



Goshen Common Council

6:00 p.m. May 18, 2021 Regular Meeting

Council Chambers, Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Call to Order by Mayor Jeremy Stutsman

Pledge of Allegiance

Roll: Megan Eichorn (District 4) Julia King (At-Large) Jim McKee (District 1)
Doug Nisley (District 2) Gilberto Pérez, Jr. (District 5) Matt Schrock (District 3)
Council President Brett Weddell (At-Large) Youth Advisor Hazany Palomino (Non-voting)

Approval of Minutes

Approval of Meeting Agenda

Privilege of the Floor

Presentation: Vehicle Purchases – *Carl Gaines, Fleet Manager*
Jeremy Stutsman, Mayor

- I. **Resolution 2021-14** Local Roads and Bridges Matching Grant Agreement with InDOT for Reconstruction Work along Madison Street and College Avenue Corridors
- II. **Resolution 2021-16** Approve Disposal of Real Estate in the 200-Block of West Monroe Street
- III. **Resolution 2021-17** Approve Disposal of Real Estate at 209 West Monroe Street
- IV. **Resolution 2021-18** Approve Disposal of Real Estate at 217 West Wilden Avenue
- V. **Ordinance 5087** (1st Reading) An Ordinance of the Common Council of the City of Goshen, Indiana, Authorizing the Issuance of the City of Goshen, Indiana Multifamily Housing Revenue Bonds, Series 2021 (Green Oaks of Goshen Project) in One or More Series, Taxable and/or Tax-Exempt, in a Maximum Aggregate Principal Amount Not to Exceed Twenty-Five Million Dollars (\$25,000,000) and Approving and Authorizing Other Actions in Respect Thereto
 - Land Use Restriction Agreement
 - Loan Agreement
 - Mortgage, Assignment of Leases and Rents, Security Agreement And Fixture Filing
 - Trust Indenture



VI. Ordinance 5083 (1st Reading) Amend Ordinance 5065, 2021 Compensation for Civil City and Utilities Employees, as Amended by Ordinance 5081, to Clarify Payment of ASE Certification Bonus

Ordinance 5084 (1st Reading) COVID-19 Vaccination Incentive

- Ma oral Memo

Ordinance 5085 (1st Reading) Establishing an ARP Coronavirus Local Fiscal Recovery Fund

Ordinance 5086 (1st Reading) Establishing an OCRA Sensory Trail Fund

- Sensory Trail Grant Agreement

X. Ordinance 5082 (2nd Reading) Additional Appropriations for Fund 203: MVH-Restricted and Fund 495: OCRA Sensory Trail Grant

- Clerk-Treasurer Memo

Elected Official Reports

Adjournment

COUNCIL RESOLUTION 2021-14

**Local Roads and Bridges Matching Grant Agreement
with InDOT
for Reconstruction Work along Madison Street and College Avenue Corridors**

WHEREAS the City of Goshen plans to mill and overlay portions of Madison Street from Main Street to Alley 159 and College Avenue from Norfolk-Southern Marion Line to 15th Street, and spot replacement of sidewalks along Madison Street (hereinafter the “Project”).

WHEREAS the City applied to Indiana Department of Transportation and was awarded a grant for up to \$170,602.32 from the State’s 2021-1 Community Crossings Matching Grant Fund which represents 50% of the eligible costs of the Project.

WHEREAS pursuant to Indiana Code § 36-1-7 et seq., a power that may be exercised by one governmental entity may be exercised by one entity on behalf of another entity if the entities enter into a written agreement.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the terms and conditions of the approves the terms and conditions of the Local Roads and Bridges Matching Grant Agreement with the Indiana Department of Transportation for the Project in substantially the same form as attached to and made a part of this resolution.

PASSED by the Goshen Common Council on May 18, 2021.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on May _____, 2021, at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on May _____, 2021.

Jeremy P. Stutsman, Mayor

LOCAL ROADS AND BRIDGES MATCHING GRANT AGREEMENT

Contract #000000000000000000052544

This Grant Agreement (this "Grant Agreement"), entered into by and between the Indiana Department of Transportation (the "State") and CITY OF GOSHEN, a Local Unit, (the "Grantee"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Grant Agreement; Funding Source. The purpose of this Grant Agreement is to enable the State to award a Grant of \$170,602.32 (the "Grant"), representing **50%** of the eligible costs of the project (the "Project") described in Attachment A of this Grant Agreement, which is incorporated fully herein. The funds shall be used exclusively in accordance with the provisions contained in this Grant Agreement and in conformance with Indiana Code § 8-23-30 establishing the authority to make this Grant, as well as any rules adopted thereunder. The funds received by the Grantee pursuant to this Grant Agreement shall be used only to implement the Project or provide the services in conformance with this Grant Agreement and for no other purpose.

FUNDING SOURCE:

State Funds: Program Title: Local Road and Bridge Matching Grant Fund (I.C. § 8-23-30).

2. Representations and Warranties of the Grantee.

A. The Grantee expressly represents and warrants to the State that it is statutorily eligible to receive these Grant funds and that the information set forth in its Grant Application is true, complete and accurate. The Grantee expressly agrees to promptly repay all funds paid to it under this Grant Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its grant application.

B. The Grantee certifies by entering into this Grant Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant Agreement by any federal or state department or agency. The term "principal" for purposes of this Grant Agreement is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.

C. The Grantee has committed matching funds from one of the following revenue sources in accordance with Ind. Code § 8-23-30-3: (1) any money the local unit is authorized to use for a local road or bridge project; (2) special distribution of local income tax under Ind. Code § 6-3.6-9-17; or (3) local rainy day fund under Ind. Code § 36-1-8-5.1.

D. The Grantee uses an approved transportation asset management plan on file with the State.

3. Implementation of and Reporting on the Project.

The Grantee shall implement and complete the Project in accordance with Attachment A and with the plans and specifications contained in its Grant Application, which is on file with the State and is incorporated by reference. Modification of the Project shall require prior written approval of the State.

4. Term. This Grant Agreement commences on the date approved by the State Budget Agency, and shall remain in effect for two (2) years. Unless otherwise provided herein, it may be extended upon the written agreement of the parties and in conformance with Ind. Code § 5-22-17-4, and as permitted by Ind. Code § 8-23-30.

The Grantee understands that the Grantee must procure materials and/or a contractor for the Project no later than four (4) months from the date of the award letter, attached hereto as Attachment B and incorporated fully herein. If the Grantee fails to procure a contractor by four (4) months from the date of the award letter, the Grantee forfeits the Grant, the grant funds shall not be distributed to the Grantee, but shall be redistributed as all other funds under Indiana Code § 8-23-30.

5. Grant Funding. Pursuant to Ind. Code § 8-23-30, the Grantee agrees to the following:

- A. It may use the State funds only for the Project described in Attachment A;
- B. If it uses the grant funds for any purpose other than construction of the Project as described in Attachment A, the Grantee:
 - i. must immediately repay all grant funds provided to the State; and
 - ii. may not participate in the grant program during the succeeding calendar year.
- C. It shall provide local matching funds equal to not less than **50%** of the estimated project cost;
- D. Disbursement of grant funds will not be made until the Grantee's submission of an accepted/awarded Project Material Bid and/or an executed contract with the contractor;
- E. The State's participation in the Project is strictly limited to the grant funds awarded herein. The Grantee understands and agrees that the State is under no obligation to pay for or participate in any cost increases, change orders, cost overruns or additional Project expenses of any kind.

6. Payment of Claims.

A. If advance payment of all or a portion of the Grant funds is permitted by statute or regulation, and the State agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. After such funds have been expended, Grantee shall provide State with a reconciliation of those expenditures. Otherwise, all payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures. As required by IC § 4-13-2-14.8, all payments will be by the direct deposit by electronic funds transfer to the financial institution designated by the Grantee in writing unless a specific waiver has been obtained from the Indiana Auditor of State.

B. Requests for payment will be processed only upon presentation of a Claim Voucher in the form designated by the State. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of local funds.

C. The State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the Project prior to making the payment under this Grant. All payments are subject to the State's determination that the Grantee's performance to date conforms with the Project as approved, notwithstanding any other provision of this Grant Agreement.

D. Pursuant to Ind. Code § 8-23-30, Local Road and Bridge Grant Funds made available to the Grantee by the State will be used to pay the Grantee for up to **50%** of the eligible Project costs and not more than \$1 million. The maximum amount of state funds allocated to the Project is **\$170,602.32**. The Grantee understands that maximum amount of Local Road and Bridge Grant funds may not exceed more than \$1 million for all qualifying projects the Grantee may have in a calendar year.

E. Claims must be submitted with accompanying supportive documentation as designated by the State. Claims submitted without supportive documentation will be returned to the Grantee and not processed for payment. Failure to comply with the provisions of this Grant Agreement may result in the denial of a claim for payment.

F. Pursuant to Ind. Code § 8-23-30-3, the Grantee's **50%** match shall be paid from one of the identified revenue sources. The remainder of the Project costs greater than the total of the State's grant and the Grantee's **50%** match shall be borne by the Grantee and may be paid how the Grantee chooses. In the interest of clarity and to avoid misunderstanding, the State shall not pay the Grantee for any costs relating to the Project except as specifically provided herein, unless the Parties enter into an amendment to this Grant Agreement.

7. Project Monitoring by the State. The State may conduct on-site or off-site monitoring reviews of the Project during the term of this Grant Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Grantee shall extend its full cooperation and give full access to the Project site and to relevant documentation to the State or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in Attachment A, the Grant Application, and the terms and conditions of the Grant Agreement;

B. that Grantee is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Grant Agreement and are fully and accurately reflected in Project reports submitted to the State.

8. Compliance with Audit and Reporting Requirements; Maintenance of Records.

A. The Grantee shall submit to an audit of funds paid through this Grant Agreement and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost.

B. If the Grantee is a "subrecipient" of federal grant funds under 2 C.F.R. 200.330, Grantee shall arrange for a financial and compliance audit that complies with 2 C.F.R. 200.500 *et seq.* if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements).

C. The Grantee shall file the annual financial report required by Ind. Code § 5-11-1-4 in accordance with the State Board of Accounts Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources. All grant documentation shall be retained and made available to the State Board of Accounts if and when requested.

D. A final audit construction invoice detailing the actual costs of construction and proof of payment to the contractor must be submitted to the State within thirty (30) days of completion of the Project. If for any reason, including overpayment of grant funds to the Grantee, the Grantee is required to repay to the State the sum or sums of state funds paid to the Grantee under the terms of this Grant Agreement, then the Grantee shall repay to the State such sum or sums within forty-five (45) days after receipt of a billing from the State. Payment for any and all costs incurred by the Grantee which are not eligible for state funding shall be the sole obligation of the Grantee.

E. If for any reason the State finds noncompliance and requires a repayment of state funds previously paid to the Grantee, the Grantee is required to submit such sum or sums within thirty (30) days after receipt of a billing from the State. If the Grantee has not paid the full amount due within sixty (60) calendar days past the due date, the State may proceed in accordance with Ind. Code § 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the Grantee's allocation of the Motor Vehicle Highway Account to the State's Local Road and Bridge Matching Grant Fund account until the amount due has been repaid.

9. Compliance with Laws.

A. The Grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference.

The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Grant Agreement shall be reviewed by the State and the Grantee to determine whether the provisions of this Grant Agreement require formal modification.

B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. If the Grantee has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Grant, the Grantee shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Grant Agreement. If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Grant immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Grantee certifies by entering into this Grant Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Grantee agrees that any payments currently due to the State may be withheld from payments due to the Grantee. Additionally, payments may be withheld, delayed, or denied and/or this Grant suspended until the Grantee is current in its payments and has submitted proof of such payment to the State.

D. The Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Grantee agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Grantee's liability or guilt in any action initiated by the State or its agencies, and the State decides to suspend funding to the Grantee, the Grantee may submit, in writing, a request for review to the Indiana Department of Administration (IDOA). A determination by IDOA shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.

E. The Grantee warrants that the Grantee and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Grant Agreement and grounds for immediate termination and denial of grant opportunities with the State.

F. The Grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

G. As required by IC § 5-22-3-7:

(1) The Grantee and any principals of the Grantee certify that:

(A) the Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC § 24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC § 24-5-12 [Telephone Solicitations]; or

(iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the Grantee will not violate the terms of IC § 24-4.7 for the duration of this Grant Agreement, even if IC § 24-4.7 is preempted by federal law.

(2) The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC § 24-4.7 for the duration of this Grant Agreement even if IC § 24-4.7 is preempted by federal law.

10. Debarment and Suspension.

A. The Grantee certifies by entering into this Grant Agreement that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Grant Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.

B. The Grantee certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Grant Agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The Grantee shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Grant Agreement.

11. Drug-Free Workplace Certification. As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, the Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Grantee will give written notice to the State within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Grant Agreement is in excess of \$25,000.00, the Grantee certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will: (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

12. Employment Eligibility Verification. As required by IC § 22-5-1.7, the Grantee hereby swears or affirms under the penalties of perjury that:

- A. The Grantee has enrolled and is participating in the E-Verify program;
- B. The Grantee has provided documentation to the State that it has enrolled and is participating in the E-Verify program;
- C. The Grantee does not knowingly employ an unauthorized alien.
- D. The Grantee shall require its contractors who perform work under this Grant Agreement to certify to Grantee that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Grantee shall maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the Grantee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

13. Funding Cancellation. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

14. Governing Law. This Grant Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

15. Information Technology Accessibility Standards. Any information technology related products or services purchased, used or maintained through this Grant must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. §794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: <http://www.access-board.gov/508.htm>.

16. Insurance. The Grantee shall maintain insurance with coverages and in such amount as may be required by the State or as provided in its Grant Application.

17. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Grantee understands that the State is a recipient of federal funds, and therefore, where applicable, Grantee and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

18. Notice to Parties. Whenever any notice, statement or other communication is required under this Grant, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

- A. Notices to the State shall be sent to:

Office of LPA/MPO and Grant Administration
Attention: Director of LPA/MPO and Grant Administration
100 North Senate Avenue, Room N758 - Local Programs
Indianapolis, IN 46204
E-mail: indotlpampo@indot.in.gov

With a copy to:

Chief Legal Counsel/Deputy Commissioner
Indiana Department of Transportation
100 N Senate Avenue, Room N750 - Legal Services
Indianapolis, IN 46204-2216

- B. Notices to the State regarding project management shall be sent to respective District Office:

Donya Larue
Fort Wayne District
5333 Hatfield Road
Fort Wayne, IN 46808
Email: dlarue@indot.in.gov

- C. Notices to the Grantee shall be sent to:

City of Goshen
ATTN: Jeremy Stutsman
204 East Jefferson Street Goshen, IN 46528
Email: mayor@goshencity.com

As required by IC § 4-13-2-14.8, payments to the Grantee shall be made via electronic funds transfer in accordance with instructions filed by the Grantee with the Indiana Auditor of State.

19. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) this Grant Agreement, (2) Exhibits prepared by the State, (3) Invitation to Apply for Grant; (4) the Grant Application; and (5) Exhibits prepared by Grantee. All of the foregoing are incorporated fully herein by reference.

20. Public Record. The Contractor acknowledges that the State will not treat this Grant as containing confidential information, and will post this Grant on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Grant shall not be considered an act of the State.

21. Termination for Breach.

A. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to suspend grant payments, and to suspend the Grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction.

B. The expenditure of State or federal funds other than in conformance with the Project or the Budget may be deemed a breach. The Grantee explicitly covenants that it shall promptly repay to the State all funds not spent in conformance with this Grant Agreement.

22. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award of the Grant, this Grant Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Grantee of a Termination Notice, specifying the extent to which such termination becomes effective. The Grantee shall be compensated for completion of the Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Grantee exceed the original grant.

23. Travel. No expenses for travel will be reimbursed unless specifically authorized by this Grant.

24. Provision Applicable to Grants with tax-funded State Educational Institutions: "Separateness" of the Parties. The State acknowledges and agrees that because of the unique nature of State Educational Institutions, the duties and responsibilities of the State Educational Institution in these Standard Conditions for Grants are specific to the department or unit of the State Educational Institution. The existence or status of any one contract or grant between the State and the State Educational Institution shall have no impact on the execution or performance of any other contract or grant and shall not form the basis for termination of any other contract or grant by either party.

25. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the 2021 OAG/ IDOA *Professional Services Contract Manual* or the 2021 *SCM Template*) in any way except as follows: Payment of Claims; the Compliance with Audit and Reporting Requirements; Maintenance of Records were modified to include statutory and program requirements.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Grant Agreement other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Grant, the Grantee attests to compliance with the disclosure requirements in IC 4-2-6-10.5.

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Grant Agreement by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Grant Agreement to the State of Indiana. I understand that my signing and submitting this Grant Agreement in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Grant Agreement and this affirmation. I understand and agree that by electronically signing and submitting this Grant Agreement in this fashion I am affirming to the truth of the information contained therein. I understand that this Grant Agreement will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCTS.GBL

In Witness Whereof, the Grantee and the State have, through their duly authorized representatives, entered into this Grant Agreement. The PARTIES, having read and understood the foregoing terms of this Grant Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY OF GOSHEN

Indiana Department of Transportation

By: _____

By: _____

Title: _____

(for) Joseph McGuinness, Commissioner

Date: _____

Date: _____

**Electronically Approved by:
Department of Administration**

**Electronically Approved by:
State Budget Agency**

By: (for) Lesley A. Crane, Commissioner

By: (for) Zachary Q. Jackson, Director

Form approval has been granted by the Office of the Attorney General pursuant to IC 4-13-2-14.3(e) on November 24, 2020.
FA 20-89

**ATTACHMENT A
PROJECT DESCRIPTION**

Des. No.: 2100376
Program: Local Roads and Bridges Matching Grants
Type of Project: HMA Overlay Minor Structural
Location:

Route Name	From	To
MADISON ST	Main St	Alley 159
COLLEGE AVE	Norfolk-Southern Marion Line	15th St

Application ID: 10788

A general scope/description of the Project is as follows:

Project consists of a 2-inch mill and overlay of portions of the Madison St and College Ave corridors to increase the expected usable life of the roadway. The project will also include spot replacements of heaved or severely cracked sidewalk along Madison.

The maximum amount of state funds allocated to the Project is \$170,602.32.

ATTACHMENT B
AWARD LETTER



INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room N758 - Local Programs
Indianapolis, Indiana 46204

PHONE: (317) 233-3680
FAX: (317) 234-8365

Eric Holcomb, Governor
Joe McGuinness, Commissioner

April 29, 2021

City of Goshen
Jeremy Stutsman
204 East Jefferson Street
Goshen, IN 46528

RE: Community Crossing Matching Grant Fund 2021-1 Award Letter

Dear Jeremy Stutsman:

The Indiana Department of Transportation (INDOT) has completed the review and selection of projects for funding in the 2021-1 Community Crossings Matching Grant Fund Program. Your community has preliminarily been awarded Community Crossings Matching Grant Funds based upon your estimates the following:

Application ID	Preliminary Awarded Amount	Location Priority
10788	\$170,602.32	All
TOTAL	\$170,602.32	

Preliminary award amounts are contingent upon the following:

- INDOT must receive a copy of the fully-executed contract with a contractor or material supplier.
- Contractor/material supply contracts must be submitted no later than four (4) months from the date of this award letter. Failure to meet this date will result in the forfeiture of your funds.
- Local Public Agency (LPA) must sign and return the LPA-INDOT Grant Agreement no later than two (2) months from the date of this award letter. Signatures cannot be over 30 days old once it reaches the INDOT LPA/MPO Division Office located in Indianapolis. Failure to meet this will result in forfeiture of your funds.
- Once all documentation listed above is received, reviewed, and contracts fully executed INDOT will transfer the agreed upon contract amount into your account.

The Community Crossings Matching Grant Funds, which are administered by INDOT, will be used for funding up to 50 percent of the construction of your project or the purchase of materials. These grant dollars will enable you to help build and improve Indiana's infrastructure.

If you have any questions, please contact Donya Larue, (260) 399-7342 or dlarue@indot.in.gov.

The state of Indiana looks forward to partnering with all Hoosier communities, both urban and rural, to invest in road and bridge infrastructure projects. Improvement to local roads and bridges will bring about economic development, create jobs, and strengthen local transportation networks for all of Indiana.

Sincerely,

Director of Local Programs
Indiana Department of Transportation

COUNCIL RESOLUTION 2021-16

Approve Disposal of Real Estate in the 200-Block of West Monroe Street

WHEREAS the City of Goshen for the Use and Benefit of its Department of Redevelopment acquired title to the real estate in the 200-Block of West Monroe Street as depicted in Exhibit A (Subject Real Estate) to carry out an economic development area project.

WHEREAS the projects along West Monroe Street, River Race Drive and the Mill Race Canal affecting the Subject Real Estate have been completed.

WHEREAS the Redevelopment Commission wishes to dispose of the remainder of the Subject Real Estate.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the disposal of the Subject Real Estate in the 200-Block of West Monroe Street as depicted in Exhibit A by the Goshen Redevelopment Commission. The Redevelopment Commission shall offer the Subject Real Estate for sale to the public in accordance with Indiana Code § 36-7-14-22.

PASSED by the Goshen Common Council on May 18, 2021.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on May _____, 2021, at _____ a.m./p.m.

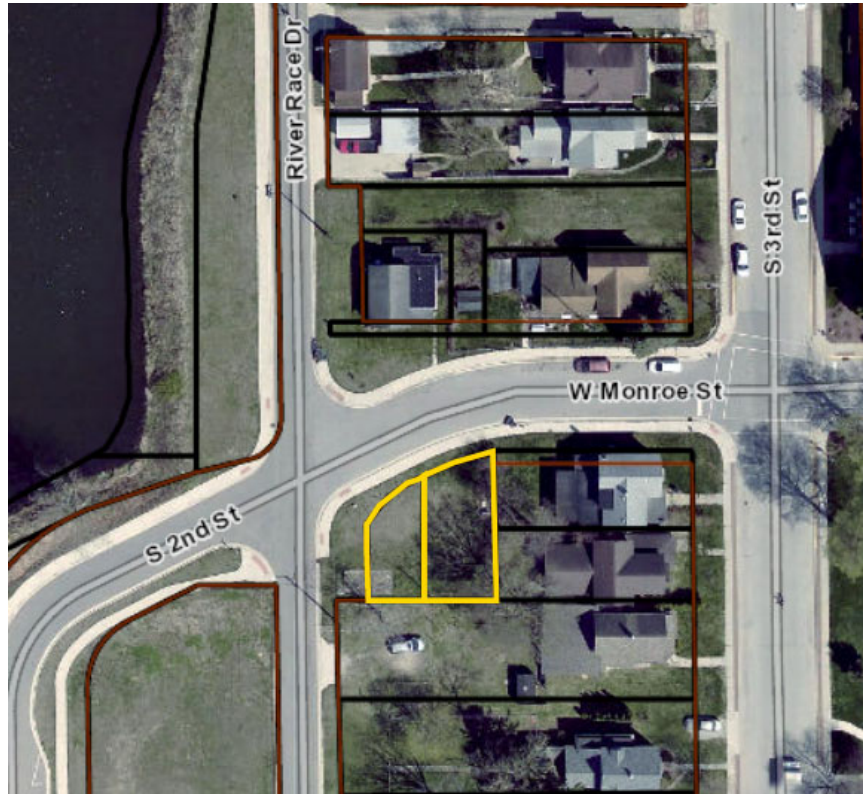
Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on May _____, 2021.

Jeremy P. Stutsman, Mayor

EXHIBIT A

**Subject Real Estate
in the 200-Block of West Monroe Street**



COUNCIL RESOLUTION 2021-17

Approve Disposal of Real Estate at 209 West Monroe Street

WHEREAS the City of Goshen for the Use and Benefit of its Department of Redevelopment acquired title to the real estate at 209 West Monroe Street as depicted in Exhibit A (Subject Real Estate) to carry out an economic development area project.

WHEREAS the projects along West Monroe Street, River Race Drive and the Mill Race Canal affecting the Subject Real Estate have been completed.

WHEREAS the Redevelopment Commission wishes to dispose of the remainder of the Subject Real Estate.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the disposal of the Subject Real Estate at 209 West Monroe Street as depicted in Exhibit A by the Goshen Redevelopment Commission. The Redevelopment Commission shall offer the Subject Real Estate for sale to the public in accordance with Indiana Code § 36-7-14-22.

PASSED by the Goshen Common Council on May 18, 2021.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on May _____, 2021, at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on May _____, 2021.

Jeremy P. Stutsman, Mayor

EXHIBIT A

**Subject Real Estate
at 209 West Monroe Street**



COUNCIL RESOLUTION 2021-18

Approve Disposal of Real Estate at 217 West Wilden Avenue

WHEREAS the City of Goshen (City) demolished the unsafe structures on the real estate at 217 West Wilden Avenue as depicted in Exhibit A (Subject Real Estate) with the cost of such demolition assessed as a judgment against the Subject Real Estate pursuant to a Court Order dated February 24, 2020 under Cause No. 20D04-1707-PL-165. City assigned its judgment lien to City of Goshen, Indiana for the Use and Benefit of the Goshen Department of Redevelopment (Redevelopment).

WHEREAS Redevelopment foreclosed on the judgment lien on the Subject Real Estate pursuant to a Court Order dated October 8, 2020 under Cause No. 20D04-2007-CC-1290. The Subject Real Estate was offered for sale at a Sheriff's sale in which Redevelopment was the successful bidder acquiring title to the Subject Real Estate by Sheriff's Deed.

WHEREAS the Redevelopment Commission wishes to dispose of the Subject Real Estate.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the disposal of the Subject Real Estate at 217 West Wilden Avenue as depicted in Exhibit A by the Goshen Redevelopment Commission. The Redevelopment Commission shall offer the Subject Real Estate for sale to the public in accordance with Indiana Code § 36-7-14-22.

PASSED by the Goshen Common Council on May 18, 2021.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on May _____, 2021, at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on May _____, 2021.

Jeremy P. Stutsman, Mayor

EXHIBIT A

**Subject Real Estate
at 217 West Wilden Avenue**



GOSHEN COMMON COUNCIL

ORDINANCE NO. 5087

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF GOSHEN, INDIANA, AUTHORIZING THE ISSUANCE OF THE CITY OF GOSHEN, INDIANA MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2021 (GREEN OAKS OF GOSHEN PROJECT) IN ONE OR MORE SERIES, TAXABLE AND/OR TAX-EXEMPT, IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TWENTY-FIVE MILLION DOLLARS (\$25,000,000) AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.

WHEREAS, Indiana Code 36-7-11.9 and -12 (collectively, the “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Goshen, Indiana (the “City”) is authorized to issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of acquisition, design, construction and equipping of economic development facilities in order to foster creation or retention of opportunities for gainful employment and creation of business opportunities in or near the City; and

WHEREAS, Green Oaks of Goshen, LLC, an Indiana limited liability company (the “Borrower”) desires to finance a certain project constituting an economic development facility under the Act within the City, including all or any portion of the acquisition, design, construction, improvement and/or equipping of approximately 120 assisted living units and certain functionally-related improvements (collectively, the “Project”) to be located at 282 Johnston Street, Goshen, Indiana 46528; and

WHEREAS, the Borrower has advised the Goshen Economic Development Commission (the “Commission”) and the City concerning the Project, and requested that the City issue one or more series of its Multifamily Housing Revenue Bonds, Series 2021 (Green Oaks of Goshen Project), in one or more series, taxable and/or tax-exempt, in an aggregate principal amount not to exceed Twenty-Five Million Dollars (\$25,000,000) (the “Bonds”) under the Act and lend all or a portion of the proceeds of such Bonds to the Borrower for the purpose of providing funds (a) to pay all or a part of the cost of design, acquisition, construction and equipping of the Project, and (b) to pay incidental expenses of issuance, including but not limited to, the funding of a debt service reserve fund, if necessary, and capitalized interest, if necessary; and

WHEREAS, the City previously adopted an Ordinance on February 2, 2021 (the “Original Authorizing Ordinance”) approving the issuance of its Bonds, in one or more series, taxable or tax-exempt, with a maximum aggregate principal amount not to exceed Twenty-Two Million Dollars (\$22,000,000) to finance the Project; and

WHEREAS, since the adoption of the Original Authorizing Ordinance, interest rates associated with the Bond financing have become more volatile and the cost of certain raw materials, such as lumber, have increased significantly which necessitate further action by the City to increase the par amount of the Bonds; and

WHEREAS, the Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City; and

WHEREAS, the Commission has studied the Project and the proposed financing of the Project and its effect on the health and general welfare of the City and its citizens; and

WHEREAS, the Commission has considered whether the proposed Project may have an adverse competitive effect on similar facilities already constructed or operating in the City; and

WHEREAS, the Commission has rendered a report concerning the proposed financing of the Project; and

WHEREAS, the completion and operation of the Project will result in the creation and retention of jobs, the creation and retention of business opportunities in the City, the creation of affordable housing in the City and will be of public benefit to the health safety and general welfare of the City and its citizens; and

WHEREAS, the Borrower has advised the City that it has determined that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended (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 that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's (the "IHCDA") qualified allocation plan; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance all or a portion of the Project by issuing the Bonds, in one or more series, taxable and/or tax-exempt, in an aggregate principal amount not to exceed Twenty-Five Million Dollars (\$25,000,000); and

WHEREAS, the Act provides that such revenue bonds may be secured by and issued pursuant to the terms of a trust indenture between an issuer and a corporate trustee; and

WHEREAS, the City intends to issue the Bonds pursuant to a Trust Indenture, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Indenture"), by and between the City and U.S. Bank National Association, as trustee (the "Trustee"), in order to obtain funds to lend to the Borrower for the purpose of financing all or a portion of the Project in accordance with the terms of a Loan Agreement, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Loan Agreement"), by and between the City and the Borrower with respect to Bonds and the Project, provided, however, that the aggregate principal amount of the Bonds shall not exceed Twenty-Five Million Dollars (\$25,000,000); and

WHEREAS, pursuant to the Loan Agreement, the Borrower will make certain representations, warranties and commitments with respect to the Project and will agree to make payments sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the

same becomes due and payable, and to pay administrative expenses in connection with the Bonds; and

WHEREAS, there has been submitted to the Commission for its approval the substantially final forms of the Indenture (including the form of the Bonds), the Loan Agreement, the Bond Purchase Agreement among the City, the Borrower and Piper Sandler & Co. (the “Underwriter”) (the “Purchase Contract”) for the sale of the Bonds, and the Land Use Restriction Agreement by and among the City, the Trustee and the Borrower to be dated as of the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (collectively, the “Financing Documents”) and the form of the proposed Ordinance of the Common Council of the City (the “Council”) with respect to the Project and the Bonds (the “Ordinance”); and

WHEREAS, pursuant to Indiana Code 36-7-12-24 and certain provisions of the Code, and the rules promulgated thereunder, as amended, the Commission published notice of a public hearing (the “Public Hearing”) on the proposed issuance of the Bonds to finance all or a portion of the Project; and

WHEREAS, on May 18, 2021, the Commission held the Public Hearing on the Project and on December 17, 2019 adopted its Report of the Goshen Economic Development Commission Concerning the Proposed Financing of Certain Goshen Assisted Living Facilities and its Resolution Concerning Certain Actions and Proceedings With Respect to the Financing of Certain Goshen Assisted Living Facilities, which resolution constituted “official action” for purposes of compliance with federal and state laws requiring governmental action as authorization for future reimbursement from the proceeds of bonds; and

WHEREAS, on December 17, 2019, the Council adopted its Resolution No. 2019-40 Concerning Actions and Proceedings With Respect to the Financing of Certain Goshen Assisted Living Facilities, which resolution also constituted “official action” for purposes of compliance with federal and state laws requiring governmental action as authorization for future reimbursement from the proceeds of bonds; and

WHEREAS, on January 19, 2021, the Commission held a meeting and adopted a resolution which was transmitted to this Council in which the Commission found that the financing of the Project complies with the purposes and provisions of the Act, that such financing will be of benefit to the health and welfare of the City and its citizens, that, based solely on the representations provided by the Borrower, 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 approved the substantially final forms of Financing Documents and the form of an Ordinance presented to the Commission; and

WHEREAS, no member of this Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to this 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, based upon the resolution adopted by the Commission pertaining to the Project, the City hereby finds and determines that the funding approved by the Commission for the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance the costs of the Project, will require the issuance, sale and delivery of one or more series of economic development revenue bonds in an aggregate principal amount not to exceed Twenty-Five Million Dollars (\$25,000,000).

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GOSHEN, INDIANA AS FOLLOWS:

SECTION 1. This Council hereby finds, determines, ratifies and confirms that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds, and the loan of the net proceeds thereof to the Borrower for the purpose of financing all or a portion of the Project and the repayment of said loan by the Borrower (i) will result in the substantial likelihood of the creation or retention of business opportunities, the creation of affordable housing and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the creation or retention of business opportunities, the creation of affordable housing, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed in the City.

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-Treasurer of the City (the "Clerk-Treasurer") or the Secretary of the Commission. 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-Treasurer for public inspection.

SECTION 3. This Council hereby approves the terms of the Financing Documents with any and all such changes as may be deemed necessary, desirable or appropriate by the Mayor, the Clerk-Treasurer or any other officer of the City and all such documents shall be kept on file by the Clerk-Treasurer or the Secretary of the Commission. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Bonds and after the issuance of said Bonds, 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 Bonds or the interest thereon remains unpaid.

SECTION 4. This Council hereby approves (i) the issuance by the City of its Bonds, in one or more series, taxable and/or tax-exempt, with a maximum aggregate principal amount not to exceed Twenty-Five Million Dollars (\$25,000,000), provided, however, that Bonds issued on a tax-exempt basis shall mature not later than forty (40) years from the date of issuance and shall bear interest at a rate not to exceed six percent (6.00%) per annum and Bonds issued on a taxable basis shall mature not later than twenty (20) years from the date of issuance and shall bear

interest at a rate not to exceed eight percent (8.00%) per annum, for the purpose of procuring funds to loan to the Borrower in order to finance all or a portion of (a) the Project, and (b) the incidental expenses of issuance of the Bonds, including but not limited to, the funding of a debt services reserve fund, if necessary, and capitalized interest, if necessary, which Bonds will be payable as to principal, premium if any, and interest solely from payments made by the Borrower pursuant to the Loan Agreement and the note issued thereunder, and upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance; (ii) the marketing of the Bonds pursuant to a Preliminary Limited Offering Memorandum (the "Preliminary Offering Memorandum"), and the offering and sale of the Bonds pursuant to a final Limited Offering Memorandum (the "Offering Memorandum"); (iii) the loan of the proceeds of the Bonds by the City to the Borrower pursuant to the terms of the Loan Agreement; (iv) the sale and delivery of the Bonds pursuant to the Purchase Contract; (v) the regulation of the Project pursuant to the Land Use Restriction Agreement; and (vi) the use of the proceeds received from the sale of the Bonds in accordance with the terms of the Indenture and the Loan Agreement and in accordance with the Act and the applicable provisions of the Code. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City. The Mayor and Clerk-Treasurer are hereby authorized to sell the Bonds to the Underwriter at a price not less than ninety-six percent (96%) of the aggregate principal amount thereof (excluding any original issue premium or discount), plus accrued interest, if any.

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

SECTION 6. 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 City 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 Loan Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City or the Commission, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of such Bonds. 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 City or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds 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 Loan Agreement and the issuance, sale and delivery of the Bonds.

SECTION 7. The Borrower and its managing member will indemnify and hold the City and the Commission, including their respective 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 Bonds, including the issuance and sale of the Bonds or failure to issue or sell the Bonds 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 Bonds, all as further described in the Loan Agreement but which are not the result of the willful misconduct of the City.

SECTION 8. 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, this Council has relied solely upon representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by the City as to the feasibility or viability of the Project. This Council hereby authorizes and directs the Clerk-Treasurer to review and make the foregoing determination again for and on behalf of the City at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the 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 Bonds to the Purchasers thereof and on or about the date that each building of the Project is placed in service.

SECTION 9. 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 10. 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 11. It is hereby determined that all formal actions of this Council relating to the adoption of this Ordinance were taken in one or more open meetings of this Council, that all deliberations of this 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 12. The Mayor and the Clerk-Treasurer are authorized to (i) take all such further actions or to execute, attest and deliver such further instruments and documents in the

name of the City as in their judgment shall be necessary or advisable in order fully to consummate the transaction and carry out the purposes of this Ordinance and, if necessary, (ii) deem the Preliminary Offering Memorandum “final” for purposes of Securities and Exchange Rule 15c2-12.

SECTION 13. This Ordinance shall be in full force and effect upon adoption and approval by the Mayor.

[Remainder of page intentionally left blank.]

ADOPTED BY THE COMMON COUNCIL OF THE CITY OF GOSHEN, INDIANA,
this ___ day of _____, 2021.

BRETT WEDDELL, PRESIDENT
GOSHEN COMMON COUNCIL

PRESENTED by me to the Mayor for his approval and signature on this _____ day of
_____, 2021.

ADAM SCHARF, CITY CLERK-TREASURER
CITY OF GOSHEN

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

JEREMY STUTSMAN, MAYOR
CITY OF GOSHEN

Prepared by and return to:
Scott A. Krapf, Esq.
Frost Brown Todd LLC
201 North Illinois Street, Suite 1900
Indianapolis, Indiana 46244

LAND USE RESTRICTION AGREEMENT

By and Among

CITY OF GOSHEN, INDIANA

and

GREEN OAKS OF GOSHEN, LLC

and

**U.S. BANK NATIONAL ASSOCIATION
as Trustee**

Dated as of [_____], 2021

Relating to

\$_[_____]
**CITY OF GOSHEN, INDIANA
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2021A
(GREEN OAKS OF GOSHEN PROJECT)**

and

\$_[_____]
**CITY OF GOSHEN, INDIANA
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2021B
(FEDERALLY TAXABLE – GREEN OAKS OF GOSHEN PROJECT)**

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LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (as supplemented and amended from time to time, this “Agreement” or this “Land Use Restriction Agreement”) is made and entered into as of [_____], by and among the **CITY OF GOSHEN, INDIANA**, a municipal corporation duly organized and existing under the laws of the State of Indiana (the “State”) (together with any successor to its rights, duties and obligations, the “Issuer”), **U.S. BANK NATIONAL ASSOCIATION** (the “Trustee”), and **GREEN OAKS OF GOSHEN, LLC**, an Indiana limited liability company (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 Borrower wishes to finance the acquisition, design, construction, improvement and/or equipping of approximately 120 assisted living units and certain functionally-related improvements to be located at 282 Johnston Street, Goshen, Elkhart County, Indiana (the “Project”), to be occupied by individuals of low income within the meaning of Section 142 of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, in order to provide moneys to finance the Project, the governing body of the Issuer adopted Ordinance No. [___] on [_____, 2021] (the “Bond Ordinance”) authorizing the issuance and sale of its Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project), in the aggregate principal amount not to exceed \$[_____] (the “Series 2021A Bonds”) and its Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project), in the aggregate principal amount not to exceed \$[_____] (the “Series 2021B Bonds”, together with the Series 2021A Bonds, the “Bonds”) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds are issued), pursuant to and in compliance with Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as now in effect and as it may from time to time be amended or supplemented (the “Act”) and pursuant to a Trust Indenture, dated as of [_____, 2021] (the “Indenture”), between the Issuer and the Trustee; and

WHEREAS, the Issuer will lend the proceeds of the Bonds to the Borrower pursuant to the Loan Agreement, dated as of [_____, 2021] (as supplemented and amended from time to time, the “Loan Agreement”), between the Issuer and the Borrower; and

WHEREAS, in order to assure the Issuer and the owners of the Bonds that interest on the Bonds will be excluded 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 Bonds are authorized to be issued under the Act, and to satisfy the purposes of the Issuer in determining to issue the Bonds, 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 Issuer, the Trustee 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, in this Section 1 or in Article I of the Indenture.

“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 “Land Use Restriction Agreement” means this Land Use Restriction Agreement, as it may be supplemented and amended from time to time.

“Area” means the Elkhart/Goshen Metropolitan Statistical Area.

“Bonds” means the City of Goshen, Indiana Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project) and the City of Goshen, Indiana Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds are issued).

“Certificate of Continuing Program Compliance” means the certificate to be filed by the Borrower with the Issuer and the Trustee pursuant to Section 4(e) hereof, which shall be in the form required by the City of Goshen, Indiana or the Internal Revenue Service.

“Closing Date” means the date of the issuance and delivery of the Bonds, being [_____], 2021.

“Housing Act” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. 1437f et seq., or its successor.

“Income Certification” means a Verification of Income in the form of Exhibit B and an Occupancy Certificate in the form attached as Exhibit C hereof or in such other form as may be provided by the Issuer to the Borrower.

“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%) 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.

“Manager” means EREG Green Oaks of Goshen, LLC, an Indiana limited liability company.

“Mortgage” means the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of [_____], 2021, executed by the Borrower, as mortgagor, in favor of the Trustee, as mortgagee, encumbering the Project and securing the Borrower’s obligations under the Loan Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Project” means the assisted living development to be located on the site described in Exhibit A hereto, consisting of those facilities, including real property, structures, buildings, fixtures or equipment, described in Exhibit A to the Loan Agreement, as it may at any time exist, the acquisition, construction and equipping of which facilities is to be financed, in whole or in part, from the proceeds of the sale of the Bonds or the proceeds of any payment by the Borrower pursuant to the 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 Exhibit A to the Loan 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 Tax-Exempt Bonds, that such interest is excluded from gross income for federal income tax purposes; provided, however, 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.

“Tax-Exempt Bonds” means the Series 2021A Bonds.

“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 Issuer to the Borrower.

Unless the context clearly requires otherwise, as used in this Land Use Restriction 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 Land Use Restriction 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 Land Use Restriction 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 Land Use Restriction 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 Arbitrage Certificate and the Loan Agreement relating to the acquisition, construction and operation of the Project.

(b) The Borrower hereby represents and warrants that the Project is located entirely within the City of Goshen, County of Elkhart, Indiana.

(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 Bonds 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 Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds in order to provide funds to assist the Borrower in the financing of the Project.

(d) As soon as is reasonably possible, the Borrower shall notify the Trustee and the Issuer 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 Tax-Exempt Bonds to become includable in the gross income of the holders thereof for federal income tax purposes, including the provision to the Trustee of all notices and correspondence from the Issuer 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 Elkhart and shall be recorded in the grantor-grantee index in the name of the Borrower as grantor and to the name of the Issuer as grantee.

(f) The Borrower is a limited liability company organized and existing under the laws of the State of Indiana, qualified to transact business in the State of Indiana, and has duly authorized, by proper action, the execution and delivery of this Land Use Restriction Agreement.

(g) Neither the execution and delivery of this Land Use Restriction 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 Land Use Restriction 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 Tax-Exempt Bonds or the execution and delivery of this Land Use Restriction Agreement,

ii. affects or questions the validity or enforceability of the Tax-Exempt Bonds or this Land Use Restriction Agreement,

iii. questions the Tax-Exempt status of the Tax-Exempt Bonds, or

iv. questions the power or authority of the Borrower to own, acquire, construct, equip or operate the Project or to execute, deliver or perform the Borrower's obligations under this Land Use Restriction Agreement.

(j) The Borrower has or will have title to the Project sufficient to carry out the purposes of this Land Use Restriction Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Land Use Restriction Agreement.

(k) The Project will consist of those facilities described herein, which generally are described as residential rental facilities 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 Tax-Exempt Bonds. The Borrower will utilize and operate the Project as a residential rental facility during the Qualified Project Period 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) The Borrower does not and will not own any of the Tax-Exempt Bonds except as provided in the Indenture and in any documents governing the issuance of any future bonds.

(n) 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 residential rental facilities comprising the Project.

(o) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Bonds are true and correct in all material respects.

(p) Money on deposit with the Trustee in any fund or account in connection with the Bonds, 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 Tax-Exempt Bonds to be “arbitrage bonds” 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 Bonds from being “arbitrage bonds” under the Code.

(q) 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 Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement or this Land Use Restriction Agreement.

Section 3. Qualified Residential Rental Project.

The Borrower hereby acknowledges and agrees that the Project will 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, constructed and operated for the purpose of providing independent and assisted living residential rental property. The Borrower will own, manage and operate the Project during the term of this Agreement as a project to provide independent and assisted living 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) Each unit will have a full bath and a kitchenette equipped with a sink, refrigerator, microwave, countertops and cabinets. Units will also be equipped with an emergency call system. All utilities except telephone will be included in the monthly charges. Therefore, there will be no utility allowance. Studios will average 350-367 square feet (net) and one-bedrooms will average 526-536 square feet (net).

(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, hospital, sanitarium, rest home or trailer court or park.

(d) No part of the Project has or 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 unit ownership by individual persons 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-serve 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 and to the extent dwelling units have been or will be leased in accordance with HUD Section 8 Program constraints and regulations and to the extent that dwelling units are required to comply with eligibility standards in place as a result of the fact that the Development shall operate as a residential care facility.

(f) The Project will consist 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 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 airplane, skybox or other private luxury box, health club facility, any facility primarily used for gambling or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(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 during the Qualified Project Period.

(k) The Bonds 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 an “economic development facility” as defined in Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as now in effect and as it may from time to time be amended or supplemented.

(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 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:

For the Qualified Project Period, no less than forty percent (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), 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 sixty (60) days, at which time the character of such unit shall be redetermined.

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%) 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.

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 Issuer 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 Issuer 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 credit report search 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. No Income Verification shall be required for any year if during such year no unit in the Project is occupied by a new resident whose income exceeds the applicable income limit.

The Borrower will maintain complete and accurate records pertaining to the Low Income Units, and will upon reasonable notice permit any duly authorized representative of the Issuer, the Trustee, 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.

The Borrower will prepare and submit to the Issuer and the Trustee, no later than the fifteenth day of the first month of each calendar quarter 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 Land Use Restriction Agreement or the 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.

For the Qualified Project Period, all tenant leases shall be subordinate to this Agreement and the Mortgage 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 Trustee on behalf of the Issuer, 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.

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, as applicable, 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.

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 shall have equal access and enjoyment to all common facilities of the Project.

The Borrower will notify the Issuer and the Trustee, 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 Trustee 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.

The Borrower shall send to the Issuer a written Land Use Restriction Agreement compliance review on or before December 1 of each year, commencing December 1, [202_], 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 Land Use Restriction 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 Tax-Exempt Bonds.

The Borrower hereby represents, warrants and agrees as follows: the Borrower 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 Tax-Exempt Bonds 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 any Tax-Exempt Bonds are 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.

Notwithstanding any provision of this Land Use Restriction Agreement to the contrary, the Issuer, the Trustee and the Borrower hereby recognize and agree that the Issuer and the Trustee shall have no compliance duty or oversight responsibility under the terms and conditions of this Land Use Restriction Agreement.

Section 8. Modification of Covenants.

The Borrower, the Trustee and the Issuer hereby agree as follows:

To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement, 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.

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 Issuer, the Trustee 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 Issuer, at its reasonable discretion, the Trustee and the Borrower, and only upon receipt by the Issuer of the written opinion of Bond Counsel to the effect that such amendment will not affect the Tax-Exempt status of interest on the Tax-Exempt Bonds or violate the requirements of the Act, and otherwise in accordance with Section 22 hereof.

The Borrower, the Issuer (upon the written request of the Borrower) and, if applicable, the Trustee, at the expense of Borrower, 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 Issuer hereby appoints the Trustee as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Issuer, 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 Issuer defaults in the performance of its obligations under this subsection (c); provided, however, that unless directed in writing by the Issuer or the Borrower, the Trustee shall take no action under this subsection (c) without first notifying the Borrower or the Issuer, or both of them, as is applicable, and without first providing the Borrower or the Issuer, 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 Trustee to execute an amendment to this Agreement on behalf of the Issuer or Borrower.

Section 9. Indemnification.

The Borrower and its general partner hereby covenant and agree that they shall indemnify and hold harmless the Issuer and the Trustee and their respective officers, directors, officials, employees and agents as set forth in the Loan Agreement, excepting any gross negligence or intentional misconduct of the aforementioned parties.

To the extent not included in the indemnification provisions of the Loan Agreement, the Borrower and its general partner shall pay and discharge and shall indemnify and hold harmless the Issuer and the Trustee including their respective officials, attorneys, employees and agents, excepting any gross negligence or intentional misconduct of the aforementioned parties, free from (a) any and all losses, damages, costs, expenses, fines, penalties, judgments, actions, liabilities or claims (“Claims”) arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees, in connection with the Bonds, the Loan Agreement, the Indenture, any mortgage, this Agreement or the Project and (b) all costs, counsel fees, expenses or liabilities incurred in connection with any such Claim or proceeding brought thereon. In the event that any action or proceeding is brought against the Trustee with respect to which indemnity may be sought under this Section 9, the Borrower will assume the investigation and defense of the action or proceeding, including the engagement of counsel selected by the Borrower and shall assume the payment of all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same in its sole discretion; provided, however, that the Trustee shall have the right to review and approve or disapprove with reasonable discretion any such compromise or settlement. The Trustee shall have the right to engage separate counsel in any action or proceeding and participate in the investigation and defense of such action or proceeding, and the Borrower or its general partner shall pay the reasonable fees and expenses of such separate counsel if (i) the Trustee determines that a conflict exists between the interests of the Trustee and the interests of the Borrower or (ii) such separate counsel is engaged with the approval of the Borrower, which approval shall not be unreasonably withheld, conditioned or delayed.

In addition thereto, the Borrower and its general partner will pay upon demand all of the fees and expenses paid or incurred by the Trustee and/or the Issuer in enforcing the provisions hereof.

The provisions of this Section 9 shall survive the term of the Tax-Exempt Bonds and this Agreement or the resignation or removal of the Trustee.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions hereof, the Borrower shall remain obligated to indemnify each indemnified party pursuant to this Section 9 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such indemnified party has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

Section 10. Consideration.

The Issuer has agreed to issue the Bonds to provide funds to lend to the Borrower to finance the Project. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

Section 11. Reliance.

The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity

of the Tax-Exempt Bonds, in the exemption from Indiana personal income taxation of interest on the Tax-Exempt Bonds and in the Tax-Exempt status of the interest on the Tax-Exempt Bonds. In performing their duties and obligations hereunder, the Issuer and the Trustee 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 Issuer and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, not taken or suffered by the Issuer or the Trustee 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 Trustee and the Issuer 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 Trustee by the Borrower or the Issuer with respect to the occurrence or absence of a default.

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 Trustee and the Issuer, which consent shall be given as promptly as practicable following (A) the receipt by the Trustee and the Issuer of evidence reasonably acceptable to the Trustee and the Issuer that (1) the Borrower shall not be in default hereunder or under the Loan Agreement (which may be evidenced by a Compliance Certificate) or the purchaser or assignee undertakes to cure any defaults of the Borrower to the reasonable satisfaction of the Trustee and the Issuer; (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 residential 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 (which may be evidenced by a certificate from the assignee), 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 (which may be evidenced by a certificate from the assignee); (B) the execution by the purchaser or assignee of any document reasonably requested by the Issuer or the Trustee 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 Issuer and the Trustee 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 Issuer and the Trustee of an opinion of Bond Counsel addressed to the Issuer and the Trustee to the effect that any such sale, transfer or other disposition will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Bonds; and (D) receipt by the Issuer and the Trustee of all fees then currently due and payable to the Issuer and the Trustee from the Borrower. 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, except that no consent of the Trustee shall be required in the case of any transfer of the Project to an entity wholly-owned by the Borrower or the Borrower's general partner if the conditions set forth in Section 6.10 of the Loan Agreement are satisfied. For the Qualified Project Period, the Borrower shall not: (1) except pursuant, or subordinate, to the provisions of this Agreement and the Mortgage (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 Tax-Exempt Bonds), 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 leases of apartments, garages, self-storage units and laundry facilities and except for Permitted Encumbrances permitted pursuant to Section 3.17 of the Mortgage); (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 Land Use Restriction Agreement and all and several of the terms hereof shall become effective upon the date hereof, 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 Tax-Exempt Bonds and discharge of the Indenture and the Loan Agreement.

The terms of this Agreement to the contrary notwithstanding, the requirements of the Code set forth in Sections 3 and 4 hereof 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 Issuer and the Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Tax-Exempt Bonds are 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 preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions 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 1.103-10(e) of the Regulations) 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 hereby subjects the Project to the covenants, reservations and restrictions set forth in this Agreement. The Issuer, the Trustee 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 Issuer, the Trustee 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 Issuer, the Trustee 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 Bonds were 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 Land Use Restriction Agreement, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by the Issuer or the Trustee to the Borrower and the Investor Member, or for a period of sixty (60) days from the date the Borrower should, with due diligence, have discovered such default, then the Trustee, acting on its own behalf or on behalf of the Issuer, 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 sixty (60) days, such default shall not constitute an Event of Default hereunder so long as (i) the Borrower institutes corrective action within said sixty (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 sixty (60) days will not adversely affect the Tax-Exempt status of interest on the Tax-Exempt Bonds. The Issuer and the Trustee 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 insure compliance with the Act or the Code. Following the declaration of an Event of Default hereunder the Issuer or the Trustee may, at their respective options, take any one or more of the following steps, in addition to all other remedies provided by law or equity:

(a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;

(b) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder; and

(d) declare a default under the Loan Agreement and proceed with any remedies provided therein, including foreclosure under the Mortgage and redemption of the Bonds to the extent permitted by, and in accordance with the provisions of, the Loan Agreement and the Indenture.

The Borrower hereby agrees that specific enforcement of the Borrower's agreements contained herein is the only means by which the Issuer and the Low Income Tenants 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 Borrower, Issuer and the Trustee each acknowledge that the primary purpose for requiring compliance with the restrictions provided in this Regulatory Agreement is to preserve the excludability from gross income for federal income tax purposes of interest on the Bonds to the owners thereof, and that the Trustee on behalf of the owners of the Bonds, who are declared to be third party beneficiaries of this Regulatory Agreement, shall be entitled, for any breach of the provisions hereof, to all remedies both at law and in equity in the event of any default hereunder.

The Issuer and the Trustee hereby agree that the cure of any default hereunder made or tendered by the Investor Member shall be accepted or rejected by the Issuer and the Trustee on the same basis as if tendered by the Borrower.

All reasonable fees, costs and expenses of the Trustee and the Issuer incurred in taking any action pursuant to this Section shall be the sole responsibility of the Borrower.

No breach or default under this Land Use Restriction 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 Trustee and the Issuer shall not be deemed to have knowledge of any default hereunder unless a responsible officer of the Trustee shall have been specifically notified in

writing of such default by the Issuer, the Paying Agent, the Borrower or by the Owners of at least 25% of the Bonds.

Section 18. Rights of the Trustee.

The Trustee shall be entitled to the same rights, immunities, and protections in so acting under this Regulatory Agreement as it has in acting as Trustee under the Indenture, including its right to compensation thereunder for any services it performs hereunder. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement the Trustee shall not be required to conduct an investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Trustee by the Borrower with respect to the occurrence or absence of a default hereunder. The Trustee shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents, certificates or other instruments delivered to it in accordance with this Regulatory Agreement but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

After the Qualified Project Period, the Trustee shall no longer have any duties or responsibilities under the Agreement and all references to the Trustee in this Agreement shall be deemed references to the Issuer.

Section 19. Recording and Filing.

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 Elhart, Indiana and in such other places as the Issuer or the Trustee may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

The Borrower and the Issuer 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 Issuer and the Trustee, in order to insure that the requirements and restrictions of this Agreement will be binding upon all owners of the Project.

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 Loan and notwithstanding a discharge of the Indenture, the Borrower shall continue to pay to the Trustee reasonable compensation for any services rendered by it hereunder and reimbursement for all expenses reasonably incurred by it in connection therewith, and shall continue to pay (or shall prepay) the Issuer's expenses as provided in the Loan Agreement.

Attention: Kevin Beard
Email: kbeard@evergreenreg.com
Telephone: (312) 569-0823

With a copy to:

Frost Brown Todd LLC
201 North Illinois Street, Suite 1900
Indianapolis, Indiana 46204
Attention: Matthew S. Carr
Telephone: (317) 237-3803
Email: mcarr@fbtlaw.com

If to the Investor
Member:

Columbia Housing/PNC Institutional Fund XX
Limited Partnership
121 S.W. Morrison, Ste 1300
Portland, OR 97204
Attention: [_____]
Telephone: [_____]
Email: [_____]

With a Copy to:

[_____]
[_____]
[_____]
Attention: [_____]
Telephone: [_____]
Email: [_____]

To the Trustee:

U.S. Bank National Association
10 West Market Street, Suite 830
Indianapolis, Indiana 46204
Attention: Global Trust Services
Telephone: [_____]
Email: [_____]

A copy of each notice sent to the Borrower shall also be sent to the Manager at the address provided in writing to the foregoing parties; but such copy shall not constitute notice to the Borrower, nor shall any failure to send such copy constitute a breach of this Agreement or a failure of or defect in notice to the Borrower. The Issuer, the Trustee 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. Unless otherwise specifically provided herein, any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when the same is: (i) deposited in the United States mail and sent by first class mail, postage prepaid, or (ii) delivered, in each case to the parties at the addresses set forth below or at such other address as a party may designate by notice to the other parties.

Section 24. Severability.

If any provision of this Land Use Restriction 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, with the exception of any and all indemnities provided by the Borrower under the Bond Documents and Section 9 hereof (i) the liability of the Borrower under this Agreement to any person or entity, including, but not limited to, the Trustee or the Issuer and their successors and assigns, is limited to the Borrower's interest in the Project, the Revenues and the amounts held in the funds and accounts created under the Indenture or other Bond Documents 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 Bond Documents, any rights of the Borrower under the Bond 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 and the Indenture 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. No Obligation of Issuer Regarding Expenses.

Notwithstanding any provision contained in this Land Use Restriction Agreement to the contrary, the Issuer will not be required to incur any expense or to advance any funds relating to this Land Use Restriction Agreement.

[Remainder of this Page Intentionally Left Blank, Signature Pages Follow]

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have executed this Land Use Restriction Agreement by duly authorized representatives, all as of the date first above written.

CITY OF GOSHEN, INDIANA,
as Issuer

By: _____
Jeremy Stutsman, Mayor

ATTEST:

By: _____
Adam Scharf, City Clerk-Treasurer

WITNESS to signatures above:

Witness Signature

Witness Name (must be typed/printed)

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have executed this Land Use Restriction Agreement by duly authorized representatives, all as of the date first above written.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Pamela V. Cole, Vice President

WITNESS to signatures above:

Witness Signature

Witness Name (must be typed/printed)

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have executed this Land Use Restriction Agreement by duly authorized representatives, all as of the date first above written.

GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company
By: EREG GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company,
its sole Member

By: _____
Name: Stephen F. Rappin
Title: Manager

WITNESS to signatures above:

Witness Signature

Witness Name (must be typed/printed)

STATE OF INDIANA)
) SS:
COUNTY OF _____)

On this ___ day of _____ 2021, before me, a Notary Public in and for said County and State, personally appeared Jeremy Stutsman and Adam Scharf to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk-Treasurer, respectively, of the City of Goshen, Indiana, a municipal corporation of the State of Indiana, and that foregoing instrument was signed on behalf of said public body corporate and politic, by authority of its Common Council and said Mayor and City Clerk-Treasurer, and further acknowledged the execution of the foregoing Land Use Restriction Agreement as their respective free act and deed on behalf of said public body corporate and politic.

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)

Printed name: _____

My Commission expires: _____

My County of Residence: _____

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, a Notary Public in and for said County and State, personally appeared _____, being known to me to be the person whose name is subscribed as a Witness to this Land Use Restriction Agreement, who, being duly sworn by me, deposes and says that this Land Use Restriction Agreement was executed Jeremy Stutsman and Adam Scharf, Mayor and City Clerk-Treasurer, respectively, of the City of Goshen, Indiana, in the above-named subscribing Witness's presence, that the above-named subscribing Witness saw Jeremy Stutsman and Adam Scharf, Mayor and City Clerk-Treasurer, respectively, of the City of Goshen, Indiana, execute the foregoing instrument, that the above-named subscribing Witness at the same time subscribed his/her name as a Witness thereto, and that the above-named subscribing Witness is not a party to the transaction described in this Land Use Restriction Agreement and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this ____ day of _____, 2021.

Notary Public – Signature

Notary Public – Printed Name

My Commission Expires:

My County of Residence:

STATE OF _____)
) SS:
COUNTY OF _____)

On this ___ day of _____ 2021, before me, a Notary Public in and for said County and State, personally appeared _____ to me personally known, who being by me duly sworn did say that she was an authorized officer of U.S. BANK NATIONAL ASSOCIATION, and that [he/she] is the persons who executed the foregoing instrument as such officer acting for and on behalf of said association, and acknowledged that [he/she] executed the same as her free act and deed for and on behalf 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)

Printed name: _____

My Commission expires: _____

My County of Residence: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared [INSERT WITNESS NAME] _____, being known to me to be the person whose name is subscribed as a Witness to this Land Use Restriction Agreement, who, being duly sworn by me, deposes and says that this Land Use Restriction Agreement was executed by _____, an authorized officer of U.S. BANK NATIONAL ASSOCIATION, in the above-named subscribing Witness's presence, that the above-named subscribing Witness saw _____, authorized officer of U.S. BANK NATIONAL ASSOCIATION, execute this Land Use Restriction Agreement, that the above-named subscribing Witness at the same time subscribed his/her name as a Witness thereto, and that the above-named subscribing Witness is not a party to the transaction described in this Land Use Restriction Agreement and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this _____ day of _____ 2021.

Notary Public in and for said County and State

(SEAL)

Printed name: _____

My Commission expires: _____

My County of Residence: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On this ____ day of _____ 2021, before me, a Notary Public in and for said County and State, personally appeared Stephen F. Rappin to me personally known, who being by me duly sworn did say that he is the Manager of EREG Green Oaks of Goshen, LLC, the sole Member of Green Oaks of Goshen, LLC, an Indiana limited liability company, and that he is the person who executed the foregoing Land Use Restriction Agreement as such person acting for and on behalf of said limited liability company, and further acknowledged the execution of the foregoing Land Use Restriction Agreement as his free act and deed for and on behalf of said limited liability company.

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)

Printed name: _____

My Commission expires: _____

My County of Residence: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared [INSERT WITNESS NAME] _____, being known to me to be the person whose name is subscribed as a Witness to this Land Use Restriction Agreement, who, being duly sworn by me, deposes and says that this Land Use Restriction Agreement was executed by Stephen F. Rappin, the Manager of EREG Green Oaks of Goshen, LLC, the sole Member of Green Oaks of Goshen, LLC, an Indiana limited liability company, in the above-named subscribing Witness's presence, that the above-named subscribing Witness saw Stephen F. Rappin, the Manager of EREG Green Oaks of Goshen, LLC, the sole Member of Green Oaks of Goshen, LLC, an Indiana limited liability company, execute this Land Use Restriction Agreement, that the above-named subscribing Witness at the same time subscribed his/her name as a Witness thereto, and that the above-named subscribing Witness is not a party to the transaction described in this Land Use Restriction Agreement and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this ____ day of _____ 2021.

Notary Public in and for said County and State

(SEAL)

Printed name: _____

My Commission expires: _____

My County of Residence: _____

The mailing address of [_____] is [_____] ,
Attention: [_____].

Please return this Instrument to [_____].

This instrument was prepared by Scott A. Krapf, Frost Brown Todd LLC, 201 N. Illinois Street, Suite 1900, Indianapolis, Indiana 46244.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Scott A. Krapf, Esq.

EXHIBIT A

DESCRIPTION OF PROJECT SITE

Address of Property: 282 Johnston Street, Goshen, Indiana 46528

[Legal Description to be inserted.]

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: Green Oaks of Goshen

The undersigned hereby (certify)(certifies) that:

1. This Certification of Tenant Eligibility is being delivered in connection with the undersigned's application for occupancy of Apartment #__ in the Green Oaks of Goshen in Goshen, Indiana.

2. 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)	_____	_____	_____	_____	_____

3. 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 _____

4. 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 charged 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:	\$ _____	_____

5. (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:
\$ _____

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 Land Use Restriction Agreement.

11. 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: _____

[The signatures of all persons over the age of 18 years listed in Number 2 above are required]

12. Calculation of Eligible Income:

- a. Enter the amount entered for entire household in 4 above: \$ _____
 b. Enter income derived from assets (line 5(d)(2)(a): \$ _____
 c. Subtract b. from a. \$ _____
 d. 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.
 e. Passbook rate _____ % X _____ = \$ _____
 f. Enter the greater of b or d \$ _____
 TOTAL ELIGIBLE INCOME (Line e + c) \$ _____

13. The amount entered in 12(f):

- _____ Qualifies the applicant(s) as a Lower Income Tenant(s)
 _____ Does not qualify the applicant(s) as Lower Income Tenant (s).

14. Number of apartment unit assigned:

Bedroom size: _____ Rent: \$ _____

Tenant-paid Utilities:

Water _____ Gas _____ Electric _____

Trash _____ Other (list type) _____

15. 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 _____

16. Method used to verify applicant(s) income:

- _____ Employer income verification
- _____ Social Security Administration verification
- _____ Department of Social Services verification
- _____ Copies of tax returns
- _____ Other (_____)

17. 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 Land Use Restriction Agreement to live in a unit in the Project.

Signature of Borrower’s Authorized Representative:

_____ Date: _____
(Signature)

Name: _____

Title: _____

EXECUTION OF ITEMS 18 AND 19 _____ IS _____ IS NOT NECESSARY.

Initials: _____

18. 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: _____

19. 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 Borrower
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 Goshen, 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 Green Oaks of Goshen 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 Goshen, Indiana.

Signature

Date

Please send form to:

Green Oaks of Goshen, LLC
566 Lake Street, Suite 400,
Chicago, IL, 60661
Attention: Kevin Beard
Email: kbeard@evergreenreg.com
Telephone: (312) 569-0823

[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: _____

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 Financing Agreement or the Land Use Restriction Agreement to which the Owner is a party.

GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company

By: EREG GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company,
its sole Member

By: _____
Name: Stephen F. Rappin
Title: Manager

Witness

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.

Commenced Occupancy	Terminated Occupancy
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.

GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company

By: EREG GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company,
its sole Member

By: _____
Name: Stephen F. Rappin
Title: Manager

Witness

Date

LOAN AGREEMENT

between

CITY OF GOSHEN, INDIANA

and

GREEN OAKS OF GOSHEN, LLC
an Indiana limited liability company

Relating to:

\$_[_____]
CITY OF GOSHEN, INDIANA
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2021A
(GREEN OAKS OF GOSHEN PROJECT),

and

\$_[_____]
CITY OF GOSHEN, INDIANA
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2021B
(FEDERALLY TAXABLE – GREEN OAKS OF GOSHEN PROJECT)

Dated as of [_____], 2021

Pursuant to a Trust Indenture dated as of [_____], 2021, the rights of the City of Goshen, Indiana hereunder, other than the Issuer Unassigned Rights (as defined in the Trust Indenture referred to below), have been assigned to U.S. Bank National Association, as trustee under a Trust Indenture dated as of [_____], 2021.

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SCHEDULE I BORROWER AGREEMENTS WITH RESPECT TO FUNDS OR
ACCOUNTS AS ESTABLISHED BY INDENTURE

LOAN AGREEMENT

This **LOAN AGREEMENT** (this “Loan Agreement”), dated as of [_____], 2021, is entered into by the **CITY OF GOSHEN, INDIANA**, a municipal corporation duly organized and existing under the laws of the State of Indiana (the “State”) (the “Issuer”) and **GREEN OAKS OF GOSHEN, LLC**, an Indiana limited liability company (the “Borrower”).

WITNESSETH:

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (the “Act”) has been enacted by the General Assembly of the State; and

WHEREAS, pursuant to the Act, the Issuer is authorized to issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing or refinancing costs of acquisition, construction and equipping of multifamily housing developments; and

WHEREAS, in order to further the purposes of the Act, the Issuer is issuing its Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project) in the aggregate principal amount of \$[_____] (the “Series 2021A Bonds”) and its Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project), in the aggregate principal amount of \$[_____] (the “Series 2021B Bonds” and together with the Series 2021A Bonds, the “Bonds”) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds are issued), and loaning the proceeds to the Borrower pursuant to this Loan Agreement for the purpose of (a) providing financing for all or a portion of the costs of the acquisition, design, construction, improvement and/or equipping of approximately 120 assisted living units and certain functionally-related improvements to be located at 282 Johnston Street, Goshen, Indiana 46528 (the “Project”), (b) paying capitalized interest on the Bonds, (c) funding certain reserves, and (d) paying certain costs of issuance of the Bonds; and

WHEREAS, the Bonds will be issued under the terms of a Trust Indenture (the “Indenture”) of even date herewith between the Issuer and U.S. Bank National Association as trustee (the “Trustee”); and

WHEREAS, the Bonds are secured by (i) an assignment and pledge by the Issuer to the Trustee of this Loan Agreement, (ii) a pledge of the Revenues (as defined herein), (iii) a pledge of and security interest in all moneys and investments held under the Indenture, (iv) the Mortgage (as defined in the Indenture) in favor of the Trustee, and (v) the Assignment of Contracts (as defined in the Indenture), in favor of the Trustee, for the benefit of the owners from time to time of the Bonds;

NOW, THEREFORE, in consideration of the respective representations and agreements herein contained, the parties hereto agree as follows (provided, that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision whatsoever, or as a pledge of the general credit, faith or taxing power of the Issuer, the State or any political subdivision thereof, except to the extent the Bonds shall be special, limited

obligations of the Issuer payable solely out of the revenues and receipts derived from this Loan Agreement, the proceeds of the Bonds, and the income from the temporary investment of such proceeds, all as herein provided):

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. All words and phrases defined in Article I of the Indenture shall have the same meanings when used in this Loan Agreement. In addition, the following words and phrases shall have the following meanings:

“*Bond Purchase Contract*” means the Purchase Contract with respect to the Bonds dated [_____], 2021, between the Borrower, the Issuer and the Underwriter.

“*Borrower Documents*” when used with respect to the Borrower, means this Loan Agreement, the Mortgage, the Assignment of Contracts, the Bond Purchase Contract, the Land Use Restriction Agreement, the Arbitrage Certificate and the Continuing Disclosure Agreement and all certificates executed and delivered by the Borrower. The Borrower Documents do not include any documents or agreements to which the Borrower is not a party.

“*Closing Date*” means [_____], 2021.

“*Collection Account*” means the account created pursuant to Section 4.2 hereof.

“*Construction Monitor*” means [_____] or such other independent third party construction monitor agreed to by a Majority of Holders.

“*Days Cash on Hand*” means as of any testing date, the amount calculated by the Borrower pursuant to Section 6.5 of the Loan Agreement equal to (i) unrestricted cash and investments held by the Borrower including, for such purpose, the balance in the Operating Reserve whether or not held by the Investor Member, plus cash held by the Managing Agent on behalf of the Borrower, plus the cash and investments held by the Trustee in the following funds or accounts: Revenue Fund or Collection Account not yet allocated to other accounts, Operating Expense Account, Trustee/Issuer Expense Account, Insurance/Tax Account and the Surplus Account divided by (ii) the sum of Operating Expenses plus annual interest on the Bonds and multiplied by (iii) 365.

“*Debt Service Coverage Ratio*” means for any consecutive twelve (12) month period, the ratio of (a) Revenues minus Operating Expenses for such consecutive twelve (12) month period determined in accordance with generally accepted accounting principles, divided by (b) the sum of the Bond Service Charges plus the regularly scheduled payments of principal of and interest on any other Indebtedness where such payments are a fixed amount that is required to be paid rather than subject to available cash flow for such consecutive twelve (12) month period.

“*Development Budget*” means the budget for development, construction and equipping of the Project attached as **Exhibit A** as modified to the date of reference pursuant to Section 3.3.

“*Fiscal Year*” means the fiscal year of the Borrower which commences January 1 and ends on the succeeding December 31, or any other consecutive twelve month period which the Borrower shall designate in writing to the Issuer and the Trustee.

“*Indebtedness*” means (i) all the indebtedness of the Borrower for borrowed money or that has been incurred in connection with the acquisition of assets, excluding, however, (a) indebtedness incurred in connection with a gift, bequest or devise of Property that is secured by a lien, charge or other encumbrance on such property and liability for which is effectively limited to the property subject to such lien, charge or other encumbrance with no recourse, directly or indirectly, to any other Property of the Borrower, (b) all unsecured indebtedness of Borrower and (c) the making of a bridge loan or the additional bridge loan to the Borrower by the Investor Member or a third party, (ii) the capitalized value of the liability under any lease of real or personal property which is properly capitalized on the balance sheet of the Borrower in accordance with generally accepted accounting principles consistently applied, and (iii) any guaranties by the Borrower of the Indebtedness of any other Person.

“*Indenture*” means the Trust Indenture, dated as of [_____], 2021, between the Issuer and U.S. Bank National Association, as trustee, under which the Bonds are being issued, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“*Independent Insurance Consultant*” means a person who or firm which is not a director, trustee, employee or officer of the Borrower or a director, trustee, employee or commissioner of the Issuer, appointed by an authorized officer of the Borrower, qualified to survey risks and to recommend insurance coverage for such Project and having a favorable reputation for skill and experience in such surveys and such recommendations, and who may be a broker or agent with whom the Borrower transacts business.

“*Investor Member*” means [Columbia Housing/PNC Institutional Fund XX Limited Partnership, an Oregon partnership], and its successors, affiliates and assigns.

“*Issuer Documents*” when used with respect to the Issuer, means the Bonds and all documents and agreements executed and delivered by the Issuer as security for or in connection with the issuance of the Bonds including, but not limited to the Loan Agreement, the Bond Purchase Contract, the Indenture, the Land Use Restriction Agreement and the Arbitrage Certificate. The Issuer Documents do not include any documents or agreements to which the Issuer is not a direct party.

“*Issuer Fees and Expenses*” means (i) payment or reimbursement to the Issuer for any expenses or indemnification hereunder or under the Indenture; (ii) fees of Issuer’s counsel with respect to the Bonds; and (iii) and any other reasonable expense that may be incurred by the Issuer hereunder or under the Indenture, plus any Late Fee incurred with respect to any of the foregoing.

“*Issuer Indemnified Parties*” means, individually and collectively, the Issuer, its past, present, and future directors, executive directors, officers, counsel, advisors, employees and agents, the Issuer’s Common Council, its past, present, and future council members, advisors and agents, the Issuer’s Economic Development Commission, its past, present and future members, advisors or agents, individually and collectively, and the Issuer.

“*Late Fee*” means ten percent (10%) of any payment due to the Issuer that is received by the Issuer later than 15 calendar days following the date the payment is due.

“*Lease-Up Stabilization*” means the date on which for two consecutive months the Project has achieved a Debt Service Coverage Ratio of 1.0 to 1.0 or more.

“*Liens*” shall have the meaning given such term in Section 6.13.

“*Limited Offering Memorandum*” means the Limited Offering Memorandum dated [_____], 2021, with respect to the Bonds.

“*Managing Agent*” means [_____], a [_____] limited liability company, as the manager of the Project pursuant to the Management Agreement, or any successor manager appointed pursuant to Section 6.11.

“*Managing Member*” means the Managing Member of the Borrower.

“*Management Agreement*” means, initially the Management Agreement, dated on or about the date hereof between the Borrower and the Managing Agent, and from time to time any other management agreement entered into by the Borrower pursuant to Section 6.11.

“*Operating Agreement*” means the Amended and Restated Operating Agreement of the Borrower, dated as of [_____], 2021.

“*Operating Expenses*” shall mean customary annual operating expenses of the Project plus amounts required to be deposited in the Replacement Reserve Account for the Fiscal Year for which audited financial statements are available or other relevant period (if applicable), but excluding for purposes of this definition depreciation, interest on the Bonds, amortization, unrealized gain or loss on investments, and other non-cash items that may be included on such financial statements as operating expenses for such period.

“*Permitted Encumbrances*” means those title exceptions listed more specifically on the title insurance policy issued on the Issuance Date referenced in Section 2.2(j) hereof and as of any particular time, any of the following:

- (a) Liens for taxes and special assessments on the Project not then due or delinquent;
- (b) Liens arising under the Borrower Documents;
- (c) purchase money security interests with respect to any item of equipment related to the Project;
- (d) utility, access, and other easements and rights-of-way, mineral rights and reservations, restrictions and exceptions which would not in the aggregate (i) materially interfere with or impair any present use of the Project or any reasonably probable future use of the Project, or (ii) materially reduce the value which would be reasonably expected to be received for the Project upon any sale (including any foreclosure of the mortgage granted by the Mortgage);
- (e) mechanics’ and materialmen’s Liens related to the Project when payment of the related bill is not overdue;
- (f) judgment Liens against the Borrower so long as such judgment is being contested and execution thereon is stayed or while the period for responsive pleading has not lapsed, provided the Borrower has established cash reserves relating to such Lien

to the extent required under generally accepted accounting principles; (g) (1) rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license or permit, or provision of law, affecting the Project, to (A) terminate such right, power, franchise, grant, license or permit, provided that the exercise of such right would not materially impair the use of the Project or materially and adversely affect the value thereof, or (B) purchase, condemn, appropriate, or recapture, or designate a purchaser of, the Project; (2) Liens on the Project for taxes, assessments, levies, fees, water and sewer charges, and other governmental and similar charges not yet due or delinquent; (3) currently existing easements, rights-of-way, servitudes, restrictions and other minor defects, encumbrances and irregularities in the title to the Project which do not materially impair the use of the Project or materially and adversely affect the value thereof; or (4) rights reserved to or vested in any municipality or public authority to control or regulate the Project or to use the Project in any manner, which rights do not materially impair the use of the Project or materially and adversely affect the value thereof; (h) Liens on the Project and/or the Revenues (subordinate to the Indenture and the Mortgage and subject to a subordination agreement) to secure payment of Indebtedness subordinate to the obligations of the Borrower under this Loan Agreement; and (i) the pledge to the Investor Member by the Managing Member of the Managing Member's interest in the Operating Agreement, as security for the performance of all of the Managing Member's obligations under the Operating Agreement.

“*Project*” has the meaning contained in the Recitals hereto. The term “Project” includes the “Project Site.”

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Loan Agreement; the term “heretofore” means before the date of execution of this Loan Agreement; and the term “hereafter” means after the date of execution of this Loan Agreement.

Section 1.2 Interpretation. Words importing persons include firms, associations and corporations. 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.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Issuer. The Issuer makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Issuer is a municipal corporation duly organized and existing under the laws of the State. Pursuant to the Act and the Bond Ordinance adopted by the Issuer on [_____, 2021] (the “Bond Ordinance”), the Issuer is authorized to enter into the transactions contemplated by this Loan Agreement, the Land Use Restriction Agreement and the Indenture and to carry out its obligations hereunder and thereunder, and has been duly authorized to execute and deliver this Loan Agreement.

(b) Neither the Issuer's execution of this Loan Agreement, the Land Use Restriction Agreement or the Indenture, the issuance of the Bonds, its consummation of the transactions contemplated on its part thereby, nor the Issuer's fulfillment or compliance with the terms and conditions of this Loan Agreement, the Land Use Restriction Agreement, the Indenture and the Bonds, conflicts with or results in a breach of the terms, conditions and provisions of any applicable law or any material restriction, agreement or instrument to which the Issuer is a party, or by which it or any of its property is bound, or constitutes a default under any of the foregoing.

(c) The Issuer has not assigned or pledged, and will not assign or pledge, its right, title or interest in or to this Loan Agreement, other than to secure the Bonds and as otherwise provided in the Indenture.

(d) The Issuer is not in default under any of the provisions of the laws of the State which would affect its existence or its powers referred to in the preceding subsection (a).

(e) Under existing statutes and decisions, no taxes on income or profits are imposed on the Issuer.

(f) All approvals, consents, and orders of any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to the performance by the Issuer, of its obligations hereunder and under the Bond Ordinance, the Issuer Documents and the Bonds and all other documents to be executed by the Issuer in connection with the issuance of the Bonds have been obtained.

(g) The Issuer will not knowingly take or omit to take any action, which action or omission the Issuer knows will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2021A Bonds under the Code.

(h) As provided in the Bond Ordinance, the Project is included within the definition of an "economic development facility" in the Act. The Borrower intends the Project to be and to continue to be an "economic development facility" under the Act during the term of this Loan Agreement.

Section 2.2 Representations, Warranties and Certain Covenants of the Borrower.

The Borrower represents, warrants and covenants as of the date of issuance of the Bonds as follows:

(a) The Borrower is a limited liability company duly organized and validly existing under the laws of the State of Indiana, is validly existing and duly authorized to conduct its business in the State and is duly authorized and has full power under all applicable laws and its Operating Agreement to create, issue, enter into, execute and deliver, as the case may be, the Borrower Documents. There has been no event of dissolution of the Borrower under its Operating Agreement or applicable law.

(b) The execution and delivery of the Borrower Documents on the Borrower's part have been duly authorized by all necessary action, and neither the Borrower's execution and delivery of the Borrower Documents, the Borrower's consummation of the transactions contemplated hereby or thereby, nor the Borrower's fulfillment of or compliance with the terms and conditions hereof or thereof, conflicts with or results in a material breach of the Operating Agreement of the Borrower or any material agreement or instrument to which the Borrower is now a party or by which it or any of its property is bound (except for any such breaches for which the Borrower has obtained a waiver or a required consent), or constitutes a material default (or would constitute a material default with due notice or the passage of time or both) under any of the foregoing, or, except as described in the Borrower Documents, 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 material instrument or agreement to which the Borrower is now a party or by which it, or any of its property, is bound.

(c) The Project is a qualified residential rental project as defined in Section 142 of the Code. The Borrower intends to operate the Project for such use from the Issuance Date to the expiration or earlier termination of the term of both this Loan Agreement, as provided herein, and the Land Use Restriction Agreement, as provided therein, and in the Act. No portion of the Project includes any property used or to be used for sectarian instruction or study or as a place for devotional activities or religious worship or any property which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(d) The Borrower Documents have been duly authorized by all necessary action by the Borrower, executed and delivered and constitute the valid and binding obligations of the Borrower, enforceable in accordance with their terms, except as such enforcement may be limited by applicable bankruptcy, insolvency or other similar laws affecting the rights and remedies of creditors generally. No authorization or approval of any other governmental body or agency is required for the execution by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations under the Borrower Documents or the transactions contemplated thereby.

(e) The Borrower will not use any of the proceeds of the Series 2021A Bonds in such a manner as to impair the exclusion from gross income of the interest on the Bonds from federal income taxation or take or fail to take any action that would so impair such exclusion. The Borrower will comply fully with its covenants and agreements under the Borrower Documents and the Arbitrage Certificate.

(f) As of the date hereof, the Borrower is in full compliance with all of the terms and conditions of this Loan Agreement and the other Borrower Documents and no "Event of Default" has occurred and is continuing with respect thereto and no event has occurred and is continuing which with the lapse of time or the giving of notice or both would constitute such an "Event of Default."

(g) As provided in the Bond Ordinance, the Project is included within the definition of an "economic development facility" in the Act. The Borrower intends the

Project to be and to continue to be an “economic development facility” under the Act during the term of this Loan Agreement.

(h) The availability of financial assistance from the Issuer as provided herein and in the Indenture has induced the Borrower to proceed with the Project. The Borrower does not intend to lease the Project, except to residents in the living units contained in the Project or otherwise in the ordinary course of business of the Borrower.

(i) The Borrower (or an affiliate of the Borrower) has good and marketable title in fee simple to the Project Site, sufficient for the purposes of this Loan Agreement, subject only to Permitted Encumbrances.

(j) The Borrower has obtained a standard American Land Title Association (“ALTA”) title insurance policy from a title insurance company in an amount at least equal to the aggregate face amount of the Bonds insuring the Issuer and the Trustee on behalf of the Bondholders as their respective interests may appear, and containing only such exceptions as listed on Schedule B.

(k) The Borrower has good and merchantable title to the Project equipment owned by the Borrower as of the date hereof, free and clear of all liens and encumbrances.

(l) The Project is in material compliance with all applicable federal, state and local laws and ordinances relating to zoning, building, safety and those environmental laws and regulations that are applicable to the Project.

(m) The representations and covenants contained in the Arbitrage Certificate are true and correct and are incorporated herein by this reference and shall have the same effect as if such representations and covenants were actually contained in this Loan Agreement.

(n) No litigation, proceedings or investigations are pending or, to the knowledge of the Borrower, threatened against the Borrower seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of the Borrower Documents or which would in any manner challenge or adversely affect the corporate existence or powers of the Borrower to enter into and carry out the transactions described in or contemplated by or the execution, delivery, validity or performance by the Borrower of the Borrower Documents. In addition, except as described in the Limited Offering Memorandum, no litigation, proceedings or investigations are pending or, to the knowledge of the Borrower, threatened in writing against the Borrower, except litigation, proceedings or investigations involving claims for which the probable ultimate recoveries and the estimated costs and expenses of defense, in the opinion of management of the Borrower (i) will be entirely within the applicable insurance policy limits (subject to applicable deductibles) or are not in excess of the total of the available assets held under applicable self-insurance programs or (ii) will not have a material adverse effect on the operations or condition, financial or otherwise, of the Borrower.

(o) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed, 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.

(p) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(q) The information furnished, or to be furnished, by the Borrower and filed, or to be filed, by the Issuer with the Internal Revenue Service pursuant to Section 149(e) of the Code was or will be true and correct in all material respects as of the date of filing said information.

(r) The Borrower has any and all necessary licenses and permits to occupy and operate their existing facilities and has obtained, will obtain or will cause to be obtained all necessary licenses and permits to acquire, occupy and operate the Project, as they become required.

ARTICLE III

ISSUANCE OF THE BONDS; APPLICATION OF FUNDS; THE PROJECT

Section 3.1 Issuance of the Bonds; Deposit of Bond Proceeds and Borrower Deposits. To provide funds to make the Loan, the Issuer will, on the Issuance Date, issue, sell and deliver the Bonds to the Underwriter. The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature, will be subject to redemption and will contain such other terms as are set forth in the Bonds and the Indenture and will be special limited obligations of the Issuer payable solely from the sources described in the Indenture. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered. On the Issuance Date, the proceeds from the sale of the Bonds will be loaned to the Borrower and deposited directly with the Trustee as provided in the Indenture.

Section 3.2 Investment of Funds and Arbitrage. Any moneys held as a part of any of the funds established under the Indenture shall be invested or reinvested by the Trustee as directed by the Authorized Borrower Representative in accordance with the Indenture. The Borrower covenants to the Issuer and to and for the benefit of the purchasers and owners of the Series 2021A Bonds from time to time outstanding that so long as any of the Series 2021A Bonds remain outstanding, moneys on deposit in any fund established under the Indenture in connection with the Series 2021A Bonds, whether or not such moneys were derived from the proceeds of the Series 2021A Bonds or from any other sources, will not be used in a manner which will cause the Series 2021A Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code. The Borrower covenants and agrees to comply with the provisions of the Arbitrage Certificate and to timely make any deposits required thereunder.

Section 3.3 Agreement to Acquire, Construct and Equip the Project; Disbursement of Construction and Acquisition Fund.

(a) The Borrower agrees that the Bond proceeds will be applied to the various funds and accounts as set forth in **Schedule I** hereto and that all proceeds deposited in the Construction and Acquisition Fund, as defined in the Indenture, shall be used for the purpose of paying the costs of acquiring, constructing and equipping the Project or reimbursing the Borrower for any such costs paid by the Borrower. All such funds will be used in accordance with the Development Budget. The Borrower shall make and enter into all contracts required for such acquisition and construction. The Borrower will cause the acquisition and construction of the Project to be completed with reasonable dispatch and in no event later than three (3) years from the Issuance Date.

(b) The Trustee has been directed under the Indenture to disburse funds from the Construction and Acquisition Fund pursuant to the Disbursing Agreement and the Indenture to pay the cost of acquisition, equipping and construction pursuant to the Development Budget as set forth in subsection (c) below or to reimburse the Borrower for any such costs paid by the Borrower. Disbursements from the Construction and Acquisition Fund shall be made only by means of a "Disbursement Request" in the form set forth in the Disbursing Agreement executed by the Authorized Borrower Representative and approved by the Construction Monitor (except the Construction Monitor's approval shall not be required for the first draw on the Issuance Date) that the amount requested is available pursuant to the relevant line-item in the Development Budget or from the contingency line-item or pursuant to paragraph (d) in this Section 3.3. The Trustee shall not be responsible for verifying the accuracy of the information contained in the requisition. The Borrower shall cause such requisitions to be directed to the Trustee as may be necessary to effect payments from the Construction and Acquisition Fund in accordance with the terms of this Section and the Indenture. The Trustee shall retain a record of all requisitions. If applicable, the Borrower shall provide with each requisition appropriate waivers of any statutory liens by the party that performed the work and a detailed requisition form as provided by the general contractor for the work completed. In making any payments from the Construction and Acquisition Fund, the Trustee may conclusively rely on any requisitions and certificates delivered pursuant hereto.

(c) Any changes to the Development Budget including reallocations from one line item to another, shall be made only with the written approval of the Borrower and a Majority of Holders; provided that the Borrower may reallocate any contingency amount or an amount up to 10% of a line item in the original Development Budget to another line item without such approval upon submitting a certificate to the Trustee stating that the amount reallocated will not be required for the purpose originally allocated.

(d) Within ninety (90) days after the completion of all items in the Development Budget, the Borrower shall submit to the Trustee the Completion Certificate signed by the Authorized Borrower Representative certifying that all portions of the work provided for in the Development Budget have been fully completed substantially in accordance with the Development Budget, the construction contracts therefor and any outline specifications for such work. Upon delivery of the Completion Certificate, all funds then remaining in the Tax-Exempt Bond Proceeds Account and Taxable Bond Proceeds Account of the Construction and Acquisition Fund shall be transferred to the Bond Fund to be used for a redemption under Section 3.1(e) of the Indenture.

(e) If the money in the Construction and Acquisition Fund available for payment of the costs of the Project shall not be sufficient to make such payment in full, the Borrower agrees to pay directly, or to deposit (or cause to be deposited) moneys in the Construction and Acquisition Fund for the payment of, such costs as may be in excess of the moneys available therefor in the Construction and Acquisition Fund. THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT THE MONEYS WHICH WILL BE DEPOSITED INTO THE CONSTRUCTION AND ACQUISITION FUND, AND WHICH UNDER THE PROVISIONS OF THE LOAN AGREEMENT WILL BE AVAILABLE FOR PAYMENT OF THE CONSTRUCTION COSTS OF THE PROJECT, WILL BE SUFFICIENT TO PAY ALL OF THE COSTS WHICH WILL BE INCURRED IN CONNECTION THEREWITH. The Borrower agrees that if, after exhaustion of the moneys in the Construction and Acquisition Fund, the Borrower should pay, or deposit moneys in the Construction and Acquisition Fund for the payment of, any portion of the costs of the Project pursuant to the provisions hereof, it shall not be entitled to any reimbursement therefor from the Issuer, the Trustee, or from the owners of any of the Bonds, nor shall it be entitled to any diminution of the amounts payable under Article IV hereof.

Section 3.4 Replacement Reserve Account. (a) The Replacement Reserve Account of the Revenue Fund is being established to pay amounts requisitioned by the Borrower to pay for capital repairs to and restoration of the Project. The Borrower shall pay or cause to be paid to the Trustee the amount required to be deposited in the Replacement Reserve Account pursuant to Section 5.6(e) of the Indenture. The Borrower shall provide to the Trustee annually by [] 30 of each year a capital improvement budget (the “Capital Improvement Budget”) showing all costs and expenses expected to be paid from the Replacement Reserve Account for the following Fiscal Year of the Borrower. At the end of every five year period, with the first such period beginning in the year in which the Trustee receives the Completion Certificate, the Borrower will base the Capital Improvement Budget on the engineer’s reports described in (b) below. Disbursements shall be made from the Replacement Reserve Account to pay the costs and expenses provided for in the budget based on a requisition signed by the Authorized Borrower Representative. Notwithstanding the foregoing, however, the Trustee shall, upon the written request of the Borrower, make unanticipated disbursements from the Replacement Reserve Account for emergency repairs to the Project affecting essential mechanical and/or structural elements of the Project and/or the health and safety of the Project residents.

(b) No more than two and one-half months prior to the end of every fifth (5th) Fiscal Year, commencing with the Fiscal Year beginning the fifth year after the year in which the Trustee receives the Completion Certificate, the Borrower shall hire an independent engineer or engineering firm expert in capital needs assessments for facilities such as the Project, to inspect the Project and recommend what capital expenditures and repairs are necessary or appropriate to maintain the Project in the ensuing five (5) Fiscal Years. The Borrower shall thereafter certify to the Trustee any upward adjustments needed (based on such report) to the monthly amount required to be deposited in the Replacement Reserve Account as described in subsection (a) above and Section 5.6(e) of the Indenture.

Section 3.5 No Warranty by Issuer. The Borrower recognizes that the Issuer has not inspected the Project or of any fixture or other item constituting a portion thereof, and the Issuer makes no warranty or representation, express or implied or otherwise, with respect to the same or the location, use, description, design, merchantability, fitness for use for any particular purpose, condition or durability thereof, or as to the Issuer's or the Borrower's title thereto or ownership thereof or otherwise, it being agreed that all risks incident thereto are to be borne by the Borrower. In the event of any defect or deficiency of any nature in the project or any fixture or other item constituting a portion thereof, whether patent or latent, the Issuer shall have no responsibility or liability with respect thereto. The provisions of this Section have been negotiated and are intended to be a complete exclusion and negation of any warranties or representations by the Issuer, express or implied, with respect to the Project or any fixture or other item constituting a portion thereof, whether arising pursuant to the Uniform Commercial Code of the State or any other law now or hereafter in effect or otherwise.

Section 3.6 Inspection of Project. The Borrower agrees that during the term of this Loan Agreement, the Issuer, the Trustee and their duly authorized agents shall have the right, but shall be under no duty or obligation to exercise this right, during regular business hours, with reasonable notice, to enter upon the premises and examine and inspect the Project, subject to such limitations, restrictions and requirements as the Borrower may reasonably prescribe.

ARTICLE IV

THE LOAN AND OTHER COVENANTS OF THE BORROWER

Section 4.1 The Loan. The Issuer agrees, upon the terms and subject to the conditions hereinafter set forth, to utilize the proceeds of the Bonds to cause the Loan to be made to the Borrower. The Issuer shall pledge its interest in the Loan and other documents related to the Loan (other than the Issuer Unassigned Rights, as defined in the Indenture) to the Trustee, all pursuant to the Indenture.

Section 4.2 Borrower's Repayment Obligation. The Borrower promises to pay to the Trustee, as assignee of the Issuer, amounts from time to time sufficient to pay principal of, and interest and premium, if any, on the Bonds when due or required to be redeemed pursuant to the Indenture. The Borrower waives presentment for payment, notice of dishonor, demand, protest, notice of protest, and all demand, notice and suretyship defenses generally in connection with the delivery, acceptance, performance, default or endorsement of this repayment obligation and specifically assents to any extension or postponement of the time for payment or other indulgence and/or to the addition or release of any other party or person primarily or secondarily liable.

The Borrower agrees to maintain a collection account (the "Collection Account") in which Revenues from operation of the Project will be deposited, and such Collection Account shall, to the extent practical operationally to the Borrower be maintained with the Trustee. The Borrower agrees to deposit all Revenues in the Collection Account upon receipt, and to cause amounts in the Collection Account (if maintained at a financial institution other than the Trustee) to be transferred not later than the last Business Day of each week, and on the twentieth (20th) day of each month irrespective of whether it is the last Business Day of a week, to the Trustee for deposit on such days into the Revenues Account under the Indenture, in order to secure payment of the Loan and

of the following amounts. Specifically, the Borrower agrees to pay, to the extent not paid from the funds held under the Indenture, the following amounts:

(a) Notwithstanding any other provision of this Loan Agreement to the contrary contained herein, this Loan Agreement evidences, and the Borrower agrees to pay, the principal of, redemption premium, if any, and interest on the Bonds issued pursuant to the Indenture, as said principal, redemption premium, if any, and interest becomes due, whether at maturity, by prior redemption, by acceleration or otherwise. Payments of principal, redemption premium, if any, and interest due under this Loan Agreement shall be made in lawful money of the United States of America to the Trustee at the address set forth in the Indenture or at such other place as any assignee of this Loan Agreement may designate by a notice in writing given to the Borrower.

(b) The Borrower agrees to pay to the Trustee for remittance to the Issuer: (i) the Issuer Fees and Expenses, and (ii) all costs and other reasonable expenses incurred by the Issuer including, but not limited, to reasonable fees of Bond Counsel, Counsel to the Issuer and of consultants retained by the Issuer in connection with the authorization, issuance, sale, preparation, execution and delivery of any and all documents required in connection with the issuance of the Bonds, payable at or before the Issuance Date.

(c) The Borrower agrees to pay to the Trustee (i) the initial acceptance fee of the Trustee and the costs and expenses, including reasonable attorneys' fees, incurred by the Trustee in entering into and executing the Indenture, and (ii) during the term of this Loan Agreement (A) an amount equal to the annual fee of the Trustee for the ordinary services of the Trustee, as trustee, rendered and its ordinary expenses incurred under the Indenture, including reasonable attorneys' fees, as and when the same become due, (B) the reasonable fees, charges and expenses of the Trustee, as and when the same become due, and (C) the reasonable fees, charges and expenses of the Trustee for the necessary extraordinary services rendered by it and including reasonable attorneys' fees actually incurred, as and when the same become due.

(d) The Borrower agrees to pay to the United States of America all amounts due and owing as arbitrage rebate on the Series 2021A Bonds in accordance with the Arbitrage Certificate and the Code and applicable regulations thereunder.

(e) The Borrower agrees to pay with respect to the Project all taxes, assessments and related governmental charges and all 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 required to maintain the insurance coverage on the Project provided for herein and in the Mortgage.

(f) The Borrower agrees to pay, or cause to be paid, all amounts referenced in **Schedule I** hereto to the Trustee by the dates and in the amounts set forth therein.

(g) The Borrower agrees to replace any DSRF Credit Facility with cash to be deposited in the Debt Service Reserve Fund within thirty (30) days in the event the

Moody's or S&P rating of the provider of the DSRF Credit Facility falls below "A" or its equivalent at any time.

(h) To the extent of an insufficiency in the amount available in the Revenues Account to fund required transfers pursuant to Section 5.6(b) of the Indenture, the Borrower shall take all steps to obtain funds within five business days, but only to the extent the Borrower has a right to do so under the Operating Agreement, from the Operating Reserve held by the Investor Member, and remit any funds so obtained to the Trustee to cure such deficiency.

Section 4.3 Operation of the Project. The Borrower covenants that it will complete the Project and that it will operate the Project for the purposes and in a manner consistent with the Limited Offering Memorandum. The Borrower further covenants and agrees that it will, throughout the term of this Loan Agreement, (1) comply with all applicable laws, regulations, ordinances, rules, and orders relating to the Project Site or the Project equipment as provided in the Borrower Documents, (2) in connection with the construction and operation of the Project, comply with all federal, state and local statutes, laws, ordinances, building codes, regulations and rulings applicable to the Project, (3) maintain and insure the Project Site and the Project equipment and pay all taxes, payments-in-lieu-of-taxes, assessments and other governmental charges in accordance with the Borrower Documents, (4) not cause or permit the Project Site or the Project equipment to become or remain a public nuisance, and (5) not allow any change in the nature of the occupancy, use or operation of the Project Site or the Project equipment which is substantially inconsistent with the Borrower's application for assistance to the Issuer, except that the Borrower may, after notice to the Issuer, permit any such change which does not disqualify the Project as an authorized project under the Act and the Code as in effect on the date hereof. Nothing in this Section is intended to require the Borrower to operate the Project Site or the Project equipment in such manner as, in the good faith judgment of the Borrower, shall materially and adversely impair the operating results of the Borrower in connection with the use of the Project Site or the Project equipment.

Section 4.4 Assignment and Pledge of the Issuer's Rights; Obligations of the Borrower Hereunder Unconditional. As security for the payment of the Bonds, the Issuer assigns and pledges to the Trustee all rights, title and interest of the Issuer in and to this Loan Agreement, including the right to receive payments hereunder and thereunder (except the Issuer Unassigned Rights and the right to receive payment of the Issuer Fees and Expenses), and the Issuer hereby directs the Borrower to make said payments directly to the Trustee. The Borrower herewith assents to such assignment and pledge and will make payments directly to the Trustee without defense or set-off by reason of any dispute between the Borrower and the Issuer or the Trustee, and hereby agrees that its obligation to make payments hereunder and to perform its other agreements contained herein are absolute and unconditional. Until the principal of and interest on the Bonds shall have been fully paid or provision for the payment of the Bonds made in accordance with the Indenture, the Borrower (a) will not suspend or discontinue any payments provided for in this Loan Agreement, (b) will perform all its other duties and responsibilities called for by this Loan Agreement, and (c) will not terminate this Loan Agreement for any cause including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the Issuer to perform any of its

agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Loan Agreement.

Section 4.5 Non-Recourse Obligation of the Borrower. The Borrower and its members shall only be liable upon the indebtedness evidenced by this Loan Agreement, or sums or amounts to accrue or to become payable hereunder, to the full extent (but only to the extent) of the security granted for the Loan and the funds held pursuant to the Indenture. If a default occurs in the timely and prompt payment of all or any part of said indebtedness, sums or amounts, any judicial proceedings or enforcement of the remedies under this Loan Agreement against the Borrower and/or its members shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, estates, assignments, titles, rights and security interests now or at any time hereafter acquired in such security and no judgment, attachment, execution or other writ of process shall be sought, issued or levied upon the assets, property or funds of the Borrower and/or its members other than the properties, rights, estates and interests of the Borrower as are identified as security for the Loan. In the event of a foreclosure or other disposition as provided for in the Mortgage and the Assignment of Contracts or the Indenture of such liens, estates, assignments, title, rights and security interests, whether by judicial proceedings or the exercise of the power of sale, no judgment for the deficiency of such indebtedness, sums and amounts shall be sought or obtained against the Borrower and/or its members.

Notwithstanding the foregoing provisions of this Section, nothing herein contained shall limit or restrict the ability of the Issuer or the Trustee to seek or obtain a judgment against the Borrower for damages caused by the Borrower as a direct consequence of the occurrence of any of the events set forth below (collectively, "Recourse Events"):

- (a) fraud or any material misrepresentation made by the Borrower or any officer, agent or employee of the Borrower in any material writing or contained in any of the provisions of this Loan Agreement, the Mortgage, the Assignment of Contracts, the Limited Offering Memorandum or any related document or Borrower Document;
- (b) material breach of any covenant contained in the Mortgage and the Assignment of Contracts, relating to the failure by the Borrower to pay, satisfy and discharge all general and special city, county and state taxes or special assessments or encumbrances, charges and liens which are or may be prior to or superior to the lien of the Mortgage;
- (c) material misapplication of (i) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Project to the full extent that such proceeds are payable or should be payable to the Trustee under the terms of the Mortgage; or (ii) proceeds or awards resulting from the condemnation or other taking in lieu of condemnation, relating to any portion of the Project to the full extent of any such proceeds or awards which are payable or should be paid to the Trustee under the terms of the Mortgage;
- (d) material failure by the Borrower to cause to be maintained upon the Project such insurance coverages as are required hereunder or under the Mortgage;

(e) the occurrence of acts or omissions of the Borrower which result in material waste to or of the Project;

(f) material failure by the Borrower to remit or cause to be remitted to the Trustee the Revenues promptly upon demand;

(g) the incurrence of any expenses, damages, or liabilities including, without limitation, all reasonable attorneys' fees, whether incurred by the Issuer or the Trustee prior to or following foreclosure of the Mortgage and whether the Issuer or the Trustee shall be in the status of a lienholder or an owner of the Project following foreclosure, directly or indirectly arising out of or attributable to use, generation, storage, release, threatened release, discharge, disposal, or presence on, under, or about the Project of any materials, wastes, or substances defined or classified as hazardous or toxic under any federal, state or local laws, regulations or otherwise resulting from the breach by the Borrower of any of the environmental covenants contained in the Mortgage; and

(h) except for the gross negligence or intentional misconduct of the Trustee or the gross negligence or intentional misconduct of the Issuer, the incurrence of any expenses, damages, or liability, including without limitation, all reasonable attorneys' fees incurred by the Issuer or the Trustee in connection with any audit or inquiry by the Internal Revenue Service, Securities Exchange Commission or similar entity in connection with the Bonds.

Section 4.6 Security Interest. As security for the Loan and all other debts, liabilities and obligations of Borrower to the Issuer now or hereafter arising (collectively, the "Obligations"), Borrower hereby grants to the Trustee, as assignee of the Issuer, a lien on and security interest in all monies held in the Collection Account, any interest of the Borrower in the funds and accounts established under the Indenture and all Revenues, and all receipts, revenues, income and other moneys, whether in the form of cash, securities or other personal property and all insurance proceeds and proceeds of the foregoing, derived from same (collectively, the "Collateral"). The granting of any security interest hereby is in addition to and does not supersede the Mortgage, assignments and security interests granted pursuant to the other Borrower Documents.

Section 4.7 Recording and Maintenance of Liens.

(a) The Borrower will, at its own expense, take all necessary action to maintain and preserve the liens and security interest in the Collateral so long as any principal, premium, if any, or interest on the Bonds remains unpaid.

(b) The Trustee will, forthwith after the execution and delivery of the Bond Documents and thereafter from time to time, cause the Bond Documents, including any amendments thereof and supplements thereto, and any financing statements in respect thereof to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to perfect and protect (i) the lien and security interest thereof upon and the title of the Borrower to the Project, and (ii) the lien and security interest therein granted to the Trustee to the rights, if any, of the Issuer assigned under the Bond Documents, and from time to time will perform or cause to be

performed any other act as provided by law and will execute or cause to be executed any and all continuation statements and further instruments necessary for such publication, perfection and protection. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all Federal or State fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Bond Documents and such instruments of further assurance.

(c) The Issuer shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected thereby. The Issuer will execute such instruments provided to it by the Borrower as may be reasonably necessary in connection with such filing or recording.

Section 4.8 Payment of Taxes and Claims and Liens. The Borrower shall, prior to the time penalties that shall attach thereto, pay and discharge or cause to be paid and discharged all taxes, assessments and other governmental charges or levies which may lawfully be levied, assessed or imposed upon it or upon the income or profits of the Borrower, or upon any property, real, personal or mixed, belonging to the Borrower or upon any part thereof or upon any of the Project or the Revenues from the Project and all lawful claims or obligations that, if unpaid, would become a lien upon the Project, real or personal, or upon any part thereof or the revenues from the Project and also any lawful claims for labor, material and supplies which, if unpaid, might become a lien or charge against such property (including the Project); provided, however, that the Borrower shall not be required to pay any such tax, assessment, charge, levy, claim or obligation if it is being contested in good faith by the Borrower but shall be paid forthwith upon the commencement of any proceedings to foreclose any lien securing the same, unless a surety bond, in an amount satisfactory to the Trustee, is obtained and delivered to the Trustee. The Borrower shall promptly pay or cause to be paid any valid, final judgment enforcing any such tax, assessment, charge, levy or claim and cause the same to be satisfied of record unless such judgment is then the subject of a good faith contest as referenced above.

Section 4.9 Preservation of Project. The Borrower will preserve and protect the Project in decent, safe and sanitary condition and from time to time will make, or will cause to be made, all reasonably required, proper repairs, renewals, replacements, betterments and improvements thereto. The Borrower shall have the privilege of remodeling the Project or making substitutions, additions, modifications and improvements to the Project from time to time as the Borrower, in its discretion, may deem to be desirable for the Borrower's use for its purposes, the costs of which remodeling, substitutions, additions, modifications and improvements shall be paid by the Borrower, and the same shall be subject to the Mortgage and the Assignment of Contracts.

Notwithstanding the foregoing, the Borrower shall not make any material change to the overall scope of the Project without the approval of a Majority of Holders.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 No Abatement of Payments. If the Project shall be damaged or either partially or totally destroyed, or if title to or the temporary use of the whole or any part of the Project shall be taken or condemned by a competent authority for any public use or purpose, there shall be no abatement or reduction in the amounts payable under this Loan Agreement.

Section 5.2 Application of Proceeds. If the Project shall be damaged or either partially or totally destroyed, or if title to or the temporary use of the whole or any part of the Project shall be taken or condemned by a competent authority for any public use or purpose, the Borrower shall immediately notify the Trustee and each Interested Beneficial Holder of such event in writing and, within ninety (90) days after the occurrence of such event shall certify to the Trustee in writing its decision regarding the restoration of the Project. If the Borrower certifies to the Trustee that it does not intend to restore the Project, all proceeds of insurance or condemnation, net of any expenses of recovering such amounts, shall be paid immediately on receipt to the Trustee for deposit in the Bond Fund. If the Borrower certifies to the Trustee that it intends to restore the Project and that no Event of Default has occurred under this Loan Agreement or any of the Borrower Documents, the Borrower shall restore the Project to substantially the same condition as existed prior to the event causing the damage or destruction or the condemnation and may apply the proceeds of any insurance or condemnation to the payment or reimbursement of the costs of such repair or restoration, provided (i) such proceeds are sufficient to rebuild the Project in a manner that provides adequate security to the Issuer for repayment of the Loan or if such proceeds are insufficient, Borrower shall, at its sole cost and expense, fund any deficiency, and (ii) the Trustee (if directed by a Majority of Holders) shall have the right to approve, in its reasonable discretion, any and all plans and specifications for any major rebuilding (expenditures in excess of \$1,000,000) and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement.

ARTICLE VI

SPECIAL COVENANTS

Section 6.1 Insurance Required. The Borrower agrees to insure the Project or cause it to be insured with insurance companies licensed to do business in the State in such amounts and in such manner and against such loss, damage and liability, including liability to third parties, as is customary with entities in the same or similar business, including without limitation:

- (a) Fire and extended coverage property damage insurance, including, but not limited to all risk insurance, in an amount equal to the full replacement value of the Project, without coinsurance or deduction for depreciation, containing a waiver of subrogation clause and a deductible amount not to exceed \$100,000 per occurrence;
- (b) Public liability insurance, and umbrella liability insurance, in such form, amount and deductible as is customary for assisted living facilities in the State, and naming Trustee as additional insured covering Trustee's interest in the Project;

(c) Worker's compensation insurance for employees of the Borrower or other operator of the Project as required by the laws of the State;

(d) Business interruption or rent loss insurance endorsement in an amount at least equal to 100% of the sum of: Bond Service Charges for the current Bond Year, annual debt service on any other permitted financing, ground rents, if any, and operating expenses, including, without limitation, real estate taxes and assessments and insurance, for the Project;

(e) Flood insurance obtainable through the National Flood Insurance Program for any portion of any building that is located within the 100 year flood plain in an amount sufficient to cover any damage to any such portion of building which may be anticipated in the event of flood; and

(f) Boiler and machinery insurance when risks covered thereby are present.

The insurance coverages described in subsections (a), (c), (d) and (e) above shall name the Trustee under a standard noncontributory mortgagee clause or otherwise directly insure the Trustee's interest in the Project. All losses under said insurance shall be payable to the Trustee as its interests appear. All policies of insurance required hereunder shall be with a company or companies with a policy rating of A and financial rating of at least Class VII in the most current edition of Best's Insurance Reports and authorized to do business in the State. All policies of insurance shall provide that they will not be canceled or modified without thirty (30) days' prior written notice to the Trustee. **The Borrower shall complete and send to the Trustee the Officer's Certificate attached hereto as Exhibit B annually not later than [_____] 1 of each year.** The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of the insurance. If any renewal or replacement policy is not obtained as required herein, the Trustee may, but is not required to, obtain the same in the Borrower's name and at the Borrower's expense. The Trustee shall not by the fact of failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Borrower hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

Not less than once every three (3) years, with the first such report filed no later than [_____] , the Borrower shall cause the Independent Insurance Consultant to prepare and file a report with the Trustee certifying as to the adequacy of the Borrower's insurance program. To the extent any such report recommends changes to the existing program, the Borrower agrees to follow such recommendation to the extent feasible. Notwithstanding the foregoing, the Trustee has no obligation to cause the Borrower to implement such recommendations.

Section 6.2 Issuer and Borrower Representatives. Whenever under the provisions of this Loan Agreement the approval of the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given for the Issuer by an Authorized Issuer Representative and for the Borrower by an Authorized Borrower Representative, and any party hereto and the Trustee shall be authorized to act on any such approval or request, which approval or request shall not be unreasonably withheld.

Section 6.3 Indemnification.

(a) Except for instances of gross negligence or intentional misconduct by an Indemnified Persons (as hereinafter defined), the Borrower will pay, and will protect, indemnify, and save the Issuer Indemnified Parties and the Trustee and its respective past, present and future members, officers, directors, executive directors, employees, agents, successor, assigns and any other person, if any, who “controls” the Issuer or the Trustee, as the case may be, as that term is defined in Section 15 of the Securities Act of 1933, as amended (the Issuer Indemnified Parties, the Trustee and the other listed persons, collectively referred to as, the “Indemnified Persons”) harmless for, from and against any and all liabilities, losses, damages, taxes, fines, penalties, costs and expenses (including attorneys’ fees and expenses of the Issuer and the Trustee), causes of action, suits, proceedings, claims, demands, tax reviews, investigations and judgments of whatsoever kind and nature (including, but not limited to, those arising or resulting from any injury to or death of any person or damage to property) arising from or in any manner directly or indirectly growing out of or connected with the following:

(i) the use, financing, non-use, condition or occupancy of the Project, any repairs, construction, alterations, renovation, relocation, remodeling and equipping thereof or thereto or the condition of any such Project including adjoining sidewalks, streets or alleys and any equipment or facilities at any time located on or connected with such Project or used in connection therewith but which are not the result of the gross negligence or willful misconduct of the Issuer, the Trustee, or any other Indemnified Persons;

(ii) the offering, issuance sale or any resale of the Bonds or the performance of any duties under any of the Bond Documents, or a violation of any agreement, warranty, covenant or condition of this Loan Agreement or any other agreement executed in connection with this Loan Agreement;

(iii) a violation of any contract, agreement or restriction by the Borrower relating to the Project;

(iv) a violation of any law, ordinance, rules, regulation or court order affecting the Project or the ownership, occupancy or use thereof or the Bonds or use of the proceeds thereof,

(v) any statement or information contained in any Limited Offering Memorandum or supplement or amendment thereto furnished to the Issuer or the purchaser of any Bonds except information therein provided by the Issuer or Trustee, that is untrue or incorrect in any material respect, and any omission from such Limited Offering Memorandum or any statement or information which should be contained therein for the purpose for which the same is to be used or which is necessary to make the statements therein not misleading in any material respect; and

(vi) with respect to the Issuer and the Trustee, the acceptance or administration of the Indenture, including without limitation the enforcement of any remedies under the Indenture and related documents.

(b) In case any claim shall be made or any action shall be brought against one or more of the Indemnified Persons in respect of which indemnity can be sought against the Borrower pursuant to the preceding paragraphs, the Indemnified Parties seeking indemnity shall promptly notify the Borrower, in writing, and the Borrower shall promptly assume the defense thereof, including the employment of counsel chosen by the Borrower and approved by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld, delayed or conditioned), the payment of all expenses and the right to negotiate and consent to settlement. If any Indemnified Person is advised in a written opinion of counsel that there may be legal defenses available to such Indemnified Person which are adverse to or in conflict with those available to the Borrower or that the defense of such Indemnified Person should be handled by separate counsel, the Borrower shall not have the right to assume the defense of such Indemnified Person, but the Borrower shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Person in assuming its own defense, and provided also that, if the Borrower shall have failed to assume the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Person shall be paid by the Borrower. Notwithstanding the foregoing, any one or more of the Indemnified Persons shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Person unless the employment of such counsel has been specifically authorized by the Borrower or unless the provisions of the immediately preceding sentence are applicable. The Borrower shall not be liable for any settlement of any such action affected without the consent of the Borrower, but if settled with the consent of the Borrower or if there be a final judgment for the plaintiff in any such action with or without consent, the Borrower agrees to indemnify and hold harmless the Indemnified Person (excepting any gross negligence or intentional misconduct by such Indemnified Person) from and against any loss, liability or expense by reason of such settlement or judgment.

(c) The Borrower shall also indemnify the Issuer Indemnified Parties, the Trustee and such Indemnified Persons for all reasonable costs and expenses, including reasonable counsel fees, incurred in: (i) enforcing any obligation of the Borrower under this Loan Agreement or any related agreement, (ii) taking any action requested by the Borrower, (iii) taking any action required by this Loan Agreement or any related agreement, (iv) an examination, investigation or audit of the Series 2021A Bonds by the Internal Revenue Service or any inquiry by the Securities and Exchange Commission or other governmental or regulatory entity related to the Bonds or the issuance thereof; and (v) taking any action considered necessary by the Issuer or Trustee and which is authorized by this Loan Agreement or any related agreement.

(d) All amounts payable to the Issuer under this Section shall be deemed to be Issuer Fees and Expenses payable to the Issuer for the purposes of the provisions hereof

and of the Indenture dealing with assignment of the Issuer's rights hereunder. The Issuer Indemnified Parties and their successors and assigns shall not be liable to the Borrower for any reason (excepting gross negligence or intentional misconduct by the Issuer Indemnified Parties).

(e) Any provision of this Loan Agreement or any other instrument or document executed and delivered in connection therewith to the contrary notwithstanding, the Issuer retains the right to (i) enforce any applicable Federal or State law or regulation or resolution of the Issuer, and (ii) enforce any rights accorded to the Issuer by Federal or State law or regulation of the Issuer, and nothing in this Loan Agreement shall be construed as an express or implied waiver thereof.

Section 6.4 Tax Exempt Status of the Series 2021A Bonds. The Borrower hereby represents, warrant and agree that:

(a) The Borrower will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the excludability from gross income for purposes of Federal income taxation of the interest on the Series 2021A Bonds and if the Borrower should take or permit, or omit to take or cause to be taken, any such action, the Borrower shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof;

(b) Upon the request of the Issuer or the Trustee after receipt of request of Majority of Holders, the Borrower will take such action or actions as may be reasonably necessary, in the written opinion of Bond Counsel, the cost of which shall be paid by the Borrower, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 142 of the Code;

(c) The Borrower shall comply with the requirements set forth in the Arbitrage Certificate and will not use or permit the use of the proceeds from the sale of the Series 2021A Bonds in any manner which will cause the Series 2021A Bonds to be "arbitrage bonds" within the meaning of the Code and the applicable regulations thereunder; and

(d) The Borrower shall comply with the requirements of the Land Use Restriction Agreement and will not take or permit to be taken any action in connection with the Project which would jeopardize the status of the Project as a "qualified residential rental project" within the meaning of Section 142 of the Code.

Section 6.5 Liquidity Covenant. The Borrower covenants that it will maintain sixty (60) Days Cash on Hand as of each [June 30 and December 31], commencing [_____]. The Borrower will provide the Trustee and the Underwriter within forty-five (45) days of each [June 30 and December 31] with a certificate stating the Days Cash on Hand. In the event that Days Cash on Hand falls below the requirement set forth above as of any testing date on or after [_____], the Borrower shall, at the request of a Majority of Holders, retain an Independent Consultant within seventy-five (75) days following the end of such semiannual testing

date at the Borrower's expense. The Independent Consultant shall make appropriate recommendations in order to bring the Borrower into compliance with this covenant. Copies of such recommendations shall be filed with the Borrower, the Underwriter and Trustee. The Borrower agrees that promptly upon the receipt of such recommendations, subject to applicable requirements or restrictions imposed by law, or to the extent practical, it shall revise its methods of operation and shall take such other reasonable actions as shall be in conformity with the recommendations. So long as the Borrower shall retain an Independent Consultant and complies with such Independent Consultant's recommendations to the extent practical or not prohibited by law, no default or Event of Default shall be declared solely by reason of a violation of the requirements of this Section.

Section 6.6 Maintenance of Existence and Qualification.

(a) Unless the Borrower complies with the following provisions of this Section, the Borrower agrees that as long as any Bonds are outstanding it will maintain its existence, will not dissolve, liquidate or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it. Any dissolution, liquidation, disposition, consolidation or merger shall be subject to the following conditions:

(i) the Borrower provides a certificate to the Issuer and the Trustee, in form and substance satisfactory to the Issuer, to the effect that no Event of Default exists hereunder or under the Indenture and that no Event of Default will be caused by the dissolution, liquidation, disposition, consolidation or merger;

(ii) the entity surviving the dissolution, liquidation, disposition, consolidation or merger assumes in writing and without condition or qualification the obligations of the Borrower under each of the Borrower Documents;

(iii) the Borrower or the entity surviving the dissolution, liquidation, disposition, consolidation or merger, within ten (10) days after execution thereof, furnishes to the Issuer and the Trustee a true and complete copy of the instrument of dissolution, liquidation, disposition, consolidation or merger;

(iv) neither the validity nor the enforceability of the Bonds, the Indenture or any agreements to which the Borrower is a party is adversely affected by the dissolution, liquidation, disposition, consolidation or merger;

(v) the exclusion of the interest on the Series 2021A Bonds from gross income for federal income tax purposes is not adversely affected by the dissolution, liquidation, disposition, consolidation or merger, and the provisions of the Act, the Indenture and the Borrower Documents are complied with concerning the dissolution, liquidation, disposition, consolidation or merger;

(vi) no rating on the Bonds, if the Bonds are then rated, is reduced or withdrawn as a result of the dissolution, liquidation, disposition, consolidation or merger;

(vii) the Project continues to be as described herein;

(viii) any successor to the Borrower shall be qualified to do business in the State and shall continue to be qualified to do business in the State throughout the term hereof; and

(ix) the Trustee has executed a certificate acknowledging receipt of all documents, information and materials required by this Section.

As of the effective date of the dissolution, liquidation, disposition, consolidation or merger, the Borrower (at its cost) shall furnish to the Issuer and the Trustee (A) an opinion of Bond Counsel, in the form and substance satisfactory to such parties, as to items (iv) and (v) above, and (B) an opinion of Independent Counsel, in form and substance satisfactory to such parties, as to the legal, valid and binding nature of item (ii) above.

(b) No dissolution, liquidation, consolidation or merger of the Borrower shall be permitted without the written consent of a Majority of Holders; provided that the following shall not be considered a dissolution, liquidation, consolidation or merger that requires the consent of the Majority of Holders or that is subject to satisfaction of the conditions in Section 6.6(a):

(i) the sale, transfer, conveyance or pledge of the Investor Member's member interests in Borrower;

(ii) the sale, transfer, conveyance or pledge of any member interest in the Investor Member;

(iii) the appointment by the Investor Member of an additional or substitute Managing Member of the Borrower in accordance with the Operating Agreement, provided that the Investor Member delivers prior notice thereof to the Trustee and the Issuer and any additional or substitute Managing Member of the Borrower is reasonably acceptable to a Majority of Holders and is selected with reasonable promptness;

(iv) the dilution of the Managing Member's interest in cash flow and/or capital transaction proceeds in the Borrower in accordance with the terms of the Operating Agreement; and

(v) any amendment to the Operating Agreement, except for the following amendments that would require the consent of a Majority of the Holders: (A) an amendment that changes the amount of the capital contributions or timing (other than adjustments which are contemplated in the Operating Agreement); (B) an amendment that changes the guarantees from the Managing Member or any guarantors; (C) an amendment that affects the sale or dissolution of the Project; or (D) an amendment affects the Borrower's operations as a single purpose entity as required by Section 6.14 of this Loan Agreement.

Section 6.7 Assignment, Selling and Leasing. This Loan Agreement may not be assigned and the Project or interest therein may not be leased or sold, as a whole or in part (other than leases for occupancy of individual units by residential tenants or leases of commercial space, if any), by the Borrower unless the Borrower satisfies each of the following conditions:

(a) An opinion of Bond Counsel is delivered to the effect that such assignment, lease or sale does not adversely affect the exclusion from gross income of the interest on the Series 2021A Bonds for Federal income tax purposes:

(b) The assignee, purchaser or lessee shall assume the obligations of the Borrower hereunder to the extent of the interest assigned or leased;

(c) The Borrower shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each assignment, assumption of obligation, contract of sale, or lease, as the case may be; and

(d) The written consent of a Majority of Holders.

Notwithstanding the foregoing, the Borrower may transfer property or assets without meeting the conditions set forth above (i) in the ordinary course of business to the extent that such property is worn out or is no longer useful or necessary in connection with the operation of the Project, (ii) to the extent that such property is replaced with property of equal value and utility, or (iii) so long as the aggregate fair market value of any property removed other than pursuant to (i) or (ii) above does not exceed \$250,000 annually.

For the purposes of this Section, neither of the following in and of itself shall be deemed an assignment: (i) any foreclosure or conveyance in lieu of foreclosure by or to the Trustee pursuant to the terms of any deed to secure debt, mortgage or security agreement securing the Borrower Documents; and (ii) any other transfer to the Trustee or to a nominee or assignee of the Trustee.

Section 6.8 Environmental Representation and Indemnity.

(a) To the best of the Borrower's knowledge, after reasonable due inquiry consisting solely and exclusively of review by the Managing Member of the Borrower of the Phase I Environmental Site Assessment and Limited Site Investigation, each dated [____], and except as otherwise disclosed in such Environmental Reports: (i) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, wastes, materials or substances, as defined in or governed by the provisions of any applicable law, statute, code, ordinance, regulation, requirement or rule relating thereto (hereinafter collectively called "Environmental Regulations"), and also including urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos-containing materials, nuclear fuel or waste, radioactive materials, explosives and carcinogens, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Project to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances") are now or have ever been stored, located, generated, produced,

processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Project; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Project into the environment; (iii) the Project has not ever been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing purposes, or a gasoline service station; (iv) no underground storage tank is now located in the Project or has previously been located therein but has been removed therefrom; (v) no violation of any Environmental Regulation now exists in, upon, under, over or from the Project, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now nor has there ever been any investigation or report involving the Project by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now, nor have there ever been, any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under, over or from the Project; (viii) the Project is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Project is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance. The Trustee will not review the Environmental Reports delivered under this Section or be responsible for the contents contained therein.

(b) Except in accordance with applicable law and in the ordinary course of business, the Borrower shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Project, shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom, shall cause all Hazardous Substances found thereon to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations, shall not install or permit to be installed any underground storage tank therein or thereunder, and shall comply with all Environmental Regulations which are applicable to the Project. At any time and upon reasonable belief, based upon tangible evidence, by the Borrower, the Trustee or the Issuer that a violation of this Section has occurred or is occurring, if the Trustee or the Issuer so requests, the Borrower shall have an environmental review, audit, assessment and/or report relating to the Project heretofore provided by the Borrower to the Trustee and the Issuer updated, at the Borrower's sole cost and expense, by a qualified environmental consultant reasonably acceptable to the Issuer, or shall have such a review, audit, assessment and/or report prepared for the Trustee and the Issuer, if none has previously been so provided. The Borrower shall indemnify the Trustee and Issuer against, shall hold Trustee and Issuer harmless from, and shall reimburse the Trustee and the Issuer for, any and all claims,

demands, judgments, penalties, liabilities, costs, fines, penalties, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the Trustee or the Issuer (prior to trial, at trial and on appeal) in any action or proceeding involving the Trustee or the Issuer, resulting from (i) any breach of the foregoing covenants, (ii) the incorrectness or untruthfulness of any warranty or representation set forth herein, or (iii) the discovery of any Hazardous Substance in, upon, under or over, or emanating from, the Project, whether or not the Borrower is responsible therefor, it being the intent of the Borrower and the Issuer that the Issuer and the Trustee shall have no liability or responsibility for damage or injury to human health, the environment or natural resources caused by, for abatement and/or clean-up of, or otherwise with respect to, Hazardous Substances by virtue of indemnity the interest of the Issuer and the Trustee in the Project created hereby or as the result of the Issuer and the Trustee exercising any of its rights or remedies with respect thereto hereunder, including, but not limited to, becoming the owner thereof by foreclosure or conveyance in lieu of foreclosure; provided, however, that the Borrower need not indemnify the Trustee for any claims, demands, judgments, penalties, liabilities, costs, fines, penalties, damages and expenses which arise solely as a result of the gross negligence or willful misconduct of the Trustee or for events occurring subsequent to Borrower's ownership of the Project Site. The foregoing representations, warranties and covenants in this Section shall be deemed continuing covenants, representations and warranties for the benefit of the Issuer and the Trustee and shall survive the satisfaction or release of the Mortgage, any foreclosure of the Mortgage and/or any acquisition of title to the Project or any part thereof by the Issuer and the Trustee. Any amounts covered by the foregoing indemnification shall bear interest from the date incurred at the prime interest rate publicly announced from time to time by the Trustee as a commercial bank plus 2% and shall be payable on demand, and shall be secured hereby.

(c) The Borrower agrees to immediately notify the Issuer and the Trustee in the event the Borrower becomes aware of any condition on the Project which does not comply with any Environmental Regulation regarding asbestos remediation. This includes notice to the Issuer and the Trustee of the creation of any lien pursuant to State law or any similar federal laws or regulations. At its own cost, the Borrower will take all actions which are required by law to remediate, encapsulate or remove any and all asbestos and/or asbestos containing material affecting the Project or its improvements including, but not limited to, the removal, encapsulation, containment or any other remedial action required by Issuer or any appropriate governmental authorities. In connection therewith, the Borrower hereby agrees, unconditionally and absolutely, to provide the Issuer and the Trustee with such indemnification as set forth in subsection (b) of this provision.

Section 6.9 Debt Service Coverage Covenant. The Debt Service Coverage Ratio shall be tested annually (commencing with the Fiscal Year ending on [____]) for the preceding Fiscal Year. If the Debt Service Coverage Ratio for any Fiscal Year ending on [____] or thereafter is less than [1.15 to 1.0], the Borrower shall, at the request of a Majority of Holders, hire an independent consultant with recognized expertise in the area of assisted/supportive living facilities (including the compliance requirements of Section 42 of the Code) to recommend in a written report, prepared at the Borrower's expense and provided to the Trustee and the holders of the Bonds, appropriate steps to increase coverage, and improve the

operations and the value of the Project. Such report shall be provided within sixty (60) days after the engagement of such consultant. The Borrower shall have a period of twelve calendar months to implement each recommendation of the independent consultant to the extent feasible and permitted by law. Within twelve (12) months after the submission of its initial report, the independent consultant shall submit to the Trustee a follow-up report indicating whether or not the recommendations contained in its initial report are being complied with. The Trustee shall not be responsible for review of or action on the written report or the follow-up report.

Section 6.10 Lease-Up Stabilization Covenant. If the Project does not reach Lease-Up Stabilization within twenty-four (24) months after the Borrower obtains a certificate of occupancy, the Borrower shall, at the request of a Majority of Holders, hire a marketing consultant, which marketing consultant shall be approved in writing by a Majority of Holders, with recognized expertise in the area of assisted/supportive living facilities to recommend in a written report, appropriate steps to market the Project to potential residents. Such report shall be provided within sixty (60) days after the engagement of such consultant. The Borrower shall have a period of twelve (12) calendar months to implement each recommendation of the marketing consultant to the extent feasible and permitted by law. Within twelve (12) months after the submission of its initial report, the marketing consultant shall submit to the Trustee a follow-up report indicating whether or not the recommendations contained in its initial report are being complied with. Notwithstanding the foregoing, the Trustee has no obligation to the Borrower to implement such recommendations.

Section 6.11 Change of Management. (a) The Borrower may remove any then-current Managing Agent and retain new management for the Project, provided that the new Managing Agent shall be approved in writing by the Investor Member, and a Majority of Holders. The consent of the Majority of Holders (which shall not be unreasonably withheld) shall be deemed given, if within 30 days following written request, no response is received.

(b) The Investor Member may cause the Borrower to remove any then-current Managing Agent and retain new management for the Project, provided that the new Managing Agent shall be approved in writing by a Majority of Holders, which approval shall not be unreasonably withheld. Notwithstanding the foregoing and provided there are no existing Events of Default under the Indenture or the Loan Agreement, the Investor Member may cause the Borrower to remove any then-current Managing Agent and retain a new Managing Agent for the Project without consent of the Issuer, the Trustee or any Bondholder if there is any: (i) deficiency between the amount of low-income housing tax credits that were certified to be allocated to the Investor Member and the actual low-income housing tax credits ultimately allocated (or projected to be allocated, in the Investor Member's reasonable judgment) to the Investor Member (a "Tax Credit Shortfall"), and such Tax Credit Shortfall is attributable (in the Investor Member's reasonable judgment) to the Managing Agent's noncompliance with Section 42 of the Code; (ii) material default by the Managing Agent under the Management Agreement or facts in existence that with passage of time would result in a material default by the Managing Agent under the Management Agreement (in Investor Member's reasonable judgment); (iii) material default under the Operating Agreement of the Managing Member or facts in existence that with the passage of time would result in a material default under the Operating Agreement (in Investor Member's reasonable judgment); (iv) an Investor Loan (as defined in the Operating Agreement) has been made and is outstanding or is expected to be required to be made by the Investor Member, in its reasonable

judgment; (v) actual or projected Debt Service Coverage Ratio less than [1.15] after the Project receives its license from the ISDH that would not be covered by the Marketing/Advertising Reserve and/or the Rent-Up Reserve Fund; (vi) actual or threatened revocation or restriction of any license or permit necessary or appropriate to operation of the Project, or facts in existence that with the passage of time would result in any such revocation or restriction (in Investor Member's reasonable judgment); or (vii) actual or threatened litigation with between the Managing Agent and the Borrower.

(c) A Majority of the Holders may request that the Borrower retain new management for the Project if (i) (A) the then-current Managing Agent does not implement the recommendation of a consultant retained pursuant to Section 6.9 hereof, and (B) the Debt Service Coverage Ratio for any Bond Year commencing not less than twelve (12) months after delivery of the report is less than 1.15 to 1.00, or (ii) an Event of Default has occurred pursuant to Section 7.1(h) hereof. The new Managing Agent shall be approved in writing by the Investor Member (which approval shall not be unreasonably withheld). No consent of the Investor Member shall be required if there is an Event of Default under Section 7.1(f) hereof.

(d) If the then-current Managing Agent resigns, the Investor Member may cause the Borrower to appoint a new Managing Agent without the consent of the Issuer, the Trustee or any Bondholder.

(e) In all cases where a new Managing Agent is appointed pursuant to this Section, unless waived in writing by the Investor Member and/or the Majority of Holders, as applicable, any new management company to be appointed as the Managing Agent (or the senior management of such new Managing Agent) shall have substantial management experience with assisted living facilities that participate in the Medicaid waiver program and either substantial experience with low income housing tax credit ("LIHTC") compliance or engage a LIHTC consultant with substantial experience to manage or oversee LIHTC compliance. Any LIHTC consultant shall be approved in writing by the Investor Member (which approval shall not be unreasonably withheld).

Section 6.12 Additional Indebtedness. The Borrower covenants that it will not incur, assume, guarantee or otherwise become liable in respect of any Indebtedness other than (a) up to \$500,000 of bank debt or equipment leases entered into in the normal course of business; (b) indebtedness that is outstanding on the Issuance Date (including the indebtedness in effect on the Closing Date); (c) Indebtedness related to any Additional Bonds or subordinated bonds under Article XII of the Indenture; (d) any indebtedness (including, without limitation, any loans from any member of the Borrower, any guarantor, or any other entity or person affiliated with the Borrower or any guarantor), provided that such indebtedness is payable solely out of excess cash flow deposited in the Surplus Account of the Revenue Fund under the Indenture; and (e) deferred developer or general contractor fees.

Section 6.13 Liens. The Borrower shall not create or suffer to exist or permit any Lien upon or with respect to any of its properties or leasehold interests, except for Permitted Encumbrances.

"*Lien*" means the Mortgage or any mortgage, pledge, security interest, hypothecation, collateral assignment, lien (statutory or other), or preference, priority or other security agreement,

preferential arrangement or encumbrance which has the practical effect of constituting a security interest (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

Section 6.14 Single Purpose Entity. The Borrower will operate as a single purpose entity and, as such, agrees and represents as follows: (i) the Borrower is operating solely for the purpose of constructing, operating and implementing the Project; (ii) to hold itself out as a separate legal entity, conduct business in its own name, use separate stationery, invoices, checks and logos and observe all other entity-level formalities; (iii) not to commingle its assets or funds with those of any other Person; (iv) maintain books, records and accounts separate and apart from any other entity; (v) pay its obligations and expenses from its own funds and, to the extent not otherwise provided in the Management Agreement, allocate fairly any employees or overhead shared with affiliates; (vi) transact business with affiliates on an arm's-length basis pursuant to agreements between the parties; (vii) not amend its organizational documents with respect to the requirements set forth herein without the consent of a Majority of Holders; (viii) not engage in any business or activity other than the ownership, operation and maintenance of the Project, and activities incidental thereto; and (x) not acquire or own any material assets other than (A) its interest in the Project and related property, and (B) such incidental personal property as may be necessary for the ownership and maintenance of the Project.

Section 6.15 Hedges. The Borrower will not enter into any hedge, interest rate swap, interest rate cap, futures contract, forward contract, float agreement or option, without the consent of a Majority of Holders.

Section 6.16 Change in Control of Managing Member. EREG Green Oaks of Goshen, LLC shall maintain directly or through control of one of its majority owned affiliates at least a fifty percent (50%) membership interest in the Managing Member, except with the written consent of a Majority of Holders. The consent of the Majority of Holders shall be deemed given, if within thirty (30) days following written request, no response is received. The consent of a Majority of Holders shall not be unreasonably withheld. Notwithstanding the foregoing, the Investor Member shall have the right to remove the Managing Member under the terms and conditions set forth in the Operating Agreement without the consent of a Majority of Holders.

Section 6.17 Financial Records; Operating Budget.

(a) The Borrower will keep true books of record and account in which full, true and correct entries will be made of all dealings or transactions in relation to its business and activities on an accrual basis.

(b) The Borrower shall furnish all financial reports and information set forth in the Continuing Disclosure Agreement.

(c) The Borrower shall deliver to the Trustee by [_____] 15 of each year, its operating budget (the "Operating Budget") for the following fiscal year, which shall include, on a monthly basis, Operating Expenses to be paid with respect to the Project

and all amounts to be deposited pursuant to Section 5.6(b) of the Indenture, together with rents and other income projected to be produced by the Project. The Operating Budget may be amended from time to time by the Borrower and any Operating Budget shall be promptly provided to the Trustee.

Section 6.18 Waiver of Borrower Covenants. The Borrower and the Issuer acknowledge that a Majority of Holders may, with the consent of the Borrower, waive or modify any affirmative or negative covenants contained in Sections 6.1, 6.5, 6.6, 6.7, 6.9, 6.10, 6.11, 6.12, 6.13, 6.16 and 6.17 of this Loan Agreement, without the need to comply with the provisions of Article XI of the Indenture.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.1 Events of Default. Upon the expiration of any notice and cure period set forth below, any one or more of the following events shall constitute an Event of Default hereunder (an “Event of Default”):

(a) Except as specified in another clause of this Section 7.1, failure by the Borrower to observe and perform any covenant, condition or agreement herein or in the Mortgage, the Assignment of Contracts on its part to be observed or performed for a period of thirty (30) days after written notice specifying such failure has been given by the Trustee to the Borrower and the Investor Member, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the Borrower can show that the failure stated in the notice cannot be corrected within the applicable period (but can be corrected within such longer period), and the Borrower initiates corrective action within said period, and diligently, continually, and in good faith works to effect a cure as soon as possible, the time period shall be reasonably extended for a period not to exceed ninety (90) days.

(b) The entry of a decree or order for relief by a court having jurisdiction in the Project in respect of the Borrower in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Borrower or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days.

(c) The commencement by the Borrower of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Borrower to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Borrower or for any substantial part of the property of the Borrower or the making by it of any assignment for the benefit of creditors, or the failure of the Borrower generally to pay its debts as such debts become due, or the taking of action by the Borrower in furtherance of any of the foregoing.

(d) Except as otherwise provided in Section 6.6 of this Loan Agreement, any dissolution, termination, partial or complete liquidation, merger or consolidation of the Borrower. Notwithstanding anything to the contrary in the Borrower Documents, the following shall not constitute a default under the Borrower Documents: (i) the sale, transfer, conveyance or pledge of Investor Member's interest in the Borrower; (ii) the sale, transfer, conveyance or pledge of any member interest in the Investor Member; (iii) the appointment by the Investor Member of an additional or substitute Managing Member of the Borrower in accordance with the Borrower's Operating Agreement, provided that the Investor Member delivers prior notice thereof to the Trustee and the Issuer and any additional or substitute Managing Member of the Borrower is reasonably acceptable to the Issuer and is selected with reasonable promptness; (iv) the dilution of the Managing Member's interest in cash flow and/or capital transaction proceeds in the Borrower in accordance with the terms of the Operating Agreement; and (v) any amendment to the Operating Agreement which does not affect the financial terms of the Operating Agreement, and does not otherwise adversely affect the security interest of the Trustee in the Project.

(e) An Event of Default under the Indenture or any of the Borrower Documents.

(f) Any failure (i) to pay principal of, redemption premium, if any, or interest on the Bonds pursuant to Section 4.2(a) hereof or (ii) to pay, within five (5) days following receipt of notice of such failure, any of the other amounts set forth in Section 4.2 hereof on the due date thereof.

(g) The making of any representation or warranty by the Borrower in a Borrower Document or certificate, disbursement request or notice delivered pursuant thereto or executed in connection therewith which is false or misleading in any material respect when made or deemed made.

(h) For any Fiscal Year, commencing with the Fiscal Year ending December 31, [20__], and each subsequent Fiscal Year thereafter, the Debt Service Coverage Ratio is less than 1.0 to 1.0 during such period based on the related audited financial statements.

(i) The Borrower shall fail to make any required payment in respect of any Indebtedness (other than any subordinate obligations issued in connection with subordinated bonds reissued pursuant to Section 12.4 of the Indenture) in an amount exceeding \$100,000 which it has incurred and which shall remain outstanding (other than any amount due under or pursuant to this Loan Agreement) when due and payable (subject to any applicable grace period).

(j) A final and non-appealable judgment or judgments for the payment of money in excess of \$100,000 shall be rendered against the Borrower, and the same shall remain unpaid for a period of thirty (30) or more consecutive days from the date of entry thereof.

(k) Any grant of a Lien to the Trustee on the collateral having a value in excess of \$100,000 contained in the Borrower Documents shall cease to be a perfected Lien with

the priority purported to be created thereby; provided, however, that the Borrower shall have twenty (20) days after knowledge to cure any such cessation.

The foregoing provisions of this Section are subject to the following limitations: if by reason of Force Majeure (as defined hereto) the Borrower is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of the Borrower contained in Section 4.2 hereof, the Borrower shall not be deemed in default under Section 7.1(a) hereof during the continuance of such inability. The term "Force Majeure" as used herein shall mean, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies, or officials, or of any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions, breakage or accident to machinery, transmission pipes or canals; or any other similar cause or event not reasonably within the control of the Borrower. The Borrower agrees, however, to use its reasonable best efforts to remedy the cause or causes preventing the Borrower from carrying out its obligations hereunder.

The following actions shall not constitute an Event of Default under the Borrower Documents:

- (a) the making of a bridge loan or the additional bridge loan to Borrower by the Investor Member or a third party; and
- (b) the pledge to the Investor Member by the Managing Member of the Managing Member's interest in the Operating Agreement, as security for the performance of all of the Managing Member's obligations under the Operating Agreement.

Section 7.2 Remedies. Upon the occurrence of an Event of Default pursuant to Section 7.1, the Trustee shall notify by Mail all Owners of Bonds and all Interested Beneficial Holders thereof promptly after the Trustee learns of such occurrence, and at any time during the continuance of such Event of Default, (a) the Trustee may (and shall if required by Section 8.2 of the Indenture), pursue any action at law or in equity, appointing a receiver, collecting the payments then and thereafter due or enforcing performance and observance of any obligation, agreement or covenant of the Borrower thereunder, hereunder, or under any documents securing the Loan, and (b) subject to the cure provisions of this Section 7.2 below, the Trustee shall, at the sole option and discretion of a Majority of Holders, declare all or any portion of the Loan to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protect or notice of any kind except as otherwise provided herein.

The Investor Member shall have the right, but not the obligation, to cure any Event of Default existing under the Borrower Documents which right must be exercised by the later of (i) any applicable cure period provided in the Borrower Documents or (ii) fifteen (15) days after receipt of written notice of default by the Investor Member. For the Investor Member to exercise effectively its cure rights, the Investor Member must fully pay the amount past due or perform the defaulted obligations, including the payment of any amounts due for legal expenses incurred in connection with the default. Notwithstanding anything to the contrary in the Borrower Documents, upon the occurrence of an Event of Default arising out of (i) the bankruptcy, insolvency or assignment of assets for the benefit of creditors by the Managing Member of Borrower or by any

guarantor, or (ii) the withdrawal from Borrower of the Borrower's Managing Member, or the death or incapacity of a Managing Member or guarantor, or (iii) a breach of the representations concerning the Managing Member or any guarantor, the Investor Member shall have the option, but not the obligation, within 45 days of receipt of written notice of such Event of Default from the Trustee or the Issuer, to cure any such default by appointing a substitute or additional Managing Member or guarantor that is an affiliate of the Investor Member to act as such Managing Member or guarantor.

If the Trustee shall have proceeded to enforce the rights of the Issuer under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then the Borrower, the Issuer and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Issuer and the Trustee shall continue as though no such proceedings had taken place.

Section 7.3 Additional Remedies. In addition to the above remedies, if the Borrower commits a breach of this Loan Agreement giving rise to an Event of Default the Trustee shall have the right and remedy, without posting bond or other security, to have the provisions of this Loan Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach will cause irreparable injury to the Issuer and that money damages will not provide an adequate remedy thereto.

Section 7.4 No Remedy Exclusive. No remedy herein conferred or reserved to the Issuer or the Trustee 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 Loan Agreement and the Indenture 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 default or 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.

Section 7.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Loan Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.6 Waiver of Extension, Appraisal, Stay, Laws. To the extent permitted by law, the Borrower will not during the continuance of any Event of Default hereunder insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of Article IV of this Loan Agreement; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Project prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States of America or by any state or territory, or otherwise, to redeem the Project so sold or any part thereof, and the Borrower hereby expressly waives all

benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Issuer, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Notice. Unless otherwise specifically provided herein, any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when the same is: (i) deposited in the United States mail and sent by first class mail, postage prepaid, or (ii) delivered, in each case to the parties at the addresses set forth below or at such other address as a party may designate by notice to the other parties:

If to the Borrower:

Green Oaks of Goshen, LLC
566 Lake Street, Suite 400,
Chicago, IL, 60661
Attention: Kevin Beard
Email: kbeard@evergreenreg.com
Telephone: (312) 569-0823

With a copy to:

Frost Brown Todd LLC
201 N. Illinois Street, Suite 1900
Indianapolis, IN 46204
Attention: Matthew S. Carr
Telephone: (317) 237-3803
Email: mcarr@fbtlaw.com

And to the Investor Member:

Columbia Housing/PNC Institutional Fund XX Limited Partnership
121 S.W. Morrison, Ste 1300
Portland, OR 97204
Attention: []
Telephone: []
Email: []

With a copy to:

[]
[]
[]
Attention: []

Telephone: [_____]
Email: [_____]

If to the Issuer:

City of Goshen, Indiana
City Hall
202 S 5th St. Suite 2
Goshen, IN 46528-3714
Attention: Clerk-Treasurer
Telephone: 574-533-8625

With a copy to:

City of Goshen, Indiana
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528
Attention: Legal
Telephone: 574-533-8621

If to the Trustee:

U.S. Bank National Association
10 West Market Street, Suite 830
Indianapolis, Indiana 46204
Attention: Global Trust Services
Telephone: [_____]
Email: [_____]

All notices, approvals, consents, directions, certificates, requests and any communications hereunder (“Notices”) must be in writing (provided that any Notices sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign initiated by the Trustee (or such other digital signature provider as specified in writing to Trustee by the authorized representative as shall be acceptable to the Trustee)), in English. The Borrower agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit Notices to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 8.2 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 and unpaid. Whenever in this 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 Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Issuer.

Section 8.3 Governing Law and Venue. This Indenture shall be governed by and construed in accordance with the laws and judicial decisions of the State, without reference to any choice of law principles, except as such laws may be preempted by any federal rules, regulations and laws applicable to the Issuer. The parties hereto expressly acknowledge and agree that any judicial action to interpret or enforce the terms of this Indenture against the Issuer shall be brought and maintained in the Superior Court of the State of Indiana, in and for the County of Elkhart, the United States District Court in and for the Northern District of Indiana, or any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or the Project.

Section 8.4 Amendments to Borrower Documents. Subject to provisions of the Indenture, and except as provided in Section 6.17 hereof, modification or waiver of any provisions of this Loan Agreement or any other Borrower Document, or consent to any departure by the Borrower therefrom, shall in no event be effective unless the same shall be in writing approved by the parties thereto and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given and in all cases subject to the terms of Article XI of the Indenture. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice of demand in the same circumstances.

Section 8.5 Further Assurances and Corrective Instruments. The Issuer 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 and agreed upon for correcting any inadequate or incorrect description of the provisions of this Loan Agreement.

Section 8.6 Captions. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Loan Agreement.

Section 8.7 Severability. In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof; provided, however, that no finding of illegality or unenforceability shall require payment by the Issuer of any funds from any source other than revenues derived hereunder.

Section 8.8 Counterparts. This Loan Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same agreement, and, in making proof of this Loan Agreement, it shall not be necessary to produce or account for more than one such counterpart. The exchange of copies of this Loan Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this instrument as to the parties hereto and may be used in lieu of the original instrument for all purposes. Signature pages of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 8.9 Amounts Remaining in Bond Fund or Other Funds. It is agreed by the parties hereto that any amounts remaining in the Bond Fund or other funds established under the Indenture upon expiration or sooner termination of the term hereof, as provided below, after payment in full of the Bonds (or provisions for payment thereof having been made in accordance with the provisions of the Indenture) and the fees and expenses of the Issuer, the Trustee and any Paying Agents in accordance with the Indenture, shall be paid in accordance with the Indenture.

Section 8.10 Effective Date and Term. This Loan Agreement shall be in full force and effect from the date hereof, and shall continue in effect until the payment in full of all principal of, premium, if any, and interest on the Bonds, or provision for the payment thereof shall have been made pursuant to Section 7.1 of the Indenture; all fees, charges, indemnities and expenses of the Issuer and the Trustee have been fully paid or provision made for such payment (the payment of which fees, charges, indemnities and expenses shall be evidenced by a written certification of the Borrower that it has fully paid or provided for all such fees, charges, indemnities and expenses); and all other amounts due hereunder have been duly paid or provision made for such payment. All representations, certifications and covenants by the Borrower as to the indemnification of various parties, the payment of fees and expenses of the Issuer, and the payment of attorneys' fees and out of pocket expenses arising from an Event of Default, and all matters affecting the tax-exempt status of the Bonds shall survive the termination of this Loan Agreement.

Section 8.11 Limitations on Liability of Trustee. The Trustee shall be entitled to the advice of counsel (who may also be counsel for the Trustee or Bond Counsel) and shall be wholly protected as to action taken or omitted in good faith in reliance on such advice. The Trustee may rely conclusively on any communication or other document furnished to it hereunder or under any other Bond Documents and reasonably believed by it to be genuine. The Trustee shall not be liable for any action (a) taken by it in good faith and reasonably believed by it to be within the discretion or powers conferred upon it, or (b) in good faith omitted to be taken by it because reasonably believed to be beyond the discretion or powers conferred upon it, or (c) taken by it pursuant to any direction or instruction by which it is governed under any Bond Document, nor shall the Trustee be responsible for the consequences of any error of judgment reasonably made by it. The Trustee shall not in any event be liable for the application or misapplication of funds, or for other acts or defaults, by any person, except its own directors, officers, officials or employees, its liability with respect to acts or defaults of any kind of agents appointed by it being limited to liability for any, if any, willful malfeasance in the appointment of such agent. When any consent or other action by any one of them is called for by Borrower Documents, it may defer such action pending receipt of such evidence (if any) as it may require in support thereof. Except as otherwise provided in the Indenture in regard to the Trustee, the Trustee shall not be required to take any remedial action (other than the giving of notice) unless indemnity is furnished by the person or persons requiring such action for any expense or liability to be incurred thereby, and the furnishing of indemnity to the reasonable satisfaction of the Trustee is hereby made a condition, which the Trustee may but need not assert, to the undertaking of such remedial action. The Trustee shall be entitled to reimbursement for expenses reasonably incurred or advances reasonably made, with interest at the rate per annum announced by the Trustee from time to time as its prime rate, as such prime rate may change from time to time, in the exercise of its rights or the performance of its obligations to the extent that it acts without previously obtaining indemnity. No permissive right or power to act which the Trustee may have shall be construed as a requirement to act; and no delay in the exercise

of a right or power shall affect the subsequent exercise of the right or power. The Trustee's immunities and protections from liability and its rights to indemnification shall likewise extend to the Trustee's officers, directors, agents, attorneys and employees; such immunities and protections and rights to indemnification, together with the Trustee's rights to compensation, shall survive the Trustee's resignation or removal, the discharge of this Agreement and the final payment of the Bonds.

Section 8.12 Indenture Provisions. The Indenture provisions concerning the Bonds and the other matters therein are an integral part of the terms and conditions of the Loan made by the Issuer to the Borrower pursuant to this Loan Agreement and the execution of this Loan Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture 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 Indenture, and the Borrower hereby agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

Section 8.13 Third Party Beneficiary. The Issuer and the Borrower hereby agree that the Trustee is a third party beneficiary to this Loan Agreement.

Section 8.14 Payment. At such time as the principal of, premium, if any, and interest on all Bonds outstanding under the Indenture shall have been paid, or shall be deemed to be paid in accordance with the Indenture, and all other sums payable by the Borrower under this Loan Agreement and the Indenture shall have been paid, the Loan shall be deemed to be fully paid, and the Borrower upon request is entitled to receive acknowledgment of such payment in full from Trustee.

Section 8.15 Limitation of Issuer's Liability.

(a) *Reliance by the Issuer on Facts or Certificates.* Anything in this Loan Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the trust and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

(b) *Immunity of the Issuer's Directors, Executive Director, Officers, Counsel, Review Advisors and Agents.* No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Loan Agreement, any other Issuer Documents, or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any Issuer Indemnified Parties, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any Issuer Indemnified Parties, either directly or by reason of any of the obligations, covenants,

promises, or agreements entered into by the Issuer with the Borrower or the Trustee to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, executive director, officer, counsel, review advisor, or agent, is, by the execution of the Bonds, this Loan Agreement, and the other Issuer Documents, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Loan Agreement, and the other Issuer Documents, is expressly waived and released.

(c) *No Pecuniary Liability of the Issuer.* No agreements or provisions contained herein, nor any agreement, covenant, or undertaking by the Issuer in connection with the Project or the issuance, sale, and/or delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from the revenues pledged hereby for the payment of the Bonds and their application as provided in the Indenture. No failure of the Issuer to comply with any term, covenant, or agreement contained in the Bonds, this Loan Agreement, or the Indenture, or in any document executed by the Issuer in connection with the Project or the issuance and sale of the Bonds, shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge, except to the extent that the same can be paid or recovered from the revenues pledged for the payment of the Bonds or other revenues derived under this Loan Agreement. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein; provided that no costs, expenses, or other monetary relief shall be recoverable from the Issuer, except as may be payable from the revenues pledged in the Indenture for the payment of the Bonds or other revenue derived under this Loan Agreement. No provision, covenant, or agreement contained in, or any obligations imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any State constitutional or statutory limitation or shall constitute or give rise to a charge against its general credit. In making the agreements, provisions, and covenants set forth in this Loan Agreement, the Issuer has not obligated itself, except with respect to the application of the revenues pledged in the Indenture for the payment of the Bonds or other revenues derived under this Loan Agreement or the Indenture.

(d) *Issuer's Performance.* The Issuer shall have no liability or obligation to the Borrower with respect to the payment of the purchase price of the Bonds to the Trustee. None of the provisions of this Loan Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the revenues pledged under the Indenture, or the Issuer shall first have been adequately indemnified by the Borrower or another party satisfactory to the Issuer, for, from and against all cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services, it being understood that such record keeping services shall be performed or provided by the Trustee or the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in

this Loan Agreement, the Indenture, in any and every Bond executed, authenticated, and delivered under the Indenture; provided, however, that (i) the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Trustee or the Borrower and (ii) the Issuer shall have received the instrument to be executed.

Section 8.16 No Agency Relationship. The Borrower agrees that neither the Issuer nor the Trustee is the agent, representative, joint venturer or partner of the Borrower, and without limitation of the foregoing, neither this Loan Agreement nor any other related document shall make the Issuer or the Trustee liable to material suppliers, contractors, craftsmen, laborers or others for goods delivered to or services performed by them upon the Project, or for debts or claims accruing to such parties against the Borrower, and there is no contractual relationship, either expressed or implied between the Issuer or the Trustee and any material suppliers, subcontractors, craftsmen, laborers or any other person supplying any work, labor or materials for the improvement of the Project.

Section 8.17 Services to Benefit Issuer Only. Any inspections or other services rendered by the Issuer or on behalf of the Issuer, whether or not paid for by Borrower, shall be rendered solely for the protection and the benefit of the Issuer, as the case may be, and the Borrower or any Bondholder shall not be entitled to claim any loss or damage against the Issuer, or against any agent or employee of either, for failure properly to discharge their duties with respect to such inspections or other services. The Issuer shall not be responsible to the Borrower or any other party for failure to carry out or cause to be carried out or for negligence in carrying out or causing to be carried out, any inspection permitted or required hereunder, nor for failure to notify or protect the Borrower or any other party from any negligence or malfeasance of the Borrower or any other party, whether or not such negligence or malfeasance is (or should have been) actually discovered by any such inspection.

Section 8.18 Limitation of Liability of Investor Member. The parties to the Borrower Documents acknowledge and agree that the Investor Member will not have liability to the other parties or to any third party as a Managing Member of the Borrower resulting from any action taken by the Investor Member pursuant to the Operating Agreement, unless and until the Investor Member is admitted to the Borrower entity as a Managing Member. Issuer and Trustee agree that they will not, in connection with any demand, claim or legal action concerning the Loan or Borrower Documents, claim that the Investor Member was liable as a Managing Member or a Managing Member as a result of the Investor Member allegedly participating in the control of Borrower by reason of any action taken by the Investor Member pursuant to its powers as an Investor Member under the Operating Agreement.

[Remainder of this Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement and caused it to be executed by their authorized representatives, as of the day and year first above written above.

CITY OF GOSHEN, INDIANA,
as Issuer

By: _____
Jeremy Stutsman, Mayor

ATTEST:

By: _____
Adam Scharf, City Clerk-Treasurer

*Signature Page of Issuer to Loan Agreement –
Green Oaks of Goshen Project*

IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement and caused it to be executed by their authorized representatives, as of the day and year first above written above.

GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company

By: EREG GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company,
its sole Member

By: _____
Name: Stephen F. Rappin
Title: Manager

*Signature Page of Borrower to Loan Agreement –
Green Oaks of Goshen Project*

EXHIBIT A
DEVELOPMENT BUDGET

EXHIBIT B

OFFICER’S CERTIFICATE REGARDING INSURANCE

Reference is made to the Trust Indenture dated as of [_____], 2021 (the “Indenture”), between the City of Goshen, Indiana (the “Issuer”), and U.S. Bank National Association, as trustee (the “Trustee”) and the Loan Agreement dated as of [_____], 2021 between the Issuer and Green Oaks of Goshen, LLC (the “Borrower”) (the “Loan Agreement”) and the Borrower Documents, as defined in the Indenture.

The undersigned Authorized Borrower Representative certifies to the Trustee that:

(i) I have read Section 6.1 of the Loan Agreement relating to the insurance requirements relating to the Project (as defined in the Loan Agreement) and the definitions relating thereto (the “Insurance Requirements”);

(ii) I have made such examination or investigation as is necessary or appropriate in order to make the statements contained herein and to enable me to express an informed opinion as to whether or not the terms, conditions and covenants in the Insurance Requirements have been met; and

(iii) Based on the foregoing, all of the terms, conditions and covenants set forth in the Loan Agreement relating to the Insurance Requirements have been satisfied and are in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Officer’s Certificate this _____ day of _____, _____.

GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company

By: EREG GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company,
its sole Member

By: _____
Name: Stephen F. Rappin
Title: Manager

SCHEDULE I

BORROWER AGREEMENTS WITH RESPECT TO FUNDS OR ACCOUNTS AS ESTABLISHED BY INDENTURE

Except as set forth herein, on or before the Issuance Date, the Borrower shall cause the following amounts to be deposited into the funds and accounts set forth below:

Prepared by and return to:
Scott A. Krapf, Esq.
Frost Brown Todd LLC
201 North Illinois Street, Suite 1900
Indianapolis, Indiana 46244

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

By

GREEN OAKS OF GOSHEN, LLC

Mortgagor,

In favor of

[_____]

as Trustee,

Mortgagee

Dated as of [_____], 2021

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

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and is only for convenience of reference)

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING, dated as of [_____], 2021 (this “Mortgage”), is by Green Oaks of Goshen, LLC, an Indiana limited liability company, as Mortgagor (the “Mortgagor”) in favor of [_____], not personally but as trustee under the Indenture hereinafter referred to (the “Trustee”), as mortgagee.

WITNESSETH

WHEREAS, the City of Goshen, Indiana, a municipal corporation duly recognized and existing under the laws of the State of Indiana (the “State”) (together with any successor to its rights, duties and obligations, the “Issuer”) is issuing Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project), in the aggregate principal amount of \$[_____] (the “Series 2021A Bonds”) and its Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project), in the aggregate principal amount of \$[_____] (the “Series 2021B Bonds,” together with the Series 2021A Bonds, the “Bonds”), pursuant to the Trust Indenture dated as of [_____], 2021 (the “Indenture”) between the Issuer and the Trustee in order to fund a loan to the Borrower in the principal amount of the Bonds pursuant to the terms of the Loan Agreement dated as of [_____], 2021 (the “Loan Agreement”) between the Issuer and the Mortgagor, as the Borrower (as such term is defined in the Indenture) and shall be evidenced by the Loan Agreement; and

WHEREAS, the Mortgagor is the owner in fee simple of the real estate described in Exhibit A hereto (the “Land”); and

WHEREAS, the Mortgagor wishes to mortgage and assign to the Trustee its interest in the Land and other Mortgaged Property described herein as security for the Loan (as defined in the Indenture) and the Bonds and the performance of the obligations of the Borrower under the Loan Agreement, the Indenture and the Mortgage hereunder; provided, however, that the maximum aggregate principal amount of Bonds that may be secured hereby is expressly limited to \$[_____].

NOW, THEREFORE, in consideration of the premises described herein, the issuance of the Bonds by the Issuer, the acceptance of the Bonds by the purchasers thereof and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest payable on the Loan and the Bonds and the performance of all the obligations of the Borrower contained in the Loan Agreement, the Indenture and of the Mortgagor contained herein, the Mortgagor has executed and delivered this Mortgage and by these presents does mortgage, warrant, assign, grant, transfer, pledge, set over and confirm unto the Trustee and its successors and assigns forever, and grant a security interest thereunto in, all of the Mortgagor’s right, title and interest in, to and under any and all of the following described property (herein collectively called the “Mortgaged Property”):

GRANTING CLAUSES

DIVISION I

The Land described in Exhibit A hereto, together with the entire interest (whether now owned or hereafter acquired) in and to said Land and in and to all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed or placed upon the Land, including all building materials, building equipment and fixtures of every kind and nature whatsoever on the Land or in any building, structure or improvement now standing or hereafter constructed or placed thereon, and the reversion or reversions, and remainder or remainders, in and to the Land, and together with the entire interest of the Mortgagor in and to all and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to the Land, belonging or in any way appertaining thereto, and all right, title and interest of the Mortgagor in, to and under any streets, ways or alleys adjoining the Land or any part thereof including all bridges thereover and tunnels thereunder, including without limitation all claims or demands whatsoever of the Mortgagor either in law or in equity, in possession or expectancy of, in and to the Land, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or hereafter acquired by the Mortgagor and affixed to or attached to or placed on the Land shall be deemed to be, and shall be considered as, fixtures and appurtenances to said Land, together with all Rents and Leases (each as defined herein) therefrom (collectively, the “Mortgaged Land”);

DIVISION II

All personal property of Mortgagor, whether now owned or hereafter acquired, and wherever located, including, without limitation, the following: accounts, chattel paper, deposit accounts, documents, equipment, fixtures, general intangibles, goods, instruments, insurance policies, inventory, letter of credit rights, payment intangibles, promissory notes, software, including all present and future attachments and accessories thereto and replacements thereof (except for property belonging to residential tenants), all as defined in Article 9.1 of the Uniform Commercial Code, as amended, of Indiana, and including, without limitation, all “Revenues” of Mortgagor, defined in the Indenture as all gross income, interest income (including interest income received by the Secured Party and deposited into the Revenue Fund pursuant to Section 5.6 of the Indenture) and revenue received by the Mortgagor from the ownership or operation of the Mortgaged Property including, but not limited to, all residential and commercial rents, income from the Mortgaged Property (except deposits held as security) received in connection with leases or occupancy or services or otherwise received from or in regard to tenants of the Mortgaged Property, any additional money deposited by the Borrower, the Issuer or the Trustee from time to time into the Revenue Fund created under the Indenture and, after certification of the Project by the Division of Aging of the Indiana Family and Social Services Administration, the payments to be made to the Mortgagor pursuant to the agreement to be entered into between the Mortgagor and the Indiana Family and Social Services Administration under the Indiana Health Care Provider program upon completion of the Project (defined in the Indenture as the “IHCP Provider Agreement”), all business interruption insurance proceeds, and all rights to receive the same whether in the form of accounts, accounts receivable, general intangibles, contract rights, chattel paper, instruments or other rights and the proceeds thereof, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Mortgagor and any other moneys, revenues or receipts which are specifically included in definition of Revenues by the terms of any supplemental indenture (collectively, the “Personal Property”);

DIVISION III

All judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Land described in Division I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including without limitation any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including without limitation severance and consequential damage, and any award for change of grade of streets (collectively, "Condemnation Awards"); and

DIVISION IV

All governmental licenses, approvals, qualifications, variances, permissive uses, franchises, accreditations, certificates, certifications, consents, permits and other authorizations now or hereafter obtained and relating to the development, construction or operation of the Mortgaged Land, or any part thereof (including without limitation, building permits, subdivision and plat approvals and subdivision and plot plans), and all applications therefor, all plans, specifications and drawings heretofore or hereafter prepared by any architect, engineer or other contractor with respect to the Mortgaged Land, or any part thereof (including without limitation, subdivision and plot plans, foundation plans, utilities facilities plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering plans and specifications and architectural and engineering studies and analyses);

DIVISION V

Any and all other property of every kind and nature from time to time hereafter owned by the Mortgagor, by delivery or by writing of any kind, mortgaged, pledged, assigned or transferred as and for additional security hereunder by the Mortgagor or by anyone on its behalf to the Trustee, all of the books and records pertaining to the foregoing, or any part thereof, or to the development, construction or operation of the Mortgaged Property, or any part thereof, together with all proceeds, including without limitation insurance proceeds with respect to anything referred to in Divisions I through V hereof;

Subject, however, to Permitted Encumbrances, as defined in the Loan Agreement;

To Have and To Hold all and singular, the Mortgaged Property, whether now owned or hereafter acquired, unto the Trustee, its successors and assigns forever; provided, however, that this Mortgage is upon the express condition that if the Mortgagor shall pay or cause to be paid all Indebtedness secured hereby and shall keep, perform and observe all and singular the covenants and promises in the Bonds, in the Loan Agreement and in this Mortgage expressed to be kept, performed and observed by the Mortgagor or the Borrower, then this Mortgage and the rights hereby granted shall cease, determine and be void, otherwise to remain in full force and effect.

The Mortgagor hereby further covenants and agrees as follows:

ARTICLE I

DEFINITIONS

In addition to the words and terms elsewhere defined in this Mortgage, the following words and terms as used in this Mortgage shall have the following meanings unless the context or use indicates another or different meaning or intent:

“Applicable State Law” means statutory and case law in the State, including, but not by way of limitation, Mortgages, Ind. Code 32-29, Mortgage Foreclosure Actions, Ind. Code 32-30-10, Receiverships, Ind. Code 32-30-5, and the Uniform Commercial Code - Secured Transactions, Ind. Code 26-1-9.1 (the “Uniform Commercial Code”), as amended, modified and/or recodified from time to time; provided, however, if by reason of mandatory provisions of law, the perfection, the effect of perfection or nonperfection, and the priority of a security interest in any personal property are governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State, “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to perfection, effect of perfection or non-perfection, and the priority of the security interests in any such personal property.

“Bonds” means the Series 2021A Bonds, the Series 2021B Bonds, and any Additional Bonds issued under the Indenture.

“Closing Date” means [_____], 2021.

“Collateral” has the meaning set forth in Section 3.20.

“Condemnation Awards” has the meaning set forth in Division III of the Granting Clauses.

“Event of Default” has the meaning set forth in Section 4.1.

“Hazardous Materials” has the meaning set forth in Article II (c).

“Indebtedness secured hereby” means the Bonds and the other amounts payable under the Indenture, the Loan Agreement and this Mortgage.

“Land” means the real estate described in Exhibit A hereto.

“Leases” means any and all leases, subleases, licenses, concessions or other occupancy agreements or agreement for guarantee of payments in lieu of Rents between the Mortgagor, as lessor, sublessor, licensor or grantor, and tenants, sublessees, licensees or grantees, with respect to the Land, including any amendment or supplement thereto.

“Loan Agreement” means the Loan Agreement dated as of [_____], 2021, between the Mortgagor and the Issuer relating to the Bonds described therein.

“Mortgage” means this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, as supplemented and amended from time to time.

“Mortgaged Land” has the meaning set forth in Division I of the Granting Clauses.

“Mortgaged Property” means the property described in Divisions I, II, III, IV and V of the Granting Clauses.

“Personal Property” has the meaning set forth in Division II of the Granting Clauses.

“Released Property” has the meaning set forth in Section 5.2(b)(A).

“Rents” shall mean any rents, income, issues, profits or proceeds from any Leases, license, concession or other arrangement entered into with respect to the Mortgaged Property or any part thereof.

“Series 2021A Bonds” means the Issuer’s \$[_____] Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Series 2021A Bonds are issued).

“Series 2021B Bonds” means the Issuer’s \$[_____] Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Series 2021B Bonds are issued).

“State” means the State of Indiana.

“Substituted Property” has the meaning set forth in Section 5.2(b)(B)(1).

“Tax and Insurance Deposits” has the meaning set forth in Section 3.9.

“Taxes” has the meaning set forth in Section 3.7.

“Trustee” means [_____].

The other terms used in this Mortgage shall have the same meanings as set forth in the Loan Agreement or the Indenture. All accounting terms not otherwise defined in the Indenture or herein shall have the meanings assigned to them in accordance with generally accepted accounting principles.

All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section or other subdivision unless the context indicates otherwise.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

The Mortgagor makes the following representations and warranties as the basis for its covenants herein:

(a) It is a limited liability company duly organized and validly existing under the laws of the State, is duly authorized to conduct its business in the State, is duly authorized and has full power under the laws of the State and all other applicable provisions of law and its partnership agreement to create, issue, enter into, execute and deliver this Mortgage, and all action on its part necessary for the valid execution and delivery of this Mortgage has been duly and effectively taken.

(b) The execution and delivery of this Mortgage, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of its Mortgaged Property except for Permitted Encumbrances. No approval or consent of any regulatory or administrative commission or authority, of any other governmental body or of any other third party (other than that which has already been obtained) is necessary to authorize the execution, delivery or recording of this Mortgage or to authorize the observance and performance by Mortgagor of the covenants and agreements contained in this Mortgage. The Mortgagor has good and marketable fee simple title to the Land and is the lawful owner and is now lawfully seized and possessed of the Mortgaged Property (other than that not presently in existence), free and clear of all liens whatsoever except Permitted Encumbrances. The Mortgagor has full power and lawful authority to mortgage and grant a security interest in the Mortgaged Property to the Trustee and will preserve, warrant and defend the same unto the Trustee against the claims of all persons and parties. This Mortgage constitutes (i) a valid first mortgage lien upon the Land, including the fixtures, subject only to Permitted Encumbrances, (ii) a security interest in the Personal Property, which security interest is (a) perfected to the extent the same may be perfected by filing under the Uniform Commercial Code and (b) prior to any other security interest in such Personal Property, subject only to Permitted Encumbrances and (iii) a legal, valid and binding obligation of the Mortgagor, enforceable in accordance with its terms. The easements, rights-of-way, liens, encumbrances, covenants, conditions, restrictions, exceptions, minor defects, irregularities of title and encroachments on adjoining real estate which are Permitted Encumbrances, if any, now existing with respect to the Land do not and will not materially adversely affect the value of the facilities or the Mortgaged Property currently affected thereby, or materially impair or materially interfere with the operation and usefulness thereof for the purpose for which they were acquired or are held by the Mortgagor.

(c) Except in accordance with applicable law, neither the Mortgagor, nor to the best of the Mortgagor's knowledge, any lessee nor any previous owner, tenant, occupant or user of the Mortgaged Property, has used, generated, released, discharged, stored or disposed of, or is using, generating, releasing, discharging, storing or disposing of, any Hazardous Materials (as

defined below) on, under or in the Mortgaged Property, or has transported, or is transporting, any Hazardous Materials to or from the Mortgaged Property and no Hazardous Materials are present on the Mortgaged Property. The Mortgagor shall not, except in accordance with applicable law, cause, suffer to exist or permit the presence, use, generation, release, discharge, storage or disposal of any Hazardous Materials on, under or in, or the transportation of any Hazardous Materials to or from, the Mortgaged Property. The term "Hazardous Materials" shall include any flammable materials, explosives, radioactive materials, hazardous materials, petroleum, asbestos, polychlorinated biphenyls, hazardous waste, hazardous or toxic substances or related materials described in the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), or described in the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (15 U.S.C. §2605), or under any other applicable federal, state or local environmental law, ordinance, rule or regulation.

(d) The Mortgaged Property and its intended use substantially and materially comply with applicable laws, ordinances, governmental rules and regulations and the terms of any final judgment or order by any federal, State, regional or local governmental agency, including, without limitation, all applicable zoning and other ordinances, laws and legal restrictions regulating development and use of the Land, and all applicable federal, State and local laws pertaining to air and water quality, hazardous waste, waste disposal, underground storage tanks, and other environmental matters, including, but not limited to, the Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation and Recovery and Comprehensive Environmental Response, Compensation and Liability Acts, and the rules, regulations and ordinances of all applicable federal, State and local agencies and bureaus (collectively, the "Applicable Environmental Regulations"). The Mortgagor covenants that the Mortgaged Property and its use shall at all times substantially and materially comply with all Applicable Environmental Regulations.

ARTICLE III

GENERAL COVENANTS AND AGREEMENTS

Section 3.1 Loan Agreement Covenants. Each and all of the representations, warranties, terms, provisions, restrictions, covenants and agreements set forth in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, are incorporated herein by reference to the same extent as though each and all of said representations, warranties, terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Loan Agreement were fully set out in an amendment or supplement to this Mortgage; and the Mortgagor hereby covenants and agrees well and truly to abide by, perform and be governed and restricted by each and all of the matters provided for by the Loan Agreement and so incorporated herein to the same extent and with the same force and effect as if each and all of said representations, warranties, terms, provisions, restrictions, covenants and agreements so incorporated hereby by reference were set out and repeated herein at length. Without limiting the foregoing, the Mortgagor covenants and agrees to pay all taxes, assessments and governmental charges or levies imposed upon this

Mortgage, the Loan, the Bonds or any other Indebtedness secured hereby and such amounts shall constitute so much additional Indebtedness secured hereby.

Section 3.2 Further Assurances; After-Acquired Property.

(a) The Mortgagor will execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such agreements supplemental hereto and all such further acts, deeds, conveyances, mortgages, assignments, instruments, transfers and assurances as the Trustee reasonably may require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Trustee all and singular the Mortgaged Property as now or hereafter constituted.

(b) All right, title and interest of the Mortgagor in and to all improvements, betterments, renewals, substitutions and replacements of the Mortgaged Property or any part thereof hereafter constructed or acquired by the Mortgagor, immediately upon such construction or acquisition, and without any further mortgaging, conveyance or assignment, shall become and be part of the Mortgaged Property and shall be subject to the lien and security interest of this Mortgage as fully and completely and with the same effect as though now owned by the Mortgagor, but at any and all times the Mortgagor will execute and deliver to the Trustee all such further assurances, mortgages, conveyances or assignments therefor and other instruments with respect thereto as the Trustee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

(c) Notwithstanding anything to the contrary set forth herein or in the Indenture, in the event that Mortgagor acquires all or any portion of the property described on Exhibit B hereto (the "Excluded Property"), the Trustee shall not have a lien on the Excluded Property or any machinery, equipment, furniture, spare parts, inventory or other personal property used exclusively with the Excluded Property (collectively, the "Excluded Collateral") and this Mortgage shall not constitute a lien on the Excluded Property or the Excluded Collateral.

Section 3.3 Payment of Principal, Premium, if any, and Interest. The Mortgagor will duly and punctually pay the principal of, premium, if any, and interest on the Loan and the Bonds secured hereby according to the terms thereof, without relief from valuation and appraisal laws, as applicable.

Section 3.4 Maintenance of Lien; Recording.

(a) The Mortgagor will, at its own expense, take all necessary action to maintain and preserve the lien and security interest of this Mortgage as a first priority lien and security interest, subject only to Permitted Encumbrances, so long as the Bonds are outstanding.

(b) The Mortgagor will, forthwith after the execution and delivery of this Mortgage and thereafter from time to time, cause this Mortgage (including any amendments thereto and supplements thereof) to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to perfect and protect the lien and security interest hereof upon, and the title of the Mortgagor to, the Mortgaged Property, and from time to time will perform or cause to be performed any other act as provided by law and will execute or cause to be executed (and file or direct the Trustee to file) any and all further

instruments that may be requested by the Trustee for such publication, perfection and protection. Except to the extent it is exempt therefrom, the Mortgagor will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal and State fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and such instruments of further assurance.

Section 3.5 Maintenance. The Mortgagor shall (a) pay, when due, any indebtedness that may be secured by a lien or charge on the Mortgaged Property (whether senior, of equal priority, or junior to the lien hereof) and, upon request, exhibit to the Trustee satisfactory evidence of the discharge of such lien; (b) complete, in accordance with the provisions of the Loan Agreement, any building(s) or other improvements now or at any time in the process of erection or rehabilitation upon the Mortgaged Property; (c) promptly repair, restore or rebuild any part of the Mortgaged Property which may become damaged or be destroyed if such damage or destruction adversely affects the value of the Mortgaged Property; (d) substantially and materially comply with all requirements of law, municipal ordinances, and restrictions and covenants of record with respect to the Mortgaged Property or the use thereof; (e) permit no removal or demolition of the Mortgaged Property (other than items of the Mortgaged Property which have become obsolete or are being replaced) without the prior written consent of the Trustee; (f) suffer or permit no unlawful use of, or nuisance to exist upon, the Mortgaged Property; (g) observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation all uses), privileges, franchises and concessions which are applicable to any part of the Mortgaged Property or which have been granted to or contracted for by Mortgagor in connection with any existing or contemplated use of any part of the Mortgaged Property; and (h) cause the Mortgaged Property to be managed in a competent and professional manner. Notwithstanding the provisions herein, Mortgagor shall have the right to contest any lien pursuant to the provisions of the Loan Agreement.

Section 3.6 Priority of Lien. It is further made an express condition and covenant hereof, that while this Mortgage is in effect, the lien of this Mortgage shall extend to any and all improvements and fixtures owned by the Mortgagor, now or hereafter on the Mortgaged Property, prior to any other lien thereon that may be claimed by any Person, so that subsequently accruing claims for liens on the Mortgaged Property shall be junior to this Mortgage, except for Permitted Encumbrances.

Section 3.7 Taxes. The Mortgagor shall pay all general and special taxes, assessments, payments, water charges, sewer charges and other fees and charges of every kind and nature whether or not assessed against the Mortgagor, if applicable to the Mortgaged Property or any interest therein or any obligation or agreement secured hereby (collectively, the "Taxes"), in accordance with the Loan Agreement and subject to the right to contest same as provided for therein; and the Mortgagor shall, upon written request, furnish to the Trustee duplicate receipts therefor.

Section 3.8 Insurance Coverage. The Mortgagor, at its own expense, will insure, or will cause to be insured, including during any construction and thereafter, all of the buildings and

improvements now or hereafter included within the Mortgaged Property, and each and every part and parcel thereof as required by the Loan Agreement, and in any event including:

(a) During the course of all construction or repair, (A) workers' compensation insurance (including employer's liability insurance) for all persons engaged on or with respect to the Mortgaged Property in such amounts as are reasonably satisfactory to the Trustee or, if such limits are established by law, in such amounts, and (B) builder's completed value risk insurance (special coverage) against "all risks of physical loss" during construction, covering the total value of work performed and equipment, supplies and materials furnished;

(b) Comprehensive public liability insurance, including, without limitation, against claims for personal injury, bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways;

(c) To the extent there are improvements on the Land, insurance against loss or damage to any of the Mortgaged Property by fire and any of the risks typically covered by the ISO Special Causes of Loss commercial property insurance form;

(d) Flood insurance, where appropriate, but only if available and required by applicable law; and

(e) Other insurance in such amounts and covering such risks as is industry norm in the same general area in which the Mortgaged Property is located.

The Trustee shall be named as an additional insured on all liability policies and losses under all policies other than liability policies shall be payable to the Trustee pursuant to a standard mortgagee endorsement satisfactory to the Trustee. In the event of a foreclosure sale of all or any part of the Mortgaged Property pursuant to the enforcement of this Mortgage, the purchaser of the Mortgaged Property shall succeed to all rights of Mortgagor, including any rights to the proceeds of insurance and to unearned premiums, in and to all of the policies of insurance required hereunder. In the event of foreclosure sale, Trustee is hereby authorized, without the further consent of Mortgagor, to assign any and all policies of insurance to the purchaser at the sale, or to take such other steps as Trustee may deem advisable to cause the interest of such purchaser to be protected by any of such policies.

Section 3.9 Deposits for Taxes and Insurance Premiums. As long as there is no Event of Default outstanding under this Mortgage, the Loan Agreement or the Indenture, or if an Event of Default has occurred but has been cured, the Mortgagor shall pay all taxes and insurance premiums in accordance with the Loan Agreement. In the case of an Event of Default that remains outstanding, if Trustee determines not to require the Mortgagor to deposit such monies with the Trustee for the payment of taxes and insurance, then Mortgagor shall pay all taxes and insurance premiums in accordance with the Loan Agreement. Upon the occurrence and during the continuance of an Event of Default, the Trustee may (and, upon the written direction of the Majority Holders, shall), upon five days prior written notice, require the Mortgagor to deposit with the Trustee on the first day of each and every month, commencing with the month following the month in which notice is given by the Trustee, an amount equal to:

(i) If the Mortgaged Property is subject to real estate taxes, one-twelfth (1/12) of the real estate taxes next to become due upon the Mortgaged Property; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subsection (i), will result in a sufficient reserve to pay the Taxes next becoming due one month prior to the date when such real estate taxes; plus

(ii) One-twelfth (1/12) of the annual premiums on each policy of insurance upon the Mortgaged Property; provided that in the case of the first such deposit, there shall be deposited in addition an amount which, when added to the aggregate amount of monthly sums next payable under this subsection (ii), will result in a sufficient reserve to pay the insurance premiums next becoming due one month prior to the date when such insurance premiums are, in fact, due and payable;

provided that the amount of such deposits (herein generally called “Tax and Insurance Deposits”) shall be based upon the Trustee’s reasonable estimate (which may be based upon the advice of a consultant) as to the amount of real estate taxes and insurance premiums next to be payable as provided by an insurance consultant; and all Tax and Insurance Deposits shall be held by the Trustee and invested at the written direction of the Mortgagor in Permitted Investments (as defined in the Indenture). Interest on such deposits, if any, shall be retained by the Trustee and applied against future payments for taxes and insurance paid by the Trustee.

The Trustee will, out of the Tax and Insurance Deposits, upon the presentation to the Trustee by the Mortgagor of the bills therefor, pay the insurance premiums and real estate taxes or will, upon the presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the real estate taxes and insurance premiums when the same shall become due, then the Mortgagor shall pay to the Trustee on demand any amount necessary to make up the deficiency and such amount shall constitute additional Indebtedness secured hereby.

If an Event of Default occurs and is continuing, the Trustee may, at its option, without being required so to do, apply any Tax and Insurance Deposits on hand in such manner as provided in the Indenture. When the Indebtedness secured hereby has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor.

Section 3.10 Proceeds of Insurance. In case of loss covered by policies of insurance, the proceeds of any insurance shall be applied as provided in Section 5.2 of the Loan Agreement.

Section 3.11 Condemnation. In case of any award or claim for damages for any of the Mortgaged Property taken or damaged under the power of eminent domain or by condemnation, including any payments made in lieu of or in settlement of a claim or threat of condemnation, the proceeds of any award or claim shall be applied as provided in Section 5.2 of the Loan Agreement.

Section 3.12 Hazardous Materials.

(a) The Mortgagor hereby indemnifies the Trustee and the owners of any Bonds, including such owners’ officers, directors, affiliates, agents or employees (“Bondholder

Indemnitees”), and agrees to hold the Trustee and the Bondholder Indemnitees harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, including without limitation reasonable attorneys’ fees and expenses incurred or suffered by, or asserted against, the Trustee or any Bondholder Indemnitees for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission, discharging, or release from, the Mortgaged Property of any Hazardous Materials (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called “Superfund” or “Superlien” law, or any other present or future Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any Hazardous Materials or the protection of the environment), regardless of whether or not caused by, or within the control of, the Mortgagor, unless: (i) resulting solely from the negligent acts or willful misconduct of the Trustee or the owners of any Bonds, or (ii) matters resulting solely from the actions of the Trustee or the Bondholder Indemnitees taken after such parties have taken title to, or exclusive possession of the Mortgaged Property, provided that such matters shall not arise from or be accumulated with any condition of the Mortgaged Property, which condition was not caused by the Trustee or the Bondholder Indemnities. The provisions of this Section 3.12(a) shall continue after the Borrower pays or causes to be paid the Bonds and shall survive the resignation or removal of the Trustee.

(b) The Mortgagor shall at all times and in all respects be in substantial and material compliance with all applicable Environmental Laws. The Mortgagor’s duty of compliance with applicable Environmental Laws includes, without limitation, the duty to undertake the following specific actions: (i) the Mortgagor will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required by all applicable Environmental Laws, including without limitation, permits required for the discharge of (appropriately treated) Hazardous Materials into the ambient air or any sanitary sewers serving any real property owned or leased by the Mortgagor and (ii) except as discharged into the ambient air or a sanitary sewer in compliance with all applicable Environmental Laws, all Hazardous Materials to be treated and/or disposed of by the Mortgagor will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on site treatment or disposal in a sanitary landfill).

Section 3.13 Stamp Tax. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Mortgagor or the Mortgaged Property, any tax is imposed or becomes due in respect of the issuance of the Bonds, the Mortgagor shall pay such tax in the manner required by such law.

Section 3.14 Effect of Extensions of Time and Amendments. If the payment of the Indebtedness secured hereby, or any part thereof, be extended or varied, or if any part of the security therefor be released, all Persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property, shall be held to assent to such extension, variation, or release; and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such Persons being expressly reserved by the Trustee, notwithstanding any such extension, variation, or release. Any Person, firm, or corporation

taking a junior mortgage or other lien upon the Mortgaged Property or any interest therein shall take the said lien subject to the rights of the Trustee to amend, modify, and supplement this Mortgage, the Loan, the Bonds, the Loan Agreement and to extend the maturity of the Indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

Section 3.15 Trustee's Performance of the Mortgagor's Obligation.

(a) When any Event of Default has occurred and is continuing, the Trustee, either before or after acceleration of the Indebtedness secured hereby or the foreclosure of the lien hereof and during any period of redemption may, but shall not be required to, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient to the Trustee; and the Trustee may, but shall not be required to, make full or partial payments of principal or interest on any prior encumbrances and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or contest any tax or assessment, and may, but shall not be required to, complete construction, rehabilitation, furnishing, and equipping of the improvements upon the Land and rent, operate and manage the Mortgaged Property and such improvements and pay operating costs and expenses, including without limitation management fees, of every kind and nature in connection therewith, so that the Mortgaged Property and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and expenses and other monies advanced by the Trustee to protect the Mortgaged Property and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Mortgaged Property and such improvements or to pay any such operating costs and expenses thereof or to keep the Mortgaged Property and improvements operational and usable for their intended purpose, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable without notice, and with interest thereon at the prime rate published as such in the Wall Street Journal plus 3% per annum. Inaction of the Trustee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor. The Trustee, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement, or estimate, without inquiry into the validity of any Taxes, sale, forfeiture, tax lien, or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, rehabilitation, furnishing or equipping of the improvements or the rental, operation or management of the Mortgaged Property or the payment of operating costs and expenses thereof, may do so in such amounts and to such Persons as the Trustee may deem appropriate. Provisions governing the rights, immunities and protections of the Trustee under the Indenture and the Loan Agreement are herein granted to the Trustee and incorporated by reference into this Mortgage as though fully set forth herein.

(b) Mortgagor hereby authorizes Trustee to obtain and/or maintain in effect any and all policies of insurance required hereunder in the event Mortgagor fails to do so after notice from Trustee, and Mortgagor agrees to reimburse Trustee for any premiums or other costs associated with obtaining such insurance which Trustee may pay.

Section 3.16 Inspection of Mortgaged Property and Records. The Trustee and the owners of the Bonds shall have the right to inspect the Mortgaged Property and all books, records and documents relating thereto at all reasonable times upon reasonable prior notice, and access thereto shall be permitted for that purpose.

Section 3.17 Restrictions on Transfer. It shall be an Event of Default hereunder if (i) the Mortgagor shall create, effect, consent to or suffer or permit any conveyance, sale, assignment, lease, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Mortgaged Land (but not including the Personal Property) or any part thereof or interest therein, other than Permitted Encumbrances, as set forth in Section 6.6(b) of the Loan Agreement, transfers to a Partner of the Borrower subject to the lien of this Mortgage and transfers as permitted by Section 5.2 hereof or (ii) any action is brought to foreclose or enforce any lien or other lien with respect to the Mortgaged Land, provided that the commencement of any such action shall not constitute an Event of Default hereunder so long as the Mortgagor shall contest such action in accordance with Section 7.1 of the Loan Agreement. Notwithstanding anything to the contrary contained herein, the Mortgagor shall not transfer the Mortgaged Land or any portion thereof to any Partner of the Borrower as permitted by this Section 3.17 unless the Mortgagor provides the Trustee with the following: (i) instruments of transfer and other documentation in form and substance satisfactory to the Trustee evidencing the transferee's assumption of the obligations and covenants set forth in this Mortgage, (ii) a title insurance policy in form and substance satisfactory to the Trustee insuring the interest of the Trustee in this Mortgage, and (iii) an opinion of counsel to the transferee in form and substance satisfactory to the Trustee to the effect that this Mortgage is valid, binding and enforceable against the transferee in accordance with its terms. Notwithstanding anything to the contrary herein, no consent of the Trustee or Bondholders shall be required in connection with the granting of any utility, access, or other easements and rights of way which would not in the aggregate (i) materially interfere with or impair any present use of the Project or any reasonably probable future use of the Project, or (ii) materially reduce the value which would be reasonably expected to be received for the Project upon any sale (including any foreclosure of the Mortgage granted herein).

Section 3.18 Mortgagor's Right of Possession. So long as the Mortgagor is in full compliance with the terms and provisions of this Mortgage and the Borrower is in full compliance with the terms and provisions of the Loan Agreement and the Indenture, the Mortgagor shall be suffered and permitted to possess, use and enjoy the properties and appurtenances constituting the Mortgaged Property.

Section 3.19 Personal Property. The Mortgagor shall furnish the Trustee, from time to time at the Trustee's reasonable request, written statements and schedules further identifying and describing the Personal Property in such detail as the Trustee may reasonably require (but not more frequently than annually unless an Event of Default has occurred and is continuing). The Mortgagor shall only transfer any assets constituting Personal Property in accordance with the provisions of Section 4.9 of the Loan Agreement.

Section 3.20 Indiana Uniform Commercial Code. This Mortgage constitutes a security agreement under the Uniform Commercial Code with respect to any part of the Mortgaged Property which may or might now or hereafter be or be deemed to be personal property, fixtures

or property other than real estate (all for the purposes of this Section 3.20 called “Collateral”); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section 3.20 shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) The Mortgagor (being the “debtor” as that term is used in the Uniform Commercial Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than Permitted Encumbrances.

(b) The Collateral is to be used by the Mortgagor solely for corporate purposes of the Mortgagor, being installed upon the Mortgaged Property for the Mortgagor’s own use or as the equipment and furnishings furnished by the Mortgagor, as landlord, to tenants of the Mortgaged Property.

(c) The Collateral will be kept at the Land comprised within the Mortgaged Property, and will not be removed therefrom except in accordance with Section 3.17 hereof or with the consent of the Trustee (being the “secured party” as that term is used in the Uniform Commercial Code) which consent shall not be unreasonably withheld, conditioned or delayed, and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.

(d) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office (other than financing statements with respect to this Mortgage or Permitted Encumbrances); and the Mortgagor will at its own cost and expense, upon demand, furnish to the Trustee such further information, execute and deliver to the Trustee such financing statements and other documents in form satisfactory to the Trustee, and do all such acts and things as the Trustee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness secured hereby, subject to no liens, charges or encumbrances other than Permitted Encumbrances. The Mortgagor will at its own cost and expense pay the cost of filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by the Trustee to be necessary or desirable.

(e) Mortgagor agrees to file or cause to be filed one or more initial financing statements. Mortgagor represents, warrants and covenants that its legal name and jurisdiction of organization set forth in the first paragraph of this Mortgage are true and correct in all respects, and that it shall not change its legal structure or jurisdiction of organization during the term of this Mortgage without the prior written consent of the Trustee, which shall not be unreasonably withheld.

(f) Upon any Event of Default hereunder or under the Loan Agreement or the Indenture and the continuance thereof, the Trustee at its option may, and if any Bonds have been accelerated, the Trustee shall promptly, declare the Indebtedness secured hereby immediately due and payable, all as more fully described in Article IV hereof, and thereupon the Trustee shall have the remedies of a secured party under the Uniform Commercial Code, including, without

limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, with or without judicial process, enter without breach of the peace upon any place that the Collateral or any part thereof may be situated and remove the same therefrom (provided that if Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Uniform Commercial Code); and the Trustee shall be entitled to hold, maintain, preserve, and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral. The Trustee, without removal, may render the Collateral unusable and dispose of the Collateral on the Mortgaged Property. The Trustee may require the Mortgagor to assemble the Collateral and make it available to the Trustee for its possession at a place to be designated by the Trustee. The Trustee will give the Mortgagor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by first class mail, postage prepaid, to the address of the Mortgagor shown in this Mortgage or in the Trustee's records at least ten (10) days before the time of the sale or other disposition. The Trustee may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, the Trustee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Mortgaged Property, the Collateral and real estate to be sold as one lot if the Trustee so elects. The net proceeds realized upon any such disposition, after deduction for the reasonable and actual expenses of retaking, holding, preparing for sale, selling or the like and reasonable attorney's fees and legal expenses incurred by the Trustee, shall be applied against the Indebtedness secured hereby. The Trustee will dispose of any surplus realized upon such disposition in accordance with the provisions of Section 8.4 of the Indenture.

(g) The remedies of the Trustee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code shall not be construed as a waiver of any of the other remedies of the Trustee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness secured hereby remains unsatisfied.

(h) The terms and provisions contained in this Section 3.20 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Uniform Commercial Code.

(i) This Mortgage is intended to be a financing statement within the purview of Section 9.1-515 of the Uniform Commercial Code with respect to the Collateral and the goods described at the beginning of this Mortgage, which goods are or are to become fixtures, as such term is defined in Section 9.1-102(a)(41) of the Uniform Commercial Code, relating to the Mortgaged Property. This Mortgage is to be filed for record with the Recorder of Elkhart County, Indiana, where the Mortgaged Property is located. In order to satisfy Section 9.1-502 of the Uniform Commercial Code the following information is hereby provided:

Name of Debtor: Green Oaks of Goshen, LLC

Address of Debtor: See Section 6.3

Type of Organization: Limited Liability Company
State of Organization: Indiana
Organization Number: [_____]
Name of Secured Party: [_____], as Trustee
Address of Secured Party: See Section 6.3
Record Owner of Mortgaged Property: Green Oaks of Goshen, LLC

Section 3.21 Assignment of Leases and Rents. The Mortgagor hereby transfers and assigns to the Trustee all of the Mortgagor’s right, title, and interest in all Rents of the Mortgaged Property, as further security for the payment of the Indebtedness secured hereby. This assignment is absolute and is effective immediately. Notwithstanding the foregoing, until a notice is sent to the Mortgagor in writing that an Event of Default or an event that with notice or passage of time or both might become an Event of Default has occurred under the terms and conditions of this Mortgage (a “Notice”), the Mortgagor may receive, collect and enjoy the Rents accruing from the Mortgaged Property, subject to the provisions of the Indenture and the Loan Agreement.

If any Event of Default or event that with notice or passage of time or both might become an Event of Default occurs hereunder, at its option, the Trustee may, after service of a Notice, receive and collect all such Rents as they become due, from the Mortgaged Property and under any and all Leases of all or any part of the Mortgaged Property. The Trustee shall thereafter continue to receive and collect all such Rents, as long as such default(s) shall exist, and during the pendency of any foreclosure proceedings.

From and after the service of a Notice, the Trustee is hereby vested with full power to use all measures, legal and equitable, it may deem necessary or proper to enforce this assignment and to collect the Rents assigned hereunder, including the right of the Trustee or its designee to enter upon the Mortgaged Property, or any part thereof, with or without process of law, take possession (to the extent permitted by law) of all or any part of the Mortgaged Property and all personal property, fixtures, documents, books, records, papers, and accounts of the Mortgagor relating thereto, and exclude the Mortgagor and its agents and servants wholly therefrom. The Mortgagor hereby grants full power and authority to the Trustee to exercise all rights, privileges, and powers herein granted at any and all times after service of a Notice, without further notice to the Mortgagor, with full power to use and apply all of the Rents and other income herein assigned to the payment of the costs of managing and operating the Mortgaged Property and of the Indebtedness secured hereby. The Trustee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of the Mortgagor in the Leases. This assignment shall not operate to place responsibility for the control, care, management, or repair of the Mortgaged Property, or parts thereof, upon the Trustee, nor shall it

operate to make the Trustee liable for the performance of any of the terms and conditions of any of the Leases, for any waste of the Mortgaged Property by any lessee under any of the Leases or any other person, for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss, injury, or death to any lessee, licensee, employee, or stranger.

The assignment under this Section is given as a primary pledge and an absolute assignment of the rights described herein (subject to the license granted herein) and such assignment shall not be deemed secondary to the security interest and mortgage granted by the Mortgagor in the Mortgaged Property. The Trustee shall have the right to exercise any rights under this Section before, together with, or after exercising any other rights under this Mortgage.

Nothing herein shall be deemed to obligate the Trustee to perform or discharge any obligation, duty, or liability of the Mortgagor under this assignment, and the Mortgagor shall and does hereby indemnify and hold the Trustee harmless from any and all cost (including without limitation reasonable attorneys' fees and legal expenses), liability, loss, or damage which the Trustee may or might incur by reason of this assignment; and any and all such cost, liability, loss, or damage incurred by the Trustee, including reasonable attorney's fees and expenses incurred by the Trustee in the defense of any claims or demands therefor (whether successful or not), shall be so much additional Indebtedness secured hereby, and the Mortgagor shall reimburse the Trustee therefor on demand, together with interest at the prime rate published as such in the Wall Street Journal plus 3% per annum.

Section 3.22 Construction Mortgage. This Mortgage secures certain obligations incurred to finance the construction of an improvement on land and is entitled to the priority of a "construction mortgage" within the meaning of the Indiana Uniform Commercial Code, Section 9.1-334(h).

ARTICLE IV

DEFAULTS AND REMEDIES THEREFOR

Section 4.1 Event of Default Defined. The Mortgagor acknowledges and agrees that each and all of the terms and provisions of Article VIII of the Indenture and Article VII of the Loan Agreement have been and are incorporated into this Mortgage by reference to the same extent as though fully set out herein and that the term "Event of Default" wherever used in this Mortgage shall mean (i) an Event of Default as defined in Article VIII of the Indenture and Article VII of the Loan Agreement, (ii) the failure of the Mortgagor to comply with any covenant, agreement or warranty contained in this Mortgage within thirty (30) days after the Trustee shall have given written notice thereof to the Mortgagor, provided that, if such default cannot with due diligence and dispatch be wholly cured within thirty (30) days but can be wholly cured, if it shall be cured within the time specified in Section 8.1 of the Indenture no Event of Default shall occur and (iii) the abandonment of the Mortgaged Property by the Mortgagor for sixty (60) consecutive days.

Section 4.2 Remedies. When any Event of Default has occurred and is continuing, the Trustee may, in addition to the remedies hereinafter described, exercise any one or more or all,

and in any order, of the remedies set forth in Article VIII of the Indenture, including without limitation the remedies provided therein with respect to real property; it being expressly understood that no remedy herein or in the Indenture conferred is intended to be exclusive of any other remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute.

Section 4.3 Possession by the Trustee. When any Event of Default has occurred and is continuing, the Trustee shall, if applicable law permits, have the right to enter into and upon the Mortgaged Property and take possession thereof or to appoint an agent or trustee for the collection of the Rents of the Mortgaged Property, exclude Mortgagor therefrom, hold, use, administer, operate, manage and control the Mortgaged Property, exercise all rights, privileges and powers of Mortgagor with respect thereto and conduct the business thereof, all to the same extent Mortgagor could do so.

Section 4.4 Foreclosure. When any Event of Default has occurred and is continuing, the Trustee shall have the right to foreclose the lien hereof for the Indebtedness secured hereby or any part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness secured hereby in the judgment of foreclosure, all costs and expenses that may be paid or incurred by or on behalf of the Trustee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, environmental studies and similar data and assurance with respect to title of property, as the Trustee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such judgment, the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this Section, and such other reasonable expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including without limitation the reasonable fees and expenses of any attorney employed by the Trustee in any litigation or proceedings affecting this Mortgage, the Bonds or the Mortgaged Property, including probate, bankruptcy and appellate proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Indebtedness secured hereby and shall be immediately due and payable by the Mortgagor.

Section 4.5 Receiver. Upon, or at any time after, the acceleration of any series of Bonds or the filing of a complaint to foreclose this Mortgage, a court of competent jurisdiction may appoint a receiver (at the Mortgagor's expense) of the Mortgaged Property. Such appointment may be made either before or after sale, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Mortgaged Property and the Trustee hereunder or any employee or agent thereof may be appointed as such receiver, if and to the extent permitted by Applicable State Law. Such receiver shall have the power to collect the Rents of the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such Rents and all other powers which may be necessary or are usual in such cases for the

protection, possession, control, management and operation of the Mortgaged Property during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Property in his hands in payment in whole or in part of: (a) the Indebtedness secured hereby or the Indebtedness secured by a judgment foreclosing this Mortgage, or any tax, special assessment, or other lien that may be or become superior to the lien hereof or of such judgment, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

Section 4.6 Application of Moneys. The proceeds of any right given or action taken under the provisions of this Article by the Trustee shall be distributed and applied as provided in Section 8.4 of the Indenture.

Section 4.7 Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in rebuilding or restoring the buildings or improvements as herein provided, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the event of foreclosure sale, the Trustee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Trustee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to the Mortgagor for prepaid premiums thereon.

Section 4.8 Rights Cumulative. Each right, power, and remedy herein conferred upon the Trustee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to the Trustee and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Trustee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

Section 4.9 Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and permitted assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other Person having an interest therein), and shall inure to the benefit of the Trustee and its successors and assigns.

Section 4.10 Waiver of Redemption, Reinstatement, Extension, Appraisement, Stay, Laws. To the extent permitted by Applicable State Law, the Mortgagor will not during the continuance of any Event of Default hereunder insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisement of the Mortgaged Property, or any part thereof,

prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor before or after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States of America or by the State to redeem the property so sold or any part thereof; and the Mortgagor hereby expressly waives all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Trustee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor for itself and all who may claim through or under the Mortgagor waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this Mortgage, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate parcels at the same or different times, all as the Trustee may determine. The Mortgagor waives the right of redemption and, to the extent permitted by law, the right of reinstatement, under Applicable State Law.

Section 4.11 Credit Bid as Sale of Mortgaged Property. In case of any sale of the Mortgaged Property pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Mortgage, the Trustee may bid for and purchase the property being sold, and upon compliance with the terms of sale, the Trustee may hold, retain, possess and dispose of such property in its own absolute right without further accountability; the Trustee, at any such sale may, in lieu of paying the purchase price, credit the Bonds for value in lieu of cash equal to the amount of such purchase price.

Section 4.12 Remedies under Uniform Commercial Code. When any Event of Default has occurred and is continuing, the Trustee shall, have all the rights and remedies of a secured party under the Uniform Commercial Code.

ARTICLE V

SUPPLEMENTS AND AMENDMENTS TO THIS MORTGAGE; RELEASE AND SUBSTITUTION OF MORTGAGED LAND

Section 5.1 Supplements and Amendments to this Mortgage. The Mortgagor and the Trustee may from time to time enter into such supplements and amendments to this Mortgage as they may deem necessary or desirable to effectuate the purposes or intent hereof; provided, however, that no such amendment shall be effective if not adopted in accordance with the terms of the Indenture.

Section 5.2 Conditions for Release. So long as no Event of Default shall have occurred and be continuing under this Mortgage or under the Loan Agreement or the Indenture, the Trustee shall release:

- (a) Personal Property in accordance with Section 3.19 hereof; and
- (b) Mortgaged Land upon receipt by the Trustee of the following:

(i) A written request of the Mortgagor for such release, describing the Mortgaged Land to be released (referred to in this Article V as the “Released Property”);

(ii) A certificate of the Mortgagor to the Trustee certifying:

1. The fair market value of the Released Property and of the Property (referred to in this Article V as the “Substituted Property”) other than cash to be substituted for the Released Property pursuant to the terms hereof;

2. The disposition to be made of the Released Property and the consideration (which may include cash) to be received for the Released Property and the fair market value of consideration (other than money);

3. That the disposition of the Released Property and the substitution therefor of the Substituted Property will not materially adversely affect the operations of the Mortgagor’s elderly housing or health care facilities or any other Property of the Mortgagor;

4. That the Substituted Property other than cash or investment securities is necessary or useful to the operation of the Mortgagor’s elderly housing or health care facilities;

5. That the cash or the fair market value of the Substituted Property together with cash, if any, to be received is at least equal to the fair market value of the Released Property;

6. That the execution and delivery of the release of the Released Property by the Trustee and the subjection of the Substituted Property to the lien of this Mortgage, and all transactions related to such release and such subjection, will not result in a default hereunder or under the Indenture;

7. That all permits and authorizations of all federal, state and local governmental bodies and agencies have been granted to effect such disposition or that no such permits or authorizations are required; and

8. No Event of Default shall exist and be continuing hereunder and no event shall have occurred which would become an Event of Default upon the giving of notice and/or passage of time.

(iii) An appraisal of the fair market value of the Released Property by a member of the American Institute of Real Estate Appraisers (an “MAI Appraiser”) if the Released Property is real property, or by another expert acceptable to the Trustee if the Released Property is not real property; provided, however, that no such appraisal shall be required for the release of real or personal Released Property with an aggregate value of \$200,000 or less;

(iv) An appraisal of the fair market value of the Substituted Property (other than cash) by an MAI Appraiser if the Substituted Property is real property, or by another

expert acceptable to the Trustee if the Substituted Property is not real property; provided, however, that no such appraisal shall be required for the substitution of real or personal Substituted Property with an aggregate value of \$200,000 or less;

(v) A supplement to this Mortgage, the Loan Agreement and to the Indenture (if necessary) and other documents reasonably requested by, and in form satisfactory to, the Trustee necessary to subject the Substituted Property to the lien of this Mortgage and, if the Substituted Property is real property, an endorsement to the existing ALTA mortgage loan policy or an additional mortgagee's loan insurance policy, evidencing that the Substituted Property is subject to the lien of this Mortgage subject only to Permitted Encumbrances;

(vi) If the fair market value of the Released Property when added to the fair market value of other Property released pursuant to the provisions of this Article V within the same 12-month period is in excess of \$500,000, a certificate of a consultant acceptable to the Trustee to the effect set forth in paragraph (B)(3) of this Section 5.2; and

(vii) (A) An opinion addressed to the Trustee from Independent Counsel satisfactory to the Trustee to the effect that:

1. The release of the Property requested by the Mortgagor is authorized hereunder;

2. The Substituted Property is subject to the lien of this Mortgage subject only to Permitted Encumbrances;

3. The execution and delivery of the requested release and the acceptance of the Substituted Property will not violate any provisions of this Mortgage or of the Indenture; all necessary action required to be taken by the Mortgagor and the Trustee to effect the release of the Released Property and the conveyance of the Substituted Property has been taken;

4. The supplemental amendment hereto, the supplemental indenture to the Indenture, if required, and all other documents required to effect the release of the Released Property and substitution therefor of the Substituted Property have been duly authorized, executed and delivered and are binding upon the parties executing and delivering the same in accordance with their respective terms (subject to customary exceptions for laws affecting creditors' rights and the applicability of equitable principles); and

5. To the knowledge of such Independent Counsel, all permits and authorizations of all federal, State and local governmental bodies and agencies have been granted, or that no such permits or authorizations are required; or

(B) Upon receipt by the Trustee of a written consent to the release of the Released Property of a majority in aggregate principal amount of the holders of the outstanding Bonds.

The foregoing notwithstanding, upon defeasance of the Indenture and Bonds thereunder in full, this Mortgage shall be deemed released and the Trustee shall cooperate with the Mortgagor to take any and all action appropriate to evidence such release.

(viii) If Bonds are outstanding, an opinion of bond counsel that the release of the Released Property will not affect the tax-exempt status of the Series 2021A Bonds.

Section 5.3 Disposition of Substituted Property. The Mortgagor agrees that (i) the Trustee shall invest any cash delivered to it as Substituted Property in Permitted Investments pursuant to a Written Request of the Mortgagor, and any such cash and Permitted Investments shall be held by the Trustee in a separate trust account for the benefit and security of the outstanding Bonds; (ii) all income from Permitted Investments pursuant to this Section 5.3 shall be added to the funds held pursuant to this Section 5.3; (iii) funds from time to time on deposit with the Trustee pursuant to this Section 5.3 shall be used to make up any deficiencies in the amount available to pay when due the principal, interest and redemption premium on any Bonds, and to the extent funds are used to make up such deficiencies, the Mortgagor will make payment directly to the Trustee for deposit in such trust account in the amount of any such deficiencies forthwith; (iv) upon compliance with the terms and provisions of Section 5.2 hereof within three years of the date of initial deposit in such trust account of moneys constituting Substituted Property, such moneys may be released in return for other Substituted Property; and (v) at the end of such three-year period or upon Written Request of the Mortgagor and provided that no Event of Default shall have occurred and be continuing under the Indenture, the Loan Agreement or this Mortgage or no event shall have occurred which would become an Event of Default upon the giving of notice and/or the passage of time, any funds held by the Trustee pursuant to this Section 5.3 shall be applied by the Trustee to redeem or purchase Bonds in accordance with Article III of the Indenture. Notwithstanding anything to the contrary, any moneys on deposit with the Trustee shall be invested in accordance with, and subject to the terms of, the Arbitrage Certificate to the extent applicable.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 Mortgage for Benefit of Parties Hereto. Nothing in this Mortgage, express or implied, is intended or shall be construed to confer upon, or to give to, any Person other than the parties hereto, the Issuer and the holders of the Bonds, any right, remedy or claim under or by reason of this Mortgage or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Mortgage contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns the Issuer and the holders of the Bonds.

Section 6.2 Severability. In case any one or more of the provisions contained in this Mortgage or in the Bonds shall be invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 6.3 Notices. Unless otherwise specifically provided herein, any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when the same is: (i) deposited in the United States mail and sent by first class mail, postage prepaid, or (ii) delivered, in each case to the parties at the addresses set forth below or at such other address as a party may designate by notice to the other parties. The Mortgagor and the Trustee may, by written notice given by each to the other, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Mortgage. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Mortgagor:

Green Oaks of Goshen, LLC
566 Lake Street, Suite 400,
Chicago, IL, 60661
Attention: Kevin Beard
Email: kbeard@evergreenreg.com
Telephone: (312) 569-0823

With a copy to:

Frost Brown Todd LLC
201 N. Illinois Street, Suite 1900
Indianapolis, IN 46204
Attention: Matthew S. Carr
Telephone: (317) 237-3803
Email: mcarr@fbtlaw.com

If to the Investor Member:

Columbia Housing/PNC Institutional Fund XX Limited Partnership
121 S.W. Morrison, Ste 1300
Portland, OR 97204
Attention: []
Telephone: []
Email: []

With a copy to:

[]
[]
[]
Attention: []
Telephone: []

Email: [_____]

To the Trustee:

[_____]

[_____]

[_____]

Attention: [_____]

Telephone: [_____]

Email: [_____]

Section 6.4 Successors and Assigns. Whenever in this Mortgage any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Mortgage contained by or on behalf of the Mortgagor, or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 6.5 Counterparts. This Mortgage is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Mortgage is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 6.6 Governing Law. It is the intention of the parties hereto that this Mortgage and the rights and obligations of the parties hereunder and the Bonds and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State.

Section 6.7 Immunity of Officers. Employees and Members of the Trustee and the Mortgagor. No recourse shall be had for the payment of the principal of or premium or interest on the Bonds or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Mortgage contained against any past, present or future officer, director, member, employee or agent of the Trustee, the Mortgagor or, respectively, of any successor public or private corporation thereto, as such, either directly or through the Trustee, the Mortgagor or, respectively, any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Mortgage and the issuance of the Bonds.

Section 6.8 Conflicts with Indenture. In the event any of the terms or provisions hereof conflict with the Indenture, the Indenture shall control.

Section 6.9 Mortgage Constitutes Fixture Filing.

(a) With respect to any portion of the Mortgaged Property which constitutes fixtures, this Mortgage shall constitute a security agreement between the Mortgagor as the debtor and the

Trustee as the secured party, and the Mortgagor hereby grants to the Trustee a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of the Trustee hereunder, the Trustee shall have all of the rights conferred upon secured parties by the Uniform Commercial Code. The Trustee may file all financing statements that may from time to time be required by the Trustee to establish and maintain the validity and priority of the security interest of the Trustee, or any modification thereof, and all costs and expenses of any searches required by the Trustee shall be paid by the Mortgagor. The Trustee may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code with respect to such property, and it is expressly agreed that if upon an Event of Default the Trustee should proceed to dispose of such property in accordance with the provisions of the Uniform Commercial Code, 10 days' notice by the Trustee to the Mortgagor shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code requiring such notice; provided, however, that the Trustee may at its option dispose of such property in accordance with the Trustee's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the Uniform Commercial Code.

(b) The Mortgagor shall give advance notice in writing to the Trustee of any proposed change in the Mortgagor's name, identity, or business form or structure and will execute and deliver to the Trustee, prior to or concurrently with the occurrence of any such change, all additional financing statements that the Trustee may require to establish and maintain the validity and priority of the Trustee's security interest with respect to any of the Mortgaged Property described or referenced to herein.

(c) This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering any other Mortgaged Property and may be filed in any other appropriate filing or recording office. The mailing address of the Mortgagor is the address of the Mortgagor set forth in the introductory paragraph of this Mortgage, and the address of the Trustee from which information concerning the security interests hereunder may be obtained is the address of the Trustee as set forth in the introductory paragraph of this Mortgage. The Mortgagor authorizes the Trustee to file one or more financing statements describing the Collateral pursuant to the Uniform Commercial Code. The Mortgagor shall pay the cost of filing in all public offices wherever filing is deemed necessary or appropriate by the Trustee. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.10 Additional State Provisions. In the event of any inconsistencies between the terms and conditions of this Section 6.9 and the other provisions of this Mortgage, the terms and conditions of this Section 6.9 shall control and be binding.

(a) The recitals set forth in this Mortgage are incorporated herein by reference and made a part of this Mortgage as if fully set forth herein.

(b) The Bonds hereby secured, if not earlier accelerated, have a final maturity date of [_____].

(c) This Mortgage is intended to secure future advances made hereunder, or under the Indenture, and all modifications, extensions and renewals of any of the foregoing, with the same priority as if made on the day of execution of this Mortgage, up to a maximum amount of [_____] Dollars (\$[_____]), pursuant to Indiana Code § 32-29-1-10.

(d) Without limiting the scope of this Mortgage, the assignment of Leases and Rents set forth herein is made pursuant to, and includes, but is not limited to, all rights conferred by Ind. Code §§ 32-21-4-2 and 32-29-1-11, and this Mortgage hereby creates, and the Mortgagor hereby grants, a security interest and lien to the Trustee in the Leases and Rents that will be perfected upon the recording of this Mortgage. Such assignment shall run with the Mortgaged Property and be good and valid as against the Mortgagor and those claiming by, under or through the Mortgagor, from the date of recording of this Mortgage. Such assignment shall continue to be operative during the foreclosure or any other proceedings taken to enforce this Mortgage. Such assignment does not and shall not be construed as obligating the Trustee or any of its successors or assigns to perform any of the covenants or undertakings required to be performed by the Mortgagor in any of the Leases.

(e) The Mortgagor hereby acknowledges receipt of a copy of this Mortgage in compliance with the Trustee's obligation to deliver a copy of the fixture filing to the Mortgagor pursuant to Section 9.1-502(f) of the Uniform Commercial Code.

(f) Notwithstanding anything in this Mortgage to the contrary, if an Event of Default shall occur and be continuing, the Mortgagor further agrees, at the Trustee's request, to assemble the Collateral and make it available to the Trustee at the Mortgaged Land or a place designated by the Trustee which is reasonably convenient to both the Trustee and the Mortgagor.

(g) Anything contained in Ind. Code § 32-29-7-5 to the contrary notwithstanding, no waiver made by the Mortgagor in this Mortgage or in any of the other terms and provisions of the Indenture shall constitute the consideration for or be deemed to be a waiver or release by the Trustee or any judgment holder of the Bonds of the right to seek a deficiency judgment against the Mortgagor or any other person or entity who may be personally liable for the Bonds, which right to seek a deficiency judgment is hereby reserved, preserved and retained by the Trustee for its own behalf and its successors and assigns.

(h) The Mortgagor represents that none of the Mortgaged Property is occupied by the Mortgagor as its principal residence and agrees that the Trustee shall be entitled to the appointment of a receiver as a matter of right in accordance with Ind. Code § 32-30-5-1(4)(C) in any foreclosure action by the Trustee seeking to enforce this Mortgage, and subject to the terms and provisions of this Mortgage, any such receiver, when duly appointed, shall have all of the powers and duties of receivers pursuant to Applicable State Law.

(i) Anything contained in this Mortgage or the Indenture to the contrary notwithstanding, the Trustee or the Trustee's assignee or representative may not require the Mortgagor, as a condition of receiving or maintaining this Mortgage, to obtain hazard insurance coverage against risks to improvements on the Land in an amount exceeding the replacement

value of the buildings, structures and improvements constituting part of the Mortgaged Land in violation of Applicable State Law.

(j) If, after the date of this Mortgage, the Mortgagor acquires any property located on the Mortgaged Land and that by the terms of this Mortgage is required or intended to be encumbered by this Mortgage, the property shall become subject to the lien and security interest of this Mortgage immediately upon its acquisition by the Mortgagor and without any further mortgage, conveyance, assignment or transfer. Nevertheless, upon the Trustee's request at any time, the Mortgagor will execute, acknowledge and deliver any additional instruments and assurances of title and will do or cause to be done anything further that is reasonably necessary for carrying out the intent of this Mortgage.

Section 6.11 Extended Use Agreement. Mortgagor has informed Beneficiary that Mortgagor intends that the mortgaged property qualify for an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code ("Tax Credits"). In order to receive an allocation of Tax Credits, Mortgagor will be required to record in the real property records of an "extended low-income housing commitment" (as defined in Code Section 42(h)(6)(B)) (the "Extended Use Agreement"). If Mortgagor demonstrates to the reasonable satisfaction of Mortgagee that the Indiana Housing and Community Development Authority or applicable federal law requires that the lien of this Mortgage be subordinate to the Extended Use Agreement, then Mortgagee shall execute a subordination agreement (the "Subordination Agreement") wherein the lien of this Mortgage is subordinated to the Extended Use Agreement. The Subordination Agreement will:

(a) provide that, if Mortgagee or its successors or assigns (collectively, the "REO Owner") acquires the mortgaged property by foreclosure (or instrument in lieu of foreclosure), then the "extended use period" (as defined in Code Section 42(h)(6)(D)) shall terminate, except for the obligation of the REO Owner to comply with the limitations on evictions, termination of tenancy and increase in rents for the three year period following the REO Owner's acquisition of the mortgaged property, as set forth in Code Section 42(h)(6)(E)(ii); and

(b) otherwise be in a form reasonably acceptable to Mortgagee.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed in its corporate name and attested by its duly authorized officers, all as of the date first above written.

GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company

By: EREG GREEN OAKS OF GOSHEN, LLC,
an Indiana limited liability company,
its sole Member

By: _____
Name: Stephen F. Rappin
Title: Manager

WITNESS to Mortgagor's signature above:

Witness Signature

Witness Name (must be typed/printed)

[Signature Page to Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing – Green Oaks of Goshen Project]

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2021, before me, a Notary Public in and for said County and State, personally appeared Stephen F. Rappin to me personally known, who being by me duly sworn did say that he is the Manager of EREG Green Oaks of Goshen LLC, the sole Member of Green Oaks of Goshen, LLC, an Indiana limited liability company, and that he is the person who executed the foregoing Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing as such person acting for and on behalf of said limited liability company, and further acknowledged the execution of the foregoing Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing as his free act and deed for and on behalf of said limited liability company.

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)

Printed name: _____

My Commission expires: _____

My County of Residence: _____

*[Acknowledgment Page to Mortgage, Assignment of Rents and Leases, Security Agreement and
Fixture Filing – Green Oaks of Goshen Project]*

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared [INSERT WITNESS NAME HERE] _____, being known to me to be the person whose name is subscribed as a Witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed by Stephen F. Rappin, the Manager of EREG Green Oaks of Goshen LLC, the sole Member of Green Oaks of Goshen, LLC, an Indiana limited liability company, in the above-named subscribing Witness's presence, that the above-named subscribing Witness saw Stephen F. Rappin, the Manager of EREG Green Oaks of Goshen LLC, the sole Member of Green Oaks of Goshen, LLC, an Indiana limited liability company, execute the foregoing instrument, that the above-named subscribing Witness at the same time subscribed his/her name as a Witness thereto, and that the above-named subscribing Witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

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)

Printed name: _____

My Commission expires: _____

My County of Residence: _____

The mailing address of [_____] is
[_____] , Attention: [_____].

Please return this Instrument to [_____].

This instrument was prepared by Scott A. Krapf, Frost Brown Todd LLC, Capital Center, 201 North Illinois Street, Suite 1900, Indianapolis, Indiana 46244.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Scott A. Krapf, Esq.

EXHIBIT A

DESCRIPTION OF LAND

Property Address: 282 Johnston Street, Goshen, Indiana 46528

Description of Real Property:

[TO BE INSERTED]

EXHIBIT B

EXCLUDED PROPERTY

None.

TRUST INDENTURE

Between

CITY OF GOSHEN, INDIANA

and

U.S. BANK NATIONAL ASSOCIATION

Relating to:

**[\$[_____]]
CITY OF GOSHEN, INDIANA
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2021A
(GREEN OAKS OF GOSHEN PROJECT),**

and

**[\$[_____]]
CITY OF GOSHEN, INDIANA
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2021B
(FEDERALLY TAXABLE – GREEN OAKS OF GOSHEN PROJECT)**

Dated as of [_____] , 2021

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TRUST INDENTURE

This **TRUST INDENTURE**, dated as of [_____], 2021, is between the **CITY OF GOSHEN, INDIANA**, (the “Issuer”), a municipal corporation duly organized and existing under the laws of the State of Indiana (the “State”), and **U.S. BANK NATIONAL ASSOCIATION**, a national association having a corporate trust office in [Indianapolis, Indiana], as trustee (the “Trustee”).

RECITALS

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (the “Act”) has been enacted by the General Assembly of the State; and

WHEREAS, pursuant to the Act, the Issuer is authorized to issue revenue bonds and make a loan of the proceeds thereof for the purpose of financing or refinancing the costs of acquisition, construction, improving and equipping of residential real property for dwelling units; and

WHEREAS, Green Oaks of Goshen, LLC, an Indiana limited liability company (the “Borrower”), has requested the Issuer to issue its Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project), in the aggregate principal amount of \$[_____] (the “Series 2021A Bonds”), its Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project), in the aggregate principal amount of \$[_____] (the “Series 2021B Bonds” and together with the Series 2021A Bonds, the “Bonds”) and loan the proceeds thereof to the Borrower to (i) finance all or a portion of the costs of the acquisition, design, construction, improvement and/or equipping of approximately 120 assisted living units and certain functionally-related improvements to be located at 282 Johnston Street, Goshen, Indiana 46528 (the “Project”), as more fully described in Exhibit A to the Loan Agreement (as hereinafter defined), (ii) fund any required reserves, (iii) pay capitalized interest on the Bonds, if any, and (iv) pay certain costs and expenses incurred in connection with the authorization, issuance and sale of the Bonds; and

WHEREAS, Common Council of the Issuer, being the governing body of the Issuer, has authorized the issuance of the Bonds pursuant to Ordinance No. [___], adopted on [_____, 2021] (the “Bond Ordinance”), pursuant to the terms and conditions of this Indenture; and

WHEREAS, the Issuer has deemed it desirable and in keeping with its purposes under the Act to issue the Bonds under this Trust Indenture dated as of [_____] 2021 (the “Indenture”) by and between the Issuer and the Trustee and to make the proceeds thereof available to the Borrower to finance the Project; and

WHEREAS, the Issuer will loan the proceeds of the Bonds to the Borrower by entering into a Loan Agreement dated as of [_____] 2021 (the “Loan Agreement”), between the Issuer and the Borrower, and the Bonds shall be payable solely from the revenues received by the Issuer from the repayment of the loan of the proceeds of the Bonds to the Borrower (the “Loan”) and from other revenues derived from the Loan and the Bonds; and

WHEREAS, all Bonds issued under this Indenture will be secured by a pledge and assignment of certain rights of the Issuer to the Trustee under the Loan Agreement; and

WHEREAS, the execution and delivery of this Indenture and the issuance and sale of the Bonds have been in all respects duly and validly authorized by the Bond Ordinance and all things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture as a valid assignment and pledge of the amounts pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds, and to constitute this Indenture as a valid assignment of certain of the rights of the Issuer under the Loan Agreement, have been done and performed, and the creation, execution and issuance of the Bonds, subject to the terms thereof, have in all respects been duly authorized. All initially capitalized terms used herein which are not otherwise defined shall have the meanings set forth in Article I below.

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

NOW, THEREFORE, THIS INDENTURE FURTHER WITNESSETH: That the Issuer has, in consideration of the premises, of the acceptance by the Trustee of the trusts hereby created, and of the purchase and acceptance of the Bonds by the holders thereof, and for the purpose of fixing and declaring the terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and in order to secure the payment of all of the Bonds at any time issued and Outstanding (as defined herein) hereunder and the interest and premium, if any, thereon according to their tenor, purport and effect, and in order to secure the performance and observance of all of the covenants and conditions therein and herein contained, executed this Indenture and does hereby grant a security interest in, assign, transfer, pledge, grant and convey unto the Trustee and its successors and assigns the following:

A. All rights and interests of the Issuer in, under and pursuant to the Loan Agreement (as defined herein), including but without limiting the generality of the foregoing, the right to receive, collect or make claim for any of the amounts payable or receivable thereunder, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is or may become entitled to do under the Loan Agreement, provided that the assignment made by this clause shall not include (i) any assignment of any obligation of the Issuer under the Loan Agreement (and the Trustee shall have no duties with respect thereto) or (ii) any of the Issuer Unassigned Rights (as defined herein).

B. All right, title and interest of the Issuer in and to any monies held under this Indenture by the Trustee, except the Rebate Account, including the proceeds of the Bonds and the interest, profits and other income derived from the investment thereof.

C. The Revenues, including amounts pledged pursuant to Section 4.6 of the Loan Agreement.

D. Any and all other real or personal property of any kind from time to time hereafter by delivery or by writing of any kind specifically conveyed, pledged, assigned or transferred, as and for additional security hereunder for the Bonds, by anyone on behalf of the Issuer or with its written consent, or by or on behalf of the Borrower, in favor of the Trustee, 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.

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in said trusts and assigns forever.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future owners of the Bonds without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds (except as may be otherwise provided herein).

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. In addition to the words and terms defined elsewhere herein, the following words and phrases as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning and intent:

“*Act*” means the act as set forth in the preambles of this Indenture.

“*Additional Bonds*” means the issuance of additional bonds pursuant to Section 12.1 of this Indenture.

“*Arbitrage Certificate*” means the Tax Agreement entered into among the Borrower, the Trustee and the Issuer in connection with the issuance of the Series 2021A Bonds and dated as of the Issuance Date, and any exhibits, schedules, amendments and supplements to the foregoing.

“*Arbitrage Rebate Consultant*” means a firm of recognized expertise in the area of arbitrage rebate calculations and its requirements engaged by Borrower after prior notice to the Issuer and the Trustee.

“*Assignment of Contracts*” means the Assignment of Contracts and Interest in Licenses, Permits and Agreements, dated even date herewith, from the Borrower to the Trustee.

“*Authorized Borrower Representative*” means such person or persons duly designated by the Borrower to act on behalf of the Borrower in a writing delivered to the Trustee.

“*Authorized Denominations*” means denominations of [\$100,000] and integral multiples of [\$5,000] in excess thereof.

“*Authorized Issuer Representative*” means the Mayor of the Issuer, any officer of the Issuer, or any other person at the time designated to act on behalf of the Issuer by written certificate furnished to the Trustee and signed on behalf of the Issuer by one of its authorized signatories, which certificate may designate an alternate or alternates, and, when used with reference to the performance of any act, the discharge of any duty or the execution of any certificate or other document, any officer, employee or other person authorized to perform such act, discharge such duty or execute such certificate or other document.

“*Bankruptcy Code*” means Title 11 of the United States Code, as amended.

“*Beneficial Owner*” means, with respect to the Bonds, the person owning the Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

“*Beneficial Ownership Interest*” means the right to receive payments and notices with respect to the Bonds held in a Book Entry System.

“*Bond*” or “*Bonds*” means the Series 2021A Bonds, the Series 2021B Bonds, and any Additional Bonds issued hereunder.

“*Bond Counsel*” means Frost Brown Todd LLC, or another firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Borrower, and to the extent the Issuer is to act or refrain from acting in reliance thereon, reasonably acceptable to the Issuer

“*Bond Documents*” mean collectively, the Issuer Documents and the Borrower Documents.

“*Bond Fund*” means the Bond Fund established and created by Section 5.2 of this Indenture.

“*Bond Purchase Contract*” shall have the meaning set forth in the Loan Agreement.

“*Bond Ordinance*” has the meaning given in the preambles hereto.

“*Bond Service Charges*” means during any period of time, principal of and interest and any redemption premium due on the Bonds for that period or payable at that time, as the case may be.

“*Bond Year*” means, during the period while any of the Bonds are Outstanding, the annual period commencing on [_____] in any year and ending on the next succeeding [_____]; provided that the first Bond Year shall be a short year commencing on the Issuance Date and ending on [_____], unless another date is selected by the Borrower.

“*Bondholder*” or “*Holder*” or “*Owner of the Bonds*” or “*Registered Owner*” means the registered owner of any Bond.

“*Borrower*” means Green Oaks of Goshen, LLC, an Indiana limited liability company, its successors and/or assigns.

“*Borrower Documents*” when used with respect to the Borrower, means all documents and agreements executed and delivered by the Borrower as security for or in connection with the issuance of the Bonds including, but not limited to the Loan Agreement, the Mortgage, the Assignment of Contracts, the Bond Purchase Contract, the Land Use Restriction Agreement, the Arbitrage Certificate and the Continuing Disclosure Agreement. The Borrower Documents do not include any documents or agreements to which the Borrower is not a direct party, including the Bonds or this Indenture.

“*Business Day*” means any day other than a Saturday or Sunday or a day on which banking institutions in the State of Indiana or the State of New York, or in the city in which the designated corporate trust office of the Trustee is located, are required or authorized by law or executive order to remain closed.

“*City*” means the City of Goshen, Indiana.

“*Code*” means, as applicable, the Internal Revenue Code of 1986, as previously amended and as amended from time to time hereafter, and with respect to a specific section of such Code, such reference shall be deemed to include the Regulations promulgated under such section.

“*Completion Bonds*” means those bonds issued in connection with the completion of the Project as set forth in Section 12.1 of this Indenture.

“*Completion Certificate*” means the certificate of the Borrower to be delivered to the Trustee pursuant to Section 3.3(d) of the Loan Agreement, to the effect that all portions of the work provided for in the Development Budget (as defined in the Loan Agreement) have been fully completed substantially in accordance with the Development Budget (as defined in the Loan Agreement), the construction contracts therefor and any outline specifications for such work.

“*Construction and Acquisition Fund*” means the Construction and Acquisition Fund established and created by Section 5.4 of this Indenture.

“*Construction Monitor*” shall have the meaning set forth in the Loan Agreement.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Agreement dated the Issuance Date between the Borrower and the Trustee, as dissemination agent, as supplemented and amended from time to time.

“*Costs of Issuance*” means (a) the fees, costs and expenses of (1) the Issuer, the Issuer’s counsel and the Issuer’s financial advisor, if any, (2) the Underwriter (including discounts to the Underwriter or other purchasers of the Bonds (other than original issue discount) incurred in the issuance and sale of the Bonds) and the Underwriter’s counsel, (3) Bond Counsel, (4) the Trustee, the Trustee’s counsel and paying agent and certifying and authenticating agent fees related to issuance of the Bonds, (5) the Borrower’s counsel and the Borrower’s financial advisor, if any, (6) any other specialized counsel fees, if any, (7) accountant fees, (8) rating agency fees, if any, (b) the costs of preparing the cash flow projections, (c) costs of engineering, feasibility and market studies necessary to the issuance of the Bonds, (d) costs incurred in connection with the required public approval process (e.g., publication costs for public notices generally and costs of the public hearing), (e) costs of printing the Bonds and the offering documents relating to the sale of the Bonds, and (f) all other fees, costs and expenses directly associated with the authorization, issuance, sale and delivery of the Bonds, including, without limitation, printing costs, costs of reproducing documents and filing and recording fees.

“*Costs of Issuance Fund*” means the Costs of Issuance Fund established and created by Section 5.3 of this Indenture.

“*Debt Service Coverage Ratio*” shall have the meaning set forth in the Loan Agreement.

“*Debt Service Reserve Fund*” means that Debt Service Reserve Fund established and created by Section 5.5 of this Indenture.

“*Debt Service Reserve Fund Requirement*” means (a) on the Issuance Date, the amount of \$[_____], and (b) with respect to any Additional Bonds issued under Article XII hereunder, an amount that does not exceed the least of (i) ten percent (10%) of the par amount of such Additional Bonds, (ii) 125% of the average annual debt service on such Additional Bonds, or (iii) the maximum annual debt service on such Additional Bonds. Notwithstanding the foregoing, no calculations of the Debt Service Reserve Fund Requirement shall take into account the final maturity of Bonds issued hereunder with a back-loaded principal payment on such final maturity date.

“*Depository*” means any bank, trust company, savings and loan association or other financial institution selected by the Trustee as a depository of monies and securities held under the provisions of this Indenture and may include the Trustee.

“*Determination of Taxability*” means the entry by a court of competent jurisdiction of a final judgment or order or a notice of deficiency issued by the Internal Revenue Service, in either such case to the effect that the interest on the Bonds (other than interest on any Bond for any period during which such Bonds are held by a “substantial user” of any facility financed with the proceeds of the Bonds or a “related person,” as such terms are used in Section 147(a) of the Code) is includable for federal income tax purposes in the gross income of all recipients thereof subject to federal income taxes. For purposes of this definition, in the event of a good faith appeal of such judgment or order, or a contest or the filing with the Internal Revenue Service of a request for ruling or other advice initiated by the Borrower or any other interested party, no Determination of Taxability shall be deemed to have occurred until the date upon which all such appeals, contests, or requests pursued with due diligence by the Borrower or other interested party have been finally exhausted, or until after the period, if any, for appeal or contest by the Borrower or other interested party has expired without such appeal or contest having been properly instituted.

“*Disbursing Agreement*” means the Disbursing Agreement, dated [_____], 2021 among the Borrower, the Trustee, the Title Company, and the Construction Monitor.

“*DSRF Credit Facility*” has the meaning assigned in Section 5.5 hereof.

“*DTC*” means The Depository Trust Company.

“*DTC Participant*” means those broker-dealers, banks and other financial institutions reflected on the books of DTC.

“*EMMA*” means the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system accessible at emma.msrb.org.

“*Event of Default*” means any occurrence or event specified and defined in, or pursuant to, Section 8.1 of this Indenture.

“*Government Obligations*” means direct obligations of the United States of America or obligations the full and timely payment of the principal of and interest on which is unconditionally guaranteed by the United States of America.

“*IHCP Provider Agreement*” means the Indiana Health Coverage Program (“IHCP”) Provider Agreement to be entered into between the Company and the Indiana Family and Social Services Administration under which the Indiana Family and Social Services Administration will agree to make payments for the Company for each Medicaid-eligible resident who is enrolled in the Aged and Disabled Waiver Program and receiving services at the Project.

“*Indenture*” means this Trust Indenture and any amendments hereof and supplements hereto.

“*Independent Counsel*” means an attorney duly admitted to practice law before the highest court of the State who is not a full-time employee of the Issuer, the Borrower, or the Trustee.

“*Interest Payment Date*” means each [_____] and [_____] , commencing [_____].

“*Interested Beneficial Holder*” shall mean the original institutional purchasers of the Bonds as certified by the Underwriter to the Trustee, and any subsequent Beneficial Owners, each owning \$1,000,000 or more in aggregate principal amount of the Bonds who have given written notice to the Trustee that they are an Interested Beneficial Holder, and have provided the Trustee with their address for notice purposes.

“*Investment Agreement*” means any investment agreement that may be entered into for the investment of moneys on deposit in the Construction and Acquisition Fund, the Bond Fund, the Debt Service Reserve Fund or the Revenue Fund between the Trustee and a provider providing for the investment of moneys; provided that any Investment Agreement shall be (i) approved by a Majority of Holders, and (ii) entered into by the Trustee only upon receipt of written direction from the Borrower.

“*Investment Obligations*” or “*Permitted Investments*” means any of the following which at the time are legal investments for the Issuer under applicable State laws, for the monies held hereunder then proposed to be invested therein:

- (a) Government Obligations;
- (b) Obligations of, or obligations guaranteed as to principal and interest by, agencies or instrumentalities of the United States of America which are backed by the full faith and credit of the United States of America or interests in money market or mutual funds comprised solely of such obligations;
- (c) Federal Funds, certificates of deposit, demand deposits, time deposits and bankers’ acceptances (in each case having maturities of not more than 365 days) of any bank the debt obligations of which (or, in the case of the principal bank in a bank holding company, debt obligations of the bank holding company) have been rated at the time of purchase A-1+ by S&P or MIG-1 or VMIG-1 by Moody’s;

(d) Deposits or money market accounts which are fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or a fund administered by the FDIC;

(e) Investments in money market funds which are rated at the time of purchase AAAm or AAAm-G; which may be money market funds administered by the Trustee;

(f) Any Investment Agreement;

(g) Interest-bearing time deposits, repurchase agreements, rate guarantee agreements or similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with a government bond dealer reporting to, trading with or recognized as a primary dealer by, the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Act of 1956 and whose unsecured or uncollateralized long-term debt obligations are assigned a rating by S&P’s or Moody’s of “AA-/A3” (at the time of purchase) or better for agreements of more than three years, and “AA-1/A-1+” (at the time of purchase) or better for agreements of more than one year but less than three years or whose unsecured and uncollateralized short-term debt obligations are assigned a rating by S&P’s or Moody’s of “A-1+” or better for agreements of one year or less, provided that each interest-bearing deposit, repurchase agreement, guarantee agreement or other similar banking arrangement shall permit moneys so placed to be available for use of the time provided with respect to investment or reinvestment of such moneys.

Ratings of Investment Securities referred to herein shall be determined at the time of purchase of such Investment Securities and without regard to ratings subcategories.

“*Investor Member*” means [Columbia Housing/PNC Institutional Fund XX Limited Partnership, an Oregon partnership], and its successors, affiliates and assigns.

“*Issuance Date*” means [_____], 2021, the date of the initial issuance and delivery of the Bonds.

“*Issuer*” means City of Goshen, Indiana, a municipal corporation duly organized and existing under the laws of the State, and its successors and assigns.

“*Issuer Documents*” when used with respect to the Issuer, means the Bonds and all documents and agreements executed and delivered by the Issuer as security for or in connection with the issuance of the Bonds including, but not limited to the Loan Agreement, the Bond Purchase Contract, the Land Use Restriction Agreement and the Arbitrage Certificate. The Issuer Documents do not include any documents or agreements to which the Issuer is not a direct party.

“*Issuer Fees and Expenses*” means (i) the Issuer Closing Fee (if any), (ii) payment or reimbursement to the Issuer for any expenses or indemnification hereunder or under the Indenture; and (iii) and any other reasonable expense that may be incurred by the Issuer hereunder or under the Indenture, plus any Late Fee incurred with respect to any of the foregoing.

“*Issuer Unassigned Rights*” means all of the rights of the Issuer under this Indenture and the Loan Agreement (i) to receive the Issuer Fees and Expenses, payments due under the Loan Agreement and any other payments due to the Issuer under this Indenture or the Loan Agreement; (ii) to be held harmless and indemnified in accordance with this Indenture, the Land Use Restrictive Agreement and the Loan Agreement; (iii) to immunity and limitation from liability, (iv) to be reimbursed for fees and expenses upon enforcement of the Loan Agreement; (v) to receive notices in accordance with this Indenture and the Loan Agreement; and (vi) to give and withhold consent to amendments, changes, modifications and alterations of the Loan Agreement.

“*Land Use Restriction Agreement*” means the Land Use Restriction Agreement dated as of the date hereof among the Issuer, the Borrower and the Trustee.

“*Lease-Up Reserve Fund*” means the Lease-Up Reserve Fund established and created by Section 5.8 of this Indenture.

“*Loan*” means the loan to the Borrower pursuant to the Loan Agreement.

“*Loan Agreement*” means the Loan Agreement dated as of the date of this Indenture with respect to the Bonds by and between the Issuer and the Borrower, as amended in accordance with the terms hereof and thereof.

“*Majority of Holders*” means the Beneficial Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

“*Managing Member*” means EREG Green Oaks of Goshen, LLC, an Indiana limited liability company.

“*Marketing Reserve Fund*” means the Marketing Reserve Fund created and established pursuant to Section 5.7 of this Indenture.

“*Maturity Date*” means the date or dates specified in Section 2.3 of this Indenture as the maturity date or dates of the Bonds or any earlier redemption date.

“*Moody’s*” means Moody’s Investors Service, Inc. and its successors.

“*Mortgage*” means the Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated as of [_____], 2021, executed by Borrower, as mortgagor, in favor of the Trustee, as mortgagee, encumbering the Project and securing the Borrower’s obligations under the Loan Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“*Operating Agreement*” means the Amended and Restated Operating Agreement dated as of [] between Investor Member and Managing Member, as supplemented and amended.

“*Operating Expense Account*” shall mean the Operating Expense Account in the Revenue Fund created and established pursuant to Section 5.6 of this Indenture.

“*Operating Reserve*” shall mean the operating reserve fund, if any, held by the Investor Member pursuant to the Operating Agreement.

“*Outstanding*” means all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds for the payment of which cash or Government Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds) and which are deemed paid within the meaning of Article VII hereof (provided that such Bonds shall be deemed to be Outstanding for the limited purpose of calculating the Issuer’s Fee); and

(c) Bonds in lieu of which others have authenticated under Sections 2.9, 2.10 or 2.11 hereof.

“*Payment Date*” means any date on which principal of or interest on the Bonds is due or on which the Bonds are subject to redemption

“*Principal Office*” means the designated corporate trust office of the Trustee, which initially shall be Indianapolis, Indiana.

“*Project*” means the project described in the WHEREAS clauses hereto.

“*Project Site*” means the project site described in Exhibit A to the Mortgage.

“*Provider Agreement Payments*” means payments made to the Borrower pursuant to the IHCP Provider Agreement.

“*Rebate Account*” means the Rebate Account in the Revenue Fund established pursuant to Section 5.6 of this Indenture.

“*Record Date*” or “*Regular Record Date*” means with respect to any Interest Payment Date the fifteenth day of the month which precedes the next succeeding Interest Payment Date, or if such date is not a Business Day, then the next Business Day.

“*Redemption Price*” shall mean the redemption price for Bonds to be redeemed as specified in Article III of this Indenture.

“*Refunding Bonds*” shall have the meaning specified in Section 12.1 of this Indenture.

“*Replacement Reserve Account*” means the Replacement Reserve Account in the Revenue Fund established and created by Section 5.6 of this Indenture.

“*Representation Letter*” shall mean the Blanket Issuer Letter of Representations by and between the Issuer and DTC.

“*Revenue Fund*” means the Revenue Fund established and created pursuant to Section 5.6 of this Indenture, including the accounts specified therein.

“*Revenues*” means all gross income (including Medicaid payments), interest income (including interest income received by the Trustee and deposited into the Revenue Fund pursuant to Section 6.5 of this Indenture) and revenue received by the Borrower from the ownership or operation of the Project including, but not limited to, all residential and commercial rents, and other income from the Project (except deposits held as security) received in connection with leases or occupancy or services or otherwise received from or in regard to tenants of the Project, any additional money deposited by the Borrower from time to time into the Revenue Fund, after certification of the Project by the Division of Aging of the FSSA, the Provider Agreement Payments to be made to the Borrower pursuant to the IHCP Provider Agreement, all business interruption insurance proceeds, and all rights to receive the same whether in the form of accounts, accounts receivable, general intangibles, contract rights, chattel paper, instruments or other rights and the proceeds thereof, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Borrower and any other moneys, revenues or receipts which are specifically included in such definition by the terms of any supplemental indenture. Notwithstanding the foregoing, in no event shall any amounts drawn by the Trustee from the Debt Service Reserve Fund held by the Trustee under this Indenture, in and of itself, be deemed to be “Revenues.”

“*S&P*” means Standard & Poor’s Financial Services LLC and its successors.

“*Series 2021A Bonds*” means the Issuer’s \$[] Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds are issued).

“*Series 2021B Bonds*” means the Issuer’s \$[] Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds are issued).

“*Special Record Date*” means the date and time established by the Trustee for determination of which Registered Owners shall be entitled to receive overdue interest on the Bonds pursuant to Section 2.4(b)(iii) hereof.

“*Stabilization*” has the meaning given such term in Operating Agreement.

“*State*” means the State of Indiana.

“*Surplus Account*” means the Surplus Account in the Revenue Fund created and established pursuant to Section 5.6 of this Indenture.

“*Tax and Insurance Account*” means the account by that name established in the Revenue Fund under Section 5.6 of this Indenture.

“*Taxable Bonds*” means those Bonds the interest on which, in the opinion of Bond Counsel delivered at the time of issuance thereof, is not excludable from gross income of the Registered Owners thereof for federal income tax purposes, initially the Series 2021B Bonds.

“*Taxable Bond Proceeds Account*” means the Taxable Bond Proceeds Account established in the Construction and Acquisition Fund by Section 5.4 of this Indenture.

“*Tax-Exempt Bonds*” means those Bonds the interest on which, in the opinion of Bond Counsel delivered at the time of issuance thereof, is excludable from gross income of the Registered Owners thereof for federal income tax purposes, initially the Series 2021A Bonds.

“*Tax-Exempt Bond Proceeds Account*” means the Tax-Exempt Bond Proceeds Account established in the Construction and Acquisition Fund by Section 5.4 of this Indenture.

“*Title Company*” means Millennial Title.

“*Trust Estate*” means the property conveyed to the Trustee pursuant to the Granting Clauses of this Indenture.

“*Trustee*” means U.S. Bank National Association, [Indianapolis, Indiana], and any qualified entity at the time serving as successor trustee hereunder.

“*Trustee/Issuer Expense Account*” means the account established under the Revenue Fund pursuant to Section 5.6 of this Indenture.

“*Underwriter*” means Piper Sandler & Co.

Section 1.2 Interpretation. In this Indenture, unless otherwise stated or the context otherwise requires:

(a) Words of one gender include the corresponding words of other genders; words of neuter include both genders; and words in the singular include words in the plural and vice versa.

(b) Words indicating persons, parties, or entities (and the like) include firms, associations, partnerships (including limited partnerships), limited liability companies (and the like), corporations, trusts and other legal entities, including public and governmental bodies, as well as natural persons.

(c) References to a statute refer to the statute, as amended, and any successor statute, and to all regulations promulgated under or implementing the statute or successor statute, as in effect at the relevant time.

(d) References to a governmental or quasi-governmental entity or representatives thereof also refer to an entity that succeeds to the functions of the governmental or quasi-governmental entity and representatives thereof.

(e) Headings preceding sections of text and any table of contents are solely for convenience of reference and are not part of this Indenture and are not to affect its meaning, interpretation or effect.

(f) Actions permitted under this Indenture may be taken at any time and from time to time in the actor's sole discretion.

(g) The word "including" means "including, but not limited to" and the word "include" means "include, among others."

(h) The terms "hereby," "hereof," "herein," and "hereunder" (and the like) refer to this Indenture.

ARTICLE II

THE BONDS

Section 2.1 Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article II. The total principal amount of Tax-Exempt Bonds other than Additional Bonds that may be issued is expressly limited to \$[_____]. The total principal amount of Bonds, in the aggregate, is \$[_____], inclusive of both the Tax-Exempt Bonds and the Taxable Bonds.

Section 2.2 Issuance of Bonds. The Series 2021A Bonds shall be designated "City of Goshen, Indiana Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project)." The Series 2021B Bonds shall be designated "City of Goshen, Indiana Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project)."

Each series of Bonds shall be dated as of the Issuance Date, shall be subject to prior redemption, and shall be numbered consecutively from RA-1 or RB-1, as applicable, upward.

The Bonds shall be issued only in fully registered form without coupons initially in the denominations of [\$100,000] and integral multiples of [\$5,000] in excess of that sum.

The Bonds shall bear interest at the rates and mature in the amounts and on the dates provided in Section 2.3 of this Indenture.

The principal of, redemption premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts, and such principal, redemption premium, if any, and interest shall be payable at the Principal Office of the Trustee.

Section 2.3 Interest Rate on Bonds; Maturity Date. The Bonds shall be issued on the Issuance Date and shall bear interest as provided below and in Section 2.4(b) hereof.

The Series 2021A Bonds shall mature in the following amounts on the following dates (subject to prior redemption as provided in Section 3.1) and shall bear interest, computed on the basis of a 360-day year, consisting of twelve 30 day months, at the following interest rate or rates per annum:

Maturity Date:

Principal Amount:

Interest Rate:

The Series 2021B Bonds shall mature in the following amounts on the following dates (subject to prior redemption as provided in Section 3.1) and shall bear interest, computed on the basis of a 360-day year, consisting of twelve 30 day months, at the following interest rate or rates per annum:

Maturity Date:

Principal Amount:

Interest Rate:

Section 2.4 Manner of Paying for Bonds.

(a) The principal or redemption price of each Bond shall be payable at the designated office of the Trustee. Payments of principal or redemption price of the Bonds shall be payable in immediately available funds in the city where the Principal Office of the Trustee is located. Such payments shall be made to the Registered Owner of the Bond so surrendered, as shown on the registration books maintained by the Trustee on the date of payment. Any Holder of the Bonds in an aggregate principal amount of \$1,000,000 or more shall also have the right to have payment of the principal of and redemption premium on its Bonds to be made by wire transfer in accordance with, and by the procedures set forth in Section 2.4(b)(iv) of this Indenture, except that such Holder shall not be required to present and surrender its Bonds in connection with a regular, scheduled sinking fund redemption that does not represent the final maturity of the Bonds.

(b) Subject to the further provisions of this Section 2.4, each Bond shall bear interest and be payable as to interest as follows:

(i) Each Bond shall bear interest at the rate set forth above (A) from the date of authentication, if authenticated on the Issuance Date or an Interest Payment Date to which interest has been paid or provided for, or (B) from the last preceding Interest Payment Date to which interest has been paid or provided for (or the date of original issuance of the Bonds if no interest thereon has been paid) in all other cases.

(ii) Subject to the provisions of subparagraph (iii) below, the interest due on any Bond on any Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the registration books kept by the Trustee on the Regular Record Date.

(iii) If the available funds under this Indenture are insufficient on any Interest Payment Date to pay the interest then due, the Regular Record Date shall no longer be applicable with respect to the Bonds. If sufficient funds for the payment of such overdue interest thereafter become available, consistent with Section 8.1 of this Indenture, the Trustee shall promptly establish a special interest payment date for the payment of the overdue interest and a Special Record Date (which shall be a Business Day) for determining the Registered Owners entitled to such payments. Notice of each date so established shall be mailed by the Trustee to each Registered Owner at least ten days prior to the Special Record Date, but not more than thirty days prior to the special interest payment date. The overdue interest shall be paid on the special interest payment date to the Registered Owners, as shown on the registration books kept by the Trustee as of the close of business on the Special Record Date.

(iv) All payments of interest on the Bonds shall be paid to the Registered Owners entitled thereto pursuant to Section 2.4(b)(ii) or (iii) above by the Trustee on the Interest Payment Date or special interest payment date, as applicable, by check or draft mailed by first class mail on the Interest Payment Date to the Registered Owners entitled thereto at such address appearing in the registration books of the Trustee or at such other address as has been furnished to the Trustee in writing by such Registered Owners. The foregoing notwithstanding, if a Holder of Bonds in an aggregate principal amount of \$1,000,000 or more shall have given the Trustee notice of the wire transfer address in the continental United States of such Holder at least one day prior to a Record Date, then, for all Interest Payment Dates thereafter until such notice is revoked or modified in writing given to the Trustee, payment of the interest on the Bonds of that Holder shall be made by the Trustee by wire transfer to the wire transfer address set forth in such notice.

Section 2.5 Execution; Limited Obligation.

(a) The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of the Mayor and Clerk-Treasurer of the Issuer. The signature of such officers may be mechanically or photographically reproduced on the Bonds. If any officer of the Issuer whose signature appears on any Bond ceases to be such officer before delivery thereof, such signature shall remain valid and sufficient for all purposes as if such officer had remained in office until such delivery.

(b) THE BONDS AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE EXCLUSIVELY FROM REVENUES AND RECEIPTS UNDER THE LOAN AGREEMENT. THE BONDS DO NOT CONSTITUTE A DEBT OR A LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE ISSUER OR OF THE STATE OF INDIANA, OR OF ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER, THE ISSUER'S ECONOMIC DEVELOPMENT COMMISSION OR THE STATE OF INDIANA. THE BONDS

SHALL NOT CONSTITUTE, DIRECTLY OR INDIRECTLY, OR CONTINGENTLY OBLIGATE OR OTHERWISE CONSTITUTE A GENERAL OBLIGATION OF OR A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER, BUT SHALL BE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE SOURCES DESCRIBED HEREIN, BUT NOT OTHERWISE.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THE BONDS AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, DIRECTOR, EXECUTIVE DIRECTOR, COUNSEL, ADVISOR, OR AGENT OF THE ISSUER, OR ITS ECONOMIC DEVELOPMENT COMMISSION, OR OF ANY SUCCESSOR TO THE ISSUER OR ITS ECONOMIC DEVELOPMENT COMMISSION, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ITS ECONOMIC DEVELOPMENT COMMISSION OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, EXECUTIVE DIRECTOR, COUNSEL, ADVISORS, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND CONSIDERATION FOR THE EXECUTION AND ISSUANCE OF THE BONDS.

Section 2.6 Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication of such Bond shall have been duly executed by the Trustee and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all the Bonds.

Section 2.7 Form of Bonds. The Bonds issued under this Indenture shall be substantially in the form set forth in Exhibit A hereto, with such variations, omissions and insertions as are permitted or required by this Indenture.

Section 2.8 Delivery of Bonds. Prior to the release by the Trustee of the Bonds, there shall be filed with the Trustee, a request and authorization to the Trustee on behalf of the Issuer and signed by the Authorized Issuer Representative to authenticate and deliver such Bonds to the Underwriter upon payment to the Trustee, but for the account of the Issuer, of a sum specified in such request and authorization in the aggregate principal amount of the Bonds.

Section 2.9 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, interest rate, maturity and denomination to that mutilated, lost, stolen or destroyed Bond, *provided* that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with an indemnity for the benefit of the Issuer, the Borrower and the Trustee, satisfactory

to the Trustee. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, the Issuer may pay the same without surrender thereof making such requirements as it deems fit for its protection including a lost instrument bond. The Trustee may charge the Holder of such Bond with its reasonable fees and expenses in this connection.

Section 2.10 Custody of Bonds; Registration; Transfer of Bonds.

(a) The Trustee may hold the Bonds as custodian for the Registered Owners so long as the Bonds are registered in the name of Cede & Co., as nominee of The Depository Trust Company under the provisions of Section 2.12 hereof.

(b) All Bonds issued hereunder shall be negotiable, subject to the provisions for registration and transfer thereof contained herein or in the Bonds.

(c) So long as any Bonds are Outstanding, the Trustee shall maintain at its offices books for the registration and transfer of Bonds, and shall provide for the registration and transfer of any Bond under such reasonable regulations as the Trustee may prescribe. The Trustee shall act as bond registrar for purposes of exchanging and registering Bonds in accordance with the provisions hereof.

(d) Each Bond shall be transferable only upon the registration books maintained by the Trustee, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the Registered Owner or his duly authorized attorney. Upon surrender for transfer of any Bond, the Issuer shall cause to be executed (but need not prepare) and the Trustee shall authenticate and deliver, in the name of the transferee, one or more new Bonds of the same aggregate principal amount at maturity, as appropriate, and maturity as the surrendered Bond.

(e) Any Bond, upon surrender thereof to the Trustee together with written instructions satisfactory to the Trustee, duly executed by the Registered Owner or his attorney duly authorized in writing, may, at the option of the Registered Owner thereof, be exchanged for an equal aggregate principal amount at maturity, as appropriate, of Bonds with the same maturity of any other Authorized Denominations.

(f) All Bonds surrendered in any exchange or transfer of Bonds shall forthwith be canceled by the Trustee.

(g) In connection with any such exchange or transfer of Bonds, the Registered Owner requesting such exchange or transfer shall as a condition precedent to the exercise of the privilege of making such exchange or transfer remit to the Trustee an amount sufficient to pay any tax or other governmental charge required to be paid with respect to such exchange or transfer; provided, however, that no such amount shall be payable by the Registered Owner in the case of the issuance of any Bond or Bonds for the unredeemed portion of a Bond surrendered for redemption.

(h) The Trustee may but shall not be obligated to exchange or register the transfer of any Bond (i) which has been called or selected for call for redemption in whole

or in part or (ii) during a period of 15 days preceding the selection of Bonds to be redeemed for the purpose of the giving of a notice of redemption. If the transfer of any Bond which has been called or selected for call for redemption in whole or in part is registered, any notice of redemption which has been given to the transferor shall be binding upon the transferee and a copy of the notice of redemption shall be delivered by the Trustee to the transferee along with the Bond or Bonds.

Section 2.11 Persons Deemed Owners of the Bonds. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal, interest or any applicable premium on any Bond shall be made only to or upon the written order of the Registered Owner thereof. Such payment shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the amount so paid.

Section 2.12 Book-Entry Only System. It is intended that the Bonds be registered so as to participate in a securities depository system with DTC (the “DTC System”), as set forth herein. The Bonds shall be initially issued in the form of a separate single fully registered Bond of each maturity of the Bonds. Upon initial issuance, the ownership of each such Bond shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Issuer and the Trustee are authorized to execute and deliver such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Representation Letter. DTC may exercise the rights of a Bondholder only in accordance with the terms hereof applicable to the exercise of such rights.

With respect to Bonds registered in the bond register in the name of Cede & Co., as nominee of DTC, the Issuer, the Trustee and the Borrower shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Bonds from time to time as securities depository (each such broker-dealer, bank or other financial institution being referred to herein as a “DTC Participant”) or to any person on behalf of whom such a DTC Participant directly or indirectly holds an interest in the Bonds (each such person being herein referred to as an “Indirect Participant”). Without limiting the immediately preceding sentence, the Issuer, the Trustee and the Borrower shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any Indirect Participant or any other person, other than a Registered Owner or an Interested Beneficial Holder, as shown in the bond register, of any notice with respect to the Bonds, including any notice of redemption, (iii) the payment to any DTC Participant or indirect participant or any other Person, other than a Registered Owner, of any amount with respect to principal of, redemption premium, if any, or interest on, the Bonds, (iv) any consent given by DTC as Registered Owner, (v) the selection by Depository or any participant in the Depository of any Person to receive payment in the event of partial redemption of the Bonds; or (vi) any consent given or other action taken by the Depository as Bondholder. The Issuer, the Borrower and the Trustee may treat DTC or any successor securities depository as, and deem DTC or any successor securities depository to be, the absolute owner of the Bonds for all purposes whatsoever, including without limitation (i) the payment of principal and interest on the Bonds, (ii) giving notice of redemption and other matters with respect to the Bonds, (iii) registering transfers with respect to the Bonds and (iv) the selection of Bonds for redemption. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a Bond certificate with respect to any

Bond. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Indenture with respect to interest checks or drafts being mailed to the Registered Owner at the close of business on the Record Date applicable to any Interest Payment Date, the name “Cede & Co.” in this Indenture shall refer to such new nominee of DTC.

Section 2.13 Successor Securities Depository; Transfers Outside Book-Entry Only System. In the event that (a) the Issuer or the Borrower determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason or (c) the Issuer or the Borrower determines that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Issuer shall notify DTC of the availability through DTC of Bond certificates and the Bonds shall no longer be restricted to being registered on the bond register in the name of Cede & Co., as nominee of DTC. At that time, the Issuer may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the Issuer, or such depository’s agent or designee, and if the Issuer does not select such an alternate securities depository system then the Bonds may be registered in whatever name or names Registered Owners of Bonds transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

Section 2.14 Payments and Notices to Cede & Co. Notwithstanding any other provision of this Indenture to the contrary, so long as any of the Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, redemption premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter

Section 2.15 Trustee to Provide Notice of Annual Outstanding Principal Amount. The Trustee shall provide to the Issuer, no later than [_____ 15] of each year, the expected principal amount of all Bonds Outstanding under this Indenture as of [_____ 1] of such year.

ARTICLE III

REDEMPTION OF BONDS

Section 3.1 Redemption. The Bonds shall be subject to redemption prior to maturity as follows:

(a) *Optional Redemption.* The Series 2021A Bonds shall be subject to redemption at the option of the Borrower, in whole or in part, after the required notice of redemption is given, on or after the dates set forth below, at the applicable redemption price described below, plus accrued interest to the redemption date.

Redemption Date

Redemption Price

The Series 2021A Bonds [are / are not] subject to optional redemption prior to [_____].

The Series 2021B Bonds [are / are not] subject to optional redemption prior to [_____].

(b) *Mandatory Sinking Fund Redemption.* The Series 2021A Bonds are subject to mandatory sinking fund redemption on the Interest Payment Dates and in the principal amounts set forth below at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest to the redemption date, and without redemption premium, subject to reduction, pro rata against all sinking fund maturities to the extent that Series 2021A Bonds are redeemed in part prior to maturity otherwise than pursuant to such scheduled mandatory redemption:

Series 2021A Term Bond Maturing on [_____]

Payment Date (November 1)	Principal Amount <u>Redeemed</u>	Payment Date (November 1)	Principal Amount <u>Redeemed</u>
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*Final Maturity

Series 2021B Term Bond Maturing on [_____]

Payment Date (November 1)	Principal Amount <u>Redeemed</u>	Payment Date (November 1)	Principal Amount <u>Redeemed</u>
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*Final Maturity

Upon any optional redemption in part of any Bond, the principal amount of such Bond redeemed shall be credited against the foregoing sinking fund redemption payments in amounts and on such dates as directed by the Borrower.

(c) *Mandatory Redemption Upon Determination of Taxability.* The Series 2021A Bonds are subject to mandatory redemption in whole on the earliest date after the required notice of redemption can be given following a Determination of Taxability but not less than thirty-five days following the Trustee's receipt of notice of such occurrence of such Determination of Taxability (the "Tax Call Redemption Date"). If the Series 2021 Bonds are so called for redemption, the Series 2021B Bonds shall also be called for redemption. The Series 2021A Bonds shall be called at a redemption price equal to 105% of the principal amount of the Series 2021A Bonds so redeemed, plus accrued interest to the Tax Call Redemption Date. The Series 2021B Bonds shall be called at a redemption price equal to par, plus accrued interest to the Tax Call Redemption Date. Notwithstanding anything in this Indenture to the contrary, the Trustee shall give prompt written notice of the occurrence of a Determination of Taxability to the Bondholders and the Borrower. No other redemption premium is required to be paid in the event of a Determination of Taxability.

(d) *Extraordinary Mandatory Redemption.* The Bonds are subject to redemption in whole or in part (as applicable as described below) prior to maturity, at a redemption price of 100% of the principal amount of the Bonds to be redeemed plus accrued interest to the date fixed for redemption, upon the receipt by the Trustee of a written certification of the Borrower fixing a redemption date (which date shall be at least forty-five days but not more than sixty days after the date of the certification and must be an Interest Payment Date in the case of (iv) below), and stating that one of the following events has occurred:

(i) any insurance proceeds received by the Trustee as a result of damage to the Project which are required under Section 5.2 of the Loan Agreement to be applied to the prepayment of the Loan (as opposed to those proceeds which are to be applied under the Loan Agreement to the repair or rebuilding of the Project);

(ii) any insurance proceeds received by the Trustee as a result of the Borrower having defective title the Project Site;

(iii) condemnation proceeds received by the Trustee which are required under Section 5.2 of the Loan Agreement to be applied to the prepayment of the Loan (as opposed to those proceeds which are to be applied under the Loan Agreement to the repair or rebuilding of the Project);

(iv) the Borrower becomes subject to the Bankruptcy Code and the trustee in bankruptcy causes or directs prepayment of the Loan (in which case the Bonds shall be redeemed in whole);

(v) an event of default under the Loan Agreement and acceleration of the Loan; or

(vi) amounts on deposit in the Surplus Account are required to be used to redeem Bonds by operation of Section 5.6(g) of this Indenture and a Majority of Holders have consented in writing to such redemption.

(e) *Mandatory Redemption to the Extent of Excess Moneys in the Construction and Acquisition Fund.* The Bonds are subject to mandatory redemption, to the extent of excess moneys in the Tax-Exempt Bond Proceeds Account and the Taxable Bond Proceeds Account of the Construction and Acquisition Fund, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest to the redemption date, in the maximum principal amount of Authorized Denominations permitted by the balance of moneys transferred to the Bond Fund as described in (ii) below but only if the amount transferred is at least \$100,000. Such redemption shall occur on the first date upon which proper notice of redemption can be given following (i) delivery by the Borrower of the certificate pursuant to Section 3.3(d) of the Loan Agreement and (ii) the transfer of excess moneys in an amount of at least \$100,000 from the Tax-Exempt Bond Proceeds Account and the Taxable Bond Proceeds Account of the Construction and Acquisition Fund to the Bond Fund pursuant to Section 3.3(d) of the Loan Agreement and Section 5.4(e) hereof.

(f) *Mandatory Redemption from the [_____] Capital Contribution.*
[_____].

Section 3.2 Selection of Bonds to Be Redeemed. Bonds shall be redeemed in whole or in part from any funds available for that purpose in accordance with the provisions of this Indenture, *provided*, that there shall be no partial redemption of any Bond which would result in the unredeemed portion not being of an Authorized Denomination. If less than all the Bonds are called for redemption under any provision of this Indenture permitting such partial redemption, the particular Bonds to be redeemed shall be selected by the Trustee by lot, provided, however, that the portion of any Bond to be redeemed shall be in an Authorized Denomination. Partial redemptions of any Bonds subject to mandatory sinking fund redemption shall be by lot. If it is determined that a portion, but not all, of the principal amount represented by any Bond is to be called for redemption, then upon notice of intention to redeem such portion, the Registered Owner of such Bond upon surrender of such Bond to the Trustee for payment to such Registered Owner of the redemption price of the portion called for redemption shall be entitled to receive a new Bond or Bonds in the aggregate principal amount of the unredeemed balance of the principal amount of such Bond. New Bonds representing the unredeemed balance of the principal amount of such Bond shall be issued to the Registered Owner, without charge. If the Registered Owner of any Bond of a denomination greater than the principal amount to be redeemed shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the portion of the principal amount called for redemption (and to that extent only).

Section 3.3 Procedure for Redemption.

(a) In case of redemption of the Bonds (other than sinking fund redemption), the Borrower shall, at least forty-five (45) days prior to the redemption date, deliver a written request to the Issuer and the Trustee (unless a shorter notice shall be satisfactory to

the Issuer and Trustee) notifying the Issuer and the Trustee of such redemption date and of the principal amount of the Bonds to be redeemed and shall, prior to the redemption date, deliver to the Trustee sufficient funds to pay the redemption price of all Bonds subject to redemption.

(b) If any of the Bonds are called for redemption at the written direction of the Borrower, the Trustee shall give written notice in the name of the Issuer, of the redemption of such Bonds, to the Registered Owner of the Bonds to be redeemed, not less than thirty (30) nor more than sixty (60) days prior to the redemption date which notice shall (i) specify the Bonds to be redeemed, the redemption date, the redemption price, and the place or places where amounts due upon such redemption will be payable (which shall be the Principal Office of the Trustee) and, if less than all of the Bonds are to be redeemed, the numbers of the Bonds, and the portion of the Bonds, so to be redeemed, (ii) state any condition to such redemption, (iii) at the request of the Borrower, state that the notice is conditional and may be cancelled at Borrower's request on or prior to the redemption date; and (iv) state that, unless the notice is cancelled, on the redemption date, and upon the satisfaction of any such condition, the Bonds to be redeemed shall cease to bear interest, provided that funds are available for such purpose on that date, and if funds are not available on such date, the redemption shall be deferred until funds are available. Such notice may set forth any additional information relating to such redemption. No defect in any such notice shall in any manner defeat the effectiveness of the call for redemption. The Trustee, upon receipt of notice from Borrower that the redemption has been cancelled, shall promptly notify Registered Owners in writing in the manner described above that the notice of redemption is cancelled.

(c) Any Bonds and portions of Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article VII of this Indenture shall cease to bear interest on the specified redemption date.

(d) Official notice of redemption having been given and not cancelled as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price specified in the notice, and from and after such date (unless there is a default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Such Bonds shall be paid by the Trustee at the redemption price. Upon surrender for any partial redemption of any Bonds, there shall be issued to the Registered Owner a new Bond or Bonds in the amount of the unredeemed principal in an Authorized Denomination. All Bonds which have been redeemed shall be canceled and destroyed by the Trustee and shall not be reissued.

Section 3.4 No Partial Redemption After Event of Default. Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing any Event of Default under this Indenture, there shall be no redemption of less than all of the Bonds at the time Outstanding.

Section 3.5 Payment of Redemption Price. Subject to other provisions of this Agreement, for the redemption of any of the Bonds, the Issuer shall cause to be deposited in the Bond Fund an amount sufficient to pay the principal of, redemption premium, if any, and interest

to become due on such Bonds on the date fixed for such redemption. Any amount in the Bond Fund available on such redemption date for payment of the principal of and accrued interest and redemption premium, if any, on the Bonds to be redeemed shall be credited against any amount required to be caused to be so deposited in the Bond Fund.

Section 3.6 Cancellation. All Bonds paid and redeemed by the Trustee under the provisions of this Indenture, either at or before maturity, shall be canceled when such payment or redemption is made, and such Bonds, unless then held by the Trustee, shall be delivered to the Trustee. All canceled Bonds shall from time to time be cremated or otherwise destroyed by the Trustee.

Section 3.7 Bonds Redeemed in Part. Any Bond which is to be redeemed only in part shall be surrendered (with due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed in blank by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Bond, without service charge to the Holder a new Bond or Bonds, of any Authorized Denomination or Denominations as requested by such Holder, and in an aggregate principal amount equal to the unredeemed portion of the principal of the Bonds surrendered.

Section 3.8 Book-Entry Only System; Redemptions. The Trustee acknowledges that references in this Article III regarding Bonds should be read, where applicable, to include Beneficial Ownership Interests therein and Bondholders or Registered Owners should be read to include Beneficial Owners, but (i) all rights of ownership must be exercised through DTC and its book-entry only system and (ii) all notices are to be given only to DTC (except as to Interested Beneficial Holders who shall be given all notices given to DTC), all pursuant to the terms and conditions of the Representation Letter.

Section 3.9 Purchase in Lieu of Redemption. In lieu of any redemption as provided in this Article III, moneys available for such purpose under the Indenture may be used and withdrawn as directed by the Borrower for the purchase of Outstanding Bonds, at public or private sale as and when, and at such prices (including brokerage and other charges) as the Borrower may provide, but in no event may Bonds be purchased at a price in excess of the principal amount of such Bonds, plus interest accrued to the date of purchase and any premium which would otherwise be due if such Bonds were to be redeemed in accordance with this Indenture.

ARTICLE IV

GENERAL COVENANTS

Section 4.1 Payment of Principal and Interest. The Issuer covenants that it will promptly pay the principal of, redemption premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in each said Bond according to the true intent and meaning thereof, but solely from the payments and other amounts pledged for payment of the Bonds which are from time to time held by the Trustee in the Bond Fund. The principal of and interest and redemption premium if any, on the Bonds are payable solely from payments and other amounts due pursuant to the Loan Agreement (except to

the extent paid out of monies attributable to the proceeds derived from the sale of the Bonds or to income from the temporary investment thereof) and nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer or the Borrower except to the extent as set forth in any of the Bond Documents. The Bonds are special limited obligations of the Issuer, payable solely from amounts to be paid by the Borrower under the Loan Agreement and amounts credited to such payment under the terms of this Indenture and are secured under this Indenture by an assignment to the Trustee of the Loan Agreement and all amounts paid by the Borrower thereunder.

Section 4.2 Performance of Issuer Covenants. The Issuer covenants that it will faithfully perform on its part at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining thereto; provided, however, that except for the matters set forth in any documents hereof relating to payment of the principal of, premium, if any, and interest on Outstanding Bonds prior to any Event of Default, the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or by Trustee, or shall have received the instrument to be executed and at the option of the Issuer shall have received from the party requesting such action or execution assurance satisfactory to the Issuer that the Issuer will be paid or reimbursed for its reasonable expenses, including legal counsel fees, incurred or to be incurred in connection with taking such action or executing such instrument. The Issuer covenants that it is duly authorized under the Constitution and the laws of the State, including particularly the Act, to issue the Bonds authorized by this Indenture and to execute this Indenture, to grant the security interest provided in this Indenture, to assign and pledge the Loan Agreement (except as otherwise provided in this Indenture) and to assign and pledge the amounts assigned and pledged by this Indenture in the manner and to the extent set forth in this Indenture, that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of their owners are and will be valid and enforceable special, limited obligations of the Issuer according to the terms thereof and hereof. Anything contained in this Indenture apparently to the contrary notwithstanding, it is understood that none of the covenants of the Issuer contained in this Indenture is intended to create a general or primary obligation of the Issuer.

Section 4.3 Instruments of Further Assurance. The Issuer agrees that the Trustee may defend its rights to the payments and other amounts due under the Loan Agreement for the benefit of the Owners of the Bonds against the claims and demands of all persons whomsoever. The Issuer covenants that it will, at the Borrower's cost, do, execute, acknowledge and deliver such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the rights assigned and the amounts pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein provided, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the Revenues payable under the Loan Agreement, or its rights thereunder.

Section 4.4 Recording and Filing. In order to perfect the security interest of the Trustee in the Trust Estate and to perfect the security interest in the Loan Agreement, the Issuer, to the extent permitted by law and at the request of the Borrower, will execute such security

agreements or financing statements, naming the Trustee as assignee and pledgee of the Trust Estate assigned and pledged under this Indenture for the payment of the principal of, premium, if any, and interest on the Bonds and as otherwise provided herein, and the Borrower will cause the same to be duly filed and recorded, as the case may be, in the appropriate State and county offices as required by the provisions of the Uniform Commercial Code or other similar law as adopted in the State, as from time to time amended. To continue the security interest evidenced by such security agreements or financing statements, the Trustee shall, at the expense of the Borrower, file and record or cause to be filed and recorded such necessary continuation statements from time to time as may be required pursuant to the provisions of the said Uniform Commercial Code or other similar law to fully preserve and protect the security interest of the Trustee in the Trust Estate and to perfect the security interest in the Loan Agreement. The Issuer, to the extent permitted by law, at the expense of the Borrower, shall execute and cause to be executed any and all further instruments as shall be reasonably required by the Trustee for such protection and perfection of the interests of the Trustee and the registered owners and the Trustee, the Borrower or its agent, as the case may be, shall, at the expense of the Borrower, file and refile or cause to be filed and refiled such instruments which shall be necessary to preserve and perfect the lien of this Indenture upon the Trust Estate until the principal of, premium, if any, and interest on the Bonds issued hereunder shall have been paid or provision for their payment shall be made as herein provided.

Section 4.5 Inspection of Project Books. Any books and records which may be in Issuer's possession relating to the Project and the payments and other amounts due pursuant to the Loan Agreement shall at all reasonable times be open to inspection by such accountants or other agencies as the Trustee or any Interested Beneficial Holder may from time to time designate.

Section 4.6 List of Bondholders. The Trustee will keep on file a list of names and addresses of all of the Bondholders as from time to time registered on the registration books of the Issuer maintained by the Trustee, together with the principal amount and numbers of such Bonds. The Trustee shall be under no responsibility with regard to the accuracy of said lists other than to accurately record the information furnished it. At reasonable times and under reasonable requirements established by the Trustee, said list may be inspected and copied by the Borrower or by Holders (or a designated representative thereof) of fifteen percent or more in principal amount of Bonds, such ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

Section 4.7 Covenants Respecting Tax Exemption of Bonds.

(a) Subject to the limitations on its liability as stated herein and to the extent permitted by law, the Issuer covenants and agrees that it has not knowingly engaged and will not knowingly engage in any activities, and that it has not knowingly taken and will not knowingly take any action, which might result in any interest on the Series 2021A Bonds becoming includable in the gross income of their owners for purposes of Federal income taxation.

(b) The Borrower is responsible for all arbitrage rebate calculations pursuant to the Arbitrage Certificate.

Section 4.8 Rights Under Loan Agreement. The Issuer agrees that the Trustee in its own name or in the name of the Issuer upon notice to the Issuer may enforce all rights of the Issuer and all obligations of the Borrower (except with respect to the Issuer Unassigned Rights) under the Loan Agreement, for and on behalf of the Bondholders, whether or not the Issuer has undertaken to enforce such rights and obligations.

Section 4.9 Limitation of Liability.

(a) *Reliance by the Issuer on Facts or Certificates.* Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

(b) *Immunity of Issuer's Directors, Officers, Counsel, Review Advisors, and Agents.* No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Indenture, any other Issuer Documents, or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any of the Issuer Indemnified Parties, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any of the Issuer Indemnified Parties, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into by the Issuer with the Borrower or the Trustee, or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against each and every Issuer Indemnified Parties are, by the execution of the Bonds, this Indenture, and the other Issuer Documents, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Indenture, and the other Issuer Documents, is expressly waived and released.

(c) *No Pecuniary Liability of the Issuer.* No agreements or provisions contained herein, nor any agreement, covenant, or undertaking by the Issuer in connection with the Project or the issuance, sale, and/or delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from the revenues pledged hereby for the payment of the Bonds and their application as provided in this Indenture. No failure of the Issuer to comply with any term, covenant, or agreement contained in the Bonds, this Indenture or the Loan Agreement, or in any document executed by the Issuer in connection with the Project or the issuance and sale of the Bonds, shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge, except to the extent the same can be paid from revenues derived under the Loan Agreement. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein; provided that no costs, expenses, or other monetary relief shall be recoverable from the Issuer, except as may be payable from the

revenues pledged under this Indenture for the payment of the Bonds or other revenue derived under the Loan Agreement. No provision, covenant, or agreement contained herein, or any obligations imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any State constitutional or statutory limitation or shall constitute or give rise to a charge against the Issuer's general credit. In making the agreements, provisions, and covenants set forth in this Indenture, the Issuer has not obligated itself, except with respect to the application of the revenues pledged in this Indenture for the payment of the Bonds or other revenues derived under the Loan Agreement.

Section 4.10 Effect of Covenants on Issuer. Nothing in this Article is intended to impose any pecuniary liability on the Issuer or obligate the Issuer to make or incur any expenditure, except from the amounts provided and available therefor pursuant to this Indenture.

Section 4.11 Fees, Charges and Expenses of the Trustee and the Issuer. The Trustee and the Issuer shall be entitled to payment and reimbursement for reasonable fees for their respective services rendered hereunder and all advances, counsel fees and other expenses reasonably made or incurred by the Trustee and the Issuer in connection with such services and in connection with entering into this Indenture, including any such fees and expenses incurred in connection with action taken hereunder.

ARTICLE V

FUNDS AND APPLICATION OF REVENUES AND OTHER MATTERS

Section 5.1 Establishment of Funds and Accounts; Application of Moneys.

(a) The following special funds and accounts shall be established and maintained pursuant to the provisions of this Indenture:

- (i) Bond Fund, and within it, a Tax-Exempt Account and a Taxable Account;
 - (A) Also within the Bond Fund, a Capitalized Interest Account, and within the Capitalized Interest Account, a Tax-Exempt Subaccount and a Taxable Subaccount;
- (ii) Costs of Issuance Fund;
 - (A) Tax-Exempt Bond Costs of Issuance Account;
 - (B) Taxable Bond Issuance Cost of Issuance Account;
- (iii) Construction and Acquisition Fund;
 - (A) Tax-Exempt Bond Proceeds Account;
 - (B) Taxable Bond Proceeds Account;

- (iv) Debt Service Reserve Fund;
- (v) Revenue Fund and within it a Rebate Account, a Replacement Reserve Account, an Operating Expense Account, a Trustee/Issuer Expense Account; a Tax and Insurance Account, and a Surplus Account;
- (vi) Marketing Reserve Fund; and
- (vii) Lease-Up Reserve Fund.

(b) The Trustee is authorized to receive the proceeds of the Bonds for and on behalf of the Issuer, along with certain other monies of the Borrower, and to give receipt therefor. The net proceeds received by the Issuer from the sale of the Bonds and the other funds deposited by the Borrower with the Trustee shall be applied as follows:

(i) The proceeds of the sale of the Series 2021A Bonds and the Series 2021B Bonds shall be applied as follows:

(A) The proceeds of the Series 2021A Bonds shall be applied as follows: \$[] to be deposited in the Tax-Exempt Bond Proceeds Account of the Construction and Acquisition Fund, \$[] to be deposited in the Tax Exempt Subaccount of the Capitalized Interest Account of the Bond Fund, and \$[] to be deposited in the Tax-Exempt Bond Cost of Issuance Account of the Costs of Issuance Fund.

(B) The proceeds of the Series 2021B Bonds shall be applied as follows: \$[] to be deposited in the Taxable Bond Proceeds Account of the Construction and Acquisition Fund and \$[] to be deposited in the Taxable Subaccount of the Capitalized Interest Account of the Bond Fund.

(ii) Subsequent to the Issuance Date, the Borrower will transfer to the Trustee, and the Trustee is directed to accept, the following amounts from the following installments of the Investor Member’s capital contributions under the Operating Agreement, for deposit in the following Funds:

<u>Amount transferred:</u>	<u>Installment:</u>	<u>Deposited to:</u>
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Section 5.2 Bond Fund.

(a) There is created and established a “Bond Fund,” and within such fund a “Tax-Exempt Account” and a “Taxable Account”, and within the Capitalized Interest Account, a “Tax-Exempt Account” and a “Taxable Account”, which shall be held by the Trustee and which shall be used for the purpose of paying the principal, redemption

premium, if any, and interest on the Series 2021A Bonds at the times set forth in the Series 2021A Bonds and of retiring such Bonds at or prior to maturity at the times and in the manner provided herein. At the Issuance Date there shall be deposited in the Tax-Exempt Subaccount of the Capitalized Interest Account of the Bond Fund the amount of \$[] of proceeds of the Series 2021A Bonds, and in the Taxable Subaccount of the Capitalized Interest Account of the Bond Fund the amount of \$[] of proceeds of the Series 2021B Bonds, for the purpose of paying capitalized interest on the Series 2021A Bonds and the Series 2021B Bonds, respectively, commencing on the Issuance Date and until such amount is depleted. All monies deposited in the Bond Fund shall be disbursed and applied by the Trustee at the times and in the manner set forth this Indenture.

(b) Except as provided in subsections (d) and (e) of this Section, neither the Issuer nor the Borrower shall have any interest in the Bond Fund or the monies and Investment Obligations therein, all of which shall be held in trust by the Trustee for the sole benefit of the Holders of the related series of Bonds.

(c) The Bond Fund shall be drawn upon for the purpose of paying the principal, redemption premium, if any, and interest on the Bonds; provided that moneys on deposit in the Capitalized Interest Account shall be drawn upon to pay interest on the Bonds before any other moneys on deposit in the Bond Fund are applied to that purpose; and further provided that the principal of and interest on each Series of Tax-Exempt Bonds shall be payable from the Tax-Exempt Accounts and Subaccounts and the principal of and interest on each Series of Taxable Bonds shall be payable from the Taxable Accounts and Subaccounts. Monies set aside from time to time with the Trustee and Paying Agent for the payment of such principal, redemption premium and interest shall be held in trust for the Holders of the Bonds in respect of which the same shall have been so set aside. Until so set aside for the payment of principal, redemption premium, if any, or interest as aforesaid, all monies in the Bond Fund shall be held in trust for the benefit of the Holders of all Bonds at the time outstanding equally and ratably and without any preference or distinction as between Bonds.

(d) Non-Presentment of Bonds.

(i) In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been deposited in the Bond Fund, all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such monies, without liability for interest thereon, for the benefit of the Holder of such Bond who shall thereafter be restricted exclusively to such monies, for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. Such monies shall be held in a separate and segregated fund and shall not be invested.

(ii) Any monies so deposited with and held by the Trustee not so applied to the payment of Bonds for at least two years after the date on which the same shall

have become due shall then be paid by the Trustee to the Borrower. Thereafter, Bondholders shall be entitled to look only to the Borrower for payment, the Borrower shall not be liable for any interest thereon and shall not be regarded as a trustee of such monies, and the Trustee shall have no further responsibilities with respect to such monies. The obligation of the Trustee under this Section to pay any such funds to the Borrower shall be subject, however, to any provisions of law applicable to the Trustee or to such funds providing other requirements for disposition of such funds.

(e) In the event there are insufficient moneys in the Bond Fund on the 21st day of the month immediately preceding any date that principal of or interest on a series of Bonds is due and payable, then the Trustee shall immediately notify Borrower and the Investor Member, of the insufficiency. The Trustee shall provide the notice in the manner specified in Section 13.5 hereof, specifically including notices via electronic mail. If, after such notice, the insufficiency of moneys in the Bond Fund has not been cured by the date that the principal or interest on a series of Bonds is due and payable, there shall be transferred by the Trustee without further direction from the other funds and accounts created hereunder to the Bond Fund up to the amount necessary to cure such insufficiency in the order set forth below:

- (i) the Surplus Account;
- (ii) the Marketing Reserve Fund;
- (iii) the Lease-Up Reserve Fund;
- (iv) draws on the Operating Reserve held by the Investor Member to the extent permitted under the Operating Agreement; and
- (v) the Debt Service Reserve Fund provided that transfers from the Debt Service Reserve Fund that would reduce the balance in such fund to less than \$250,000 shall only be made with the consent of the Majority of the Holders.

Except as otherwise provided herein, all such monies shall be transferred pro rata into the Tax-Exempt and Taxable Accounts of the Bond Fund in proportion to the amounts due and payable on the next Interest Payment Date.

Section 5.3 Costs of Issuance Fund. There is created and established a “Costs of Issuance Fund” which shall be held by the Trustee. The Costs of Issuance Fund is to be funded at the Issuance Date as provided herein from Bond proceeds or moneys paid to the Trustee by the Borrower. Any Bond proceeds in the Costs of Issuance Fund shall be expended to pay Costs of Issuance before any other moneys in the Fund are applied to the purpose. No more than two percent (2%) of the sale price of the Series 2021A Bonds may be used to pay the Costs of Issuance of the Series 2021A Bonds. Amounts in the Costs of Issuance Fund shall be used to pay Costs of Issuance upon filing with the Trustee a written requisition of the Authorized Borrower Representative. Any monies remaining in the Costs of Issuance Fund three months after the Issuance Date shall be transferred to the Construction and Acquisition Fund.

Section 5.4 Construction and Acquisition Fund.

(a) There is created and established a “Construction and Acquisition Fund”, and within the Construction and Acquisition Fund a “Tax-Exempt Bond Proceeds Account” and a “Taxable Bond Proceeds Account”, which shall be held by the Trustee and disbursed by the Trustee at the written request of the Borrower to pay, or reimburse the Borrower for payment of, costs of the acquisition, equipping and construction of the Project. Moneys in the Tax-Exempt Bond Proceeds Account shall be expended first for payment of such costs. Moneys in the Construction and Acquisition Fund will be disbursed upon receipt by the Trustee of written requisitions from the Authorized Borrower Representative and approved by the Construction Monitor (except the approval of the Construction Monitor to the first draw on the Issuance Date shall not be required) in substantially the form attached to the Disbursing Agreement as **Exhibit A**.

(b) If an Event of Default occurs under this Indenture, and the Trustee declares the principal of all Bonds and the interest accrued thereon to be due and payable, no moneys may be paid out of the Construction and Acquisition Fund by the Trustee during the continuance of such an Event of Default, except that moneys on deposit in the Construction and Acquisition Fund may be transferred into the Bond Fund as and when necessary for the purpose of paying the Bonds as due as a result of such Event of Default; provided, however, that if such an Event of Default shall be waived and such declaration shall be rescinded by the Trustee or the Owners of the Bonds pursuant to the terms of this Indenture, the full amount of any such moneys in the Construction and Acquisition Fund may again be disbursed by the Trustee in accordance with the provisions of this Indenture.

(c) The Trustee shall keep and maintain adequate records pertaining to the Construction and Acquisition Fund and all disbursements therefrom.

(d) The Trustee’s sole obligation shall be to make disbursements in accordance with the Disbursing Agreement upon the receipt of properly completed requisitions. Trustee shall have no responsibility for the Borrower’s compliance with its obligations regarding the use of the proceeds of the Construction and Acquisition Fund.

(e) After the receipt by the Trustee of the Completion Certificate as provided by Section 3.3(d) of the Loan Agreement, the Trustee shall transfer funds remaining on deposit in the Tax-Exempt Bond Proceeds Account of the Construction and Acquisition Fund to the Bond Fund to redeem Bonds in accordance with Section 3.1(e) hereof and shall transfer funds remaining in the Taxable Bond Proceeds Account of the Construction and Acquisition Fund to redeem Bonds in accordance with Section 3.1(e) hereof. The Construction and Acquisition Fund will then be closed.

Section 5.5 Debt Service Reserve Fund.

(a) There is created and established a “Debt Service Reserve Fund” in which funds are required to be deposited pursuant to Sections 5.1(b) and 5.6(b)(1)(vi) hereof, as well as pursuant to Section 6.16(c) of the Operating Agreement. The Debt Service Reserve Fund will initially be funded by Investor Member in conjunction with Investor Member’s

Fifth Capital Contribution (as defined in the Operating Agreement) by depositing a DSRF Credit Facility with the Trustee. The Debt Service Reserve Fund is required to be maintained in the amount of the Debt Service Reserve Fund Requirement, which shall be held by the Trustee. The Trustee will, without further direction, transfer funds in the Debt Service Reserve Fund to the Bond Fund on any Interest Payment Date, to the extent that the funds in the Bond Fund, after all transfers into the Bond Fund as provided in Section 5.2(e)(iv) hereof, on such Interest Payment Date are insufficient to pay the interest and principal then due on the Bonds including, without limitation, any mandatory sinking fund redemptions provided for in Section 3.1(b) hereof.

(b) At the written direction of the Borrower, whenever the amount held in cash in the Debt Service Reserve Fund, together with any other funds then held under this Indenture, is sufficient to provide for the redemption in whole of all Outstanding Bonds, including any interest accrued to the date of redemption and any applicable redemption premium, such amount shall be transferred to the Bond Fund and applied to such redemption. On the final maturity of the Bonds or upon acceleration of the Bonds, any cash amount remaining in the Debt Service Reserve Fund shall be used to pay the amount, including any accrued interest, due on final maturity and any balance remaining after the Bonds are fully paid shall be disbursed to the Borrower. The Trustee shall determine the market value of the investment securities in the Debt Service Reserve Fund semiannually on each Interest Payment Date. Interest earnings on cash and investment securities in the Debt Service Reserve Fund shall be retained in each respective subaccount within Debt Service Reserve Fund, until withdrawn or transferred; provided, however, that if the amount of cash and securities in the Debt Service Reserve Fund is greater than the Debt Service Reserve Fund Requirement, such excess shall be transferred to the Revenue Fund.

(c) The Debt Service Reserve Fund Requirement may be met by the deposit with the Trustee of a DSRF Credit Facility (or by the deposit of cash and a DSRF Credit Facility). A “DSRF Credit Facility” shall consist of a letter of credit or surety bond which (a) permits the Trustee to draw on such instrument in an amount in order to pay principal of and interest on the Bonds in the event moneys in the Bond Fund are insufficient therefor or pay expenses pursuant to Section 9.2 of this Indenture, and (b) is issued by National Liability & Fire Insurance Company or other provider with a financial strength rating of at least “A” or its equivalent by Moody’s or S&P. The Borrower may at any time deposit cash with the Trustee for deposit into the Debt Service Reserve Fund in substitution for a DSRF Credit Facility, provided that the cash so deposited with the Trustee is in at least the amount of the undrawn amount remaining available to be drawn on the DSRF Credit Facility. In the event that the financial strength rating of the provider of the DSRF Credit Facility by Moody’s or S&P shall at any time fall below “A” or its equivalent, the Borrower shall be obligated to replace such DSRF Credit Facility and meet the Debt Service Reserve Fund Requirement with cash to be deposited in the Debt Service Reserve Fund within 30 days following such rating reduction. If the Borrower meets the Debt Service Reserve Fund Requirement by depositing a combination of cash and a DSRF Credit Facility, draws on the Debt Service Reserve Fund shall first be made from cash and then from the DSRF Credit Facility.

(d) On any date that the Debt Service Reserve Fund Requirement declines pursuant to clause (b) of the definition thereof, the Trustee shall present the existing DSRF Credit Facility to the provider thereof in exchange for a new DSRF Credit Facility in the amount of the new reduced Debt Service Reserve Fund Requirement.

Section 5.6 Revenue Fund.

(a) *Revenue Fund and Accounts.* There is established a “Revenue Fund” which shall be held by the Trustee and which shall have the following accounts:

- (i) Rebate Account;
- (ii) Operating Expense Account;
- (iii) Trustee/Issuer Expense Account;
- (iv) Tax and Insurance Account;
- (v) Replacement Reserve Account; and
- (vi) Surplus Account.

(b)(1) *Flow of Funds.* Section 4.2 of the Loan Agreement requires that all Revenues shall be deposited when received from the Borrower in a Collection Account (as defined in the Loan Agreement). All Revenues in the Collection Account shall be transferred by the Borrower (if the Collection Account is maintained at a financial institution other than the Trustee) not later than the last Business Day of each week, and on the 20th day of each month irrespective of whether it is the last Business Day of a week, to the Trustee for deposit into the Revenue Fund. If the Collection Account is maintained with the Trustee, then the Trustee shall transfer all Revenues in the Collection Account on the 20th day of each month to the Revenue Fund. The Trustee shall transfer or disburse all funds in the Revenue Fund on the 20th day of each month (except as otherwise provided below) in the following amounts and order of priority:

(i) to the Trustee/Issuer Expense Account the amount required (A) to pay any amount coming due to the Trustee pursuant to the Loan Agreement or this Indenture prior to the fifteenth of the following month plus any unpaid amounts previously due to the Trustee, (B) to pay the amounts necessary, as directed in writing by the Issuer, to pay Issuer Fees and Expenses due to the Issuer prior to the fifteenth of the following month pursuant to the Loan Agreement or this Indenture, plus any unpaid amounts previously due to the Issuer, including Late Fees, if any, and (C) to pay any and all consultants or experts retained by the Trustee or the Issuer pursuant to the terms of the Borrower Documents, as certified in writing to the Trustee by the Borrower;

(ii) to the Rebate Account, amounts necessary in each year so as to meet the Rebate Amount (as defined in the Arbitrage Certificate), as set forth in writing by the Borrower to the Trustee;

(iii) to the Operating Expense Account, amounts necessary to meet the budgeted expenditures for the operations of the Project for the following month (other than expenditures otherwise paid for out of other accounts in the Revenue Fund) as set forth in writing by the Authorized Borrower Representative to the Trustee;

(iv) to the extent that amounts from the initial deposit of Bond proceeds into the Bond Fund are insufficient, to the Bond Fund the sum of (A) one-sixth of the interest due on the next Interest Payment Date plus (B) one-twelfth of the principal amount required to pay Bonds at maturity thereof or to redeem the Bonds scheduled for redemption during the current Bond Year pursuant to Section 3.1(b) hereof, provided, however, that, notwithstanding the foregoing, the deposit made to the Bond Fund by the 20th day of the month immediately preceding an Interest Payment Date shall be at least the amount equal to the difference between the amount already on deposit in the Bond Fund and the Bond Service Charges payable on the Bonds on such Interest Payment Date;

(v) if, after the Investor Member has made the Fifth Capital Contribution (as defined in the Operating Agreement), the amount available to be drawn under any DSRF Credit Facility, together with funds on deposit in the Debt Service Reserve Fund, are less than the Debt Service Reserve Fund Requirement, to the Debt Service Reserve Fund an amount equal to the shortfall between the amount of the funds on deposit in the Debt Service Reserve Fund, together with the undrawn amount of any DSRF Credit Facility therein, and the Debt Service Reserve Fund Requirement, in order to bring the balance of the Debt Service Reserve Fund up to the Debt Service Reserve Fund Requirement by the next succeeding Interest Payment Date;

(vi) transfer to the Tax and Insurance Account the sum of (A) one twelfth (or such greater amount as necessary to pay when due) of the sum of all real estate taxes and assessments to be due in the next 12 months as certified in writing to the Trustee by the Authorized Borrower Representative plus (B) one-twelfth (or such greater amount as necessary to pay when due) of the amount necessary to maintain all required insurance coverage during the next 12 months as certified in writing to the Trustee by the Authorized Borrower Representative;

(vii) commencing on the first day of each calendar month on the earlier of Stabilization (as defined in the Operating Agreement), funding of the Third Capital Contribution (as defined in the Operating Agreement) or thirty (30) months after Initial Closing (as defined in the Operating Agreement), there shall be deposited in twelve (12) equal monthly payments an amount equal to [\$_____.00] per unit per year, increasing by [__%] per year; subject, however, to any greater amount as provided by a notice by the Borrower or any future adjustment, as determined by a report prepared by the independent engineer in accordance with Section 3.4(b) of the Loan Agreement, in such amounts sufficient to fund any necessary repairs and/or restoration as determined by such findings of the independent engineer.; and

(viii) to the Surplus Account, the balance, if any.

(b)(2) To the extent that the amount available in the Revenue Fund is insufficient on the 20th day of any month to transfer the amounts for such month required pursuant to (i) through (vi) above, except for any amounts required to be transferred to the Bond Fund pursuant to (iv) above which are instead transferred to the Bond Fund from the Debt Service Reserve Fund pursuant to Section 5.5(a), such amounts shall next be transferred from the following accounts in the following order of priority: (1) the Surplus Account; (2) the Marketing Reserve Fund; and (3) the Lease-Up Reserve Fund. To the extent a deficiency still exists, the Trustee shall notify the Borrower and demand that the Borrower obtain funds within five Business Days of the date of such demand, but only to the extent the Borrower has a right to do so under the Operating Agreement, from the Operating Reserve held by the Investor Member, and remit any funds so obtained to the Trustee to cure such deficiency.

(c) *Trustee/Issuer Expense Account.* The Trustee shall apply monies on deposit in the Trustee/Issuer Expense Account to pay the fees of the Trustee and of the Issuer pursuant to the Loan Agreement (including, without limitation, the Issuer Fees and Expenses) as such fees are due or as set forth in Section 5.6(b)(1)(i). Any deficiency shall be paid by the Borrower upon notice and demand pursuant to the Loan Agreement.

(d) *Tax and Insurance Account.* The Trustee shall apply monies on deposit in the Tax and Insurance Account to pay real estate taxes, personal property taxes and insurance premiums in regard to the Project as such amounts become due, provided that the Trustee receives a written request from an Authorized Borrower Representative. Any deficiency shall be paid by the Borrower upon notice and demand from the Trustee.

(e) *Replacement Reserve Account.* Commencing on the first day of each calendar month on the earlier of Stabilization (as defined in the Operating Agreement, funding of the Third Capital Contribution (as defined in the Operating Agreement) or thirty (30) months after Initial Closing (as defined in the Operating Agreement), there shall be deposited in twelve (12) equal monthly payments an amount equal to [\$.00] per unit per year, increasing by [%] per year; subject, however, to any greater amount as provided by a notice by the Borrower or any future adjustment, as determined by a report prepared by the independent engineer in accordance with Section 3.4(b) of the Loan Agreement, in such amounts sufficient to fund any necessary repairs and/or restoration as determined by such findings of the independent engineer. Additionally, the Managing Member shall increase the minimum funding of the Replacement Reserve Account if necessary to comply with sound asset management principles (commonsensical, thoughtful and well-advised). Disbursements shall be made from the Replacement Reserve Account solely to pay costs and expenses of repairs and restoration of the Project provided for in the Capital Improvement Budget provided pursuant to Section 3.4 of the Loan Agreement based on a requisition signed by the Authorized Borrower Representative, with the written consent of the Investor Member, certifying with respect to each payment, (i) the name and address of the person to whom payment is due (which may be the Borrower if the payment is to reimburse the Borrower for amounts previously paid and the Borrower provides evidence of prior payment), (ii) the line item of the approved budget to which the payment relates,

(iii) the unexpended budgeted amount remaining in regard to such line item before the payment requested, (iv) the amount to be paid, and (v) that the obligation to be paid has been properly incurred in regard to the Project and is a proper charge against the Replacement Reserve Account. Notwithstanding the foregoing and the above-described requisition, the Trustee shall make, upon receipt of a written request of an Authorized Borrower Representative, with the written consent of the Investor Member, unanticipated disbursements from the Replacement Reserve Account for emergency repairs to the Project affecting essential mechanical and/or structural elements of the Project and/or the health and safety of the Project residents.

(f) *Transfers from Surplus Account.* In each year beginning with the year following the Borrower's first full calendar year of operations, on the first day of the month following receipt by the Trustee of the audited financial statements of the Borrower for the previous fiscal year, the Trustee shall distribute to the Borrower the lesser of (x) the amount which was on deposit in the Surplus Account as of the end of the previous fiscal year or (y) the amount then on deposit in the Surplus Account, but only if:

(i) the Debt Service Coverage Ratio for the preceding fiscal year equals or exceeds 1.15 to 1.0 based upon audited financial statements;

(ii) the Borrower shall evidence via a certificate of the Borrower delivered to the Trustee a minimum of sixty (60) Days' Cash on Hand at both (A) either the June 30 or the December 31 preceding a release of funds from the Surplus Account, and (B) the day following the Trustee's release of funds from the Borrower Account to the Borrower;

(iii) the amount then on deposit in all funds and accounts held by the Trustee under this Indenture are at least equal to the amounts then required to be on deposit therein; and

(iv) no covenant default set forth in Section 8.1(c) has occurred in the preceding two fiscal years.

In addition, upon the receipt of the Third Capital Contribution under the Operating Agreement and as such is confirmed in writing to the Trustee, the Trustee shall distribute to the Borrower, upon written request, the amount of funds then on deposit in the Surplus Account, provided that the tests set forth in this Section 5.6(f)(i) through (iv) have been satisfied, with the liquidity covenant test date in (ii) above measured after the date of such Third Capital Contribution.

(g) *Transfers from Surplus Account to Redeem Bonds.* In each year beginning with the year following the Borrower's first full calendar year of operations, on the first day of the month following receipt by the Trustee of the audited financial statements of the Borrower for the previous fiscal year, the Trustee shall distribute to the Borrower the amount then on deposit in the Surplus Account to redeem Bonds in accordance with Section 3.1(d)(vi) hereof on the first Interest Payment Date for which notice can be given, but only if: (i) the Debt Service Coverage Ratio for the preceding fiscal year equals or

exceeds 1.15 to 1.0 based upon the audited financial statements; (ii) the amount then on deposit in all accounts held by the Trustee under the Indenture are at least equal to the amounts then required to be on deposit therein; and (iii) no covenant default has occurred in the preceding two fiscal years; provided that there shall be no such redemption a Majority of Holders has directed in writing that the Bonds be so redeemed.

(h) *Rebate Account.* The Trustee shall cause all amounts to be deposited into the Rebate Account and all amounts on deposit in the Rebate Account to be paid to the United States Department of the Treasury at the times and in the amounts required by written directions provided to the Trustee by the Borrower pursuant to the Arbitrage Certificate.

(i) *Operating Expense Account.* Amounts in the Operating Expense Account shall be disbursed to the Borrower on the 20th day of each month in the amount of the budgeted expenditures for operations of the Project for the following month as provided in the Operating Budget provided to the Trustee by the Borrower for that year pursuant to Section 6.17(c) of the Loan Agreement.

Section 5.7 Marketing Reserve Fund. There is created and established a “Marketing Reserve Fund,” which shall be funded as set forth in Section 5.1 hereof and amounts on deposit therein shall be held and disbursed by the Trustee at the written request of the Borrower in accordance with this Indenture to pay, or reimburse the Borrower for payment of pre-opening management costs, marketing and advertising costs related to the Project. Moneys in the Marketing Reserve Fund will be disbursed upon receipt by the Trustee of a written request from an Authorized Borrower Representative stating the amount requested, the purpose for such payment or reimbursement, and the then-current estimated date of delivery of the Completion Certificate. The Trustee shall be entitled to rely on such written request and shall have no duty to confirm work and services completed or the appropriateness of the charges of payees. Moneys from the Marketing Reserve Fund shall not be disbursed to the Borrower prior to the date which is 180 days before such estimated date of delivery of the Completion Certificate. Any moneys remaining in the Marketing Reserve Fund after the Project has achieved economic occupancy of at least 90% (as evidenced by a certificate signed by an Authorized Borrower Representative and submitted to the Trustee) shall be transferred to the Operating Reserve held by the Investor Member.

Section 5.8 Lease-Up Reserve Fund. Monies in the Lease-Up Reserve Fund shall be held by the Trustee and transferred by the Trustee to the Revenue Fund on any date to the extent that the funds in the Revenue Fund are insufficient to make deposits as provided for in Section 5.6(b)(1)(i) through (vii) hereof. Pursuant to Section 4.2(f) of and Schedule I to the Loan Agreement, the Borrower is required to transfer to the Trustee, for deposit in the Lease-Up Reserve Fund, \$[] from the second draw of the First Capital Contribution (but no earlier than sixty (60) days prior to Completion) to be made by the Investor Member and \$[] from the third draw of the First Capital Contribution, as described under the Operating Agreement. If Investor Member withdraws from the Borrower, Investor Member shall promptly transfer the Lease-Up Reserve Fund to the Borrower. The Lease-Up Reserve Fund is not required to be replenished. Any funds remaining in the Lease-Up Reserve at Stabilization (as evidenced by a

certificate signed by an Authorized Borrower Representative and submitted to the Trustee) shall be transferred to the Operating Reserve held by the Investor Member.

Section 5.9 Trustee's Maintenance of Records on Payment of Bonds. The Trustee shall keep, or cause to be kept, proper books of records and accounts in which complete and accurate entries shall be made of all funds and accounts established by or pursuant to this Indenture, which shall at all reasonable times be subject to the inspection by the Issuer or Holders (or a designated representative thereof) of any Interested Beneficial Holder. The Trustee will provide any other information in the Trustee's possession that the Investor Member may reasonably request in writing.

ARTICLE VI

INVESTMENT OF FUNDS

Section 6.1 Investment of Funds and Accounts Held by the Trustee. All monies held in the funds provided for in Section 5.1 shall be invested by the Trustee at the written direction of the Borrower in Investment Obligations that mature in five years or less; provided that monies deposited in the Bond Fund to pay interest or principal on an Interest Payment Date must be invested in Investment Obligations maturing on or before the relevant Interest Payment Date. In the event the Trustee does not receive such written instruction from the Borrower, monies shall be held un-invested by the Trustee. The Trustee may make any and all investments through itself or any bank or trustee company under common control with the Trustee.

Although the Issuer and the Borrower recognize that they may obtain a broker confirmation at no additional cost, the Issuer and Borrower hereby waive such notifications to the extent permitted by law and acknowledge that the Borrower will receive monthly cash transaction statements which will detail all investment transactions from the Trustee.

Section 6.2 Valuation. In computing the amount in any fund or account held by the Trustee under the provisions of this Indenture, obligations purchased as an investment of monies therein shall be determined in accordance with the price provided by pricing services and sources relied upon by the Trustee, and specified in the statements for each Fund provided by the Trustee to the Borrower. Except with respect to the valuation of the Rebate Fund, the value of investments will be based on the current market value. The Trustee does not have any duty to independently value any asset or an obligation, and shall provide such valuation based on the price provided by such pricing services and sources generally relied upon by the Trustee.

Section 6.3 Sale of Investments. The Trustee shall sell at the market price, or present for redemption, any obligation purchased by it as an investment whenever it shall be necessary in order to provide monies to meet any payment or transfer from the fund or account for which such investment was made. The Trustee shall provide the Borrower with a written statement, as of the last day of each calendar quarter (or month if part of Trustee's monthly statements), listing all of the Investment Obligations, if any, held for the credit of each fund or account in its custody under the provisions of this Indenture and supplements hereto as of the end of the preceding quarter.

Section 6.4 Liability of the Trustee and Issuer for Investments. The Borrower shall authorize and direct in writing all investments by the Trustee. The Trustee shall not be liable or responsible for the making of, or failure to make, any investment authorized by the provisions of this Article, in the manner provided in this Article, or for any loss resulting from any such investment so made, nor shall the Issuer have any liability in connection therewith. The Trustee shall be fully protected in relying on the written investment directions of the Borrower as provided above as to the legality and suitability of such directed investments and shall have no obligation to determine that any investment made pursuant to such written directions or as otherwise described hereunder constitutes a Permitted Investment.

Section 6.5 Earnings on Investments. Earnings on the investments of all accounts and funds, other than the Construction and Acquisition Fund and the Rebate Account, invested by the Trustee shall be deposited in the Revenue Fund; provided that earnings on the investment of (i) the Debt Service Reserve Fund shall be *first*, retained in the applicable account therein if the amounts on deposit are below the applicable Debt Service Reserve Fund Requirement and *second*, shall be deposited in the Construction and Acquisition Fund through the date of delivery of the Completion Certificate, and (ii) the Bond Fund, shall be deposited in the Construction and Acquisition Fund through the date of delivery of the Completion Certificate. Earnings on the investment of amounts in the Construction and Acquisition Fund shall be retained therein and used as other moneys in that Fund are used. Earnings on the investment of amounts in the Rebate Account shall be retained in that account and applied as other moneys in that account are applied.

Section 6.6 Arbitrage. No investment shall be made which would cause the Tax-Exempt Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code. Notwithstanding any provision of this Indenture to the contrary, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with, or for the purpose of complying with, Section 148 of the Code, or any successor statute or any regulation, ruling or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid to the United States of America or the determination of the maximum amount which may be invested in non-purpose obligations having a yield higher than the yield on the Tax-Exempt Bonds, and the Trustee shall not be liable or responsible for monitoring the compliance by the Issuer or the Borrower with any of the requirements of Section 148 of the Code or any applicable regulation, ruling or other judicial or administrative interpretation thereof; it being acknowledged and agreed that the sole obligation of the Trustee with respect to the investment of monies held under any fund or account created under this Indenture shall be to invest such monies in accordance with written instructions received by it as set forth in this Indenture.

ARTICLE VII

DISCHARGE OF LIEN

Section 7.1 Discharge. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid or provision for payment made, to the Owners of the Bonds, the principal and interest due or to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, then the estate and rights granted by this Indenture shall cease,

determine and be void, whereupon the Trustee shall (at Borrower's expense) cancel and discharge the lien of this Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to release such lien, and reconvey, release, assign and deliver unto the Issuer any and all the estate, right, title and interest in and to any and all rights or property conveyed, assigned or pledged to the Trustee by this Indenture or otherwise subject to the lien of this Indenture, except cash or Government Obligations held by the Trustee for the payment of the principal of, and redemption premium, if any, and interest on the Bonds and except that any amounts remaining in any funds and accounts hereunder not needed to pay Bond Service Charges or any amounts payable to the Issuer or Trustee hereunder or under the Loan Agreement shall be transferred to the Borrower.

Section 7.2 Defeasance. Any Bond shall be deemed to be paid within the meaning of this Article and for all purposes of this Indenture when (a) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Government Obligations which shall not contain provisions permitting the redemption thereof at the option of the Issuer, the principal of, premium, if any, and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Trustee at the same time, shall be sufficient to pay when due the principal of and premium, if any, and interest due and to become due on said Bond on and prior to the redemption date or maturity date thereof, as the case may be; (b) there shall have been delivered to the Trustee a certificate from a firm of independent certified public accountants or other professional experienced in such matters certifying as to the sufficiency of the deposit made pursuant to the preceding clause (a); (c) there shall have been delivered to the Trustee an opinion of Bond Counsel that such payment does not adversely affect the exclusion from gross income of interest on the Bonds; and (d) in the event said Bond is not by its terms subject to redemption within the next forty five (45) days, the Borrower shall have given the Trustee in form satisfactory to the Trustee irrevocable written instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 3.3 hereof, a notice to the Registered Owner of such Bond that the deposit required by (a) above has been made with the Trustee and that payment of said Bond has been provided for in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and premium, if any, and interest on said Bond. Neither such securities nor moneys deposited with the Trustee pursuant to this Section or principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and premium, if any, and interest on said Bond; provided any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal of and premium, if any, and interest to become due on said Bond on or prior to such redemption date or maturity date thereof, as the case may be. At such time as payment of a Bond has been provided for as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purpose of any payment from such moneys or securities deposited with the Trustee.

Section 7.3 Provisions to Survive After Discharge.

(a) Notwithstanding the discharge of the lien hereof as in this Article provided, the Trustee shall nevertheless retain such rights, powers, trusts, obligations and duties

hereunder as may be necessary and convenient for the payment of amounts due or to become due on the Bonds and the registration, transfer, exchange and replacement of Bonds as provided herein.

(b) Notwithstanding the payment in full of the Bonds, the discharge of this Indenture, and the termination or expiration of the Loan Agreement, all provisions in this Indenture concerning (a) the tax exempt status of the Tax-Exempt Bonds (including, but not limited to provisions concerning rebate), (b) the interpretation of this Indenture, (c) the governing law, (d) the forum for resolving disputes, (e) the Issuer's right to rely on facts or certificates, (f) the immunity from and limitation on liabilities of the Issuer Indemnified Parties, (g) the Issuer Indemnified Parties' rights to indemnity, and (h) the Issuer's lack of pecuniary liability shall survive and remain in full force and effect.

ARTICLE VIII

REMEDIES OF TRUSTEE AND BONDHOLDERS UPON EVENT OF DEFAULT

Section 8.1 Events of Default. Each of the following events is defined as and shall constitute an "Event of Default" with respect to the Bonds issued under this Indenture:

- (a) Default in the due and punctual payment of the interest on any of the Bonds;
- (b) Default in the due and punctual payment of the principal of or redemption premium on any of the Bonds, whether at maturity or otherwise;
- (c) The Issuer shall fail to observe or perform any material covenant, condition, agreement or provision contained in the Bonds or this on the part of the Issuer to be performed (except a failure that results in an Event of Default under (a) or (b)), and such failure shall continue for thirty (30) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Holders of not less than twenty five (25%) in aggregate principal amount of all Bonds Outstanding; provided, however, that if said default be such that it cannot be corrected within the applicable period but is capable of being cured, it shall not constitute an Event of Default if corrective action is instituted by the Issuer (or the Borrower on behalf of the Issuer) within the applicable period and diligently pursued until the default is corrected; but in any event such default is cured within ninety (90) days, unless a longer cure period is consented to in writing by a Majority of Holders; and
- (d) The occurrence of an Event of Default under the Loan Agreement, the Mortgage or the Assignment of Contracts.

If an Event of Default with respect to any of the Bonds at the time Outstanding occurs and is continuing, then and in each and every such case, unless the principal of all the Bonds shall have already become due and payable, either the Trustee or a Majority of Holders, by notice in writing to the Issuer and the Borrower (and to the Trustee and the Issuer and the Borrower if given by Holders), may declare, the principal amount of all the Bonds to be due and payable immediately,

and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture, a supplemental indenture or in the Bonds contained to the contrary notwithstanding. The foregoing provisions are, however, subject to the condition that if, at any time after the principal amount of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Issuer shall pay or shall deposit or cause to be paid or deposited with the Trustee, but only from the sources herein described, a sum sufficient to pay all matured installments of interest upon the Bonds and the principal of and redemption premium, if any, on any and all Bonds which shall have become due otherwise than by acceleration (with interest on overdue installments of interest, to the extent that payment of such interest is enforceable under applicable law, and on such principal and redemption premium, if any, at the rate of interest borne by the Bonds, to the date of such payment or deposit) and the reasonable expenses of the Trustee (including reasonable attorneys' fees), and any and all Events of Default under this Indenture or the appropriate supplemental indenture, other than the nonpayment of principal of or redemption premium, if any, or accrued interest on Bonds which shall have become due by acceleration, shall have been remedied, then and in every such case, a Majority of Holders, by written notice to the Issuer and to the Trustee, may waive all Events of Default with respect to the Bonds and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Event of Default, or shall impair any right consequent thereon.

The Investor Member shall have the right to cure any Event of Default existing under this Indenture or any of the Borrower Documents, which right must be exercised within the cure period provided in the Borrower Documents. For the Investor Member to exercise effectively its cure rights, the Investor Member must fully pay the amount past due or perform the defaulted obligations, including the payment of any amounts due for legal expenses incurred in connection with the default. Notwithstanding anything to the contrary in the Borrower Documents, upon the occurrence of an Event of Default arising out of: (i) the bankruptcy, insolvency or assignment of assets for the benefit of creditors by the Managing Member of Borrower, or (ii) the withdrawal from Borrower of the Borrower's Managing Member, or the death or incapacity of a Managing Member, or (iii) a breach of the representations concerning such Managing Member, the Investor Member shall have the option, but not the obligation, within forty-five (45) days of receipt of written notice of such Event of Default from the Trustee, to cure any such default by appointing a substitute or additional Managing Member that is an affiliate of the Investor Member to act as such Managing Member.

Section 8.2 Enforcement of Remedies. Upon the happening and continuance of any Event of Default with respect to the Bonds, the Trustee, in its own name and as trustee of an express trust, on behalf of and for the benefit and protection of the Holders of all Bonds, may proceed with indemnification satisfactory to it to protect and enforce its rights and any rights of Issuer by such suits, actions or proceedings in equity or at law, either for the specific performance of any covenant or contract contained herein, in the Loan Agreement or in the Bond Documents or in aid or execution of any power herein granted or for the foreclosure on the security held for the benefit of the Bonds under this Indenture, or for any proper, legal or equitable remedy as the Trustee shall deem most effectual to protect and enforce the rights aforesaid.

If an Event of Default shall have occurred with respect to the Bonds, and if requested in writing so to do by a Majority of Holders, the Trustee, subject to Section 9.1(1) of this Indenture, shall be obligated to exercise one or more of the rights and powers conferred by this Article, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Holders of the Bonds.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Holders of the Bonds) 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 Trustee or to the Holders of the Bonds hereunder 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 as often as may be deemed expedient.

No waiver of any Event of Default hereunder, whether by the Trustee or by the Holders of the Bonds to which such Event of Default relates shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 8.3 Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, a Majority of Holders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, together with indemnity satisfactory to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture with respect to an Event of Default, or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture; provided that (i) any direction shall not be other than in accordance with the provisions of law and of this Indenture, (ii) the Trustee shall be indemnified as provided in Section 9.1, and (iii) the Trustee may take any other action that it deems to be proper and that is not inconsistent with the direction. In no event shall any provisions of this Indenture be construed to require the Trustee to take any action upon the occurrence of any Default or Event of Default except as specifically provided herein at the direction of a Majority of Holders.

Section 8.4 Priority of Payments. All monies received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be applied by the Trustee after payment of the costs and expenses of the proceedings resulting in the collection of such monies (including reasonable attorneys' fees to the extent actually incurred) and of the charges, expenses and liabilities incurred and advances made by the Trustee, if any, as follows:

(a) Unless the principal of all the Bonds shall have become or been declared due and payable:

FIRST: To the payment of any and all amounts owed to the Issuer pursuant to the terms of this Indenture or the Borrower Documents and amounts owed to the Trustee as stated above.

SECOND: To the payment of the persons entitled thereto of all installments of interest then due on the Bonds in the order of the maturity of such installments, and, if the amount available

shall not be sufficient to pay in full any installment, then to the payment thereof, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference;

THIRD: To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds matured for the payment of which monies are held pursuant to the provisions of this Indenture), and in the order of their due dates, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, then to the payment thereof ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

FOURTH: To be held for the payment to the persons entitled thereto as the same shall become due of the principal of and interest on the Bonds which may thereafter become due at maturity and, if the amount available shall not be sufficient to pay in full such Bonds due on any particular date, together with interest then due and owing thereon, payment on such Bonds shall be made ratably according to the amount of principal due on such date to the persons entitled thereto without any discrimination or privilege;

FIFTH: Any balance remaining, to the Borrower.

(b) If the principal of all the Bonds shall have become or been declared due and payable then to the payment of the principal and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment, or if any such Bond over any other such Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference, and with any balance remaining to the Borrower.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declarations shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of (a) above, in the event that the principal of all the Bonds shall later become due or be declared due and payable, the monies shall be applied in accordance with the provisions of (b) above.

(d) Whenever monies are to be applied pursuant to the provisions of this Section, such monies shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such monies available for application and the likelihood of additional monies becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such monies and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 8.5 Remedies Vested in the Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee without the necessity of joining as plaintiffs or defendants any owner of the Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the Holders of the Outstanding Bonds.

Section 8.6 Rights and Remedies of Bondholders. No owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (i) an Event of Default with respect to the Bonds held by such owner has occurred of which the Trustee has been notified as provided in Section 9.1(h) hereof, or of which by said subsection it is deemed to have notice, (ii) a Majority of Holders shall have made written notice to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in their own name or names, (iii) such owners of Bonds have offered to the Trustee indemnity as provided in Section 9.1(1) hereof, and (iv) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, and such notification, request and offer of indemnity are declared in every case, at the option of the Trustee, to be a condition precedent to the execution of the powers under this Indenture or for any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the Holders of all Bonds then Outstanding. However, nothing contained in this Indenture shall affect or impair the right of any Bondholders to enforce the payment of the principal of and interest on each of the Bonds issued hereunder to the respective owners thereof at the time and place, from the source and in the manner expressed in the Bonds.

Section 8.7 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Holders of the Bonds to which such proceeding related shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.8 Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences upon the written request of the Holders of (i) more than two-thirds in aggregate principal amount of all the Bonds then Outstanding in respect to which default in the payment of principal or interest, or both, exists, or (ii) a Majority of Holders in the case of any other Event of Default, provided, however, that there shall not be waived (i) any Event of Default in the payment of the principal of any Outstanding Bonds at the date of maturity, or (ii) any default in the payment when due of the interest on any such Bonds unless, prior to such waiver

or rescission, all arrears of interest or all arrears of payments of principal or both, when due, as the case may be, with interest on overdue principal at the rate borne by the Bonds, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, and the Owners of the Bonds 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 thereon.

ARTICLE IX

TRUSTEE

Section 9.1 Acceptance of the Trusts. The Trustee accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after all Events of Default which may have occurred have been cured, undertakes to perform such duties and only such duties as are expressly set forth in this Indenture or any other Bond Document.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same, and shall be entitled to advice of counsel concerning all matters and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may consult with counsel and may act and rely without investigation upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer or the Borrower), approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for the validity of the execution by the Issuer of the Bonds or this Indenture or of any supplements hereto or any other of the Bond Documents or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured by this Indenture and by indentures supplemental to this Indenture.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the Owner of Bonds secured by this Indenture with the same rights which it would have if not the Trustee.

(e) The Trustee shall be protected in acting upon and may rely upon without independent investigation any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it in good faith to be genuine and correct

and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bond shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled, without investigation, to rely upon a certificate signed by an Authorized Issuer Representative or Authorized Borrower Representative as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been notified as provided in subsection (h) of this section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient. A certificate of the Issuer to the effect that an ordinance or resolution in the form therein set forth has been adopted by Issuer is conclusive evidence that such ordinance or resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its gross negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the Issuer to cause to be made any of the payments to the Trustee required to be made by Article IV hereof for payment when due of principal, redemption premium or interest on any Bond, unless the Trustee shall be specifically notified in writing of such Event of Default by the Issuer or by the Holders of at least twenty-five percent in aggregate principal amount of the Bonds then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Principal Office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no Event of Default except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect any and all of the property herein or in indentures supplemental hereto conveyed, including all books, papers and records of Issuer pertaining to the revenues and receipts under the Loan Agreement, any arrangements for the servicing of the Loan and the Bonds, and to take such memoranda from and make copies thereof and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, or any action whatsoever within

the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee. No provision of this Indenture or any of the other Bond Documents shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights of powers.

(l) Before taking the action referred to in Section 8.2 hereof or any action following an Event of Default or under any other Bond Document, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful default by reason of any action so taken.

(m) All monies received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required herein or by law. The Trustee shall not be under any liability for interest on any monies received hereunder.

(n) The Trustee shall have the right and power to disclaim any interest which, in the Trustee's sole discretion, will or may cause the Trustee to be considered an "owner" or "operator" of property held subject to this Indenture, under the provisions of any environmental law as amended from time to time, or which shall otherwise cause the Trustee to incur liability under any environmental law, or any other federal, State or local law, rule or regulation. In the event of an Event of Default, the Trustee may, in its reasonable discretion, after being indemnified by the Bondholders, inspect, review and monitor, or require the inspection, review and monitoring of any and all property subject to this Indenture for the purpose of determining compliance with any law, rule or regulation affecting such property. All expenses of such inspection, review and monitoring shall be paid by the Bondholders.

(o) In the event the Trustee shall receive inconsistent or conflicting requests and indemnity from two or more groups of Bondholders, each representing less than majority of the aggregate principal amount of the Bonds then Outstanding, the Trustee, in its sole discretion and with advice of counsel, may determine what action, if any, shall be taken.

(p) The Trustee shall not be liable hereunder or deemed in breach of default hereunder if and to the extent its performance hereunder is prevented by reason of an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care, including but not limited to, acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics, electrical outages, equipment or transmission failures or other similar occurrences.

(q) The Trustee shall have the right to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Issuer or Borrower shall provide to the Trustee an incumbency certificate listing designated persons with the authority to provide such instructions and containing specimen signatures of such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Issuer or Borrower elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer and Borrower agree: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, 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 instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer or Borrower; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

Section 9.2 Fees, Charges, Expenses and Indemnification of the Trustee. The Trustee shall be entitled to its reasonable fees, charges and expenses for serving hereunder including those of its agents, counsel, servicer, paying agent and co-trustee. Such fees, charges and expenses shall be paid by Borrower or from the Trust Estate in accordance with this Indenture and the Loan Agreement. Without limiting the foregoing, the Trustee may draw on the DSRF Credit Facility to pay such fees, charges and expenses to the extent permitted therein; provided, however, the Trustee shall not utilize any amounts credited to the Debt Service Reserve Fund without the prior written consent of the Holders of two-thirds of the aggregate principal amount of the Bonds. None of the provisions contained in this Indenture or any of the other Bond Documents shall require the Trustee to expend or risk its own funds or otherwise incur financing liability in the performance of any of its duties or in the exercise of any of its rights or powers. The obligations of the Issuer under this Section to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements, charges and counsel fees and to indemnify and hold harmless the Trustee shall survive the satisfaction and discharge of this Indenture, provided that the Issuer shall only be required to pay obligations pursuant to this Section from monies received from the Borrower pursuant to the Loan Agreement. If the monies from the Borrower are not adequate to pay such obligations, the Trustee may, upon written notice to the Issuer, reimburse itself from any moneys in its possession under the provisions of this Indenture (other than any irrevocable trust or escrow fund established with respect to defeased Bonds) and shall be entitled to a preference therefor over any of the Bonds Outstanding hereunder. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of and interest on any Bond upon the Trust Estate (other than monies held pursuant to Section 7.1 hereof) for the charges and expenses incurred by it as described in Section 8.4 hereof.

If the Trustee renders any service hereunder not provided for in this Indenture or the other Bond Documents, or the Trustee is made a party to or intervenes in any litigation pertaining to this Indenture or institutes interpleader proceedings relative hereto, the Trustee shall be compensated reasonably by the Issuer for such extraordinary services and reimbursed for any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket and incidental expenses and legal fees occasioned thereby.

Following the occurrence of an Event of Default, the Trustee shall be entitled to payment or reimbursement for all advances, counsel fees and other expenses reasonably made or incurred by the Trustee in and about the execution of the trusts created by this Indenture in connection with the Event of Default and in and about the exercise and performance of the powers and duties of the Trustee hereunder in connection with the Event of Default and for the reasonable costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful misconduct of the Trustee) in connection with the Event of Default. In this regard the Issuer has made provisions in the Loan Agreement for the payment by the Borrower of said fees, advances, counsel fees, costs and expenses, and reference is made to the Loan Agreement for the provisions so made; and the Issuer shall not be liable for the payment of such sums.

The compensation of the Trustee shall not be limited by any provision of law which limits the compensation of a trustee of an express trust.

Section 9.3 Notice to Bondholders if Event of Default Occurs. If an Event of Default occurs of which the Trustee is by Section 9.1(h) hereof required to take notice or if notice of an Event of Default be given as in Section 9.1(h) hereof provided, then the Trustee shall immediately give written notice to the Borrower and the Investor Member, pursuant to Section 13.4 hereof, and to the Holders of all Bonds then Outstanding, shown by the list required by Section 4.6 hereof to be kept at the Principal Office of the Trustee, and to Interested Beneficial Holders. In addition, the Trustee, acting as dissemination agent, shall post such Event of Default on EMMA to the extent required by the Continuing Disclosure Agreement.

Section 9.4 Intervention by the Trustee. In any judicial proceeding concerning the issuance or the payment of the Bonds to which the Issuer or the Borrower is a party and which in the opinion of counsel has a substantial bearing on the interests of owners of the Bonds, the Trustee, to the extent permitted by the court, intervene on behalf of owners of the Bonds and shall do so, to the extent permitted by the court, if provided with indemnity satisfactory to the Trustee and requested in writing by the Holders of at least twenty-five percent of the aggregate principal amount of the Bonds then Outstanding.

Section 9.5 Successor to the Trustee. Any corporation or association into which the Trustee 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 corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto shall be and become successor to the Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything

herein to the contrary notwithstanding. Any such successor trustee shall give notice thereof to the Issuer and the Borrower.

Section 9.6 Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts created by this Indenture by giving thirty days' written notice to the Issuer, the Borrower and the Holder of each Bond shown by the list required by the terms of Section 4.6 hereof to be kept at the office of the Trustee, and such resignation shall not take effect until the appointment of a successor Trustee by the Borrower, the Owners of the Bonds or by the Issuer as provided in Section 9.8.

Section 9.7 Removal of the Trustee. The Trustee may be removed at any time upon thirty (30) days' written notice, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, and the Borrower, and signed by a Majority of Holders. The Issuer or Borrower may remove the Trustee at any time with the consent of a Majority of Holders, except as set forth under the provisions herein, for such cause as shall be determined in the sole discretion of the Issuer or Borrower by filing with the Trustee and the Borrower or Issuer, as appropriate, an instrument signed by an Authorized Issuer Representative or Authorized Borrower Representative, as appropriate. Any removal shall not take effect until the appointment of a successor Trustee by the Borrower, the Owners of the Bonds or by the Issuer as provided in Section 9.8 hereof.

Section 9.8 Appointment of Successor Trustee by the Bondholders; Temporary Trustee. In the event that the Trustee hereunder shall give notice of resignation or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public office or offices, or of a receiver appointed by a court, a successor may with the prior written consent of the Borrower (to the extent that no "Event of Default" shall have occurred and be continuing under the Loan Agreement) be appointed by a Majority of Holders, by an instrument or concurrent instruments in writing signed by such owners, or by their duly authorized attorneys in fact, a copy of which shall be delivered personally or sent by first class mail, postage prepaid, to the Issuer, retiring Trustee, successor Trustee and Borrower. Pending such appointment by the Bondholders, the Issuer may, with the consent of the Borrower (to the extent that no "Event of Default" shall have occurred and be continuing under the Loan Agreement) appoint a temporary successor Trustee by an instrument in writing signed by an authorized officer of the Issuer, a copy of which shall be delivered personally or sent by first class mail, postage prepaid, to the retiring Trustee, successor Trustee and Borrower. If the registered owners and the Issuer fail to so appoint a successor Trustee hereunder within forty-five (45) days after the Trustee has given notice of its resignation, has been removed, has been dissolved, has otherwise become incapable of acting hereunder or has been taken under control by a public officer or receiver, the Trustee shall, at the Borrower's expense, have the right to petition a court of competent jurisdiction to appoint a successor hereunder. Every such Trustee appointed pursuant to the provisions of this Section 9.8 shall be a trust company or bank organized and in good standing under the laws of any State or the District of Columbia and have a combined capital and surplus of not less than \$100,000,000 as set forth in its most recent published annual report of condition.

Section 9.9 Concerning Any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Issuer and the Borrower an instrument in writing accepting such appointment hereunder, and thereupon

such successor, without any further act, deed or conveyances shall become fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its predecessor, but such predecessor shall, nevertheless, execute and deliver an instrument transferring to such successor Trustee all the estate, properties, rights, powers and trusts of such predecessor hereunder, except any rights to payment due or indemnification rights, and every predecessor Trustee shall deliver all securities and monies held by it as the Trustee hereunder to its successor upon payment of all amounts due to the predecessor Trustee. Should any instrument in writing from Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties vested or intended to be vested by this Indenture in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where this Indenture shall have been filed or recorded.

ARTICLE X

SUPPLEMENTAL INDENTURES

Section 10.1 Supplemental Indentures. The Issuer and Trustee may, without consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to, or amending, this Indenture for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Indenture; (ii) to grant to or confer upon Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bondholders or Trustee; (iii) to subject to this Indenture additional revenues, properties or collateral; (iv) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States of America; (v) to modify, alter, amend, supplement or restate this Indenture in any and all respects necessary, desirable or appropriate in connection with the delivery to Trustee of a letter of credit or other security arrangement obtained or provided by Borrower but only to the extent such supplement does not adversely affect any then current rating from any rating agency then providing the rating on the Bonds; (vi) to modify, alter, amend, supplement or restate this Indenture in any and all respects necessary, desirable or appropriate in order to satisfy the requirements of any rating agency which may from time to time provide a rating on the Bonds, or in order to obtain or retain such rating on the Bonds as is deemed necessary by the Borrower; (vii) to evidence the appointment of a separate or co-Trustee or the succession of a new Trustee hereunder; (viii) to permit the issuance of additional bonds in accordance with Section 12.1 of this Indenture; or (ix) to make any other change which does not materially adversely affect the interests of the Bondholders.

(a) Subject to the terms and provisions contained in this Section and not otherwise, a Majority of Holders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying,

altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing in this Section shall permit, or be construed as permitting, without the consent of the Holders of at least two-thirds of the aggregate principal amount of all Outstanding Bonds, (i) a reduction in the principal amount of any Bond or the rate of interest thereon, or (ii) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (iii) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indentures, or (iv) the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estate or any part thereof, or (v) deprivation of the Holders of any Bond then Outstanding of the lien created on the Trust Estate, or (vi) an extension of the maturity of the Bonds.

(b) If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause written notice of the proposed execution of such supplemental indenture to be given at least 60 days prior to the execution of the supplemental indenture to the Holder of each Bond affected shown by the lists required by the terms of Section 4.6 hereof to be kept at the office of the Trustee. Such notices shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by all Bondholders. If, within sixty days or such longer period as shall be prescribed by the Issuer following such notices, the requisite percentage of Bondholders have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

(c) Prior to executing any supplemental indentures, Trustee shall be entitled to receive and may rely upon an opinion of counsel to the effect that such supplemental indenture is authorized or permitted in accordance with the terms of this Indenture.

(d) Anything in this Indenture or in any supplemental indenture to the contrary notwithstanding, so long as the Borrower is not in default under the Loan Agreement, a supplemental indenture under this Article shall not become effective unless and until the Borrower shall have consented to the execution and delivery of such supplemental indenture.

ARTICLE XI

AMENDMENT OF LOAN AGREEMENT OR MORTGAGE

Section 11.1 Amendments, Etc., Requiring Bondholder Consent. Except as provided in Section 11.2 hereof, none of the Issuer, the Borrower or the Trustee shall consent to any

amendment, change or modification of the Loan Agreement or Mortgage without having provided written notice to all Bondholders at least forty-five (45) days prior to the proposed effective date of such amendment and receiving evidence that a Majority of Holders shall have consented to such amendment as provided in this Section; provided, however, that if such amendment, change, or modification shall reduce the amount due from the Borrower with respect to the Bond Service Charges or delay any payment thereof, such consent shall be required to be given by not less than the Holders of at least two-thirds of the aggregate principal amount of the Bonds. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of the Loan Agreement or Borrower Documents, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by Section 10.1 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Registered Owners of Bonds affected by such amendment, change or modification.

Section 11.2 Amendments Without Bondholders' Consent; Waivers.

Notwithstanding the provisions of Section 11.1 of this Indenture, the Issuer and the Borrower may, with the prior written consent of the Trustee, amend or modify the Loan Agreement or the Mortgage, or any provision thereof, or may consent to the amendment or modification thereof, in any manner, for any one or more of the following purposes: (a) to cure any ambiguity or formal defect in the Loan Agreement or the Mortgage; (b) to grant to or confer upon the Issuer or Trustee, for the benefit of the Bond Owners, any additional rights, remedies, powers or authorities that lawfully may be granted to or conferred upon the Issuer or the Trustee; (c) to amend or modify the Loan Agreement or the Mortgage, or any part thereof, in any manner specifically required or permitted by the terms thereof, including, without limitation, as may be necessary to maintain the exclusion from gross income for purposes of federal income taxation of the interest on the Bonds; (d) to provide that the Bonds may be secured by a credit facility or other additional security not otherwise provided for in this Indenture or the Loan Agreement; (e) to modify, amend or supplement the Loan Agreement or the Mortgage, or any part thereof, or any supplement thereto, in such manner as the Trustee and the Borrower deem necessary in order to comply with any statute, regulation, judicial decision or other law relating to secondary market disclosure requirements with respect to tax-exempt obligations of the type that includes the Bonds; (f) to provide for changes in the components of the Project, to the extent consistent with the Act and which does not adversely affect the exclusion of the interest on the Bonds from the gross income of the owners thereof for Federal income tax purposes; and (g) to make any other change which does not have a material adverse effect upon the interests of the Bondholders. In addition, certain provisions of the Loan Agreement may be waived by a Majority of Holders without requiring Issuer or Trustee consent as provided in Section 6.18 of the Loan Agreement.

Section 11.3 Opinion of Counsel. Prior to executing or consenting to any amendment, change or modification of the Loan Agreement, the Borrower Documents or this Indenture, the Trustee shall be entitled to receive and may rely upon an opinion of counsel to the effect that the same is authorized or permitted by this Indenture.

ARTICLE XII

ADDITIONAL BONDS

Section 12.1 Authorization of Additional Bonds. In addition to the Bonds initially issued, the Issuer may, at the direction of the Borrower, issue Additional Bonds on a parity with all Outstanding Bonds and secured by an equal charge and lien on and payable equally from the Revenues and the Trust Estate (i) to provide moneys for any funds or accounts held under the Indenture; (ii) to provide for completion of the Project (“Completion Bonds”); and (iii) to refund in whole or in part a previously issued series of Bonds (“Refunding Bonds”). The principal amount of such Additional Bonds may include an amount allocated to pay the cost of issuance of such Additional Bonds as well as amounts required to be deposited in certain funds and accounts established pursuant to this Indenture.

In the event that any Additional Bonds are issued hereunder, all provisions of this Indenture which apply to the “Bonds” shall apply equally to such Additional Bonds except only those provisions which clearly by their terms apply only to the initial series of Bonds (e.g. interest rates, maturities and redemption provisions). All provisions of this Indenture applicable to the tax exemption of the Bonds shall not apply to any Additional Bonds the interest on which is not excludable from the gross income of the owners thereof for Federal income tax purposes.

Section 12.2 Provisions for Issuance of Additional Bonds. Additional Bonds shall be dated, shall bear interest until their payment at such rate or rates payable on such date or dates and shall mature on such date or dates and shall have such other terms and conditions not inconsistent with the provisions of this Indenture as shall be provided for such series in any supplemental indenture authorizing the issuance thereof. The Additional Bonds may be issued in one or more series and the Additional Bonds of each series shall each be designated the “City of Goshen, Indiana Multifamily Housing Revenue Bonds, Series 2021A and/or Series 2021B (Green Oaks of Goshen Project),” as the case may be.

Section 12.3 Supplemental Indentures for Additional Bonds. Each supplemental indenture executed in connection with the issuance of Additional Bonds shall specify:

- (a) the authorized principal amount of such Additional Bonds;
- (b) the purposes for which such Additional Bonds are being issued;
- (c) the date, maturity dates and amounts of each maturity and the first and subsequent Interest Payment Dates of such Additional Bonds or the manner of determining such items;
- (d) the interest rate or rates of such Additional Bonds, or the manner of determining such rate or rates;
- (e) the denomination or denominations of and the manner of numbering and lettering of such Additional Bonds or the manner of determining such items;
- (f) the form in which such Additional Bonds shall be initially issued;

- (g) the Redemption Price or Redemption Prices, if any, and, subject to Article III, the redemption terms, if any, for such Additional Bonds;
- (h) provisions for the sale of such Additional Bonds;
- (i) provisions with respect to funds and accounts, and revenues and application thereof, as provided in Article V;
- (j) directions for the application and disbursement of the proceeds of the Additional Bonds; and
- (k) any other provisions deemed advisable by the Issuer, in lieu of or in substitution for the provisions of this Indenture to the extent such action is permitted under the provisions of Article XI hereof.

Section 12.4 Subordinated Bonds. The Issuer may also issue revenue bonds for any purpose permitted under the Act secured by a charge and lien on, and payable from, the Revenues and the Trust Estate which is junior, inferior and subordinate in all respects to the lien of the Revenues and the Trust Estate which secures the Bonds. Subordinated bonds may be issued pursuant to and in accordance with the provisions of a resolution of the Issuer authorizing such bonds or otherwise as determined by the Issuer, but only upon there being filed with the Trustee the consent of the holders of at least two thirds of the aggregate principal amount of the Bonds.

Section 12.5 Requirements for Additional Bonds. Prior to the delivery of any Additional Bonds on a parity with the Bonds, there shall be filed with the Trustee: (i) a supplemental Loan Agreement or a supplement or modification to the Mortgage, or both, which shall require payments by the Borrower at such times and in such manner as shall be necessary to provide for full payment of the debt service on such Additional Bonds as such debt service becomes due; (ii) an Opinion of Bond Counsel to the effect that such supplemental Loan Agreement is a valid, binding and legal instrument of the Issuer, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally, and to the effect that the issuance of such Additional Bonds will not adversely affect the exclusion from the gross income of the owners of the Tax-Exempt Bonds and any other tax-exempt Bonds theretofore issued under this Indenture for Federal income tax purposes; (iii) an Opinion of Counsel to the Borrower addressed to the Issuer and the Trustee and in form and substance satisfactory to the Issuer and the Trustee to the effect that the supplemental Loan Agreement or a supplement or modification to the Mortgage, or both, is valid and binding upon the Borrower in accordance with its terms subject to the typical qualifications as to enforceability, and (iv) there is obtained (1) if the Debt Service Coverage Ratio based on the most recent audit equals or exceeds 1.50 of the Bond Service Charges on the then Outstanding Bonds and any Additional Bonds assuming level annual debt service on the Additional Bonds to be issued, the consent of a Majority of Holders, or (2) if the condition in (1) above is not met, the consent of the Holders of at least two thirds of the aggregate principal amount of the Bonds; provided, that notwithstanding the foregoing, no consent of Holders shall be required in the event all then Outstanding Bonds are refunded as a whole.

Notwithstanding anything herein to the contrary, no Additional Bonds shall be issued if an Event of Default exists under the Loan Agreement or this Indenture at the time of the Issuance of such Additional Bonds unless the issuance of such Additional Bonds cures such Event of Default.

Unless such Additional Bonds are Refunding Bonds, and unless waived by a Majority of Holders, no Additional Bonds shall be delivered by the Issuer unless there shall have been filed with the Trustee a certificate of an architect or engineer setting forth: (i) the estimated cost of capital additions or repairs to be financed with the proceeds of the Additional Bonds; (ii) the estimated amounts which will be required from month to month for paying such cost; (iii) the estimated date of completion; and (iv) that in his/her opinion the proceeds of such Additional Bonds together with other available moneys are not less than the amount of the cost of such capital additions or repairs to the extent that such plans and specifications for such capital additions or repairs have been prepared by such architect or engineer. In the event that a Majority of Holders so determines or in the event that the principal amount of such Additional Bonds does not exceed five percent (5%) of the Borrower's fixed assets (exclusive of construction in progress, but after deduction of depreciation) as shown in the most recent audited financial statements of the Borrower, an Authorized Officer of the Borrower may submit a certificate setting forth the same information required from the architect or engineer in lieu of the architect's or engineer's certificate.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Consents, Etc., of Registered Owners. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Registered Owners may be in any number of concurrent documents and may be executed by such Registered Owners in person or by an agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive without independent investigation in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

(b) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee pursuant to Section 4.6 hereof.

To the extent that it is necessary for the Trustee to determine whether any Person is a Beneficial Owner, the Trustee shall make such determination based on a certification of such Person (on which the Trustee may conclusively rely) setting forth in satisfactory detail the

principal balance and bond certificate owned and any intermediaries through which such bond certificate is held. The Trustee shall also be entitled to rely conclusively on information it receives from DTC or other applicable Depository, its direct participants and the indirect participating brokerage firms for such participants with respect to the identity for a Beneficial Owner. The Trustee shall not be deemed to have actual or constructive knowledge of the books and records of DTC or its participants.

Section 13.2 Immunity of Directors, Executive Director, Officer or Employees of Issuer. No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained in the Agreement, this Indenture or in any Bond issued hereunder for any claim based thereon or otherwise in respect thereof, against any director, executive director, officer, employee or agent, as such, in his individual capacity, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assignment or penalty or otherwise; it being expressly agreed and understood that the Bonds, the Agreement, the Mortgage and this Indenture are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any director, executive director, officer, employee, or agent, as such, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower whether contained in this Indenture, the Agreement or the Mortgage or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, executive director, officer, employee, or agent is, by the execution of the Agreement, the Mortgage and this Indenture, and as a condition of, and as part of the consideration for, the execution of the Agreement, the Mortgage and this Indenture, expressly waived and released.

Section 13.3 Limitation of Rights; Third Party Beneficiaries. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties hereto, the Borrower and the Owners of the Bonds, any legal or equitable right, remedy or claim under or with respect to this Indenture or any covenants, conditions and provisions herein contained, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Trustee and the Owners of the Bonds as herein provided. Each of the Issuer Indemnified Parties shall be considered to be intended third party beneficiaries of this Indenture.

Section 13.4 Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever, provided, however, that no finding of illegality or unenforceability shall require payment by the Issuer of any funds from any source other than Revenues.

Section 13.5 Notices. Except as otherwise provided herein, any notices, certificates or other communications hereunder shall be deemed given to the parties required hereunder to receive such notice, certificate or communication when mailed by first class mail, postage prepaid, or actually delivered, addressed as follows:

If to the Issuer: City of Goshen, Indiana
City Hall
202 S 5th St. Suite 2
Goshen, IN 46528-3714
Attention: Clerk-Treasurer
Telephone: 574-533-8625

With copies to: City of Goshen, Indiana
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528
Attention: Legal
Telephone: 574-533-8621

If to the Borrower: Green Oaks of Goshen, LLC
566 Lake Street, Suite 400,
Chicago, IL, 60661
Attention: Kevin Beard
Email: kbeard@evergreenreg.com
Telephone: (312) 569-0823

With copies to: Frost Brown Todd LLC
201 N. Illinois Street, Suite 1900
Indianapolis, IN 46204
Attention: Matthew S. Carr
Telephone: (317) 237-3803
Email: mcarr@fbtlaw.com

And to Investor Member: Columbia Housing/PNC Institutional Fund XX Limited Partnership
121 S.W. Morrison, Ste 1300
Portland, OR 97204
Attention: []
Telephone: []
Email: []

With copies to: []
[]
[]
Attention: []
Telephone: []
Email: []

If to the Trustee: U.S. Bank National Association
10 West Market Street, Suite 830
Indianapolis, Indiana 46204
Attention: Global Corporate Trust
Telephone: []

Email: [_____]

Notices to Interested Beneficial Holders shall be sent to the address specified by the Interested Beneficial Holder in its notice to the Trustee. A duplicate copy of each notice required to be given hereunder by the Trustee to either the Issuer or Borrower shall also be given to the other. The Issuer, the Borrower, the Investor Member and the Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

All notices, approvals, consents, directions, certificates, requests and any communications hereunder (“Notices”) must be in writing (provided that any Notices sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign initiated by the Trustee (or such other digital signature provider as specified in writing to Trustee by the authorized representative as shall be acceptable to the Trustee)), in English. The Borrower agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit Notices to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 13.6 Payments Due on Saturdays; Sundays and Holidays. In any case where the date of payment or performance hereunder shall not be a Business Day, then payment or performance 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 the date originally due and in the case of payment no interest shall accrue for the period after such date.

Section 13.7 Counterparts. This Indenture 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. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this instrument as to the parties hereto and may be used in lieu of the original instrument for all purposes. Signature pages of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 13.8 Governing Law and Venue. This Indenture shall be governed by and construed in accordance with the laws and judicial decisions of the State, without reference to any choice of law principles, except as such laws may be preempted by any federal rules, regulations and laws applicable to the Issuer. The parties hereto expressly acknowledge and agree that any judicial action to interpret or enforce the terms of this Indenture against the Issuer shall be brought and maintained in the Superior Court of the State of Indiana, in and for the County of Elkhart, the United States District Court in and for the Northern District of Indiana, or any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or the Project.

Section 13.9 Rules of Interpretation. Unless expressly indicated otherwise, references to Sections or Articles are to be construed as references to Sections or Articles of this instrument as originally executed. Use of the words “herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Indenture and not solely to the particular portion in which any such word is used.

Section 13.10 Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Indenture.

Section 13.11 Consent and Directions in Writing; Authorized Representatives. Any consent, certification, request or direction by or from the Borrower or the Issuer shall be in writing and in each case shall be executed by an Authorized Borrower Representative or Authorized Issuer Representative, respectively.

[Signature Page Follows]

IN WITNESS WHEREOF, the Issuer has caused these presents to be signed and sealed in its name and behalf by its duly authorized Mayor and Clerk-Treasurer, and to evidence its acceptance of the trusts hereby created, the Trustee has caused these presents to be signed and sealed in its name and behalf by its duly authorized signatory, all as of the date first above written.

CITY OF GOSHEN, INDIANA

By: _____
Jeremy Stutsman, Mayor

ATTEST:

By: _____
Adam Scharf, City Clerk-Treasurer

*Signature Page of Issuer to Trust Indenture –
Green Oaks of Goshen Project*

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Pamela V. Cole, Vice President

ATTEST:

By: _____

*Signature Page of Trustee to Trust Indenture –
Green Oaks of Goshen Project*

EXHIBIT A

FORM OF BOND

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Trustee or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), Any Transfer, Pledge, or Other Use Hereof for Value or Otherwise by or to Any Person Is Wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

City of Goshen, Indiana
Multifamily Housing Revenue Bond, [Series 2021A][Series 2021B]
([Federally Taxable -] Green Oaks of Goshen Project),

R-[A][B]__ \$ _____

<u>Date of Authentication</u>	<u>Issuance Date</u>	<u>Maturity Date</u>	<u>Interest Rate Per Annum</u>	<u>CUSIP</u>
_____, 2021	_____, 2021	[_____] 1, 20__]		

Owner: Cede & Co.

Amount:

The City of Goshen, Indiana (the “Issuer”), a municipal corporation duly organized and existing under the laws of the State of Indiana (the “State”), pursuant to the provisions of the Constitution of the State and under Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as amended (the “Act”), acknowledges itself indebted and for value received hereby promises to pay to Cede & Co. or registered assigns, the principal sum of _____ and No/100 Dollars (\$ _____), on the Maturity Date stated above or on the date fixed for prior redemption, as the case may be, together with interest on such principal sum from the Issuance Date of this Bond until the Issuer’s obligation with respect to the payment of such principal sum shall be discharged, at the Interest Rate Per Annum stated above payable on [_____] 1, 2021] and thereafter on each [_____] 1] and [_____] 1] until maturity or earlier redemption. Interest shall be computed on the basis of a 360-day year, consisting of twelve 30-day months. The Bonds shall be issued only in fully registered form without coupons initially in the denominations of \$100,000 and integral multiples of \$5,000 in excess of that sum. This Bond, as to principal and redemption premium, if any, when due, will be payable at the corporate trust office of [_____] [_____] [_____] or its successors as trustee under the Indenture mentioned below (the “Trustee”). Interest on this Bond will be payable by check or bank draft and will be mailed to the registered owner who shall appear on the registration books of the Issuer which shall be kept and maintained by the Trustee hereinafter mentioned, as determined on the 15th day of [_____] and [_____] (the “Record Date”) (or, in the case of any proposed redemption of the bond, the day next preceding the date of the first publication of notice of such redemption); provided, that at the written request of a Registered Owner of \$1,000,000 or more of

bonds, such interest shall be paid by wire transfer of funds to a bank account located in the United States as designated by such Registered Owner. Payment of the principal of, redemption premium, if any, and interest on this bond shall be made in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is the duly authorized issue of revenue bonds, designated as Multifamily Housing Revenue Bonds, Series 2021A (Green Oaks of Goshen Project) (the “Series 2021A Bonds”) of the Issuer, limited to the aggregate principal amount of [\$ _____] and Multifamily Housing Revenue Bonds, Series 2021B (Federally Taxable – Green Oaks of Goshen Project) (the “Series 2021B Bonds”), of the Issuer, limited to the aggregate principal amount of [\$ _____], and authorized and issued under and pursuant to: (i) the Act, (ii) an ordinance of the Common Council as the governing body of the Issuer duly adopted on [_____, 2021] (the “Ordinance”); and (iii) a Trust Indenture from the Issuer and to the Trustee dated as of [_____], 2021 (the “Indenture”). Copies of the Indenture are on file at the principal corporate trust office of the Trustee.

ALL CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS BOND SHALL HAVE THE RESPECTIVE MEANINGS ASSIGNED TO SUCH TERMS IN THE INDENTURE.

Pursuant to the Loan Agreement, dated as of [_____], 2021 (the “Loan Agreement”), between the Issuer and Green Oaks of Goshen, LLC, an Indiana limited liability company (the “Borrower”), the Borrower is obligated to make payments to the Trustee in the amounts and at the times corresponding to the payments of principal of, redemption premium, if any, and interest on the Bonds (the “Bond Service Charges”) when due. The obligations of the Borrower under the Loan Agreement are secured by the Mortgage described below. By the Indenture, the Issuer has assigned its right, title and interest in and to the Loan Agreement (except for the “Issuer Unassigned Rights” as defined in the Indenture) to the Trustee as security for the payment of the Bond Service Charges.

The Bonds are issued pursuant to and in compliance with the Act and laws of the State of Indiana.

The Bonds are special limited obligations of the Issuer and the principal of, redemption premium, if any, and interest on the Bonds are payable solely from and secured by: (i) amounts paid by the Borrower under the Loan Agreement; (ii) an assignment to the Trustee of all the Issuer’s rights (except for the Issuer Unassigned Rights) under the Loan Agreement; (iii) a pledge of and security interest in all moneys and investments held by the Trustee under the Indenture, including any moneys representing earnings on monies held under the Indenture; and (iv) a Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing on a portion of the Borrower’s property located at 282 Johnston Street, Goshen, Indiana 46528 (the “Mortgage”).

THE BONDS AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE EXCLUSIVELY FROM REVENUES AND RECEIPTS UNDER THE LOAN AGREEMENT. THE BONDS DO NOT CONSTITUTE A DEBT OR A LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT

OR TAXING POWER OF THE ISSUER OR OF THE STATE OF INDIANA, OR OF ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR THE STATE OF INDIANA. THE BONDS SHALL NOT CONSTITUTE, DIRECTLY OR INDIRECTLY, OR CONTINGENTLY OBLIGATE OR OTHERWISE CONSTITUTE A GENERAL OBLIGATION OF OR A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER, BUT SHALL BE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE SOURCES DESCRIBED HEREIN AND IN THE INDENTURE, BUT NOT OTHERWISE.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, DIRECTOR, EXECUTIVE DIRECTOR, COUNSEL, ADVISOR, OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, OR ITS ECONOMIC DEVELOPMENT COMMISSION, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, OR ITS ECONOMIC DEVELOPMENT COMMISSION, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, EXECUTIVE DIRECTOR, COUNSEL, ADVISORS, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND CONSIDERATION FOR THE EXECUTION AND ISSUANCE OF THIS BOND.

This Bond is transferable, as provided in the Indenture, only upon the registration books of the Issuer which are kept for that purpose at the corporate trust office of the Trustee in Indianapolis, Indiana, or its successor, upon surrender of this Bond together with a written instrument of transfer which is satisfactory to the Trustee and which is duly executed by the registered owner or by his or her duly authorized attorney, and thereupon the Issuer shall issue in the name of the transferee a new registered Bond or Bonds, of the same aggregate principal amount and series, designation, maturity and interest rate as the surrendered Bond as provided in the Indenture, upon payment of the charges therein prescribed. The Issuer and the Trustee may treat and consider the person in whose name this Bond is registered as the holder and absolute owner of this Bond for the purpose of receiving payment of the principal of, redemption premium, if any, and interest due on this Bond and for all other purposes.

[Redemption. The Bonds [are/are not] subject to redemption prior to maturity as provided in the Indenture.]

It is certified, recited and declared that all conditions, acts and things which are required by the Constitution or by the statutes of the State of Indiana or by the Ordinance or Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due form, time and manner as required by law.

(Remainder of page intentionally left blank)

IN TESTIMONY WHEREOF, the Issuer has caused this Bond to be executed and attested by the printed facsimile signatures of its duly authorized Mayor and Clerk-Treasurer, and this Bond to be authenticated by the manual signature of an authorized representative of the Trustee, without which authentication this Bond shall not be valid nor entitled to the benefits of the Indenture.

CITY OF GOSHEN, INDIANA

By: _____
Jeremy Stutsman, Mayor

ATTEST:

By: _____
Adam Scharf, City Clerk-Treasurer

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This Bond is one of the [Series 2021A][Series 2021B] Bonds described in the within mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned sells, assigns and transfer unto

(Name, Address and Taxpayer Identification Number of Assignee)

the Multifamily Housing Revenue Bonds, Series 2021[A][B] ([Federally Taxable -] Green Oaks of Goshen Project), of the City of Goshen, Indiana and does hereby irrevocably constitute and appoint _____ to transfer the Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Registered Owner

NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

Taxpayer Identification
Number: _____

NOTICE: Signature(s) must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF TRANSFER MIN ACT	--	Uniform Transfers to Minor Act
CUST	--	Custodian
TEN COM	--	as tenants in common
TEN ENT	--	as tenants by the entireties
JT TEN	--	as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

ORDINANCE 5083

Amend Ordinance 5065, 2021 Compensation for Civil City and Utilities Employees, as amended by Ordinance 5081, to Clarify Payment of ASE Certification Bonus

WHEREAS Ordinance 5065 approves the 2021 minimum and maximum compensation, including wages and benefits, for Civil City and Utilities employees.

WHEREAS Ordinance 5081 clarified prior practice of the City Administration and recognized that the positions of Fleet Maintenance Manager and Assistant Fleet Maintenance Manager should receive a certification bonus if the employee possesses and maintains ASE certifications.

WHEREAS questions arose after the adoption of Ordinance 5081 as to the schedule of payments of certification bonus to which the Fleet Maintenance Manager and Assistant Fleet Maintenance Manager are entitled, as well as for the bargaining unit employees of Goshen City Central Garage.

WHEREAS the Common Council now wishes to further clarify the way ASE Certification bonuses are paid.

NOW, THEREFORE, BE IT ORDAINED by the Goshen Common Council that Ordinance 5065, 2021 Compensation for Civil City and Utilities Employees, as amended by Ordinance 5081, shall be amended to read as follows:

SECTION 1. ASE Certification Bonus

The ASE Certification Bonus section added to Ordinance 5065 by Ordinance 5081 shall be amended to read as follows:

ASE Certification Bonus

- (A) This section applies to the positions of Central Garage Fleet Maintenance Manager and Central Garage Assistant Fleet Maintenance Manager.
- (B) Each employee is eligible to receive an annual bonus of Four Hundred Dollars (\$400) for each approved ASE certification test passed, and provided the ASE certification is current, up to a maximum of One Thousand Two Hundred Dollars (\$1,200) annually. The ASE certification bonus shall be included in the employee's regular bi-weekly paycheck.
- (C) The ASE certification test must be within one of the following disciplines:
 - (1) Automobile/Light Truck Certification (A Series)
 - (2) Medium/Heavy Duty Truck Certification (T Series)
 - (3) Truck Equipment Certification (E Series)
 - (4) Electronic Diesel Engine Diagnosis Specialist Certification (L2)
- (D) In addition, the City shall reimburse each employee passing the certification tests required to obtain the Master Automotive Certification or Master Heavy Truck

Certification the cost of the test registration and test fee up to a maximum of One Hundred Thirty-five Dollars (\$135) per test.

The total amount of ASE certification bonus to which the Fleet Maintenance Manager and Assistant Fleet Maintenance Manager are each entitled shall be prorated over the remainder of 2021, and paid in the bi-weekly pay of the Fleet Maintenance Manager and Assistant Fleet Maintenance Manager commencing after the passage and adoption of this ordinance so that the Fleet Maintenance Manager and Assistant Fleet Maintenance Manager each receive the full amount of the annual ASE Certification Bonus to which they are each entitled. The City shall pay other employees of the Goshen City Central Garage ASE Certification, allowed under Ordinance 5065 and their collective bargaining agreement, in the manner in which such employees have received ASE Certification pay in years prior to 2021, and not prorated and paid in their biweekly pay.

SECTION 2. Effective

All remaining provisions of Ordinance 5065, as amended, shall remain in full force and effect; however the ASC Certification Bonus section added by Ordinance 5081 shall be replaced by the language found in Section 1 above.

PASSED by the Goshen Common Council on _____, 2021.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2021 at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2021.

Jeremy P. Stutsman, Mayor



Jeremy P. Stutsman, Mayor
CITY OF GOSHEN

202 South Fifth Street, Suite 1 • Goshen, IN 46528-3714

Phone (574) 533-9322 • Fax (574) 533-9740 • TDD (574) 534-3185
mayor@goshencity.com • www.goshenindiana.org

May 13, 2021

Council President Weddell and Council Members,

Ordinance 5084 is being presented to you for your consideration. As we are all well aware COVID-19 has made for a very interesting and rough year of work and life in general. Since the COVID-19 vaccine has been approved and more people are getting it, we are seeing both our economy open and our community start to reconnect. This ordinance is to help encourage but not mandate that city staff consider getting their vaccine shot.

If ordinance 5084 is passed or fails to pass, it doesn't take anything away from our staff. What it does, is offer an incentive to get the vaccination before the listed date. If they choose not to participate they lose nothing. If they participate they stand to gain extra time off.

When this ordinance is presented at our May 18th council meeting I will give more detail and background to how we came to this idea and what we are attempting to accomplish.

Respectfully,

A handwritten signature in blue ink, appearing to read "JPM", with a long horizontal line extending to the right.

Jeremy Stutsman

ORDINANCE 5084

COVID-19 Vaccination Incentive

WHEREAS according to the Center for Disease Control and Prevention, the COVID-19 vaccination is an important tool to help stop the pandemic. Studies show that COVID-19 vaccines are effective at keeping individuals from getting COVID-19 and the vaccine will also help keep an individual from getting seriously ill even if an individual does get COVID-19.

WHEREAS City administration encourages all City employees to receive the COVID-19 vaccination.

WHEREAS to encourage all City employees to voluntarily get the COVID-19 vaccination as well as reward those employees who have already been fully-vaccinated, the City administration wishes to incentivize COVID-19 vaccinations to reinforce the importance of getting vaccinated.

NOW, THEREFORE, BE IT ORDAINED by the Goshen Common Council that:

- (A) This ordinance applies to all City of Goshen employees, excluding elected officials, filling a position that is regularly scheduled to work at least 1,040 hours each year and is not filling a temporary, intermittent, or seasonal position.
- (B) An eligible employee who voluntarily receives the full manufacturer-recommended dose(s) of the COVID-19 vaccine by July 23, 2021 shall receive one (1) paid day off work to be used by December 31, 2021. The employee must show written proof to their department head and certify that the employee has been fully-vaccinated by July 23, 2021 in order to receive the paid day off work. Proof includes the CDC card issued to the employee at the time they received the vaccination(s) or a written record from the healthcare provider administering the vaccination(s).
- (C) An eligible employee who is unable to receive the COVID-19 vaccine due to a medical condition shall receive one (1) paid day off work to be used by December 31, 2021. The employee must show written proof to their department head and certify that the employee has been advised against receiving the vaccination by their local primary care physician due to a medical reason.
- (D) If a department or office achieves a COVID-19 vaccination rate of at least eighty percent (80%), then the eligible employees in that department or office that have been fully-vaccinated shall receive one (1) additional paid day off work to be used by December 31, 2021. The vaccination rate will be calculated based on the number of eligible employees fully-vaccinated in the department or office divided by the total number of eligible employees in the department or office. Eligible employees with a valid medical exemption shall not be considered as part of the calculation under this paragraph. The vaccination rate must meet or exceed eighty percent (80%).
- (E) The paid day off work shall be equivalent to the number of hours the eligible employee is scheduled to work on a regular basis, excluding any overtime hours worked. For the purposes of payment, the paid day off shall be based on the employee's straight hourly rate of pay or regular daily wage. The hours taken off shall not be considered as hours worked for the purposed of calculating overtime.

PASSED by the Goshen Common Council on _____, 2021.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2021 at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2021.

Jeremy P. Stutsman, Mayor

ORDINANCE 5085

Establishing an ARP Coronavirus Local Fiscal Recovery Fund

WHEREAS the City of Goshen will be receiving federal assistance through the American Rescue Plan (ARP) Act of 2021 (the “ARP Act”) to mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (COVID–19).

WHEREAS it is necessary to establish a separate fund to account for all receipts and disbursements for each separately identified assistance provided through the ARP Act.

NOW, THEREFORE, BE IT ORDAINED by the Goshen Common Council that:

Section 1. ARP Coronavirus Local Fiscal Recovery Fund Established.

An ARP Coronavirus Local Fiscal Recovery Fund is established.

Section 2. Source of Funding.

The source of funding of the ARP Coronavirus Local Fiscal Recovery Fund shall be from the grant funding allocation to the City of Goshen from the Coronavirus Local Fiscal Recovery Fund under Section 603 of Title VI of the Social Security Act (42 USC §801 et seq.), as added by Title IX, Subtitle M, Section 9901 of the ARP Act.

Section 3. Use of Fund.

The ARP Coronavirus Local Fiscal Recovery Fund shall be used in accordance with the purposes set forth in Section 603(c) of Title VI of the Social Security Act and pursuant to the final rules to be published in the Federal Register. Such authorized purposes under the ARP Act include (as reprinted from 42 USC §803(c)(1)):

“(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 metropolitan city, nonentitlement unit of local government, or county 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 such metropolitan city, nonentitlement unit of local government, or county due to the

*COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or
(D) to make necessary investments in water, sewer, or broadband infrastructure.”*

Section 4. Fiscal Year-End Balance; Termination.

- (A) Any balance remaining in the ARP Coronavirus Local Fiscal Recovery Fund at the end of a fiscal year shall be carried over in the fund for the following year and shall not be transferred to any other fund.
- (B) The ARP Coronavirus Local Fiscal Recovery Fund shall terminate without further action of the Common Council once all grant funds have been expended.

PASSED by the Goshen Common Council on _____, 2021.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2021, at _____ a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2021.

Jeremy P. Stutsman, Mayor

ORDINANCE 5086

Establishing an OCRA Sensory Trail Fund

WHEREAS the Indiana Office of Community and Rural Affairs (OCRA), State Community Development Block Grant Program, awarded the City of Goshen a grant of \$155,322 under a Grant Agreement for grant number A192-21-FSSA-CV2-102 (Grant Agreement) to be used for eligible costs to create a virtual and physical sensory trail in the City (Project).

WHEREAS it is necessary to establish a separate fund to account for all receipts and disbursements of the grant funds.

NOW, THEREFORE, BE IT ORDAINED by the Goshen Common Council that:

Section 1. OCRA Sensory Trail Fund Established.

An OCRA Sensory Trail Fund is established.

Section 2. Source of Funding.

The source of funding of the OCRA Sensory Trail Fund shall be from the grant funding received pursuant to the Grant Agreement between the City of Goshen and the Indiana Office of Community and Rural Affairs dated March 15, 2021.

Section 3. Use of Fund.

The OCRA Sensory Trail Fund shall be used exclusively for the eligible costs of the Project as set forth in the Grant Agreement. Such costs include the purchase of equipment and software, and payments for consultant hours provided by ADEC as a subrecipient.

Section 4. Fiscal Year-End Balance; Termination.

- (A) Any balance remaining in the OCRA Sensory Trail Fund at the end of a fiscal year shall be carried over in the fund for the following year and not be transferred to any other fund.
- (B) The OCRA Sensory Trail Fund shall terminate without further action of the Common Council once all grant funds have been expended.

PASSED by the Goshen Common Council on _____, 2021.

Presiding Officer

ATTEST:

Adam C. Scharf, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on _____, 2021, at _____
a.m./p.m.

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on _____, 2021.

Jeremy P. Stutsman, Mayor

**STATE OF INDIANA—OFFICE OF COMMUNITY AND RURAL AFFAIRS
STATE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
GRANT NUMBER # A192-21-FSSA-CV2-102**

Contract #00000000000000000051498

This Grant Agreement (this "Grant Agreement"), entered into by and between Indiana Office of Community and Rural Affairs (the "State") and **CITY OF GOSHEN** (the "Grantee"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Grant Agreement; Funding Source. The purpose of this Grant Agreement is to enable the State to award a Grant of **\$155322** (the "Grant") to the Grantee for eligible costs of the services or project (the "Project") described in **Exhibits A and B** of this Grant Agreement, which are incorporated fully herein.

The funds shall be used exclusively in accordance with the provisions contained in this Grant Agreement and in conformance with United States Department of Housing and Urban Development ("HUD") laws and regulations found in Indiana Code §4-4-9.7-6 as well as 42 U.S.C. §§ 3531-3549 and Title I of the Housing and Community Development Act, 42 U.S.C. §§ 5301-5321 (the "Act") and 24 C.F.R. part 570, establishing and governing the CDBG program establishing the authority to make this Grant, as well as any rules adopted thereunder. The funds received by the Grantee pursuant to this Grant Agreement shall be used only to implement the Project or provide the services in conformance with this Grant Agreement and for no other purpose.

FUNDING SOURCE:

If Federal Funds: Program Name per Catalog of Federal Domestic Assistance (CFDA):

CFDA No.: 14.228
TITLE: State Administered CDBG Program
AWARD NO.: B-20-DW-18-0001 – Awarded 6/18/2020
FEDERAL AGENCY: U.S. Housing & Urban Development (HUD)
STATE: Office of Community and Rural Affairs (OCRA)

2. Representations and Warranties of the Grantee.

A. The Grantee expressly represents and warrants to the State that it is statutorily eligible to receive these Grant funds and that the information set forth in its Grant Application is true, complete and accurate. The Grantee expressly agrees to promptly repay all funds paid to it under this Grant Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its grant application.

B. The Grantee certifies by entering into this Grant Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant Agreement by any federal or state department or agency. The term "principal" for purposes of this Grant Agreement is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.

C. The Grantee certifies that it has verified the state and federal suspension and debarment status for all contractors and subcontractors receiving funds under this Grant Agreement and

shall be solely responsible for any recoupment, penalties, or costs that might arise from use of a suspended or debarred subcontractor. The Grantee shall immediately notify the State if any contractor or subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the contractor or subcontractor for work to be performed under this Grant Agreement.

3. Implementation of and Reporting on the Project.

A. The Grantee shall implement and complete the Project in accordance with **Exhibit A** and with the plans and specifications contained in its Grant Application, which is on file with the State and is incorporated by reference. Modification of the Project shall require prior written approval of the State.

B. The Grantee shall submit to the State written progress reports until the completion of the Project. These reports shall be submitted on an **annual** basis and shall contain such detail of progress or performance on the Project as is requested by the State.

4. Term. This Grant Agreement shall commence on **March 1, 2021** and shall remain in effect through **June 30, 2022** (the "Expiration Date"), unless sooner terminated as described in this Grant Agreement. The Project funded by this Grant Agreement must be completed by **December 31, 2021** (the "Completion Date"). All claim vouchers for grant disbursements must be received prior to the Completion Date. The closeout process must be initiated within 30 days after the Completion Date or the last grant disbursement, whichever comes first. The Grantee may request in writing that the Completion Date be extended.

5. Grant Funding.

A. The State shall fund this Grant in the amount of **\$155322**. The approved Project Budget is set forth as **Exhibit B** of this Grant Agreement, attached hereto and incorporated herein. The Grantee shall not spend more than the amount for each line item in the Project Budget without the prior written consent of the State, nor shall the Project costs funded by this Grant Agreement and those funded by any local and/or private share be changed or modified without the prior written consent of the State.

B. Administrative, architectural, preliminary engineering design and environmental review costs may be incurred (i.e. execute contracts or other binding documents) by the Grantee prior to the effective date of this Grant Agreement, as referenced in the "Notice of Grant Award". Any expenditure other than those listed above requires prior written consent of the State.

However, authorization by the State to incur costs prior to the effective date of this Grant Agreement does not constitute a representation or guarantee that such costs will be paid or reimbursed by the State. All costs incurred by the Grantee prior to the Grant Agreement's execution and receipt of a "Notice of Release of Funds and Authorization to Incur Costs" are incurred voluntarily and the Grantee, upon its own credit and expenses, assumes the sole risk that costs incurred prior to the Grant Agreement's execution will ultimately be included in the eligible costs of the Project.

Payment of grant funds for costs incurred prior to the execution of this Grant Agreement shall be governed by the provisions of this Grant Agreement, including compliance with all applicable statutes, rules, regulations, policy memoranda and other authority, and subject to the availability of CDBG Program funds.

C. Environmental Review. It is understood by the Grantee that an Environmental Review must be completed to the State's satisfaction before State will authorize the incurrence of any cost for any activity. Only activities that are essential to completion of the Environmental Review will be authorized by the State prior to the satisfactory completion of the Environmental Review. The

Environmental Review must also be completed prior to the Grantee incurring cost from the “local match”, “private match”, or “other funds” line items of the budget.

D. Program Income. Any Program Income generated by the Grantee as a result of an activity financed in whole or in part with CDBG funds is subject to the terms and conditions set forth in 24 CFR 570.489(e). Pursuant to 24 CFR 570.489(e)(2), if the total amount of income generated is less than \$35,000 in a single year, these amounts will not be considered program income.

6. Payment of Claims.

A. All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures. As required by IC §4-13-2-14.8, all payments will be by the direct deposit by electronic funds transfer to the financial institution designated by the Grantee in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Grant Agreement except as permitted by Ind. Code § 4-13-2-20 or by the statute authorizing this Grant.

B. Requests for payment will be processed only upon presentation of a Claim Voucher in the form designated by the State. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items.

C. The State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the Project prior to making the first payment under this Grant. All payments are subject to the State’s determination that the Grantee’s performance to date conforms to the Project as approved, notwithstanding any other provision of this Grant Agreement. The payment of grant funds under this Grant Agreement shall be made in accordance with the following terms and conditions:

- (1) This Grant must be fully executed.
- (2) All the evidentiary materials required by **Exhibit D & G**, attached hereto and incorporated herein, must be submitted to and approved by the State.
- (3) Any other grant conditions must be met to the State’s satisfaction.

D. The State will accept a drawdown request for review and approval provided that the State has no reason, through monitoring procedures or review of attached invoices, to determine that the Grantee is not performing or completing the project in accordance with its responsibilities under this Grant Agreement. Such responsibilities will include, but are not limited to, timely submission of required reports and monitoring responses.

E. Claims must be submitted with accompanying supportive documentation as designated by the State. Claims submitted without supportive documentation will be returned to the Grantee and not processed for payment. Failure to comply with the provisions of this Grant Agreement may result in the denial of a claim for payment.

F. Failure to complete the Project and expend state, local and/or private funds in accordance with this Grant Agreement may be considered a material breach and shall entitle the State to seek any or all legal remedies against the Grantee including, but not limited to, suspension of all grant payments, and/or suspension of the Grantee’s participation in State grant programs until such time as all material breaches are cured to the State’s satisfaction. Said remedies may also include repayment of all state funds expended that are not in the scope of this Project or the Project Budget.

7. Project Monitoring by the State. The State may conduct on-site or off-site monitoring reviews of the Project during the term of this Grant Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Grantee shall extend its full cooperation and give full access to the Project site and to relevant documentation to the State or its authorized designees for the purpose of determining, among other things:

- A. whether Project activities are consistent with those set forth in **Exhibit A**, the Grant Application, and the terms and conditions of the Grant Agreement;
- B. the actual expenditure of state, local and/or private funds expended to date on the Project is in conformity with the amounts for each Budget line item as set forth in **Exhibit B** and that unpaid costs have been properly accrued;
- C. that Grantee is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Grant Agreement and are fully and accurately reflected in Project reports submitted to the State.

8. Compliance with Audit and Reporting Requirements; Maintenance of Records.

A. The Grantee shall submit to an audit of funds paid through this Grant Agreement and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost

B. If the Grantee is a "subrecipient" of federal grant funds under 2 C.F.R. 200.330, Grantee shall arrange for a financial and compliance audit that complies with 2 C.F.R. 200.500 *et seq.* if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements).

C. If the Grantee is a non-governmental unit, the Grantee shall file the Form E-1 annual financial report required by IC § 5-11-1-4. The E-1 entity annual financial report will be used to determine audit requirements applicable to non-governmental units under IC § 5-11-1-9. Audits required under this section must comply with the State Board of Accounts *Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources*, <https://www.in.gov/sboa/files/guidelines-examination-entities-receiving-financial-assistance-government-sources.pdf>. Guidelines for filing the annual report are included in Exhibit C (Guidelines for Non-governmental Entities).

9. Compliance with Laws.

A. The Grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Grant Agreement shall be reviewed by the State and the Grantee to determine whether the provisions of this Grant Agreement require formal modification.

B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Grantee has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Grant, the Grantee shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Grant Agreement.** If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics

Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Grant immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Grantee certifies by entering into this Grant Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Grantee agrees that any payments currently due to the State may be withheld from payments due to the Grantee. Additionally, payments may be withheld, delayed, or denied and/or this Grant suspended until the Grantee is current in its payments and has submitted proof of such payment to the State.

D. The Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Grantee agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Grantee's liability or guilt in any action initiated by the State or its agencies, and the State decides to suspend funding to the Grantee, the Grantee may submit, in writing, a request for review to the Indiana Department of Administration (IDOA). A determination by IDOA shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.

E. The Grantee warrants that the Grantee and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Grant Agreement and grounds for immediate termination and denial of grant opportunities with the State.

F. The Grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

G. As required by IC § 5-22-3-7:

(1) The Grantee and any principals of the Grantee certify that:

(A) the Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC § 24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC § 24-5-12 [Telephone Solicitations]; or

(iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the Grantee will not violate the terms of IC § 24-4.7 for the duration of this Grant Agreement, even if IC § 24-4.7 is preempted by federal law.

(2) The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC § 24-4.7 for the duration of this Grant Agreement even if IC § 24-4.7 is preempted by federal law.

10. Debarment and Suspension.

A. The Grantee certifies by entering into this Grant Agreement that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Grant Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.

B. The Grantee certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Grant Agreement and shall be solely responsible for any recouments or penalties that might arise from non-compliance. The Grantee shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Grant Agreement.

11. Drug-Free Workplace Certification. As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, the Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Grantee will give written notice to the State within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Grant Agreement is in excess of \$25,000.00, the Grantee certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will: (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance

or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

12. Employment Eligibility Verification. As required by IC § 22-5-1.7, the Grantee hereby swears or affirms under the penalties of perjury that:

- A. The Grantee has enrolled and is participating in the E-Verify program;
- B. The Grantee has provided documentation to the State that it has enrolled and is participating in the E-Verify program;
- C. The Grantee does not knowingly employ an unauthorized alien.
- D. The Grantee shall require its contractors who perform work under this Grant Agreement to certify to Grantee that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Grantee shall maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the Grantee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

13. Funding Cancellation. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

14. Governing Law. This Grant Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

15. Information Technology Accessibility Standards. Any information technology related products or services purchased, used or maintained through this Grant must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. §794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: <http://www.access-board.gov/508.htm>.

16. Insurance. The Grantee shall maintain insurance with coverages and in such amount as may be required by the State or as provided in its Grant Application.

17. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Grantee

certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Grantee understands that the State is a recipient of federal funds, and therefore, where applicable, Grantee and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

18. Notice to Parties. Whenever any notice, statement or other communication is required under this Grant, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Mr. Kyle Ingram
Vocational Rehabilitation Policy and Compliance Manager
Division of Disability and Rehabilitative Services
Indiana Family and Social Services Administration
402 W. Washington Street, Room W453 – MS26
Indianapolis, IN 46207
kyle.ingram@fssa.in.gov

B. Notices to the Grantee shall be sent to:

Mr. Jeremy P. Stutsman, Mayor
City of Goshen
202 S. 5th Street
Goshen, IN 46528
mayor@goshencity.com
adamscharf@goshencity.com
belusard@adecinc.com

As required by IC § 4-13-2-14.8, payments to the Grantee shall be made via electronic funds transfer in accordance with instructions filed by the Grantee with the Indiana Auditor of State.

19. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or state law, including those identified in paragraph 24, below, (2) this Grant Agreement, (3) Exhibits prepared by the State, (4) Invitation to Apply for Grant; (5) the Grant Application; (6) Exhibits prepared by Grantee; and (7) the OCRA CDBG Handbook. All of the foregoing are incorporated fully herein by reference.

20. Public Record. The Contractor acknowledges that the State will not treat this Grant as containing confidential information, and will post this Grant on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Grant shall not be considered an act of the State.

21. Termination for Breach.

A. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to suspend grant payments, and to suspend the Grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction.

B. The expenditure of State or federal funds other than in conformance with the Project or the Budget may be deemed a breach. The Grantee explicitly covenants that it shall promptly repay to the State all funds not spent in conformance with this Grant Agreement.

22. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award of the Grant, this Grant Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Grantee of a Termination Notice, specifying the extent to which such termination becomes effective. The Grantee shall be compensated for completion of the Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Grantee exceed the original grant.

23. Travel. No expenses for travel will be reimbursed unless specifically authorized by this Grant.

24. Federal and State Third-Party Contract Provisions. If part of this Grant involves the payment of federal funds, the Grantee and, if applicable, its contractors shall comply with the federal grant / contract provisions referenced in the CDBG Handbook and incorporated fully herein. All applicable state and federal statutes, rules, regulations, OMB circulars, executive orders, circulars, Exhibits, Attachments or other documents referred to in this Grant Agreement are specifically incorporated herein by reference.

25. Provision Applicable to Grants with tax-funded State Educational Institutions: "Separateness" of the Parties. Omitted, not applicable.

26. Duties and Responsibilities of the Grantee.

A. Compliance with Approved Program and Laws. All activities performed by the Grantee pursuant to this Grant Agreement shall be done in conformance with the Act and all applicable rules, regulations, policy memoranda and other authority thereunder; and the directives of the State. The Grantee agrees that it will comply with all future requirements determined by the State to be necessary, as well as all then current applicable state and federal laws and regulations to which the State and/or the Grantee are subject.

The Grantee agrees to abide by all provisions of the CDBG Handbook, which is fully incorporated herein by reference, except in the event that applicable authority has been modified and the CDBG Handbook does not reflect those modifications. The State will attempt to inform the Grantee of applicable authority through the CDBG Handbook and through updates to that Handbook. However, the Grantee expressly agrees to be solely responsible to insure that the use of the funds received under this Grant Agreement is in compliance with all federal, state and local statutes, rules and other legal authority affecting the use of the grant funds.

The Grantee further acknowledges that where applicable, any Subrecipient is subject to and shall abide by all applicable requirements of the Act as more fully outlined in **Exhibit E**, attached hereto and incorporated fully herein.

In order to be reimbursed from State funds, all services obtained prior to the execution of this Grant Agreement must be competitively procured under federal procurement regulations. Grantee shall also ensure that all contractors and subcontractors for non-professional services shall complete a contract addendum as outlined in **Exhibit F**, which is herein incorporated and made a part of this Grant Agreement.

B. Lack of Compliance. If the Grantee fails to comply with any of the applicable laws, rules, regulations, terms and conditions of this Grant Agreement or other requirements, and such failure continues for a period of sixty (60) days following Grantee's receipt of a Notice of Default from the

State, the State, in its sole discretion, may require the Grantee to repay any Grant funds already disbursed. Grantee agrees to promptly repay such funds at the request of the State.

C. Reports, Records & Evaluations. The Grantee shall submit to the State such records and reports as may be required by the State or HUD, including but not limited to the reports listed in the CDBG Handbook. Grantee's signature to this Grant Agreement signifies its confirmation of receipt of the CDBG Handbook.

The State may carry out monitoring and evaluation activities as deemed appropriate by the State. The Grantee will ensure the cooperation of the Grantee's employees, subrecipients, or subcontractors in such monitoring and evaluation efforts. The Grantee will take all actions necessary to correct or cure any problems or deficiencies identified by the State during its monitoring and evaluations.

The State has provided all applicable information for State or Federal examiners of this Grant Agreement as shown in **Exhibit C**, which is incorporated herein. The Grantee will ensure this information is included in all agreements and records for subrecipients of this Grant.

Special Reporting Requirements. The Grantee shall continue to provide semi-annual or other reports, as may be required by the State, until the Project and all its objectives are complete. In the event that such reports are not submitted within the time frame allotted by the State, the State shall withhold authorization for drawdown on grant funds until such time as the deficiency is corrected.

27. Indemnification. Grantee agrees to indemnify, defend and hold harmless the State, its agents, officials and employees from all claims and suits including court costs, attorney's fees and other expenses caused by any act or omission of the Grantee and/or its subcontractors, if any, in the performance of this Grant Agreement. The State shall not provide such indemnification to the Grantee.

28. Survival. The covenants, agreements and representations of Grantee in this Grant Agreement shall survive the Expiration Date or earlier termination of this Grant Agreement.

29. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the *2018 OAG/ IDOA Professional Services Contract Manual* or the *2018 SCM Template*) in any way except as follows:

Paragraph 1. Program Specific Language
Paragraph 2. Program Specific Language. Added Paragraph 2C
Paragraph 4. Program Specific Language.
Paragraph 5. Replaced Paragraph 5B with program specific language. Added Paragraph 5C & 5D.

Paragraph 6. Changed Paragraph 6A to program specific language. Added additional language to Paragraph C. Replaced Paragraph 6D with program specific language. Added Paragraph 6F.

Paragraph 19. Added program specific language.
Paragraph 24. Added program specific language.
Paragraph 25. Removed – Not Applicable
Paragraph 26, 27, 28. Added Duties/Responsibilities, Indemnification & Survival.

Non-Collusion, Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Grant Agreement other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Grant, the Grantee attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCT S.GBL

In Witness Whereof, the Grantee and the State have, through their duly authorized representatives, entered into this Grant Agreement. The parties, having read and understood the foregoing terms of this Grant Agreement, do by their respective signatures dated below agree to the terms thereof.


CITY OF GOSHEN

By: 
B9E90C465C6E404...

Title: Mayor

Date: 3/15/2021 | 15:22 EDT

Indiana Office of Community and Rural Affairs

By: 
D30046C2D31C44D...

Title: Executive Director

Date: 3/15/2021 | 16:33 EDT

Electronically Approved by: Department of Administration By: _____ (for) Lesley A. Crane, Commissioner	
Electronically Approved by: State Budget Agency By: _____ (for) Zachary Q. Jackson, Director	Electronically Approved as to Form and Legality by: Office of the Attorney General By: _____ (for) Theodore E. Rokita, Attorney General

EXHIBIT A**GRANTEE** – City of Goshen - Cage Code: 4NCU4**PREVIOUSLY AWARDED & ONGOING GRANTS** - Not Applicable**CURRENT AWARD** - FSSA-CV2-102 - \$155,322.00**TOTAL AMOUNT OF AWARDED FUNDS** **\$155,322.00****PROJECT DESCRIPTION****1. IDENTIFY THE NATIONAL OBJECTIVE TO BE ADDRESSED AS A RESULT OF THIS PROJECT:**

Benefit to Low- and Moderate-Income Persons Limited Clientele

2. IDENTIFY THE NUMBER OF INDIVIDUALS BENEFITING AS A RESULT OF THIS PROJECT

TOTAL BENEFICIARIES: 907

TOTAL LOW/MOD BENEFICIARIES: 907

3. DESCRIBE THE PROPOSED ACTIVITY DESIGNED TO ADDRESS THE COMMUNITY'S NEEDS AS SPECIFIED IN THE APPLICATION. QUANTIFY IF POSSIBLE.

The City of Goshen and ADEC Inc. are awarded \$155,322 to create a virtual and physical sensory trail experience which includes three cameras for virtual viewing, a virtual smartphone application for exploration of trails, the purchase of ten iPads for a device lending library to facilitate access to the trail experience, and consultation hours for music and recreational therapists to enhancing the sensory experience of the trails.

EXHIBIT B**PROJECT BUDGET AND COST SHARING SCHEDULE****Grantee Name:** City of Goshen **Grant Number:** FSSA-CV2-102

ITEM #	ACTIVITY DESCRIPTION	CDBG FUNDS	%	LOCAL FUNDS	%	OTHER FUNDS	%	TOTAL FUNDS	%
05B	Public Services	\$155,322.00	100	\$0.00	0	\$0.00	0	\$155,322.00	100
21A	Administration	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	TOTAL	\$155,322.00	100	\$0.00	0	\$0.00	0	\$155,322.00	100

Cost Sharing Schedule: Grantee shall expend federal CDBG funds on a pro-rata basis for Project costs incurred as determined by the percentage distribution shown in each line item of the budget found in this Grant Agreement. The State will disburse grant funds under the percentage distribution, or maximum line item amount specified, whichever may be less. Any unexpended grant funds will be de-obligated at the Expiration Date of this Grant Agreement. No local match is required for this grant.

Exhibit C

Annual Financial Report for Non-governmental Entities

Guidelines for filing the annual financial report:

1. Filing an annual financial report called an Entity Annual Report (E-1) is required by IC 5-11-1-4. This is done through Gateway which is an on-line electronic submission process.
 - a. There is no filing fee to do this.
 - b. This is in addition to the similarly titled Business Entity Report required by the Indiana Secretary of State.
 - c. The E-1 electronical submission site is found at <https://gateway.ifionline.org/login.aspx>
 - d. The Gateway User Guide is found at <https://gateway.ifionline.org/userguides/E1guide>
 - e. The State Board of Accounts may request documentation to support the information presented on the E-1.
 - f. Login credentials for filing the E-1 and-additional information can be obtained using the notforprofit@sboa.in.gov email address.
2. A tutorial on completing Form E-1 online is available at https://www.youtube.com/watch?time_continue=87&v=nPpgtPcdUcs
3. Based on the level of government financial assistance received, an audit may be required by IC 5-11-1-9.

EXHIBIT D

OTHER GRANT CONDITIONS, EVIDENTIARY MATERIALS AND REQUIREMENTS FOR RELEASE OF CDBG GRANT FUNDS

A. TITLE TO ASSETS ACQUIRED OR IMPROVED WITH CDBG GRANT FUNDS:

The Grantee shall retain title to the CDBG assets acquired, improved or otherwise assisted by CDBG grant funds **unless** the Grantee, with prior written approval of the State, assigns an interest in the CDBG-assisted assets to a subrecipient by means of a lease agreement or subrecipient agreement approved in writing by the State. If Grantee applied for CDBG funds on behalf of a subrecipient, the application will serve as notice to the State that Grantee does not have title to the assets for the Project. The Grantee shall ensure that the Grantee retains either direct or reversionary control of the CDBG-assisted facilities or assets until the State issues a Certificate of Completion for the Project.

B. USE OF ASSETS ACQUIRED OR IMPROVED WITH CDBG FUNDS:

Pursuant to 24 CFR 570.489, the Grantee shall ensure that CDBG-assisted assets or facilities are used in a manner that complies with the Grantee's approved Project for a five-year period, or until Grantee is issued a Certificate of Completion by the State. Grantee shall ensure that any subrecipient complies with the use requirements of the CDBG program. In the event the Grantee or its lessee or subrecipient fails to comply with the prescribed use requirements, the State shall request reimbursement of the current fair market value of the property less any portion of value attributable to non-CDBG funds pursuant to 24 CFR 570.503(b)(7)(i) and 24 CFR 570.489.

C. INSURANCE COVERAGE FOR CDBG-ASSISTED FACILITIES AND ASSETS:

1. For all projects for which the State provides CDBG funds for the acquisition, construction or rehabilitation of improvements to real property and fire safety vehicles, the Grantee shall maintain property damage, comprehensive, and liability insurance in an amount equal to the replacement cost of such property improvements or vehicle(s). Such insurance coverage shall be carried by the Grantee, at the Grantee or subrecipient's (if applicable) expense during the term of this Grant Agreement and until the State issues a Certificate of Completion for the Project.
2. The Grantee shall be named as the loss payee of all such policies of insurance coverage. The Grantee shall maintain proof of such insurance coverage in its files for purpose of audit by the State or its representatives for the five year period following the date of issuance of a Certificate of Completion to the Grantee by the State respective to this Project. The Grantee shall ensure that the minimum level of such coverage is equivalent to the State's financial interest in the CDBG-assisted property

D. ASSIGNMENT OR LIENS AGAINST CDBG-ASSISTED FACILITIES AND ASSETS:

The Grantee, its lessees and its subrecipient(s) shall not assign, pledge, or otherwise encumber the Grantee's interest in the CDBG-assisted facilities or assets without the prior written consent of the State. Grantee's lessees or subrecipient(s) shall not pledge or mortgage the CDBG-assisted facilities or assets as collateral for loans without the prior written consent of the both the Grantee and the State. Grantee's lessees or subrecipient(s) shall cure and otherwise perfect all liens placed against the CDBG-assisted facilities or assets.

E. DEADLINE AND REQUIREMENTS FOR RELEASE OF CDBG GRANT FUNDS:

All materials listed below must meet with the approval of the State and must be submitted to the State in time to allow a "**Notice of Release of Funds and Authorization to Incur Costs**" to be issued by the State to the Grantee not later than **November 1, 2021**. Failure to complete and submit these documents in a timely manner or by the deadline set forth herein shall result in the issuance of a Termination Notice pursuant to paragraph 19 of this Grant Agreement.

Activities/documentation required to secure a "**Notice of Release of Funds and Authorization to Incur Costs**" are as follows:

1. **Project Financing:** Grantee must submit to the State information sufficient to document that Grantee has secured all necessary funding to fully implement the Project
2. **Procurement of Grant-Related Services:** Grantee shall procure all necessary architectural, engineering, environmental, legal, administrative, and other required professional or consultative services using procurement methods prescribed by applicable federal and state procurement statutes and regulations
3. **Environmental Review:** Pursuant to 24 CFR 58 the Grantee shall complete the necessary assessment of environmental impact of the Project and shall complete an Environmental Review Record for the Project. Upon satisfactory completion of the State's environmental review process pursuant to 24 CFR Part 58, State shall issue to Grantee a "**Notice of Removal of Environmental Conditions**". The Grantee must complete the CDBG Environmental Review process in sufficient time to allow the State to issue a "**Notice of Removal of Environmental Conditions**" not later than **November 1, 2021**.

4. **Architectural/Engineering Documents** (as applicable): The Grantee shall ensure that all project-related preliminary and final architectural and engineering services are completed. Such services shall include the completion of architectural and engineering plans and construction specifications necessary to accomplish public bidding requirements of Indiana Code Titles 5 and 36.
5. **Permits:** The Grantee must secure all necessary permits from federal, state and local authorities.
6. **Site Control Evidentiary Documents:** Interests in real property are to be acquired in accordance with the federal Uniform Relocation and Acquisitions Policies Act of 1970, as amended (42 U.S.C. 4601-4655, the "URA") and 24 CFR 570.606:
 - a. "Acquisition Questionnaire" (if applicable) in the form prescribed by the State respective to each parcel of, or interest in, real property;
 - b. Certification by Grantee's legal counsel that applicable title searches and title opinions have been completed and all applicable parcels or interests in real property are unencumbered to the extent that the same may be dedicated to the Grantee's Project by the owner(s) of record
 - c. Documentation that the owner(s) of record of each parcel, easement or other interest has been furnished with the required HUD-1041-CPD brochure entitled "When A Public Agency Acquires Your Property" prior to the beginning of acquisition negotiations;
 - d. Documentation that the owner(s) of record of each parcel, easement or other interest has been afforded, in writing, the opportunity to accompany the appraiser during the appraisal process for their property;
 - e. Documentation as to written professional market estimates of the value of real property interests where the value of such interest is less than \$10,000;
 - f. Documentation of all fee and review appraisals conducted respective to each parcel interest in real property;
 - g. Where applicable, copies of all written waiver of rights under the URA;
 - h. Copies of all options, easement and purchase agreements completed and fully-executed by owner(s) of record; and,
 - i. Documentation of recording of all of Grantee's interests in real property under the Project in the Office of the Recorder of the applicable county
7. **Insurance Documents:** Grantee must provide proof of property damage and comprehensive liability insurance coverage as set forth in Paragraph 3 of this exhibit.
8. **Public Bidding Evidentiary Documents:** Grantee must submit to the State for examination the following bid-related documents no later than **November 1, 2021:**
 - a. Bid specifications and related documents certified by an Architect or Professional Engineer licensed in Indiana which reflect inclusion of the required federal contracting language, and applicable federal wage decision issued by the US Department of Labor to State and Grantee for Grantee's CDBG Program;

- b. Publishers' Affidavit(s) for all public bid advertisements conducted in accordance with IC 5-3-1;
 - c. Bid tabulation certified by the Grantee's Architect or Professional Engineer; and,
 - d. Documentation as to proposed construction schedule, as applicable.
9. **Other Evidentiary Documents:** Grantee must submit to the State the following documents prior to issuance a **"Notice of Release of Funds and Authorization to Incur Costs"**:
- a. Copy of Grantee's Fair Housing Ordinance or Resolution by the Grantee's governing body, outlining measures to ensure compliance with federal and state fair housing statutes;
 - b. (2) Written notification of Grantee's designated Labor Standards Officer under this Grant Agreement who will administer compliance with federal labor standards statutes and regulations;
 - c. (3) Written notification of Grantee's designated Civil Rights Officer under this Grant Agreement who will administer compliance with federal and state civil rights statutes and regulations;
 - d. (4) If applicable, the Grantee must submit a copy of all leases, cooperative or subrecipient agreements with participating nonprofit agencies or other units of local government, respective to this Grant Agreement (Refer to **Exhibit E**).
 - e. (5) Written plan by Grantee as to its procedures for monitoring the activities and performance of subrecipients or lessees, where applicable.

F. INDIRECT COST RATE FOR FEDERAL AWARD:

1. Indirect Cost Rate. According to 2 CFR 200.414(f), the Recipient may charge a de minimis rate of 10% of modified total direct costs (MTDC). As described in 2 CFR 200.403, Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the Recipient chooses to negotiate a rate, which the Recipient may apply to do at any time.

A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the Recipient, must be certified by the Recipient using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX in 2 CFR part 200. The certificate must be signed on behalf of the Recipient by an individual at a level no lower than vice president or chief financial officer of the Recipient.

EXHIBIT E

SUBRECIPIENT REQUIREMENTS AND REPORTING

A. REQUIREMENTS FOR LEASE OR SUBRECIPIENT AGREEMENTS

1. Where Grantee has applied for CDBG funds on behalf of another entity, the Grantee and Grantee's lessee(s) and/or subrecipient(s) shall execute a written Lease Agreement or Subrecipient Agreement in a form approved, in writing, by the State. Such lease or subrecipient agreement shall include all applicable requirements of the Act and applicable CDBG-related regulations promulgated by HUD, and shall include the following regulatory provisions:

24 CFR 570.483: Criteria for CDBG National Objectives

- 24 CFR 570.489: CDBG Program Administrative Requirements
- 24 CFR 570.488 & 570.606: Applicability of Uniform Administrative Requirements
- 24 CFR 570.503 & 570.502 (b): Agreements with Subrecipients
- 24 CFR 570.489(e): CDBG Program Income Requirements
- 24 CFR 570.489: Use of CDBG-Assisted Real Property
- 24 CFR 570.490: Records to be Maintained

2. The Grantee shall require each lessee or subrecipient to maintain records in accordance with requirements prescribed by the State or the Grantee. Such records shall be maintained until the State notifies Grantee in writing that HUD has closed out the grant to the State.

3. The Grantee shall require all lessees and subrecipients to comply with the record keeping, reporting and auditing requirements prescribed by 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements) for all CDBG-activities.

4. All Grantees with Subrecipients having an interest in CDBG-assisted property must record a signed Office of Community and Rural Affairs Subrecipient Agreement with the County Recorder for the county in which the project is located.

B. REPORTING

The Grantee shall require the lessee or subrecipient to submit the following reports to Grantee:

- 1. A report at the conclusion of the Project which summarizes the successes or failures of the assisted activity, and the level of attainment respective to the CDBG national objective of the Project.

This reports shall be submitted by the lessee or subrecipient until the Grantee is issued a Certificate of Completion for the Project by the State.

All Grantees and subrecipients must jointly submit to the State semiannual subrecipient reports, using the form prescribed by the State. All such subrecipient reports must be submitted by July 31 and January 31 of each year, for the preceding six-month period, until the issuance of a "Certificate of Project Completion" by the State to the Grantee.

EXHIBIT F

ECONOMIC OPPORTUNITIES FOR LOW AND VERY LOW INCOME PERSONS UNDER THE HOUSING AND URBAN DEVELOPMENT ACT

Grantee understands and agrees to comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and 24 CFR 135.38 ("Section 3") for the Project carried out under this Grant Agreement. Section 3 establishes requirements for creating economic opportunities for low and very low income persons in connection with certain HUD funded projects.

All contractors and subcontractors for non-professional services working on this Project must also comply with Section 3. Grantee agrees to ensure that all contractors and subcontractors for non-professional services shall have the following addendum inserted in to their contract with Grantee:

"Addendum to Contract dated _____, 20_____, between _____ (Grantee), and _____ (Contractor),

(Collectively, "The Parties").

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The

purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. Upon request by contractor, the Grantee shall furnish to contractor a verbatim copy of 24 Code of the Federal Register (CFR), Subchapter B – Employment and Business Opportunity, Subparts A through E contractor’s use in compliance by contractor and his/her subcontractors with applicable requirements of 24 CFR part 135.

2. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Section 3 regulations.

3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.

6. Noncompliance with HUD’s regulations in 24 CFR part 135 may result in remedies, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).”

EXHIBIT G

COVID-19 RELATED STATEMENTS AND REQUIREMENTS

A. DUPLICATION OF BENEFITS

The Grantee certifies and represents that all information contained in and enclosed with the grant application is true to the best of his or her knowledge and acknowledges that the Office of Community and Rural Affairs (OCRA) has relied on such information to award COVID-19 related assistance. The Grantee certifies that it has disclosed to OCRA in the application process all insurance proceeds and all other funds available from, received by, or to be received from governmental agencies as compensation for COVID-19 related emergencies for which assistance may be provided by OCRA. The Grantee certifies that it will disclose to OCRA all future insurance proceeds or other funds received from and or available from governmental

agencies as compensation for damages resulting from these declared COVID-19 related emergencies for which assistance has been provided. The Grantee acknowledges that it may be prosecuted by Federal, State, or local authorities and/or that repayment of all COVID-19 related funds may be required in the event that it makes or files false, misleading, or incomplete statements or documents.

B. ADDITIONAL REPORTING

The Grantee will be required to provide OCRA with additional reporting beyond the regular semi-annual reports associated with Community Development Block Grants. Any additional reporting will be based on the national objective identified in Exhibit A. Examples of reporting include but are not limited to quarterly reports detailing Limited Clientele breakdowns and / or annual reports detailing the level of job/business retention achieved through economic development efforts. Reporting may be required for up to 5 years past the expiration date of the grant agreement. Reports will be submitted upon request from OCRA in the Grants Management System or in a format supplied by OCRA.



**City Clerk-Treasurer
CITY OF GOSHEN**

202 South Fifth Street, Suite 2 • Goshen, IN 46528-3714

Phone (574) 533-8625 • Fax (574) 533-9740

clerktreasurer@goshencity.com • www.goshenindiana.org

Date: 29 April 2021

To: Mayor Stutsman and Goshen Common Council

From: Adam Scharf, City Clerk-Treasurer

Re: Additional Appropriations from OCRA Sensory Trail Grant and MVH-Restricted

The Department of Finance encourages Mayor Stutsman's recommendation, and the council's approval, to appropriate \$400,000 for capital projects in Fund 203 - Motor Vehicle Highway - Restricted. The cash balance of this fund, after correction of audit-identified prior-year state distribution misallocation of \$357,582, is just over \$1.4M while current 2021 budgeted appropriations total \$950,000.

The intended focus of this state-mandated fund is road and bridge maintenance. (State Board of Accounts guidance document attached.) The City of Goshen has asphalt paving, concrete paving, and bridge maintenance/repair projects already under contract for 2021, for which scope increases are possible. The Engineering Department has identified, and communicated in multiple public meetings, a paving maintenance funding deficit of well over \$40M just to maintain status quo condition of local roads and streets. Allocating a mere 1% of that deficit sooner rather than later toward road, street and bridge upkeep would be a small but meaningful step in the right direction.

With American Rescue Plan funds coming soon, inflationary pressure in public sector infrastructure will be very high as every local government unit in the country gets a big lump sum to spend in large part on infrastructure in 2022-2024. Shortages of design and construction contractors, if not certain materials/equipment, is highly likely. Given the current near-zero interest-rate investment environment for the city's generally healthy cash balances, coupled with near-certain price inflation for road and bridge maintenance materials and services over the next couple of years, additional road/bridge maintenance investment in 2021 is a worthy fiscal consideration for Mayor Stutsman and the Common Council.

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The Department of Environmental Resilience has been awarded grant funds for the development of a Sensory Trail via the Office of Community and Rural Development. Approval on first reading for appropriation of these funds is requested. In tandem, Fund 495 – OCRA Sensory Trail Grant has been provisionally created on the city's books in anticipation of council action to officially create this fund at an upcoming meeting.

ORDINANCE 5082

**Additional Appropriations for Fund 203: MVH-Restricted and
Fund 495: OCRA Sensory Trail Grant**

WHEREAS, it has been determined that it is now necessary to appropriate more money than was appropriated in the annual budget.

WHEREAS, the Department of Environmental Resilience has secured grant funding by way of the Office of Community and Rural Affairs for the development of a Sensory Trail.

WHEREAS, the Department of Finance recommends to the Mayor and Common Council that, in light of the current low interest rate environment for the City’s cash investments, and anticipated inflationary pressures in public sector infrastructure fed in part by substantial federal funding to local units for use in 2022-24, prompt additional investment in road and bridge maintenance would be fiscally responsible.

Now, THEREFORE, be it ordained by the Common Council of the City of Goshen, Elkhart County, Indiana, that for the expenses of the taxing unit the following additional sums of money are hereby appropriated out the funds named and for the purposes specified, subject to the laws governing the same:

MVH-Restricted

203-530-00-445.0401 MVH REST/Capital Projects \$200,000

OCRA Sensory Trail

495-560-00-411.0140	SENSTR/Part-time Personnel	\$65,000
495-560-00-413.0100	SENSTR/FICA Match	\$4030
495-560-00-413.0200	SENSTR/Medicare	\$950
495-560-00-421.0500	SENSTR/Supplies	\$10,020
495-560-00-431.0500	SENSTR/ADEC Services	\$10,522
495-560-00-442.0100	SENSTR/Trail Purchases	\$9800
495-560-00-449.0100	SENSTR/Trail Fixtures	\$55,000

PASSED BY THE COMMON COUNCIL on the ____ day of _____, 2021

Jeremy P. Stutsman, Presiding Officer

ATTEST _____
Adam C. Scharf, Clerk-Treasurer

Presented to the Mayor of the City of Goshen, Indiana, on the ____ day of _____, 2021

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on the ____ day of _____, 2021

Jeremy P. Stutsman, Mayor