

City of Bloomington Common Council

Legislative Packet

Containing legislation and materials related to:

Wednesday, 18 August 2021

*Regular Session at 6:30 pm
immediately followed by
Committee of the Whole*

**Please see the notes on the [Agenda](#) addressing public meetings during the public health emergency. For a schedule of upcoming meetings of the Council and the City's boards and commissions, please consult the City's [Calendar](#).*



CITY OF BLOOMINGTON COMMON COUNCIL

AGENDA AND NOTICE:
REGULAR SESSION (to be followed by a
Committee of the Whole)
WEDNESDAY | 6:30 PM
18 August 2021

Per IC 5-14-1.5-3.7, this meeting will be conducted electronically.

The public may access the meeting at the following link:

<https://bloomington.zoom.us/j/93484097255?pwd=dkZCMnF6RDFla0l4YmhpS1NXdGJRUT09>

- I. **ROLL CALL**
- II. **AGENDA SUMMATION**
- III. **APPROVAL OF MINUTES**
 - 09 September 2020 (Special Session)
 - 23 September 2020 (Regular 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**
 - C. **Council Committees**
 - D. **Public***
- V. **APPOINTMENTS TO BOARDS AND COMMISSIONS**
- VI. **LEGISLATION FOR SECOND READINGS AND RESOLUTIONS**
 - A. Appropriation Ordinance 21-01 - To appropriate from the ARP Coronavirus Local Fiscal Recovery Fund, IFA Coronavirus Relief Fund, General Fund, and Parks and Recreation General Fund Expenditures for Purposes that Fulfill the Intent of the American Rescue Plan Act in Aid of the City of Bloomington's Recovery from the Effects of the COVID-19 Emergency
- VII. **LEGISLATION FOR FIRST READINGS**
 - A. Ordinance 21-33 - Final Approval to Issue Economic Development Revenue Notes and Lend the Proceeds for the Renovation of Affordable Housing - Re: Crestmont Community, 1002 N. Summit Street, Bloomington, Indiana (Bloomington Rad II, LP, Petitioner)
 - B. Ordinance 21-32 - To Amend Title 8 of the Bloomington Municipal Code, Entitled "Historic Preservation and Protection" to Establish a Historic District Re: The Thomas Smith House Historic District
 - C. Ordinance 21-31 - To Amend the City of Bloomington Zoning Maps by Amending the District Ordinance and Preliminary Plan of the Curry PUD – Re: 105 S. Pete Ellis Drive (Curry Urban Properties, Petitioner)

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Posted: 13 August 2021

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.

STATEMENT ON PUBLIC MEETINGS DURING THE PUBLIC HEALTH EMERGENCY

Under Indiana Code 5-14-1.5-3.7, during a declared public health emergency, the Council and its committees may meet by electronic means. The public may simultaneously attend and observe this meeting at the link provided above. Please check [the Council Website at https://bloomington.in.gov/council](https://bloomington.in.gov/council) for the most up-to-date information on how the public can access Council meetings during the public health emergency.

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Posted: 13 August 2021



CITY OF BLOOMINGTON COMMON COUNCIL

AGENDA AND NOTICE:
COMMITTEE OF THE WHOLE
(immediately following Regular Session)
18 August 2021

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Chair: Ron Smith

- A. Ordinance 21-33 - Final Approval to Issue Economic Development Revenue Notes and Lend the Proceeds for the Renovation of Affordable Housing - Re: Crestmont Community, 1002 N. Summit Street, Bloomington, Indiana (Bloomington Rad II, LP, Petitioner)

Asked to Attend: Larry Allen, Assistant City Attorney
Alex Crowley, Director, Economic and Sustainable Development
Amber Skoby, Executive Director, Bloomington Housing Authority

- B. Ordinance 21-32 - To Amend Title 8 of the Bloomington Municipal Code, Entitled "Historic Preservation and Protection" to Establish a Historic District Re: The Thomas Smith House Historic District

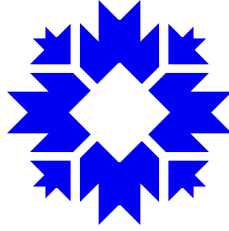
Asked to Attend: Gloria Colom, Program Manager – Historic Preservation

- C. Ordinance 21-31 - To Amend the City of Bloomington Zoning Maps by Amending the District Ordinance and Preliminary Plan of the Curry PUD – Re: 105 S. Pete Ellis Drive (Curry Urban Properties, Petitioner)

Asked to Attend: Jacqueline Scanlan, Development Services Manager

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

NOTICE

Wednesday, 18 August 2021

**Regular Session at 6:30 pm
immediately followed by a
Committee of the Whole**

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STATEMENT ON PUBLIC MEETINGS DURING THE PUBLIC HEALTH EMERGENCY

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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

09 September 2020 | 23 September 2020

In Bloomington, Indiana on Wednesday, September 9, 2020 at 7:30pm, Council President Stephen Volan presided over a Special Session of the Common Council. Per Executive Orders issued by the Governor, this meeting was conducted electronically.

COMMON COUNCIL
SPECIAL SESSION
September 9, 2020

Councilmembers present via teleconference: 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]

Council President Stephen Volan summarized the agenda.

AGENDA SUMMATION [7:32pm]

Flaherty moved and it was seconded to add Ordinance 20-16 to the agenda under legislation for first reading. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

AGENDA AMENDMENT [7:39pm]

Piedmont-Smith moved and it was seconded to approve the minutes of September 25, 2019, October 2, 2019, and September 2, 2020. The motion received a roll call vote of Ayes: 8, Nays: 0, Abstain: 1 (Smith).

APPROVAL OF MINUTES [7:41pm]

September 25, 2019 (Special Session)
October 2, 2019 (Regular Session)
September 2, 2020 (Regular Session)

LEGISLATION FOR FIRST
READING AND RESOLUTIONS
[7:42pm]

Piedmont-Smith moved and it was seconded to introduce and read by title and synopsis Resolution 20-13. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Chief Deputy Clerk Sofia McDowell read the legislation by title and synopsis.

Resolution 20-13 Resolution proposing an ordinance to modify the Monroe County Local Income Tax Rate, allocate the additional revenues to economic development and cast votes in favor of the ordinance.

Piedmont-Smith moved and it was seconded to adopt Resolution 20-13. There was council discussion regarding the appropriateness of the motion.

Mayor John Hamilton presented on the Local Income Tax plan. (See attachment)

Piedmont-Smith asked at what level of income a resident must earn before they must pay the Local Income Tax.

Council Questions:

Jeff Underwood, Controller, stated that it was the bottom end of the exemptions a resident gets in the state of Indiana. Underwood explained that one's adjusted gross income from their federal taxes, including deductions and exemptions, and would be around \$3500.

Piedmont-Smith clarified that anyone earning more than \$3500 would have to pay the Local Income Tax.

Underwood confirmed that was correct.

Rollo asked Underwood to expand on revenue pressures anticipated for 2021 and 2022.

Underwood responded that the state had already provided the property tax increase and that the pressures will begin in 2022, 2023, and 2024. Underwood explained that the revenue drop was in gasoline tax, food and beverage tax, and parks and recreation, and that it was expected that would go on for a few years.

Rollo asked if there would be a decline in assessed value.

Underwood stated that there would, and that that would affect revenue.

Rollo asked where Bloomington would fall, in the list of the 20 largest cities in Indiana, if the 0.25% were to be implemented.

Hamilton stated that Bloomington would be 18 out of 20.

Resolution 20-13 (cont'd)

Council Questions:

Rollo asked if the mayor anticipated implementing a capital improvement plan on an annual basis.

Hamilton responded that was correct and the appropriations would be done annually.

Sgambelluri asked if it is the mayor who adopts the capital improvement plan and not the council.

Hamilton explained that the executive was responsible for presenting a capital plan to the county auditor who was responsible for releasing the funds, but that nothing restricted the executive's plan. Hamilton clarified that no money was spent until the council approved the appropriation.

Sgambelluri asked Philippa Guthrie, Corporation Counsel, about guidelines or parameters.

Guthrie stated that the plan would not be adopted until the Local Income Tax was adopted.

Sgambelluri clarified that the council does not vote to adopt the capital improvement plan.

Guthrie confirmed that was correct and that it was a function of the executive.

Flaherty asked about property tax rate relief, and the .0518% portion used in Monroe County, and how that affected the effective local income tax rate.

Hamilton responded that about half of the counties in the state used the local income tax for property tax relief.

Underwood clarified that it was based on assessed value and that it varied.

Flaherty asked for further clarification on why we had that rate and what it was used for.

Underwood explained that it was used for property tax relief.

Flaherty asked Hamilton if there would be public input into funding priorities and decision making.

Hamilton stated that the council, and city boards and commissions, would be included and that the discussion would have to happen in the first part of the year, annually.

Smith asked if the federal government would reimburse cities for lost revenue, based on a constituent question to him.

Hamilton responded that the federal government was primarily providing funding for things like personal protective equipment. Hamilton explained that it was mainly up to the city to allocate the funding to assist people who were on i.e. fixed income.

Smith asked if the city could tighten its belt and cut some services or extras to help make up the shortfall, per a constituent question.

Hamilton responded that the city had tightened its belt, and that it couldn't do that further and still provide the services in demand in the city.

Smith asked if the city had negotiated with the county regarding the local income tax.

Hamilton stated that he had spoken with county council members, and that the local income tax would only be implemented if the majority of the entities voted in favor.

Resolution 20-13 (cont'd)

Rosenbarger asked if there was a way to offer a tax credit to households earning less than \$40K or to give money back in some way.

Hamilton stated that the administration did not have the legal authority to offer a tax rebate, and that the best way to address that was to dedicate the funding in ways that benefit the public.

Rosenbarger asked Hamilton to provide more detail on which projects get funded.

Hamilton stated that he intended to work with council members to determine what gets funded, and that he proposed to have a discreet new fund to appropriate monies from the tax that would be very transparent and provide reports.

Volan asked Hamilton to comment on the option of the council asking the administration to allocate the funding entirely to council to then distribute it similar to Jack Hopkins Social Service Funding.

Hamilton responded that he welcomed suggestions, and that the funding was integrated into the city budget. Hamilton explained that the council allocated the money and the administration administered it, and that it was the administration's responsibility to fashion a coherent and effective overall budget.

Volan responded that the council only had the ability to agree on the overall budget and was limited to cutting funding as opposed to moving money around.

Guthrie stated that she would have to look at Volan's suggestion because it might undercut the statutory authority that required the mayor to adopt the capital plan.

Rollo asked if there was an urgency to act right now.

Hamilton stated that there was urgency, and that he wished there was the local authority to decide a progressive city tax.

Piedmont-Smith asked if the local income tax increase passed in the fall, and the state legislature decided to give all the power to the county government, could the county government rescind the tax.

Hamilton stated that he did not know.

Piedmont-Smith asked for clarification on the 0.0518% portion of the local income tax, and if that meant that some property taxes were refunded to some residents.

Underwood stated that was correct and that it was capped at 1.25% so we were below the cap.

Piedmont-Smith asked who decided how much goes towards property tax relief.

Underwood responded that he believed it was the county fiscal body or the tax council.

Sgambelluri asked if there had been any conversations or thoughts about a sunset date.

Hamilton stated that there had been conversations about it but he wasn't sure if they could do that, but that he thought it would be good for council to review the tax to see its use and impact.

Sgambelluri inquired about the mayor's original plan for the local income tax increase, proposed on January 1, which included transit as a big element, and the revised plan which took out a large chunk pertaining to transit.

Hamilton responded that while he had intended it to be .25% for transit, and .25% for everything else, it was difficult to know how transit should now be enhanced. Hamilton stated that transit

received \$8 million federal money. Hamilton continued that there was a lot of support for an income tax supporting transit that would likely be adopted by everybody.

Sgambelluri further asked about why transit was more uncertain.

Hamilton clarified that the volume was way down and that it was unclear what the demand would be for transit. Hamilton stated that the focus was for the needs of the community right now, and named several examples.

Sims asked about the potential impact of the local income tax and the looming rate increase from utilities, and of township government in regards to fire protection, and what that would look like. Sims also asked for clarification on timing of the local income tax starting on October 1 instead of January 1.

Hamilton commented that the fee changes for fire districts would apply only to those townships outside of city limits. Hamilton also commented that he had asked the City of Bloomington Utilities Department to be more regular and transparent in the timing and reviewing of rates. Hamilton clarified that if the vote was effective after November 1, then the tax was not collected until late the following year, and that he feared that the state legislature could override that and change how a tax was imposed.

Randy Paul spoke about the impact on taxes on people living in poverty or with lower income, and hoped for a delay.

Public Comment:

Ilana Stonebraker questioned the mechanism in place for allocating funds from the local income tax.

Greg Alexander read a bullet point from the letter sent by the County Council and spoke to the need for a manifest use of the funds and the importance of transit, bicycles, and sidewalks.

Quinton Deppert spoke about the importance of equitable energy conservation, transit, safety, infrastructure, and assisting lower-income households.

Alex Goodlad spoke to the importance of using the funding for transit and the future, and that the community needed to have more input.

Daniel Bingham spoke in favor of the initial proposed plan for the local income tax, and that the pandemic was part of climate collapse. Bingham elaborated on the importance of both helping people who were hurting while also cutting carbon emissions and restructuring society drastically, and that the mayor's revised plan did not address carbon emissions.

Chief Deputy Clerk McDowell read the comment, submitted by Dave Askins of the B Square Beacon, on Ordinance 20-16.

Joseph Wynia spoke in favor of the local income tax and echoed Daniel Bingham's comments.

Natalia Galvan commented on the importance of climate change and that the local income tax was initially proposed as a climate tax. Galvan stated that we were in a climate emergency, which couldn't wait, and echoed Daniel Bingham's comments. Galvan urged council to support the proposal if it was climate focused.

Resolution 20-13 (cont'd)

Chief Deputy Clerk McDowell read a written statement by Emily Ernsberger, Herald Times, regarding the distribution of the revenue to the city from the county.

Resolution 20-13 (cont'd)

Rollo asked if transportation was not an option for an economic development local income tax.

Additional Council Questions:

Guthrie responded that it was allowable.

Sandberg asked how the \$4 million would be allocated amongst the units.

Underwood stated that it would be distributed on the same basis as the public safety local income tax, and that the county would get slightly less than the city.

Volan clarified that the total amount raised by the tax was over \$8 million and that roughly \$4 million would go to the city and county, each.

Underwood responded that that was correct, and that the total raised was \$8.7 million dollars.

Piedmont-Smith asked why the proposal was an economic development local income tax increase, rather than a certified shares increase.

Hamilton commented that it was to meet the needs that were identified and that fit the economic development proposal.

Piedmont-Smith asked if there was a difference in approach if the income tax council wanted to increase the amount distributed through certified shares.

Hamilton stated that he did not think it was a different path.

Guthrie confirmed that it was the same process.

Piedmont-Smith asked for further clarification on why the economic development local income tax increase was selected.

Guthrie clarified that it was because the biggest need was the creation of jobs, the economy, and climate change which was intricately involved with the economy. Guthrie continued that another consideration was that it could be placed in a separate fund for transparency.

Smith stated that several constituents have told him that there hadn't been enough time to consider the local income tax increase and asked if council members wanted to comment on how they feel about that.

Volan explained that the schedule was such because the process for properly enacting the tax, and for giving the other units a full 30-days to review, made the hard date for adoption September 17 in order to implement the increase on January 1. Volan continued that he chose the schedule for fairness to the other units.

Stephen Lucas, Council Attorney, clarified that the city council, as a member of the tax council, would propose an ordinance to the Monroe County Tax Council by way of Resolution 20-13 and that the County Auditor had up to ten days to distribute it to the other tax council members. Lucas further clarified that after the other tax council members received the ordinance, they had up to 30 days to consider and act on it. Lucas explained possible outcomes at that point in the process.

Hamilton commented that administration had worked hard to follow the timing demands in the process as per state statute.

Piedmont-Smith asked which ordinance was referenced in the language in Resolution 20-13, specifically item #5, listing an ordinance adopted in 2019.

Guthrie responded that she believed it would have been the local income tax passed last year and guessed it was the public safety local income tax. Guthrie clarified that the proposal was an economic development rate increase and that all other rates would remain the same.

Resolution 20-13 (cont'd)

Rollo stated that the mayor laid out a very good argument and that he appreciated the context. Rollo mentioned that even with the rate increase, we would still be lower than surrounding counties. Rollo commented that a significant portion of the funding would go toward vulnerable members of the community, job development, and accessible transportation, and was focused to a significant degree on climate action. Rollo stated that he would not be as supportive if the plan did not also address social services.

Council Comments:

Sgambelluri stated that it was not compelling to her that 50% of the revenue would come from people making \$100,000 or more. Sgambelluri commented that that was not a consolation if someone had lost their job in recent months and had had to move their savings, and were faced with losing secure housing. Sgambelluri continued that her concern was for the impact on individual households. Sgambelluri stated that the plan also heavily relied on working with community partners and that she would like to hear from those organizations.

Flaherty stated that timing was important and that after this year, it was possible that they would lose any input on local income tax proposals. Flaherty explained that despite several county colleagues caring about issues like climate change, tackling sustainability, and equitable investments in our community, they were seemingly an anti-tax body and that was true prior to COVID-19. Flaherty stated that it was unfortunate that it was a flat tax which affected people in a regressive way, and that it would be great if the state changed that. Flaherty also stated that he would support giving separate taxing authority to cities and counties. Flaherty questioned the current local income tax rate, and asked why the public safety local income tax was okay, and why not cut that tax rate in half and put money back in people's pockets. Flaherty stated that it came down to whether one believed in the power of government to collect taxes to collectively serve the greater good of people, and also that no tax raised could directly benefit every individual that was taxed. Flaherty expressed that he shared Daniel Bingham's views and that we were in the midst of a climate emergency that affected people of color, low income communities, and other marginalized groups by the current system. Flaherty stated that a just and equitable, sustainable economic development solution was needed, which is what the tax was meant to do. Flaherty concluded that transparency, reporting of outcomes, the effectiveness of policies, and decision making needed to have meaningful public involvement and elected officials.

Piedmont-Smith stated that she wanted to point out that it was emphasized that Bloomington had a low tax rate, and would continue to if the tax increase were adopted, but that we also had the highest cost of living and housing costs in the state. Piedmont-Smith explained that she would like to have had more time, but that she understood the concerns about waiting and losing the ability to act at all.

Resolution 20-13 (cont'd)

Smith stated that he had done a poll on NextDoor and three or four people were against the tax increase. Smith also questioned if the proposal was in response to the current health and economic crisis, and that there were certain initiatives that were not necessary when considering the crises. Smith stated that he was concerned that there was \$1.2 million each year for improving bicycle lanes, and considering the tax to be a response to a health and economic crisis, he felt he might not be able to support the proposal. Smith concluded that he was listening to his constituent's comments and looking at the proposal and gathering more information.

Rosenbarger stated that she was leaning in support of the tax, but that her major concern was transparency and accountability. Rosenbarger explained that she understood it was difficult to take money from the community during a pandemic but that the tax was very small and that the good outweighed that part. Rosenbarger concluded that she wanted to make sure to have a good mechanism in place to check it every year and to ensure it was put towards economic justice, racial justice, sustainability, and environmental justice.

Sandberg stated that if they were to vote, she would abstain, and that she did not make decisions lightly and listened before speaking. Sandberg commented that the partnerships were important and that her reservation was the lack of the ability to work with the county colleagues. Sandberg stated that we all knew what the Indiana General Assembly was capable of and how they sometimes targeted Bloomington. Sandberg questioned how to overcome the obstacles and barriers, as a city entity, to be able to fund what the community wanted to fund. Sandberg explained that she believed in government and was not anti-tax, but that she was concerned about the timing of the proposal, and the revised plan. Sandberg stated that it was too large of a project and that her constituents were asking what the money would be used for. Sandberg was also concerned that it would impact people outside of council members' jurisdictions, and preferred to take more time and get more buy in from county counterparts and other community members.

Volan commented that it had been questioned if this was an appropriate use for economic development funds. Volan explained that sustainability had been defined as a form of economic development, and that distributing the money via certified shares required even less specificity in how the money would be used. Volan stated that they've heard of the absurd constraints that our friends in Indianapolis have placed on cities, because they do not value cities. Volan explained and provided examples of the restrictions from the state house specific to Bloomington. Volan clarified that an income tax would have no impact on a household that had lost its income. Volan continued that while the county had written council members requesting that they collaborate with them, they had also made it clear that they did not support the tax. Volan stated that the only thing that the city and county agreed upon was to jointly approach the legislature to ask that they not force the county to raise a tax they did not want, or to only allow regressive taxes. Volan stated that in order to fund local government as it should be funded, he would be a fool to not consider this tax. Volan commended the mayor for being boldly proactive during these trying times and for doing a good job of advancing the argument for a tax like the one proposed, including the point of the low rate for this locality in the state, country, and world. Volan stated that the mayor had advanced a plan with

specifics and that his questions pertain to those specifics. Volan questioned if trail projects merited special spending, or curbside composting, or helping a few people own housing. Volan concluded that he is leaning towards being in favor of the tax, but questioned some parts of the plan, and believed that the council should have more say in how the money was spent. Volan continued that if more time was needed for his colleagues to get on board with the proposal, then it was not out of the question to extend beyond September 16.

Flaherty moved and it was seconded to postpone the vote on Resolution 20-13 until September 16. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Piedmont-Smith moved and it was seconded to introduce and read Ordinance 20-16 by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. McDowell read the legislation by title and synopsis.

Lucas provided information regarding the Jack Hopkins Social Services Fund application. There were no additional council meetings to discuss.

Piedmont-Smith moved and it was seconded to adjourn. The motion was approved by voice vote.

Resolution 20-13 (cont'd)

Vote to postpone the vote on Resolution 20-13 until September 16, 2020 [10:21pm]

Ordinance 20-16 To establish the Sustainable Development Non-Reverting Fund and to amend Title 2 of the Bloomington Municipal Code entitled "Administration and Personnel" (Adding Chapter 2.35 Entitled "Sustainable Development Fund Advisory Commission")

COUNCIL SCHEDULE [10:23pm]

ADJOURNMENT [10:25pm]

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this ____ day of _____, 2021.

APPROVE:

ATTEST:

Jim Sims, PRESIDENT
Bloomington Common Council

Nicole Bolden, CLERK
City of Bloomington

Mayor John Hamilton: Remarks to City Council on ED-LIT Proposal

Why are we here? What is the problem we are trying to address? We are here because city revenues do not match our needs. Nor our challenges. Nor our values. Like we did in 2016, when we acknowledged that revenues for public safety did not match our community's needs and expectations (for well trained, equipped, and funded public safety systems), and this Council passed a 0.25% PS-LIT. Today, our community is reeling from a pandemic and the resultant economic recession. We need to help our families get jobs. We need to protect each other with a strong social safety net, and to ensure that economic recovery forward is inclusive and just, for everyone. We also need to address racial injustice that persists in our community. And we need to do our part responding to the climate emergency. These are very big challenges, and it's important to mention that our basic government services are also under stress. We expect to face significant revenue pressures in the coming 2-4 years, as a result of the recession and of increased demands for service.

The positive news is that as we address these challenges, we will be creating the kind of community that matches our values and will offer a higher quality of life to all, and particularly to those in our community who struggle to meet their family needs and fulfill their opportunities.

More positive news is we already have taken or are taking appropriate steps. With important investments over the past several years. And with Recover Forward part 1, for 2020, w \$2 million being deployed as we speak, toward these goals. And with Recover Forward part 2, embedded in the 2021 budget that we've outlined, and will work together on in the coming weeks. Tonight is about part 3, how we assure ongoing commitment to and investment in this progress. To help Bloomington recover and thrive.

I'm here tonight to urge the City Council to support an Economic Development Local Income Tax or ED-LIT increase of 0.25%. To generate about \$4MM/yr to address these challenges and help our families move ahead. Will discuss the kinds of investments below.

Briefly on the How: we propose to create a new separate and discrete city fund, into which ED-LIT revenues will flow, and from which they will be appropriated annually. Under state law, a Capital Plan is to be provided by the executive to guide expenditures, and I commit to you that we will work together to develop that plan annually, with full and regular transparency, and accountability to, and input from, our community. In a few minutes, I will be presenting AN outline of a POTENTIAL plan. But it's critical to note this is just a preliminary outline. It shows some of what is needed, and what can be accomplished with this ED-LIT. (It also shows many things that cannot be achieved without it.) But ahead of us is a lot of dialogue and collective planning to refine an actual plan, after the ED-LIT is enacted.

Let's consider the When of the ED-LIT. As you know, to generate additional local revenues, there are few choices beyond a LIT. Property taxes are determined by state formula, with a prescribed growth in the levy each year that we cannot exceed. Most other revenue sources are similarly formulaic, such as the gas tax or state or federal appropriations. The state legislature has allowed basically only the Local Income Tax as how local governments can achieve needed revenues. They have also established the LIT Council and very specific voting procedures to adopt a LIT.

If the ED-LIT is in place before November 1, it becomes effective January 1 next year. We know the legislation has indicated concern about even the current LIT approach. The past session, earlier this year, (after I announced plans to pursue), they changed voting, to limit the ability of cities with the majority of votes in their counties to enact a LIT. And this provision lapses May 2021, clearly indicating plans to adjust again in the coming session. Some legislative proposals this past spring would have removed a city's ability to vote altogether. That is, it is not clear the LIT Council and we will have the authority effectively to enact this revenue after 10/31 (legislative change in spring could remove any tax not in place already.)

So Who needs to act: to pass before 10/31, need City Council to act by 9/16, to allow other jurisdictions of LIT Council their statutory chance to weigh in, vote, discuss, hear from the public, etc. So full LIT Council, as established by state law, can review and act on the proposal. (as we did in 2016).

Two important asides: We are following the LIT rules established by the state legislature. It's important to note that for many years, municipalities have sought permission from the legislature to enact their own

LITs. Repeat that. But the legislature has always denied that local authority and required countywide taxes. We absolutely will seek again this coming year that city authority -- and look forward to pursuing that with our county colleagues. And let me say tonight clearly if the state legislature finally does give municipalities that authority, and if other local jurisdictions decide they don't want/need the revenue after this ED-LIT is passed, I would and will advocate to rescind this ED-LIT and pass a city-only LIT. But let me be equally clear tonight, that I do not believe we can let the city's future depend on the benevolence of the state legislature. By enacting the ED-LIT we are protecting our future, while also preserving indeed perhaps supporting the opportunity to work with the legislature to encourage additional flexibility. All of that weighs in the timing of this LIT.

A second aside is about the nature of the LIT. It is a flat tax on household income reported to the state. We are not allowed to impose a progressive income tax. (I'll share data about that in a moment, but again, the hand we are dealt with is the option of a fixed LIT). I will look forward to appealing to the legislature to encourage more just and appropriate progressive local tax options as well.

Back to the main question and to conclude this intro with the principles involved. Budgets are our values. Beyond the basic services, we must assure, of course, public safety, infrastructure, regulation, our budgets embody what we value for our community and our people. We in Bloomington invest in the quality of life, and we believe in opportunity for all. In these very challenging times, we must be countercyclical, we must assure that our community invests in economic justice, so some people aren't left behind -- now, or as we recover. We must invest in racial justice, so we continue our progress to overcome the legacies and present realities of racial discrimination deep in our country's and community's history. We must embrace the challenge of the climate emergency, understanding this is a collective responsibility, requiring collective action, and that means us. We do all this, knowing that as we invest in these values, we are investing in each other, we are investing in a better future. In all this, our investments must steer toward those most in need, to assure the value of new revenues is an investment in the future of all.

Now I'd like to share some visuals and details. First as to tax capacity. Increasing revenues always should be done only when needed to achieve important goals. And we should be sensitive to overall tax rates. It's very important to note that we in this very progressive community have very low tax rates relative to our peers. Four charts to share briefly. US. Indiana. Bloomington. Monroe County.

As many of us would strongly believe a progressive tax is better than a flat tax, I wanted to share what information we can gather about who pays the LIT tax, and how the burden is shared through our community. One more chart as best we can predict. From Reedy Financial Group. (Reminder: Imperative to invest resources to help those least able to pay, most in need of support.)

Balance between sharing potential plan, with details, versus recognizing community input, council input, for any ultimate plan. But to propose some key investments to put our values into our budgets, I'll outline a potential Capital Plan. Again, this notes what we can do with revenue. And what we generally cannot do without the revenue. Begin with the overview slide. 5-year plan.

...Lower Energy Use / Cost for Build Environment...Improve Mobility Options...Improve Local Food / Other Quality of Life...Job Supports...Housing Support...City Govt Infrastructure.

Closing: these investments are crucial, and they are focused on lifting our whole community up and meeting our challenges. Putting our values into action. When people are struggling, our whole community is struggling, why seek these revenues? Because the government is here to make lives better, to invest these funds to improve lives. To build a better future especially for those at risk. To lower energy bills and save families cash every month. To improve non-auto mobility options to eliminate the need for a car. To bolster our social safety net with more Jack Hopkins funds that will serve tens of thousands. To help protect hundreds of people experiencing or at risk of homelessness. To help individuals struggling to get into the workplace, or back into the workplace, or to get a better-paying job. To support child care for low-income working families. To help local farmers and local artists make a living. To help bridge the digital divide. To help first-time homeowners actually purchase that home. To plant hundreds of trees, especially in underplanted areas of the city. This is government investing in our future.

These are investments worth doing. If we DO NOT pass the ED-LIT, we will not be able to do these things and things like them. We will face serious restrictions on our ability to meet basic services and help in the recovery.

Some friends and colleagues in county government have indicated their opposition to this proposal. I respect their views of their own needs, and of course they will have flexibility of how to use the revenues that would come to them -- whether to allocate to other jurisdictions, or strengthen reserves for tough times ahead, or otherwise redistribute them. And we look forward to working together to convince the legislature to give us all more flexibility. But for us, in Bloomington, this is the choice to put our progressive values into action, to be countercyclical, and to help recovery to include all of us, and move us closer to economic, racial and climate justice. I strongly encourage your support for this ED-LIT proposal and welcome your questions and comments.

For Approval

In Bloomington, Indiana on Wednesday, September 23, 2020 at 6:30pm, Council President Stephen Volan presided over a Special Session of the Common Council. Per the Governor's Executive Orders, this meeting was conducted electronically.

COMMON COUNCIL
SPECIAL SESSION
September 23, 2020

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

ROLL CALL [6:30pm]

Council President Stephen Volan summarized the agenda.

AGENDA SUMMATION [6:31pm]

Alex Crowley, Director of Economic and Sustainable Development (ESD), presented an overview of an Economic Development Administration (EDA) grant for the Trades District Technology Center (TDTC).

REPORTS

- MAYOR AND CITY OFFICES [6:32pm]

Kaisa Goodman, Special Projects Manager, provided details on the concept of the TDTC.

Sims asked who would be responsible for the financial sustainability of the TDTC.

Council questions:

Crowley explained that there was a detailed operations plan that included the building and programming components. He said that there was a cost breakdown of the expenses and a conservative projection of what the building revenues would be, including leased office space, building income, and programming income. Crowley stated that staff had looked at examples of event income for places like The Mill. Crowley explained that in the first year, there would be a gap in income, but that the EDA required that a building, post-opening, be self-sufficient, and break even by the third year. Crowley clarified that the first year cost gap could be around \$250,000 if there was no income, but that it would operate in the \$100,000-150,000 range as income started to come in from the building.

Piedmont-Smith asked if the building would be built to LEED standards, or other green building standards.

Crowley responded that the green building standards applied to the TDTC and that staff was looking at ways to best adhere to the standards, including solar panels. He clarified that the preliminary drawings of the TDTC would be redrawn if the project was granted.

Goodman stated that the preliminary engineering report included that a large portion of the roof would be green and the rest would be white.

Piedmont-Smith asked where the solar panels would be placed.

Crowley explained that they would be from the top to the south portion of the roof.

Smith asked about the timeline for marketing, when the building would have tenants, if there would be tech centers with personnel, or would be a company's headquarters with hardware.

Crowley said that the TDTC was intended to be an office building in order to create a space for companies to interact together, and provided examples of collaborations.

LEGISLATION FOR SECOND
READING AND RESOLUTIONS
[6:56pm]

Piedmont-Smith moved and it was seconded that Resolution 20-15 be read by title and synopsis only. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. City Clerk Nicole Bolden read the legislation by title and synopsis.

Resolution 20-15 A Resolution
Extending the Term of Ordinance
20-11

Piedmont-Smith moved and it was seconded that Resolution 20-15 be adopted.

Crowley presented the legislation and explained the need for the extension of Ordinance 20-11 which waived certain formalities of the Bloomington Municipal Code (BMC) related to signs and seating encroachments.

Goodman provided more details including the pick-up/drop off zones, parklets, relaxation of signage guidelines, and the weekend closure of Kirkwood Avenue.

Volan asked if a resolution could extend an ordinance.

Council questions:

Stephen Lucas, Council Attorney/Administrator confirmed that Ordinance 20-11 allowed that a resolution be adopted to adjust certain components of the ordinance.

Flaherty asked about parklets since they were not included in Ordinance 20-11 and if the relaxation of codes was enough to allow parklets.

Mike Rouker, City Attorney, stated that Public Works had the authority to take that action without the Common Council.

Flaherty asked if that department also had to update the action.

Rouker clarified that the Public Works had taken responsibility for certain closures so no additional action was needed.

Flaherty asked if this fell under the 180-day orders.

Rouker confirmed that was correct.

Piedmont-Smith asked if there were any businesses on the blocks of Kirkwood that were closed, who expressed that the closure hurt their business.

Goodman stated that in determining which blocks to close, staff worked with Kirkwood Community Association (KCA) who reached out to the businesses and other impacted establishments. Goodman clarified that while there was not 100% consensus, there was overwhelming support for the closure, though some restaurants had not taken advantage of the outdoor seating.

Piedmont-Smith asked if the city had heard from specific businesses who said the closure hurt their business.

Crowley explained that staff relied on KCA as the interface with businesses and stated that he had not been contacted by restaurants about the street closure. Crowley said that he was contacted by community members who complained about less parking.

Piedmont-Smith asked if there were concerns from non-restaurant businesses about the closures.

Crowley stated that there had only been concerns about the placement of parklets near non-restaurant businesses.

Clerk Bolden read a question from Dave Askins of B Square Beacon regarding council consideration of legislation enabling flexibility in the BMC so that city staff can make decisions similar to what was done in the health emergency, in a more nimble way.

Public comment:

Piedmont-Smith commented that she had enjoyed patronizing two restaurants on Kirkwood Ave., and that both restaurant managers had expressed that the closure had been helpful to the business. She said that she was in support of continuing the closure.

Resolution 20-15 (cont'd)

Flaherty echoed Cm. Piedmont-Smith and stated that the changes were useful outside of the pandemic, and that he would consider how to continue the changes long term, and what role the council had.

Volan stated that originally he had predicted that an extension to Ordinance 20-11 would need to be done, and further predicted that in the future, portions of the ordinance would be permanent. He commented that the closure of some parking spaces did not harm businesses and spoke about parking in the city.

The motion to adopt Ordinance 20-15 received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0.

Vote to adopt Ordinance 20-15
[7:15pm]

Piedmont-Smith moved and it was seconded that Resolution 20-16 be read by title and synopsis. The motion received a roll call vote of Ayes: 9, Nays: 0, Abstain: 0. Clerk Bolden read Resolution 20-16 by title and synopsis.

Resolution 20-16 Supporting the Painting of Two Black Lives Matter Street Murals - One on Elm Street and One at a Downtown Location to be Determined

Piedmont-Smith moved and it was seconded that Resolution 20-16 be adopted.

Sean Starowitz, Assistant Director for the Arts of ESD, presented Resolution 20-16. Starowitz referenced the importance of September 23 as the day that Emmett Till's murderers were acquitted and the justice system's failure towards Breonna Taylor and her family. He said that Resolution 20-16 came about by recommendation of the Banneker Community Center Advisory Council (BCCAC).

Erik Pearson, Program Facility Coordinator of Banneker Community Center (BCC), and staff liaison for the BCCAC, discussed the proposed Black Lives Matter murals in Resolution 20-16.

Nichelle Whitney, BCCAC, commented that the proposal asked that the city join in the commitment to painting two Black Lives Matter murals as a community engagement project. Whitney highlighted key points in the proposal including artistic design, the determination of the second mural's location, and spoke about the accountability that comes with the painting of the murals.

There were no council questions.

Council questions:

Autumn Brunelle, BCCAC, spoke in favor of Resolution 20-16 and as an Indigenous community member, she valued the importance of the anti-racist approach in the proposal.

Public comment:

Sims thanked the presenters of Resolution 20-16 and stated that it had unanimous support from the Office of the Mayor, the Community and Family Resources (CFR) department, the Economic and Sustainable Development department (ESD), and Public Works. Sims expressed his support for Resolution 20-16 and spoke about the Black Voices section in the Indiana Daily Student (IDS). He mentioned that Jacquelyn Ferguson was the Editor for Black Voices and that Jacob DeCastro was the Editor-in-Chief. Sims discussed the changes that were arising, including policies, practices, and laws.

Council comments:

Sims also discussed the approval process Resolution 20-16 went through via the Board of Parks Commissioners and the Arts Commission and hoped that created a continued dialogue, meaningful actions, and education for the community.

Resolution 20-16 (cont'd)

Sgambelluri thanked the individuals who worked on the proposal and asked if local Black and Brown artists would be painting the mural.

Starowitz confirmed that local Black and Brown artists were commissioned for the work, and stated that the Elm Street mural would be more artistic while the downtown mural (location to be determined) would be in a higher traffic area, so would use high traffic paint for longevity. Starowitz also commented that it would be a community event, and the city would work with the Monroe County Health Department to ensure Covid-19 protocols for safety.

Sandberg thanked all the individuals who worked on the proposal and commented on the importance of art in a variety of aspects within the community. She also stated that it was especially important during the nation's time of turmoil and that those voices needed to be heard. Sandberg stressed the importance of finding common ground for social justice.

Piedmont-Smith added her thanks to the BCCAC and city staff who helped bring forward Resolution 20-16 and spoke about the unofficial Black Lives Matter mural in Peoples' Park. She said that the murals needed to be followed by action, and that she was committed to have community conversations regarding public safety.

Rollo thanked those involved in the project and said that he overwhelmingly supported Black Lives Matter and its sentiment. He spoke about injustices including current events regarding Breonna Taylor. Rollo commented that there was a difference between Black Lives Matter sentiment and the political organization called Black Lives Matter, and that they were sometimes conflated. He said that he was apprehensive to use government funds to promote a political organization. Rollo spoke about petitions and court cases that other political organizations had brought forward to challenge cities that had adopted legislation like Resolution 20-16. Rollo stated that because of the reasons he listed, he would be passing on Resolution 20-16.

Flaherty stated that he would be proudly supporting Resolution 20-16 and that he appreciated the presentation. He said that the resolution was a statement of support and only one piece in a larger civil rights movement that council had a high-level responsibility of furthering. Flaherty commented that he looked forward to ongoing conversations, trainings, and policy changes to address racial inequities. He stated that he appreciate Ms. Whitney calling for accountability.

Volan stated that he would be supporting Resolution 20-16 and suggested that the ESD and BCCAC could interface with a council committee, perhaps the Community Affairs committee.

Sims stated that Joy Roberts was having AV trouble in the Zoom meeting and asked him to thank everyone on her behalf. Smith thanked individuals for the proposal and stated he hoped there was a way to begin a more direct dialogue and asked the presenters to reach out to him.

The motion to adopt Resolution 20-16 received a roll call vote of Ayes: 8, Nays: 0, Abstain: 1 (Rollo).

Vote to adopt Resolution 20-16
[7:46pm]

Stephen Lucas, Council Attorney/Administrator discussed the upcoming schedule.

COUNCIL SCHEDULE [7:47pm]

Sandberg stated that the Jack Hopkins Social Services Funding (JHSSF) had extended more time for applications.

Lucas stated that the new deadline was October 2, 2020 at 12:00pm (noon) and that more information could be found on the JHSSF website.

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

ADJOURNMENT [7:50pm]

APPROVED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this ____ day of _____, 2021.

APPROVE:

ATTEST:

Jim Sims, PRESIDENT
Bloomington Common Council

Nicole Bolden, CLERK
City of Bloomington



MEMO FROM COUNCIL OFFICE ON

Appropriation Ordinance 21-01 - To appropriate from the ARP Coronavirus Local Fiscal Recovery Fund, IFA Coronavirus Relief Fund, General Fund, and Parks and Recreation General Fund Expenditures for Purposes that Fulfill the Intent of the American Rescue Plan Act in Aid of the City of Bloomington's Recovery from the Effects of the COVID-19 Emergency

Synopsis

Appropriation Ordinance 21-01 - This ordinance appropriates funds from the ARP Coronavirus Local Fiscal Recovery Fund for the purposes set forth in the ARPA Community Investment Plan, and from the IFA Coronavirus Relief Fund, General Fund, and Parks & Recreation General Fund for additional expenditures the City will make to aid the community's recovery from the COVID-19 pandemic.

Relevant Materials

- Appropriation Ordinance 21-01
- Memo from staff
- ARPA Community Investment Plan – Version 1.0
- Amendment 01 (in need of sponsor)

Summary

Appropriation Ordinance 21-01 appropriates funds received by the City of Bloomington as a result of the COVID-19 pandemic from both the American Rescue Plan Act ("ARPA") and the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The City will receive a total of approximately \$22.1 million as a result of the American Rescue Plan Act ("ARPA") that may be used for the purposes specified in Ordinance 21-25, which are restated in the attached memo from Corporation Counsel Philippa Guthrie.

All uses of ARPA funding received by the City are subject to the requirements outlined in the U.S. Department of Treasury Interim Final Rule (available online at <https://home.treasury.gov/system/files/136/FRF-Interim-Final-Rule.pdf>). In addition, the Indiana State Board of Accounts ("SBOA") has published a memorandum on accounting processes for ARPA funding that requires the City to: 1) establish by ordinance a local ARP Coronavirus Local Fiscal Recovery Fund to receive the ARPA allocation (which was accomplished via Ordinance 21-25) and 2) develop "a plan that will provide the details for use of these funds" (which was recently approved by the Council via Resolution 21-25).

The ARPA Plan identifies four broad categories of need for the City – revenue replacement, housing insecurity, economic recovery, and public infrastructure. Appropriation Ordinance 21-01 states that the ARPA Plan will remain in effect until amended or supplemented in accordance with future appropriation ordinances of the Council.



City of Bloomington Indiana

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

The ARPA Plan also details proposed expenditures of ARPA funds totaling \$3,350,000 that have been included in Appropriation Ordinance 21-01 for the Council's consideration. The appropriation ordinance also includes a proposed appropriation of \$600,000 from the IFA Coronavirus Relief Fund to be transferred to and ultimately spent out of the General Fund and Parks General Fund for the purposes listed in the legislation.

Appropriation Ordinance 21-01 proposes additional appropriations for expenditures called for in the ARPA Plan and additional expenditures the City will make related to the COVID-19 pandemic out of the ARP Coronavirus Local Fiscal Recovery Fund, IFA Coronavirus Relief Fund, General Fund, and Parks and Recreation General Fund. Indiana Code 36-4-7-8 provides that the legislative body may, on the recommendation of the city executive, make further or additional appropriations by ordinance, as long as the result does not increase the city's tax levy that was set as part of the annual budgeting process. The additional appropriations requested by Appropriation Ordinance 21-01 should not result in such an increase to the city's tax levy. Please note that a public notice of the proposed additional appropriation has been published pursuant to Indiana Code 6-1.1-18-5 and that the Council must conduct a public hearing (scheduled for August 18, 2021) on the proposal before adoption.

One amendment has been prepared and included herein to make two corrections within the legislation. First, the amendment adds the date of adoption for Resolution 21-25, which is referenced in the eighth Whereas clause. Second, the amendment would clarify that the \$75,000 appropriation to advance the goals of the Digital Equity Strategic Plan would not necessarily come in the form of grants.

Contact

Philippa Guthrie, Corporation Counsel, 812-349-3426, guthriep@bloomington.in.gov

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

APPROPRIATION ORDINANCE 21-01

TO APPROPRIATE FROM THE ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND, IFA CORONAVIRUS RELIEF FUND, GENERAL FUND, AND PARKS AND RECREATION GENERAL FUND EXPENDITURES FOR PURPOSES THAT FULFILL THE INTENT OF THE AMERICAN RESCUE PLAN ACT IN AID OF THE CITY OF BLOOMINGTON'S RECOVERY FROM THE EFFECTS OF THE COVID-19 EMERGENCY

WHEREAS, the American Rescue Plan Act of 2021 ("ARPA") was enacted by Congress on March 11, 2021; and

WHEREAS, the ARPA will provide an estimated \$350 billion in emergency funding directly to state and local governments for the purpose of supporting their recovery from the ravages of the COVID-19 pandemic; and

WHEREAS, the City of Bloomington ("City") will receive approximately \$22.1 million under the ARPA, which will be distributed in two tranches of fifty percent (50%) in 2021 and 2022, and which must be obligated by the end of 2024 and ultimately spent by the end of 2026; and

WHEREAS, the U.S. Department of the Treasury issued an Interim Final Rule providing guidance on allowable expenditures of ARPA funds; and

WHEREAS, on June 16, 2021, in accordance with the requirements of the Indiana State Board of Accounts as set forth in its Memorandum dated May 12, 2021 and entitled "Accounting Processes for ARPA Subtitle M-Coronavirus State and Local Fiscal Recovery Funds" ("SBOA Memo"), the Common Council adopted Ordinance 21-25 establishing the ARP Coronavirus Local Fiscal Recovery Fund ("ARP Fund"); and

WHEREAS, and the City has already received the first distribution of its ARPA allocation, in the amount of approximately \$11 million, and deposited the monies in the ARP Fund; and

WHEREAS, ARPA funds may only be used for the purposes specified in Section 603 of the ARPA, and the City must adopt a plan detailing the proposed expenditures of the funds; and

WHEREAS, on _____, 2021 in Resolution 21-25, the Common Council adopted the American Rescue Plan Act Community Investment Plan (Version 1.0) ("ARPA Plan Version 1.0"), which details initial 2021 ARP Fund expenditures and shall be amended from time to time as and when the Common Council approves additional appropriations from the ARP Fund for the benefit of the community; and

WHEREAS, the Administration hereby brings this request for appropriation of the amounts specified herein for the purposes set forth in the ARPA Plan Version 1.0, and for appropriation of the amounts specified from the IFA Coronavirus Relief Fund, General Fund, and Parks & Recreation General Fund for additional expenditures the City will make to aid the community's recovery from the COVID-19 pandemic.

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

SECTION I. For the expenses of said Municipal Corporation the following additional sums of money are hereby appropriated and ordered set apart from the fund herein named and for the purposes herein specified, subject to the laws governing the same:

	AMOUNT REQUESTED
ARP Coronavirus Local Fiscal Recovery Fund 176	
Classification 3 – Services and Charges:	
Grant to the Bloomington Housing Authority to create affordable housing options	\$ <u>250,000</u>
Grant to United Way for addressing homelessness and housing insecurity	\$ <u>1,200,000</u>
Efforts to increase landlord participation in federal Section 8 and similar programs	\$ <u>200,000</u>
Accelerating job training and employment of underemployed categories of workers	\$ <u>150,000</u>
Grants to local arts and cultural groups to foster recovery	\$ <u>175,000</u>
Deferred maintenance at the Waldron to reactivate it as a community arts venue and economic engine.	\$ <u>550,000</u>
Professional services to evaluate the potential for a new downtown performing arts facility.	\$ <u>50,000</u>
Identification and inventory of all lead-based service lines in the CBU system; prepare for a replacement program.	\$ <u>700,000</u>
Digital Equity grants advancing the goals of the Digital Equity Strategic Plan.	\$ <u>75,000</u>
Grand Total	\$ <u>3,350,000</u>
IFA Coronavirus Relief Fund 160	
Classification 3 – Services and Charges:	
To transfer \$340,000 to the departments Information & Technology Services, Community & Family Resources, and Facilities Maintenance in the General Fund; and \$260,000 to the Parks & Recreation General Fund	\$ <u>600,000</u>
Grand Total	\$ <u><u>600,000</u></u>
General Fund 101	
Information & Technology Service Classification 4 -	
Capital Outlays: To pay for Coronavirus-related computer and equipment purchases	\$ <u>300,000</u>
Community & Family Resources Classification 3 -	
Other Services and Charges: For a grant to Monroe County Community Schools Corporation.	\$ <u>30,000</u>
Facilities Maintenance Classification 3 –	
Other Services and Charges: for Security and Cleaning for the restrooms at the 4th Street and Trades garages.	\$ <u>10,000</u>
Grand Total for the General Fund	\$ <u>340,000</u>

Parks & Recreation General Fund 200

Parks & Recreation Classification 3 - Other Services
and Charges: For the Security and Cleaning for the
restrooms at Switchyard Park

	\$	260,000
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**Grant total for the Parks & Recreation
General Fund**

	\$	260,000
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SECTION 2. The Common Council has adopted by Resolution 21-25 the ARPA Plan Version 1.0, which details the proposed expenditures from the ARP Fund. The ARPA Plan Version 1.0 shall be amended from time to time as and when the Common Council approves additional appropriations from the ARP Fund for the benefit of the community.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2021.

JIM SIMS, 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 _____, 2021.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2021.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance appropriates funds from the ARP Coronavirus Local Fiscal Recovery Fund for the purposes set forth in the ARPA Community Investment Plan, and from the IFA Coronavirus Relief Fund, General Fund, and Parks & Recreation General Fund for additional expenditures the City will make to aid the community’s recovery from the COVID-19 pandemic.

**CITY OF BLOOMINGTON
LEGAL DEPARTMENT
MEMORANDUM**

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

FROM: Philippa Guthrie, Corporation Counsel
Jeffrey Underwood, Controller

CC: Stephen Lucas, Council Administrator/Attorney

RE: Appropriation Ordinance for Expenditures from the ARP
Coronavirus Local Fiscal Recovery Fund (“ARP Fund”), IFA
Coronavirus Relief Fund, General Fund, and Parks and Recreation
General Fund

DATE: July 16, 2021

The American Rescue Plan Act of 2021 (“ARPA”) was enacted by Congress on March 11, 2021 to provide economic relief funding for individuals, businesses and non-profits, and local government units across the country trying to recover from the COVID-19 pandemic. The ARPA will provide an estimated \$350 billion in emergency funding directly to state and local governments, and the City of Bloomington’s (“City”) allocation is an estimated \$22.1 million. Half of the funds are being distributed in 2021 and half in 2022. The City has already received its 2021 distribution in the amount of approximately \$11 million and it has been deposited in the ARP Fund which was established by the Council in Ordinance 21-25, adopted on June 16, 2021.

The ARP fund dollars must be obligated by the end of 2024 and ultimately spent by the end of 2026, and allowable expenditures include the following:

- (A) To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (B) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the City that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- (C) For the provision of government services to the extent of the reduction in revenue of the City due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the City prior to the emergency, that being 2019; or
- (D) To make necessary investments in water, sewer, or broadband infrastructure.
- (E) For any other purpose as may be allowed by Congress or regulations issued by the Department of the Treasury.

In accordance with Indiana State Board of Accounts (“SBOA”) requirements, the City must have “a plan that will provide the details for use of these [ARPA] funds.” The Administration therefore requests first that the Council approve the initial plan, entitled the ARPA Community Investment Plan, by adopting Resolution 21-25, which details the 2021 ARP Fund expenditures. Once the plan is approved, we request that the Council adopt Appropriation Ordinance 21-01, approving the appropriation of funds for the 2021 ARP expenditures, as well as the appropriation of funds from the IFA Coronavirus Relief Fund to fund additional security details for Parks and equipment and related expenditures for ITS.

The Administration looks forward to working with the Council on determining how best to deploy the ARP Fund monies over the next several years for the benefit of our community as it recovers from the COVID-19 pandemic. The plan will be amended by the Administration as each appropriations ordinance is adopted by the Council so that the plan will document the approved expenditures from the ARP Fund in accordance with directives from the SBOA.

AMERICAN RESCUE PLAN ACT CITY OF BLOOMINGTON, INDIANA COMMUNITY INVESTMENT PLAN

as of July 16, 2021

Introduction

On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) was signed into law by President Joe Biden. ARPA establishes the Coronavirus Local Fiscal Recovery Fund (“ARP Fund”) to provide resources to local governments to assist with recovery efforts related to the COVID-19 public health emergency. The City of Bloomington (“City”) will receive a total of approximately \$22.1 million in ARPA funds under this program, and received a first allocation of \$11.1 million on May 20, 2021.

On March 18, 2021, the Indiana State Board of Accounts issued a memorandum requiring each recipient to establish a local fund for the grant money, to identify the eligible uses for which the recipient intends to use the grant money, and to establish a plan detailing the use of the funds that may be amended over time. The City Council established this fund by action (Ordinance 21-25) on June 16, 2021.

This document shall serve as the City’s plan, to be updated as appropriations from the ARPA grant fund are approved by the City Council. The U.S. Department of Treasury has issued specific guidance defining the use categories for which grant funds may be used, but two caveats inform the City's plan, including timing and program choices: 1) new or additional guidance may be issued in the future which could affect eligible uses, and 2) new or additional funding sources have been or may be made available from federal or state sources to support similar uses.

Community Vision

The COVID-19 pandemic has affected the lives of all Bloomington residents, and disproportionately impacted individuals and communities that have been historically disadvantaged.

We believe that all potential ARPA investments should be reviewed through the lenses of sustainability and of equity. The City should use these one-time investments in order to advance Bloomington toward a more sustainable, equitable future. Based on conversations with city staff, members of the City Council, as well as community feedback through a citizen survey and input from civic organizations, the City has identified four major categories of need and many potential components within the categories:

1. Revenue replacement, in order to assist city government in recovering from the fiscal impact of the pandemic.

2. Housing insecurity, in order to address both the need for more rental and ownership housing more affordable to more people, and the need for services for those experiencing or at risk of homelessness.
3. Economic recovery, in order to help the individuals and enterprises (nonprofit and for-profit) of our community recover from the pandemic and expand access to high-quality job opportunities and educational or workforce training.
4. Public infrastructure, to strengthen the resiliency of Bloomington's physical and operational assets.

Many of these priorities may be addressed through use of the ARP Fund. Still others may be supplemented with related programs authorized by ARPA or future federal initiatives.

As the City pursues these goals, and others, it is committed to doing so through a process that embodies the importance of public input, transparency, and accountability.

Plan for ARPA-Eligible Projects

As set forth in §603(C) of ARPA, in accordance with Treasury Guidance, the City's plan for Recovery Fund spending includes the following:

1. *The City will allocate funds to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) and its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality. This could include programs such as: delivering assistance to workers and families, supporting small businesses, speeding the recovery of the hospitality sector, and/or rebuilding public sector capacity.*

The City will specifically fund the following programs totaling **\$3,350,000** in 2021:

- (a) **\$250,000** grant to the Bloomington Housing Authority ("BHA") to enhance the strength and functionality of the Summit Hill Community Development Corporation, "SHCDC"), to create more affordable housing options through activities such as establishing a land trust, developing permanently affordable housing units, managing deed-restricted units and fostering public-private partnerships across the city.
- (b) **\$1,200,000** grant to support the ongoing work of the Housing Insecurity Group, a collaborative, regional group of governments, funders and providers, focused on increasing success for community members experiencing housing insecurity including homelessness or unaffordable or unsuitable housing, to be administered through United Way. The grant will provide a portion of the funding needed for a projected multi-year operational budget of \$3 million. It is expected that substantial additional ARPA support

would be allocated in the future to advance direct housing goals as identified by the Housing Insecurity Group.

(c) **\$200,000** to establish or support a new landlord risk mitigation fund designed to increase landlord participation in programs designed for renters facing barriers, including the federal Section 8 program and other such rental programs.

(d) **\$150,000** to accelerate inclusive job training and employment growth, including through collaborative programs Bloomington Remote, ReBoot, Brighten B-Town, and other direct or indirect city employment for underemployed categories of workers.

(e) **\$175,000** for grants to local arts and cultural groups to foster recovery through support for employment, equipment purchases, facility upgrades or access, program enhancements, or other activities or needs to strengthen the arts and cultural sector.

(f) **\$550,000** to fund essential deferred maintenance at the Waldron to reactivate it as a community arts venue and foster economic recovery for arts organizations that serve as economic engines for the community.

(g) **\$50,000** for third-party professional services to evaluate the potential for a new downtown performing arts facility.

2. *The City will allocate funds to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) and its disproportionate impact on low-income families and communities of color, which has exacerbated systemic health and economic inequities. This could include programs such as: addressing health disparities and the social determinants of health, investments in housing and neighborhoods, addressing educational disparities, and/or promoting healthy childhood environments. Projects related to investments in housing and neighborhoods in this category are presumed eligible if they are used in a qualified census tract.*

No requests at this time. Projects from other categories related to housing and neighborhoods or infrastructure may also qualify under this category, but that will depend on geocoding for qualified census tracts.

3. *The City will allocate funds to assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, funding necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. This could include projects that maintain a level of service that meets applicable health-based standards, take into account resilience to climate change, or*

establish or improve broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.

The City will specifically fund the following programs:

(a) **\$700,000** for a program to identify and inventory all lead-based service lines in the CBU system, to prepare for a replacement program designed to protect public health risks (which may be funded through a future federal infrastructure program). The support will be offered as a loan/credit program to CBU, with potential future reimbursement.

(b) **\$75,000** to expand Digital Equity investments advancing the goals of the Digital Equity Strategic Plan developed after the recent digital equity community survey, including expanding public wi-fi access at city parks such as Crestmont, Butler, Peoples, and Waldron, Hill, Buskirk (3rd Street).

4. *The City will allocate funds for the provision of government services to the extent of the reduction in revenue of the City due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the City prior to the emergency.*

No requests at this time. The ARPA provides a formula for determining the amount of “lost revenues.” A current estimate is \$6.4 million; we anticipate requesting allocations with the 2022 budget process.

***** Amendment Form *****

Appropriation Ordinance #: 21-01
Amendment #: Am 01
Submitted By: [In need of sponsor]
Date: 18 August 2021
Proposed Amendment:

1. Appropriation Ordinance 21-01 shall be amended by inserting “July 21” prior to “, 2021” in the eighth Whereas clause.

2. Appropriation Ordinance 21-01, Section 1 shall be amended by revising the purpose for the appropriation made to advance the goals of the Digital Equity Strategic Plan as follows:

Digital Equity ~~grants~~ **investments** advancing the goals of the Digital Equity Strategic Plan.

Synopsis

This amendment makes two corrections. First, it adds the relevant date of passage for Resolution 21-25 as mentioned in the eighth Whereas clause. Second, it clarifies that the appropriation made to advance the goals of the Digital Equity Strategic plan will not necessarily come in the form of grants.

Committee Recommendation: N/A
Regular Session Action (08/18/2021): Pending



MEMO FROM COUNCIL OFFICE ON:

Ordinance 21-33 – Final Approval to Issue Economic Development Revenue Notes and Lend the Proceeds for the Renovation of Affordable Housing - Re: Crestmont Community, 1002 N. Summit Street, Bloomington, Indiana (Bloomington RAD II, 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 Thirty Million Dollars (\$30,000,000.00). The City would lend the proceeds from the economic development revenue notes to Bloomington RAD II, LP, an Indiana limited partnership and its affiliated partners or limited liability company for the acquisition, rehabilitation, and renovation of the affordable housing development known as the Crestmont Community at 1007 Summit Street in Bloomington. Bloomington RAD II, LP, and its partners would fully indemnify the City and take full responsibility for payment of the notes. 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 community would focus on addressing code requirements, handicap accessibility, modernizing the units, and energy efficiency.

Relevant Materials

- [Ordinance 21-33](#)
- Staff Memo from Larry Allen, Assistant City Attorney
- Presentation slides
- Economic Development Commission Resolution 21-05
- Financing Documents (in substantially final form), including:
 - Funding Loan Agreement
 - Project Loan Agreement
 - Regulatory Agreement
 - Refunding Loan Agreements (Funding, Project Loans, Regulatory)

Summary

[Ordinance 21-33](#) approves the issuance of economic development revenue notes in order to provide financing for the renovation of affordable housing located at 1007 Summit Street (Crestmont Community). For context, the City previously supported similar projects at the Walnut Woods and Reverend Butler Apartments through a similar mechanism with [Resolution 19-15](#) and [Ordinance 20-02](#) (background materials for these past pieces of legislation can be found in the [October 2, 2019 Legislative Packet](#) and the [January 8, 2020 Legislative Packet](#) respectively.



This ordinance also follows from the Council's [Resolution 21-05](#), which was adopted in February, 2021 (materials for this resolution area available in the [February 3, 2021 Legislative Packet](#)). [Resolution 21-05](#) granted preliminary approval for the City to issue bonds for the Crestmont Community project. One purpose for the resolution was to induce Bloomington RAD II, 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 Bloomington RAD II, LP, to pursue tax credits for the project with the Indiana Housing & Community Development Authority (IHCDA).

Note that [Resolution 21-05](#) followed from an action the Council took in 2019 to amend the City's Cooperation Agreement with the Bloomington Housing Authority ("BHA").¹ The revisions to that Agreement allowed the BHA to take advantage of the Department of Housing and Urban Development's ("HUD") Rental Assistance Demonstration ("RAD") program. Detailed information about the RAD program can be found on HUD's website located at <https://www.hud.gov/RAD> and in the supporting materials attached to this resolution. In short, the RAD program helps BHA renovate units much sooner than would otherwise occur under federal funding in part through easier access to financing options.

The Crestmont Community 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 21-33](#) 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 \$30,000,000 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 herein 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

¹ See [Resolution 19-08](#), and associated background materials contained in the [June 5, 2019 Legislative Packet](#).



City of Bloomington Indiana

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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 me 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 21-33

FINAL APPROVAL TO ISSUE ECONOMIC DEVELOPMENT REVENUE NOTES AND LEND THE PROCEEDS FOR THE RENOVATION OF AFFORDABLE HOUSING - Re: Crestmont Community, 1002 N. Summit Street, Bloomington, Indiana (Bloomington RAD II, 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 Bloomington RAD II, 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 Crestmont Community, containing approximately 204 apartment units located at 1002 N. Summit Street, Bloomington, Indiana, together with functionally related and subordinate facilities such as carports, garages and parking areas 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 \$30,000,000 aggregate principal amount of its City of Bloomington, Indiana Economic Development Revenue Note, Series 2021 (Crestmont Community Project) (the "2021 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 2021 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 August 25, 2021, 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 \$30,000,000 outstanding in one or more tax-exempt or taxable series or subseries; and
- WHEREAS, the Issuer intends to issue the 2021 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 2021 Notes between the Issuer and the Borrower, provided, however, that the aggregate principal amount of the Notes shall not exceed \$30,000,000 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 2021 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 August 11, 2021, 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 \$30,000,000 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 \$30,000,000 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 2021 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 _____, 2021.

JIM SIMS, 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 _____, 2021.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2021.

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 Thirty Million Dollars (\$30,000,000.00). The City would lend the proceeds from the economic development revenue notes to Bloomington RAD II, LP, an Indiana limited partnership and its affiliated partners or limited liability company for the acquisition, rehabilitation, and renovation of the affordable housing development known as the Crestmont Community at 1007 Summit Street in Bloomington. Bloomington RAD II, LP, and its partners would fully indemnify the City and take full responsibility for payment of the notes. 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 community would focus on addressing code requirements, handicap accessibility, modernizing the units, and energy efficiency.

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. ____, 2021, an ORDINANCE, passed by the Common Council on the ____ day of _____, 2021, by a vote of ____ YEAS and ____ NAYS, which was signed by the Mayor on the ____ day of _____, 2021, 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 _____, 2021.

(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
Philippa Guthrie, Corporation Counsel
Jane Kupersmith, Assistant Director, Economic and Sustainable Development (ESD)
Stephen Lucas, Attorney Advisor, Common Council

Date: August 9, 2021

Re: Ordinance 21-33: Approving Economic Development Revenue Debt Issue for the RAD conversion of Crestmont Community

This Ordinance is for approval for the City of Bloomington to Issue Economic Development Revenue Notes (2021 Notes) pursuant to Indiana Code Chapters 36-7-11.9 and 36-7-12 in an amount not to exceed Thirty Million Dollars (\$30,000,000.00). The City would lend the funds from the Economic Development Revenue Notes to Bloomington RAD II, LP, an Indiana limited partnership, or a to-be-formed Indiana limited partnership or limited liability company for the acquisition, rehabilitation and renovation of the affordable housing development known as the Crestmont Community at 1007 N. Summit Street in Bloomington. Bloomington RAD II, LP, and its partners would indemnify the City and be fully responsible for payment of the notes from the project's revenue. 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.

This authorization was considered by the Economic Development Commission (EDC) on August 11, 2021, and in a public hearing on or about August 26, 2021. The EDC unanimously approved recommendation of passage to the Council in EDC Resolution 21-05 and issued a report on its findings (included with this memorandum).

Background

Located at 1007 Summit Street, Crestmont was built in 1965 and includes 196 apartments. The property is currently owned and managed by the Bloomington Housing Authority (BHA). BHA has recently changed its funding model to directly provide residents with housing vouchers, based on the federal Rental Assistant Demonstration (RAD) Program. BHA has engaged Bloomington RAD II, LP, to acquire and renovate Crestmont in a process known as RAD conversion. Once completed, BHA will enter into a Housing Assistance Payment (HAP) contract with Bloomington RAD II, LP. One hundred percent of the Crestmont units will receive rental subsidies through this HAP contract. This project is similar to the RAD conversion that is being conducted with the Walnut Woods and Reverend Butler Apartments.

Project

Bloomington RAD II, LP proposes to invest in capital improvements to address significant needs at Crestmont. The renovations will focus on addressing current code requirements, handicap accessibility, structural repair, unit modernization, and improvements in energy efficiency. The work will include reconfiguring units to accommodate wheelchairs, safety features, new roofs, site lighting, new flooring throughout all units, new kitchen cabinets, countertops, the addition of dishwashers and washers and dryers, high efficiency furnaces and air conditioner condensers, and new windows.

The project will also increase the supply of much-needed one-bedroom units on the site by converting existing three-bedroom townhomes, which will bring the total units from 196 to 204. During the renovation, residents would be relocated for no more than 60 to 90 days, and moving and relocation services would be paid for by BHA. Residents will not be permanently displaced nor would they see an increase in rent as a result of the project.

The project will also retain the jobs for 10 individuals that currently staff the property.

Financing Process

To finance this major rehabilitation project, Bloomington RAD II, LP will require the issuance of revenue Notes, in an amount not to exceed Thirty Million Dollars (\$30,000,000.00). Additionally, Bloomington RAD II, LP will rely on available tax credits from the Indiana Community Housing Development Authority (IHCDA). While Bloomington RAD II, LP could seek these revenue notes 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 notes to finance the acquisition, renovation, improvement and equipping of the properties. These notes would not be payable from taxes or be a general obligation of the City; they would be payable solely from revenues of the project. Bloomington RAD II, LP, would assume total liability for note 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/Note Transaction

Bloomington RAD II, LP, is seeking approval of the financing agreement and authorization to issue 2021 Notes and use proceeds to reimburse the developer for these improvements. Previously, in Council Resolution 21-05, the Council approved inducement of this process, which enabled Bloomington RAD II, LP, to pursue IHCDA tax credits for the Crestmont Community Project.

The public procedure required by state law is the following:

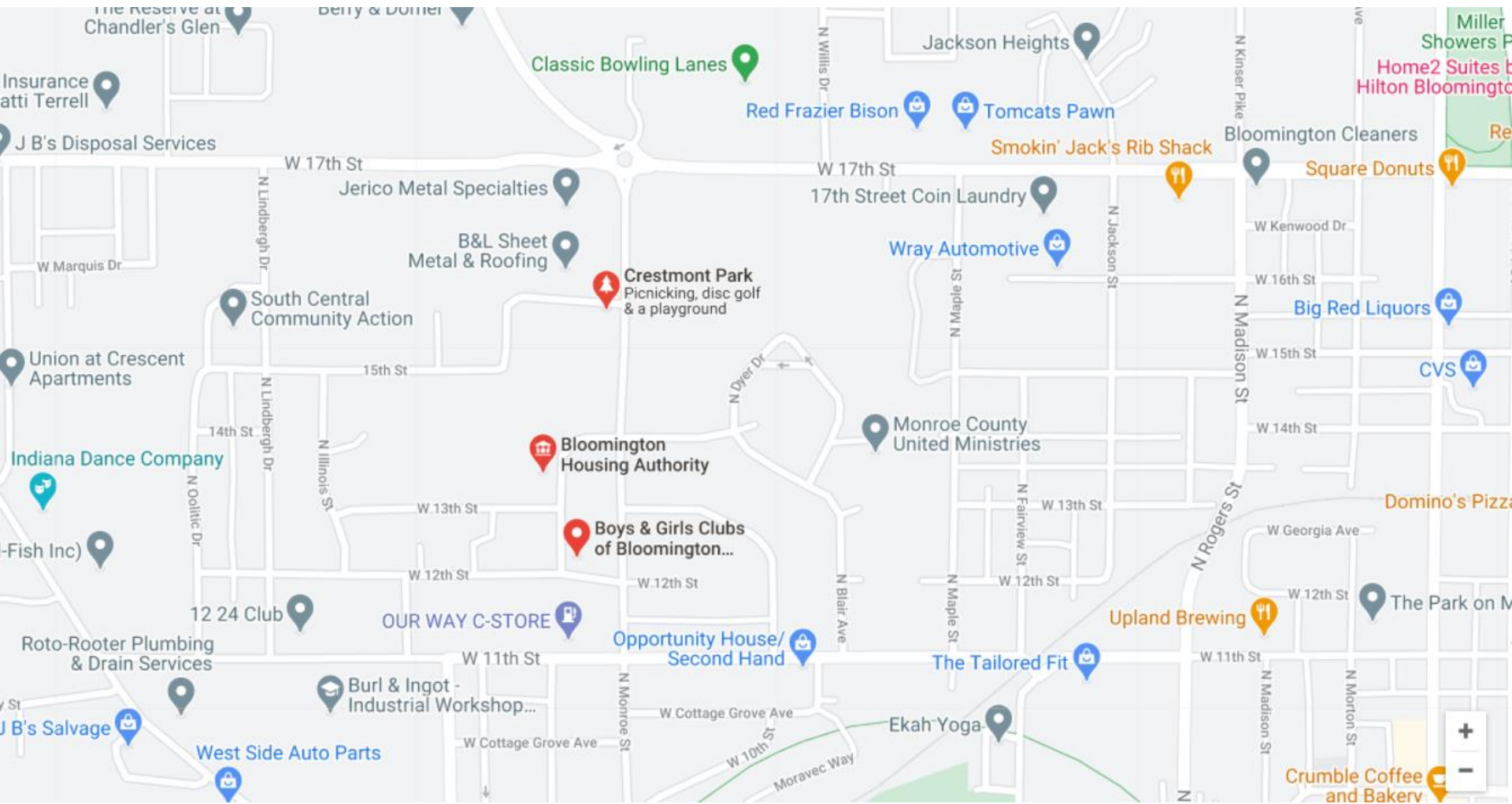
1. Common Council passes inducement resolution
2. Bloomington RAD II, LP, applies for IHCDA tax credits, negotiates financing agreement
3. IHCDA approves Bloomington RAD II, LP, tax credit application
4. EDC holds public hearing to approve financing agreement, issuance of bonds/notes
5. Common Council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

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

Presentation to City of Bloomington EDC and Common Council

Crestmont Community
2021 Economic Development
Revenue Bonds

Crestmont



Crestmont Highlights

- ➔ Originally built in 1965.
- ➔ 204 apartments serving Individuals and Families.
- ➔ Located at 1002 Summit Street.
- ➔ Nearby Ferguson Crestmont Boys & Girls Club.
- ➔ Currently managed and owned by Bloomington Housing Authority.
- ➔ 100% of the units will receive rental subsidy through a HAP contract.
- ➔ Management by BHA staff will continue.

Crestmont Community



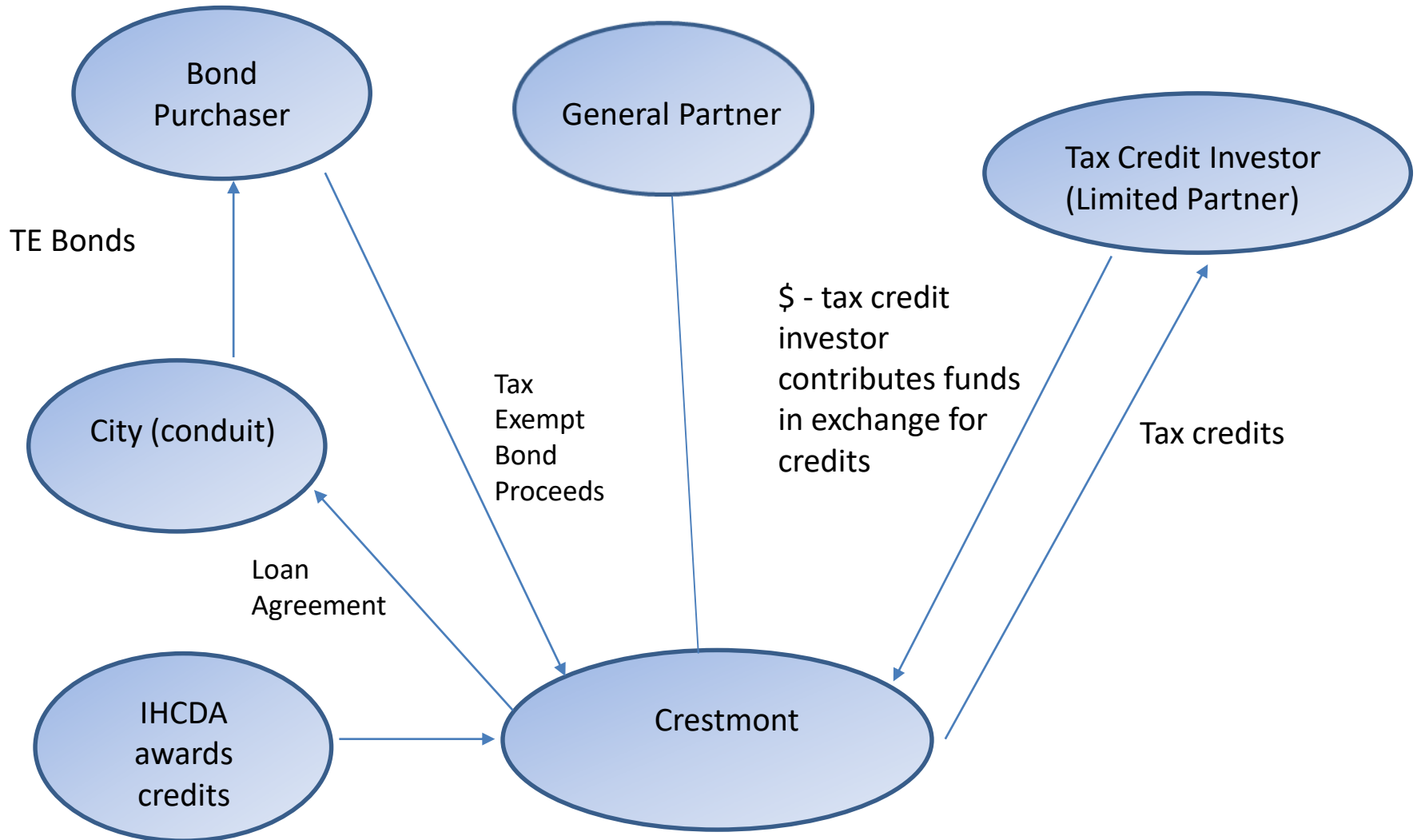
Proposed Project

- ➔ Renovations focused on addressing code requirements, handicap accessibility, structural repair, unit modernization and energy efficiency.
- ➔ Includes reconfiguring units to accommodate wheelchairs and safety features as well as new roofs and site lighting.
- ➔ Interior improvements include: new flooring throughout all units, new kitchen cabinets, countertops, addition of dishwashers and washers and dryers, high efficiency furnaces and air conditioner condensers, new windows, new roofs, and site lighting
- ➔ Adding much-needed 8 1-bedroom units by converting 3-bedroom townhomes
- ➔ Resident relocation for no more than 60 to 90 days. Moving and relocation services will be paid for by BHA.
- ➔ No new jobs will be created and ~10 jobs will be retained.

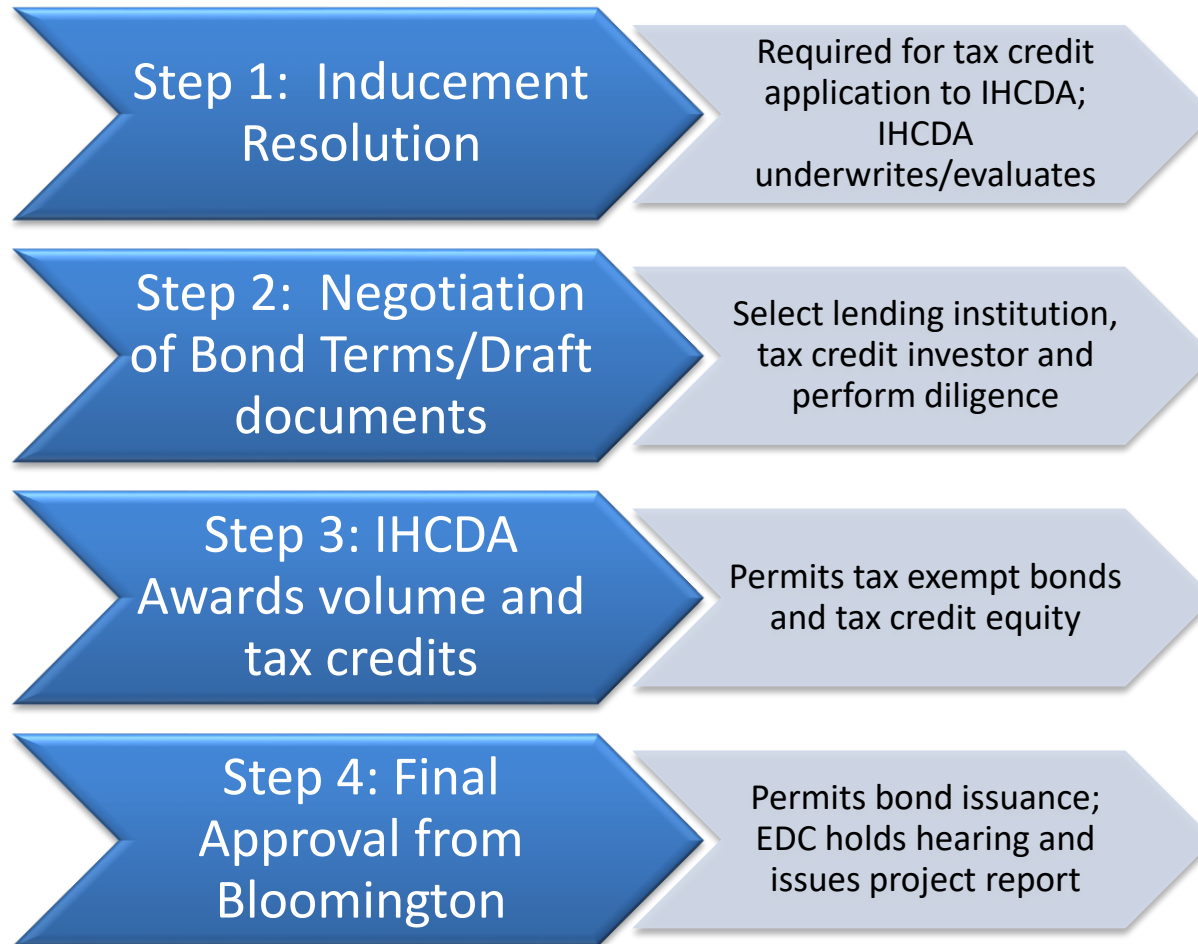
RENTAL ASST DEMONSTRATION (RAD)

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

Bond and Credit Structure



Bond and Tax Credit Process



Bond Characteristics

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

Conclusion

Any Questions?

Thank you!

**RESOLUTION 21-05
OF THE
CITY OF BLOOMINGTON
ECONOMIC DEVELOPMENT COMMISSION**

- WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and
- WHEREAS, the Act provides that an issuer may, pursuant to the Act, issue revenue bonds and 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 Bloomington RAD II, 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 Crestmont Community, containing approximately 204 apartment units located at 1002 N. Summit Street, Bloomington, Indiana, together with functionally related and subordinate facilities such as carports, garages and parking areas 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 \$30,000,000 aggregate principal amount of its City of Bloomington, Indiana Economic Development Revenue Note, Series 2021 (Crestmont Community Project) (the "2021 Notes") in one or more tax-exempt or taxable series or subseries; and

WHEREAS, the Issuer intends to issue the 2021 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 2021 Notes between the Issuer and the Borrower, provided, however, that the aggregate principal amount of the outstanding Notes (as defined herein) shall not exceed \$30,000,000; and

WHEREAS, the Project Loan Agreement provides for the repayment by the Borrower of the loan of the proceeds of the 2021 Notes pursuant to which the Borrower will agree to make payments sufficient to pay the principal and interest on the 2021 Notes as the same become due and payable and to pay administrative expenses in connection with the 2021 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 2021 Notes, the "Notes"), the proceeds thereof, if any, to be loaned to the Borrower to be used for the refunding and redemption of the 2021 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 \$30,000,000, 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 2021 Notes as described above, in the aggregate principal amount outstanding not to exceed \$30,000,000 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 11th day of August, 2021.

CITY OF BLOOMINGTON ECONOMIC
DEVELOPMENT COMMISSION

Kurt Zorn, President

Vanessa McClary, Member

Geoff McKim, Member

Kate Rosenbarger, Member

Malcolm Webb, Member

FUNDING LOAN AGREEMENT

among

**[INITIAL FUNDING LENDER],
as Initial Funding Lender**

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

and

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

Relating to

**Crestmont Community
1002 N. Summit Street
Bloomington, Indiana 47404**

Maximum Funding Loan Principal Amount: \$[[30,000,000]]

Dated as of ____ 1, 2021

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FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this “**Funding Loan Agreement**”), is made and entered into as of ____ 1, 2021, by and among [INITIAL FUNDING LENDER], in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), 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**”), 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 Chicago, Illinois, 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, as amended (the “**Act**”) and the Project Loan Agreement dated as of ____ 1, 2021 (the “**Project Loan Agreement**”) by and among the Governmental Lender, the Fiscal Agent and Bloomington RAD II, 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 \$[[30,000,000]] (the “**Project Loan**”) to provide for the financing of a multifamily rental housing development located or to be located at 1002 N. Summit Street in Bloomington, Indiana and subordinate and related facilities thereto known as the Crestmont Community (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 \$[[30,000,000]] (including any current refunding thereof, the “**Funding Loan**” and together with the Project Loan, the “**Loans**”). The Funding Loan is evidenced by the Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) dated _____, 2021 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 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 [[Multifamily Note]] dated _____, 2021 (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 [[Multifamily Leasehold Mortgage, Assignment of Rents and Security Agreement]] dated as of the date hereof (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 [[[FREDDIE MAC SELLER/SERVICER]]] (the “**Freddie Mac Seller/Servicer**”) dated _____, 2021 (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 amended.

“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 Multifamily Leasehold Mortgage, Assignment of Rents and Security Agreement]] dated as of the date hereof by the Initial Funding Lender assigning its interest in the Security Instrument to the Fiscal Agent.

“Authorized Amount” shall mean \$[[30,000,000]], 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 Chief Financial Officer 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 Bloomington RAD II, LP, an Indiana 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 Loan Agreement]] dated as of the Closing 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 Closing 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 construction 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, construction 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 the lower 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.

“*Delivery Date*” means _____, 2021, 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 Notice” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; 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 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.

“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.

“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 [[]], 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 Initial Funding Lender upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Freddie Mac Commitment.

“Freddie Mac Seller/Servicer” means [[[FREDDIE MAC SELLER/SERVICER]]], 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 \$[[30,000,000]] 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 duly organized and existing under the laws of the State of Indiana.

“*Governmental Note*” means the Multifamily Housing Revenue Note, Series 2021 (Crestmont Community 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 BMO Bank N.A., as initial holder of the Governmental Note.

“*Interest Payment Date*” means (i) the first day of each calendar month, commencing [[_____ 1, 2021]], (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.

“*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.

“*Ordinance*” 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.

“*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 Crestmont Community Project located or to be located at 1002 N. Summit Street in Monroe County, 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 \$[[30,000,000]], 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.

“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.

“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 [[Multifamily Leasehold Mortgage, Assignment of Rents and Security Agreement]] 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 BMO Bank N.A. 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 the Certificate of the Issuer Re: Arbitrage and the Tax Representation Certificate executed by the Governmental Lender and the Borrower, as applicable, on the Delivery Date.

“Tax Regulatory Agreement” means the Regulatory Agreement dated as of ____ 1, 2021 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 [[]], 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, 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 rate permitted by such law.

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, body corporate and politic, municipality or other agency of the State or the Governmental Lender, and neither the State, the City, the County, the Governmental Lender nor any other political subdivision, body corporate and politic, municipality or other local agency of the State or the Governmental Lender 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, any other political subdivision, body corporate and politic of the State or Governmental Lender 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 or taxing power of the State, body corporate and politic or any agency or 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 a percentage of not less than twenty-five percent (25%) 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.

Section 2.09 *Reserved.*

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 Ordinance;

(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 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 Greater Indiana Title Co. dated the Closing 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 the Greater Indiana Title Co., 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 the Fiscal Agent, on or prior to the Delivery Date, the Borrower Equity Deposit for deposit 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 provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments out of the Project Loan Fund as required under Section 4.02 hereof during the Construction Phase. 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; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments out of the Project Loan Fund as required under Section 4.02 hereof during the Construction Phase. 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 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, including to effect a current refunding of the Funding Loan on the Conversion Date.

(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. In the absence of written direction from the Borrower, the Fiscal Agent shall invest amounts on deposit in the funds and accounts established under this Funding Loan Agreement in Government Obligations or in investments of the type described in subparagraph (g) of the definition of Qualified Investments which shall have the same maturity and other restrictions as set forth above. 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. 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.

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 best price

obtainable (at least 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 Rebateable 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 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.

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 appraisement 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 Mortgage 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. 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.

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.

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 of the proper party or parties, including any Electronic 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, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted 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 reasonable security or indemnity 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.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

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.

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 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 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 gross 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. 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.

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.

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 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 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 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.

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.

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.

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: crowleya@bloomington.in.gov
Telephone: (812) 349-3477

The Fiscal Agent: [FISCAL AGENT]
[ADDRESS]
Attention:
Email:
Telephone:

The Borrower: Bloomington RAD II, LP
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Senior Vice President
Email: plevavi@brinshore.com
Telephone: (224) 927-5057

With a copy to: Bloomington RAD II, LP
c/o Bloomington Housing Authority
1007 N. Summit Street
Bloomington, Indiana 47404
Attention: Executive Director
Email: askoby@blha.net
Telephone: (812) 339-3491

Funding Lender
Representative
(during the Construction Phase):

[INITIAL FUNDING LENDER]
[ADDRESS]
Attention:
Email:
Telephone:

With a copy to:

Funding Lender (from Conversion Date
to Freddie Mac Purchase Date) and
Servicer (as of Freddie Mac Purchase Date):

[FREDDIE MAC SELLER/SERVICER]
[ADDRESS]
Attention:
Email:
Telephone:

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

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 Notice of written instructions and/or directions 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: _____
Hon. John Hamilton, Mayor

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO CRESTMONT COMMUNITY PROJECT FUNDING LOAN
AGREEMENT]

[INITIAL FUNDING LENDER], as Initial
Funding Lender

By: _____
Name:
Title:

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO CRESTMONT COMMUNITY PROJECT FUNDING LOAN
AGREEMENT]

[FISCAL AGENT], as Fiscal Agent

By: _____
Name:
Title:

[FISCAL AGENT'S SIGNATURE PAGE TO CRESTMONT COMMUNITY PROJECT FUNDING LOAN
AGREEMENT]

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project)

US \$[[30,000,000]]

_____, 2021

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 [INITIAL FUNDING LENDER] (the “**Funding Lender**”), and its assigns, the maximum principal sum of [[THIRTY MILLION DOLLARS (US \$30,000,000)]], 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 Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of ____ 1, 2021 (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 \$[[30,000,000]] (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 Bloomington RAD II, LP (the “**Borrower**”) pursuant to the Project Loan Agreement dated as of ____ 1, 2021 (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 first calendar day of each month commencing _____ 1, 2021, 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 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 [[_____]] (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. 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 five percent (5%) 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, body corporate and politic, municipality or other agency of the State or the Obligor, and neither the State, the City, the County, the Obligor nor any other political subdivision, body corporate and politic, municipality or other local agency of the State or the Obligor 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, any other political subdivision, body corporate and politic of the State or Obligor 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 or taxing power of the State, body corporate and politic or any agency or 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.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed by the manual or facsimile signature of its Chair and attested by the manual or facsimile signature of its Executive Director.

CITY OF BLOOMINGTON, INDIANA

[SEAL]

By _____
Mayor

ATTEST:

By _____
Clerk

CERTIFICATE OF AUTHENTICATION

This Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: _____

[FISCAL AGENT]

By: _____
Authorized Signer

SCHEDULE 1
FUNDING LOAN AMORTIZATION SCHEDULE

EXHIBIT B

**FORM OF NOTICE OF APPOINTMENT
OF FUNDING LENDER REPRESENTATIVE**

[INITIAL FUNDING LENDER]

Bloomington RAD II, LP
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062

City of Bloomington, Indiana
401 N. Morton St.
Bloomington, Indiana 47404

[FISCAL AGENT]

Re: Crestmont Community Project

Ladies and Gentlemen:

The undersigned is the holder (the “**Funding Lender**”) of the Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) dated _____, 2021 (the “**Governmental Note**”) delivered pursuant to the Funding Loan Agreement dated as of ____ 1, 2021 (the “**Funding Loan Agreement**”), among [INITIAL FUNDING LENDER], 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 [INITIAL FUNDING LENDER].

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 _____, _____.

[INITIAL FUNDING LENDER]

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.
Indianapolis, Indiana 46204

[FISCAL AGENT]

Re: Crestmont Community Project

Ladies and Gentlemen:

The undersigned (the “Funding Lender”) hereby acknowledges receipt of the Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) dated _____, 2021 (the “Governmental Note”) delivered pursuant to the Funding Loan Agreement dated as of ____ 1, 2021 (the “Funding Loan Agreement”), among [INITIAL FUNDING LENDER], 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 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 TRANSFEE 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 TRANSFEE 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 _____, 2021 (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.

[INITIAL FUNDING LENDER]

By: _____
Name: _____
Title: _____

EXHIBIT D

COSTS OF ISSUANCE REQUISITION (Cost of Issuance Fund)

[FISCAL AGENT],
as Fiscal Agent

Re: Crestmont Community 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 ____ 1, 2021, by and among [INITIAL FUNDING LENDER], in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the City of Bloomington, Indiana and _____, as Fiscal Agent, securing the Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) dated _____, 2021 (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of Bloomington RAD II, 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: _____

BLOOMINGTON RAD II, LP

By: _____

Name:

Title:

EXHIBIT E

PROJECT LOAN FUND REQUISITION (Project Loan Fund)

[FISCAL AGENT],
as Fiscal Agent

Re: Crestmont Community 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 ____ 1, 2021, by and among [INITIAL FUNDING LENDER], 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 Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) dated _____, 2021 (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: _____

BLOOMINGTON RAD II, LP

By: _____
Name:
Title:

APPROVED:

[INITIAL FUNDING LENDER]

By: _____
Name:
Title:

EXHIBIT F

CONSTRUCTION PHASE INTEREST RATE

[TO BE PROVIDED BY INITIAL FUNDING LENDER]

PROJECT LOAN AGREEMENT

among

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

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

and

**BLOOMINGTON RAD II, LP,
as Borrower**

Relating to

**Crestmont Community
1002 N. Summit Street
Bloomington, Indiana 47404**

Maximum Project Loan Principal Amount: \$[[30,000,000]]

Dated as of _____ 1, 2021

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 _____ 1, 2021 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 ____ 1, 2021, 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 **BLOOMINGTON RAD II, 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, Chapters 11.9 and 12, as amended (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 \$[[30,000,000]] (the “**Project Loan**”) to provide for the financing of a multifamily rental housing development located or to be located at 1002 N. Summit Street in Bloomington, Indiana and subordinate and related facilities thereto known as Crestmont Community Project (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 \$[[30,000,000]] (including as such loan may be currently refunded on the Conversion Date, 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 [INITIAL FUNDING LENDER], 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 Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) dated ____, 2021 (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, construction 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 ____, 2021 (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 Initial Funding Lender a [[[Multifamily Leasehold Mortgage, Assignment of Rents and Security Agreement]] dated as of _____, 2021 (the “**Security Instrument**”) with respect to the Project, which Security Instrument will be assigned by the Initial Funding 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 [FREDDIE MAC SELLER/SERVICER] (the “**Freddie Mac Seller/Servicer**”) dated _____, 2021 (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 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 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 Funding 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:

“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.

“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 first day of each calendar month, commencing [_____], 2021, 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 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.____%]] 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) lease or 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 [[Second Amended and Restated Agreement of Limited Partnership]], 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 [[Second Amended and Restated Agreement of Limited Partnership]].

(p) The Project is located wholly within the boundaries of the City of Bloomington, 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 leasehold interest in the land and a fee simple interest in the 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; and

(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 each disbursement 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 any proposed disbursement, (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 \$[[30,000,000]]; (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 the Governmental Lender Fee, together with 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) 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 Governmental Lender, an initial financing fee in an amount equal to \$[[10,000]], together with all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(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 \$[[3,000]], 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, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender 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 (including in connection with a current refunding of the Funding Loan).

(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 each of the Borrower's general partners: (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. In addition, the obligations of Borrower under the Construction Loan Documents shall be full recourse obligations of the Borrower.

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) 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, construction 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 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 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, impairment of this Project Loan Agreement or any other Financing Document;

(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.

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 Governmental Lender and 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.

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.

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 *Reserved*

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: _____
Hon. John Hamilton, Mayor

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO CRESTMONT COMMUNITY PROJECT LOAN
AGREEMENT]

[FISCAL AGENT], as Fiscal Agent

By: _____
Name:
Title:

[FISCAL AGENT'S SIGNATURE PAGE TO CRESTMONT COMMUNITY PROJECT LOAN AGREEMENT]

BLOOMINGTON RAD II, LP, an Indiana limited partnership

By: Bloomington RAD II Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD II, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President

[BORROWER'S SIGNATURE PAGE TO CRESTMONT COMMUNITY 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

BLOOMINGTON RAD II, LP

Dated as of _____ 1, 2021

Relating to

CITY OF BLOOMINGTON, INDIANA
MULTIFAMILY HOUSING REVENUE NOTE, SERIES 2021
(CRESTMONT COMMUNITY 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 _____ 1, 2021, by and among the CITY OF BLOOMINGTON, INDIANA, a municipal corporation duly organized and existing under the laws 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 Chicago, Illinois, as Fiscal Agent (the “Fiscal Agent”) and BLOOMINGTON RAD II, 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 Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) (the “Note”), pursuant to a Funding Loan Agreement, by and among the Governmental Lender, the Fiscal Agent and [INITIAL FUNDING LENDER], of even date herewith (the “Funding Loan Agreement”) in the aggregate principal amount of not to exceed \$[[30,000,000]] pursuant to and in compliance with Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as amended (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 204-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 Metropolitan 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 _____, 2021.

“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 _____ 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 Multifamily Housing Revenue Note, Series 2021 (Crestmont Community Project) in the original aggregate principal amount of \$[[30,000,000]].

“Project” means the privately owned or leased real and personal property to be comprised of a multifamily housing complex consisting of 204 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 leasehold interest with respect to the land and a fee simple title to 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

Crestmont Community Project 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 leasehold interest in the land own fee simple title to 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, construct, 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:

- (i) 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;
- (ii) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;
- (iii) 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
- (iv) 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:

To the Governmental Lender: City of Bloomington, Indiana
 401 N. Morton St.

Bloomington, Indiana 47404
Attention: City Attorney
Email: crowleya@bloomington.in.gov
Telephone: (812) 349-3477

To the Borrower:

BLOOMINGTON RAD II, LP
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Senior Vice President
Email: plevavi@brinshore.com
Telephone: (224) 927-5057

With a copy to:

Bloomington RAD II, LP
c/o Bloomington Housing Authority
1007 N. Summit Street
Bloomington, Indiana 47404
Attention: Executive Director
Email: askoby@blha.net
Telephone: (812) 339-3491

With a copy to Investor
Limited Partner:

With a copy to:

To the Fiscal Agent:

[FISCAL AGENT]
[Address]
Attention:
Email:
Telephone:

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: _____
Hon. John Hamilton, Mayor

[SEAL]

[FISCAL AGENT], as Fiscal Agent

By: _____
Name:
Title:

BLOOMINGTON RAD II, LP, an Indiana limited partnership

By: Bloomington RAD II Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD II, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

On this ____ day of _____, 2021, before me appeared the Honorable John Hamilton, to me personally known who, being by me sworn did say that he is the Mayor of the City of Bloomington, Indiana, a municipal corporation duly organized and existing under the laws of the State of Indiana, and that the seal affixed to the foregoing instrument is the official seal of said entity, and that said instrument was signed and sealed on behalf of said municipal corporation, by authority of it council, acknowledged said instrument to be the free act and deed of said municipal corporation.

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 _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2021, before me appeared _____ to me personally known, who being by me duly sworn did say that he is an Authorized Officer of [FISCAL AGENT], organized and operating under the laws of the United States of America, having a corporate trust office in _____, Indiana, and that he is the persons who executed the foregoing instrument as such officers acting for and on behalf of said association, and acknowledged that he executed the same as his free act and deed as such officer of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public in and for said County and State

(SEAL)

My Commission expires: _____

My County of Residence: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2021, before me appeared Richard Sciortino to me personally known, who being by me duly sworn did say that he is the President of RJS Real Estate Services, Inc., an Illinois corporation, which is the member of Brinshore Development, L.L.C., which is the managing member of Bloomington RAD II Manger, LLC, which is the general partner of BLOOMINGTON RAD II, LP, and that he is the person who executed the foregoing instrument as such officer acting for and on behalf of said general partner of BLOOMINGTON RAD II, LP, and acknowledged that he executed the same as a free act and deed as such officer of said limited partnership.

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: Crestmont Community Project

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 Crestmont Community Project in Bloomington, 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 BLOOMINGTON RAD II, 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:

BLOOMINGTON RAD II, LP
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Senior Vice President

[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: Crestmont Community Project

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.

BLOOMINGTON RAD II, 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.

BLOOMINGTON RAD II, LP

Witness

Owner

PLEASE LIST ALL THE LOW INCOME UNITS BELOW:
(PLACE AN "X" TO INDICATE TENANTS RECEIVING SECTION 8)

[illegible]

EXHIBIT D

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned, Authorized Borrower Representative of BLOOMINGTON RAD II, 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.

BLOOMINGTON RAD II, 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 _____ 1, 2021, 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 BLOOMINGTON RAD II, 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 [INITIAL FUNDING LENDER], 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 _____ 1, 2021 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**” means the Multifamily Housing Refunding Revenue Note, Series 2021 (Crestmont Community Project) dated _____, 2021 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 _____ 1, 2021, 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 Amended and Restated 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 Construction Deed to Secure Debt, Security Agreement, Assignment of Leases and Rents 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 [FREDDIE SELLER/SERVICER], 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:

[FREDDIE SELLER/SERVICER]

[ADDRESS]

Attention:

Email:

Telephone:

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

FUNDING LOAN AGREEMENT

among

**[PERMANENT PHASE FUNDING LENDER],
as Initial Funding Lender**

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

and

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

Relating to

**Crestmont Community
1002 N. Summit Street
Bloomington, Indiana 47404**

Funding Loan Principal Amount: \$ _____

Dated as of _____

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FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this “**Funding Loan Agreement**”), is made and entered into as of _____, by and among [PERMANENT PHASE FUNDING LENDER], an Indiana corporation, 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 _____, _____, 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, as amended (the “**Act**”) and the Project Loan Agreement dated as of _____ (the “**Project Loan Agreement**”) by and among the Governmental Lender, the Fiscal Agent and Bloomington RAD II, LP, a 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 original aggregate principal amount of \$_____ (the “**Project Loan**”) to provide for the refinancing of a multifamily rental housing development located at 100 W. 11th Ave. in Gary, Indiana and subordinate and related facilities thereto known as Crestmont Community Project (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 original principal amount of \$_____ (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”). The Funding Loan is being originated and funded by the Initial Funding Lender hereunder and is evidenced by the Multifamily Housing Revenue Refunding Note, Series 20[___] (Crestmont Community Project) dated _____, 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 Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”), has entered into a commitment with the Initial Funding Lender dated _____, as amended (the “**Freddie Mac Commitment**”), whereby Freddie Mac has agreed to purchase the Funding Loan upon the date of satisfaction of the conditions set forth in the Freddie Mac Commitment (the “**Freddie Mac Purchase Date**”). On the Freddie Mac Purchase Date, the Initial Funding Lender will assign to Freddie Mac all of its rights and interest in the Governmental Note, this Funding Loan Agreement, the Continuing Covenant Agreement and the other Financing Documents (as such terms are herein defined).

D. The Borrower has agreed to use the proceeds of the Project Loan to effect the refunding of the Prior Notes.

E. The Borrower’s repayment obligations in respect of the Project Loan will be evidenced by a Project Note dated _____ (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 Fiscal Agent an Amended and Restated Multifamily Leasehold Mortgage, Assignment of Rents and Security Agreement dated as of the date hereof (the "**Security Instrument**") with respect to the Project, which will also serve as security for the Funding Loan.

G. On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans (in such capacity and any successor in such capacity, the "**Funding Lender Representative**"). [PERMANENT PHASE FUNDING LENDER] (the "**Servicer**") will act as initial servicer for the Loans on behalf of the Funding Lender Representative.

H. The Borrower is also entering into a Continuing Covenant Agreement dated as of the date hereof with the Initial Funding Lender (the "**Continuing Covenant Agreement**"), which sets forth various other requirements with respect to the Project, and which agreement will be assigned to Freddie Mac on the Freddie Mac Purchase Date.

I. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to make 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.

J. 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 amended, as now in effect and as it may from time to time hereafter be amended or supplemented.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.02 hereof.

“*Authorized Officer*” means (a) when used with respect to the Governmental Lender, the Chief Financial Officer 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, 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 Bloomington RAD II, LP, a limited partnership duly organized and existing under the laws of the State, or any of its permitted successors or assigns, as owner of the Project.

“*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.

“*Continuing Covenant Agreement*” means the Continuing Covenant Agreement dated as of the date hereof by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.02 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 Servicer and the Servicer’s counsel, (e) the Funding Lender and the Funding Lender’s counsel (including both the Initial Funding Lender and Freddie Mac, as assignee thereof on the Freddie Mac Purchase Date), and (f) 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.

“*Default Rate*” means the lower of (i) the Interest Rate otherwise in effect notwithstanding the default plus [[four percent (4%)]] per annum or (ii) the maximum rate allowed by law.

“*Delivery Date*” means _____, the date of initial funding 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 Notice” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; 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 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.

“Extraordinary Fiscal Agent’s Fees and Expenses” means all those fees, expenses and disbursements 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.

“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.

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

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

“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 Initial Funding Lender pursuant to which Freddie Mac has agreed to purchase the Funding Loan, subject

to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“Freddie Mac Purchase Date” means the date Freddie Mac purchases the Funding Loan from the Initial Funding Lender upon satisfaction of the conditions set forth in 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, and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

“Funding Loan” means the loan evidenced by the Governmental Note in the original principal amount of \$_____ 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 City of Bloomington, Indiana, a municipal corporation organized and existing under the laws of the State.

“Governmental Note” means the Multifamily Housing Revenue Refunding Note, Series 20[___] (Crestmont Community 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/Service Guide, as the same may be amended, modified or supplemented from time to time.

“Initial Debt Service Deposit” means an amount equal to the sum of (i) the interest payable on the Funding Loan, and (ii) the ongoing fees payable with respect to the Project Loan (as provided in Section 4.02 of the Project Loan Agreement), in each case for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

“Initial Funding Lender” means [PERMANENT PHASE FUNDING LENDER], as initial holder of the Governmental Note.

“Interest Payment Date” means (i) the first day of each calendar month, commencing the first day of the calendar month after the Delivery Date, (ii) the date of any prepayment of the

Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

“Interest Rate” means the interest rate of _____% per annum; provided during the continuance of any Event of Default hereunder, the Interest Rate shall be the Default Rate.

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

“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 4.02 hereof.

“Loan Prepayment Fund” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.02 hereof.

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

“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.

“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 and each year thereafter.

“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.

“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 the amount payable by the Borrower under Section 10 of the Project Note 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.

“Prior Notes” means the Governmental Lender’s Multifamily Housing Revenue Notes, Series 2021 (Crestmont Community Project) in the original principal amount of \$[[16,300,000]].

“Project” means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Crestmont Community Project located at 100 W. 11th Ave. in Gary, Indiana, including the real estate described in the Security Instrument.

“Project Loan” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the original principal amount of \$_____, 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 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 Project 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 may be 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 (including the Fiscal Agent or any of its affiliates) 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 and 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 referred to herein shall be determined 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 or any of its affiliates) 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 4.02 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 the Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by the 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.

“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 and having direct responsibility for the administration of this Funding Loan Agreement.

“Revenue Fund” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.02 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 Amended and Restated Multifamily Leasehold Mortgage, Assignment of Rents and Security Agreement dated as of the date hereof, by the Borrower, granting a first priority lien and security interest in the Project to the Fiscal Agent to secure the repayment of the Project Loan and related obligations, and which will also serve as security for the Funding Loan, as the same may be amended, supplemented or restated.

“S&P” means S&P Global Ratings, a division of S&P Global, Inc., 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. Initially, the Servicer shall be [PERMANENT PHASE FUNDING LENDER]

“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 the Certificate of the Governmental Lender regarding Arbitrage executed by the Governmental Lender and the Borrower on _____, 20____, and the Tax Certificate of the Borrower executed on the Delivery Date.

“Tax Regulatory Agreement” means the Amended and Restated Regulatory Agreement dated as of [_____], 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 Funding Loan shall be originated and funded on the Delivery Date in the original principal amount of \$_____ with funds provided to the Governmental Lender by the Initial Funding Lender. The proceeds of the Funding Loan shall be deposited 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 bear interest payable on each Interest Payment Date at the Interest Rate and shall mature on [[July 1, 20__]], subject to scheduled monthly principal payments as provided in Section 2.01(c) below and optional and mandatory prepayment prior to maturity as provided in Article III hereof. Interest on the Funding Loan shall be computed on the basis of a 360-day year and the actual number of days elapsed.

(c) The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(d) 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).

(e) 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.

(f) 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 rate permitted by such law.

Section 2.02 Pledged Security. At the request of the Initial Funding Lender, the Governmental Lender has directed that the Borrower deliver the Security Instrument directly to the Fiscal Agent 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, together with the Security Instrument, 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, 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 special, 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, the State, or of any other political subdivision, municipality or other local agency, and none of the State, the County of Monroe, the Governmental Lender or any other political subdivision, municipality or other local agency is or will be liable for the payment of the Governmental Note.

(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, faith or taxing power of the 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.

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 Chair or Vice Chair of the Governmental Lender, and attested by the manual or facsimile signature of the Vice Chair,

Executive Director or Chief Financial Officer 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, 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 a percentage of not less than twenty-five percent (25%) 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. The Fiscal Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Agreement or under applicable law with respect to the transfer of any interest in the Funding Loan other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Agreement, and to examine the same to determine substantial compliance as to the form with the express requirements hereof. 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.

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 proceeds of the Funding Loan from the original funding thereof by the Initial Funding Lender;

(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, and the Continuing Covenant Agreement;

(f) an opinion(s) of counsel(s) 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 full amount of the Funding Loan;

(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; and

(l) evidence of a notice of redemption delivered to the Governmental Lender, Bond Counsel, and the Prior Fiscal Agent regarding the refunding in full of the Prior Note on the Delivery Date together with evidence that any final rebate calculation with respect thereto shall have been made or otherwise provided for to the extent required under the Code.

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. Money on deposit in the Project Loan Fund shall be held uninvested. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11.

(b) The proceeds of the Funding Loan from the Project Loan Fund shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date to accomplish the repayment in full of the Prior Notes. Upon written direction from the Borrower, the Fiscal Agent will transfer the proceeds of the Funding Loan to the Prior Fiscal Agent who shall prepay and cancel the Prior Notes. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Governmental Lender agrees that the Borrower is to pay from sources other than the Loans, Costs of Issuance.

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 Funding 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 Funding 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 collected from the Borrower and shall remit the Governmental Lender Fee to the Governmental Lender 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, the Governmental Lender 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.

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, at the earliest practicable date upon the occurrence of a mandatory prepayment of the Project Loan pursuant to Section 10(b) of the Project Note and 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.

Section 3.02 Notice of Prepayment. Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent (at the written direction of the Borrower) 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. 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 against any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

Section 4.02 Establishment of Funds. 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 4.02 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 4.03 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 on the Delivery Date, 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 (ii) 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) hereof; and (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all of the Funding Loan pursuant to Section 3.01(a).

(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. 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. In the absence of written direction from the Borrower, the Fiscal Agent shall invest amounts on deposit in the funds and accounts established under this Funding Loan Agreement invest such moneys pursuant to standing written instructions delivered to the Fiscal Agent by the Borrower upon the original issuance of the Funding Loan, as such instructions may be amended from time to time. 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. 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.

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 best price obtainable (at least 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 in writing 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 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 excludability 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 Reserved.

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. In doing so, the Governmental Lender and its officers and employees shall be fully indemnified by the Borrower. 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.

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) 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;

(iii) 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

(iv) 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 have 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.

Section 5.09 Limitations. Notwithstanding any provision herein, the Project Loan Agreement or the Governmental Note to the contrary, the Governmental Lender shall be entitled to refrain from taking any action otherwise required of it under this Funding Loan Agreement, the Project Loan Agreement, the Tax Certificate and the Governmental Note if it determines, in its sole judgment, such action or inaction involves burdens, costs or risks to the Governmental Lender, unless and until the Borrower shall have caused adequate provision for the payment of any and all reasonable costs and expenses, outlays, and counsel fees and other disbursements, and against all liability, to be provided for the account of the Governmental Lender in advance of taking such action. Notwithstanding any provision hereof, the Project Loan Agreement or the Governmental Note to the contrary, the Governmental Lender may consult with independent counsel, chosen by it with reasonable care, and shall not be liable for action taken or not taken in good faith in reliance upon the written advice or opinion of such counsel.

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 and the Funding Lender Representative after a Responsible Officer obtains actual knowledge from the Servicer of the occurrence of an Event of Default or obtains actual knowledge from the Servicer 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. The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of a payment related Event of Default, regardless of information from the Servicer.

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.

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. 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, the Security Instrument or any other Project Loan Document, 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. 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.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its 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.

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 of the proper party or parties, including any Electronic 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, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted 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 reasonable security or indemnity against Extraordinary Fiscal Agent's Fees and Expenses and 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.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement provided, however, that the Borrower, the Servicer and the Funding Lender Representative shall provide to the Fiscal Agent an incumbency certificate listing Authorized Officers with the authority to provide such directions and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Borrower, the Servicer or the Funding Lender Representative elects to give the Fiscal Agent Electronic Notice of directions and the Fiscal Agent in its discretion elects to act upon such directions, the Fiscal Agent's understanding of such directions shall be deemed controlling. The Borrower, the Servicer and the Funding Lender Representative each understands and agrees that the Fiscal Agent cannot determine the identity of the actual sender of such directions and that the Fiscal Agent shall conclusively presume that they have been sent by an Authorized Officer. The Borrower, the Servicer or the Funding Lender Representative each shall be responsible for ensuring that only Authorized Officers transmit such directions to the Fiscal Agent and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys with extreme care. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such directions notwithstanding such directions conflict or are inconsistent with a subsequent written direction. The Borrower, Servicer and Funding Lender Representative each agrees: (i) to assume all risks arising out of the use of Electronic Notice of directions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized directions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions to the Fiscal Agent and that there may be more secure methods of transmitting directions than the method(s) selected by the Borrower, Servicer or Funding Lender Representative; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

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.

The permissive rights of the Fiscal Agent to do things enumerated in this Funding Loan Agreement shall not be construed as duties.

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 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 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, fines, penalties 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 gross 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. 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.

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.

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 as 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 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 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 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 in such manner and in such places as the initial filings were made. 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 in writing by the Funding Lender Representative or the Servicer 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 financing or 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. 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.

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.

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 or provision of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or

(b) 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.

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 excludability 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 Fiscal Agent, 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 its 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 moneys deposited with the Fiscal Agent in trust for the payment of the principal of, or interest or premium on, the Governmental Note remaining unclaimed after the principal of the Governmental Note has become due and payable (whether at maturity, by mandatory prepayment or acceleration), shall be disposed of as provided by law and the owner of the Governmental Note shall thereafter be entitled to look only to the Borrower for payment thereof, and all liability of the Fiscal Agent with respect to such moneys shall thereupon cease. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

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.

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 excludable 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; provided, however, that any notice to the Fiscal Agent shall be deemed to be given when received. 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: crowleya@bloomington.in.gov
Telephone: (812) 349-3477

The Fiscal Agent:

Attention:
Email:
Telephone:

The Borrower: Bloomington RAD II, LP
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Senior Vice President
Email: plevavi@brinshore.com
Telephone: (224) 927-5057

With a copy to: Bloomington RAD II, LP
c/o Bloomington Housing Authority
1007 N. Summit Street
Bloomington, Indiana 47404
Attention: Executive Director
Email: askoby@blha.net
Telephone: (812) 339-3491

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: guy_nelson@freddiemac.com
Telephone: (703) 903-2000

Initial Funding Lender
and Servicer:

[PERMANENT PHASE FUNDING LENDER]
[ADDRESS]
Attention:
Phone:
Email:

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 Notice of written instructions and/or directions 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 Freddie Mac Purchase Date, Freddie Mac shall be 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, employee (past, present or future) or agent 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: _____
Hon. John Hamilton, Mayor

[SEAL]

[PERMANENT PHASE FUNDING LENDER]

By: _____
Name: _____
Title: _____

[FISCAL AGENT], as Fiscal Agent

By: _____

Name: _____

Title: _____

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

**CITY OF BLOOMINGTON, INDIANA
MULTIFAMILY HOUSING REVENUE REFUNDING NOTE, SERIES 20[____]
(CRESTMONT COMMUNITY PROJECT)**

US \$ _____, 20__

FOR VALUE RECEIVED, the undersigned, the 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 [PERMANENT PHASE FUNDING LENDER], (the “**Funding Lender**”), and its assigns, the principal sum of [PRINCIPAL] (US \$ _____), 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 Multifamily Housing Revenue Refunding Note, Series 20__ (Crestmont Community Project) (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of [_____] (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 original principal amount of \$ _____ (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 Bloomington RAD II, LP (the “**Borrower**”) pursuant to the Project Loan Agreement dated as of _____ (the “**Project Loan Agreement**”), among the Obligor, the Borrower and the Fiscal Agent.

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 first calendar day of each month commencing the first day of the calendar month after the Delivery Date, interest on this Note at the rate of [____ %] per annum (or such higher rate of interest borne by the Funding Loan upon any default) (the “**Interest Rate**”) on the outstanding principal balance of this Note, and shall also pay interest on this Note at the Interest Rate 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**”).

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 March 1, 2039 (the “**Maturity Date**”) and 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, 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. 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 Interest Rate 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 or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** Notwithstanding any other provision of this Note to the contrary:

(a) The obligations of the Obligor with respect to this Note are not general obligations of the Obligor but are special, limited obligations of the Obligor payable by the Obligor solely from the Pledged Security.

(b) 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.

(c) This Note is not and will not be a debt of the Obligor, the State or of any other political subdivision, municipality or other local agency, and none of the State, the City, the County, the Obligor or any other political subdivision, municipality or other local agency is or will be liable for the payment of the Note.

(d) 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.

(e) 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.

(f) 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 this Note, the Funding Loan Agreement or any of the other Financing Documents, whether for the payment of the principal or prepayment price of, or interest on, this Note, the payment of third party fees or administrative expenses or otherwise.

(g) 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 or taxing power of the 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.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed by the manual or facsimile signature of its Chief Executive Officer and attested by the manual or facsimile signature of its Assistant Secretary.

CITY OF BLOOMINGTON, INDIANA

[SEAL]

By _____
Chair

ATTEST:

By _____
Executive Director

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: _____
Authorized Signer

SCHEDULE 1
FUNDING LOAN AMORTIZATION SCHEDULE

EXHIBIT B

FORM OF NOTICE OF APPOINTMENT OF FUNDING LENDER REPRESENTATIVE

[Fiscal Agent]
[Address]

Bloomington RAD II, LP
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Senior Vice President

City of Bloomington, Indiana
401 N. Morton St.
Bloomington, IN 47404
Attention: City Attorney

[PERMANENT PHASE FUNDING LENDER]
[ADDRESS]
Attention:

Re: Crestmont Community Project

Ladies and Gentlemen:

The undersigned is the holder (the “**Funding Lender**”) of the Multifamily Note dated [____], 20[___] (the “**Governmental Note**”), delivered pursuant to the Funding Loan Agreement dated as of _____ (the “**Funding Loan Agreement**”), among [PERMANENT PHASE FUNDING LENDER], 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 _____. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

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 _____, _____.

[PERMANENT PHASE FUNDING LENDER]

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF TRANSFEEE REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

City of Bloomington, Indiana
401 N. Morton St.
Bloomington, IN 47404
Attention: City Attorney

[FISCAL AGENT]

[Address]

Attention: Corporate Trust Department

Re: Crestmont Community Project

Ladies and Gentlemen:

The undersigned (the “Funding Lender”) hereby acknowledges receipt of the Note dated [____], 20[___] (the “Governmental Note”) delivered pursuant to the Funding Loan Agreement dated as of _____ (the “Funding Loan Agreement”), among [PERMANENT PHASE FUNDING LENDER], in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the City of Bloomington, Indiana (the “Governmental Lender”) and _____ (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 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 SELLER/SERVICER PURCHASER 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 the Federal Home Loan Mortgage Corporation (“Freddie Mac”) pursuant to the commitment dated _____, 2021 (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.

[SIGNATURE BLOCK]

By: _____

Name: _____

Title: _____

EXHIBIT D
[RESERVED]

PROJECT LOAN AGREEMENT

among

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

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

**BLOOMINGTON RAD II, LP,
as Borrower**

Relating to

**Crestmont Community
1002 N. Summit Street
Bloomington, Indiana 47404**

Project Loan Principal Amount: \$_____

Dated as of _____

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 [_____], 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 _____, by and among the **CITY OF BLOOMINGTON, INDIANA** (the “**Governmental Lender**”), a municipal corporation of the State of Indiana (the “**State**”), _____, 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**”), **BLOOMINGTON RAD II, 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, Chapters 11.9 and 12, as amended, as amended (the “**Act**”) and this Project Loan Agreement, the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the original aggregate principal amount of \$_____ (the “**Project Loan**”) to provide for the refinancing of a multifamily rental housing development located at 1002 N. Summit Street, Bloomington, Indiana, known as the Crestmont Community (the “**Project**”).

B. The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the loan in the original principal amount of \$_____ (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 [FREDDIE MAC SELLER/SERVICER], in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the Governmental Lender and the Fiscal Agent. The Funding Loan is being originated and funded by the Initial Funding Lender and is evidenced by the Governmental Lender’s Multifamily Housing Revenue Refunding Note, Series 20[___] (Crestmont Community Project) dated _____ (together with all riders and addenda thereto, the “**Governmental Note**”) delivered by the Governmental Lender to the Initial Funding Lender.

C. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”), has entered into a commitment as amended with the Initial Funding Lender dated _____, 2021, (the “**Freddie Mac Commitment**”) whereby Freddie Mac has agreed to purchase the Funding Loan upon the satisfaction of the conditions set forth in the Freddie Mac Commitment (the “**Freddie Mac Purchase Date**”). On the Freddie Mac Purchase Date, the Initial Funding Lender will assign to Freddie Mac all of its rights and interest in the Governmental Note, the Funding Loan Agreement, the Continuing Covenant Agreement and the other Financing Documents (as such terms are herein defined).

D. The Borrower has agreed to use the proceeds of the Project Loan to effect the refunding of the Prior Notes.

E. The Borrower’s repayment obligations in respect of the Project Loan will be evidenced by a Project Note dated _____ (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 Fiscal Agent an Amended and Restated Multifamily Leasehold Mortgage, Assignment of Rents and Security Agreement dated as of the date hereof (the "**Security Instrument**") with respect to the Project, which will also serve as security for the Funding Loan.

G. On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans (in such capacity and any successor in such capacity, the "**Funding Lender Representative**"). [FREDDIE MAC SELLER/SERVICER] (the "**Servicer**") will act as initial servicer for the Loans on behalf of the Funding Lender Representative.

H. The Borrower is also entering into a Continuing Covenant Agreement dated as of the date hereof with the Initial Funding Lender (the "**Continuing Covenant Agreement**"), which sets forth various other requirements with respect to the Project, and which agreement is being assigned to Freddie Mac on 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:

"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.

"Prior Notes" means the Governmental Lender's Multifamily Housing Revenue Notes, Series 2021 (Crestmont Community Project) in the original principal amount of \$[[30,000,000]].

"Prior Funding Loan Agreement" means the Funding Loan Agreement dated as of [[_____] 1, 2021]] between the Governmental Lender, [INITIAL FUNDING LENDER], as Funding Lender and the Prior Fiscal Agent pursuant to which the Prior Notes were issued.

"Prior Fiscal Agent" means [INITIAL FISCAL AGENT], as fiscal agent for the Prior Notes under the Prior Funding Loan Agreement.

“*Project Loan Agreement*” means this Project Loan Agreement, together with any amendments hereto.

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

“*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) the first day of each calendar month, commencing on the first day of the first calendar month following the Delivery Date, 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 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.____]% 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 or the redemption of the Prior Notes; (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 the Prior Notes; 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, 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) results 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) Within the six (6) month period preceding the Delivery Date, the Borrower has not acquired the Project or any interest therein, nor has the Borrower transferred or acquired any capital interest in the owner of the Project. The Borrower shall not cause or permit the Project, or any interest therein, to be sold, assigned or transferred, except as

provided in the Financing Documents, and shall not sell the Project or any interest therein or in its ownership structure for a period of six (6) months following the Delivery Date.

(g) 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, the redemption of the Prior Notes, 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 or the Prior Notes.

(h) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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 Amended and Restated Agreement of Limited Partnership and that certain Purchase Option and Right of First Refusal dated _____, 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.

(m) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(n) 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.

(o) 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.

(p) 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 Amended and Restated Agreement of Limited Partnership and that certain Purchase Option and Right of First Refusal dated _____.

(q) The Project is located wholly within the boundaries of the City of Bloomington, Indiana.

(r) 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.

(s) 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 and shall adhere to the provisions of its 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.

(t) The Borrower has and will have a fee simple interest in the land and improvements on the Project, subject only to liens permitted under the Security Instrument.

(u) 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; and

(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.

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.

[End of Article II]

ARTICLE III

THE PROJECT LOAN

Section 3.01 *Conditions to Funding the Project Loan.* On the Delivery Date, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance with Section 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 such 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, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower to the Fiscal Agent, 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) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent; and

(d) 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.

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 original principal amount of \$_____ ; (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.

(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 [FREDDIE MAC SELLER/SERVICER] who shall service the Loans pursuant to the terms of the 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 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 the Governmental Lender Fee, together with 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; (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, (iv) the *Guide* is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (v) 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 *Initial Deposits.* On the Delivery Date, proceeds of the Funding Loan in the amount of \$_____ shall be deposited with the Fiscal Agent to be transferred immediately upon deposit to the Prior Fiscal Agent as provided in Section 2.11 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, for the benefit of the Funding Lender, 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 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. The parties hereto further acknowledge that, at the request of the Initial Funding Lender, the Governmental Lender has directed the Borrower to deliver the Security Instrument to the Fiscal

Agent as security for its obligations under the Project Note, as described in Recital F of the preambles hereto.

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 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.

[End of Article III]

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, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) 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 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.

(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 the Governmental Lender, all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(iii) 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 Servicer, its commitment fees and application fees, together with all third party and out of pocket expenses of the Servicer (including but not limited to the fees and expenses of counsel to the Servicer, if any) in connection with the Loans.

(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 Fiscal Agent, 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.

(v) 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.

(vi) To the Governmental Lender, any extraordinary expenses not covered by the Governmental Lender Fee that the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time.

(vii) 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.

(viii) 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.

(ix) 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.

(x) 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.

(xi) 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 pay 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.

(c) **Defeasance of the Funding Loan.** In addition, 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 of all or any portion of the Project Loan, 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 Section 9 of 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 or their partners 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 each of the Borrower's general partners: (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.

[End of Article IV]

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 was 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 was 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 (a) receipt by the Fiscal Agent of an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such sale or transfer will not adversely affect the tax exempt status of the Governmental Note, and (b) 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) 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 *Reserved.*

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.

[End of Article V]

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 partners) 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, fines, penalties, 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 have the right, to be exercised in its sole discretion, to 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, and should the Funding Lender (or its nominee) exercise such right 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 has exercised its rights to succeed to the rights and obligations of the Borrower under this Project Loan Agreement, 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.

[End of Article VI]

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;

(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 Project Loan Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(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.

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).

(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 Governmental Lender and 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 have the right, to be exercised in its sole discretion, to 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. In the event that such party elects to exercise its rights under this Section 7.07, 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.

[End of Article VII]

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), upon receipt if to the Fiscal Agent, or 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.

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 of which it has received written notice 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 *Reserved.*

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.

Section 8.18 *Supplemental Loans.* 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.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Project Loan Agreement and the Governmental Lender has caused its corporate seal to be affixed hereto and to be attested, all as of the date first set forth above.

CITY OF BLOOMINGTON, INDIANA, as
Governmental Lender

By: _____
Hon. John Hamilton, Mayor

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO CRESTMONT COMMUNITY
PROJECT LOAN AGREEMENT]

[FISCAL AGENT], as Fiscal Agent

By _____
Name:
Title:

[FISCAL AGENT'S SIGNATURE PAGE TO CRESTMONT COMMUNITY PROJECT LOAN AGREEMENT]

BLOOMINGTON RAD II, LP, an Indiana limited partnership

By: Bloomington RAD II Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD II, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President

[BORROWER'S SIGNATURE PAGE TO CRESTMONT COMMUNITY PROJECT LOAN AGREEMENT]

Prepared by and return to:
Tyler J. Kalachnik
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282

AMENDED AND RESTATED REGULATORY AGREEMENT

By and Among

CITY OF BLOOMINGTON, INDIANA

[FISCAL AGENT]

And

BLOOMINGTON RAD II, LP

Dated as of [_____]_____

Relating to

CITY OF BLOOMINGTON, INDIANA
MULTIFAMILY HOUSING REVENUE REFUNDING NOTE, SERIES 20[____]
(CRESTMONT COMMUNITY PROJECT)

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REGULATORY AGREEMENT

THIS AMENDED AND RESTATED REGULATORY AGREEMENT (as supplemented and amended from time to time, this “Agreement” or this “Regulatory Agreement”) is made and entered into as of [_____], by and among the CITY OF BLOOMINGTON, INDIANA, municipal corporation duly organized and existing under the laws 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 _____, _____, as Fiscal Agent (the “Fiscal Agent”) and BLOOMINGTON RAD II, LP, a 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 Multifamily Housing Revenue Refunding Note, Series 20[___] (Crestmont Community Project) (the “Note”), pursuant to a Funding Loan Agreement, by and among the Governmental Lender, the Fiscal Agent and [FREDDIE MAC SELLER/SERVICER]oration, of even date herewith (the “Funding Loan Agreement”) in the aggregate principal amount of not to exceed \$_____ pursuant to and in compliance with Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (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 refinance the acquisition, construction and equipping of a 204-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 Metropolitan 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 [_____].

“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 U.S. Bancorp Community Development Corporation, a Minnesota corporation 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 Multifamily Housing Revenue Refunding Note, Series 20[_____] (Crestmont Community Project) in the original aggregate principal amount of \$_____.

“Project” means the privately owned real and personal property to be comprised of a multifamily housing complex consisting of 204 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, construction and equipping of which facilities is to be refinanced, 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, construction, 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, construct, 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 fee simple title to 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 or notes.

(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

Crestmont Community Project 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 own fee simple title to 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 refinanced 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 Funding 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, the Funding 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 Funding 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 Funding 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 and the Funding 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 refinance the acquisition, construction and equipping of the Project, all for the purpose, among others, of inducing the Borrower to acquire, construct, 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 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, the Funding 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, the Funding 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:

- (i) 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;
- (ii) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;
- (iii) 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
- (iv) Reserved.

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 Funding Lender.

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 and Funding 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 Funding Lender and a request that such Bond Counsel render to the Governmental Lender and Funding 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
30 S. Meridian St., Suite 900
Indianapolis, IN 46204
Attention: Chief Financial Officer
Email: rharcourt@ihcda.in.gov
Telephone: (317) 232-7777

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: _____
Hon. John Hamilton, Mayor

[SEAL]

[FISCAL AGENT],
as Fiscal Agent

By: _____
Name:
Title:

BLOOMINGTON RAD II, LP, an Indiana limited partnership

By: Bloomington RAD II Manager, LLC, an Indiana limited liability company, its general partner

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager and a member

By: RJS Real Estate Services, Inc., an Illinois corporation, its member

By: _____
Richard Sciortino, President

By: Summit Hill RAD II, LLC, an Indiana limited liability company, a member

By: _____
Amber Skoby, President

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

On this _____ day of [_____], before me appeared Hon. John Hamilton, to me personally known who, being by me sworn did say that he is the Mayor of the City of Bloomington, Indiana, a municipal corporation duly organized and existing under the laws of the State of Indiana, and that the seal affixed to the foregoing instrument is the official seal of said entity, and that said instrument was signed and sealed on behalf of said public body corporate and politic, by authority of its board of directors and said Assistant Secretary, acknowledged said instrument to be the free act and deed of said public body corporate and politic.

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 _____)
) SS:
COUNTY OF _____)

On this _____ day of [____], before me appeared _____ to me personally known, who being by me duly sworn did say that they are an Authorized Officer of [FISCAL AGENT], a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in _____, _____, and that they are the persons who executed the foregoing instrument as such officer acting for and on behalf of said association, and acknowledged that they executed the same as his/her free act and deed as such officer of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public in and for said County and State

(SEAL)

My Commission expires: _____

My County of Residence: _____

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

On this _____ day of _____, 2021, before me appeared Richard Sciortino to me personally known, who being by me duly sworn did say that he is the President of RJS Real Estate Services, Inc., an Illinois corporation, which is the member of Brinshore Development, L.L.C., which is the member of Bloomington RAD II Manager, LLC, which is the general partner of Bloomington RAD II, LP, and that he is the person who executed the foregoing instrument as such officer acting for and on behalf of said general partner of Bloomington RAD II, LP, and acknowledged that he executed the same as a free act and deed as such officer of said limited partnership.

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: Crestmont Community Project

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 Crestmont Community Project in Gary, 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 Bloomington RAD II, 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:

Bloomington RAD II, LP
c/o Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Senior Vice President

[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: Crestmont Community Project

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.

BLOOMINGTON RAD II, 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.

BLOOMINGTON RAD II, LP

Witness

Owner

PLEASE LIST ALL THE LOW INCOME UNITS BELOW:
(PLACE AN "X" TO INDICATE TENANTS RECEIVING SECTION 8)

[illegible]

EXHIBIT D

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned, Authorized Borrower Representative of Bloomington RAD II, 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.

BLOOMINGTON RAD II, LP

Owner

EXHIBIT E

FREDDIE MAC RIDER

This Freddie Mac Rider (the “Rider”) is attached to and forms a part of the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), dated as of [____], by and among CITY OF BLOOMINGTON, INDIANA (the “Governmental Lender”), _____, as fiscal agent (together with any successor in such capacity, the “Fiscal Agent”), and BLOOMINGTON RAD II, 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 [PERMANENT PHASE FUNDING LENDER], 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 [____] by and among the Governmental Lender, the 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**” means the Multifamily Housing Refunding Revenue Note, Series 20[____] (Crestmont Community Project) dated [____] 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 [____], 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 Amended and Restated Project Note, including applicable addenda, to be executed by the Borrower in favor of the Governmental Lender, evidencing the Borrower’s financial obligations under the Project Loan, and to be endorsed

by the Governmental Lender, without recourse, to the order of the Fiscal Agent, as the same may be amended, modified, supplemented or restated from time to time.

“Security Instrument” means the Amended and Restated Multifamily Deed to Secure Debt, Assignment of Rents and Security Agreement, 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 [FREDDIE MAC SELLER/SERVICER], 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:

[FREDDIE MAC SELLER/SERVICER].
[ADDRESS]
Attention:
Phone:
Email:

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations - Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

with a copy to: Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive, MS 210
McLean, Virginia 22102
Attention: Managing Associate General Counsel –
Multifamily Legal Division
Email: guy_nelson@freddiemac.com
Telephone: (703) 903-2000



MEMO FROM COUNCIL OFFICE ON:

Ordinance 21-32 – To Amend Title 8 of the Bloomington Municipal Code, Entitled “Historic Preservation and Protection” to Establish a Historic District – Re: The Thomas Smith House Historic District

Synopsis

This ordinance amends Chapter 8.20 of the Bloomington Municipal Code entitled “List of Designated Historic and Conservation Districts” in order to designate “The Thomas Smith House”, parcel number 53-08-03-400-008.001-009, located at 1326 South Pickwick Place, City of Bloomington, Monroe County, Indiana, as a historic district. Built in 1828, The Thomas Smith House is one the earliest examples of the I-House form in Bloomington. The home is only one of a handful of Covenanter brick farmhouses from the early settlement period of Bloomington that still stand and it maintains a high level of historic integrity due to the unaltered state of the original portion of the house. The house is associated with Thomas Smith, a member of the early Covenanter Church in Bloomington, a philanthropist, and a purported conductor on the Underground Railroad.

Relevant Materials

- Ordinance 21-32
- Staff Report from Bloomington Historic Preservation Commission
- Photos
- Location Map

Summary

Ordinance 21-32 would classify “The Thomas Smith House” property as notable and would designate it as a historic district as provided under Title 8 of the Bloomington Municipal Code entitled “Historic Preservation and Protection”. The provisions of BMC Title 8 are enabled by state law under Indiana Code 36-7-11 (and following provisions) and are intended to

- Protect historic and architecturally-worthy properties that either impart a distinct aesthetic quality to the City or serve as visible reminders of our historic heritage;
- Ensure the harmonious and orderly growth and development of the City;
- Maintain established residential neighborhoods in danger of having their distinctiveness destroyed;
- Enhance property values and attract new residents; and
- Ensure the viability of the traditional downtown area and to enhance tourism.¹

The Historic Preservation Commission (“Commission”) is authorized to make recommendations to Council regarding the establishment of historic districts either on its own accord or by petition of the property owner. In this case, the HPC recommends that the Thomas Smith House be designated as a local historic district due to:

¹ See BMC 8.02.010



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

- the property's association with the Thomas Smith, a member of the early Covenanter Church in Bloomington, a philanthropist, and a purported conductor on the Underground railroad;
- its architectural significance as one of a handful of Covenanter brick farmhouse from the early settlement period of Bloomington that still stands; and
- existing as one of the oldest brick I-house form buildings in Bloomington and maintaining a high level of historic integrity due to the unaltered state of the original portion of the house.

A historic district designation authorizes the Commission to review and issue a certificate of appropriateness prior to the issuance of a permit for, or prior to work beginning on any of the following within all areas of an historic district²:

- The demolition of any building;
- The moving of any building;
- A conspicuous change in the exterior appearance of any historic building or any part of or appurtenance to such a building, including walls, fences, light fixtures, steps, paving, and signs by additions, reconstruction, alteration, or maintenance involving exterior color change if cited by individual ordinance, or
- Any new construction of a principal building or accessory building or structure subject to view from a public way.

In order to bring forward a historic designation, local code requires that the Commission hold a public hearing³ and submit a map and staff report (Report) to the Council. The map identifies the district and classifies properties, and the Report explains these actions in terms of the historic and architectural criteria set forth in the ordinance.⁴ These criteria provide the grounds for the designation.

Ordinance 21-32:

- Approves the map and establishes the district, which provides the basis for the designation;
- Incorporates the map and the report by reference and provides that copies of each are on file with the Clerk and available for public inspection;
- Describes the district and classifies the property;
- Inserts the newly-established district into the List of Historic and Conservation Districts contained within BMC 8.20.

Contact

Gloria Colom, Historic Preservation Program Manager, (812) 349-3420,
gloria.colom@bloomington.in.gov

² See BMC 8.08.020

³ A hearing on the Thomas Smith House was properly noticed and held on May 2, 2021.

⁴ See BMC 8.08.010[e]

ORDINANCE 21-32

**TO AMEND TITLE 8 OF THE BLOOMINGTON MUNICIPAL CODE, ENTITLED
“HISTORIC PRESERVATION AND PROTECTION”
TO ESTABLISH A HISTORIC DISTRICT
Re: The Thomas Smith House Historic District**

WHEREAS, the Common Council adopted Ordinance 95-20, which created a Historic Preservation Commission (“Commission”) and established procedures for designating historic districts in the City of Bloomington; and

WHEREAS, on May 2, 2021, the Commission held a public hearing for the purpose of allowing discussion and public comment on a proposed historic designation of the Thomas Smith House, located at 1326 South Pickwick Place; and

WHEREAS, at the same hearing, the Commission found that the Thomas Smith House meets the historical and architectural significance that merits the protection of the property as a historic district; and

WHEREAS, at the same hearing, the Commission approved a map and written report which accompanies the map and validates the proposed district by addressing the criteria outlined in Bloomington Municipal Code 8.08.010; and

WHEREAS, at the same hearing, the Commission voted to submit the map and report to the Common Council which may recommend local historic designation of said property, for its consideration; and

WHEREAS, the report considered by the Commission at this hearing notes that the main house is a two story brick, federal style I-House built in 1828 by Thomas Smith who was a leading member of the early Covenanter church in Bloomington, a philanthropist, and a purported conductor on the Underground Railroad. The other building on the lot is a detached garage built in 2003 and is considered a “non-contributing” resource.

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

SECTION 1. The map setting forth the proposed historic district for the site is hereby approved by the Common Council, and said historic district is hereby established. A copy of the map and report submitted by the Commission are attached to this ordinance and incorporated herein by reference and two copies of them are on file in the Office of the Clerk for public inspection.

The legal description of this property is further described as:

015-54950-00 PT SW SE 3-8-1W 1.80A; PLAT 155 in the City of Bloomington, Monroe County, Indiana.

SECTION 2. The property located at 1326 South Pickwick Place shall be classified as “Notable”.

SECTION 3. Chapter 8.20 of the Bloomington Municipal Code, entitled “List of Designated historic and Conservation Districts,” is hereby amended to insert “The Thomas Smith House” and such entry shall read as follows:

The Thomas Smith House

1326 South Pickwick Place

SECTION 4. 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 5. 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 _____, 2021.

JIM SIMS, 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 _____, 2021.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2021.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Chapter 8.20 of the Bloomington Municipal Code entitled “List of Designated Historic and Conservation Districts” in order to designate “The Thomas Smith House”, parcel number 53-08-03-400-008.001-009, located at 1326 South Pickwick Place, City of Bloomington, Monroe County, Indiana, as a historic district. Built in 1828, The Thomas Smith House is one the earliest examples of the I-House form in Bloomington. The home is only one of a handful of Covenanter brick farmhouses from the early settlement period of Bloomington that still stand and it maintains a high level of historic integrity due to the unaltered state of the original portion of the house. The house is associated with Thomas Smith, a member of the early Covenanter Church in Bloomington, a philanthropist, and a purported conductor on the Underground Railroad.

The property at 1326 S. Pickwick Place, qualifies for local designation under the following highlighted criteria found in Ordinance 95-20 of the Municipal Code (1) a // (2) e, g.

Financial Impact:

There is no anticipated fiscal impact associated with this Ordinance.

(1) Historic:

- a) **Has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the city, state, or nation; or is associated with a person who played a significant role in local, state, or national history; or**
- b) Is the site of an historic event; or
- c) Exemplifies the cultural, political, economic, social, or historic heritage of the community.

(2) Architectural:

- a) Embodies distinguishing characteristics of an architectural or engineering type; or
- b) Is the work of a designer whose individual work has significantly influenced the development of the community; or
- c) Is the work of a designer of such prominence that such work gains its value from the designer's reputation; or
- d) Contains elements of design, detail, materials, or craftsmanship which represent a significant innovation; or
- e) **Contains any architectural style, detail, or other element in danger of being lost; or**
- f) Owing to its unique location or physical characteristics, represents an established and familiar visual feature of the city; or
- g) **Exemplifies the built environment in an era of history characterized by a distinctive architectural style**

Background: The proposed single-property district at 1326 S. Pickwick Place consists of two buildings on a 1.8 acre parcel. The main house is a two story brick, federal style I-House built in 1828 by Thomas Smith who was a founding member of the Bloomington Reformed Presbyterian Church. The other building on the lot is a detached garage built in 2003 and is considered a “non-contributing” resource. The property, which was once a bucolic country farm, is now hemmed in on all sides by subdivisions. It is currently owned by Edward Morris who submitted a building permit to construct an attached garage to the historic home. The case went through a demolition delay review because the scope of work was considered a “partial demolition” of a

structure rated as “notable” on the Bloomington Historic Sites and Structures List. The Bloomington Historic Preservation Commission made a motion to begin formal designation proceedings at the April 22nd, 2021 meeting and asked staff to prepare this report.

Historical Significance:

(A) Has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the city, state, or nation; or is associated with a person who played a significant role in local, state, or national history.

Thomas Smith was a leading member of the early Covenanter church in Bloomington, a philanthropist whose donation helped keep Indiana University in Bloomington, and a conductor on the Underground Railroad.

In 1827 Thomas Smith purchased 160 acres and established a farm about two miles southeast of the courthouse square. He built the two story brick home that is 1326 S. Pickwick Place in 1828. Smith was a highly respected member and elder of the Reformed Presbyterian (Covenanter) congregation, a small, tightknit religious group of Scotch/Irish who relocated to Bloomington from South Carolina because of religious opposition to the institution of slavery.

In addition to being a successful farmer Thomas Smith was a philanthropist. His congregation worshipped at the Blair farmhouse on West 10th Street until Smith donated land near the intersection of Moores Pike and South High Street so that a church and cemetery could be established. The cemetery is still there. Smith also donated \$500 to the state in order to keep the State Seminary, which later became Indiana University, in Bloomington. Due to his generous contribution he was given a paper stating that his heirs could attend the seminary free of tuition.

It is purported that Thomas Smith also harbored escaped slaves on his property and helped transport them north on the Underground Railroad. In an article titled “The Underground Railroad in Monroe County”, Henry Lester Smith, great grandson of Thomas and a dean at Indiana University from 1917-1946, asserts that members of the Covenanter congregation conducted a section of the Underground Railroad that ran through Monroe County. According to Smith’s article, leading Covenanter families such as Faris, Cathcart, Blair, and Smith sheltered escaped slaves from Tennessee and Kentucky at their homes and transported them northward to the next station which was the Quaker settlement of Mooresville. Thomas Smith in particular was named as a leader in the movement and was said to have hidden people in the barn loft and root cellar.

Architectural Significance:

(E) Contains any architectural style, detail, or other element in danger of being lost.

The Thomas Smith House is part of an increasingly rare and important class of buildings built by successful farmers during the early years following Bloomington’s establishment as a county seat. These homes were built from brick that was hand made on site and their construction is a

testament to the hard work, ingenuity, and self-reliance of Bloomington's early pioneers. Built several miles from the town center, which in the early nineteenth century was considered rural, these brick farmhouses were accompanied by a collection outbuildings such as barns, root cellars, smith shops, and spring houses. Since the postwar expansion of suburbs and subdivisions, these once isolated farmsteads have been hemmed in by new infill and their bucolic setting eroded away. As parcels of the farms were sold off, outbuildings were either destroyed or converted. In the case of the Thomas Smith property, the large barn with a gambrel roof was converted to a residence which is still used today. Originally a 160 acre parcel littered with a dozen agricultural buildings, fruit orchards, and wagon roads, only the brick farmhouse situated on 1.8 acres remains today. For reference, the Indiana Bat is considered an endangered species and its habitats are monitored and protected by the federal government. Their population is estimated to be over 200,000. The Thomas Smith House is one of only a handful of brick I-houses from its period of significance left in Monroe County—endangered is an understatement.

(G) Exemplifies the built environment in an era of history characterized by a distinctive architectural style.

Built in 1828, the Smith House is one the earliest examples of the I-House form in Bloomington. The I-House was constructed by gentleman farmers and was symbol of economic prosperity and was traditionally two-stories tall, two rooms wide, and one room deep. The style was prominent in Indiana from 1820 to 1890. It should be noted that the Smith House is not a typical I-House and is differentiated through its fenestration and use of two front doors. Rather than a central door flanked by two evenly spaced windows on either side such as found on more traditional I-Houses such as the Faris House or Cochran-Lindley House, the Smith House bucks symmetry by incorporating a second door where one would expect a window. While intentional, this gives the appearance that the house is missing a section. This is likely an influence of southern architecture, where the use of two front doors was utilized in the Hall and Parlor form. The Smith House also boasts simple Federal architectural detailing through the use of narrow mullions on the transom windows and limestone sills and lintels.

The house is built from handmade brick which means that it was dug and fired on site. The flat brick arches over the windows are characteristic of early houses in Monroe County, such as the Glassie/Henderson House which was built in the 1830s. According to a detailed analysis of the house written in 1975 by Elizabeth Warren, floor joists are small logs still covered with bark and the undersides of the ash floorboards have straight marks on them from a water-driven saw. Also, several doors were built with mortise joints held with pegs and wedges and the hardware on the doors is cast iron with a patent date that reads 1847.

Despite such a high degree of original architectural detailing on the home, there have been several additions to the original I-House. The brick addition to the south was likely added in the late 19th century while the wood framed and lap sided addition to the east was added in 2003. The southern addition has gained historical significance in its own right, but the east addition threatens the architectural integrity of the home. Any further addition to the home would endanger the historic building's integrity and should be carefully designed so as to avoid removing or obscuring any of the original fabric that remains.

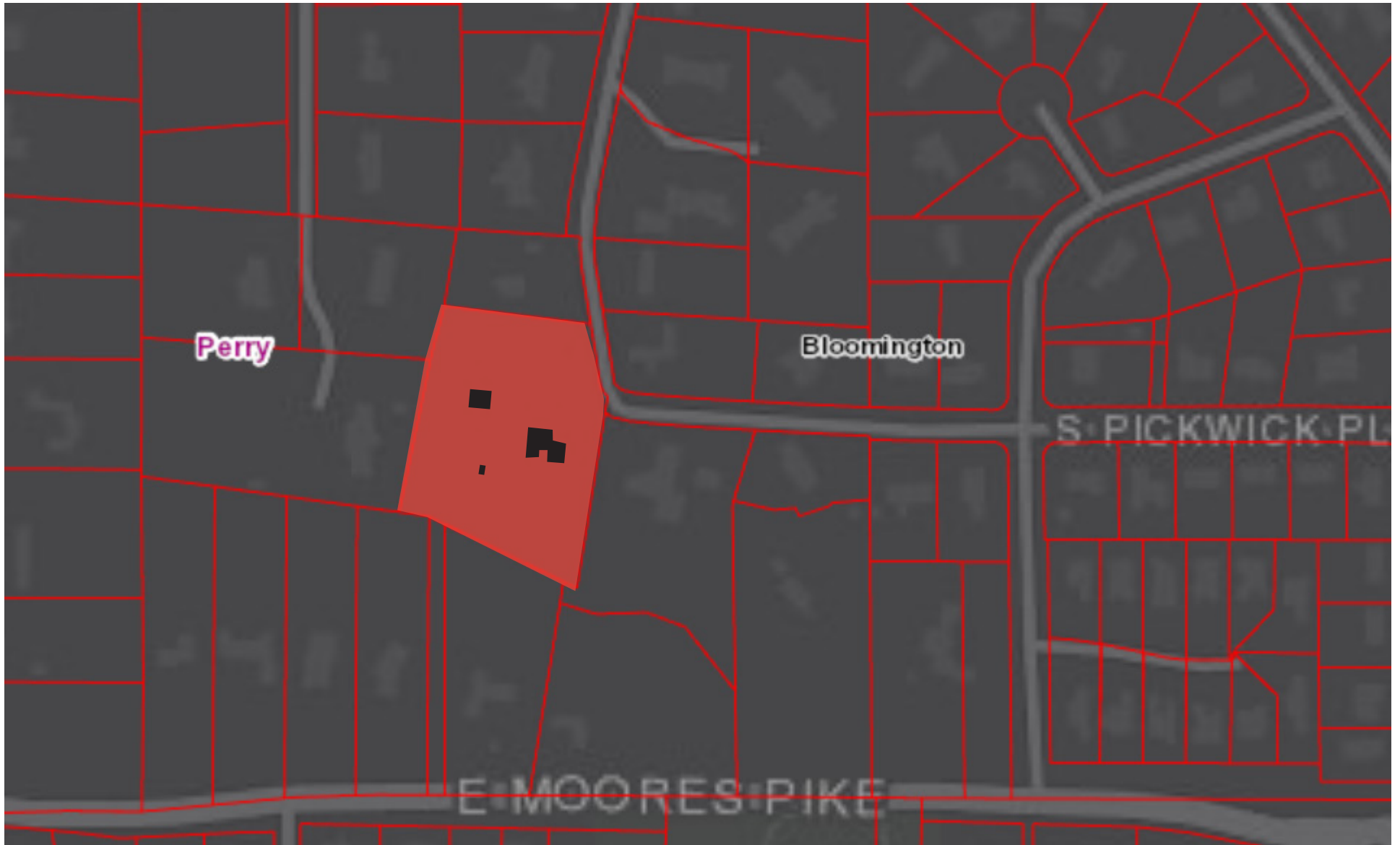
Recommendation: Approval

Staff recommends property parcel 53-08-03-400-008.001-009 (The Smith House) be designated as a local historic district. After careful consideration of the application and review of the Historic District Criteria as found in Ordinance 95-20 of the Municipal Code, staff finds that the property not only meets, but exceeds the minimum criteria listed in the code.

The property meets Criteria 1(a) because of its association with Thomas Smith, a member of the early Covenanter Church in Bloomington, philanthropist, and purported conductor on the Underground Railroad.

The property meets Criteria 2 (e) because the home is only one of a handful of Covenanter brick farmhouses from the early settlement period of Bloomington that still stands.

The property meets Criteria 2(g) because it one of the oldest brick I-house form buildings in Bloomington and maintains a high level of historic integrity due to the unaltered state of the original portion of the house.



Location: 1326 S Pickwick
Place, Bloomington, IN



Lot
Structures

300 ft



THOMAS SMITH HOUSE

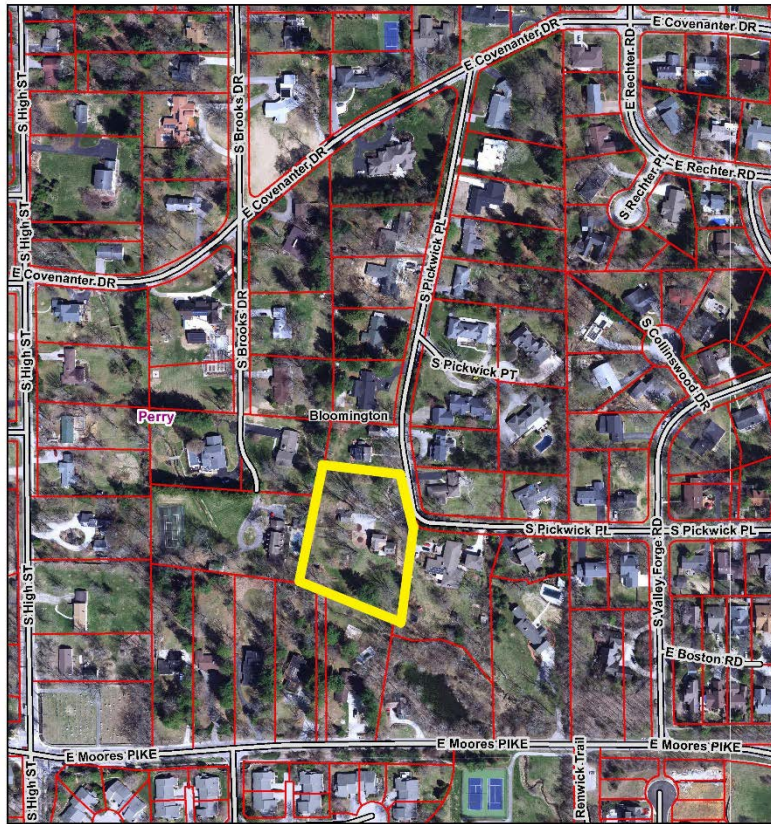
1326 S Pickwick PL, Bloomington, Indiana



**Bloomington Historic Sites
& Structures Survey Rating:**

Notable

Background



Thomas Smith House:



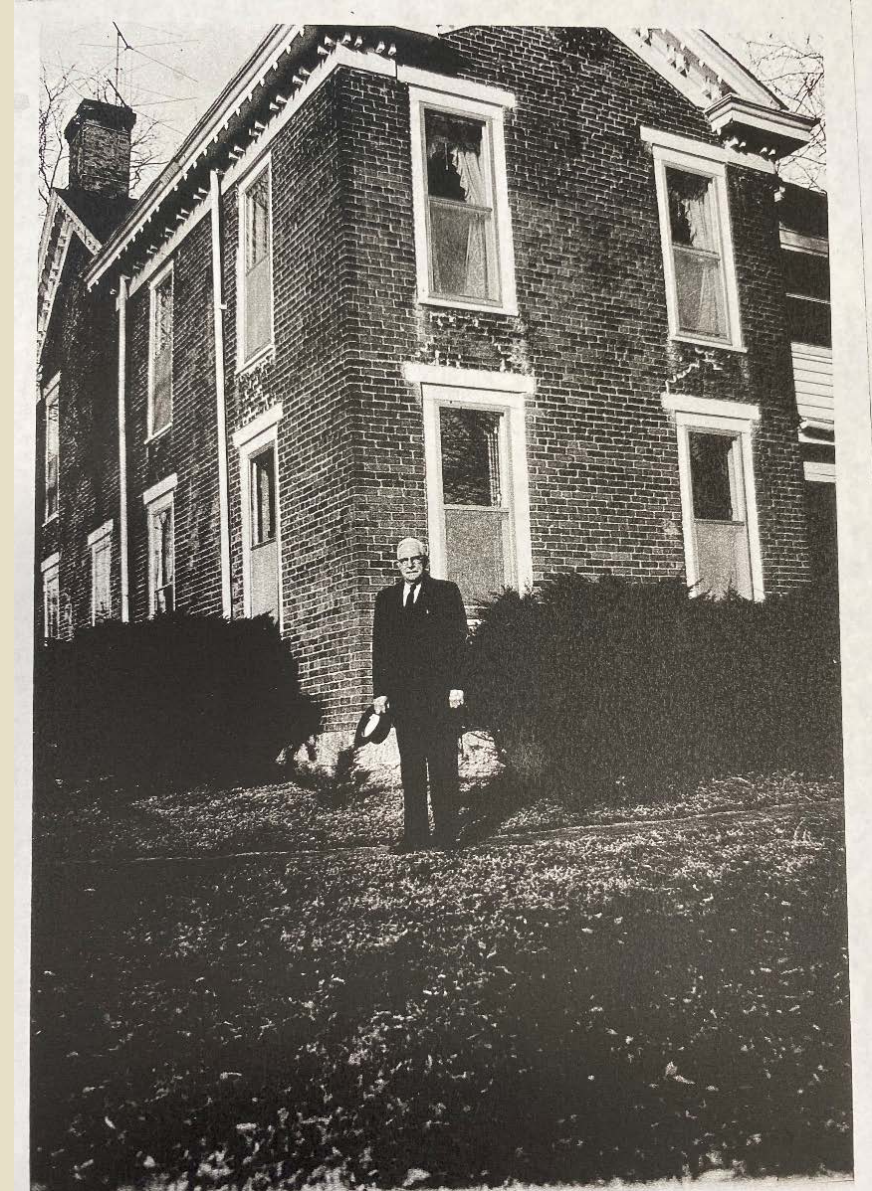
- The proposed single-property district at 1326 S. Pickwick Place consists of two buildings on a 1.8 acre parcel.
- The main house is a two story brick, federal style I-House built in 1828 by Thomas Smith who was a founding member of the Bloomington Reformed Presbyterian Church. The other building on the lot is a detached garage built in 2003 and is considered a “non-contributing” resource.
- The property, which was once a bucolic country farm, is now hemmed in on all sides by subdivisions.

Background

- It is currently owned by Edward Morris, who submitted a building permit to construct an attached garage to the historic home. The case went through a demolition delay review because the scope of work was considered a “partial demolition” of a structure rated as “notable” on the Bloomington Historic Sites and Structures List. Both Edward Morris and his wife support the nomination.
- The Bloomington Historic Preservation Commission made a motion to begin formal designation proceedings at the May 2nd, 2021 meeting.

Historical Background

- Thomas Smith was a leading member of the early Covenantan church in Bloomington and a philanthropist whose donation of \$500 helped keep Indiana University, then known as the State Seminary in Bloomington.
- He was purported to be a conductor on the Underground Railroad. In an article titled “The Underground Railroad in Monroe County”, Henry Lester Smith, great grandson of Thomas and a dean at Indiana University from 1917-1946, asserts that members of the Covenantan congregation conducted a section of the Underground Railroad that ran through Monroe County.



- The Smith house is an I-House, made of locally handmade bricks.
- Contains any architectural style, detail, or other element in danger of being lost
- Exemplifies the built environment in an era of history characterized by a distinctive architectural style







MEMO FROM COUNCIL OFFICE ON:

Ordinance 21-31 – To Amend the City of Bloomington Zoning Maps by Amending the District Ordinance and Preliminary Plan of the Curry PUD – Re: 105 S. Pete Ellis Drive (Curry Urban Properties, Petitioner)

Synopsis

Ordinance 21-31 amends the District Ordinance and Preliminary Plan for the Curry PUD to allow for 3-bedroom units and some design changes to the building among other changes, while still allowing the construction of one mixed-use building.

Relevant Materials

- Ordinance 21-31
- Certification of Ordinance 21-31 by Plan Commission
- Staff Memo from Jacqueline Scanlan
- Environmental Commission Memo
- Maps
- Petitioner's Statement – 06.04.2021
- Illustrative Site Plan Context
- Renderings
- District Ordinance and Preliminary Plan
- Zoning Commitment

Background

This property was rezoned from Commercial Limited (CL) to Planned Unit Development (PUD) on February 5, 2020 by [Ordinance 20-01](#) (background materials for this legislation can be found in the [January 8, 2020 Legislative Packet](#)) with the following reasonable conditions:

1. RC 01 – Re: mitigating both sound and light pollution;
2. RC 03 – Re: screening of garage by art or vegetation;
3. RC 04 – Re: compliance with Cool or Vegetated Roof standards in the new UDO;
4. RC 05 – Re: decoupling rent from use of a private parking space;
5. RC 06 – Re: solar panels - EV charging stations – Design (for retrofitting parking garage); and
6. RC 08 – Re: screening of roof-top mechanicals



The Petitioner is requesting to amend the existing PUD district ordinance and preliminary plan in order to incorporate:

- the addition of 3-bedroom units; and
- a redesign of the building, as follows:
 - the redesign requires that RC 03 can no longer be met;
 - the height maximum increases by roughly 2.5 feet; and
 - the building setback along the northern façade decreases to 10 feet and 14 feet in places.

In accordance with [Section 20.01.040 of the UDO \(Transition from Prior Regulations\)](#) of the current UDO, this petition will be reviewed under the 2019 UDO, which was in place when the PUD was approved in 2020.¹

Council's Review and Consideration

The Council's review of a PUD proposal is guided by state statute and local code. The Council has wide discretion but must have a rational basis for its decision. Within ninety (90) days after such a proposal is certified to the Council by the Plan Commission, the Council may adopt or reject the proposal and may also exercise powers set forth under Indiana Code 36-7-4-1500 et seq. Those powers include:

- imposing reasonable conditions;
- conditioning the issuance of a certificate of zoning compliance on the furnishing of a bond or certain guarantees; and
- allowing or requiring the owner of real property to make written commitments.

If the Council fails to act on the proposal within 90 days after certification, the ordinance would take effect as if it had been adopted as certified by the Plan Commission.²

In consideration of [Ordinance 21-31](#), Indiana Code directs that Council shall pay reasonable regard to the following³:

- the [comprehensive plan](#);
- current conditions and the character of current structures and uses in each district;
- the most desirable use for which the land in each district is adapted;
- the conservation of property values throughout the jurisdiction; and
- responsible development and growth.

It is not necessary that Council find absolute conformity with each of the factors outlined above. Rather, the Council is to take into consideration the entire constellation of criteria, balancing the statutory factors.

¹ A copy of the 2019 UDO can be found at <https://bloomington.in.gov/sites/default/files/2019-09/UDO%20%282019%29.pdf>

² IC 36-7-4-608

³ IC 36-7-4-603



Further, the Council will review Ordinance 21-31 under the 2019 UDO and will consider the following⁴:

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

Finally, the BMC provides that permitted uses in a PUD are subject to the discretion and approval of the Plan Commission and the Council. Permitted uses are determined in consideration of the Comprehensive Plan, existing zoning, land uses contiguous to the area being rezoned, and the development standards outlined in the UDO.⁵

⁴ BMC 20.04.080(j)(1) – <https://bloomington.in.gov/sites/default/files/2019-09/UDO%20%282019%29.pdf>

⁵ BMC 20.04.030 – <https://bloomington.in.gov/sites/default/files/2019-09/UDO%20%282019%29.pdf>



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

Certified by Plan Commission

Ordinance 21-31 was certified to the Council by the Plan Commission on June 23, 2021 with a favorable recommendation (8-0). The findings of the Plan Commission are outlined in the staff memo, which concludes that the PUD has multiple characteristics that support the goals of the Comprehensive Plan. The petition is forwarded to the Council by the Plan Commission with a favorable recommendation and 13 conditions, which are listed in the staff memo.

What Happens Next

The Council's role ends with the adoption or rejection of the zoning ordinance. There is no obligation to develop a property after the adoption of a zoning ordinance, but if a developer chooses to do so, the zoning ordinance provides the framework for how the property can be developed. In the event the Council adopts Ordinance 21-31, the next step would be for a developer to present a site plan to the Planning and Transportation Department staff for approval.⁶ Once a site plan is submitted, it is reviewed to ensure that it meets with the provisions of the zoning ordinance, including any reasonable conditions and commitments. There is no time constraint for the submission of a site plan, but once approved, a site plan is valid for a defined period of time.

Contact

Jacqueline Scanlan, Development Services Manager, scanlanj@bloomington.in.gov, (812) 349-3524

⁶ Note that while the Plan Commission usually approves the site plan, the PUD Final Plan approval in this case has been delegated to the Planning and Transportation Department staff as a condition of the Plan Commission's recommendation.

ORDINANCE 21-31

TO AMEND THE CITY OF BLOOMINGTON ZONING MAPS BY AMENDING THE DISTRICT ORDINANCE AND PRELIMINARY PLAN OF THE CURRY PUD

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

WHEREAS, Ordinance 20-06, which repealed and replaced Title 20 of the Bloomington Municipal Code entitled, “Unified Development Ordinance”, went into effect on April 18, 2020; and

WHEREAS, Ordinance 20-01, which established the Curry PUD, went into effect on February 10, 2020; and

WHEREAS, the Plan Commission has considered this case, PUD-16-21, and recommended that the petitioner, Curry Urban Properties, be granted an approval to amend the District Ordinance and Preliminary Plan for a Planned Unit Development (PUD) to allow 3-bedroom units and change the approved building design among other changes; and

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

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

SECTION I. Through the authority of IC 36-7-4 and pursuant to Chapter 20.06 of the Bloomington Municipal Code, the District Ordinance and Preliminary Plan for the Curry PUD shall be amended. The property is further described as follows:

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

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

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

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

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2021.

JIM SIMS, 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 _____, 2021.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2021.

JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

Ordinance 21-31 amends the District Ordinance and Preliminary Plan for the Curry PUD to allow for 3-bedroom units and some design changes to the building among other changes, while still allowing the construction of one mixed-use building.

****ORDINANCE CERTIFICATION****

In accordance with IC 36-7-4-605 I hereby certify that the attached Ordinance Number 21-31 is a true and complete copy of Plan Commission Case Number PUD-16-21 which was given a positive recommendation by a vote of 8 Ayes, 0 Nays, and 0 Abstentions by the Bloomington City Plan Commission at a public hearing held on June 14, 2021.

Date: June 23, 2021



SCOTT ROBINSON, Secretary
Plan Commission

Received by the Common Council Office this 23 day of June, 2021.

NICOLE BOLDEN, City Clerk

Appropriation
Ordinance # _____

Fiscal Impact
Statement
Ordinance # _____

Resolution # _____

Type of Legislation:

Appropriation
Budget Transfer
Salary Change

End of Program
New Program
Bonding

Penal Ordinance
Grant Approval
Administrative
Change
Short-Term Borrowing
Other

Zoning Change
New Fees

Investments
Annexation

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

Cause of Request:

Planned Expenditure
Unforeseen Need _____

Emergency
Other _____

Funds Affected by Request:

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

Signature of Controller

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

Yes _____ No _____ X _____

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

The legislation amends an existing PUD to allow for a wider variety of unit size and to amend architectural standards.

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

Interdepartmental Memo

To: Members of the Common Council
From: Jacqueline Scanlan, AICP Development Services Manager
Subject: PUD-16-21 Amendment to Curry PUD
Date: June 23, 2021

Attached are the staff report, maps, petitioner's statement, and petitioner's exhibits which pertain to Plan Commission case PUD-16-21. The Plan Commission heard this petition at the June 14, 2021 hearing and voted 8-0 to send this petition to the Common Council with a positive recommendation.

The amended Plan Commission report for that hearing is below. Recommended Conditions 6 and 11 were amended at the hearing.

REQUEST: The petitioner is requesting to amend the District Ordinance and Preliminary Plan for a 3.2 acre Planned Unit Development. And requesting a waiver of second hearing.

BACKGROUND:

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

REPORT: The property is located at the northwest corner of E. Longview Avenue and S. Pete Ellis Drive and is zoned Planned Unit Development (PUD). The property was rezoned to PUD in 2020. The 3.2 acre property is currently undeveloped. Surrounding zoning includes Residential High-Density Multifamily (RH) to the north, Mixed-Use Corridor (MC) and Mixed-Use Neighborhood Scale (MN) to the south, and Mixed-Use Neighborhood Scale (MN) to the east and west. The surrounding properties have been developed with a mix of high density multi-family residences and commercial tenant spaces with the St. Mark United Methodist Church just to the west of the site. This property has frontage on 3 public streets: E. 7th Street to the west; E. Longview Drive to the south; and S. Pete Ellis Drive to the east. There are no environmental constraints on this property.

The petitioner is requesting to amend the existing PUD in order to incorporate a series of changes.

- Addition of 3-bedroom units
- Redesign of building
 - The redesign requires that Reasonable Condition #3 from Common Council can no longer be met.
 - The height maximum increases by roughly 2.5 feet.

- Building setback along northern façade decreased to 10 feet and 14 feet in places.

The Unified Development Ordinance (UDO) Transition from Prior Regulations, 20.01.040(8), require that this petition be reviewed under the old UDO which was in place when the PUD was approved.

The PUD is still designed as a 4-story, mixed-use building. The proposal includes 14,000 square feet of commercial space, which was previously 12,000-19,000, with apartments on the upper floors and a portion of the ground floor. The commercial use is still expected to be medical office related to the new hospital campus, and will be initially marketed as such, though an addition has been added that other uses will be marketed, as well. The multifamily portion of the proposal includes a mix of studio units, one-bedroom units, two-bedroom units, and three-bedroom units for a total of 233 units and 341 beds, a decrease from the approved maximum of 264 units and 344 bedrooms. The overall density is still proposed at a maximum of 30 units/acre. The building will also contain a structured parking garage accessed from Longview Drive, now with 254 parking spaces, as compared to the previously approved 306 parking spaces. The proposed maximum parking ratio for residential parking is still 0.90 spaces per unit and no more than 0.70 spaces per bed, with additional spaces to be used to support the commercial use. The petitioner also proposes 14 back-in, angled, on-street spaces on Pete Ellis Drive.

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

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

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

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

The proposed amendment does not change the aspects of the project that support the Comprehensive Plan, including adding mixed use with office and multifamily residential to a

portion of the Regional Activity Center that is not on the main commercial thoroughfare.

PRELIMINARY PLAN:

Uses/Development Standards: The PUD utilizes a modified set of standards from the previous UDO's Commercial Limited (CL) zoning district for the permitted uses and development standards for this project. The deviations from the CL district include allowing first-floor residential uses; removal of the maximum square footage limitation that exists in CL for a single non-residential tenant, which is currently limited to 5,000 square feet per tenant; an increase in density; an increase in building height; and an increase in allowable impervious surface coverage. Architecture standards are addressed separately in this report. The PUD development standards are changing slightly in that the north side setback will decrease to 14 feet and 10 feet in places, and the heights will change slightly from the approved standards.

Residential Density: The PUD allows a maximum of 30 units per acre, and the petitioner is requesting no change to that maximum.

Height and Bulk: The petitioners are still proposing one, four-story building to be articulated so as to provide visual interest by providing building recesses and varying setbacks along the different facades. The building design has changed so that the structured parking is now wrapped by apartments and not visible from either the north or south side of the building. At its tallest point the building is proposed to be 59' 4" tall. (New proposed heights are in the District Ordinance without the previous heights being listed.) The previous height maximum was 57' tall.

While the architectural changes proposed hide the structured parking, they also reduce opportunity for the green wall that was required through Reasonable Condition #3 by the Common Council. The Department recommended to the petitioner that either a large art installation or green wall feature be incorporated in order to visually break up the Longview façade, as the previous green wall would have.

The petitioner addressed concerns regarding bulk and massing by increasing the proposed setback from the north property line and through the use of varied building materials and modulation around the building during the approved petition process. The increased setback on the north side of 15 feet remains largely in place, though a stair tower is now shown as 10 feet and another portion of the building is 14 feet, but within the realm of the CL zoning district.

Parking, Streetscape, and Access: The property has frontage on 7th Street, Longview Avenue, and Pete Ellis Drive. A possible total of 254 structured parking spaces, down from 306, are proposed in a garage that would be located in the middle portion of the building. 14,000 square feet of commercial space is planned. The proposed maximum parking ratio for residential parking is still 0.90 spaces per unit and no more than 0.70 spaces per bed, with additional spaces to be used to support the commercial use.

The petitioner is also proposing 14 back-in, angled parking spaces on Pete Ellis Drive. There is one vehicular access into the building from Longview Avenue.

No right-of-way pedestrian designs are proposed to change. There is currently a 5' wide concrete sidewalk along Pete Ellis Drive and 8' wide, multi-use paths along 7th Street and Longview Drive. The petitioner plans to widen the Pete Ellis Drive sidewalk to a minimum of 6' wide, as well as

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

A traffic study was discussed extensively with the last petition. Based on staff analysis at the time of the previous petition, a traffic study was not required with this amendment, but the condition requiring such a study at the time of the Final Plan application is still included.

Bicycle Parking and Alternative Transportation: The development has 341 proposed bedrooms and 14,000 square feet of commercial/office space. The UDO requires one bicycle parking space for every 6 bedrooms and one bicycle space for each 15 required vehicular parking spaces for the commercial use, or a minimum of 4. Since the project is larger than 20,000 square feet, all non-residential required spaces will be Class II covered spaces. They will meet current UDO bicycle parking requirements by providing both bicycle parking spaces along the exterior of the building as well as internal bike storage areas. The eastside local 8 bus, as well as an intermittent 3 line bus both pass the property on the eastern side.

Architecture/Materials: The design has changed because of the internal consolidation of the courtyards, as well as the wrapping of the garage. However, the proposed renderings and elevations still show modulation, building design elements, and articulation designed to mitigate the effects of such a large building. Substantial modulation has been shown around the building and includes recessing portions of the upper floor in places, and all four-floors in the southwest corner. Materials to be used include brick and block masonry, metal/steel, storefront glass, stone, and fiber-cement siding. The Department has suggested the continued inclusion of either a green wall feature or public art on the southern façade of the building to provide visual interest and help break up the large building.

Environmental Considerations: The petition site is a grassed open space and will be almost entirely developed. The petitioner proposes a 67% impervious surface coverage maximum, which is a 1% difference from the previous approval. However, the UDO allows a 1% fluctuation without additional approval, so that amount is allowed under the existing PUD.

The FITWEL design is still included in the proposal.

Housing Diversity: The petitioner has an agreed upon a Housing Zoning Commitment with the Housing and Neighborhood Development Department, and no changes to that agreement are proposed. The draft Zoning Commitment is included in the petitioner submittal.

ENVIRONMENTAL COMMISSION RECOMMENDATIONS: The Bloomington Environmental Commission (EC) made 1 recommendation concerning this development, which are listed below:

1.) Commit to attaining a Fitwel Three-Star building rating.

Department Response: While not required, attainment of a Three-Star building would have positive impacts on the project.

20.04.080(h) Planned Unit Development Considerations

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

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

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

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

PROPOSED FINDINGS: The requested amendment does not alter those aspects of the PUD that address the items listed above, such as providing workforce housing close to campus and supportive commercial space in the area near the Regional Health Campus.

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

PROPOSED FINDINGS: The proposed amendments do not deviate from the previous UDO. Additionally, the inclusion of a maximum of 15% three-bedroom units still keeps the project in line with the current UDO's definition of 'dwelling, multifamily' and below the 'student housing or dormitory' definition threshold.

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

PROPOSED FINDINGS: The petition does further some of the goals of the UDO and the Comprehensive Plan, including contributing to a need for housing across multiple areas of the economic spectrum, from workforce housing to small-unit market rate. The Department does not believe that the addition of three-bedroom units or redesign change that.

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

PROPOSED FINDINGS: The proposed amendment does hide the structure parking within the structure, but also removes a large visual interest piece with the removal of the required green wall. The Department suggests that green elements and/or art still be required in order to visually break up the Longview façade.

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

PROPOSED FINDINGS: The proposed amendment hides the parking garage from view for the neighbors to the north which is an improvement to that interface. Additionally, the increased setbacks and removal of projecting balconies are still elements that are included in the amendment proposal.

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

PROPOSED FINDINGS: The proposed amendment does not alter the benefits that the petition offers including new residential units as well as 14,000 square feet of supportive office space near the new hospital location, both benefits to the tax base.

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

PROPOSED FINDINGS: The petitioner is still committed to submitting a traffic study for review at the final plan stage. The proposed amendment does not alter the

desirability or increase the necessity for that study.

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

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

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

PROPOSED FINDINGS: The proposed amendment hides the structured parking in a way that is intended to decrease its impact on the adjoining parcel to the north. Allowing a limited number of three-bedroom units will not be injurious to the public health, safety, and general welfare.

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

PROPOSED FINDINGS: The proposed amendment maximizes development on the site by allowing some larger units and hiding the structured parking, while still keeping the project within the scale that was determined appropriate in the 2020 petition.

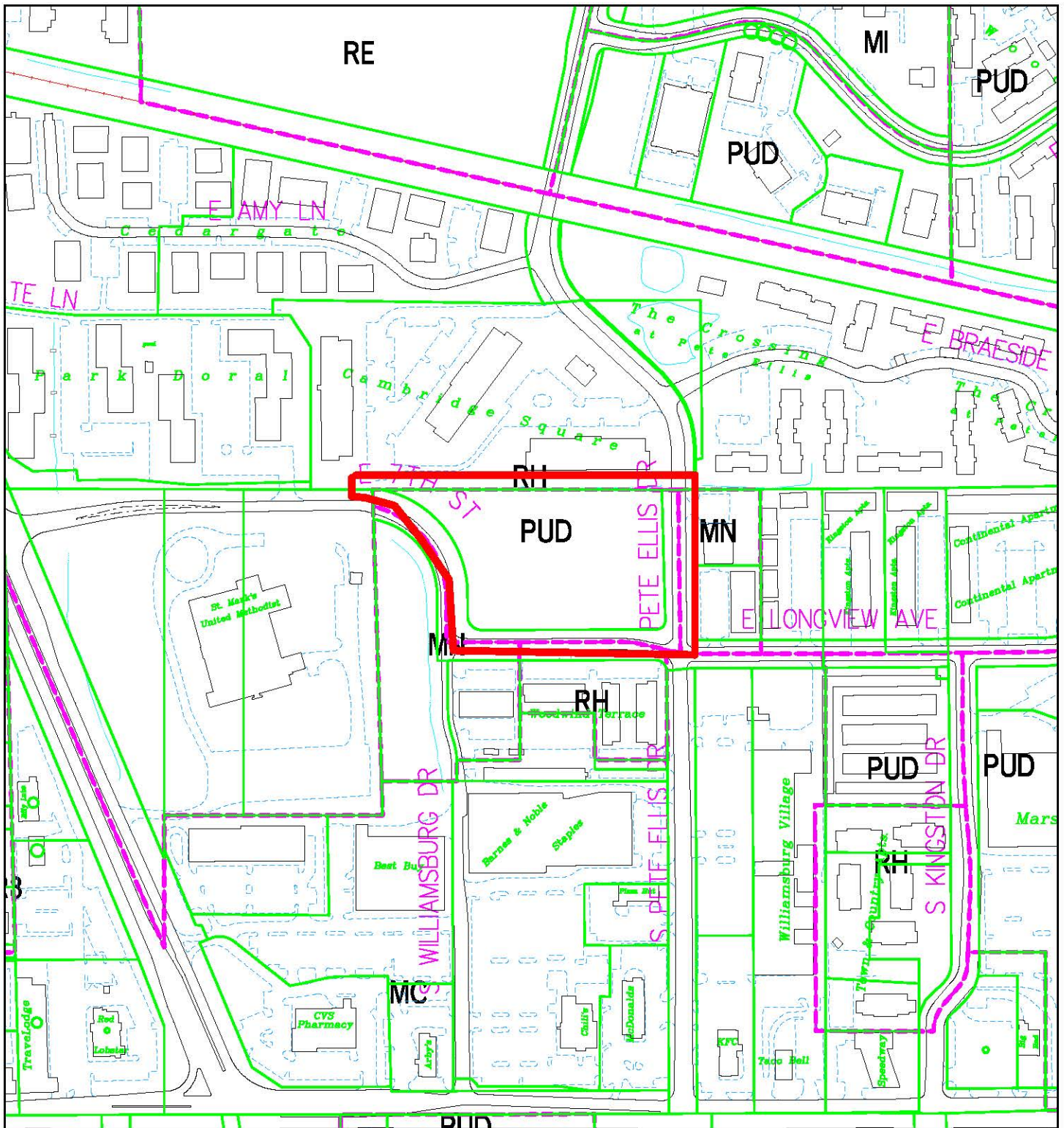
CONCLUSION: The proposed PUD amendment allows for some larger units at the site, and removes the structured parking from public view and need for screening on both the north and south facades. The PUD still plans to provide supportive office space or commercial and workforce housing in an area that will soon contain a large workforce generator, the new hospital. The project includes multiple characteristics that support the goals of the Comprehensive Plan. The large size of the building is an issue that has been discussed, but the petitioner continues to mitigate those concerns by utilizing modulation on all sides, as well as setting the top floor of the building back at its tallest location. The Comprehensive Plan clearly encourages incorporating diverse housing types within the City and even with the proposed amendments, this PUD contributes to this goal and provides a clear public benefit.

RECOMMENDATION: The Planning and Transportation Department recommended that the Plan Commission waive the second hearing and forward this petition to the Common Council with a positive recommendation with the following conditions. Plan Commission forwards the petition to Common Council with a positive recommendation and the following conditions:

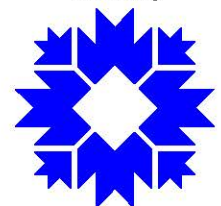
1. PUD Final Plan approval is delegated to the Planning and Transportation Department staff.
2. Prior to the issuance of a grading permit, all items in the right-of-way shall receive an encroachment agreement from the Board of Public Works.
3. The petitioner will record the proposed workforce housing zoning commitment before any occupancy is issued for the site.
4. All public improvements, including but not limited to bike racks, sidewalks, and side paths must be located in either right-of-way or a recorded pedestrian easement. Board of Public Works approval for those items in the right-of-way must be obtained before any occupancy permits will be issued.
5. A Zoning Commitment indicating that these public improvements, as well as the rain gardens, will be maintained by the property owner in perpetuity must be recorded before

any occupancy will be issued.

6. ~~The petitioner will submit a traffic study for review with the application for Final Plan approval.~~The petitioner will submit a traffic study for review with the application for Final Plan approval. If the traffic study indicates that improvements are warranted, such improvements will be installed before final occupancy is issued and is the financial, design, and installation responsibility of the petitioner or future owner, unless otherwise determined with the City of Bloomington.
7. The petitioner shall describe the LEED-compliant practices planned, as well as provide plans for the green or live wall elements being planned along with a maintenance plan for their future viability with the application for Final Plan approval.
8. The property owner shall assure that no sound amplification device used in the amphitheater or in conjunction with any potential community viewing screen within the project produces sound in violation of BMC 14.09 (Noise Control).
9. The property owner shall assure that no light emanating from the amphitheater or from the potential community viewing screen adversely affects neighboring properties and shall adhere to the Outdoor Lighting standards set forth in the current UDO 20.04.090, approved by the City of Bloomington Plan Commission in January 2020.
10. The developer shall record a written zoning commitment to install an art facade feature or green wall feature along the wall on the Longview Ave. façade that is immediately west of the vehicular entrance.
11. The developer shall record a written zoning commitment to install a Cool or Vegetated Roof covering at least 70 percent of the area over the parking structure, as specified in the Unified Development Ordinance (UDO) Section 20.04.110(d)(2)(A)(iv) (Sustainable Development – Cool or Vegetated Roof). However, if the installation of rooftop solar photovoltaic panels occupies a large enough space to require a reduction in the percent of roof dedicated to a cool or vegetated surface, this reduction will be permitted.
12. The developer shall record a written zoning commitment to offer on-site parking only a la carte, and not include parking spaces in rent.
13. The developer shall record a written zoning commitment to:
 - (a) Installing solar photovoltaic panels with a minimum power capacity of 15 kilowatts;
 - (b) Installing at least ten electric vehicle charging stations in an area of priority parking and designing a parking garage with features, such as conduit throughout the facility, that allow for the garage to be retrofitted for more charging stations, if demand for the stations grows; and
 - (c) Having P&T staff review and approve the design elements at Final Plan stage and installation prior to issuance of Occupancy Permit.
14. The rooftop mechanicals shall be subject to BMC 20.04.080 (m) - Screening - of the UDO approved by the Bloomington Plan Commission in January 2020, such they will not be visible from the ground-level.

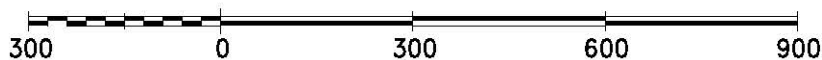


City of Bloomington
Planning

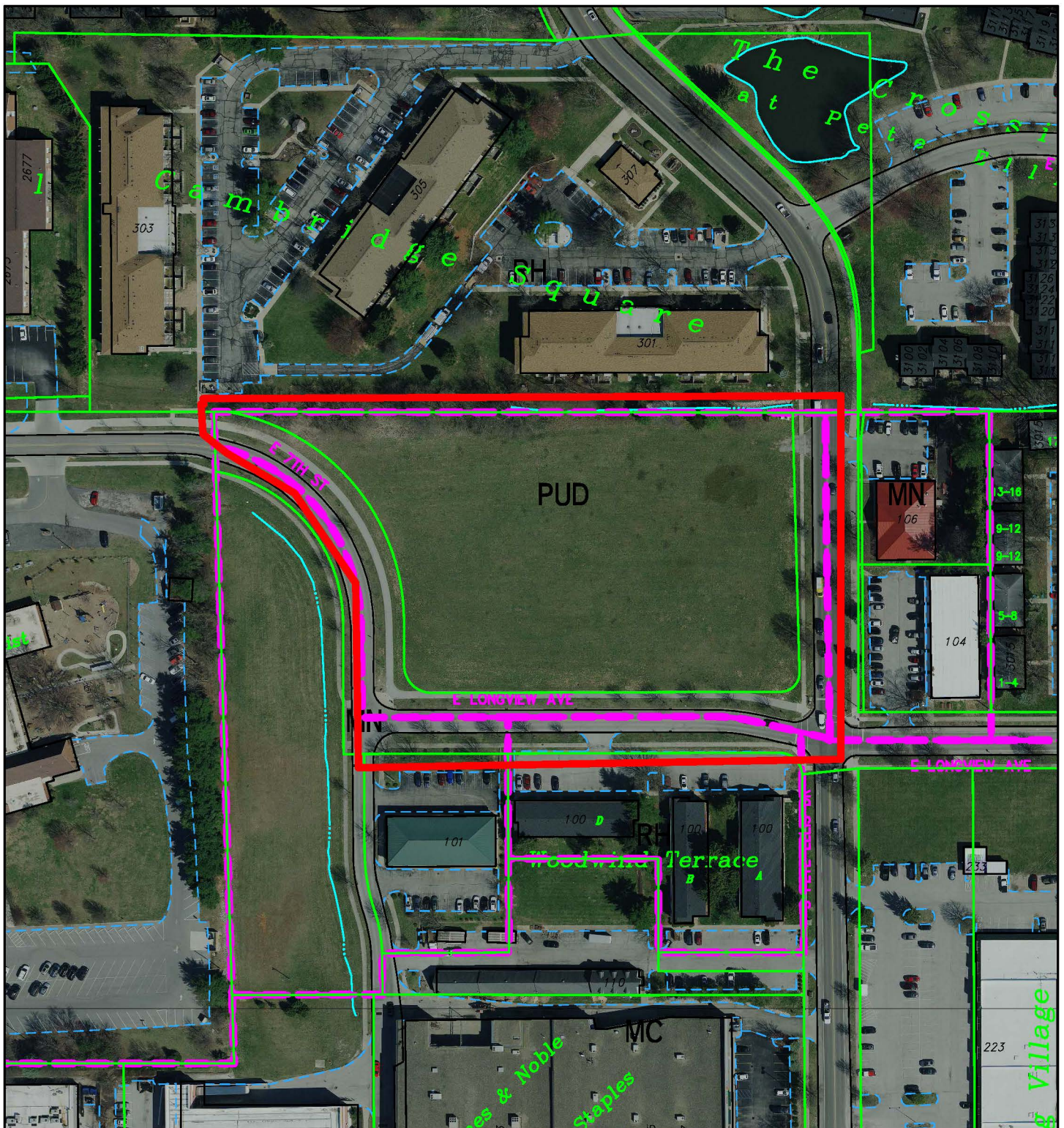


Scale: 1" = 300'

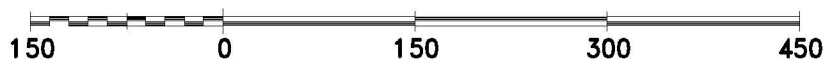
By: scanlanj
3 May 21



For reference only; map information NOT warranted.

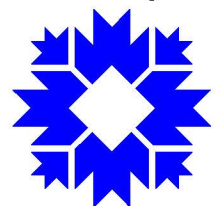


By: scanlanj
3 May 21



For reference only; map information NOT warranted.

City of Bloomington
Planning



Scale: 1" = 150'



City of Bloomington
Bloomington Environmental Commission

MEMORANDUM

Date: June 14, 2021
To: Bloomington Plan Commission
From: Bloomington Environmental Commission
Subject: PUD-16-21: Curry Urban Properties
105 S. Pete Ellis Drive

The purpose of this memo is to convey the environmental concerns and subsequent recommendations for conditions of approval for this development petition. The Environmental Commission's (EC) objective is that the results of our review and suggestions will lead to enhancement of the ecosystem services provided, and the climate-change mitigation attributes of the site. The request is for the Plan Commission to approve the proposal.

Comments

1.) FITWELL BUILDING RATING

The Petitioner committed to build the facility to the Fitwell building standards. Unlike several other building-ratings we are somewhat familiar with, the Fitwell rating concentrates on occupant health. It was developed by the U.S. Center for Disease and Prevention and the General Services Administration.

Although the EC still recommends green building practices for this and all development, we are pleased about the indoor air quality associated with the Fitwell program. The EC recommends that the design and construction attain a three-star (out of three) designation.

Recommended Conditions of Approval

1.) Commit to attaining a Fitwell Three-Star building rating.



- | | |
|--------------------------|--------------------------------|
| <input type="checkbox"/> | PLAN COMMISSION |
| <input type="checkbox"/> | PLAT COMMITTEE |
| <input type="checkbox"/> | BOARD OF ZONING APPEALS |
| <input type="checkbox"/> | HEARING OFFICER |
| <input type="checkbox"/> | COMMON COUNCIL |
| <input type="checkbox"/> | STAFF LEVEL |

CASE# _____
FILING DATE May 10, 2021
FILING FEE \$ 660.00
HEARING DATE(s) June 14, 20__
June 14, 20__
HT ACCT# 150022
PLANNER: _____

ADDRESS OF PROPERTY 105 S Pete Ellis Drive

Applicant's Name Curry Urban Properties

Phone 8123393182

Address 1111W 17th Street Bloomington, IN 47407

Email tyler@jericometals.comOwner's Name Same

Phone

Address

Email

Counsel or Consultant Bynum Fanyo and Assoc. Inc.

Phone 812 332 8030

Address 528 N. Walnut Street, Bloomington, IN 47404

Email jfanyo@bynumfanyo.com

STAFF USE ONLY – TO BE COMPLETED BY STAFF

Plan Commission/Plat Committee

- ☐ Change of Zone
 - ☐ Site Plan Review
 - ☐ Planned Unit Development (Preliminary Plan)
 - ☐ Planned Unit Development (Final Plan)
 - ☐ Preliminary Plat Review
 - ☐ Final Plat Review

BZA/Hearing Officer

- ☐ Appeal from Administrative Decision
- ☐ Conditional Use
- ☐ Variance
- ☐ Use Variance
- Common Council
- ☐ Right-of-Way Vacation

Description of Request:

This application must be accompanied by all required submittals and plan elements, as indicated for the requested approval. Submittal of plans for review by City of Bloomington Utilities is required at or prior to time of application. Present CBU verification of receipt of plans at time of filing. Applicants are required to meet with a planner to review their request prior to filing an application. No applications will be accepted without prior Staff consultation. Staff reserves the right to schedule hearing dates for petitions subject to complete submittals and previously filed cases. Notices to adjacent property owners should not be mailed until hearing dates have been confirmed.

I (we) agree that the applicant will notify all adjacent property owners at the applicant's expense.

I (we) further agree that the Planning and Transportation Department 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 subject to this application and authorize Staff to inspect the site as needed.

If applicant is other than recorded owner, an affidavit designating authority to act on owner's behalf, must accompany this application.

Applicant Signature: Jeffrey S. Fanzo Date: 5-10-21 Staff Initial: _____

401 N. Morton Street · Bloomington, IN 47404

City Hall

Phone: (812) 349-3423 · Fax: (812) 349-3520

PETITIONER'S STATEMENT – 06.04.2021

Petition:

Amend certain Development Standards pertaining to Ordinance 20-01 that rezoned real estate identified as Lot Number 8, located in Deckard East Third Street Subdivision, Monroe County, Indiana consisting of 3.2 acres from CL to Planned Unit Development (PUD) passed on February 07, 2020.

Petitioner is also requesting waiver of the second Plan Commission hearing.
Petitioner is also requesting Final PUD approval to be at the staff level.

Proposed Amendments:

Petitioner provided an updated Preliminary Plan (based on further developed design documents) prior to submitting for PUD Final Plan Approval to the Planning and Transportation Department ("Planning"). After reviewing with Petitioner, Planning determined two components of the proposed plan require an amendment to the PUD.

Petitioner is seeking to amend the approved PUD and Preliminary Plan to provide for the following:

- 1) **Proposed Change:** Shifting the garage and using residential units to meet the requirements under Reasonable Condition #03 to mask the garage.

Planning: City Council's counsel believes proposed masking eliminates the need for Reasonable Condition #03 and therefore requires an amendment.

Reasonable Condition #03:

The developer shall record a written commitment to install an art facade feature or green screening that masks the parking garage infrastructure along Longview Ave. as well as along the north side of the garage.

Synopsis: This Reasonable Condition is sponsored by Cm. Rosenbarger. It is intended to improve the visual appeal of the exterior of the parking garage by requiring an artistic or green screening.

Petitioner's Response: Petitioner is proposing to shift the parking structure to allow for single (enlarged) courtyard and wrap the garage completely with residential units in lieu of "artistic or green screening" as described in Reasonable Condition #03. Petitioner proposes that the intent of the reasonable condition to "improve the visual appeal of the exterior of the parking garage" is met by completely wrapping the garage with the architectural façade (effectively eliminating the garage from view). Further, this will provide for a courtyard space that will allow for plantings to grow, an improved resident amenity, and better function of and between the commercial space, residential leasing office, and garage.

- 2) **Proposed Change:** Allow for 3-bedroom units, through conversion of a portion of approved 2-bedroom units.

Planning: Petitioner's Statement did not include 3-bedrooms in Preliminary Plan.

Petitioner Response: Petitioner is proposing to allow for the inclusion of 3-bedroom units. Petitioner's proposed unit mix is consistent with the original concept and intent of the Preliminary Plan and PUD. The proposed mix consists of 233 units and 341 beds, and remains below 30 DUE/acre and the 264 units and 344 beds in the approved Preliminary Plan. The target market as described in the original Petitioner's Statement, remains the same while the proposed programming will provide a greater variety of living options consistent with conventional market rate apartments vs student housing, furthering the goals of the Comprehensive Plan to provide a variety of quality housing options for all incomes, ages, and abilities.

The proposed mix provides for approximately 15% of total units to be 3-bedrooms which is well under the percentage of total units that the newly adopted UDO qualifies as student housing (33%). The Development Standards as it relates to unit mix as approved and as proposed are as follows:

Approved PUD Development Standards:

- Studios, 1-Bedroom, and 2-Bedroom Units
- Max: 30 DUE/Acre

Proposed Development Standards:

- Studios, 1-Bedroom, 2-Bedroom, and 3-Bedroom Units
- Max: 30 DUE/Acre

Petitioner will meet the requirements of the other Reasonable Conditions.

RC 01-02: No sound amplification or light emanating from amphitheater

RC 04: Petitioner proposes to meet intent via 20.01.110(d)(2)(A)(iii) SRI requirements on top of parking deck

RC 05: Developer shall record a written commitment to offer on-site parking only a la carte, and not include parking spaces in rent

RC 06: install solar photovoltaic panels with minimum power capacity of 15 kilowatts and at least ten electric vehicle charging stations.

RC 08: The rooftop mechanicals shall be subject to BMC 20.04.080 (m) - Screening - of the UDO adopted in January 2020, such they will not be visible from the ground-level.

Project Description:

Petitioner petitions ~~for rezoning of the property from Commercial Limited to a mixed-use, Planned Unit Development to amend certain Development Standards and Preliminary Plan as approved in Ordinance 20-01~~. The property currently is unimproved. Various utility lines border and bisect the property. The property is surrounded to the North by multi-family housing under RH zone. East of the property fronting on North Pete Ellis Drive are commercial properties, developed commercial lots under ~~CL-MN~~ zoning under the new district ordinance. East of these lots fronting on North Pete Ellis Drive are additional multi-family housing under RH zoning. Southeast of the property is zoned ~~CAMC~~. South of the

property and fronting on Longview Avenue are multi-family housing under RH zoning. At the southwest corner of the property south of Longview Avenue is a small commercial development under ~~CL-MN~~ zoning. West of the property fronting on East Seventh Street is a vacant, unimproved parcel, under MN zoning.

Petitioner proposes to develop a mixed-use development consisting of multi-family residential use on a building outlining the west one-half of the property; 1st floor commercial use on the building outlining the east ½ of the property and a ~~34~~-floor interior parking garage in the middle of the property ~~with top floor (4th floor) wrapped with 3-4 floors of~~ residential units. The buildings will be connected and constructed as a single building but with breaks and variations by design, by structural elements ~~(e.g., the garage)~~ and by façade features. The proposed building is projected at four floors. The center of the property ~~on the east and west sides of the garage~~ will be developed with courtyard/open space.

In an effort to provide a public benefit to the City of Bloomington, Petitioner has ~~offered~~ agreed to offer 15% of its unit bedrooms to be set aside for workforce housing. Two-thirds of these workforce housing units will be restricted to income earners whose annual income does not exceed ~~80~~100% of the Area Median Income (AMI) while the remaining one-third of the workforce housing units will be restricted to those income earners making no more than ~~100~~120% of AMI. Base rental rates will be limited to 25% of those income earners total annual income. ~~Petitioner has described this offering in further detail in the accompanying letter to Housing and Neighborhood Development~~A copy of the Zoning Commitment is attached to this submission.

The Plan Commission recommended approval of the previous petition and Preliminary Plan. Petitioner's proposed amendments do not reduce the degree to which the goals of the PUD District Ordinance and Comprehensive Plan are met, keeping in place all of the previously described benefits. Rather, it enhances the project and better achieve the purpose and intent of the PUD District Ordinance and Comprehensive Plan.

The subject property is located in the Regional Activity Center and Regional Academic Health Center Focus Area in the Comprehensive Plan. One of the strategies the City aims to employ in this focus area is Livability and Lifetime Communities – which are places that “promote social, physical, mental, and emotional well-being for persons of all abilities, across the entire lifespan.” Providing 3-bedrooms in addition to the approved Studio's, 1-bedroom and 2-bedroom units better accomplishes this goal than the previously proposed unit mix. With limited options outside of single oriented living units, the previous mix would not cater to all persons as described in the Focus Area strategy, limiting the household size and stage of life the residents. Proposed mix provides additional options and caters to a greater variety of individuals across life stages and economic spectrum, providing workforce housing, small-unit market rate, and families or roommate offerings via 2- and 3-bedroom units.

Further, the addition of 3-bedroom units is necessary to provide for the project design. It regains some of the lost efficiency in single loaded corridors needed to fully wrap the garage,

and improves the economic feasibility, with the drastically increasing construction costs, and exclusion of which otherwise impedes the viability of the project.

AMENDMENT PETITION MODIFICATIONS

Modifications to the approved Petitioner's Statement are shown as redlines to the approved Petitioner's Statement, and primarily limited to updates as it relates to the above two changes or for current conditions. Certain modifications stem from current conditions eliminating the applicability of previous commitments (Ex. Omission of Bike Share Program).

RESUBMITTAL MODIFICATIONS (FROM 8.20.19 PETITION)

Since the initial Planning Commission hearings, the Petitioner has had follow up meetings with members of The Planning Administration, Bloomington Economic and Sustainable Development, Housing and Neighborhood Development, Planning and Transportation, and the Environmental Commission and has worked to address comments and concerns stemming from the prior submissions and those expressed by the Planning Commission during the hearings. The comments/concerns and responses from the Petitioner are outlined below:

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

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

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

- Overall Building Massing seen as a concern (EC, Scanlan, Kinzie)

- Planning Administration feels that the height of the proposed building at the southwest corner (7th and Longview) should be reduced

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

However, the Petitioner initially reduced the building mass by shrinking the building and eliminating 12 units (and 12 beds). As noted, the northern set back was moved inward from the initial petition, basically doubling the set back. This also helped to increase open space on the property. In numerous places along each elevation of the building, the 4th floor units are stepped back 5 feet. This is done to provide some relief from the proposed, four- story height. Petitioner has worked with its architect to further reduce several parapet heights to lower the overall height in numerous areas, from 1’ to 4’. Regarding the building height at the southwest corner, (previously 61’ as measured from adjacent grade to roof parapet, including the exposed “lower-level” of the building), the top corner unit (4th floor) was eliminated in its entirety, creating a “step back” of 25 feet or more which results in the building now “reading” as a +/- 50’ building at this corner, including the “lower-level.” Overall, while the building height exceeds the 40-foot restriction of CL zoning, it does retain a varied, articulated roofline for functional and aesthetic reasons and works though the challenges of the significant grade changes (over 20 feet) from the northwest to the southwest corner of the parcel.

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

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

- Environmental concerns as to the project being below the open space requirement;

impervious surfaces (EC, Sandberg, Cate, Kinzie, Kappas). EC has requested the Petitioner redesign the building.

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

Petitioner has further reduced the paved surfaces and covered area and/or has worked with the landscape architect to program permeable materials for pathways. It should be noted that the eastern property boundary includes a 20-foot easement for utilities. Coupled with the utilities that run throughout the 15-foot Right-of-Way along Pete Ellis Drive, the Engineer and Landscape architect have not programmed trees (large, evergreen or medium) along the frontage as trees cannot be planted within 10 feet of the easement. Petitioner will work through its landscape architect (~~Rundell Ernstberger Associates~~) and the city of Bloomington to address this along with the overall landscape plans.

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

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

Moreover, Petitioner is excited to bring Bloomington its first FITWEL Building. FITWEL Certification articulates a vision for the future where every building is enhanced to support the well-being of its occupants, and surrounding communities. It is a new and emergent building certification that positively impacts occupant health and productivity through

workplace design and operations. FITWEL's development is led by the U.S. Centers for Disease Control and Prevention and the General Services Administration. This demonstrates how the focus for sustainable buildings have shifted in the U.S. from green buildings that were "high performance" because they had a low carbon footprint to, now, occupant well-being and the resultant increased productivity which has been studied, and proven. The well-being of building occupants is increasingly being described as the number one driver of sustainability. The Petitioner has volunteered to deliver the City of Bloomington its inaugural FITWEL Building.

Bicycle Traffic, Safety and Connectivity / Traffic along Pete Ellis Drive. Several members of the Planning Commission responded to the parking along Pete Ellis as well as wanting to make certain the bicycle and pedestrian paths remain safe amid the ingress/egress to the proposed building (Kopper, Kinzie, Wisler, Hoffman).

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

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

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

DEVELOPMENT STANDARDS SUMMARY / OUTLINE PLAN DETAILS:

Commercial space:

Estimated ~~at 2012,000~~ rentable square feet; ~~no less than 12,000 square feet would be~~ is programmed for the development, approximately 14,000 including back of house space.

Multi-family residential:

Studios, 1-bedroom, ~~and 2-bedroom mix,~~ and 3-bedroom mix. D.U.E not to exceed 30 per acre

Parking:

~~306~~ Approximately 254 garage spaces; ~~15-14~~ potential on-street parking spaces (angled parking along Pete Ellis ~~76-58~~ garage spaces to serve commercial use

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

Architectural Standards:

CL Zone

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

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

Site plan details:

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

North side: 14 feet at NE Corner, 15 feet or more elsewhere (modified from 7') East side: 24 feet (modified from 20'), except for stairs that are 10 feet from property line.

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

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

Garage entrance:

Longview Ave.

Uses:

CL zone permitted uses

Modification: add first floor multifamily residential use

No Maximum floor space for a single tenant

Basic PUD development:

1. Dedicated commercial space, expected to be 4912,000 square feet on the east side, fronting on S. Pete Ellis Drive. ~~This space will be flexible in total area~~

This space is anticipated to be medical office space and will be marketed as such.
Secondary marketing efforts will include general commercial use as permitted in CL Zoning based on current market conditions.

2. Multi-Family residential use (mix of studio, one-bedroom ~~and two-bedroom, and three-bedroom~~ apartments); generally, the units are oriented to those seeking a more personal, single-living environment, with the addition of 2- and 3-bedroom units providing a greater variety of living options and providing for a larger range of individuals.

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

3. Building height to be 4 floors. Throughout the building, numerous portions of the building's 4th floor are set back from the lower floors. Along the eastern portion of the building, the length of the building along Pete Ellis Drive steps back 5 feet at the 2nd floor and another 5 feet at numerous areas along the 4th floor. There remains a partial lower level ~~at the southwest corner of the building and across~~ at the Leasing Office entrance along Longview Drive, ~~east and up to the~~ at the Parking Garage entrance.

4. Residential buildings will allow first floor residential use (CL Zone requires 2nd floor and above residential use) with commercial along Pete Ellis Drive

5. Open space (to be calculated) estimated at 33% of the lot. This open space is below the current CL zoning standards, the site shape, topography, the city's build-forward design preference and the economic feasibility of the project necessitate this open space design; however, Petitioner is proposing to: a.) exceed landscaping and plantings requirements, b.) include plantings vertically ~~with green elements in the garage screening~~, c.) exceed rain water quality issues with multi-function water harvesting, flow through planters and rain gardens, d.) include numerous sustainable practices including community gardens as well as delivering the first FITWEL Building in Bloomington, and e.) bring numerous public benefit to the project including re-locating and improving current sidewalk paths, as necessary, at Pete Ellis, Longview and 7th street (all three sides) with multi-use paths

6. Parking – The building will include a four-story structure that is central to the building design. ~~This portion of the building will also serve the project with mixed uses, housing three stories of parking garage with a 4th floor residential component.~~ Parking garage will be interior to the development with the commercial and residential use building(s) wrapping around the parking structure and interior courtyard ~~with parking lot/parking garage interior to the courtyard.~~ Parking garage to be shielded from view on North and South sides of building via residential components. ~~extend to the development line along the north property line~~

7. Exterior finish materials: multiple types of masonry; steel; glass and composite

Development Standards:

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

Building Height:

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

- North side: ranges from 48 to 53' in center of building to 54'-2" (NE corner) and 52' (NW corner)
- East side: ranges from 51' to 54' in center of building to 53' 10" (SE corner) and 54'-2" (NE corner) NE Stair tower adjacent to garage reaches 59' 4" but sets back from the East façade by 33'.
- South side: ranges from 52' to 58'-6" in center of building to 53' 10" (SE corner) and approximately 45'-8" at outside SW corner
- West side: ranges from 49' to 55'-10" in center of building to 52' (NW corner) and approximately 53' at outside SW corner

- a. Architectural roof top or roof line elements to provide both form and function at no more than one point at the peak of any section of building that exceeds 60 feet in height (as measured from adjacent, proposed finished grade at that point of the building).
- b. The site has significant topography slope, particularly along the western border of the parcel. Approximately 20 feet of grade change occurs from the point of the parcel that is furthest to the northwest as compared to the point furthest to the southwest of the parcel. It is anticipated that the building plane at the first-floor level will be set at an elevation which causes the southwest corner of the building (at 7th Street and Longview) to be elevated + 8 feet above the parcel's grade at this location. Thus, the Petitioner has planned functional space ~~within this "sub-level" of the building that will include 6 "garden" units which address the~~along Longview street frontage ~~and will be accessible internally as well as via the described including the described~~ "pocket park." This adds a "story" to the building at the southwest elevation of the development, albeit below the average grade along 7th Street.
- c. Petitioner has worked extensively with Architect and Civil Engineer to reduce heights around building, and modulate the fourth floor with 5-foot step backs in numerous portions of the building while maintaining dynamic roof lines around the building.
- e.d. Petitioner has worked extensively with Architect and Civil Engineer to further develop the building plans that have resulted in height changes to the approved PUD. These are a result of greater and better site data, and actual information from Structural Engineer on roof truss depths – the changes include reductions in some areas, and increases of no more than 2-2" only at the parapets.

Unit Mix and DUE:

1. The building will include a mix of Studio, One- ~~and Two- and Three-~~ Bedroom Units. Projected D.U.E is 29.5 per acre. Actual development not to exceed 30 per acre. The site is 3.2 acres.
2. The project will house ~~264-approximately 233~~ units. As roughly ~~3017%~~ of those units are expected to be Two-~~bedroom units, and 15% are expected to be Three-~~ bedroom units, the total bedroom count would calculate to ~~344-341~~ bedrooms, ~~although-†~~The project is not a student housing community and will not exceed 33% of living units as 3-bedroom as described in the newly adopted UDO.

Parking:

1. Up to 15 angled parking spaces will be improved along the western-most lane of Pete Ellis Drive, to serve the commercial spaces at that location. Currently there are 14 shown.
2. The internal parking garage is expected to have approximately no more than 102 spaces per floor and no more than a total of 254 306 spaces.
3. A portion of the first floor of the parking garage will serve the commercial spaces (Pete Ellis Drive portion of the building) and meet municipal parking code and count requirements as well as the number of spaces required by the ultimate user/tenant.
4. Assuming 4 spaces per 1,000 square feet (assumed user requirement), and a ~~129,000~~ square foot user, the commercial spaces will require ~~76-a minimum of 48~~ of the total ~~324 254 total~~ spaces (~~145~~ angled, street spaces and ~~306-garage spaces~~). The leasing office is approximately 2,000 sf so an additional 4 stalls will be added for this use. Keeping the same maximum parking ratios, †this would leave 245-202 spaces for 264-233 units (or 344-341 beds). Excluding the street parking, this parking ratio is 229 210 spaces in the garage for residents or 0.8787:1 per unit or 0.5967:1 per bedroom.
- 4.5. It is anticipated that +/- 1% of these stalls will be lost as design is further developed.

Bicycle parking:

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

Housing:

Oriented to single-living environment around the IU Health Medical Center, University, Service Industry, Young professional, medical/grad students, nursing students, researchers, interns, staff and employees of professional offices and staff and employees at the IU Health complex consisting of approximately 68% of studios or 1-bedroom units. The development will also provide 2-bedroom (approx. 17%) and 3-bedroom units

(approx. 15%) for the balance of units to provide a greater variety of living options consistent with conventional market rate apartments. Actual percent of each unit type may vary in Final Plan.

Green Building Elements Planned:

- Petitioner will be delivering Bloomington's first FITWEL building, a new and emergent building certification that positively impacts occupant health and productivity through workplace design and operations as led by the U.S. Centers for Disease Control and Prevention and the General Services Administration.
- Energy Star appliances / Energy efficient building materials / LEED compliant
- ~~Downspout Cisterns for~~ Various measures of on-site rain water harvesting to be used for watering landscaping and other exterior uses
- Downspout flow through planters and rain gardens along perimeter and interior courtyards
- ~~green or live wall elements incorporated into building / garage screening~~
- Petitioner proposes to meet intent of Reasonable Condition #04 by meeting SRI requirements under 20.04.110(d)(2)(A)(iii) which is more applicable to a parking structure vs roof (Aged SRI rating of 32). Reasonable Condition #04: install a Cool or Vegetated Roof covering at least 70 percent of the parking structure, as specified in the Unified Development Ordinance (UDO) Section 20.04.110(d)(2)(A)(iv) (Sustainable Development – Cool or Vegetated Roof).
Although top level of garage is exposed, Petitioner proposes to meet aged SRI rating of 32 via coating or materials.
- Comprehensively, the property will exceed landscape and planting requirements per the current zoning
- Storm water control and quality - series of cisterns, flow-through planters and storm planters (in sidewalk) and rain gardens are proposed along Pete Ellis drive
- Electric car charging stations within parking garage
- Sustainability – community vegetable and herb gardens
- Multi-modal transportation
- Reasonable Condition #06: Installation of solar photovoltaic panels with minimum power capacity of 15 kilowatts for at least ten electric vehicle charging station and retrofitted for more charging stations if demand grows

Public Benefits:

- Workforce housing to comprise 15% of unit bedroom count – Petitioner has ~~proposed agreed to~~ workforce housing commitments in a separate letter to with HAND. The commitment to which is attached and included with this resubmittal which Petitioner has not modified.
- Multi-modal transportation – proposed project is pedestrian to Bloomington's largest work centers (IU Health upon completion, College Mall, Indiana University)

- Several bus-line stops in proximity to the subject location
 - Petitioner promoting the use of bicycles and non-vehicular transportation through widening of paths around perimeter to multi-use paths, placement of bicycle parking, and public bicycle racks
- Public Art - exterior murals / interior art displayed for public viewing (not just residents); viewings to be programmed
 - ~~Petitioner proposes to commit to a 5 year program to rotate art periodically (6-month to 1-year rotation) for public display. Works to be commissioned with City of Bloomington~~
 - ~~Petitioner proposes to conduct receptions and “gallery” style viewings, free to public (donations will be accepted for local not for profit, art related groups)~~
 - ~~Petitioner proposes to include exterior public art in one of the blank spaces along the Longview façade. Art to be coordinated with Bloomington.~~
 - Petitioner proposes to furnish the interior Leasing Office, that is most accessible by the public as it is open during regular business hours, with public art pieces. This program will include the provisions in the Scholarship section below.
- Scholarship - public art to be commissioned with IU art department and will be offered to city art programs — Petitioner will provide area for works to be displayed within building (can be sold by artists) in return for annual scholarships or grants from Petitioner
- Sustainability:
 - ~~In addition to m~~Meeting FITWEL standards, ~~approximately 1/3 of the interior-~~
 - A portion of the courtyard space ~~within the western courtyard~~ will be improved with herb, flower and vegetable gardens - improvements will include gardening areas/plots for residents
 - Petitioner proposes to program monthly events or demonstrations using the planted foods and flowers; such as making floral arrangements; cooking with the harvested vegetables and herbs with local chefs, etc.
 - Gardens will be irrigated with harvested rainwater from the ~~eistern~~-system Petitioner is proposing
 - Reasonable Condition #06: Installation of solar photovoltaic panels with minimum power capacity of 15 kilowatts for at least ten electric vehicle charging station and retrofitted for more charging stations if demand grows
- “Jam Session” Room - public music room/studio will be included for use by area musicians, music scholars, etc. for "plug-in and play" sessions to create, share and explore musical interests of those within the community looking to "pick up" instruments and create with others
 - Amphitheater – directly adjacent to the Jam Session, an amphitheater is planned for live music or other performances, free to the public
 -
- ~~Bike Depot~~ ~~Petitioner will work with City of Bloomington to include a public bike depot at the property~~
[This program is no longer in place]

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

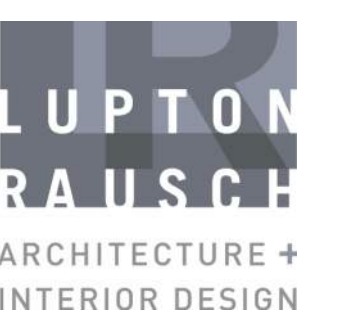
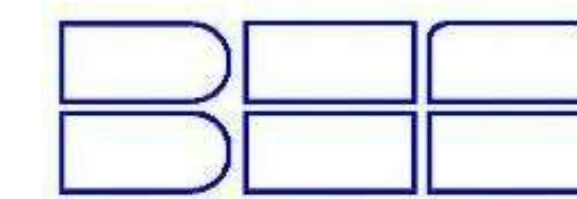


PETE ELLIS DRIVE
RENDERING

05/03/2021

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408

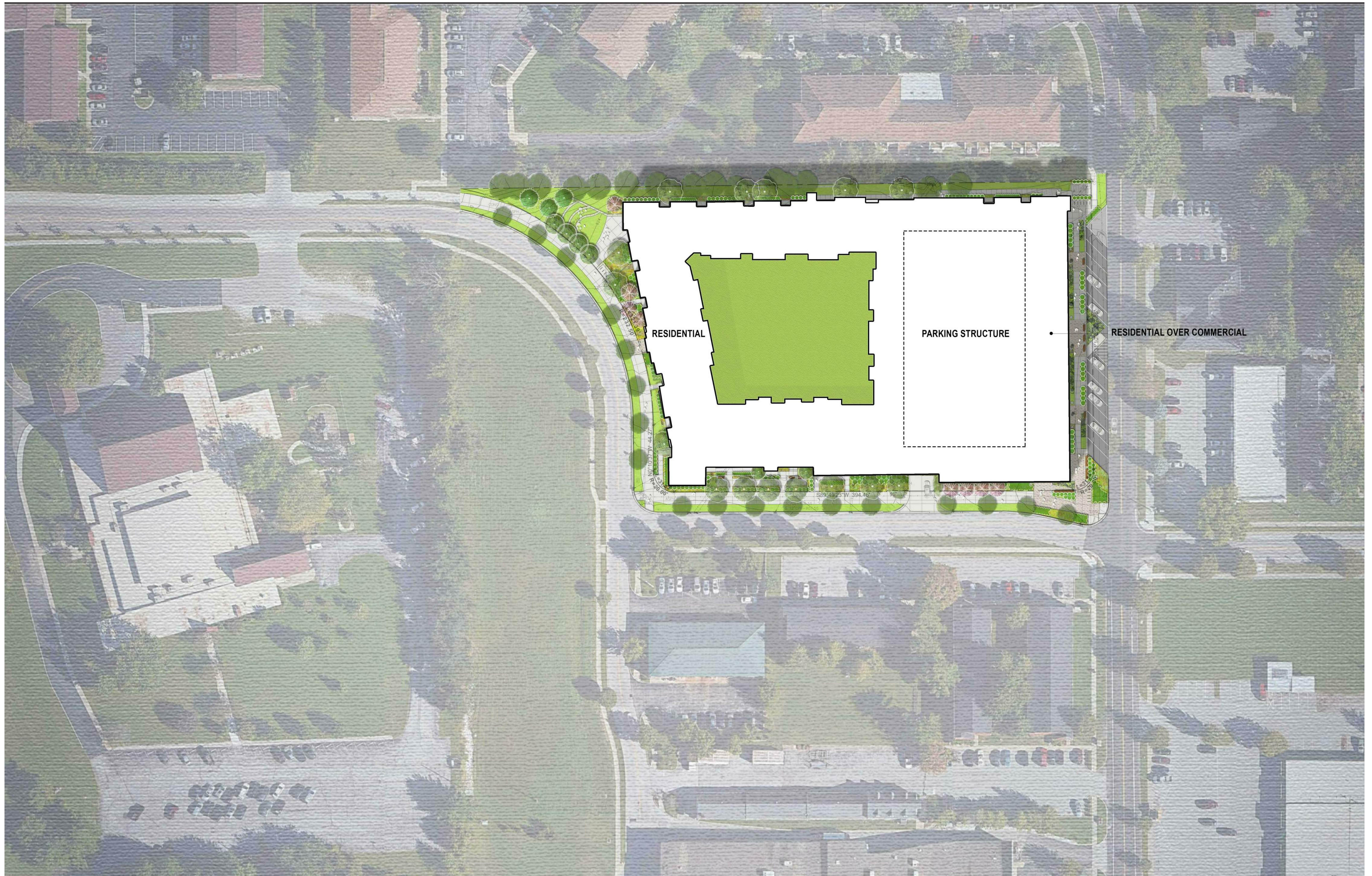




PETE ELLIS DRIVE
RENDERING
05/03/2021

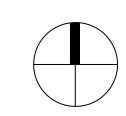
CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408



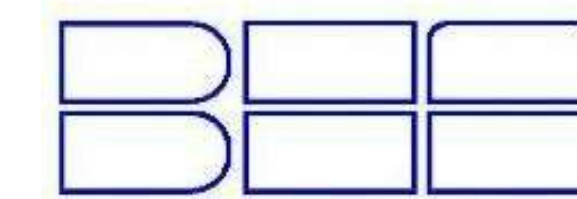
SITE AERIAL

05/03/2021

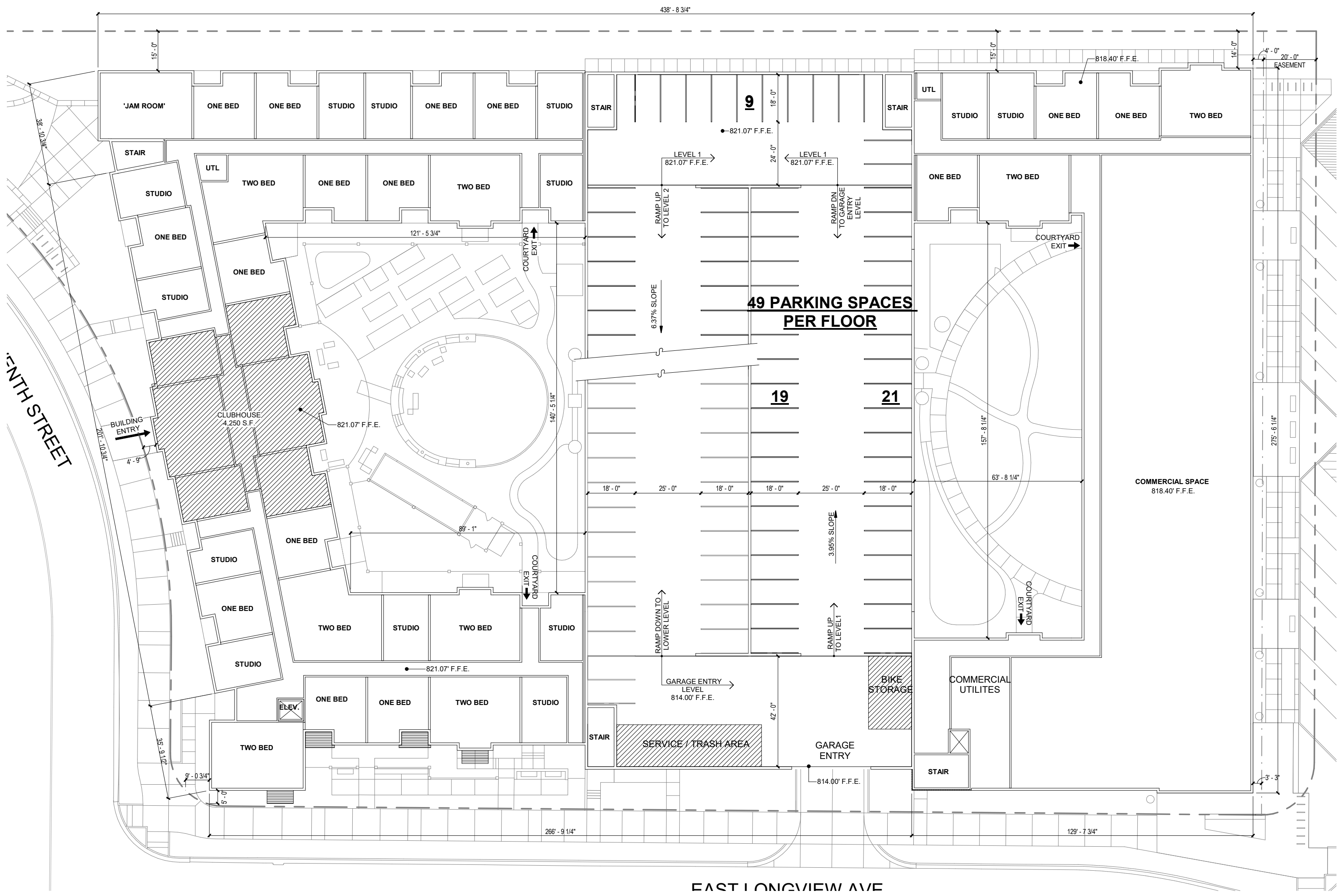


CURRY URBAN PROPERTIES

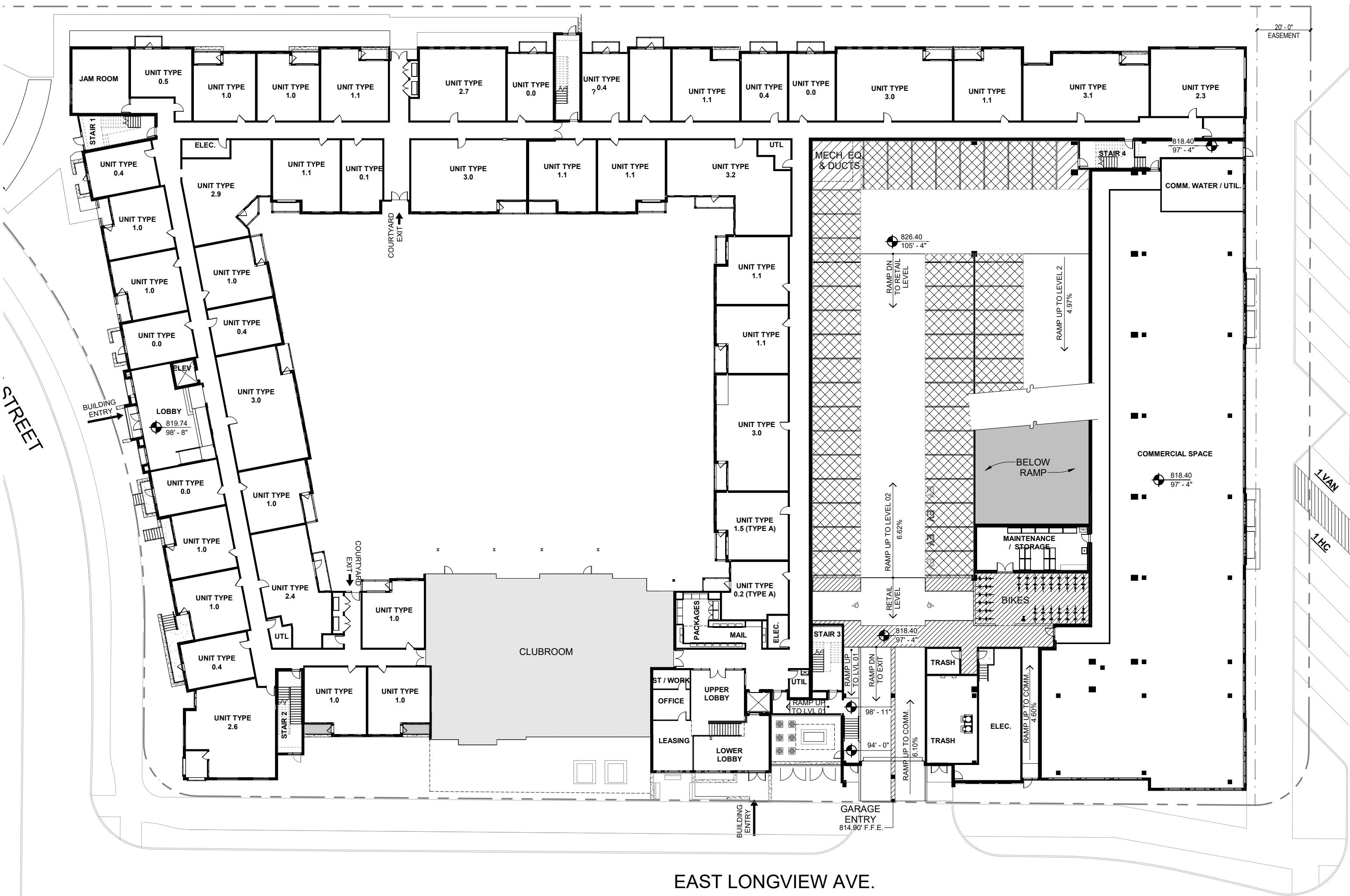
EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408



APPROVED PRELIMINARY PLAN

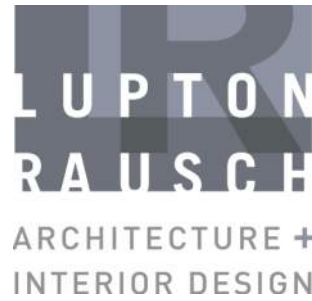
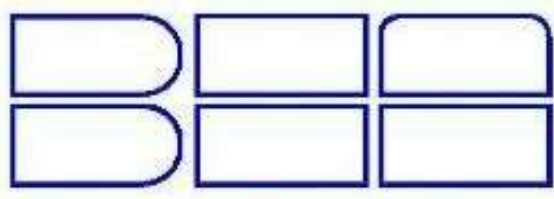


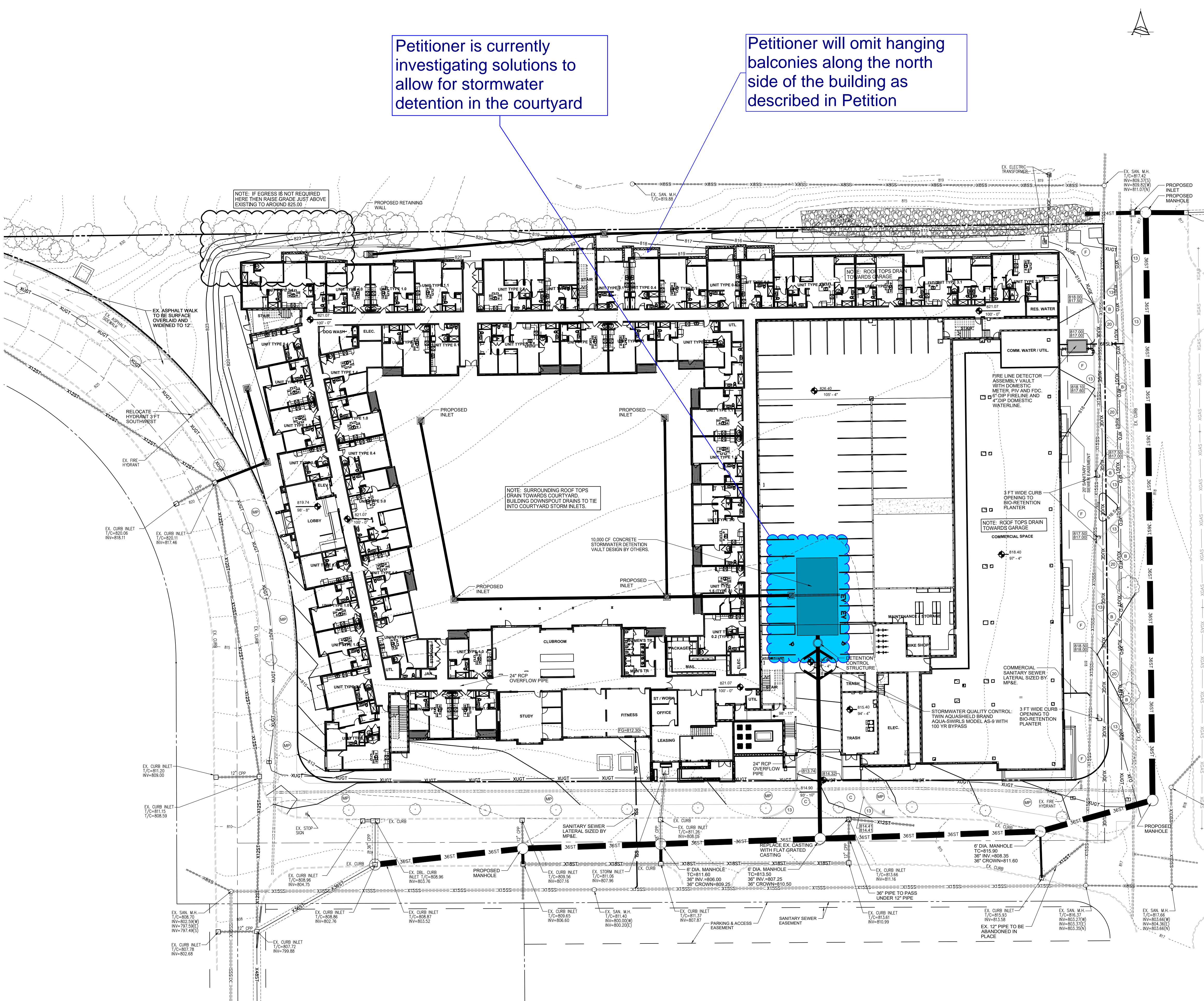
PROPOSED



CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408





GRADING LEGEND	
XXX	ELEVATION CONTOUR
FL>	FLOWLINE
XXXXXX	SPOT GRADE ELEVATION
XXXXXX	TOP OF CURB ELEVATION OVER PAVEMENT ELEVATION
FF=XXXXXX	FINISH FLOOR ELEVATION
FG=XXXXXX	FINISH EARTH GRADE ELEVATION
FGH=XXXXXX	FINISH GRADE ELEVATION ON HIGH SIDE OF RETAINING WALL
FGL=XXXXXX	FINISH GRADE ELEVATION ON LOW SIDE OF RETAINING WALL
FW=XXXXXX	FINISH TOP OF SIDEWALK ELEVATION
TC=XXXXXX	FINISH TOP OF CASTING AT FLOWLINE
TW=XXXXXX	FINISH TOP OF RETAINING WALL ELEV.

SITE LEGEND	
(A)	BRUNNUS PAVEMENT
(B)	BRUNNUS PARKING PAVEMENT WITHIN R.O.W.
(AB)	ADA ACCESSIBLE PARKING SPACE, 3' INTERNATIONAL ADA SYMBOL, STOPPING, ANGLES, SIGNAGE AND SLOPES SHALL CONFORM WITH THE MOST STRINGENT OF FEDERAL, STATE AND LOCAL ACCESSIBLE GUIDELINES.
(AP)	ADA ACCESSIBLE PARKING SIGN
(C)	REINFORCED CONCRETE PAVEMENT
(CL)	CONSTRUCTION LIMITS
(CT)	CONCRETE CURB TURNOUT
(ED)	END CONCRETE CURB CONSTRUCTION
(E)	CONCRETE SIDEWALK
(M)	MONOLITHIC CONCRETE CURB AND SIDEWALK
(A)	4" GUARDRAIL - SEE ARCHITECTURAL PLANS
(H)	36" HANDRAIL - SEE ARCHITECTURAL PLANS
(L)	LAWN OR LANDSCAPED AREA
(M)	MATCH EXISTING CURB, SIDEWALK, PAVEMENT ELEVATIONS
(MP)	MULTI-PURPOSE SIDEWALK PAVEMENT SECTION
(P)	PERVIOUS BRICK PAVEMENT
(R)	PRESSURE TREATED WOOD SHADOWBOX PRIVACY FENCE, HEIGHT AS SHOWN ON SITE PLAN
(PL)	NEW PARKING LOT POLE LIGHT FIXTURE - SEE SITE LIGHTING NOTE THIS SHEET
(PS)	STANDARD ROAD PAVEMENT PATCH
(S)	3' WIDE CONCRETE PAVED SIDE DITCH
(S)	SIDEWALK ADA ACCESSIBLE RAMP, # FOR STYLES 1-3
(R)	REINFORCED CONCRETE RETAINING WALL - SEE ARCHITECTURAL PLANS
(N)	VAN ACCESSIBLE SUPPLEMENTAL SIGN
(U)	6-IN WIDE CONCRETE CURB
(U)	4-IN CONCRETE CURB, SAME AS 13 BUT 3-IN CURB HEIGHT
(U)	18-IN CONCRETE CURB & GUTTER
(U)	PERVIOUS PAVED CONCRETE CURB/CAP FLUSH W/ PAVEMENT
(U)	4-IN WIDE SOLID WHITE THERMOPLASTIC PAVEMENT MARKING
(U)	4-IN WIDE SOLID WHITE PAINTED PAVEMENT MARKING
(U)	4-IN WIDE SOLID BLUE PAINTED ADA PAVEMENT MARKING
(U)	NUMBER OF PARKING SPACES PER LOT

UTILITY LEGEND	
D.S.	DOWNSPOUT
4SD	4" SDP 35 PVC BUILDING/DOWNSPOUT DRAIN PIPE (PRIVATELY OWNED)
6SD	6" SDP 35 PVC BUILDING/DOWNSPOUT DRAIN PIPE (PRIVATELY OWNED)
FSL	6" POLYETHYLENE ENCASED DIP FIRE SERVICE LINE (PRIVATELY OWNED) TO BE SIZED BY THE FIRE SUPPRESSION ENGINEER
4UD	4" DUAL WALL TYPE "S" PERFORATED HOPE PIPE WRAPPED IN A FILTER SOCK
4W	4" POLYETHYLENE ENCASED DIP WATER LINE (PRIVATELY OWNED) TO FIRE DEPT. CONNECTION F.D.C.
2DLSL	2" SDP-9 250 PSI BLUE ULTRA CTS WATER PE PIPE DOMESTIC WATER SERVICE LINE
W	WATER LINE GATE VALVE
F.D.C.	FIRE DEPARTMENT "STORM" CONNECTION
P.I.V.	POST INDICATING VALVE
36ST	36" ADS BRAND SERIES N-12 HOPE STORM SEWER PIPE
SSL	8" SDP 35 PVC SANITARY SEWER LATERAL (PRIVATELY OWNED)
0-SSL	6" SDP 35 PVC GREASE LATERAL (PRIVATELY OWNED)
GAS	GAS SERVICE LINE
ELEC	ELECTRIC/DATA SERVICE LINE - SEE NOTE THIS SHEET

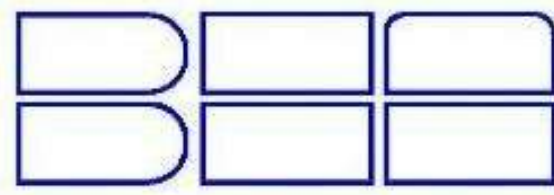
EROSION CONTROL LEGEND	
CL	CONSTRUCTION LIMITS
SF	SILTATION FENCE (TEMPORARY)
CW	CONCRETE WASHOUT AREA (TEMPORARY)
GP	GRAVEL INLET PROTECTION (TEMPORARY)
P	INLET PROTECTION (TEMPORARY)
MS	MULCH SEEDING - SEE SPECIFICATIONS (TEMPORARY & PERMANENT)
SP	STONE PAD ENTRANCE, 25 FT X 50 FT

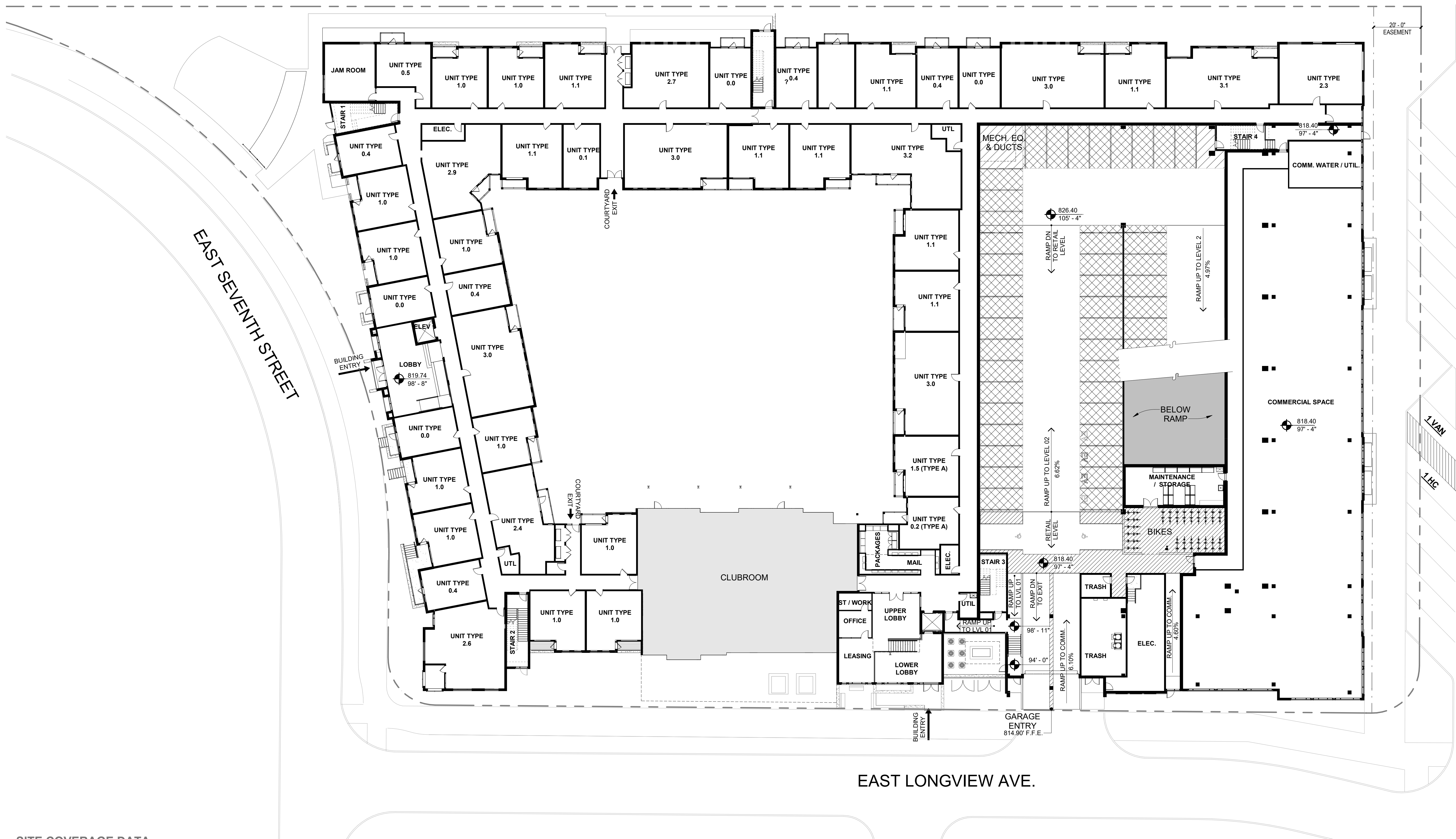
NOT TO SCALE
SITE PLAN

05/03/2021

CURRY URBAN PROPERTIES

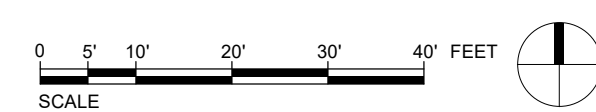
EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408





SITE COVERAGE DATA
SITE AREA = 139,392 SF
BUILDING = 85,536 SF
EXTERIOR HARDSCAPE AND DRIVES = TBD

F.A.R. = 61.4%

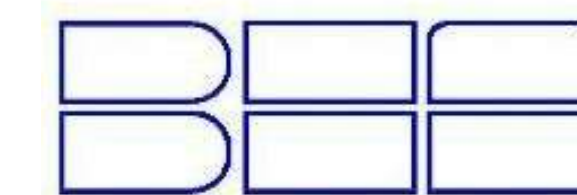


FIRST FLOOR PLAN

05/03/2021

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408





EAST ELEVATION

- TRUSS BEARING
143' - 4" (864.40)
- 04 - FOURTH FLOOR
134' - 0" (855.07)
- 03 - THIRD FLOOR
122' - 8" (843.74)
- 02 - SECOND FLOOR
111' - 4" (832.40)
- 01 - FIRST FLOOR
100' - 0" (821.07)
- 01 - FIRST FLOOR (RETAIL)
97' - 4" (818.40)



NORTH ELEVATION

- TRUSS BEARING
143' - 4" (864.40)
- 04 - FOURTH FLOOR
134' - 0" (855.07)
- 03 - THIRD FLOOR
122' - 8" (843.74)
- 02 - SECOND FLOOR
111' - 4" (832.40)
- 01 - FIRST FLOOR
100' - 0" (821.07)



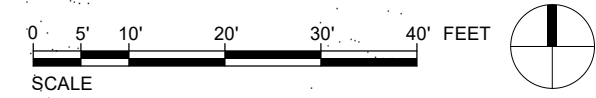
WEST ELEVATION

- TRUSS BEARING
143' - 4" (864.40)
- 04 - FOURTH FLOOR
134' - 0" (855.07)
- 03 - THIRD FLOOR
122' - 8" (843.74)
- 02 - SECOND FLOOR
111' - 4" (832.40)
- 01 - FIRST FLOOR
100' - 0" (821.07)
- 00 - LOWER LEVEL
88' - 8" (809.74)



SOUTH ELEVATION

- TRUSS BEARING
143' - 4" (864.40)
- 04 - FOURTH FLOOR
134' - 0" (855.07)
- 03 - THIRD FLOOR
122' - 8" (843.74)
- 02 - SECOND FLOOR
111' - 4" (832.40)
- 01 - FIRST FLOOR
100' - 0" (821.07)
- 01 - FIRST FLOOR (RETAIL)
97' - 4" (818.40)

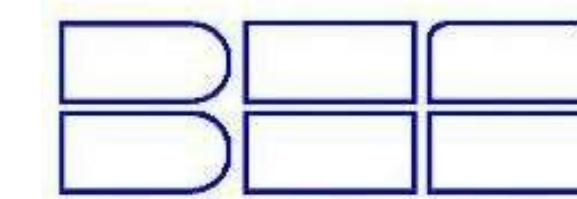


ELEVATIONS

05/03/2021

CURRY URBAN PROPERTIES

EAST LONGVIEW AVENUE
BLOOMINGTON, INDIANA 47408



ZONING COMMITMENT

WHEREAS, Indiana Code § 36-1-24.2-4 allows the owner of real property to make a written commitment as part of its request for incentives or grants from a municipality; and

WHEREAS, Curry Urban Properties (“Owner”), is the owner of the property located at 105 N. Pete Ellis Drive, Bloomington, Indiana the property is identified by the following Monroe County Parcel Number 53-05-35-300-043.000-005 (the “Property”); and

WHEREAS, Owner petitioned the City of Bloomington Plan Commission (the “Commission”) to rezone 3.2 acres from Commercial Limited to a Planned Unit Development (“PUD”) and to approve a preliminary plan; and

WHEREAS, the Commission recommended approval of Owners’ site plan petition PUD-34-19; and

WHEREAS, the Common Council of the City of Bloomington approved the PUD through Ordinance 20-01 on February 7, 2020; and

WHEREAS, Owner pledged its intent to record this Commitment, which was presented for consideration during the Council’s consideration of its petition; and

WHEREAS, Owner supports the City of Bloomington’s efforts to create affordable housing which contributes to diversification and helps address the community’s affordable housing needs;

NOW THEREFORE, in recognition of its ability to voluntarily provide a written commitment under Indiana Code § 36-1-24.2-4, the Owner hereby voluntarily provides and records this Zoning Commitment for the Property.

1. **Legal Description for the Property.** The Property is located at 105 N. Pete Ellis Drive (Parcel No. 53-05-35-300-043.000-005), Bloomington, Indiana, with the following legal description:

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

2. **Binding.** This written Commitment is binding on the owner of the Property. Upon the written Commitment being recorded in the office of the Monroe County Recorder, this written Commitment shall be binding on Owner’s successors and assigns, including but not limited to any subsequent owner or any other person who acquires an interest in the Property, and shall run with the land.
3. **Recording.** This written Commitment shall be recorded in the office of the Monroe County Recorder within 30 days of the signing of this Commitment.
4. **Modification.** This written Commitment shall only be modified by the City of Bloomington Plan Commission after notice of the hearing in which the modification will be considered has been provided in accordance with the Rules and Procedures of said Commission.
5. **Rental Commitment.** Owner agrees to designate fifteen percent (15%) of its bedrooms for workforce housing; ten percent (10%) of the bedrooms shall be offered and rented to anyone earning up to 100% of the Area Median Income (AMI); five percent (5%) of the bedrooms shall be offered and rented to anyone earning up to 120% of AMI. The base

rental rate for the workforce housing units shall be no more than twenty-five percent (25%) of the adjusted AMI at the time the lease is established.

6. Base Rental Rate. The base rental rate shall be inclusive of utilities with the exception of cable, internet, and/or electricity. In the event that the individual units within the Property are separately metered or sub-metered for water or sewer utility purposes, Owner shall have the right to pass through to its tenants the amount of the monthly billing that exceeds the average monthly billing for similar sized units at the Property, regardless of whether such tenant is a workforce housing tenant or not. Location premiums, unit finish premiums, furniture premiums, and washer/dryer premiums are not considered base rental rate amounts and shall not be included in base rental rates. Rather, said premiums will be in addition to any base rental rates for all units at the Property, including workforce housing.
7. Workforce Housing Qualifications. The workforce housing qualifications and rents shall be set in coordination with Bloomington's Housing and Neighborhood Development ("HAND") Department policies. HAND will annually provide income eligibility guidelines and rent structure guidelines to the Owner for use in this workforce housing project. The income eligibility and rent structure may be modified from time to time in accordance with guidelines provided by HAND, or its successor City department, in which case notice shall issue to Owner by HAND.
8. Unit Types. Owner shall make studio and one-bedroom units available as workforce housing.
9. Term of Commitment. The term of this Commitment shall be ninety-nine (99) years commencing from the date it is recorded with the office of the Monroe County Recorder.
10. Notice of Compliance. Owner shall provide HAND and the Commission an affidavit affirming that the Owner has complied with this Commitment on or before January 1 of each year until the end of the 99-year term of this Commitment. As part of this affidavit, the City may request information from Owner concerning (1) the number of Workforce Housing Units available; (2) the number of Workforce Housing Units occupied; (3) the rent of the Workforce Housing Units; (4) the wage rates and/or salaries of the persons living in the Workforce Housing Units; and (5) the Market rate rent for a unit comparable to the Workforce Housing Units.
11. Termination. This written Commitment shall only terminate with approval from the City of Bloomington Plan Commission after notice of the hearing in which the termination will be considered has been provided in accordance with the Rules and Procedures of said Commission.
12. Sale or Transfer. In the event that Owner or any subsequent owner of the Property sells or transfers title to the Property or otherwise alters any ownership interest in the Property, he/she shall provide HAND with thirty (30) days advance written notice of the transaction and shall provide HAND with contact information for the party with whom the transaction is being conducted.
13. Violation and Enforcement. Failure to honor this Commitment shall constitute a violation of the City of Bloomington's Unified Development Ordinance and, in particular, of the Plan Commission's preliminary plan and district ordinance approval. A violation shall be subject to the penalties and remedies provided by Bloomington Municipal Code § 20.10, and shall subject person(s) obligated hereby to revocation or denial of occupancy permits and any other appropriate legal action. An action to enforce any provision of this written Commitment may be brought in the Monroe County Circuit Court by the Plan Commission, any person who was entitled to enforce a Commitment under the Rules and Procedures of the Plan Commission in force at the time this written Commitment is made, or any other specially affected person that is so designated in this written Commitment.
14. Copy. A copy of this written Commitment shall be provided to the City of Bloomington's Planning and Transportation Department.

DATED this _____ day of _____, 2020.

CURRY URBAN PROPERTIES

By: _____
Signature

Print Name and Title

ATTEST:

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Personally appeared before me, a Notary Public in and for said County and State,
_____, Owner who acknowledged execution of the above and foregoing
instrument to be his or her voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2020.

_____ Printed Name of Notary Public	_____ Signature of Notary Public
My Commission Expires: _____	
County of Residence: _____	
Commission Number: _____	

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Michael Rouker.

This instrument was prepared by Michael Rouker, Attorney at Law, City of Bloomington, P.O. Box 100, Bloomington, Indiana 47402.