annual Lease Payment						<u>\$ 394,287</u>

(1) The ESG Solar Lease payments are allocated between the Sewage Works, the Bloomington Municipal Water Utility, the City of Bloomington Redevelopment Commission, and the City of Bloomington Parks & Recreation Department. The ESG Solar Lease payments are not on parity with the outstanding bonds of the Utility.

Source: ESG Solar Lease Payment Schedule, as recalculated by Crowe.

Equipment Lease Purchase for Advance Metering Infrastructure Project Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Sewer Portion (1)
8/15/22	\$ 450,000	3.40 %	\$ 120,020	\$ 570,020		
2/15/23	460,000	3.40	112,370	572,370	\$ 1,142,390	\$ 685,434
8/15/23	470,000	3.40	104,550	574,550		
2/15/24	470,000	3.40	96,560	566,560	1,141,110	684,666
8/15/24	485,000	3.40	88,570	573,570		
2/15/25	490,000	3.40	80,325	570,325	1,143,895	686,337
8/15/25	500,000	3.40	71,995	571,995		
2/15/26	505,000	3.40	63,495	568,495	1,140,490	684,294
8/15/26	520,000	3.40	54,910	574,910		
2/15/27	520,000	3.40	46,070	566,070	1,140,980	684,588
8/15/27	535,000	3.40	37,230	572,230		
2/15/28	540,000	3.40	28,135	568,135	1,140,365	684,219
8/15/28	555,000	3.40	18,955	573,955		
2/15/29	560,000	3.40	9,520	569,520	1,143,475	686,085
Totals	\$ 7,060,000		\$ 932,705	\$ 7,992,705		

Average Annual Lease Payment \$ 685,089

- (1) The Advance Metering Infrastructure Project payments are allocated between the Sewage Works and the Bloomington Municipal Water Utility. The Sewage Works' allocated share is sixty percent (60%). The Advance Metering Infrastructure Project lease payments are not on parity with the outstanding bonds of the Utility.

Source: *Equipment Lease Purchase for Advance Metering Infrastructure Project Agreement, as recalculated by Crowe.*

Sewage Works Statements of Income for the Twelve Months Ended April 30, 2022, December 31, 2021, and December 31, 2020

	April 30, 2022	December 31, 2021	December 31, 2020
Operating Revenues			
Metered Sales - Single Family	\$ 7,238,965	\$ 7,341,677	\$ 7,280,096
Metered Sales - Commercial	4,353,781	4,298,417	3,477,048
Metered Sales - Industrial	630,436	623,506	506,270
Metered Sales - Public Authority	3,665,161	3,390,316	3,026,846
Metered Sales - Multiple Family	7,879,925	7,691,107	7,125,106
Forfeited Discounts	116,691	137,765	69,290
Miscellaneous Operating Revenues	100,377	102,302	115,983
Total Operating Revenues	23,985,336	23,585,090	21,600,639
Operation and Maintenance Expenses			
Director	497,698	510,495	479,014
Utility Service Board	1,038,104	1,048,824	2,370,948
Accounting	477,940	562,044	443,098
Billing and Collections	607,053	608,492	442,494
Customer Relations	197,768	201,074	181,640
Purchasing	275,239	281,324	260,027
Environmental Services	339,497	329,431	358,639
Communications	198,474	189,076	170,891
Blucher Poole Treatment Plant	1,588,643	1,667,008	1,674,729
Dillman Road Treatment Plant	4,126,260	3,254,773	3,318,085
Laboratory	207,505	227,407	212,856
Transmission and Distribution	2,085,403	2,128,865	2,167,701
Booster and Lift Stations	159,175	160,273	145,273
Meters	635,657	602,157	580,074
Engineering	906,288	911,838	936,791
Total Operation and Maintenance Expenses	13,340,704	12,683,081	13,742,260
Sewage Works Depreciation Expense	3,802,100	3,802,100	3,249,161
Taxes Other Than Income Taxes			
FICA	391,222	392,509	397,483
Payment in Lieu of Property Taxes	-	-	716,626
Total Taxes Other Than Income Taxes	391,222	392,509	1,114,109
Total Operating Expenses	17,534,026	16,877,690	18,105,530
Net Operating Income	6,451,310	6,707,400	3,495,109

Data Source: Utility trial balances

Statements of Income (Continued)

	April 30, 2022	December 31, 2021	December 31, 2020
Other Income			
Interest Income	\$ 19,219	\$ 35,347	\$ 94,086
Stormwater Revenues	3,512,915	3,272,706	3,124,754
Connection Charges	536,175	648,619	582,586
Miscellaneous Other Income	1,567,717	1,156,229	2,542,457
Total Other Income	5,636,026	5,112,901	6,343,883
Other Expenses			
Stormwater Expenses	990,866	1,000,422	1,142,579
Stormwater Depreciation Expense	280,681	280,681	279,824
Interest Expense	1,676,959	1,249,741	1,178,374
Miscellaneous Expense	216,870	216,770	314,682
Total Other Expenses	3,165,376	2,747,614	2,915,459
Net Income	\$ 8,921,960	\$ 9,072,687	\$ 6,923,533

Note: Stormwater Revenues and Stormwater Expenses are included in Other Income and Other Expenses. See Stormwater Detailed Income Statement for additional information on Stormwater Utility operating results.

Data Source: Utility trial balances

Adjustments to the Sewage Works Financial Statements

Note: Expense categories with multiple adjustments are listed on separate lines.

Sewage Works Adjusted Statement of Income

	April 30, 2022	Adjustments	Adjusted
<u>Operating Revenues</u>			
Metered Sales - Single Family	\$ 7,238,965		\$ 7,238,965
Metered Sales - Commercial	4,353,781		4,353,781
Metered Sales - Industrial	630,436		630,436
Metered Sales - Public Authority	3,665,161		3,665,161
Metered Sales - Multiple Family	7,879,925		7,879,925
Forfeited Discounts	116,691		116,691
Miscellaneous Operating Revenues	100,377		100,377
Total Operating Revenues	<u>23,985,336</u>		<u>23,985,336</u>
<u>Operation and Maintenance Expenses</u>			
Director	497,698	\$ 39,978 1	501,940
		5,262 2	
		(40,998) 3	
Utility Service Board	1,038,104	(17,823) 1	1,474,742
		724,206 4	
		(269,745) 5	
Accounting	477,940	(11,111) 1	398,149
		(1,453) 2	
		(67,227) 3	
Billing and Collections	607,053	4,715 1	604,914
		644 2	
		(15,498) 6	
		8,000 7	
Customer Relations	197,768	13,115 1	212,777
		1,894 2	
Purchasing	275,239	(10,263) 1	263,573
		(1,403) 2	
Environmental Services	339,497	64,703 1	413,305
		9,105 2	
Communications	198,474	35,468 1	239,017
		5,075 2	
Blucher Poole Treatment Plant	1,588,643	130,431 1	1,737,919
		18,845 2	
Dillman Road Treatment Plant	4,126,260	150,274 1	3,865,450
		21,440 2	
		223,448 8	
		(738,542) 9	
		82,570 10	

See Appendix A: Assumptions and Adjustment Detail

Sewage Works Adjusted Statement of Income (Continued)

Note: Expense categories with multiple adjustments are listed on separate lines.

	April 30, 2022	Adjustments		Adjusted
Laboratory	\$ 207,505	\$ 9,833	1	\$ 218,754
		1,416	2	
Transmission and Distribution	2,085,403	98,140	1	2,238,779
		13,159	2	
		24,896	11	
		17,181	12	
Booster and Lift Stations	159,175	21,740	8	180,915
Meters	635,657	83,757	1	731,301
		11,887	2	
Engineering	906,288	104,505	1	1,025,514
		14,721	2	
Total Operation and Maintenance Expenses	<u>13,340,704</u>	<u>766,345</u>		<u>14,107,049</u>
Sewage Works Depreciation Expense	<u>3,802,100</u>			<u>3,802,100</u>
<u>Taxes Other Than Income Taxes</u>				
FICA	391,222	50,527	13	441,749
Payment in Lieu of Property Taxes	-	432,657	14	432,657
Total Taxes Other Than Income Taxes	<u>391,222</u>	<u>483,184</u>		<u>874,406</u>
Total Operating Expenses	<u>17,534,026</u>	<u>1,249,529</u>		<u>18,783,555</u>
Net Operating Income	<u>\$ 6,451,310</u>	<u>\$ (1,249,529)</u>		<u>\$ 5,201,781</u>

See Appendix A: Assumptions and Adjustment Detail

Sewage Works Adjustment Detail

#	Functional Area	Category	Adjustment to Test Year (1)	Description
1	Multiple	Salaries & Wages	\$695,722	To adjust Salaries & Wages to the Utility's 2023 budget.
2	Multiple	Employee Pension & Benefits	\$100,592	To adjust Employee Pension & Benefits for additional PERF contributions resulting from increased Salaries & Wages.
3	Multiple	Contract Services Accounting	(\$108,225)	To adjust Contract Services Accounting to remove expenses related to the 2021 Refunding Bonds and to provide for rate analysis to be conducted every four years.
4	USB	Contract Services Interdepartmental	\$724,206	To adjust Contractual Services Interdepartmental to remove the Utility's share of the ESG Solar Lease recorded to the Test Year, which will be included as a distinct revenue requirement, and to add in the Utility's share of the General Expenses from the 2021 Interdepartmental Agreement.
5	USB	Contracted Services Other	(\$269,745)	To adjust Contracted Services Other to exclude the adjusting entry to expense Construction Work in Progress totaling \$269,745.
6	Billing & Collections	Materials & Supplies Statements	(\$15,498)	To adjust Materials & Supplies Statements to remove two months of expenses. The average monthly bill is \$7,749.
7	Billing & Collections	Bad Debt	\$8,000	To adjust Bad Debt to the Utility's 2023 adopted budget.
8	Multiple	Purchased Power	\$245,188	To adjust Purchased Power for the anticipated increased expenses due to an electric rate increase by Duke Energy.
9	Dillman Road WWTP	Materials & Supplies Structures	(\$738,542)	To adjust Materials & Supplies Structures to remove two invoices from Electric Plus for emergency services performed at Dillman Road Wastewater Treatment Plant. Future similar expenses would be expected to be capitalized.
10	Dillman Road WWTP	Chemicals	\$82,570	To adjust Sodium Hypochlorite and Sodium Aluminate to the Utility's 2023 budget.
11	Transmission & Distribution	Materials & Supplies General	\$24,896	To adjust the Test Year to the three-year historical average.
12	Transmission & Distribution	Materials & Supplies Lines	\$17,181	To adjust the Test Year to the three-year historical average.
13	Taxes Other Than Income Taxes	FICA	\$50,527	To adjust FICA expenses due to an increase in Salaries & Wages.
14	Taxes Other Than Income Taxes	Contract Services in Lieu of Taxes	\$432,657	To adjust Contract Services in Lieu of Taxes to include the 2021 payment to be made by the Utility to the City of Bloomington.

(1) Adjustment amounts are expressed based on the net effect on the Utility's revenue requirements.

See Appendix A: Assumptions

Sewage Works Capital Improvement Plan

Project	2023	2024	2025	2026	2027	Total
Dillman Road Waste Water Treatment Plant						
Modernization and capacity Phase II - Design	\$ 2,000,000 ^					\$ 2,000,000
Modernization and capacity Phase II - Const		\$ 9,889,617 ^				9,889,617
Clarifier Algae Control - Weir Covers, 4 Remaining		1,166,000 ^				1,166,000
Mechanical Screen Replacement and Electrical Feed	4,400,000 ^					4,400,000
Sludge Press Re-Build		470,000 ^				470,000
PACL Feed System			\$ 530,000 #			530,000
End of life Equipment Replacements; PS VFDs, etc				\$ 1,500,000		1,500,000
Admin HVAC			350,000			350,000
Repair or Replace Equalization Basin Liner					\$ 50,000	50,000
Addition of Video Surveillance for Security				140,000		140,000
Replace Main Plan Gate and Controls			110,000			110,000
Headworks- Bar Screen, Replace Compactor Auger, Replace VFD, AV, Add Space Pump					390,000	390,000
Asphalt Drives at Plant			2,140,000			2,140,000
Vortex Grit Removal					8,307,000 &	8,307,000
Final Clarifier Drive Motors					247,000	247,000
Replace Sand Filter Media					1,508,000	1,508,000
Replace Polymer Blending Units for Belt Presses		220,000 ^				220,000
Demolish and Transition Annunciator Board in Admin Building					200,000	200,000
Replace Scum Pump Suction Piping and Valves					156,000	156,000
Blucher Poole Waste Water Treatment Plant						
Belt Press Rehab	155,000					155,000
Intake (2) and RAS (1) Pump Replacements and Misc.	175,000					175,000
End of life Equipment Replacements	200,000	200,000	200,000		200,000	800,000
North Sewer Basin and Plant Hydraulic Capacity Study	250,000					250,000
Plant Expansion (EQ Basin/PC Plus Other Capacity) - Design		1,100,000 ^				1,100,000

Data Source Utility

See Appendix A: Assumptions

Sewage Works Capital Improvement Plan (Continued)

Project	2023	2024	2025	2026	2027	Total
Blucher Poole Waste Water Treatment Plant (continued)						
Waste Storage Building	\$ 2,000,000 ^					\$ 2,000,000
Solids Handling Building Plumbing		\$ 101,920				101,920
Parking Lot Expansion		44,800				44,800
Human Machine Interface (HMI) PLC		560,000 ^				560,000
RAS (3) Pump and Flow Meter Replacement			\$ 749,300 #			749,300
Secondary Clarifier - Painting & Sanding Covers, ISO Valves			769,360 #			769,360
Influent Flume Rehab			118,000			118,000
Yard Valve Replacement (6)		168,000				168,000
Plant Generator					\$ 100,000	100,000
Electrical Upgrades		560,000 ^				560,000
Plant Hydraulic Expansion				\$ 12,887,692 #		12,887,692
Collection System						
I&I Reduction Program	100,000	100,000	100,000	100,000	100,000	500,000
Sewer Lining, Manhole Rehab, FMs Lining	430,000	430,000	430,000	430,000	430,000	2,150,000
Lift Stations (Morningside, Cans, etc)	1,200,000	2,240,000	2,124,000	100,000	100,000	5,764,000
Road Projects Relocations	20,000	20,000	20,000	20,000	20,000	100,000
SE-Interceptor College Mall-Design (3,000')			1,500,000 #			1,500,000
SE Interceptor MH 8830 Past Goat Farm - Design				1,200,000		1,200,000
SC Interceptor Gordan Pike to Rogers St - Design		1,200,000 ^				1,200,000
Relief Interceptor Dillman WWTP to Rogers St. (3,300')	2,916,000 ^				15,163,200 &	18,079,200
Replacement of Maintenance Equipment (55%)	550,000	145,750	154,495	163,765	173,591	1,187,601
Other						
New Service Center			22,929,759 +			22,929,759
Total Capital Improvement Plan	\$ 14,396,000	\$ 18,616,087	\$ 32,224,914	\$ 16,541,457	\$ 27,144,791	\$ 108,923,249
Projects to be Funded through Proposed 2023 Bond Issuance (^)	(11,316,000)	(15,165,617)				(26,481,617)
Projects to be Funded through Proposed 2025 Bond Issuance (#)			(3,548,660)	(12,887,692)		(16,436,352)
Projects to be Funded through Proposed Service Center Financing (+)			(22,929,759)			(22,929,759)
Projects to be Funded through Future Rate Analysis (&)					(23,470,200)	(23,470,200)
Calculated Extensions and Replacements	\$ 3,080,000	\$ 3,450,470	\$ 5,746,495	\$ 3,653,765	\$ 3,674,591	\$ 19,605,321
Five-Year Average Extensions and Replacements						\$ 3,921,064

Data Source: Utility
See Appendix A: Assumptions

Proposed Sewage Works Revenue Bonds of 2023

Estimated Sources and Uses of Funds

Estimated Sources of Funds

Par Amount	<u>\$ 34,240,000</u>
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Estimated Uses of Funds

Project Fund	
Sewage Works Projects	\$ 26,481,617
Stormwater Projects	4,080,000
Debt Service Reserve	2,860,516
Underwriter's Discount	342,400
Insurance Expense	272,710
Costs of Issuance	<u>202,757</u>
Total Estimated Uses of Funds	<u>\$ 34,240,000</u>

See Appendix A: Assumptions

Estimated Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Less: Stormwater (1)	Sewage Works Fiscal Total
7/1/23			\$ 774,679	\$ 774,679			
1/1/24			774,679	774,679	\$ 1,549,358	\$ (320,782)	\$ 1,228,576
7/1/24			774,679	774,679			
1/1/25			774,679	774,679	1,549,358	(320,782)	1,228,576
7/1/25			774,679	774,679			
1/1/26	\$ 1,310,000	3.70 %	774,679	2,084,679	2,859,358	(320,782)	2,538,576
7/1/26			750,444	750,444			
1/1/27	1,355,000	3.80	750,444	2,105,444	2,855,888	(320,782)	2,535,106
7/1/27			724,699	724,699			
1/1/28	1,410,000	3.90	724,699	2,134,699	2,859,398	(320,782)	2,538,616
7/1/28			697,204	697,204			
1/1/29	1,465,000	3.95	697,204	2,162,204	2,859,408	(320,782)	2,538,626
7/1/29			668,270	668,270			
1/1/30	1,520,000	4.00	668,270	2,188,270	2,856,540	(320,782)	2,535,758
7/1/30			637,870	637,870			
1/1/31	1,580,000	4.15	637,870	2,217,870	2,855,740	(320,782)	2,534,958
7/1/31			605,085	605,085			
1/1/32	1,650,000	4.20	605,085	2,255,085	2,860,170	(320,782)	2,539,388
7/1/32			570,435	570,435			
1/1/33	1,715,000	4.35	570,435	2,285,435	2,855,870	(320,782)	2,535,088
7/1/33			533,134	533,134			
1/1/34	1,790,000	4.55	533,134	2,323,134	2,856,268	(320,782)	2,535,486
7/1/34			492,411	492,411			
1/1/35	1,875,000	4.65	492,411	2,367,411	2,859,822	(320,782)	2,539,040
7/1/35			448,818	448,818			
1/1/36	1,960,000	4.70	448,818	2,408,818	2,857,636	(320,782)	2,536,854
7/1/36			402,758	402,758			
1/1/37	2,055,000	4.75	402,758	2,457,758	2,860,516	(320,782)	2,539,734
7/1/37			353,951	353,951			
1/1/38	2,150,000	4.75	353,951	2,503,951	2,857,902	(320,782)	2,537,120
7/1/38			302,889	302,889			
1/1/39	2,250,000	4.80	302,889	2,552,889	2,855,778	(320,782)	2,534,996
7/1/39			248,889	248,889			
1/1/40	2,360,000	4.85	248,889	2,608,889	2,857,778	(320,782)	2,536,996
7/1/40			191,659	191,659			
1/1/41	2,475,000	4.90	191,659	2,666,659	2,858,318	(320,782)	2,537,536
7/1/41			131,021	131,021			
1/1/42	2,595,000	4.90	131,021	2,726,021	2,857,042	(320,782)	2,536,260
7/1/42			67,444	67,444			
1/1/43	2,725,000	4.95	67,444	2,792,444	2,859,888	(320,782)	2,539,106
Totals	<u>\$ 34,240,000</u>		<u>\$ 20,302,036</u>	<u>\$ 54,542,036</u>	<u>\$ 54,542,036</u>	<u>\$ (6,415,640)</u>	<u>\$ 48,126,396</u>

(1) The Stormwater portion of the debt service payment was calculated based on a twenty-year amortization of the Stormwater Project costs at the Net Interest Cost on the Bonds of 4.76%.

Note: Coupon rates are estimated and subject to change. Arbitrage yield on the bonds is estimated at 4.65%. Coupon rate is based on "A" rates as of September 21, 2022, plus issuer credit spread and 50 basis point timing spread to account for uncertainty of future market rates at time of issuance.

See Appendix A: Assumptions

Proposed Sewage Works Revenue Bonds of 2025

Estimated Sources and Uses of Funds

Estimated Sources of Funds

Par Amount	<u>\$ 18,490,000</u>
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Estimated Uses of Funds

Project Fund	\$ 16,436,352
Debt Service Reserve	1,513,508
Underwriter's Discount	184,900
Insurance Expense	151,110
Costs of Issuance	<u>204,130</u>
Total Estimated Uses of Funds	<u>\$ 18,490,000</u>

See Appendix A: Assumptions

Estimated Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/25			\$ 468,728	\$ 468,728	
1/1/26	\$ 575,000	4.20 %	468,728	1,043,728	\$ 1,512,456
7/1/26			456,653	456,653	
1/1/27	600,000	4.30	456,653	1,056,653	1,513,306
7/1/27			443,753	443,753	
1/1/28	625,000	4.40	443,753	1,068,753	1,512,506
7/1/28			430,003	430,003	
1/1/29	650,000	4.45	430,003	1,080,003	1,510,006
7/1/29			415,540	415,540	
1/1/30	680,000	4.50	415,540	1,095,540	1,511,080
7/1/30			400,240	400,240	
1/1/31	710,000	4.65	400,240	1,110,240	1,510,480
7/1/31			383,733	383,733	
1/1/32	745,000	4.70	383,733	1,128,733	1,512,466
7/1/32			366,225	366,225	
1/1/33	780,000	4.85	366,225	1,146,225	1,512,450
7/1/33			347,310	347,310	
1/1/34	815,000	5.00	347,310	1,162,310	1,509,620
7/1/34			326,935	326,935	
1/1/35	855,000	5.10	326,935	1,181,935	1,508,870
7/1/35			305,133	305,133	
1/1/36	900,000	5.15	305,133	1,205,133	1,510,266
7/1/36			281,958	281,958	
1/1/37	945,000	5.15	281,958	1,226,958	1,508,916
7/1/37			257,624	257,624	
1/1/38	995,000	5.20	257,624	1,252,624	1,510,248
7/1/38			231,754	231,754	
1/1/39	1,050,000	5.25	231,754	1,281,754	1,513,508
7/1/39			204,191	204,191	
1/1/40	1,105,000	5.25	204,191	1,309,191	1,513,382
7/1/40			175,185	175,185	
1/1/41	1,160,000	5.35	175,185	1,335,185	1,510,370
7/1/41			144,155	144,155	
1/1/42	1,220,000	5.40	144,155	1,364,155	1,508,310
7/1/42			111,215	111,215	
1/1/43	1,290,000	5.40	111,215	1,401,215	1,512,430
7/1/43			76,385	76,385	
1/1/44	1,360,000	5.45	76,385	1,436,385	1,512,770
7/1/44			39,325	39,325	
1/1/45	1,430,000	5.50	39,325	1,469,325	1,508,650
Totals	<u>\$18,490,000</u>		<u>\$ 11,732,090</u>	<u>\$ 30,222,090</u>	

Note: Coupon rates are estimated and subject to change. Arbitrage yield on the bonds is estimated at 5.22%. Coupon rate is based on "A" rates as of September 21, 2022, plus issuer credit spread and 100 basis point timing spread to account for uncertainty of future market rates at time of issuance.

See Appendix A: Assumptions

Proposed Service Center Financing

Estimated Sources and Uses of Funds

Estimated Sources of Funds	
Par Amount	<u>\$ 25,680,000</u>
Estimated Uses of Funds	
Project Fund	\$ 22,929,759
Debt Service Reserve	2,081,306
Underwriter's Discount	256,800
Insurance Expense	207,897
Costs of Issuance	<u>204,238</u>
Total Estimated Uses of Funds	<u>\$ 25,680,000</u>

Note: As of the date of this Report, Management of the Utility is uncertain when financing of a new service center will occur. This Report provides funding for estimated financing beginning in 2023, though actual timing is preliminary and subject to change.

See Appendix A: Assumptions

Estimated Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Contingency Fiscal Total (1)	Sewage Works Portion (2)
7/1/23			\$ 634,960	\$ 634,960			
1/1/24	\$ 810,000	4.15 %	634,960	1,444,960	\$ 2,079,920	\$ 2,287,912	\$ 1,372,747
7/1/24			618,153	618,153			
1/1/25	845,000	4.20	618,153	1,463,153	2,081,306	2,289,437	1,373,662
7/1/25			600,408	600,408			
1/1/26	880,000	4.20	600,408	1,480,408	2,080,816	2,288,898	1,373,339
7/1/26			581,928	581,928			
1/1/27	915,000	4.30	581,928	1,496,928	2,078,856	2,286,742	1,372,045
7/1/27			562,255	562,255			
1/1/28	955,000	4.40	562,255	1,517,255	2,079,510	2,287,461	1,372,477
7/1/28			541,245	541,245			
1/1/29	995,000	4.45	541,245	1,536,245	2,077,490	2,285,239	1,371,143
7/1/29			519,106	519,106			
1/1/30	1,040,000	4.50	519,106	1,559,106	2,078,212	2,286,033	1,371,620
7/1/30			495,706	495,706			
1/1/31	1,085,000	4.65	495,706	1,580,706	2,076,412	2,284,053	1,370,432
7/1/31			470,480	470,480			
1/1/32	1,140,000	4.70	470,480	1,610,480	2,080,960	2,289,056	1,373,434
7/1/32			443,690	443,690			
1/1/33	1,190,000	4.85	443,690	1,633,690	2,077,380	2,285,118	1,371,071
7/1/33			414,833	414,833			
1/1/34	1,250,000	5.00	414,833	1,664,833	2,079,666	2,287,633	1,372,580
7/1/34			383,583	383,583			
1/1/35	1,310,000	5.10	383,583	1,693,583	2,077,166	2,284,883	1,370,930
7/1/35			350,178	350,178			
1/1/36	1,380,000	5.15	350,178	1,730,178	2,080,356	2,288,392	1,373,035
7/1/36			314,643	314,643			
1/1/37	1,450,000	5.15	314,643	1,764,643	2,079,286	2,287,215	1,372,329
7/1/37			277,305	277,305			
1/1/38	1,525,000	5.20	277,305	1,802,305	2,079,610	2,287,571	1,372,543
7/1/38			237,655	237,655			
1/1/39	1,605,000	5.25	237,655	1,842,655	2,080,310	2,288,341	1,373,005
7/1/39			195,524	195,524			
1/1/40	1,690,000	5.25	195,524	1,885,524	2,081,048	2,289,153	1,373,492
7/1/40			151,161	151,161			
1/1/41	1,775,000	5.35	151,161	1,926,161	2,077,322	2,285,054	1,371,032
7/1/41			103,680	103,680			
1/1/42	1,870,000	5.40	103,680	1,973,680	2,077,360	2,285,096	1,371,058
7/1/42			53,190	53,190			
1/1/43	1,970,000	5.40	53,190	2,023,190	2,076,380	2,284,018	1,370,411
Totals	<u>\$25,680,000</u>		<u>\$ 15,899,366</u>	<u>\$41,579,366</u>	<u>\$41,579,366</u>	<u>\$45,737,305</u>	<u>\$27,442,385</u>

Note: Coupon rates are estimated and subject to change. Arbitrage yield on the bonds is estimated at 5.11%. Coupon rate is based on "A" rates as of September 21, 2022, plus issuer credit spread and 100 basis point timing spread to account for uncertainty of future market rates at time of issuance.

- (1) Contingency amount includes a ten percent cushion on Fiscal Total Amounts, as provided by Management of the Utility.
- (2) Sewage Works Portion is sixty percent (60%) of Contingency Fiscal Total, as provided by Management of the Utility.

See Appendix A: Assumptions

Estimated Sewage Works Combined Debt after Issuance of the Proposed Bonds

Pay Year	2006 A-1 Bonds (1)	2013 Refunding Bonds	2017 Bonds	2019 Refunding Bonds	2020 Bonds (1)	2021 Refunding Bonds	Total Outstanding Bonds	Estimated 2023 Bonds (1)	Estimated 2025 Bonds	Estimated Service Center Financing WW Portion (1)	Total
2022	\$ 129,000	\$ 1,181,232	\$ 457,300	\$ 1,021,800	\$ 446,000	\$ 775,904	\$ 4,011,236				\$ 4,011,236
2023	130,272	1,191,296	461,300	1,023,200	446,000	778,150	4,030,218	\$ 1,228,576		\$ 1,372,747	6,631,541
2024	130,116	1,190,826	460,100	1,022,200	446,000	779,400	4,028,642	1,228,576		1,373,662	6,630,880
2025	128,770		463,800	1,022,000	446,000	785,050	2,845,620	2,538,576	\$ 1,512,456	1,373,339	8,269,991
2026	131,244		467,300	613,600	846,000	784,950	2,843,094	2,535,106	1,513,306	1,372,045	8,263,551
2027			467,250		2,023,000	789,250	3,279,500	2,538,616	1,512,506	1,372,477	8,703,099
2028			471,900		2,024,600	777,800	3,274,300	2,538,626	1,510,006	1,371,143	8,694,075
2029			471,100		2,528,600	276,050	3,275,750	2,535,758	1,511,080	1,371,620	8,694,208
2030			475,000		2,529,800	273,700	3,278,500	2,534,958	1,510,480	1,370,432	8,694,370
2031			473,450		1,482,400	281,200	2,237,050	2,539,388	1,512,466	1,373,434	7,662,338
2032			476,600		1,483,200	283,250	2,243,050	2,535,088	1,512,450	1,371,071	7,661,659
2033			479,300		1,486,800		1,966,100	2,535,486	1,509,620	1,372,580	7,383,786
2034			486,550		1,483,000		1,969,550	2,539,040	1,508,870	1,370,930	7,388,390
2035			488,200		1,482,000		1,970,200	2,536,854	1,510,266	1,373,035	7,390,355
2036			494,400		1,483,600		1,978,000	2,539,734	1,508,916	1,372,329	7,398,979
2037					1,482,600		1,482,600	2,537,120	1,510,248	1,372,543	6,902,511
2038					1,484,000		1,484,000	2,534,996	1,513,508	1,373,005	6,905,509
2039					1,482,600		1,482,600	2,536,996	1,513,382	1,373,492	6,906,470
2040					1,483,400		1,483,400	2,537,536	1,510,370	1,371,032	6,902,338
2041								2,536,260	1,508,310	1,371,058	5,415,628
2042								2,539,106	1,512,430	1,370,411	5,421,947
2043									1,512,770		1,512,770
2044									1,508,650		1,508,650
Totals	\$ 649,402	\$ 3,563,354	\$ 7,093,550	\$ 4,702,800	\$ 26,569,600	\$ 6,584,704	\$ 49,163,410	\$ 48,126,396	\$ 30,222,090	\$ 27,442,385	\$ 154,954,281
Average Annual Debt Service (2023-2024)											\$ 6,631,211
Average Annual Debt Service (2025-2027)											\$ 8,412,214

(1) Amounts shown are net of the Stormwater Utility portion of debt service.

Note: The Proposed 2023 Bonds, Proposed 2025 Bonds, and Proposed Service Center Financing were amortized using level debt service. The Utility may consider structuring such obligations at the time of issuance to achieve aggregate level debt service for the Utility on a combined basis.

Statement of Sewage Works Revenue Requirements

Statement of Sewage Works Revenue Requirements

	Phase I (2023)	Phase II (2025)
Adjusted Operation and Maintenance Expense	\$ 14,107,049	\$ 14,107,049
Adjusted Taxes Other Than Income Taxes	874,406	874,406
Estimated Combined Annual Debt Service	6,631,211 (1)	8,412,214 (2)
Average Annual Lease Payment: Equipment for AMI	685,089	685,089
Annual Lease Payment: Solar Lease	394,287	394,287
Extensions and Replacements (3)	<u>3,921,064</u>	<u>3,921,064</u>
Total Revenue Requirements	26,613,106	28,394,109
Less: Adjusted Operating Revenues	<u>23,985,336</u>	<u>26,837,528</u>
Deficit	2,627,770	1,556,581
Divide by: Adjustable Operating Revenues	<u>23,768,268</u>	<u>26,620,460</u>
Percent Rate Increase Required	<u>12%</u>	<u>6%</u>

- (1) Estimated average combined annual debt service of the Sewage Works for 2023 and 2024.
 (2) Estimated average combined annual debt service of the Sewage Works for 2025 through 2027.
 (3) Average Calculated Extensions and Replacements for 2023 through 2027. See Sewage Works Capital Improvement Plan.

See Appendix A: Assumptions

Schedule of Sewage Works Present and Proposed Rates and Charges

	Present Rates (1)	Phase I Proposed Rates	Phase II Proposed Rates
SEWAGE WORKS RATES			
<u>Monthly Usage Charge (Per 1,000 Gallons)</u>			
Inside City Customers	\$ 7.99	\$ 8.95	\$ 9.49
Outside City Customers	8.95	10.02 (2)	10.63 (2)
<u>Monthly Service Charge (per meter)</u>			
Inside City Customers	\$ 8.19	\$ 9.17	\$ 9.72
Outside City Customers	9.17	10.27 (2)	10.89 (2)
<u>Excess Strength Surcharge</u>			
<u>Rate per Pound in Excess of 300 ppm</u>			
Biochemical Oxygen Demand (BOD)	\$ 0.391	\$ 0.438	\$ 0.464
Suspended Solids (SS)	0.319	0.357	0.378
<u>Special Laboratory Analysis Monthly Charge</u>			
Strength of BOD and SS Sampling Charge	\$ 171.91	\$ 192.54	\$ 204.09
Grease and Oil Sampling	161.14	180.48	191.31
Metal Sampling (per metal per test)	35.81	40.11	42.52
<u>Unmetered Users</u>			
Minimum Annual Charge - Inside City Customers	\$ 796.74	\$ 892.35	\$ 945.89
Minimum Annual Charge - Outside City Customers	892.41	999.43 (2)	1,059.40 (2)

(1) Sewage Works Present Rates and Charges went into effect on January 1, 2020.

(2) Includes the Outside City Surcharge Factor of 12% applied against the Proposed Rates for Inside City customers.

Typical Monthly Bill Analysis

Inside City Customers

Gallons	Present Charges	Proposed Phase I Charge	Difference to Present	Proposed Phase II Charge	Difference to Phase I
0	\$ 8.19	\$ 9.17	\$ 0.98	\$ 9.72	\$ 0.55
1,000	16.18	18.12	1.94	19.21	1.09
2,000	24.17	27.07	2.90	28.70	1.63
3,000	32.16	36.02	3.86	38.19	2.17
4,000	40.15	44.97	4.82	47.68	2.71
5,000	48.14	53.92	5.78	57.17	3.25
6,000	56.13	62.87	6.74	66.66	3.79
7,000	64.12	71.82	7.70	76.15	4.33
8,000	72.11	80.77	8.66	85.64	4.87
9,000	80.10	89.72	9.62	95.13	5.41
10,000	88.09	98.67	10.58	104.62	5.95
11,000	96.08	107.62	11.54	114.11	6.49
12,000	104.07	116.57	12.50	123.60	7.03
13,000	112.06	125.52	13.46	133.09	7.57
14,000	120.05	134.47	14.42	142.58	8.11
15,000	128.04	143.42	15.38	152.07	8.65
16,000	136.03	152.37	16.34	161.56	9.19
17,000	144.02	161.32	17.30	171.05	9.73
18,000	152.01	170.27	18.26	180.54	10.27
19,000	160.00	179.22	19.22	190.03	10.81
20,000	167.99	188.17	20.18	199.52	11.35

Outside City Customers

Gallons	Present Charges	Proposed Phase I Charge	Difference to Present	Proposed Phase II Charge	Difference to Phase I
0	\$ 9.17	\$ 10.27	\$ 1.10	\$ 10.89	\$ 0.62
1,000	18.12	20.29	2.17	21.52	1.23
2,000	27.07	30.31	3.24	32.15	1.84
3,000	36.02	40.33	4.31	42.78	2.45
4,000	44.97	50.35	5.38	53.41	3.06
5,000	53.92	60.37	6.45	64.04	3.67
6,000	62.87	70.39	7.52	74.67	4.28
7,000	71.82	80.41	8.59	85.30	4.89
8,000	80.77	90.43	9.66	95.93	5.50
9,000	89.72	100.45	10.73	106.56	6.11
10,000	98.67	110.47	11.80	117.19	6.72
11,000	107.62	120.49	12.87	127.82	7.33
12,000	116.57	130.51	13.94	138.45	7.94
13,000	125.52	140.53	15.01	149.08	8.55
14,000	134.47	150.55	16.08	159.71	9.16
15,000	143.42	160.57	17.15	170.34	9.77
16,000	152.37	170.59	18.22	180.97	10.38
17,000	161.32	180.61	19.29	191.60	10.99
18,000	170.27	190.63	20.36	202.23	11.60
19,000	179.22	200.65	21.43	212.86	12.21
20,000	188.17	210.67	22.50	223.49	12.82

Stormwater Analysis

Stormwater Detailed Income Statement

	April 30, 2022	December 31, 2021	December 31, 2020
Stormwater Revenues			
Stormwater Single Family	\$ 952,925	\$ 950,868	\$ 931,785
Stormwater Sales Commercial	957,385	962,128	896,530
Stormwater Sales Industrial	31,743	31,743	30,628
Stormwater Sales Public Authority	602,593	601,255	577,488
Stormwater Sales Multiple Family	702,287	693,851	658,753
Stormwater Plan Review Revenue	1,445	1,190	765
Forfeited Discounts - Storm	16,260	18,037	8,305
Total Stormwater Revenues	<u>3,264,638</u>	<u>3,259,072</u>	<u>3,104,254</u>
Stormwater Operation and Maintenance Expenses			
Salaries and Wages	517,069	520,477	591,315
Employee Pension and Benefits	274,436	271,252	267,482
Materials and Supplies	82,452	83,464	72,828
Customer Assistance Program	44,944	46,961	34,874
Contractual Services	16,690	16,038	82,152
Liability Insurance	15,534	15,425	36,995
Miscellaneous Expenses	2,673	9,717	12,120
Total	<u>953,798</u>	<u>963,334</u>	<u>1,097,766</u>
Stormwater Depreciation Expense:	<u>280,681</u>	<u>280,681</u>	<u>279,824</u>
FICA	<u>37,067</u>	<u>37,088</u>	<u>44,813</u>
Total Stormwater Operating Expenses:	<u>1,271,546</u>	<u>1,281,103</u>	<u>1,422,403</u>
Stormwater Net Operating Income:	<u>1,993,092</u>	<u>1,977,969</u>	<u>1,681,851</u>
Stormwater Other Income			
Reimbursements	234,454	194	16,794
Interest Stormwater Construction	10,236	7,748	-
Revenue from Contract Work	-	1,650	-
Interest Stormwater O&M	3,588	4,043	3,707
Total Stormwater Other Income:	<u>248,278</u>	<u>13,635</u>	<u>20,501</u>
Stormwater Net Income	<u>\$ 2,241,370</u>	<u>\$ 1,991,604</u>	<u>\$ 1,702,352</u>

Stormwater Utility Adjusted Statement of Income

	April 30, 2022	Adjustments	Adjusted
Stormwater Revenues			
Stormwater Single Family	\$ 952,925		\$ 952,925
Stormwater Sales Commercial	957,385		957,385
Stormwater Sales Industrial	31,743		31,743
Stormwater Sales Public Authority	602,593		602,593
Stormwater Sales Multiple Family	702,287		702,287
Stormwater Plan Review Revenue	1,445		1,445
Forfeited Discounts - Storm	16,260		16,260
Total Stormwater Revenues	3,264,638		3,264,638
Stormwater Operation and Maintenance Expenses			
Salaries and Wages	517,069	\$ 190,937 1	708,006
Employee Pension and Benefits	274,436	27,654 2	302,090
Materials and Supplies	82,452		82,452
Customer Assistance Program	44,944		44,944
Contractual Services	16,690	6,115 3	22,805
Liability Insurance	15,534		15,534
Miscellaneous Expenses	2,673	250,000 4	252,673
Total	953,798	474,706	1,428,504
Stormwater Depreciation Expense	280,681		280,681
FICA	37,067	13,687 5	50,754
Total Stormwater Operating Expenses	1,271,546	488,393	1,759,939
Stormwater Net Operating Income	1,993,092	(488,393)	1,504,699

See Appendix A: Assumptions and Adjustment Detail

Stormwater Utility Adjustment Detail

#	Functional Area	Category	Adjustment to Test Year (1)	Description
1	Multiple	Stormwater Salaries & Wages	\$190,937	To adjust Environmental Sciences (Department 57) and Utilities Stormwater (Department 81) Salaries & Wages to the Utility's 2023 adopted budget.
2	Multiple	Employee Pension & Benefits	\$27,654	To adjust Environmental Sciences (Department 57) and Utilities Stormwater (Department 81) Employee Pensions & Benefits for additional PERF contributions resulting from increased Salaries & Wages.
3	Contractual Services	Contract Services Accounting	\$6,115	To provide funding for estimated rate analysis expenses (\$25,000) every four (4) years.
4	Multiple	Miscellaneous Expenses	\$250,000	To provide funding for Street Sweeping expenses to be incurred annually by the Stormwater Utility.
5	Taxes Other Than Income Taxes	FICA	\$13,687	To adjust FICA expenses due to an increase in Salaries & Wages.

(1) Adjustment amounts are expressed based on the net effect on the Utility's revenue requirements.

See Appendix A: Assumptions

Stormwater Utility Capital Improvement Plan

Project	2023	2024	2025	2026	2027	Total
300 Other Services E&R and Green Infrastructure						
Jordan River Culvert at Indiana - Construction	\$ 2,050,000 ^					\$ 2,050,000
Lower Cascades Storm Culvert Extension		\$ 250,000				250,000
Spanker's Arch at 6th street	100,000	100,000	\$ 746,000			946,000
Clear Creek Open Channel Improvements - E 1st St. to Grimes Ln.		500,000				500,000
ROW relocations						
High Street Combined with City	70,000			\$ 200,000	\$ 300,000	570,000
Green Infrastructure						
RGSP/Regional Detention	100,000	100,000	100,000	100,000	100,000	500,000
Wexley Road - YMCA Pond	110,000					110,000
Wexley Road - Winslow Park		150,000				150,000
Wexley Road - South Hampton Pond			150,000			150,000
Public 4 Small Projects	261,290					261,290
Stormwater Master Plan	50,000					50,000
Miller Showers Dredging	300,000 ^		50,000			350,000
DPW Engineering GI Inclusion for Road Projects	50,000	50,000	54,866	50,000	50,000	254,866
Replacement of Equipment	321,680	51,760		58,157	61,647	493,244
Stormwater Review Assistance	100,000					100,000
Bridge Inspections	20,000	20,000	20,000	20,000	20,000	100,000
Septic Elimination Program (Sewer Credit)	11,200	11,200	11,200	11,200	11,200	56,000
Internal Neighborhood Projects	300,000 ^	300,000 ^	300,000 ^	300,000	300,000	1,500,000
Condition Assessment 18" and Larger CMP	50,000	50,000	50,000	50,000	50,000	250,000
Weimer Bridge					200,000	200,000
Moores Pike Culvert Extension				100,000		100,000
MS4 Permit Software	25,000					25,000
MS4 On-call Consultant	20,000	20,000	20,000	20,000	20,000	100,000
Stormwater Master Plan Implementation Items	171,000 ^	235,000 ^	424,000 ^	500,000	480,000	1,810,000
Total Capital Improvement Plan	\$ 4,110,170	\$ 1,837,960	\$ 1,926,066	\$ 1,409,357	\$ 1,592,847	\$ 10,876,400
Less: Projects to be Funded through 2023 Bond Issuance (^)	(2,821,000)	(535,000)	(724,000)			(4,080,000)
Less: Anticipated Grant Proceeds	(150,000)					(150,000)
Calculated Extensions and Replacements	\$ 1,139,170	\$ 1,302,960	\$ 1,202,066	\$ 1,409,357	\$ 1,592,847	\$ 6,646,400
Five-Year Average Extensions and Replacements						\$ 1,329,280

Data Source: Utility
See Appendix A: Assumptions

Estimated Stormwater Utility Combined Debt After Issuance of the Proposed Bonds

Pay Year	2006 A-1	2020 Bonds	Proposed 2023 Bonds	Estimated Total Bonds
2022	\$ 436,200	\$ 523,800		\$ 960,000
2023	436,200	523,800	\$ 320,782	1,280,782
2024	436,200	523,800	320,782	1,280,782
2025	436,200	523,800	320,782	1,280,782
2026	436,200	523,800	320,782	1,280,782
2027		523,800	320,782	844,582
2028		523,800	320,782	844,582
2029		523,800	320,782	844,582
2030		523,800	320,782	844,582
2031		523,800	320,782	844,582
2032		523,800	320,782	844,582
2033		523,800	320,782	844,582
2034		523,800	320,782	844,582
2035		523,800	320,782	844,582
2036		523,800	320,782	844,582
2037		523,800	320,782	844,582
2038		523,800	320,782	844,582
2039		523,800	320,782	844,582
2040		523,800	320,782	844,582
2041			320,782	320,782
2042			320,782	320,782
Total	\$ 2,181,000	\$ 9,952,200	\$ 6,415,640	\$ 18,548,840
Estimated Average Annual Debt Service (2023-2026)				\$ 1,280,782

Statement of Stormwater Utility Revenue Requirements

Adjusted Operation and Maintenance Expense	\$ 1,428,504
Adjusted Taxes Other Than Income Taxes	50,754
Estimated Average Annual Debt Service (2023-2026)	1,280,782
Estimated Average Annual Extensions and Replacements (2023-2027)	<u>1,329,280</u>
Total Revenue Requirements	4,089,320
Less: Adjusted Operating Revenues	<u>3,264,638</u>
Deficit	824,682
Divide by: Adjustable Operating Revenues	<u>3,248,378</u>
Percent Rate Increase Required	<u>26%</u>

Stormwater Utility Present and Proposed Rates

	Present Rates (1)	Proposed Rates
<u>Stormwater Utility Monthly Charges</u>		
Single Family Residential Customers	\$ 5.95	\$ 7.50

All other customers shall be charged based upon the amount of runoff generated by the customer.

(1) Stormwater Utility Present Rates and Charges went into effect on January 1, 2020.

Appendix A: Assumptions

The following assumptions, provided by and approved by the management of the Utility, were used in preparation of the Report.

#	Report Area	Assumption
1	All	Operating Revenues, Operation and Maintenance Expenses, and Taxes Other Than Income Taxes of the Utility for the year ending April 30, 2022, ("Test Year") are representative of expected pro forma operating results, except where otherwise noted.
2	All	Assumes no provision for new debt or leases beyond those summarized in the Estimated Combined Amortization Schedule After Issuance of Proposed Bonds for the Sewage Works and Stormwater Utility.
3	Adjusted Statements of Income	Consumption patterns and number of customers are assumed to be stable and not materially fluctuate in future years from the Test Year.
4	Sewage Works Adjusted Statement of Income	Adjustment 1: Test Year overtime and 2023 Budget for Salaries and Wages will be indicative of personnel costs for the Pro Forma year.
5	Sewage Works Adjusted Statement of Income	Adjustment 2: Pro Forma PERF expense based on Pro Forma wages and assumes that PERF expense is incurred in similar proportions in the Pro Forma year as the Test Year.
6	Sewage Works Adjusted Statement of Income	Adjustment 3: Assumes future similar costs of issuance will be paid from proceeds of future bond issues.
7	Sewage Works Adjusted Statement of Income	Adjustment 4: Sewage Works will be responsible for \$1,008,674 for General Services Costs in the Pro Forma year, which is 60% of the 2021 Interdepartmental agreement value of \$1,681,123.
8	Sewage Works Adjusted Statement of Income	Adjustment 8: Contemplates a 29% increase in electricity costs for Departments 65 (Dillman Road WWTP) and Department 73 (Boosters & Lift Stations) based on the observed increases in Duke Energy rates between average Test Year costs and rates as of June 2022. Energy costs for Blucher Poole were not increased as they are not served by Duke Energy.
9	Sewage Works Adjusted Statement of Income	Adjustment 9: Assumes future similar expenses will be capitalized or non-recurring in nature.
10	Sewage Works Adjusted Statement of Income	Adjustment 13: Pro Forma FICA expense equals Pro Forma Salaries and Wages times FICA rate of 7.65%.
11	Sewage Works Capital Improvement Plan	Funding for large 2027 projects, including Vortex Grit Removal and Relief Interceptor Dillman WWTP to Rogers Street, will be determined in the Utility's 2026 rate analysis. Timing for the New Service Center is unknown as of the date of this Report. Funding is provided for the New Service Center beginning in 2023, however, actual timing of construction and financing is unknown.
12	Estimated Sources and Uses (Proposed 2023 Bonds, Proposed 2025 Bonds, and Proposed Service Center Financing)	<ul style="list-style-type: none"> Project costs based on sum of projects to be financed as indicated in the Capital Improvement Plans provided by Management of the Utilities. Debt Service Reserve Funds are based on the maximum annual debt service of the respective

#	Report Area	Assumption
		<p>bond issuances.</p> <ul style="list-style-type: none"> Costs of issuance are estimates based on similar transactions.
13	Estimated Amortization Schedules	<p>Coupon rates based on A Refinitiv MMD rates as of September 21, 2022, plus an issuer credit spread, and a 50 basis point timing spread for the 2023 Bonds, and 100 basis point timing spread for the 2025 Bonds and Service Center Financing. Rates are estimated and subject to change. The amortization schedule for the 2023 Bonds assumes level debt service after interest only payments for the first two years. The amortization schedule for the 2025 Bonds and Service Center Financing assumes level debt service. The Utility may consider structuring the obligations at the time of issuance to achieve aggregate level debt service for the Utility on a combined basis.</p>
14	Statement of Sewage Works Revenue Requirements	<p>Assumes a Phase I rate increase effective January of 2023, and a Phase II rate increase effective January of 2025. Assumes the Utility will complete an additional rate analysis in 2027 to evaluate funding needs for the projects identified on the capital improvement plan as debt financing and for the Utility's anticipated increased debt service for the years 2027 through 2030.</p>
15	Stormwater Utility Adjusted Statement of Income	<p>Adjustment 1: Test Year overtime and 2023 Budget for Salaries and Wages will be indicative of personnel costs for the Pro Forma year.</p>
16	Stormwater Utility Adjusted Statement of Income	<p>Adjustment 2 and 5: Pro Forma PERF and FICA expense based on Pro Forma wages, and assumes that PERF expense is incurred in similar proportions in the Pro Forma year as the Test Year.</p>
17	Stormwater Utility Adjusted Statement of Income	<p>Adjustment 4: Pro Forma estimated expenses attributable to Street Sweeping functions provided by Utility management.</p>
18	Stormwater Utility Capital Improvement Plan	<p>Assumes receipt of grant funding of \$150,000 for Green Infrastructure Public 4 small projects in 2023.</p>

DILLMAN ROAD WWTP							
PROJECT	2022	2023	2024	2025	2026	2027	Total
Modernization and efficiency improvements	\$ 4,000,000						\$ 4,000,000
Modernization and capacity Phase II - Design		\$ 2,000,000					\$ 2,000,000
Modernization and capacity Phase II - Const			\$ 9,889,617				\$ 9,889,617
Clarifier Algea Control - Weir covers, 4 remaining			\$ 1,166,000				\$ 1,166,000
Mechanical Screen Replacement and Electrical Feed	\$ 320,000	\$ 4,400,000					\$ 4,720,000
Sludge Press Re-Build			\$ 470,000				\$ 470,000
PACL feed system				\$ 530,000			\$ 530,000
End of life Equipment Replacements; PS VFD's, etc					\$ 1,500,000		\$ 1,500,000
Admin HVAC				\$ 350,000			\$ 350,000
Repair or Replace Equalization Basin Liner						\$ 50,000	\$ 50,000
Addition of Video Surveillance for Security					\$ 140,000		\$ 140,000
Replace Main Plant Gate and Controls				\$ 110,000			\$ 110,000
Headworks- bar screen, replace compactor auger, replace VFD, AC, add spare pump						\$ 390,000	\$ 390,000
Asphalt drives at plant				\$ 2,140,000			\$ 2,140,000
Vortex Grit Removal						\$ 8,307,000	\$ 8,307,000
Final Clarifier Drive Motors						\$ 247,000	\$ 247,000
Replace Sand Filter Media						\$ 1,508,000	\$ 1,508,000
Replace Polymer Blending Units for Belt Presses			\$ 220,000				\$ 220,000
Demolish and Transition Annunciator Board in Admin Building						\$ 200,000	\$ 200,000
Replace Scum Pump Suction Piping and Valves						\$ 156,000	\$ 156,000
							\$ -
Total Expenditure	\$ 4,320,000	\$ 6,400,000	\$ 11,745,617	\$ 3,130,000	\$ 1,640,000	\$ 10,858,000	\$ 38,093,617

BLUCHER POOLE WWTP							
PROJECT	2022	2023	2024	2025	2026	2027	Total
Belt Press Rehab	\$ 150,000	\$ 155,000					\$ 305,000
Intake (2) and RAS (1) pump replacements and misc		\$ 175,000					\$ 175,000
End of life Equipment Replacements		\$ 200,000	\$ 200,000	\$ 200,000		\$ 200,000	\$ 800,000
North Sewer Basin and Plant hydraulic capacity study		\$ 250,000					\$ 250,000
Plant hydraulic expansion (EQ Basin/PC plus other capacity) - design			\$ 1,100,000				\$ 1,100,000
Waste storage building		\$ 2,000,000					\$ 2,000,000
solids handling building plumbing		\$ 101,920					\$ 101,920
Parking lot expansion			\$ 44,800				\$ 44,800
Human machine interface (HMI) PLC			\$ 560,000				\$ 560,000
RAS (3) pump and flow meter replacement				\$ 749,300			\$ 749,300
Secondary clarifier - painting&sanding covers, iso valves				\$ 769,360			\$ 769,360
Influent Flume rehab				\$ 118,000			\$ 118,000
Yard valve replacement (6)			\$ 168,000				\$ 168,000
Plant Generator						\$ 100,000	\$ 100,000
Electrical Upgrades			\$ 560,000				\$ 560,000
Plant hydraulic expansion					\$ 12,887,692		\$ 12,887,692
							\$ -
							\$ -
Total Expenditure	\$ 150,000	\$ 2,780,000	\$ 2,734,720	\$ 1,836,660	\$ 12,887,692	\$ 300,000	\$ 20,689,072

COLLECTION SYSTEM							
PROJECT	2022	2023	2024	2025	2026	2027	Total
I&I Reduction Program (Clear Water Reduction Program)	\$ 20,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 520,000
Sewer Lining, Manhole Rehab, FMs lining	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 2,580,000
Lift stations (morningside, cans, etc)	\$ 500,000	\$ 1,200,000	\$ 2,240,000	\$ 2,124,000	\$ 100,000	\$ 100,000	\$ 6,264,000
Road projects relocations	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 120,000
SE-Interceptor College Mall-Design (3,000')				\$ 1,500,000			\$ 1,500,000
SE Interceptor MH 8830 past goat farm-Design					\$ 1,200,000		\$ 1,200,000
SC Interceptor Gordan Pike to Rogers St-Design			\$ 1,200,000				\$ 1,200,000
Relief Interceptor Dillman WWTP to Rogers St. (3,300')-design, construction		\$ 2,916,000				\$ 15,163,200	\$ 18,079,200
Replacement of maintenance equipment (55%)		\$ 550,000	\$ 145,750	\$ 154,495	\$ 163,765	\$ 173,591	\$ 1,187,601
							\$ -
Total Expenditure	\$ 970,000	\$ 5,216,000	\$ 4,135,750	\$ 4,328,495	\$ 2,013,765	\$ 15,986,791	\$ 32,650,801

EXPENDITURE SUMMARY BY LOCATION							
	2022	2023	2024	2025	2026	2027	Total
Dillman Road WWTP	\$ 4,320,000	\$ 6,400,000	\$ 11,745,617	\$ 3,130,000	\$ 1,640,000	\$ 10,858,000	\$ 38,093,617
Blucher Poole WWTP	\$ 150,000	\$ 2,780,000	\$ 2,734,720	\$ 1,836,660	\$ 12,887,692	\$ 300,000	\$ 20,689,072
Collection System	\$ 970,000	\$ 5,216,000	\$ 4,135,750	\$ 4,328,495	\$ 2,013,765	\$ 15,986,791	\$ 32,650,801
Total Wastewater	\$ 5,440,000	\$ 14,396,000	\$ 18,616,087	\$ 9,295,155	\$ 16,541,457	\$ 27,144,791	\$ 64,288,699

DILLMAN ROAD WWTP										
PROJECT	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Modernization and efficiency improvements	\$ 18,000,000	\$ 4,000,000								\$ 22,000,000
Roof replacement	\$ 450,000									\$ 450,000
Preliminary Engineering update		\$ 100,000								
P2-1 Vortex Grit Removal			\$ 1,050,629	\$ 4,202,515						\$ 5,253,144
P2-8 Phase 1 more Electrical Improvements			\$ 229,164	\$ 916,656						\$ 1,145,820
P2-6 WAS Thickening - Gravity Belt			\$ 500,000	\$ 2,320,000						\$ 2,820,000
P2-9 Plant Wide SCADA Improvements			\$ 1,000,000	\$ 2,000,000						\$ 3,000,000
5 UV Disinfection					\$ 1,000,000	\$ 2,370,000				\$ 3,370,000
Miscellaneous Improvements							\$ 500,000	\$ 500,000	\$ 500,000	\$ 1,500,000
Clarifier Algae Control - Weir covers, 4 remaining		\$ 600,000								\$ 600,000
Mechanical Screen No. 1 Replacement		\$ 350,000								\$ 350,000
Sludge Press Re-Build		\$ 325,000								\$ 325,000
PACL										
Pump station VFDs										
Total Expenditure	\$ 18,450,000	\$ 5,375,000	\$ 2,779,793	\$ 9,439,171	\$ 1,000,000	\$ 2,370,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 40,813,964

BLUCHER POOLE WWTP										
PROJECT	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Phosphorous Removal System	\$ 500,000									\$ 500,000
Belt Press Rehab		\$ 150,000								
Miscellaneous Improvements										
Plant expansion (EQ Basin/PC plus other capacity)					\$ 1,900,000	\$ 8,000,000	\$ 4,000,000			\$ 13,900,000
Equipment replacements										\$ -
Miscellaneous Improvements		\$ 400,000	\$ 400,000			\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 2,800,000
Total Expenditure	\$ 500,000	\$ 550,000	\$ 400,000	\$ -	\$ 1,900,000	\$ 8,500,000	\$ 4,500,000	\$ 500,000	\$ 500,000	\$ 17,200,000

COLLECTION SYSTEM										
PROJECT	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
I&I Reduction Program Development	\$ 50,000	\$ 100,000	\$ 100,000	\$ 100,000						\$ 350,000
Sewer Lining, Manhole Rehab, FMs lining	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 3,870,000
Dunn Street Sewer (total \$2.9M, \$880K paid by IU)	\$ 2,100,000									\$ 2,100,000
Lift stations (morningside, cans, etc)		\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 800,000
Edwards LS - hyde park (studying still)	\$ 50,000									\$ 50,000
Road projects relocations ??										\$ -
SE-Interceptor College Mall							\$ 3,300,000			\$ 3,300,000
SE Interceptor MH 8830 past goat farm									\$ 7,000,000	\$ 7,000,000
SC Interceptor south of Gordan Pike								\$ 5,000,000		\$ 5,000,000
										\$ -
Total Expenditure	\$ 2,630,000	\$ 630,000	\$ 630,000	\$ 630,000	\$ 530,000	\$ 530,000	\$ 3,830,000	\$ 530,000	\$ 7,530,000	\$ 18,220,000

EXPENDITURE SUMMARY BY LOCATION										
	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Dillman Road WWTP	\$ 18,450,000	\$ 5,375,000	\$ 2,779,793	\$ 9,439,171	\$ 1,000,000	\$ 2,370,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 45,913,964
Blucher Poole WWTP	\$ 500,000	\$ 550,000	\$ 400,000	\$ -	\$ 1,900,000	\$ 8,500,000	\$ 4,500,000	\$ 500,000	\$ 500,000	\$ 18,075,000
Collection System	\$ 2,630,000	\$ 630,000	\$ 630,000	\$ 630,000	\$ 530,000	\$ 530,000	\$ 3,830,000	\$ 530,000	\$ 7,530,000	\$ 18,220,000
Total Wastewater	\$ 21,580,000	\$ 6,555,000	\$ 3,809,793	\$ 10,069,171	\$ 3,430,000	\$ 11,400,000	\$ 8,830,000	\$ 1,530,000	\$ 8,530,000	\$ 82,208,964

Updated 01/4/21 1/4/21 updated and loaded

DILLMAN ROAD WWTP										
PROJECT	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Modernization and efficiency improvements	\$ 18,000,000	\$ 4,000,000								\$ 22,000,000
Roof replacement	\$ 450,000									\$ 450,000
P2-1 Vortex Grit Removal			\$ 1,050,629	\$ 4,202,515						\$ 5,253,144
P2-8 Phase 1 more Electrical Improvements			\$ 229,164	\$ 916,656						\$ 1,145,820
P2-6 WAS Thickening - Gravity Belt			\$ 500,000	\$ 2,320,000						\$ 2,820,000
P2-9 Plant Wide SCADA Improvements			\$ 1,000,000	\$ 2,000,000						\$ 3,000,000
5 UV Disinfection					\$ 1,000,000	\$ 2,370,000				\$ 3,370,000
Miscellaneous Improvements							\$ 500,000	\$ 500,000	\$ 500,000	\$ 1,500,000
Clarifier Algae Control - Weir covers, 4 remaining		\$ 600,000								\$ 600,000
Mechanical Screen No. 1 Replacement		\$ 350,000								\$ 350,000
Sludge Press Re-Build		\$ 325,000								\$ 325,000
Total Expenditure	\$ 18,450,000	\$ 5,275,000	\$ 2,779,793	\$ 9,439,171	\$ 1,000,000	\$ 2,370,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 40,813,964

BLUCHER POOLE WWTP										
PROJECT	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Phosphorous Removal System	\$ 200,000									\$ 200,000
Plant expansion (EQ Basin/PC plus other capacity)					\$ 1,900,000	\$ 8,000,000	\$ 4,000,000			\$ 13,900,000
UV System Replacement										\$ -
Miscellaneous Improvements		\$ 400,000	\$ 400,000			\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 2,800,000
Total Expenditure	\$ 200,000	\$ 400,000	\$ 400,000	\$ -	\$ 1,900,000	\$ 8,500,000	\$ 4,500,000	\$ 500,000	\$ 500,000	\$ 16,900,000

COLLECTION SYSTEM										
PROJECT	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
I&I Reduction Program Development	\$ 50,000	\$ 100,000	\$ 100,000	\$ 100,000						\$ 350,000
Sewer Lining, Manhole Rehab, FMs lining	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 430,000	\$ 3,870,000
Dunn Street Sewer (total \$2.9M, \$880K paid by IU)	\$ 2,100,000									\$ 2,100,000
Lift stations (morningside, cans, etc)		\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 800,000
Edwards LS - hyde park (studying still)	\$ 50,000									\$ 50,000
Road projects relocations ??										\$ -
SE-Interceptor College Mall							\$ 3,300,000			\$ 3,300,000
SE Interceptor MH 8830 past goat farm									\$ 7,000,000	\$ 7,000,000
SC Interceptor south of Gordan Pike								\$ 5,000,000		\$ 5,000,000
Total Expenditure	\$ 2,630,000	\$ 630,000	\$ 630,000	\$ 630,000	\$ 530,000	\$ 530,000	\$ 3,830,000	\$ 530,000	\$ 7,530,000	\$ 18,220,000

EXPENDITURE SUMMARY BY LOCATION										
	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Dillman Road WWTP	\$ 18,450,000	\$ 5,275,000	\$ 2,779,793	\$ 9,439,171	\$ 1,000,000	\$ 2,370,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 45,813,964
Blucher Poole WWTP	\$ 200,000	\$ 400,000	\$ 400,000	\$ -	\$ 1,900,000	\$ 8,500,000	\$ 4,500,000	\$ 500,000	\$ 500,000	\$ 17,625,000
Collection System	\$ 2,630,000	\$ 630,000	\$ 630,000	\$ 630,000	\$ 530,000	\$ 530,000	\$ 3,830,000	\$ 530,000	\$ 7,530,000	\$ 18,220,000
Total Wastewater	\$ 21,280,000	\$ 6,305,000	\$ 3,809,793	\$ 10,069,171	\$ 3,430,000	\$ 11,400,000	\$ 8,830,000	\$ 1,530,000	\$ 8,530,000	\$ 81,658,964

PHASE II	Const	Const cont	Cons other	Const + Engr	Notes	Dan's Notes Aug 2022	G&H Notes	GH priority
Deferred facility plan - phase II 2022 rate case								
Replace RAS screen control box and grit				\$ 200,000				
8 Phase II+ Electrical Improvements				\$ 6,300,000	Improvements to substation	Part under contract and part under study		1 subtracted eng design from \$7.3M
7B Septic Monitoring Improvements -hose bib, paving	\$ 300,000	\$ 390,000	\$ 440,700	\$ 528,840	Evaluate need	Not included	May not be done	
7C Clarifier Sludge Drive	\$ 30,000	\$ 39,000	\$ 44,070	\$ 52,884	needed?	Under Study	May not be done	
Replacement of remaining sludge/solid line (300'-500')				\$ 220,000				1
7E Paint Clarifier Tanks	\$ 120,000	\$ 156,000	\$ 176,280	\$ 280,000		Under Study		2
skids with sumps need replaced				\$ 330,000				2
Repair wash water tank floor				\$ 130,000				1.5
3 valves and 2 sluice gates in the drying beds need replaced				\$ 370,000				1
Polymer blending units for belt presses				\$ 220,000				
Replace Wash Water Recovery Tank Effluent Valve, add sump pump and seal				\$ 100,000				
Manhole Repairs along Clear Creek				\$ 70,000				1
			\$ 661,050	\$ 8,801,724	\$	8,140,674		
			inflation cost	\$ 9,889,617				
New things NOT in facility plan Phase II								
PACL Feed system	\$ 300,000	\$ 390,000	\$ 440,700	\$ 528,840	need better estimate	Under Study		
Admin HVAC	\$ 300,000			\$ 300,000	from lab arch, need better estimate	Under Study		
7D FRP Clarifier Launder Covers (weir covers)	\$ 600,000	\$ 780,000	\$ 881,400	\$ 1,057,680	operators really want this, 2024	Under Study	May not be done	
1 Vortex Grit Removal	\$ 2,980,000	\$ 3,874,000	\$ 4,377,620	\$ 6,390,000	Need to evaluate versus rehab existing	Under Study - may not be done	May not be done	3
Deferred, outside of 5 year CIP								
5 UV Disinfection	\$ 1,910,000	\$ 2,483,000	\$ 2,805,790	\$ 3,366,948		Under Study		
9 Plant Wide SCADA Improvements - will do a reduced version	\$ 2,190,000	\$ 2,847,000	\$ 3,217,110	\$ 3,860,532		Under Study		
Raise drying bed burms				\$ 130,000	GH 2022 #s			
Aerobic Digestion Expansion / TWAS Improvements				\$ 33,650,000	GH 2022 #s			
2 Digester Tank Mixers			\$ 2,083,333	\$ 2,500,000	Evaluate need for expansion, v. rough est.	Under Study	May not be done	don't need to do to get to 20mgd
6 Waste Activated Sludge Thickening - Gravity Belt	\$ 1,600,000	\$ 2,080,000	\$ 2,350,400	\$ 2,820,480	Evaluate need for expansion	Under Study	May not be done	don't need to do to get to 20mgd
Primary clarification				\$ 14,420,000	GH 2022 #s			
Phase 3 electrical				\$ 9,300,000	GH 2022 #s			

Additional Information

Phase II - per Dan, GH, and plant staff 9-8-22
 9)old polymer bldg- demo equipment
 Final Clarifier Drive Motors
 Replace Wash Water Recovery Tank Effluent Valve, add sump pump and seal
 Replace Sand Filter Media
 Replace Polymer Blending Units for Belt Presses
 Demolish and Transition Annunciator Board in Admin Building
 Replace Scum Pump Suction Piping and Valves

COMPLETED

Facilities Plan - 2018

2018 cost estimates; Actual project was much more.

Complete or in-progress	Const	Const cont	Cons other	Engr	Notes	Dan's Notes Aug 2022	G&H Notes
2 Digester Tanks - Membrane with PD	\$ 2,210,000	\$ 2,873,000	\$ 3,246,490	\$ 3,895,788	Not Mixers	Complete	
3A Aeration Tanks - with RAS/WAS/Scum Pumps	\$ 2,500,000	\$ 3,250,000	\$ 3,672,500	\$ 4,407,000	also 3 GBP pumps	Complete	
3B Multi-stage Blowers	\$ 770,000	\$ 1,001,000	\$ 1,131,130	\$ 1,357,356		Complete	
4 Standalone Disc Filter Addition	\$ 1,770,000	\$ 2,301,000	\$ 2,600,130	\$ 3,120,156		Complete	
5 Modest Improvements to Chemical Disinfection	\$ 150,000	\$ 195,000	\$ 220,350	\$ 264,420	done pre-project	Complete	
8 Phase 1 Electrical Improvements	\$ 1,970,000	\$ 2,561,000	\$ 2,893,930	\$ 3,472,716	less substation	Complete	
Total	\$ 9,370,000	\$ 12,181,000	\$ 13,764,530	\$ 16,517,436	Project was \$23M, was other stuff added?		
done under phase 1							
7A EQ Aerator-Mixers	\$ 170,000	\$ 221,000	\$ 249,730	\$ 299,676	Already done?	Done	

Item	Ballpark Construction Cost	Notes
Bar Screen Heater	\$14,000	From Dan's Word file
Belt Press No. 2	\$155,000	From Dan's Word file
Sludge Handling Building - Damaged Piping Replacement	\$90,800	See tab
Sludge Storage Building	\$1,980,000	See tab. Planned for consultant to evaluate
Parking Lot Expansion	\$37,700	See tab
HMI/SCADA	\$500,000	Planned for consultant to evaluate
RAS Modifications	\$635,000	See tab. Planned for consultant to evaluate
Secondary Clarifier Rehab	\$652,000	See tab
Yard Valve Replacement	\$148,500	See tab
Electrical Upgrades	\$500,000	Planned for consultant to evaluate
Hydraulic Expansion	\$9,250,000	2018 cost opinion from BV study, minus UV Improvements, minus Plantwide SCADA, with 4.5%/yr increase over 6 years (2024 construction)
Total	\$13,963,000	

Blucher EQ

\$9,500,000.00

Possible Projects**Notes****Deferred facility plan**

2 Digester Tank Mixers	Evaluate need for expansion
6 Waste Activated Sludge Thickening - Gravity Belt	Evaluate need for expansion
1 Vortex Grit Removal	Need to evaluate versus rehab existing
8 Phase 1+ Electrical Improvements	Add substation
7A EQ Aerator-Mixers	Already done?
7B Septic Monitoring Improvements	Evaluate need
7C Clarifier Sludge Drive	Verifying if replaced
7D FRP Clarifier Launder Covers	
7E Paint Clarifier Tanks	
5 UV Disinfection	Is it worth it?

New things not in original facility plan

PACL Feed system	need better estimate
Admin HVAC	from lab arch, need better estimate

Plant wishes; some should be in this plan, some not

Replace the sludge transfer line that was not completed in Phase 1.
Filter media evaluation/replacement.
Look at raising the flood dam around the sludge beds.
Any drain or gate replacement at the north or south lagoons
Blacktop both of the lagoons
Investigate and make needed repairs to the plant influent manholes along the Creek
EQ rubber liner inspection and repair, it is 5-6 years old now.
Video cameras in the plant to monitor the areas for safety and operations.
Plant entrance gate replacement and controls
Miscellaneous plant sump pump replacements.
Repair the Wash Water Tank floor leaking.
Remove old equipment from the polymer building. Repurpose the building.
Replacement of the dual polyblend system on the belt press in the solids building.
Remove the annunciator board in the Admin building.
Scum pump suction piping replacement.

Complete or in-progress	Const	Const cont	Cons other	Engr	Notes	Dan's Notes Aug 2022	G&H Notes
Relief Interceptor W/ SSO Removal	\$ 5,000,000	\$ 6,500,000	\$ 7,345,000	\$ 8,814,000			
				-needs updated	with GH 9-16-22 numbers		

Year or Priority; if there is a year its on the CIP, if there is no year then use for grouping projects

Year or group in	Project	Notes	brad notes
2021-22	Modernization and efficiency improvements		
2022	Modernization and capacity Phase II - Design		
2023-24	Modernization and capacity Phase II - Const		
2024	Clarifier Algae Control - Weir covers, 4 remaining	include w/ project	
2021	Mechanical Screen No. 1 Replacement	still needed?	
2024	Sludge Press Re-Build	still needed?	
2025	PACI		
	UV Disinfection		on cip - sort of
Grouping			
1	Filter media evaluation/replacement.		how old is existing?
2	Lagoon liner inspection and repair as needed.		
2	Look at raising the flood dam around the sludge beds.		
2	Any drain or gate replacement at the north or south lagoon: is very connected to working on one that is empty, and then switching and filling up the empty one, and of course emptying the one in service.		
			This is not easily done while receiving solids from the Monroe plant and 30,000 gallons or so of grease every month. At some point they should both be repaved.
2	Blacktop both of the lagoons		
2	Investigat and make needed repairs to the plant influent manholes along the Creek		internal?
3	EQ rubber liner inspection, it is 5-6 years old now.		
4	Video cameras in the plant to monitor the areas for safety and operations.		
4	Plant entrance gate replacement and controls		
5	Miscellaneous plant sump pump replacements.		?
5	Repair the Wash Water Tank floor leaking.		
5	Spare Raw pump rotating element.		
5	Drain ditching grade between the solids and aeration basin (North and south)		
5	Remove old equipment from the polymer building. Repurpose the building.		
5	Replacement of the dual polyblend system on the belt press in the solids building.		
6	Contract for the new Generator service to connect and to run the total plant during a power out yes		
9	Remove the annunciator board in the Admin building.		
9	Plant wide pavement at project completion.		
9	Scum pump suction piping replacement.		
9	Replace the sludge transfer line that was not completed in Phase 1.		
10	Recoating and rehab of the 6 clarifiers (walls and structure)		on cip
10	Grit collection system replacement (auger's)		on cip

MEMO FROM COUNCIL OFFICE ON:

Ordinance 22-34 – To Amend Title 10 of the Bloomington Municipal Code Entitled “Wastewater” (Stormwater Rate Adjustment)

Synopsis

This ordinance amends Title 10 of the Bloomington Municipal Code, entitled “Wastewater”, by amending Section 10.08.045-Rates – Stormwater utility users by increasing the stormwater fee from \$5.95 to \$7.50, an increase of 26%, to allow for appropriate funding of necessary improvements to the stormwater system which includes additional design work, repairs and construction of the hidden river culvert system and spankers arch as well as open channel improvements to clear creek which are all intended to reduce flooding in the downtown area.

Relevant Materials

- Ordinance 22-34
- Staff Memo from Chris Wheeler, Assistant City Attorney, City Legal
- Utility Service Board Resolution No. 2022-09
- Report by Crowe, LLP (applicable to both Ordinance 22-33 and Ordinance 22-34)
- Stormwater Capital Improvement Plan

Summary

Ordinance 22-34 increases the rates for stormwater services for all utility customers with accounts within the stormwater service area. This increase comes at the suggestion of the Utilities Service Board after reviewing a study by Crowe LLP. The rate increase will take effect on January 1, 2023.

State law grants municipalities the authority to regulate sewage works under Indiana Code 36-9-23-2. While not explicitly sewage works, the statutory authority for the regulation of stormwater utilities still comes from Indiana Code 36-9-23.

Section 25 requires the municipal legislative body to set rates for fees of service by ordinance. According to I.C. 36-9-23-25(b), the fees must be sufficient to:

- (1) pay all expenses incidental to the operation of the works, including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations;
- (2) provide the sinking fund required by section 21 of [applicable state code];
- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Factors that can be used in establishing fees are among the following:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.

- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of the owner's property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.
- (9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.
- (10) Any other factors the legislative body considers necessary.

I.C. 36-9-23-5(d). Here, the stormwater fee is generated by an estimate of the amount of storm run-off generated by users. This estimate is determined by the amount of impervious surface on users' properties. A base monthly charge is multiplied by the fraction of runoff generated by the non-single family residential (SFR) user over the average SFR user.

Under statute, rates and charges must produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service, or else they are unlawful. I.C. 8-1.5-3-8(d). For changing or adjusting rates that were already determined by ordinance in the past, state law permits the municipal legislative body to change or readjust the fees in the same manner by which they were established. I.C. 36-9-23-26(d).

State law requires, after the initial introduction of the ordinance but before the fees can be adopted, notice and a public hearing to be held. I.C. 36-9-23-26. The notice must set forth the proposed fee schedule, conform to state publication procedures under Indiana Code 5-3-1, and be mailed to owners of vacant property and users for service to property outside city limits.

The public hearing presents an opportunity for users of sewage works, owners of property served by sewage works, and other members of the public may be heard regarding the proposed fees. I.C. 36-9-23-26. After the hearing, the legislative body must adopt the ordinance, as originally introduced or as modified. A copy of the fee schedule must be available for public inspection. Fees established after notice and hearing are presumed just and equitable. I.C. 36-9-23-25(b).

The public hearing for the rate changes to Wastewater in Ordinance 22-33 is set for November 16, 2022.

Contact

Chris Wheeler, Assistant City Attorney, wheelech@bloomington.in.gov, (812)-349-3426
Vic Kelson, Utilities Director, kelsonv@bloomington.in.gov, (812)-349-3650

ORDINANCE 22-34

**TO AMEND TITLE 10
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“WASTEWATER”
(Stormwater Rate Adjustment)**

- WHEREAS, the City of Bloomington, Indiana (the “City”) has established, acquired, and financed its sewage works pursuant to Indiana Code 36-9-23, as amended (the “Act”), for the purpose of providing for the collection, treatment and disposal of sewage from inhabitants in and around the City; and
- WHEREAS, the City has established within the city wastewater utility the powers, duties and responsibility for the construction, operation and maintenance for the stormwater utility in accordance with Indiana Code 36-9-23; and
- WHEREAS, the current rates and charges of the sewage works of the City were established by Common Council under Ordinance 19-02 on February 20, 2019, with said rate adjustment taking effect on July 1, 2019 for Phase I and January 1, 2020 for Phase II; and
- WHEREAS, the City, through its Utilities Service Board, recommends necessary construction of additions and improvements to the stormwater utility, including hidden river culvert design work, repairs and construction; spankers arch at 6th street; and clear creek open channel improvements; and
- WHEREAS, the City, through its Utilities Service Board, engaged the services of Crowe LLP to study the revenue requirements for the stormwater system; and
- WHEREAS, Crowe LLP prepared a rates and charges report concerning the current stormwater rate (the “Report”); and
- WHEREAS, the City, through its Utilities Service Board, upon consideration of the study prepared by Crowe LLP, recommends that the Common Council approve a 26% increase in rates and charges for the stormwater utility; and
- WHEREAS, based upon the Report, and the recommendations of the Utility Service Board, the Common Council of the City (the “Council”) finds that the current rates and charges for the use of and service rendered by the stormwater utility do not produce sufficient revenues to pay all the legal and necessary expenses incident to the operation of such stormwater utility, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the stormwater utility, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and
- WHEREAS, the Council finds that the current rates and charges do not produce an income sufficient to maintain the stormwater utility property in a sound physical and financial condition to render safe, adequate and efficient service; and
- WHEREAS, the Council finds that the current rates and charges for the use of and service rendered by the stormwater utility must be increased in order to provide sufficient revenue to meet such requirements; and
- WHEREAS, the Council finds that the rates and charges set forth herein are nondiscriminatory, reasonable and just and are based upon the cost of providing service to the customers of the stormwater utility and will enable the City to meet its legal revenue requirements for the stormwater utility; and
- WHEREAS, the Council caused notice of a public hearing on the rates and charges set forth herein to be duly advertised and mailed, and held a public hearing thereon, all pursuant to the Act.

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

SECTION 1. Section 10.08.045 of the Bloomington Municipal Code (the “Code”), entitled “Rates—Stormwater utility users”, is hereby amended and restated to read as follows:

10.08.045 - Rates - Stormwater utility users.

(a) The rates and charges of the stormwater utility shall be as follows:

The stormwater system user fee is applicable to all utility customers with accounts within the stormwater service area. All customers classified by the utility as being single-family residential (SFR) shall pay a monthly SFR base charge. All Non SFR customers shall be charged based upon the amount of runoff generated by the customer or the monthly SFR base charge, whichever is greater. The amount of runoff subject to the stormwater utility rate for all Non SFR customers shall be determined by a calculation based upon the following formula, minus any credits, as approved by the Utilities Service Board:

$$SFR \text{ base charge} \times \left(\frac{\text{Runoff generated by Non SFR customer}}{\text{Runoff generated by the average SFR customer}} \right)$$

The monthly SFR base charge shall be seven dollars and fifty cents (\$7.50).

(b) These rates and charges shall be billed monthly, and all provisions of the Indiana Code, the Bloomington Municipal Code and the city utilities department "Rules, Regulations and Standards of Service" which apply to the payment and collection of rates and charges for wastewater services shall apply equally to the rates and charges for stormwater utilities services.

SECTION 2. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, 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 upon its passage by the Common Council of the City of Bloomington, Monroe County, Indiana, and approval of the Mayor; provided, however, that the rates and charges herein approved shall take effect on January 1, 2023.

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

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.

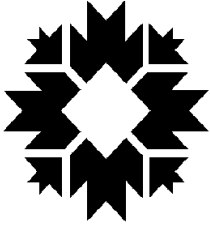
NICOLE BOLDEN, Clerk
City of Bloomington

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

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Title 10 of the Bloomington Municipal Code, entitled “Wastewater”, by amending Section 10.08.045-Rates – Stormwater utility users by increasing the stormwater fee from \$5.95 to \$7.50, an increase of 26%, to allow for appropriate funding of necessary improvements to the stormwater system which includes additional design work, repairs and construction of the hidden river culvert system and spankers arch as well as open channel improvements to clear creek which are all intended to reduce flooding in the downtown area.



**CITY OF BLOOMINGTON
LEGAL DEPARTMENT
MEMORANDUM**

TO: City of Bloomington Common Council Members
FROM: Christopher J. Wheeler, Assistant City Attorney
RE: Proposed Ordinance 22-34 to Amend Title 10 of the Bloomington Municipal Code Entitled “Wastewater”
DATE: October 26, 2022

This ordinance amends Title 10 of the Bloomington Municipal Code, entitled “Wastewater”, by amending Section 10.08.045-Rates – Stormwater utility users, by increasing the stormwater fee from \$5.95 to \$7.50, an increase of 26%, to meet revenue requirements for operation and maintenance expenses, on-going debt service payments, and capital improvements to the stormwater system including additional design work, repairs and construction of the hidden river culvert system and spankers arch as well as open channel improvements to clear creek which are all intended to reduce flooding in the downtown area.

If you have any questions regarding this proposed ordinance, please feel free to contact me by calling City Legal at 812.349.3549 or e-mailing me at wheelech@bloomington.in.gov.

**UTILITY SERVICE BOARD
OF THE CITY OF BLOOMINGTON, INDIANA
RESOLUTION NO. 2022-09**

RE: THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF IMPROVEMENTS AND EXTENSIONS TO THE CITY'S STORMWATER UTILITY, APPROVING THE FORMS OF ORDINANCES ADJUSTING THE RATES AND CHARGES FOR THE USERS OF SUCH STORMWATER UTILITIES AND RECOMMENDING ITS ADOPTION TO THE COMMON COUNCIL OF THE CITY, AND OTHER RELATED MATTERS

WHEREAS, the City of Bloomington, Indiana (the "City"), has previously established and constructed and now owns and operates through its Utility Service Board (the "Board"): (i) a sewage works (the "Sewage Works"), for the collection and treatment of sewage and other wastes pursuant to Indiana Code 36-9-23, as amended; and

WHEREAS, the City has established within the city wastewater utility the powers, duties and responsibility for the construction, operation and maintenance of a stormwater utility in accordance with Indiana Code 36-9-23; and

WHEREAS, CBU staff recommends necessary construction of additions and improvements to the stormwater infrastructure, including hidden river culvert design work, repairs and construction; spankers arch at 6th street; and clear creek open channel improvements; and

WHEREAS, CBU, through this Board, engaged the services of Crowe LLP, to conduct a thorough study of the revenue requirements for continued maintenance, improvement and expansion of the stormwater system; and

WHEREAS, Crowe LLP prepared a rate and financing report concerning the current rates and charges of the stormwater utility (the "Report"); and

WHEREAS, CBU staff accepts the Report and recommends that this Board approve an 18% increase in the rates and charges of the stormwater utility; and,

WHEREAS, based upon the Report, and the recommendations of CBU staff and Crowe LLC, this Board finds that the current rates and charges for the use of and service rendered by the stormwater utility do not produce sufficient revenues to pay all the legal and necessary expenses incidental to the operation of such stormwater utility, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the sewage works, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and

WHEREAS, this Board finds that the current rates and charges do not produce an income sufficient to maintain the stormwater utility in a sound physical and financial condition to render safe, adequate and efficient service; and

WHEREAS, this Board finds that the current rates and charges for the use of and service rendered by the stormwater utility must be increased in order to provide sufficient revenue to meet such requirements; and

WHEREAS, this Board finds that the rates and charges set forth herein are nondiscriminatory, reasonable and just and are based upon the cost of providing service to the customers of the stormwater utility and will enable the City to meet its legal revenue requirements for the stormwater utility; and

WHEREAS, the proposed ordinance for stormwater rate adjustment has been duly considered by this Board and found satisfactory, a copy of which is attached hereto, marked as **Exhibit “A”** and by this reference incorporated herein; and


WHEREAS, this Board desires to recommend the adoption of the proposed ordinance to the Bloomington Common Council.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITY SERVICE BOARD OF THE CITY OF BLOOMINGTON, INDIANA, AS FOLLOWS:

1. The Board requests the Bloomington Common Council authorize (i) modification of the rates and charges for the users of the stormwater utility as set forth in the proposed form of the ordinance presented at this meeting, by the adoption of such ordinance, in substantially the same form attached hereto as **Exhibit “A”**.
2. The Secretary of the Board is hereby directed to present a copy of this Resolution to the Bloomington City Clerk for presentation to the Bloomington Common Council as soon as may be done.
3. This Resolution shall be in full force and effect upon its adoption by the Board.


PASSED AND ADOPTED THIS 26 DAY OF October, 2022.

CITY OF BLOOMINGTON, INDIANA
By and Through its Utility Service Board


Jeffrey L. Ehman (Oct 25, 2022 14:00 EDT)

Jeff Ehman, President

ATTEST:


Latreana Teague (Oct 26, 2022 08:30 EDT)

LaTreana Teague, Secretary

ORDINANCE 22-34

**TO AMEND TITLE 10
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“WASTEWATER”
(Stormwater Rate Adjustment)**

- WHEREAS, the City of Bloomington, Indiana (the “City”) has established, acquired, and financed its sewage works pursuant to Indiana Code 36-9-23, as amended (the “Act”), for the purpose of providing for the collection, treatment and disposal of sewage from inhabitants in and around the City; and
- WHEREAS, the City has established within the city wastewater utility the powers, duties and responsibility for the construction, operation and maintenance for the stormwater utility in accordance with Indiana Code 36-9-23; and
- WHEREAS, the City, through its Utilities Service Board, recommends necessary construction of additions and improvements to the stormwater utility, including hidden river culvert design work, repairs and construction; spankers arch at 6th street; and clear creek open channel improvements; and
- WHEREAS, the City, through its Utilities Service Board, engaged the services of Crowe LLC to study the revenue requirements for the stormwater system; and
- WHEREAS, Crowe LLC prepared a rates and charges report concerning the current stormwater rate (the “Report”); and
- WHEREAS, the City, through its Utilities Service Board, upon consideration of the study prepared by Crowe LLC, recommends that the Common Council approve an 26% increase in rates and charges for the stormwater utility; and,
- WHEREAS, based upon the Report, and the recommendations of the Utility Service Board, the Common Council of the City (the “Council”) finds that the current rates and charges for the use of and service rendered by the stormwater utility do not produce sufficient revenues to pay all the legal and necessary expenses incident to the operation of such stormwater utility, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the stormwater utility, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and
- WHEREAS, the Council finds that the current rates and charges do not produce an income sufficient to maintain the stormwater utility property in a sound physical and financial condition to render safe, adequate and efficient service; and
- WHEREAS, the Council finds that the current rates and charges for the use of and service rendered by the stormwater utility must be increased in order to provide sufficient revenue to meet such requirements; and
- WHEREAS, the Council finds that the rates and charges set forth herein are nondiscriminatory, reasonable and just and are based upon the cost of providing service to the customers of the stormwater utility and will enable the City to meet its legal revenue requirements for the stormwater utility; and
- WHEREAS, the Council caused notice of a public hearing on the rates and charges set forth herein to be duly advertised and mailed, and held a public hearing thereon, all pursuant to the Act.

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

SECTION 1. Section 10.08.045 of the Bloomington Municipal Code (the “Code”), entitled “Rates—Stormwater utility users”, is hereby amended and restated to read as follows:

10.08.045 - Rates - Stormwater utility users.

(a) The rates and charges of the stormwater utility shall be as follows:

The stormwater system user fee is applicable to all utility customers with accounts within the stormwater service area. All customers classified by the utility as being single-family residential (SFR) shall pay a monthly SFR base charge. All Non SFR customers shall be charged based upon the amount of runoff generated by the customer or the monthly SFR base charge, whichever is greater. The amount of runoff subject to the stormwater utility rate for all Non SFR customers shall be determined by a calculation based upon the following formula, minus any credits, as approved by the Utilities Service Board:

$$SFR \text{ base charge} \times \left(\frac{\text{Runoff generated by Non SFR customer}}{\text{Runoff generated by the average SFR customer}} \right)$$

The monthly SFR base charge shall be seven dollars and fifty cents (\$7.50).

(b) These rates and charges shall be billed monthly, and all provisions of the Indiana Code, the Bloomington Municipal Code and the city utilities department "Rules, Regulations and Standards of Service" which apply to the payment and collection of rates and charges for wastewater services shall apply equally to the rates and charges for stormwater utilities services.

SECTION 2. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, 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 upon its passage by the Common Council of the City of Bloomington, Monroe County, Indiana, and approval of the Mayor; provided, however, that the rates and charges herein approved shall take effect on January 1, 2023.

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 10 of the Bloomington Municipal Code, entitled "Wastewater", by amending Section 10.08.045-Rates – Stormwater utility users by increasing the stormwater fee from \$5.95 to \$7.50, an increase of 26%, to allow for appropriate funding of necessary improvements to the stormwater system which includes additional design work, repairs and construction of the hidden river culvert system and spankers arch as well as open channel improvements to clear creek which are all intended to reduce flooding in the downtown area.

ORDINANCE 22-34

**TO AMEND TITLE 10
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
“WASTEWATER”
(Stormwater Rate Adjustment)**

- WHEREAS, the City of Bloomington, Indiana (the “City”) has established, acquired, and financed its sewage works pursuant to Indiana Code 36-9-23, as amended (the “Act”), for the purpose of providing for the collection, treatment and disposal of sewage from inhabitants in and around the City; and
- WHEREAS, the City has established within the city wastewater utility the powers, duties and responsibility for the construction, operation and maintenance for the stormwater utility in accordance with Indiana Code 36-9-23; and
- WHEREAS, the City, through its Utilities Service Board, recommends necessary construction of additions and improvements to the stormwater utility, including hidden river culvert design work, repairs and construction; spankers arch at 6th street; and clear creek open channel improvements; and
- WHEREAS, the City, through its Utilities Service Board, engaged the services of Crowe LLC to study the revenue requirements for the stormwater system; and
- WHEREAS, Crowe LLC prepared a rates and charges report concerning the current stormwater rate (the “Report”); and
- WHEREAS, the City, through its Utilities Service Board, upon consideration of the study prepared by Crowe LLC, recommends that the Common Council approve an 26% increase in rates and charges for the stormwater utility; and,
- WHEREAS, based upon the Report, and the recommendations of the Utility Service Board, the Common Council of the City (the “Council”) finds that the current rates and charges for the use of and service rendered by the stormwater utility do not produce sufficient revenues to pay all the legal and necessary expenses incident to the operation of such stormwater utility, including legal expenses, maintenance costs, operating charges, repairs, lease rentals and interest charges on bonds or other obligations of the stormwater utility, to provide a sinking fund for the liquidation of indebtedness, and to provide adequate funds to be used as working capital and funds for making extensions and replacements and to make payments in lieu of taxes; and
- WHEREAS, the Council finds that the current rates and charges do not produce an income sufficient to maintain the stormwater utility property in a sound physical and financial condition to render safe, adequate and efficient service; and
- WHEREAS, the Council finds that the current rates and charges for the use of and service rendered by the stormwater utility must be increased in order to provide sufficient revenue to meet such requirements; and
- WHEREAS, the Council finds that the rates and charges set forth herein are nondiscriminatory, reasonable and just and are based upon the cost of providing service to the customers of the stormwater utility and will enable the City to meet its legal revenue requirements for the stormwater utility; and
- WHEREAS, the Council caused notice of a public hearing on the rates and charges set forth herein to be duly advertised and mailed, and held a public hearing thereon, all pursuant to the Act.

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

SECTION 1. Section 10.08.045 of the Bloomington Municipal Code (the “Code”), entitled “Rates—Stormwater utility users”, is hereby amended and restated to read as follows:

10.08.045 - Rates - Stormwater utility users.

(a) The rates and charges of the stormwater utility shall be as follows:

The stormwater system user fee is applicable to all utility customers with accounts within the stormwater service area. All customers classified by the utility as being single-family residential (SFR) shall pay a monthly SFR base charge. All Non SFR customers shall be charged based upon the amount of runoff generated by the customer or the monthly SFR base charge, whichever is greater. The amount of runoff subject to the stormwater utility rate for all Non SFR customers shall be determined by a calculation based upon the following formula, minus any credits, as approved by the Utilities Service Board:

$$SFR \text{ base charge} \times \left(\frac{\text{Runoff generated by Non SFR customer}}{\text{Runoff generated by the average SFR customer}} \right)$$

The monthly SFR base charge shall ~~increase in two phases:~~

~~(1) The SFR monthly base charge for the first phase shall be four dollars and thirty two cents (\$4.32) and shall commence on July 1, 2019.~~

~~(2) The SFR monthly base charge for the second phase shall be five dollars and ninety five center (\$5.95) seven dollars and fifty cents (\$7.50) and shall commence on January 1, 2020.~~

(b) These rates and charges shall be billed monthly, and all provisions of the Indiana Code, the Bloomington Municipal Code and the city utilities department "Rules, Regulations and Standards of Service" which apply to the payment and collection of rates and charges for wastewater services shall apply equally to the rates and charges for stormwater utilities services.

SECTION 2. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, 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 upon its passage by the Common Council of the City of Bloomington, Monroe County, Indiana, and approval of the Mayor; provided, however, that the rates and charges herein approved shall take effect on January 1, 2023.

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 10 of the Bloomington Municipal Code, entitled “Wastewater”, by amending Section 10.08.045-Rates – Stormwater utility users by increasing the stormwater fee from \$5.95 to \$7.50, an increase of 26%, to allow for appropriate funding of necessary improvements to the stormwater system which includes additional design work, repairs and construction of the hidden river culvert system and spankers arch as well as open channel improvements to clear creek which are all intended to reduce flooding in the downtown area.

Preliminary Rate and Financing Report

Bloomington Municipal Sewage Works and
Bloomington Municipal Stormwater Utility

October 21, 2022



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Purpose of the Report

Crowe LLP (“Crowe” or “we”) has performed a study and analysis of the operating and financial reports, budgets, and other data pertaining to City of Bloomington Municipal Sewage Works (the “Sewage Works”) and City of Bloomington Municipal Stormwater Utility (the “Stormwater Utility”) (together the “Utilities”). The results of our analysis are contained in this Preliminary Rate and Financing Report (“Report”). While presented in one report, we analyzed the Utilities separately for the purpose of calculating rates and charges for each of the Utilities that would recover the respective revenue requirements of each utility.

The purpose of this Report is to estimate each utility’s on-going revenue requirements for operation and maintenance expenses, proposed debt service payments, and capital improvements to the Utilities’ systems. This Report is based on data for the twelve months ended April 30, 2022 (“Test Year”). The historical information used in this Report was taken from the books and records of the Utilities and was adjusted as necessary for fixed, known, and measurable items as disclosed in the exhibits and schedules of this Report.

In the course of preparing this Report, we have not conducted an audit of any financial or supplemental data used in the accompanying exhibits and schedules. We have made certain projections based on assumptions provided by the Utilities that may vary from actual results because events and circumstances frequently do not occur as estimated and such variances may be material. We have no responsibility to update this Report for events and circumstances occurring after the date of this Report.

If you have any questions regarding this Report, please call Jennifer Wilson at (317) 269-6699.

Crowe’s services are conducted in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants, and Crowe’s deliverables and other work product are based on underlying assumptions and other information determined by Client. Crowe’s services, deliverables and other work product do not constitute a forecast or projection of any kind. With no relevant precedent for the COVID-19 pandemic, it is impossible to predict with accuracy the economic repercussions of the COVID-19 pandemic, and therefore Crowe’s services, deliverables and other work product must not be relied upon for predicting such repercussions. Crowe’s services, deliverables and other work product are intended solely for the use of Crowe’s Client, and no other person or entity may rely on Crowe’s services, deliverables or other work product for any purpose. Crowe LLP disclaims any obligation to update this work product.

Financial Statements

Balance Sheets as of April 30, 2022, December 31, 2021, and December 31, 2020

ASSETS AND OTHER DEBITS	April 30, 2022	December 31, 2021	December 31, 2020
<u>Utility Plant - Sewage Works</u>			
Utility Plant in Service	\$ 186,861,948	\$ 186,876,435	\$ 175,261,884
Less: Accumulated Depreciation	(102,128,299)	(102,128,299)	(98,438,414)
Net Utility Plant in Service	84,733,649	84,748,136	76,823,470
Add: Construction Work in Progress	47,753,539	44,304,025	26,434,416
Net Utility Plant - Sewage Works	132,487,188	129,052,161	103,257,886
<u>Utility Plant - Stormwater Utility</u>			
Utility Plant in Service	19,107,169	19,107,169	19,064,363
Less: Accumulated Depreciation	(3,872,199)	(3,872,199)	(3,591,518)
Net Utility Plant in Service	15,234,970	15,234,970	15,472,845
Add: Construction Work in Progress	1,742,714	1,843,332	980,542
Net Utility Plant - Stormwater Utility	16,977,684	17,078,302	16,453,387
<u>Restricted Assets</u>			
Sinking Fund	1,659,177	211	7,518
Debt Service Reserve Fund	4,990,262	4,990,262	5,270,319
Bond and Interest Fund	745,528	4,909,089	5,538,224
Improvement Fund - Sewage Works	-	-	549,742
Improvement Fund - Stormwater Utility	600,000	600,000	-
Construction Fund - Sewage Works	-	932,164	16,926,703
Construction Fund - Stormwater Utility	3,043,790	5,069,159	13,184,000
Total Restricted Assets	11,038,757	16,500,885	41,476,506
<u>Current and Accrued Assets</u>			
Operation and Maintenance			
Fund - Sewage Works	6,373,264	8,471,358	3,773,649
Operation and Maintenance			
Fund - Stormwater Utility	1,774,862	2,977,115	1,293,415
Accounts Receivable - Net	1,364,981	616,201	1,347,693
Total Current and Accrued Assets	9,513,107	12,064,674	6,414,757
<u>Deferred Debits</u>			
Unamortized Bond Issuance Costs	125,064	125,064	155,929
Unamortized Bond Discount	189,043	189,043	201,800
Deferral Loss on Advance Refunding	256,212	256,212	341,617
Total Deferred Debits	570,319	570,319	699,346
Total Assets and Other Debits	\$ 170,587,055	\$ 175,266,341	\$ 168,301,882

Data Source: Utility trial balances

Balance Sheets as of April 30, 2022, December 31, 2021, and
December 31, 2020 (Continued)

LIABILITIES AND OTHER CREDITS	April 30, 2022	December 31, 2021	December 31, 2020
<u>Equity Capital</u>			
Unappropriated Retained Earnings	\$ 66,261,212	\$ 57,188,525	\$ 50,253,800
Current Year Earnings	3,493,755	9,072,687	6,923,533
Total Equity Capital	<u>69,754,967</u>	<u>66,261,212</u>	<u>57,177,333</u>
<u>Long Term Debt</u>			
Revenue Bonds Payable	42,626,000	45,957,400	49,816,000
Capital Lease Obligations	3,966,000	4,503,000	5,022,000
Compensated Absences - Long Term	217,427	217,427	234,692
Total Long Term Debt	<u>46,809,427</u>	<u>50,677,827</u>	<u>55,072,692</u>
<u>Current and Accrued Liabilities</u>			
Accounts Payable	(8,228)	4,627,233	1,403,730
Revenue Bonds - Current	3,331,400	3,278,600	4,320,700
Capital Lease Obligations - Current	270,000	-	-
Accounts Payable to Associated Company	10,803	8,957	9,875
Unearned Revenue	1,939,477	1,933,303	1,972,683
Accrued Payroll	101,460	101,460	78,747
Compensated Absences Payable - Short Term	96,892	96,892	86,600
Total Current and Accrued Liabilities	<u>5,741,804</u>	<u>10,046,445</u>	<u>7,872,335</u>
<u>Deferred Credits</u>			
Unamortized Bond Premium	6,654,738	6,654,738	6,544,292
Other Deferred Liabilities	19,000	19,000	19,000
Total Deferred Credits	<u>6,673,738</u>	<u>6,673,738</u>	<u>6,563,292</u>
Contributions in Aid of Construction	<u>41,607,119</u>	<u>41,607,119</u>	<u>41,607,119</u>
Prior Period Adjustments	<u>-</u>	<u>-</u>	<u>9,111</u>
Total Liabilities and Other Credits	<u>\$ 170,587,055</u>	<u>\$ 175,266,341</u>	<u>\$ 168,301,882</u>

Data Source: Utility trial balances

Sewage Works Combined Outstanding Debt

Pay Year	2006 A-1 Bonds (1)	2013 Refunding Bonds	2017 Bonds	2019 Refunding Bonds	2020 Bonds (1)	2021 Refunding Bonds	Total
2022	\$ 129,000	\$ 1,181,232	\$ 457,300	\$ 1,021,800	\$ 446,000	\$ 775,904	\$ 4,011,236
2023	130,272	1,191,296	461,300	1,023,200	446,000	778,150	4,030,218
2024	130,116	1,190,826	460,100	1,022,200	446,000	779,400	4,028,642
2025	128,770		463,800	1,022,000	446,000	785,050	2,845,620
2026	131,244		467,300	613,600	846,000	784,950	2,843,094
2027			467,250		2,023,000	789,250	3,279,500
2028			471,900		2,024,600	777,800	3,274,300
2029			471,100		2,528,600	276,050	3,275,750
2030			475,000		2,529,800	273,700	3,278,500
2031			473,450		1,482,400	281,200	2,237,050
2032			476,600		1,483,200	283,250	2,243,050
2033			479,300		1,486,800		1,966,100
2034			486,550		1,483,000		1,969,550
2035			488,200		1,482,000		1,970,200
2036			494,400		1,483,600		1,978,000
2037					1,482,600		1,482,600
2038					1,484,000		1,484,000
2039					1,482,600		1,482,600
2040					1,483,400		1,483,400
Totals	\$ 649,402	\$ 3,563,354	\$ 7,093,550	\$ 4,702,800	\$ 26,569,600	\$ 6,584,704	\$ 49,163,410
Maximum Annual Debt Service							<u>\$ 4,030,218</u>

(1) Amounts shown are net of the Stormwater Utility portion of debt service.

Sewage Works Revenue Bonds of 2006, Series A-1 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Less: Stormwater (1)	Sewage Works Fiscal Total
7/1/22			\$ 59,400	\$ 59,400			
1/1/23	\$ 446,400	4.80 %	59,400	505,800	\$ 565,200	\$ (436,200)	\$ 129,000
7/1/23			48,686	48,686			
1/1/24	469,100	4.83	48,686	517,786	566,472	(436,200)	130,272
7/1/24			37,358	37,358			
1/1/25	491,600	4.83	37,358	528,958	566,316	(436,200)	130,116
7/1/25			25,485	25,485			
1/1/26	514,000	4.83	25,485	539,485	564,970	(436,200)	128,770
7/1/26			13,072	13,072			
1/1/27	541,300	4.83	13,072	554,372	567,444	(436,200)	131,244
Totals	<u>\$2,462,400</u>		<u>\$ 368,002</u>	<u>\$2,830,402</u>	<u>\$2,830,402</u>	<u>\$(2,181,000)</u>	<u>\$ 649,402</u>

- (1) The Stormwater Utility transfers \$36,350 monthly to the Sewage Works for its portion of projects from the 2006 A-1 Bonds, as provided by Management of the Utility.

Note: The 2006 A-1 Bonds were issued through the Indiana Bond Bank. The amortization schedule was amended March 26, 2015, and resulted in a reduction in the overall payments of approximately \$720,000.

Source: *Sewage Works Revenue Bonds of 2006, Series A-1 Amended Qualified Entity Purchase Agreement as recalculated by Crowe.*

Sewage Works Refunding Revenue Bonds, Series 2013 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/22			\$ 30,616	\$ 30,616	
1/1/23	\$ 1,120,000	1.78 %	30,616	1,150,616	\$ 1,181,232
7/1/23			20,648	20,648	
1/1/24	1,150,000	1.78	20,648	1,170,648	1,191,296
7/1/24			10,413	10,413	
1/1/25	<u>1,170,000</u>	1.78	<u>10,413</u>	<u>1,180,413</u>	1,190,826
Totals	<u>\$ 3,440,000</u>		<u>\$ 123,354</u>	<u>\$ 3,563,354</u>	

Source: Sewage Works Refunding Revenue Bonds, Series 2013 Final Private Placement Memorandum, as recalculated by Crowe.

Sewage Works Revenue Bonds of 2017 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/22			\$ 78,650	\$ 78,650	
1/1/23	\$ 300,000	2.00 %	78,650	378,650	\$ 457,300
7/1/23			75,650	75,650	
1/1/24	310,000	2.00	75,650	385,650	461,300
7/1/24			72,550	72,550	
1/1/25	315,000	2.00	72,550	387,550	460,100
7/1/25			69,400	69,400	
1/1/26	325,000	2.00	69,400	394,400	463,800
7/1/26			66,150	66,150	
1/1/27	335,000	3.00	66,150	401,150	467,300
7/1/27			61,125	61,125	
1/1/28	345,000	3.00	61,125	406,125	467,250
7/1/28			55,950	55,950	
1/1/29	360,000	3.00	55,950	415,950	471,900
7/1/29			50,550	50,550	
1/1/30	370,000	3.00	50,550	420,550	471,100
7/1/30			45,000	45,000	
1/1/31	385,000	3.00	45,000	430,000	475,000
7/1/31			39,225	39,225	
1/1/32	395,000	3.00	39,225	434,225	473,450
7/1/32			33,300	33,300	
1/1/33	410,000	3.00	33,300	443,300	476,600
7/1/33			27,150	27,150	
1/1/34	425,000	3.00	27,150	452,150	479,300
7/1/34			20,775	20,775	
1/1/35	445,000	3.00	20,775	465,775	486,550
7/1/35			14,100	14,100	
1/1/36	460,000	3.00	14,100	474,100	488,200
7/1/36			7,200	7,200	
1/1/37	<u>480,000</u>	3.00	<u>7,200</u>	<u>487,200</u>	494,400
Totals	<u>\$ 5,660,000</u>		<u>\$ 1,433,550</u>	<u>\$ 7,093,550</u>	

Source: Sewage Works Refunding Revenue Bonds, Series 2017 Final Official Statement, as recalculated by Crowe.

Sewage Works Refunding Revenue Bonds, Series 2019 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/22			\$ 78,400	\$ 78,400	
1/1/23	\$ 865,000	3.88 % (1)	78,400	943,400	\$ 1,021,800
7/1/23			61,600	61,600	
1/1/24	900,000	3.44 (1)	61,600	961,600	1,023,200
7/1/24			46,100	46,100	
1/1/25	930,000	3.25 (1)	46,100	976,100	1,022,200
7/1/25			31,000	31,000	
1/1/26	960,000	4.00	31,000	991,000	1,022,000
7/1/26			11,800	11,800	
1/1/27	<u>590,000</u>	4.00	<u>11,800</u>	<u>601,800</u>	613,600
Totals	<u>\$ 4,245,000</u>		<u>\$ 457,800</u>	<u>\$ 4,702,800</u>	

(1) The below maturities were sold with split coupons payments. The amount shown in the schedule is the weighted average of the below amounts.

<u>1/1/2023</u>			
	100,000	3.00 %	
	765,000	4.00	
	<u>865,000</u>	<u>3.88</u> %	
<u>1/1/2024</u>			
	250,000	2.00 %	
	650,000	4.00	
	<u>900,000</u>	<u>3.44</u> %	
<u>1/1/2025</u>			
	350,000	2.00 %	
	580,000	4.00	
	<u>930,000</u>	<u>3.25</u> %	

Source: Sewage Works Refunding Revenue Bonds, Series 2019 Final Official Statement, as recalculated by Crowe.

Sewage Works Revenue Bonds of 2020 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Less: Stormwater (1)	Sewage Works Fiscal Total
7/1/22			\$ 484,900	\$ 484,900			
1/1/23			484,900	484,900	\$ 969,800	\$ (523,800)	\$ 446,000
7/1/23			484,900	484,900			
1/1/24			484,900	484,900	969,800	(523,800)	446,000
7/1/24			484,900	484,900			
1/1/25			484,900	484,900	969,800	(523,800)	446,000
7/1/25			484,900	484,900			
1/1/26			484,900	484,900	969,800	(523,800)	446,000
7/1/26			484,900	484,900			
1/1/27	\$ 400,000	2.00 %	484,900	884,900	1,369,800	(523,800)	846,000
7/1/27			480,900	480,900			
1/1/28	1,585,000	4.00	480,900	2,065,900	2,546,800	(523,800)	2,023,000
7/1/28			449,200	449,200			
1/1/29	1,650,000	4.00	449,200	2,099,200	2,548,400	(523,800)	2,024,600
7/1/29			416,200	416,200			
1/1/30	2,220,000	4.00	416,200	2,636,200	3,052,400	(523,800)	2,528,600
7/1/30			371,800	371,800			
1/1/31	2,310,000	4.00	371,800	2,681,800	3,053,600	(523,800)	2,529,800
7/1/31			325,600	325,600			
1/1/32	1,355,000	4.00	325,600	1,680,600	2,006,200	(523,800)	1,482,400
7/1/32			298,500	298,500			
1/1/33	1,410,000	4.00	298,500	1,708,500	2,007,000	(523,800)	1,483,200
7/1/33			270,300	270,300			
1/1/34	1,470,000	4.00	270,300	1,740,300	2,010,600	(523,800)	1,486,800
7/1/34			240,900	240,900			
1/1/35	1,525,000	4.00	240,900	1,765,900	2,006,800	(523,800)	1,483,000
7/1/35			210,400	210,400			
1/1/36	1,585,000	4.00	210,400	1,795,400	2,005,800	(523,800)	1,482,000
7/1/36			178,700	178,700			
1/1/37	1,650,000	4.00	178,700	1,828,700	2,007,400	(523,800)	1,483,600
7/1/37			145,700	145,700			
1/1/38	1,715,000	4.00	145,700	1,860,700	2,006,400	(523,800)	1,482,600
7/1/38			111,400	111,400			
1/1/39	1,785,000	4.00	111,400	1,896,400	2,007,800	(523,800)	1,484,000
7/1/39			75,700	75,700			
1/1/40	1,855,000	4.00	75,700	1,930,700	2,006,400	(523,800)	1,482,600
7/1/40			38,600	38,600			
1/1/41	1,930,000	4.00	38,600	1,968,600	2,007,200	(523,800)	1,483,400
Totals	<u>\$24,445,000</u>		<u>\$12,076,800</u>	<u>\$36,521,800</u>	<u>\$36,521,800</u>	<u>\$ (9,952,200)</u>	<u>\$26,569,600</u>

(1) The Stormwater Utility transfers \$33,650 monthly to the Sewage Works for its portion of projects from the 2020 Bonds, as provided by Management of the Utility.

Source: Sewage Works Revenue Bonds of 2020 Final Official Statement, as recalculated by Crowe.

Sewage Works Refunding Revenue Bonds of 2021 Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/22			\$ 90,329	\$ 90,329	
1/1/23	\$ 600,000	3.00 %	85,575	685,575	\$ 775,904
7/1/23			76,575	76,575	
1/1/24	625,000	3.00	76,575	701,575	778,150
7/1/24			67,200	67,200	
1/1/25	645,000	3.00	67,200	712,200	779,400
7/1/25			57,525	57,525	
1/1/26	670,000	3.00	57,525	727,525	785,050
7/1/26			47,475	47,475	
1/1/27	690,000	3.00	47,475	737,475	784,950
7/1/27			37,125	37,125	
1/1/28	715,000	3.00	37,125	752,125	789,250
7/1/28			26,400	26,400	
1/1/29	725,000	3.00	26,400	751,400	777,800
7/1/29			15,525	15,525	
1/1/30	245,000	3.00	15,525	260,525	276,050
7/1/30			11,850	11,850	
1/1/31	250,000	3.00	11,850	261,850	273,700
7/1/31			8,100	8,100	
1/1/32	265,000	3.00	8,100	273,100	281,200
7/1/32			4,125	4,125	
1/1/33	<u>275,000</u>	3.00	<u>4,125</u>	<u>279,125</u>	283,250
Totals	<u>\$ 5,705,000</u>		<u>\$ 879,704</u>	<u>\$ 6,584,704</u>	

Source: Sewage Works Refunding Revenue Bonds of 2021 Final Official Statement, as recalculated by Crowe.

ESG Solar Lease Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Sewer Portion (1)
6/30/22	\$ 279,263	2.97 %	\$ 168,352	\$ 447,615		
12/30/22	283,410	2.97	164,205	447,615	\$ 895,230	\$ 394,287
6/30/23	287,619	2.97	159,996	447,615		
12/30/23	291,890	2.97	155,725	447,615	895,230	394,287
6/30/24	296,225	2.97	151,390	447,615		
12/30/24	300,623	2.97	146,991	447,614	895,229	394,286
6/30/25	305,088	2.97	142,527	447,615		
12/30/25	309,618	2.97	137,997	447,615	895,230	394,287
6/30/26	314,216	2.97	133,399	447,615		
12/30/26	318,882	2.97	128,733	447,615	895,230	394,287
6/30/27	323,618	2.97	123,997	447,615		
12/30/27	328,423	2.97	119,192	447,615	895,230	394,287
6/30/28	333,300	2.97	114,315	447,615		
12/30/28	338,250	2.97	109,365	447,615	895,230	394,287
6/30/29	343,273	2.97	104,342	447,615		
12/30/29	348,371	2.97	99,244	447,615	895,230	394,287
6/30/30	353,544	2.97	94,071	447,615		
12/30/30	358,794	2.97	88,821	447,615	895,230	394,287
6/30/31	364,122	2.97	83,493	447,615		
12/30/31	369,529	2.97	78,086	447,615	895,230	394,287
6/30/32	375,017	2.97	72,598	447,615		
12/30/32	380,586	2.97	67,029	447,615	895,230	394,287
6/30/33	386,237	2.97	61,377	447,614		
12/30/33	391,973	2.97	55,642	447,615	895,229	394,286
6/30/34	397,794	2.97	49,821	447,615		
12/30/34	403,701	2.97	43,914	447,615	895,230	394,287
6/30/35	409,696	2.97	37,919	447,615		
12/30/35	415,780	2.97	31,835	447,615	895,230	394,287
6/30/36	421,954	2.97	25,661	447,615		
12/30/36	428,220	2.97	19,395	447,615	895,230	394,287
6/30/37	434,580	2.97	13,035	447,615		
10/30/37	<u>443,227</u>	2.97	<u>4,388</u>	<u>447,615</u>	895,230	394,287
Totals	<u>\$ 11,336,823</u>		<u>\$ 2,986,855</u>	<u>\$ 14,323,678</u>		
Annual Lease Payment						<u>\$ 394,287</u>

(1) The ESG Solar Lease payments are allocated between the Sewage Works, the Bloomington Municipal Water Utility, the City of Bloomington Redevelopment Commission, and the City of Bloomington Parks & Recreation Department. The ESG Solar Lease payments are not on parity with the outstanding bonds of the Utility.

Source: ESG Solar Lease Payment Schedule, as recalculated by Crowe.

Equipment Lease Purchase for Advance Metering Infrastructure Project Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Sewer Portion (1)
8/15/22	\$ 450,000	3.40 %	\$ 120,020	\$ 570,020		
2/15/23	460,000	3.40	112,370	572,370	\$ 1,142,390	\$ 685,434
8/15/23	470,000	3.40	104,550	574,550		
2/15/24	470,000	3.40	96,560	566,560	1,141,110	684,666
8/15/24	485,000	3.40	88,570	573,570		
2/15/25	490,000	3.40	80,325	570,325	1,143,895	686,337
8/15/25	500,000	3.40	71,995	571,995		
2/15/26	505,000	3.40	63,495	568,495	1,140,490	684,294
8/15/26	520,000	3.40	54,910	574,910		
2/15/27	520,000	3.40	46,070	566,070	1,140,980	684,588
8/15/27	535,000	3.40	37,230	572,230		
2/15/28	540,000	3.40	28,135	568,135	1,140,365	684,219
8/15/28	555,000	3.40	18,955	573,955		
2/15/29	560,000	3.40	9,520	569,520	1,143,475	686,085
Totals	<u>\$ 7,060,000</u>		<u>\$ 932,705</u>	<u>\$ 7,992,705</u>		

Average Annual Lease Payment \$ 685,089

- (1) The Advance Metering Infrastructure Project payments are allocated between the Sewage Works and the Bloomington Municipal Water Utility. The Sewage Works' allocated share is sixty percent (60%). The Advance Metering Infrastructure Project lease payments are not on parity with the outstanding bonds of the Utility.

Source: *Equipment Lease Purchase for Advance Metering Infrastructure Project Agreement, as recalculated by Crowe.*

Sewage Works Statements of Income for the Twelve Months Ended April 30, 2022, December 31, 2021, and December 31, 2020

	April 30, 2022	December 31, 2021	December 31, 2020
Operating Revenues			
Metered Sales - Single Family	\$ 7,238,965	\$ 7,341,677	\$ 7,280,096
Metered Sales - Commercial	4,353,781	4,298,417	3,477,048
Metered Sales - Industrial	630,436	623,506	506,270
Metered Sales - Public Authority	3,665,161	3,390,316	3,026,846
Metered Sales - Multiple Family	7,879,925	7,691,107	7,125,106
Forfeited Discounts	116,691	137,765	69,290
Miscellaneous Operating Revenues	100,377	102,302	115,983
Total Operating Revenues	23,985,336	23,585,090	21,600,639
Operation and Maintenance Expenses			
Director	497,698	510,495	479,014
Utility Service Board	1,038,104	1,048,824	2,370,948
Accounting	477,940	562,044	443,098
Billing and Collections	607,053	608,492	442,494
Customer Relations	197,768	201,074	181,640
Purchasing	275,239	281,324	260,027
Environmental Services	339,497	329,431	358,639
Communications	198,474	189,076	170,891
Blucher Poole Treatment Plant	1,588,643	1,667,008	1,674,729
Dillman Road Treatment Plant	4,126,260	3,254,773	3,318,085
Laboratory	207,505	227,407	212,856
Transmission and Distribution	2,085,403	2,128,865	2,167,701
Booster and Lift Stations	159,175	160,273	145,273
Meters	635,657	602,157	580,074
Engineering	906,288	911,838	936,791
Total Operation and Maintenance Expenses	13,340,704	12,683,081	13,742,260
Sewage Works Depreciation Expense	3,802,100	3,802,100	3,249,161
Taxes Other Than Income Taxes			
FICA	391,222	392,509	397,483
Payment in Lieu of Property Taxes	-	-	716,626
Total Taxes Other Than Income Taxes	391,222	392,509	1,114,109
Total Operating Expenses	17,534,026	16,877,690	18,105,530
Net Operating Income	6,451,310	6,707,400	3,495,109

Data Source: Utility trial balances

Statements of Income (Continued)

	April 30, 2022	December 31, 2021	December 31, 2020
Other Income			
Interest Income	\$ 19,219	\$ 35,347	\$ 94,086
Stormwater Revenues	3,512,915	3,272,706	3,124,754
Connection Charges	536,175	648,619	582,586
Miscellaneous Other Income	1,567,717	1,156,229	2,542,457
Total Other Income	5,636,026	5,112,901	6,343,883
Other Expenses			
Stormwater Expenses	990,866	1,000,422	1,142,579
Stormwater Depreciation Expense	280,681	280,681	279,824
Interest Expense	1,676,959	1,249,741	1,178,374
Miscellaneous Expense	216,870	216,770	314,682
Total Other Expenses	3,165,376	2,747,614	2,915,459
Net Income	\$ 8,921,960	\$ 9,072,687	\$ 6,923,533

Note: Stormwater Revenues and Stormwater Expenses are included in Other Income and Other Expenses. See Stormwater Detailed Income Statement for additional information on Stormwater Utility operating results.

Data Source: Utility trial balances

Adjustments to the Sewage Works Financial Statements

Note: Expense categories with multiple adjustments are listed on separate lines.

Sewage Works Adjusted Statement of Income

	April 30, 2022	Adjustments	Adjusted
<u>Operating Revenues</u>			
Metered Sales - Single Family	\$ 7,238,965		\$ 7,238,965
Metered Sales - Commercial	4,353,781		4,353,781
Metered Sales - Industrial	630,436		630,436
Metered Sales - Public Authority	3,665,161		3,665,161
Metered Sales - Multiple Family	7,879,925		7,879,925
Forfeited Discounts	116,691		116,691
Miscellaneous Operating Revenues	100,377		100,377
Total Operating Revenues	<u>23,985,336</u>		<u>23,985,336</u>
<u>Operation and Maintenance Expenses</u>			
Director	497,698	\$ 39,978 1	501,940
		5,262 2	
		(40,998) 3	
Utility Service Board	1,038,104	(17,823) 1	1,474,742
		724,206 4	
		(269,745) 5	
Accounting	477,940	(11,111) 1	398,149
		(1,453) 2	
		(67,227) 3	
Billing and Collections	607,053	4,715 1	604,914
		644 2	
		(15,498) 6	
		8,000 7	
Customer Relations	197,768	13,115 1	212,777
		1,894 2	
Purchasing	275,239	(10,263) 1	263,573
		(1,403) 2	
Environmental Services	339,497	64,703 1	413,305
		9,105 2	
Communications	198,474	35,468 1	239,017
		5,075 2	
Blucher Poole Treatment Plant	1,588,643	130,431 1	1,737,919
		18,845 2	
Dillman Road Treatment Plant	4,126,260	150,274 1	3,865,450
		21,440 2	
		223,448 8	
		(738,542) 9	
		82,570 10	

See Appendix A: Assumptions and Adjustment Detail

Sewage Works Adjusted Statement of Income (Continued)

Note: Expense categories with multiple adjustments are listed on separate lines.

	April 30, 2022	Adjustments		Adjusted
Laboratory	\$ 207,505	\$ 9,833	1	\$ 218,754
		1,416	2	
Transmission and Distribution	2,085,403	98,140	1	2,238,779
		13,159	2	
		24,896	11	
		17,181	12	
Booster and Lift Stations	159,175	21,740	8	180,915
Meters	635,657	83,757	1	731,301
		11,887	2	
Engineering	906,288	104,505	1	1,025,514
		14,721	2	
Total Operation and Maintenance Expenses	<u>13,340,704</u>	<u>766,345</u>		<u>14,107,049</u>
Sewage Works Depreciation Expense	<u>3,802,100</u>			<u>3,802,100</u>
<u>Taxes Other Than Income Taxes</u>				
FICA	391,222	50,527	13	441,749
Payment in Lieu of Property Taxes	-	432,657	14	432,657
Total Taxes Other Than Income Taxes	<u>391,222</u>	<u>483,184</u>		<u>874,406</u>
Total Operating Expenses	<u>17,534,026</u>	<u>1,249,529</u>		<u>18,783,555</u>
Net Operating Income	<u>\$ 6,451,310</u>	<u>\$ (1,249,529)</u>		<u>\$ 5,201,781</u>

See Appendix A: Assumptions and Adjustment Detail

Sewage Works Adjustment Detail

#	Functional Area	Category	Adjustment to Test Year (1)	Description
1	Multiple	Salaries & Wages	\$695,722	To adjust Salaries & Wages to the Utility's 2023 budget.
2	Multiple	Employee Pension & Benefits	\$100,592	To adjust Employee Pension & Benefits for additional PERF contributions resulting from increased Salaries & Wages.
3	Multiple	Contract Services Accounting	(\$108,225)	To adjust Contract Services Accounting to remove expenses related to the 2021 Refunding Bonds and to provide for rate analysis to be conducted every four years.
4	USB	Contract Services Interdepartmental	\$724,206	To adjust Contractual Services Interdepartmental to remove the Utility's share of the ESG Solar Lease recorded to the Test Year, which will be included as a distinct revenue requirement, and to add in the Utility's share of the General Expenses from the 2021 Interdepartmental Agreement.
5	USB	Contracted Services Other	(\$269,745)	To adjust Contracted Services Other to exclude the adjusting entry to expense Construction Work in Progress totaling \$269,745.
6	Billing & Collections	Materials & Supplies Statements	(\$15,498)	To adjust Materials & Supplies Statements to remove two months of expenses. The average monthly bill is \$7,749.
7	Billing & Collections	Bad Debt	\$8,000	To adjust Bad Debt to the Utility's 2023 adopted budget.
8	Multiple	Purchased Power	\$245,188	To adjust Purchased Power for the anticipated increased expenses due to an electric rate increase by Duke Energy.
9	Dillman Road WWTP	Materials & Supplies Structures	(\$738,542)	To adjust Materials & Supplies Structures to remove two invoices from Electric Plus for emergency services performed at Dillman Road Wastewater Treatment Plant. Future similar expenses would be expected to be capitalized.
10	Dillman Road WWTP	Chemicals	\$82,570	To adjust Sodium Hypochlorite and Sodium Aluminate to the Utility's 2023 budget.
11	Transmission & Distribution	Materials & Supplies General	\$24,896	To adjust the Test Year to the three-year historical average.
12	Transmission & Distribution	Materials & Supplies Lines	\$17,181	To adjust the Test Year to the three-year historical average.
13	Taxes Other Than Income Taxes	FICA	\$50,527	To adjust FICA expenses due to an increase in Salaries & Wages.
14	Taxes Other Than Income Taxes	Contract Services in Lieu of Taxes	\$432,657	To adjust Contract Services in Lieu of Taxes to include the 2021 payment to be made by the Utility to the City of Bloomington.

(1) Adjustment amounts are expressed based on the net effect on the Utility's revenue requirements.

See Appendix A: Assumptions

Sewage Works Capital Improvement Plan

Project	2023	2024	2025	2026	2027	Total
Dillman Road Waste Water Treatment Plant						
Modernization and capacity Phase II - Design	\$ 2,000,000 ^					\$ 2,000,000
Modernization and capacity Phase II - Const		\$ 9,889,617 ^				9,889,617
Clarifier Algae Control - Weir Covers, 4 Remaining		1,166,000 ^				1,166,000
Mechanical Screen Replacement and Electrical Feed	4,400,000 ^					4,400,000
Sludge Press Re-Build		470,000 ^				470,000
PACL Feed System			\$ 530,000 #			530,000
End of life Equipment Replacements; PS VFDs, etc				\$ 1,500,000		1,500,000
Admin HVAC			350,000			350,000
Repair or Replace Equalization Basin Liner					\$ 50,000	50,000
Addition of Video Surveillance for Security				140,000		140,000
Replace Main Plan Gate and Controls			110,000			110,000
Headworks- Bar Screen, Replace Compactor Auger, Replace VFD, AV, Add Space Pump					390,000	390,000
Asphalt Drives at Plant			2,140,000			2,140,000
Vortex Grit Removal					8,307,000 &	8,307,000
Final Clarifier Drive Motors					247,000	247,000
Replace Sand Filter Media					1,508,000	1,508,000
Replace Polymer Blending Units for Belt Presses		220,000 ^				220,000
Demolish and Transition Annunciator Board in Admin Building					200,000	200,000
Replace Scum Pump Suction Piping and Valves					156,000	156,000
Blucher Poole Waste Water Treatment Plant						
Belt Press Rehab	155,000					155,000
Intake (2) and RAS (1) Pump Replacements and Misc.	175,000					175,000
End of life Equipment Replacements	200,000	200,000	200,000		200,000	800,000
North Sewer Basin and Plant Hydraulic Capacity Study	250,000					250,000
Plant Expansion (EQ Basin/PC Plus Other Capacity) - Design		1,100,000 ^				1,100,000

Data Source Utility

See Appendix A: Assumptions

Sewage Works Capital Improvement Plan (Continued)

Project	2023	2024	2025	2026	2027	Total
Blucher Poole Waste Water Treatment Plant (continued)						
Waste Storage Building	\$ 2,000,000 ^					\$ 2,000,000
Solids Handling Building Plumbing		\$ 101,920				101,920
Parking Lot Expansion		44,800				44,800
Human Machine Interface (HMI) PLC		560,000 ^				560,000
RAS (3) Pump and Flow Meter Replacement			\$ 749,300 #			749,300
Secondary Clarifier - Painting & Sanding Covers, ISO Valves			769,360 #			769,360
Influent Flume Rehab			118,000			118,000
Yard Valve Replacement (6)		168,000				168,000
Plant Generator					\$ 100,000	100,000
Electrical Upgrades		560,000 ^				560,000
Plant Hydraulic Expansion				\$ 12,887,692 #		12,887,692
Collection System						
I&I Reduction Program	100,000	100,000	100,000	100,000	100,000	500,000
Sewer Lining, Manhole Rehab, FMs Lining	430,000	430,000	430,000	430,000	430,000	2,150,000
Lift Stations (Morningside, Cans, etc)	1,200,000	2,240,000	2,124,000	100,000	100,000	5,764,000
Road Projects Relocations	20,000	20,000	20,000	20,000	20,000	100,000
SE-Interceptor College Mall-Design (3,000')			1,500,000 #			1,500,000
SE Interceptor MH 8830 Past Goat Farm - Design				1,200,000		1,200,000
SC Interceptor Gordan Pike to Rogers St - Design		1,200,000 ^				1,200,000
Relief Interceptor Dillman WWTP to Rogers St. (3,300')	2,916,000 ^				15,163,200 &	18,079,200
Replacement of Maintenance Equipment (55%)	550,000	145,750	154,495	163,765	173,591	1,187,601
Other						
New Service Center			22,929,759 +			22,929,759
Total Capital Improvement Plan	\$ 14,396,000	\$ 18,616,087	\$ 32,224,914	\$ 16,541,457	\$ 27,144,791	\$ 108,923,249
Projects to be Funded through Proposed 2023 Bond Issuance (^)	(11,316,000)	(15,165,617)				(26,481,617)
Projects to be Funded through Proposed 2025 Bond Issuance (#)			(3,548,660)	(12,887,692)		(16,436,352)
Projects to be Funded through Proposed Service Center Financing (+)			(22,929,759)			(22,929,759)
Projects to be Funded through Future Rate Analysis (&)					(23,470,200)	(23,470,200)
Calculated Extensions and Replacements	\$ 3,080,000	\$ 3,450,470	\$ 5,746,495	\$ 3,653,765	\$ 3,674,591	\$ 19,605,321
Five-Year Average Extensions and Replacements						\$ 3,921,064

Data Source: Utility
See Appendix A: Assumptions

Proposed Sewage Works Revenue Bonds of 2023

Estimated Sources and Uses of Funds

Estimated Sources of Funds

Par Amount	<u>\$ 34,240,000</u>
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Estimated Uses of Funds

Project Fund	
Sewage Works Projects	\$ 26,481,617
Stormwater Projects	4,080,000
Debt Service Reserve	2,860,516
Underwriter's Discount	342,400
Insurance Expense	272,710
Costs of Issuance	<u>202,757</u>
Total Estimated Uses of Funds	<u>\$ 34,240,000</u>

See Appendix A: Assumptions

Estimated Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Less: Stormwater (1)	Sewage Works Fiscal Total
7/1/23			\$ 774,679	\$ 774,679			
1/1/24			774,679	774,679	\$ 1,549,358	\$ (320,782)	\$ 1,228,576
7/1/24			774,679	774,679			
1/1/25			774,679	774,679	1,549,358	(320,782)	1,228,576
7/1/25			774,679	774,679			
1/1/26	\$ 1,310,000	3.70 %	774,679	2,084,679	2,859,358	(320,782)	2,538,576
7/1/26			750,444	750,444			
1/1/27	1,355,000	3.80	750,444	2,105,444	2,855,888	(320,782)	2,535,106
7/1/27			724,699	724,699			
1/1/28	1,410,000	3.90	724,699	2,134,699	2,859,398	(320,782)	2,538,616
7/1/28			697,204	697,204			
1/1/29	1,465,000	3.95	697,204	2,162,204	2,859,408	(320,782)	2,538,626
7/1/29			668,270	668,270			
1/1/30	1,520,000	4.00	668,270	2,188,270	2,856,540	(320,782)	2,535,758
7/1/30			637,870	637,870			
1/1/31	1,580,000	4.15	637,870	2,217,870	2,855,740	(320,782)	2,534,958
7/1/31			605,085	605,085			
1/1/32	1,650,000	4.20	605,085	2,255,085	2,860,170	(320,782)	2,539,388
7/1/32			570,435	570,435			
1/1/33	1,715,000	4.35	570,435	2,285,435	2,855,870	(320,782)	2,535,088
7/1/33			533,134	533,134			
1/1/34	1,790,000	4.55	533,134	2,323,134	2,856,268	(320,782)	2,535,486
7/1/34			492,411	492,411			
1/1/35	1,875,000	4.65	492,411	2,367,411	2,859,822	(320,782)	2,539,040
7/1/35			448,818	448,818			
1/1/36	1,960,000	4.70	448,818	2,408,818	2,857,636	(320,782)	2,536,854
7/1/36			402,758	402,758			
1/1/37	2,055,000	4.75	402,758	2,457,758	2,860,516	(320,782)	2,539,734
7/1/37			353,951	353,951			
1/1/38	2,150,000	4.75	353,951	2,503,951	2,857,902	(320,782)	2,537,120
7/1/38			302,889	302,889			
1/1/39	2,250,000	4.80	302,889	2,552,889	2,855,778	(320,782)	2,534,996
7/1/39			248,889	248,889			
1/1/40	2,360,000	4.85	248,889	2,608,889	2,857,778	(320,782)	2,536,996
7/1/40			191,659	191,659			
1/1/41	2,475,000	4.90	191,659	2,666,659	2,858,318	(320,782)	2,537,536
7/1/41			131,021	131,021			
1/1/42	2,595,000	4.90	131,021	2,726,021	2,857,042	(320,782)	2,536,260
7/1/42			67,444	67,444			
1/1/43	2,725,000	4.95	67,444	2,792,444	2,859,888	(320,782)	2,539,106
Totals	<u>\$ 34,240,000</u>		<u>\$ 20,302,036</u>	<u>\$ 54,542,036</u>	<u>\$ 54,542,036</u>	<u>\$ (6,415,640)</u>	<u>\$ 48,126,396</u>

(1) The Stormwater portion of the debt service payment was calculated based on a twenty-year amortization of the Stormwater Project costs at the Net Interest Cost on the Bonds of 4.76%.

Note: Coupon rates are estimated and subject to change. Arbitrage yield on the bonds is estimated at 4.65%. Coupon rate is based on "A" rates as of September 21, 2022, plus issuer credit spread and 50 basis point timing spread to account for uncertainty of future market rates at time of issuance.

See Appendix A: Assumptions

Proposed Sewage Works Revenue Bonds of 2025

Estimated Sources and Uses of Funds

Estimated Sources of Funds

Par Amount	<u>\$ 18,490,000</u>
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Estimated Uses of Funds

Project Fund	\$ 16,436,352
Debt Service Reserve	1,513,508
Underwriter's Discount	184,900
Insurance Expense	151,110
Costs of Issuance	<u>204,130</u>

Total Estimated Uses of Funds	<u>\$ 18,490,000</u>
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See Appendix A: Assumptions

Estimated Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
7/1/25			\$ 468,728	\$ 468,728	
1/1/26	\$ 575,000	4.20 %	468,728	1,043,728	\$ 1,512,456
7/1/26			456,653	456,653	
1/1/27	600,000	4.30	456,653	1,056,653	1,513,306
7/1/27			443,753	443,753	
1/1/28	625,000	4.40	443,753	1,068,753	1,512,506
7/1/28			430,003	430,003	
1/1/29	650,000	4.45	430,003	1,080,003	1,510,006
7/1/29			415,540	415,540	
1/1/30	680,000	4.50	415,540	1,095,540	1,511,080
7/1/30			400,240	400,240	
1/1/31	710,000	4.65	400,240	1,110,240	1,510,480
7/1/31			383,733	383,733	
1/1/32	745,000	4.70	383,733	1,128,733	1,512,466
7/1/32			366,225	366,225	
1/1/33	780,000	4.85	366,225	1,146,225	1,512,450
7/1/33			347,310	347,310	
1/1/34	815,000	5.00	347,310	1,162,310	1,509,620
7/1/34			326,935	326,935	
1/1/35	855,000	5.10	326,935	1,181,935	1,508,870
7/1/35			305,133	305,133	
1/1/36	900,000	5.15	305,133	1,205,133	1,510,266
7/1/36			281,958	281,958	
1/1/37	945,000	5.15	281,958	1,226,958	1,508,916
7/1/37			257,624	257,624	
1/1/38	995,000	5.20	257,624	1,252,624	1,510,248
7/1/38			231,754	231,754	
1/1/39	1,050,000	5.25	231,754	1,281,754	1,513,508
7/1/39			204,191	204,191	
1/1/40	1,105,000	5.25	204,191	1,309,191	1,513,382
7/1/40			175,185	175,185	
1/1/41	1,160,000	5.35	175,185	1,335,185	1,510,370
7/1/41			144,155	144,155	
1/1/42	1,220,000	5.40	144,155	1,364,155	1,508,310
7/1/42			111,215	111,215	
1/1/43	1,290,000	5.40	111,215	1,401,215	1,512,430
7/1/43			76,385	76,385	
1/1/44	1,360,000	5.45	76,385	1,436,385	1,512,770
7/1/44			39,325	39,325	
1/1/45	1,430,000	5.50	39,325	1,469,325	1,508,650
Totals	<u>\$18,490,000</u>		<u>\$ 11,732,090</u>	<u>\$ 30,222,090</u>	

Note: Coupon rates are estimated and subject to change. Arbitrage yield on the bonds is estimated at 5.22%. Coupon rate is based on "A" rates as of September 21, 2022, plus issuer credit spread and 100 basis point timing spread to account for uncertainty of future market rates at time of issuance.

See Appendix A: Assumptions

Proposed Service Center Financing

Estimated Sources and Uses of Funds

Estimated Sources of Funds	
Par Amount	<u>\$ 25,680,000</u>

Estimated Uses of Funds	
Project Fund	\$ 22,929,759
Debt Service Reserve	2,081,306
Underwriter's Discount	256,800
Insurance Expense	207,897
Costs of Issuance	<u>204,238</u>
Total Estimated Uses of Funds	<u>\$ 25,680,000</u>

Note: As of the date of this Report, Management of the Utility is uncertain when financing of a new service center will occur. This Report provides funding for estimated financing beginning in 2023, though actual timing is preliminary and subject to change.

See Appendix A: Assumptions

Estimated Amortization Schedule

Date	Principal	Coupon	Interest	Period Total	Fiscal Total	Contingency Fiscal Total (1)	Sewage Works Portion (2)
7/1/23			\$ 634,960	\$ 634,960			
1/1/24	\$ 810,000	4.15 %	634,960	1,444,960	\$ 2,079,920	\$ 2,287,912	\$ 1,372,747
7/1/24			618,153	618,153			
1/1/25	845,000	4.20	618,153	1,463,153	2,081,306	2,289,437	1,373,662
7/1/25			600,408	600,408			
1/1/26	880,000	4.20	600,408	1,480,408	2,080,816	2,288,898	1,373,339
7/1/26			581,928	581,928			
1/1/27	915,000	4.30	581,928	1,496,928	2,078,856	2,286,742	1,372,045
7/1/27			562,255	562,255			
1/1/28	955,000	4.40	562,255	1,517,255	2,079,510	2,287,461	1,372,477
7/1/28			541,245	541,245			
1/1/29	995,000	4.45	541,245	1,536,245	2,077,490	2,285,239	1,371,143
7/1/29			519,106	519,106			
1/1/30	1,040,000	4.50	519,106	1,559,106	2,078,212	2,286,033	1,371,620
7/1/30			495,706	495,706			
1/1/31	1,085,000	4.65	495,706	1,580,706	2,076,412	2,284,053	1,370,432
7/1/31			470,480	470,480			
1/1/32	1,140,000	4.70	470,480	1,610,480	2,080,960	2,289,056	1,373,434
7/1/32			443,690	443,690			
1/1/33	1,190,000	4.85	443,690	1,633,690	2,077,380	2,285,118	1,371,071
7/1/33			414,833	414,833			
1/1/34	1,250,000	5.00	414,833	1,664,833	2,079,666	2,287,633	1,372,580
7/1/34			383,583	383,583			
1/1/35	1,310,000	5.10	383,583	1,693,583	2,077,166	2,284,883	1,370,930
7/1/35			350,178	350,178			
1/1/36	1,380,000	5.15	350,178	1,730,178	2,080,356	2,288,392	1,373,035
7/1/36			314,643	314,643			
1/1/37	1,450,000	5.15	314,643	1,764,643	2,079,286	2,287,215	1,372,329
7/1/37			277,305	277,305			
1/1/38	1,525,000	5.20	277,305	1,802,305	2,079,610	2,287,571	1,372,543
7/1/38			237,655	237,655			
1/1/39	1,605,000	5.25	237,655	1,842,655	2,080,310	2,288,341	1,373,005
7/1/39			195,524	195,524			
1/1/40	1,690,000	5.25	195,524	1,885,524	2,081,048	2,289,153	1,373,492
7/1/40			151,161	151,161			
1/1/41	1,775,000	5.35	151,161	1,926,161	2,077,322	2,285,054	1,371,032
7/1/41			103,680	103,680			
1/1/42	1,870,000	5.40	103,680	1,973,680	2,077,360	2,285,096	1,371,058
7/1/42			53,190	53,190			
1/1/43	1,970,000	5.40	53,190	2,023,190	2,076,380	2,284,018	1,370,411
Totals	<u>\$25,680,000</u>		<u>\$ 15,899,366</u>	<u>\$41,579,366</u>	<u>\$41,579,366</u>	<u>\$45,737,305</u>	<u>\$27,442,385</u>

Note: Coupon rates are estimated and subject to change. Arbitrage yield on the bonds is estimated at 5.11%. Coupon rate is based on "A" rates as of September 21, 2022, plus issuer credit spread and 100 basis point timing spread to account for uncertainty of future market rates at time of issuance.

- (1) Contingency amount includes a ten percent cushion on Fiscal Total Amounts, as provided by Management of the Utility.
- (2) Sewage Works Portion is sixty percent (60%) of Contingency Fiscal Total, as provided by Management of the Utility.

See Appendix A: Assumptions

Estimated Sewage Works Combined Debt after Issuance of the Proposed Bonds

Pay Year	2006 A-1 Bonds (1)	2013 Refunding Bonds	2017 Bonds	2019 Refunding Bonds	2020 Bonds (1)	2021 Refunding Bonds	Total Outstanding Bonds	Estimated 2023 Bonds (1)	Estimated 2025 Bonds	Estimated Service Center Financing WW Portion (1)	Total
2022	\$ 129,000	\$ 1,181,232	\$ 457,300	\$ 1,021,800	\$ 446,000	\$ 775,904	\$ 4,011,236				\$ 4,011,236
2023	130,272	1,191,296	461,300	1,023,200	446,000	778,150	4,030,218	\$ 1,228,576		\$ 1,372,747	6,631,541
2024	130,116	1,190,826	460,100	1,022,200	446,000	779,400	4,028,642	1,228,576		1,373,662	6,630,880
2025	128,770		463,800	1,022,000	446,000	785,050	2,845,620	2,538,576	\$ 1,512,456	1,373,339	8,269,991
2026	131,244		467,300	613,600	846,000	784,950	2,843,094	2,535,106	1,513,306	1,372,045	8,263,551
2027			467,250		2,023,000	789,250	3,279,500	2,538,616	1,512,506	1,372,477	8,703,099
2028			471,900		2,024,600	777,800	3,274,300	2,538,626	1,510,006	1,371,143	8,694,075
2029			471,100		2,528,600	276,050	3,275,750	2,535,758	1,511,080	1,371,620	8,694,208
2030			475,000		2,529,800	273,700	3,278,500	2,534,958	1,510,480	1,370,432	8,694,370
2031			473,450		1,482,400	281,200	2,237,050	2,539,388	1,512,466	1,373,434	7,662,338
2032			476,600		1,483,200	283,250	2,243,050	2,535,088	1,512,450	1,371,071	7,661,659
2033			479,300		1,486,800		1,966,100	2,535,486	1,509,620	1,372,580	7,383,786
2034			486,550		1,483,000		1,969,550	2,539,040	1,508,870	1,370,930	7,388,390
2035			488,200		1,482,000		1,970,200	2,536,854	1,510,266	1,373,035	7,390,355
2036			494,400		1,483,600		1,978,000	2,539,734	1,508,916	1,372,329	7,398,979
2037					1,482,600		1,482,600	2,537,120	1,510,248	1,372,543	6,902,511
2038					1,484,000		1,484,000	2,534,996	1,513,508	1,373,005	6,905,509
2039					1,482,600		1,482,600	2,536,996	1,513,382	1,373,492	6,906,470
2040					1,483,400		1,483,400	2,537,536	1,510,370	1,371,032	6,902,338
2041								2,536,260	1,508,310	1,371,058	5,415,628
2042								2,539,106	1,512,430	1,370,411	5,421,947
2043									1,512,770		1,512,770
2044									1,508,650		1,508,650
Totals	\$ 649,402	\$ 3,563,354	\$ 7,093,550	\$ 4,702,800	\$ 26,569,600	\$ 6,584,704	\$ 49,163,410	\$ 48,126,396	\$ 30,222,090	\$ 27,442,385	\$ 154,954,281
Average Annual Debt Service (2023-2024)											\$ 6,631,211
Average Annual Debt Service (2025-2027)											\$ 8,412,214

(1) Amounts shown are net of the Stormwater Utility portion of debt service.

Note: The Proposed 2023 Bonds, Proposed 2025 Bonds, and Proposed Service Center Financing were amortized using level debt service. The Utility may consider structuring such obligations at the time of issuance to achieve aggregate level debt service for the Utility on a combined basis.

Statement of Sewage Works Revenue Requirements

Statement of Sewage Works Revenue Requirements

	Phase I (2023)	Phase II (2025)
Adjusted Operation and Maintenance Expense	\$ 14,107,049	\$ 14,107,049
Adjusted Taxes Other Than Income Taxes	874,406	874,406
Estimated Combined Annual Debt Service	6,631,211 (1)	8,412,214 (2)
Average Annual Lease Payment: Equipment for AMI	685,089	685,089
Annual Lease Payment: Solar Lease	394,287	394,287
Extensions and Replacements (3)	<u>3,921,064</u>	<u>3,921,064</u>
Total Revenue Requirements	26,613,106	28,394,109
Less: Adjusted Operating Revenues	<u>23,985,336</u>	<u>26,837,528</u>
Deficit	2,627,770	1,556,581
Divide by: Adjustable Operating Revenues	<u>23,768,268</u>	<u>26,620,460</u>
Percent Rate Increase Required	<u>12%</u>	<u>6%</u>

- (1) Estimated average combined annual debt service of the Sewage Works for 2023 and 2024.
- (2) Estimated average combined annual debt service of the Sewage Works for 2025 through 2027.
- (3) Average Calculated Extensions and Replacements for 2023 through 2027. See Sewage Works Capital Improvement Plan.

See Appendix A: Assumptions

Schedule of Sewage Works Present and Proposed Rates and Charges

	Present Rates (1)	Phase I Proposed Rates	Phase II Proposed Rates
SEWAGE WORKS RATES			
<u>Monthly Usage Charge (Per 1,000 Gallons)</u>			
Inside City Customers	\$ 7.99	\$ 8.95	\$ 9.49
Outside City Customers	8.95	10.02 (2)	10.63 (2)
<u>Monthly Service Charge (per meter)</u>			
Inside City Customers	\$ 8.19	\$ 9.17	\$ 9.72
Outside City Customers	9.17	10.27 (2)	10.89 (2)
<u>Excess Strength Surcharge</u>			
<u>Rate per Pound in Excess of 300 ppm</u>			
Biochemical Oxygen Demand (BOD)	\$ 0.391	\$ 0.438	\$ 0.464
Suspended Solids (SS)	0.319	0.357	0.378
<u>Special Laboratory Analysis Monthly Charge</u>			
Strength of BOD and SS Sampling Charge	\$ 171.91	\$ 192.54	\$ 204.09
Grease and Oil Sampling	161.14	180.48	191.31
Metal Sampling (per metal per test)	35.81	40.11	42.52
<u>Unmetered Users</u>			
Minimum Annual Charge - Inside City Customers	\$ 796.74	\$ 892.35	\$ 945.89
Minimum Annual Charge - Outside City Customers	892.41	999.43 (2)	1,059.40 (2)

(1) Sewage Works Present Rates and Charges went into effect on January 1, 2020.

(2) Includes the Outside City Surcharge Factor of 12% applied against the Proposed Rates for Inside City customers.

Typical Monthly Bill Analysis

Inside City Customers

Gallons	Present Charges	Proposed Phase I Charge	Difference to Present	Proposed Phase II Charge	Difference to Phase I
0	\$ 8.19	\$ 9.17	\$ 0.98	\$ 9.72	\$ 0.55
1,000	16.18	18.12	1.94	19.21	1.09
2,000	24.17	27.07	2.90	28.70	1.63
3,000	32.16	36.02	3.86	38.19	2.17
4,000	40.15	44.97	4.82	47.68	2.71
5,000	48.14	53.92	5.78	57.17	3.25
6,000	56.13	62.87	6.74	66.66	3.79
7,000	64.12	71.82	7.70	76.15	4.33
8,000	72.11	80.77	8.66	85.64	4.87
9,000	80.10	89.72	9.62	95.13	5.41
10,000	88.09	98.67	10.58	104.62	5.95
11,000	96.08	107.62	11.54	114.11	6.49
12,000	104.07	116.57	12.50	123.60	7.03
13,000	112.06	125.52	13.46	133.09	7.57
14,000	120.05	134.47	14.42	142.58	8.11
15,000	128.04	143.42	15.38	152.07	8.65
16,000	136.03	152.37	16.34	161.56	9.19
17,000	144.02	161.32	17.30	171.05	9.73
18,000	152.01	170.27	18.26	180.54	10.27
19,000	160.00	179.22	19.22	190.03	10.81
20,000	167.99	188.17	20.18	199.52	11.35

Outside City Customers

Gallons	Present Charges	Proposed Phase I Charge	Difference to Present	Proposed Phase II Charge	Difference to Phase I
0	\$ 9.17	\$ 10.27	\$ 1.10	\$ 10.89	\$ 0.62
1,000	18.12	20.29	2.17	21.52	1.23
2,000	27.07	30.31	3.24	32.15	1.84
3,000	36.02	40.33	4.31	42.78	2.45
4,000	44.97	50.35	5.38	53.41	3.06
5,000	53.92	60.37	6.45	64.04	3.67
6,000	62.87	70.39	7.52	74.67	4.28
7,000	71.82	80.41	8.59	85.30	4.89
8,000	80.77	90.43	9.66	95.93	5.50
9,000	89.72	100.45	10.73	106.56	6.11
10,000	98.67	110.47	11.80	117.19	6.72
11,000	107.62	120.49	12.87	127.82	7.33
12,000	116.57	130.51	13.94	138.45	7.94
13,000	125.52	140.53	15.01	149.08	8.55
14,000	134.47	150.55	16.08	159.71	9.16
15,000	143.42	160.57	17.15	170.34	9.77
16,000	152.37	170.59	18.22	180.97	10.38
17,000	161.32	180.61	19.29	191.60	10.99
18,000	170.27	190.63	20.36	202.23	11.60
19,000	179.22	200.65	21.43	212.86	12.21
20,000	188.17	210.67	22.50	223.49	12.82

Stormwater Analysis

Stormwater Detailed Income Statement

	April 30, 2022	December 31, 2021	December 31, 2020
Stormwater Revenues			
Stormwater Single Family	\$ 952,925	\$ 950,868	\$ 931,785
Stormwater Sales Commercial	957,385	962,128	896,530
Stormwater Sales Industrial	31,743	31,743	30,628
Stormwater Sales Public Authority	602,593	601,255	577,488
Stormwater Sales Multiple Family	702,287	693,851	658,753
Stormwater Plan Review Revenue	1,445	1,190	765
Forfeited Discounts - Storm	16,260	18,037	8,305
Total Stormwater Revenues	<u>3,264,638</u>	<u>3,259,072</u>	<u>3,104,254</u>
Stormwater Operation and Maintenance Expenses			
Salaries and Wages	517,069	520,477	591,315
Employee Pension and Benefits	274,436	271,252	267,482
Materials and Supplies	82,452	83,464	72,828
Customer Assistance Program	44,944	46,961	34,874
Contractual Services	16,690	16,038	82,152
Liability Insurance	15,534	15,425	36,995
Miscellaneous Expenses	2,673	9,717	12,120
Total	<u>953,798</u>	<u>963,334</u>	<u>1,097,766</u>
Stormwater Depreciation Expense:	<u>280,681</u>	<u>280,681</u>	<u>279,824</u>
FICA	<u>37,067</u>	<u>37,088</u>	<u>44,813</u>
Total Stormwater Operating Expenses:	<u>1,271,546</u>	<u>1,281,103</u>	<u>1,422,403</u>
Stormwater Net Operating Income:	<u>1,993,092</u>	<u>1,977,969</u>	<u>1,681,851</u>
Stormwater Other Income			
Reimbursements	234,454	194	16,794
Interest Stormwater Construction	10,236	7,748	-
Revenue from Contract Work	-	1,650	-
Interest Stormwater O&M	3,588	4,043	3,707
Total Stormwater Other Income:	<u>248,278</u>	<u>13,635</u>	<u>20,501</u>
Stormwater Net Income	<u>\$ 2,241,370</u>	<u>\$ 1,991,604</u>	<u>\$ 1,702,352</u>

Stormwater Utility Adjusted Statement of Income

	April 30, 2022	Adjustments	Adjusted
Stormwater Revenues			
Stormwater Single Family	\$ 952,925		\$ 952,925
Stormwater Sales Commercial	957,385		957,385
Stormwater Sales Industrial	31,743		31,743
Stormwater Sales Public Authority	602,593		602,593
Stormwater Sales Multiple Family	702,287		702,287
Stormwater Plan Review Revenue	1,445		1,445
Forfeited Discounts - Storm	16,260		16,260
Total Stormwater Revenues	3,264,638		3,264,638
Stormwater Operation and Maintenance Expenses			
Salaries and Wages	517,069	\$ 190,937 1	708,006
Employee Pension and Benefits	274,436	27,654 2	302,090
Materials and Supplies	82,452		82,452
Customer Assistance Program	44,944		44,944
Contractual Services	16,690	6,115 3	22,805
Liability Insurance	15,534		15,534
Miscellaneous Expenses	2,673	250,000 4	252,673
Total	953,798	474,706	1,428,504
Stormwater Depreciation Expense	280,681		280,681
FICA	37,067	13,687 5	50,754
Total Stormwater Operating Expenses	1,271,546	488,393	1,759,939
Stormwater Net Operating Income	1,993,092	(488,393)	1,504,699

See Appendix A: Assumptions and Adjustment Detail

Stormwater Utility Adjustment Detail

#	Functional Area	Category	Adjustment to Test Year (1)	Description
1	Multiple	Stormwater Salaries & Wages	\$190,937	To adjust Environmental Sciences (Department 57) and Utilities Stormwater (Department 81) Salaries & Wages to the Utility's 2023 adopted budget.
2	Multiple	Employee Pension & Benefits	\$27,654	To adjust Environmental Sciences (Department 57) and Utilities Stormwater (Department 81) Employee Pensions & Benefits for additional PERF contributions resulting from increased Salaries & Wages.
3	Contractual Services	Contract Services Accounting	\$6,115	To provide funding for estimated rate analysis expenses (\$25,000) every four (4) years.
4	Multiple	Miscellaneous Expenses	\$250,000	To provide funding for Street Sweeping expenses to be incurred annually by the Stormwater Utility.
5	Taxes Other Than Income Taxes	FICA	\$13,687	To adjust FICA expenses due to an increase in Salaries & Wages.

(1) Adjustment amounts are expressed based on the net effect on the Utility's revenue requirements.

See Appendix A: Assumptions

Stormwater Utility Capital Improvement Plan

Project	2023	2024	2025	2026	2027	Total
300 Other Services E&R and Green Infrastructure						
Jordan River Culvert at Indiana - Construction	\$ 2,050,000 ^					\$ 2,050,000
Lower Cascades Storm Culvert Extension		\$ 250,000				250,000
Spanker's Arch at 6th street	100,000	100,000	\$ 746,000			946,000
Clear Creek Open Channel Improvements - E 1st St. to Grimes Ln.		500,000				500,000
ROW relocations						
High Street Combined with City	70,000			\$ 200,000	\$ 300,000	570,000
Green Infrastructure						
RGSP/Regional Detention	100,000	100,000	100,000	100,000	100,000	500,000
Wexley Road - YMCA Pond	110,000					110,000
Wexley Road - Winslow Park		150,000				150,000
Wexley Road - South Hampton Pond			150,000			150,000
Public 4 Small Projects	261,290					261,290
Stormwater Master Plan	50,000					50,000
Miller Showers Dredging	300,000 ^		50,000			350,000
DPW Engineering GI Inclusion for Road Projects	50,000	50,000	54,866	50,000	50,000	254,866
Replacement of Equipment	321,680	51,760		58,157	61,647	493,244
Stormwater Review Assistance	100,000					100,000
Bridge Inspections	20,000	20,000	20,000	20,000	20,000	100,000
Septic Elimination Program (Sewer Credit)	11,200	11,200	11,200	11,200	11,200	56,000
Internal Neighborhood Projects	300,000 ^	300,000 ^	300,000 ^	300,000	300,000	1,500,000
Condition Assessment 18" and Larger CMP	50,000	50,000	50,000	50,000	50,000	250,000
Weimer Bridge					200,000	200,000
Moores Pike Culvert Extension				100,000		100,000
MS4 Permit Software	25,000					25,000
MS4 On-call Consultant	20,000	20,000	20,000	20,000	20,000	100,000
Stormwater Master Plan Implementation Items	171,000 ^	235,000 ^	424,000 ^	500,000	480,000	1,810,000
Total Capital Improvement Plan	\$ 4,110,170	\$ 1,837,960	\$ 1,926,066	\$ 1,409,357	\$ 1,592,847	\$ 10,876,400
Less: Projects to be Funded through 2023 Bond Issuance (^)	(2,821,000)	(535,000)	(724,000)			(4,080,000)
Less: Anticipated Grant Proceeds	(150,000)					(150,000)
Calculated Extensions and Replacements	\$ 1,139,170	\$ 1,302,960	\$ 1,202,066	\$ 1,409,357	\$ 1,592,847	\$ 6,646,400
Five-Year Average Extensions and Replacements						\$ 1,329,280

Data Source: Utility
See Appendix A: Assumptions

Estimated Stormwater Utility Combined Debt After Issuance of the Proposed Bonds

Pay Year	2006 A-1	2020 Bonds	Proposed 2023 Bonds	Estimated Total Bonds
2022	\$ 436,200	\$ 523,800		\$ 960,000
2023	436,200	523,800	\$ 320,782	1,280,782
2024	436,200	523,800	320,782	1,280,782
2025	436,200	523,800	320,782	1,280,782
2026	436,200	523,800	320,782	1,280,782
2027		523,800	320,782	844,582
2028		523,800	320,782	844,582
2029		523,800	320,782	844,582
2030		523,800	320,782	844,582
2031		523,800	320,782	844,582
2032		523,800	320,782	844,582
2033		523,800	320,782	844,582
2034		523,800	320,782	844,582
2035		523,800	320,782	844,582
2036		523,800	320,782	844,582
2037		523,800	320,782	844,582
2038		523,800	320,782	844,582
2039		523,800	320,782	844,582
2040		523,800	320,782	844,582
2041			320,782	320,782
2042			320,782	320,782
Total	\$ 2,181,000	\$ 9,952,200	\$ 6,415,640	\$ 18,548,840
Estimated Average Annual Debt Service (2023-2026)				\$ 1,280,782

Statement of Stormwater Utility Revenue Requirements

Adjusted Operation and Maintenance Expense	\$ 1,428,504
Adjusted Taxes Other Than Income Taxes	50,754
Estimated Average Annual Debt Service (2023-2026)	1,280,782
Estimated Average Annual Extensions and Replacements (2023-2027)	<u>1,329,280</u>
Total Revenue Requirements	4,089,320
Less: Adjusted Operating Revenues	<u>3,264,638</u>
Deficit	824,682
Divide by: Adjustable Operating Revenues	<u>3,248,378</u>
Percent Rate Increase Required	<u>26%</u>

Stormwater Utility Present and Proposed Rates

	Present Rates (1)	Proposed Rates
<u>Stormwater Utility Monthly Charges</u>		
Single Family Residential Customers	\$ 5.95	\$ 7.50

All other customers shall be charged based upon the amount of runoff generated by the customer.

(1) Stormwater Utility Present Rates and Charges went into effect on January 1, 2020.

Appendix A: Assumptions

The following assumptions, provided by and approved by the management of the Utility, were used in preparation of the Report.

#	Report Area	Assumption
1	All	Operating Revenues, Operation and Maintenance Expenses, and Taxes Other Than Income Taxes of the Utility for the year ending April 30, 2022, ("Test Year") are representative of expected pro forma operating results, except where otherwise noted.
2	All	Assumes no provision for new debt or leases beyond those summarized in the Estimated Combined Amortization Schedule After Issuance of Proposed Bonds for the Sewage Works and Stormwater Utility.
3	Adjusted Statements of Income	Consumption patterns and number of customers are assumed to be stable and not materially fluctuate in future years from the Test Year.
4	Sewage Works Adjusted Statement of Income	Adjustment 1: Test Year overtime and 2023 Budget for Salaries and Wages will be indicative of personnel costs for the Pro Forma year.
5	Sewage Works Adjusted Statement of Income	Adjustment 2: Pro Forma PERF expense based on Pro Forma wages and assumes that PERF expense is incurred in similar proportions in the Pro Forma year as the Test Year.
6	Sewage Works Adjusted Statement of Income	Adjustment 3: Assumes future similar costs of issuance will be paid from proceeds of future bond issues.
7	Sewage Works Adjusted Statement of Income	Adjustment 4: Sewage Works will be responsible for \$1,008,674 for General Services Costs in the Pro Forma year, which is 60% of the 2021 Interdepartmental agreement value of \$1,681,123.
8	Sewage Works Adjusted Statement of Income	Adjustment 8: Contemplates a 29% increase in electricity costs for Departments 65 (Dillman Road WWTP) and Department 73 (Boosters & Lift Stations) based on the observed increases in Duke Energy rates between average Test Year costs and rates as of June 2022. Energy costs for Blucher Poole were not increased as they are not served by Duke Energy.
9	Sewage Works Adjusted Statement of Income	Adjustment 9: Assumes future similar expenses will be capitalized or non-recurring in nature.
10	Sewage Works Adjusted Statement of Income	Adjustment 13: Pro Forma FICA expense equals Pro Forma Salaries and Wages times FICA rate of 7.65%.
11	Sewage Works Capital Improvement Plan	Funding for large 2027 projects, including Vortex Grit Removal and Relief Interceptor Dillman WWTP to Rogers Street, will be determined in the Utility's 2026 rate analysis. Timing for the New Service Center is unknown as of the date of this Report. Funding is provided for the New Service Center beginning in 2023, however, actual timing of construction and financing is unknown.
12	Estimated Sources and Uses (Proposed 2023 Bonds, Proposed 2025 Bonds, and Proposed Service Center Financing)	<ul style="list-style-type: none"> Project costs based on sum of projects to be financed as indicated in the Capital Improvement Plans provided by Management of the Utilities. Debt Service Reserve Funds are based on the maximum annual debt service of the respective

#	Report Area	Assumption
		<p>bond issuances.</p> <ul style="list-style-type: none"> Costs of issuance are estimates based on similar transactions.
13	Estimated Amortization Schedules	<p>Coupon rates based on A Refinitiv MMD rates as of September 21, 2022, plus an issuer credit spread, and a 50 basis point timing spread for the 2023 Bonds, and 100 basis point timing spread for the 2025 Bonds and Service Center Financing. Rates are estimated and subject to change. The amortization schedule for the 2023 Bonds assumes level debt service after interest only payments for the first two years. The amortization schedule for the 2025 Bonds and Service Center Financing assumes level debt service. The Utility may consider structuring the obligations at the time of issuance to achieve aggregate level debt service for the Utility on a combined basis.</p>
14	Statement of Sewage Works Revenue Requirements	<p>Assumes a Phase I rate increase effective January of 2023, and a Phase II rate increase effective January of 2025. Assumes the Utility will complete an additional rate analysis in 2027 to evaluate funding needs for the projects identified on the capital improvement plan as debt financing and for the Utility's anticipated increased debt service for the years 2027 through 2030.</p>
15	Stormwater Utility Adjusted Statement of Income	<p>Adjustment 1: Test Year overtime and 2023 Budget for Salaries and Wages will be indicative of personnel costs for the Pro Forma year.</p>
16	Stormwater Utility Adjusted Statement of Income	<p>Adjustment 2 and 5: Pro Forma PERF and FICA expense based on Pro Forma wages, and assumes that PERF expense is incurred in similar proportions in the Pro Forma year as the Test Year.</p>
17	Stormwater Utility Adjusted Statement of Income	<p>Adjustment 4: Pro Forma estimated expenses attributable to Street Sweeping functions provided by Utility management.</p>
18	Stormwater Utility Capital Improvement Plan	<p>Assumes receipt of grant funding of \$150,000 for Green Infrastructure Public 4 small projects in 2023.</p>

300 Other Services E&R and Green Infrastructure								
PROJECT	2022	2023	2024	2025	2026	2027	total	Notes
Jordan River Culvert- repair near kirkwood	\$ 190,000						\$ 190,000	jf est 10/19
Jordan River Culvert at Indiana - design	\$ 355,000						\$ 355,000	jf em 9/27
Jordan River Culvert at Indiana - construction		\$ 2,050,000					\$ 2,050,000	Resurvey/complete design 2023; Const 2024
Spanker's Arch at 6th street			\$ 100,000	\$ 746,000			\$ 846,000	Design 2024; Const 2025
Clear Ck Open Channel Improvements - E 1st St. to Grimes Ln.	\$ 100,000	\$ 500,000					\$ 600,000	move out?study in 2022, could be more than a million
Lower Cascades storm culvert extension		\$ 250,000					\$ 250,000	
							\$ -	
Internal Neighborhood Projects \$300,000/yr		\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 1,500,000	material for internal construction
Somax							\$ -	
Roadside ditches (multiple neighborhoods)							\$ -	
							\$ -	
DPW Related Projects							\$ -	if usually done as part of road work
High street combined with city	\$ 70,000				\$ 200,000	\$ 300,000	\$ 570,000	jf swag, only if City proceeds with project
Weimer bridge						\$ 200,000	\$ 200,000	maybe. work with city? new road?
moores pike culvert extension					\$ 100,000		\$ 100,000	difficult - combine with trail (P&T?)
Bridge inspections	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 100,000	wkg with City. 2K / inspection. Done already.
Condition Assessment and replacement 18" and larger CMP	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 250,000	Will apply replacement costs after assessment. Create list first from Meghan/Chuck (James).
Total Expenditure	\$ 545,000	\$ 2,590,000	\$ 1,220,000	\$ 1,116,000	\$ 670,000	\$ 870,000	\$ 7,011,000	

Green Infrastructure \$400,000/yr								
PROJECT	2022	2023	2024	2025	2026	2027	total	Notes
RSGP/Regional Detention	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 500,000	
Wexley Road-YMCA Pond	\$ 110,000						\$ 110,000	
Wexley Road - Winslow Park			\$ 150,000				\$ 150,000	~\$300K. Work with Parks?
Wexley Road - South Hampton Pond				\$ 150,000			\$ 150,000	
Public 4 small projects	\$ 261,290						\$ 261,290	2023: Sare Rd. est + Waterman projects. (20K on top of 150K from grant)
Stormwater Master Plan	\$ 50,000						\$ 50,000	James please confirm. bs updated 11/2 based on what's in contract
Miller Showers Dredging	\$ 300,000						\$ 300,000	
DPW Engineering GI inclusion for road projects	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 250,000	
Total Expenditure	\$ -	\$ 871,290	\$ 300,000	\$ 300,000	\$ 150,000	\$ 150,000	\$ 1,771,290	

General & Miscellaneous								
PROJECT	2022	2023	2024	2025	2026	2027	total	Notes
Replacement of equipment		\$ 321,680	\$ 51,760	\$ 54,866	\$ 58,157	\$ 61,647	\$ 548,110	
Stormwater Review Assistance	\$ 50,000	\$ 100,000					\$ 150,000	
Total Expenditure	\$ 50,000	\$ 421,680	\$ 51,760	\$ 54,866	\$ 58,157	\$ 61,647	\$ 698,110	

MS4								
PROJECT	2022	2023	2024	2025	2026	2027	total	Notes
Septic Elimination program (sewer credit)		\$ 11,200	\$ 11,200	\$ 11,200	\$ 11,200	\$ 11,200	\$ 56,000	
Wapehani wetland tree/plug replacements	\$ 23,500						\$ 23,500	Contract w/ Eco Logic + plugs and trees
MS4 Permit Software	\$ 15,000	\$ 25,000					\$ 40,000	20k - pilot 24k-annual subscription
MS4 On-call consultant		\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 100,000	
Stormwater Master Plan Implementation Items		\$ 171,000	\$ 235,000	\$ 424,000	\$ 500,000	\$ 480,000	\$ 1,810,000	
Hidden River Art (Stormwater Education)	\$ 30,000						\$ 30,000	How much can we afford?
Total Expenditure	\$ 68,500	\$ 227,200	\$ 266,200	\$ 455,200	\$ 531,200	\$ 511,200	\$ 2,059,500	

EXPENDITURE SUMMARY BY CATEGORY	2022	2023	2024	2025	2026	2027	total
Projects	\$ 545,000	\$ 2,590,000	\$ 1,220,000	\$ 1,116,000	\$ 670,000	\$ 870,000	\$ 7,011,000
Green Infrastructure	\$ -	\$ 871,290	\$ 300,000	\$ 300,000	\$ 150,000	\$ 150,000	\$ 1,771,290
General	\$ 50,000	\$ 421,680	\$ 51,760	\$ 54,866	\$ 58,157	\$ 61,647	\$ 698,110
MS4	\$ 68,500	\$ 227,200	\$ 266,200	\$ 455,200	\$ 531,200	\$ 511,200	\$ 2,059,500
Total Stormwater	\$ 663,500	\$ 4,110,170	\$ 1,837,960	\$ 1,926,066	\$ 1,409,357	\$ 1,592,847	\$ 11,539,900

	2022	
Total budget	\$ 3,101,865	
100 - Personnel Services	\$ 1,011,603	
200 - Supplies	\$ 85,280	
300 - Other Services	\$ 148,209	includes residential grants-yes
300 - Other Services- E&R	\$ 498,771	
300 - Green Infrastructure	\$ 400,000	
400- Storm Sinking (P&I)***	\$ 960,000	

300 Other Services E&R and Green Infrastructure								
PROJECT	2022	2023	2024	2024	2025	2026	total-2026	Notes
Hidden River Culvert Replacement - beyond bond	\$ 220,000							lp em 9/21
Hidden River Culvert Replacement - CO	\$ 100,000							jf est 10/1
Hidden River - environmental								bs updated 11/2
Jordan River Culvert- repair near kirkwood	\$ 190,000							jf est 10/19
Jordan River Culvert at Indiana - design	\$ 355,000							jf em 9/27
Jordan River Culvert at Indiana - construction		\$ 2,050,000						Resurvey/complete design 2023; Const 2024
Spanker's Arch at 6th street			\$ 100,000	\$ 746,000			\$ 846,000	Design 2024; Const 2025
Clear Creek Open Channel Improvements - E 1st St. to Grimes Ln.	\$ 100,000	\$ 500,000					\$ 600,000	move out?study in 2022, could be more than a million
ROW relocations								jf usually done as part of road work
								culvert top failed with bikelane project
High street combined with city		\$ 70,000			\$ 200,000	\$ 300,000	\$ 570,000	jf swag, only if City proceeds with project
Green Infrastructure \$400,000/yr								
Wexley Road-YMCA Pond	\$ 110,000							Could be ongoing 2023-24 costs. ~300K. Work with Parks?
Wexley Road - Winslow Park	\$ 150,000							
Wexley Road - South Hampton Pond			\$ 150,000					
RSGP/Regional Detention	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000		
Deer Park Devon Lane	\$ 150,000							\$180K quote in 10/21, requote for 2022 const. Consider T&D for construction.
Public 4 small projects	\$ 261,290							2023: Sare Rd. est + Waterman projects. (20K on top of 150K from grant)
Stormwater Master Plan	\$ 50,000							James please confirm. bs updated 11/2 based on what's in contract
Miller Showers Dredging	\$ 300,000							
Downtown Hydraulic Model	\$ 50,000							Part of culvert design work. was ACOE. Quote for ~40K JF
Bridge inspections	\$ 20,000							wkg with City. 2K / inspection. Done already.
Septic Elimination program (sewer credit)	\$ 11,200							
Internal Neighborhood Projects \$300,000/yr	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000		material for internal construction
Somax								
Roadside ditches (multiple neighborhoods)								Equipment (grade-all)
Lower Cascades storm culvert extension			\$ 250,000					
Condition Assessment and replacement 18" and larger CMP	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000		Will apply replacement costs after assessment. Create list first from Meghan/Chuck (James).
Weimer bridge						\$ 200,000	\$ 200,000	maybe. work with city? new road?
Wapehani wetland tree/plug replacements	\$ 23,500							Contract w/ Eco Logic + plugs and trees
moores pike culvert extension					\$ 100,000		\$ 100,000	difficult - combine with trail (P&T?)
MS4 Permit Software	\$ 15,000	\$ 25,000						20k - pilot 24k-annual subscription
MS4 On-call consultant		\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000		
Stormwater Master Plan Implementation Items		\$ 171,000						
Stormwater Review Assistance	\$ 50,000	\$ 100,000						
Hidden River Art (Stormwater Education)	\$ 30,000							How much can we afford?
Total Expenditure \$900,000 available	\$ 1,529,700	\$ 3,431,290	\$ 1,450,000	\$ 1,196,000	\$ 750,000	\$ 950,000	\$ 2,216,000	

Project	Allocated/Paid	Needs to happen this year	Can be moved to 2023
Hidden River Culvert Replacement - beyond bond	\$	220,000	
Hidden River Culvert Replacement - CO	\$	100,000	
Hidden River - environmental			
Hidden River - repair near kirkwood	\$	190,000	
Hidden River Culvert at Indiana - design	\$	355,000	
Hidden River Culvert at Indiana - construction			
Spanker's Arch at 6th street			
Clear Creek Open Channel Improvements - E 1st St. to Grimes Ln. ROW relocations	\$	100,000	
7th and Morton bike lane repair			
High street combined with city			
Green Infrastructure \$400,000/yr			
Wexley Road	\$	110,000	
Deer Park Devon Lane	\$	150,000	
Public 4 small projects			
Stormwater Master Plan	\$	80,000	
Miller Showers Dredging			
Downtown Hydraulic Model	\$	50,000	
Bridge inspections	\$	20,000	
Griffy Dam	\$	25,000	
Septic Elimination program (sewer credit)	\$	11,200	
Internal Neighborhood Projects \$300,000/yr			
Somax			
Queen's Way			
Wexley Road			
Roadside ditches (multiple neighborhoods)			
Condition Assessment 18" and larger CMP			
Weimer bridge			
Wapehani wetland tree/plug replacements	\$	12,000	

moores pike culvert extension		
MS4 Permit Software	\$	15,000
Hidden River Art (Stormwater Education)	\$	30,000