AGENDA

Monday, December 17, 2018

HOLIDAY RECEPTION
6:00PM

Meetings of Standing Committees
Council Conference Room
6:45 P.M.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00 P.M.

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Previous Regular Meeting

December 03, 2018

5. Petitions, Communications, Remonstrance and Memorials

R2018-27 Honoring Firefighter Mark Regina

A letter from the Board of Zoning Appeals regarding recommendations from their December 11, 2018 meeting.

A letter from the City Plan Commission regarding recommendations from their December 11, 2018 meeting

6. Report of Special Committee

7. Ordinances on First Reading

P.O. NO. 2018-38 Authorizing the Issuance of Economic Development Revenue Bonds $7,800,000 Ironwood Village Apts. located near the intersection of Ironwood & Ewing

P.O. NO. 2018-39 Establishing Flexible Spending Account Fund(Petitioner Requesting Second Reading)

P.O. NO. 2018-40 PUD Amendment S 10 Acres of Coussens SE Main St and Douglas RD PUD & Lot 1 Portillo's Main St.

8. Resolutions

R2018-26 Use Variances to allow Multiple Buildings, One Drive-thru Restaurant on One Parcel Zoned C-1 Vacant land N of 5102 N Main St (Portillo's)

R2018-28 Honoring Joe Canarecci for years of Service

9. Ordinances on Second Reading

P.O. NO. 2018-31 Transfer Funds - $15,000.00 MVH Dept. (Assigned to Budget and Finance Committee)

P.O. NO. 2018-32 Additional Fund - Sidewalk & Curb - $20,359.00 (Assigned to Budget and Finance Committee)

P.O. NO. 2018-33 Amending Internal Control Standards(Assigned to Budget and Finance Committee)

P.O. NO. 2018-34 Establishing a New Ambulance Fund (Assigned to Budget and Finance Committee)

P.O. NO. 2018-35 Deferred Compensation Matching Plan(Assigned to Budget and Finance Committee)

P.O. NO. 2018-36 Amending the Civil City Salary Ord for 2019 (assigned to Budget and Finance Committee)

P.O. NO. 2018-37 Transfer Funds - Park & Rec Dept - $57.000.00 (Assigned to Budget and Finance Committee)

10. Privilege of the Floor – Non-Agenda Items

11. Unfinished Business

12. New Business

PRESENTATION OF PLAQUES

13. Adjournment

At this time I know of no other business to come before the Council.
Deborah S. Block, IAMC, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements, contact Geoffrey Spiess, ADA Coordinator, at (574) 258-1615.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
December 03, 2018

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Monday December 03, 2018, at 7:00 p.m. The meeting was called to order by President Mammolenti all were asked to stand for the Pledge of Allegiance.

Roll Call.
Present: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Deal, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Mammolenti.

Minutes for the Regular Meeting of November 19, 2018 were approved as received from the Clerk's Office.

Clerk Block read the following the following Appeals and Petition to the council, who referred them to the Board of Zoning Appeals and City Plan Commission for their recommendations

Appeal No. 2018-44 Use Variances to allow Multiple Buildings, One Drive-thru Restaurant on One Parcel Zoned C-1 – Vacant Land N of 5102 N Main St (Portillo's)

Petition No. 2018-31 Annexation and Rezoning to C-6 53013 Fir Rd FHS Investments, LLC

Petition No. 2018-32 PUD Amendment S 10 Acres of Coussens SE Main & Douglas PUD & Lot 1 Portillo's Main St.

Clerk Block read the following proposed ordinances by title were assigned to a committee and set for public hearing at next meeting

PROPOSED ORDINANCE NO. 2018-31

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2018
(Transfer MVH- $15,000)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-32

AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2018
(Add. Sidewalk/Curb - $20,359)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-33

AN ORDINANCE AMENDING ORDINANCE 5532 THAT ESTABLISHED INTERNAL CONTROL STANDARDS AND THE MATERIALITY THRESHOLD
(Internal Controls Standards)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-34

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING AN AMBULANCE FUND
(Establish New Ambulance Fund**)**
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-35

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING THE PARTICIPATION IN THE STATE OF INDIANA DEFERRED COMP MATCHING PLAN, ADOPTION AGREEMENT, AND AMENDMENT 1
(Deferred Comp Matching Plan)
(Assigned to Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-36

AN ORDINANCE AMENDING ORDINANCE 5627 THE FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2019.
(Amd Civil City Salary Ord 2019)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2018-37

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2018
(Park & Rec Transfer - $57,000)
(Assigned to the Budget and Finance Committee)

Clerk Block read the following ordinances by title and were opened for public hearing.

PROPOSED ORDINANCE NO. 2018-29

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.
(Rez from R-1 to C-1 Electrical Contract Office corner S. Elder & Norton St.)
(Assigned to the Land Use Planning Committee)

Mr. Tanner reported the Land Use Planning Committee recommended this proposed ordinance should be presented to the council as a whole. This is signed by the entire committee upon a second by Mr. Banicki motion carried.

John Piraccini, Realtor and owner of proposed property represented purchaser. He said he bought the property in 2007; it was a part of the Maggie Pricket Estate. Mr. Piraccini went to say when he bought the property it was zoned C-1, he had an idea and site plan of a commercial lot along and seven residential. He said developers approached him about the residential properties. Mr. Piraccini said after rezoning and prior to the closing the developer opted out due to financial reasons. He said since 2007 he tried to sell the property for residential housing but the developers could not make it work financially with old sewer lines, utilities and other improvements. Mr. Piraccini mentioned Habitat for Humanity showed interest in the property but like other developers it was not feasible. He went on to say this proposal came to him from an electrical contractor from Elkhart who would like to move to Mishawaka. Mr. Piraccini said he felt this was a good use, it would be a low impact on traffic and there would be one sewer and water tap. He continued to say hours would be Monday through Friday and closed on weekends. Mr. Piraccini said the purchaser specialized in commercial fire alarms and commercial security systems. He continued to say they were proposing a 14-foot-high brick building, no outside storage. Mr. Piraccini mentioned there were a couple of remonstrators at the Plan Commission meeting. He said he asked the purchaser to send letters and meet with remonstrator regarding their concerns.
Mr. Piraccini went on to discuss the traffic concerns. He said the 7 homes would generate more traffic than the business. Mr. Piraccini said there would be very little traffic coming out of the proposed business. He said this business was zoned C-1 when purchased, if he would have known the residential would not fall through he would have never rezoned it. Mr. Piraccini continued to say there was a lot of commercial development currently there. Mr. Piraccini said he sold property to the vet clinic; they did a nice job building. He said he exhausted all avenues over the last 11 years; he finally had a chance to bring a business and generate some tax dollars and improve the property.

Mrs. Voelker questioned the surrounding businesses. Mr. Piraccini said there was a vet clinic, church, and most of Lincoln Way had commercial business.

Mr. Mammolenti expressed he appreciated Mr. Piraccini for doing his diligence and giving the potential buyer the correct advice to meet with the neighbors and handle any questions or concerns first hand before it was presented.

Remonstrators Anna Trinidad expressed she did not feel changing the property the C-1 would fit their community. They said Lincoln Way had many vacant lots for this proposed property. Mrs. Trinidad expressed her concerns of the business generating high traffic on Elder Street.

Mr. Deal asked what Mrs. Trinidad's thoughts of the property as it currently appears. Mrs. Trinidad said it was just a vacant lot. Mr. Deal said he received calls from time to time regarding the overgrowth, trash and falling trees. Mr. Deal also mentioned he received calls before from residence who would like to see something done with property. Mr. Deal asked what she would prefer to see on the property. Mrs. Trinidad said she would like to see residential property. She said she knew the expenses of having to do water tap as she had to do it for her property. Mr. Deal went on to say it had been pointed out from the Planning Department, it was more than a water and sewer tap, the property was so old the infrastructure needed upgraded, it needed new curbs, sidewalk, and re-pavement of streets, which made it cost prohibited.

Mr. Mammolenti asked for Mrs. Trinidad opinion as he referred to Mr. Piraccini comments regarding there being more traffic with building residential homes than the proposed property. He asked did she disagree. Mrs. Trinidad replied yes.

Mrs. Voelker asked for the location of the curb cuts, what kind of landscaping they were considering and what improvements would be made to the neighborhood. Mr. Piraccini said they have not been through the site plan process. He continued to say the building would be as far north towards Lincoln Way. Mr. Piraccini said curb cuts and landscaping would be whatever the city required. He went on to discuss the traffic concerns. Mr. Piraccini said Engineering could tell them residential would generate more traffic than the proposed business. He continued to say residents make 4 and 5 trips a day 7 days a week. Mr. Piraccini said there would be 5 guys in and 5 guys out Monday through Friday. He said if they could build homes on the property, they would have a long time ago, they tried.

Mr. Mammolenti asked how many residential developers looked at the property. Mr. Piraccini replied 5 or 6, all had the same objection. He named Habitat, Andys Place, Ward were the few who showed interest. Mr. Piraccini said the price on this property was considerably less than what a lot was in the city. He went on to say there were available lots on Lincoln Way, but the proposed business was a small business, the potential purchaser could not afford it.

Mr. Canarecci asked would the commercial development be responsible to redo sidewalks and other improvements. He said he did not understand why it was more expensive for residential builders than commercial. Ken Prince, City Planners explained it was the number of lots, theoretically the cost would be the same for this business as it would be to put one house on the lot in terms of the sewer and water tap and other things that needed to be done. He continued they were essentially looking at one excavation in the street in order to get that accomplished. Mr. Prince said if they were to put 5 lots on the proposed property they would have to cut up the streets which would require the street to be repaved and brought up. He said the significant cost was the entire section of that street as opposed to one cut. Mr. Prince continued to say when it was added up by lot and multiplied; the infrastructure cost did not match the going rate for a lot in the proposed neighborhood.

Mr. Bellovich questioned delivery traffic. Mr. Piraccini said materials would be delivered in vans, maybe a box truck once a week. He mentioned they also pick up their materials at a supply store. Mr. Piraccini said there would not be much delivery traffic.

Mr. Tanner stated he understood the economy of the desired use verses what the realistic use of the property was financially. He continued to say it appeared the highest and best use was being proposed. Mr. Tanner expressed his support

Mr. Mammolenti mentioned at their neighborhood meetings the proposed property was frequently brought to his attention. He said he noticed the dead trees and debris as he travels by. Mr. Mammolenti expressed he would like to see something similar to this development verses the wooded lot and would also like to bring a new business to the area. He expressed his support.

Mr. Compton asked if a developer bought the proposed property, would the developer pay for each tap, sidewalk and street work. Mr. Prince replied yes. Mr. Compton asked could the city do the work. He continued to say the city has done sewer and water work for other cases when the city was trying to attract a business. Mr. Compton said the city has also done some preliminary development work to get thing ready for the site. He asked was the streets and sidewalk work something the city could burden. Mr. Prince said when they discussed habitat looking at the lots; the city was taping multiple sources to try to contribute to the infrastructure. He continued to say because habitat provides low income housing, the city had access to different federal funds that they would not otherwise. Mr. Prince said the other area Mr. Compton referred to, they simply modified the TIF District in order to expend that capital. He said the proposed property was not located in the TIF District, so the city's funding was very limited. Mr. Prince went to say the city's deal was too good because they looked at it as an opportunity to try to take care of multiple items at one time. He continued to say the fact that the numbers did not work out told him a lot about the situation of the property. Mr. Compton said with habitat the city was looking being a partner in the project but maybe not financially. Mr. Prince said yes, and they were contributing dollars to the infrastructure, but it did not work. Mr. Compton asked if habitat did not work out how could a private building work.

Mrs. Voelker said looking at google maps; it looked like most traffic would go towards Lincoln Way. Mr. Prince said traffic would be negligible to the redevelopment of this property. He continued to say if they developed the property as residential, he concurred compared to the business proposed, residential would have more of a traffic impact.

Question was called for at 7:34 P.M. for **PROPOSED ORDINANCE NO. 2018-29** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Deal, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Mammolenti.** Thus, it becomes **ORDINANCE NO. 5634**

PROPOSED ORDINANCE NO. 2018-30

AN ORDINANCE AMENDING LAND DEVELOPMENT CODE, PART II, APPENDIX A, SCHEDULE OF FEES, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED,
(Amending Building Code Schedule Fees)
(Assigned to the Budget and Finance Committee)

Mr. Bellovich reported the Budget and Finance Committee recommended this proposed ordinance should be presented to the council as a whole. This is signed by the entire committee upon a second by Mr. Banicki motion carried.

Bo Hundt, Building Commissioner said 2011 was the last time building fees were amended. He continued to say they did an examination of the building fees. Mr. Hundt said the main reason for the amendment was for the new software coming in 2019. He went on to say this gave them a chance to look at their fees and compare to surrounding communities to see what areas needed to be changed. Mr. Hundt said it has been over a year since he started the process of going through the fees with inspectors, his department and other city employees. He went on to discuss the main changes. Mr. Hundt said they had a conflict with commercial fees when they raised the fees in 2011. He explained it was 250 dollars for a minimum permit; the problem was there was a lot of residential property that was turned into commercial use. Mr. Hundt said they lowered the front end of the commercial fees to make it manageable for commercial properties in the Mishawaka area. He continued to say they also lowered residential fees on the front end. Mr. Hundt also discussed the percentage fees based off the cost of a project. He went on to say the electrical, plumbing and HVAC were combined to make it simple for contractors and software.

Mr. Mammolenti asked was it typical to go by percentage of a project verses a flat rate. Mr. Hundt said he was giving an example. He said they were staying on the same type of schedule, he broke it down by percentage to make the council aware of the percentages. Mr. Hundt said the minimum permit fee was 30 dollars and licenses would continue to be 125, which were lower than surrounding communities.

Mr. Canarecci asked would the new software allow them make changes more frequently. Mr. Hundt replied yes, if the need to.

Questioned was called for at 7:41 P for **PROPOSED ORDINANCE NO. 2018-30 Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Deal, Mr. Banicki, Mr. Emmons, Mr. Bellovich, Mr. Canarecci, Mr. Mammolenti.** Thus it becomes **ORDINANCE NO. 5635**

PRIVILEGE OF THE FLOOR

Unfinished Business

PROPOSED ORDINANCE NO. 2018-24

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

(Res C-1 to C-4 for Car Wash 4405 & 4415 Grape Rd.)
(Assigned to Land Use Planning Committee)

Mr. Tanner reported the Land Use Planning Committee recommended this proposed ordinance should be presented to the council as a whole. This is signed by the entire committee upon a second by Mr. Banicki motion carried.

Brian McMorrow, Abonmarche Consultants, Inc. said they were back as requested to share all of the information they submitted initially to the Plan Commission and supply and present addition information the council requested at the November 29th meeting regarding ground water elevations, reclaimed water system, and traffic results. Mr. McMorrow went on to discuss the materials that were presented to the council. He said they were proposing to develop on half of the property, much of the property from the city owned pump station to the north up to Juday Creek which would remain in its present condition without any proposed redevelopment. Mr. McMorrow mentioned within the provided documents there was the architectural design of the building and some color rendering of the facility the petitioner was proposing. He pointed out the canopies over the vacuum systems were no longer being proposed, which was a changed made at the Plan Commission meeting. Mr. McMorrow said they received letter of support from Stauffer Investment, owner of the property where Buffalo Wild Wings operates and GHC3 Mishawaka LLC, they met with property manager and executive director of Tanglewood Trace who also founded it to be a favorable proposition. He said he provided landscape screening and fencing they were proposing between the car wash and Tanglewood Trace. Mr. McMorrow went on to say they also provided technical information on the reclaimed water system and the FEMA Map which showed the flood way of Juday Creek and balance of the property with a based flood elevation of 739 that extended to Buffalo Wild Wings. He went on to discuss the traffic concerns; he said John Wyants location in Nappanee serviced 180 cars a day. Mr. McMorrow said they compared the car wash to other C-1 permitted uses; the car wash would generate far less traffic than any other uses. He continued to say traffic would not be affected, the car wash would be able to queue 20 cars waiting to use with three lanes of 6 cars each which would be visible from Grape Road. Mr. McMorrow said they did not feel like there would ever be an opportunity when cars would back up to Grape Road when there is a visible line.

Mr. Deal expressed the proposed business was not comparable to the location in Nappanee. Mr. McMorrow said they expect business to be better here.

Mrs. Voelker asked was there one way in and out. Mr. McMorrow said at the Plan Commission meeting they discussed adding a secondary driveway on Tanglewood Trace.

Mr. Banciki said the rendering provide showed 2 lanes. Mr. McMorrow explained when plan evolved as they went through the Plan Commission, initially it showed 2 renderings, but the site plan would show 3 renderings. Mr. Banicki also pointed out the photos showed the entrance into the wash off the access road was closer to Grape Road with rendering back. Mr. McMorrow said the renderings were intended to show the architect of the building, the architect in Texas was not with them every step of the way as the site plan evolved. He continued to say the site plan entered was the one that would be built with the exception of a second driveway on Tanglewood Trace. Mr. Banicki also questioned the tanks they were proposing.

Jason Wray, Vice President with Harrell's Car Wash Systems briefly discussed the reclaimed water systems. He said it was manufactured by a company called Pure Clean; they have been operating since 1983 in California. Mr. Wray went on to say the tanks Pure Clean specs are suitable for conditions in California such as earthquakes. He explained the tank were large settlement tanks, the water goes through 3 tank separating dirt and oil then recycled back to the car wash constantly.

Mr. Mammolenti asked would all the tanks be full constantly. Mr. Wray replied yes, up to a certain level and then the tanks would go through the recurring cycle.

Mr. Deal asked what would happen if the system were to shut down and would there be a chance of the tanks overflowing. Mr. Wray said there would be 3 tanks full of water if the system were to shut down. He continued to say the tanks are meant to stay at a certain level, if the system stops it would no longer run the water.

Mr. Compton asked what happens to the oils and grease that is separated from the water. Mr. Wray said it would settle in the first tank to the city sanitary or water separator. He said the tanks would be pumped every 6 months. Mr. Compton expressed the main concern was the tanks cranking and leaking. He asked if electronic systems were not involved to indicate a leak, how would they know there was a leak. Mr. Wray said if there was a leak it would be evident at some point to the owner because the system would start to shut down due to low water pressure. He explained if there was not a continuous supply of water into the pump, the pump would shut itself down and would set off an alarm. Mr. Wray said he's been with the company for 9 years, he never heard of the tanks failing or needing rebuild. Mr. Compton asked was there a system of fresh water makeup. Mr. Wray replied yes, 88% of the water would be fresh water, very little of the reclaimed water went through the wash process.

Mr. Tanner asked were the drain system gravity fed and questioned the electronic system. Mr. Wray replied yes, it was gravity fed. He said they had an electronic senor system through the tops of each tank. Mr. Wray also mentioned there was a back-flow preventer in the car wash to keep the sanitary sewer from backing up into the facility. Mr. Tanner asked if there was a possible flood would the water enter the settlement tanks. Mr. Wray replied it would be possible. He said if there were a catastrophic flood the water running through the streets would be far worse than the water in the reclaimed tank. Mr. Wray said he has been with Pure Clean for 9 years; they have never experienced a leaking tank. Mr. Tanner asked could freeze-thaw affect the tanks. Mr. Wray replied he was unsure but the engineers would spec for it, it would be whatever was required. He continued to say nothing in the proposed site plan was deviating from anything they've done in the last 5 or 6 years, it was all pretty standard. Mr. Tanner questioned any linear surrounding the tanks. Mr. Wray said usually there was rock bed or pea gravel around the tanks.

Mr. Canarecci asked would they submit their spec locally for the tanks. Mr. Wray said specs were submitted to local GC, they would give cast tanks based of the specs.

Mr. Mammolenti asked in Mr. Wray 9 years with this company what the failure rate for this system. Mr. Wray said from a tank stand point, he has ne experienced a failed tank. He continued to say pumps will fail, every 3 to 5 years the pumps would need to be replaced.

Mr. McMorrow thanked the council for giving them another opportunity to supplement their initial submission and for the rigorous review; it was good for everyone if they were challenged. He said he hoped the council would find as the Plan Commission did see the rezoning was appropriate.

Mr. Banicki said after a lot of different consideration and looking at the city's recommendation he was not sold on the traffic issues. He continued to say there would definitely be some residual water dripping into the creek. Mr. Banicki said he has always been protective of Juday Creek and he would continue to be. He went on to say this was a great project but for a different location. Mr. Banicki expressed he was not in support.

Question was called for at 8:14 P.M. for **PROPOSED ORDINANCE NO. 2018-24 Vote: Motion failed (summary: Yes = 4, No = 5, Abstain = 0). Yes: Mrs. Voelker, Mr. Compton, Mr. Deal, Mr. Bellovich. No: Mr. Tanner, Mr. Banicki, Mr. Emmons, Mr. Canarecci, Mr. Mammolenti.**

ADJOURNMENT 8:15 P.M.

Deborah S. Block /s/	Matt Mammolenti /s/
Deborah S. Block, IAMC, MMC, City Clerk	Matt Mammolenti, President

City of Mishawaka

DAVID A. WOOD, MAYOR **DEPARTMENT OF CITY PLANNING**

December 12, 2018

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation
December 11, 2018, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above referenced date at which time the following Use Variance was considered:

APPEAL #18-44 An appeal submitted by SCM 10X Mishawaka I, LLC requesting a Use Variance for vacant property between 5102 and 5310 North Main Street to allow multiple buildings with multiple tenants and one drive-thru restaurant on C-1 General Commercial zoned property.

The Board, with a vote of 5-0, recommended approval subject to the following conditions:

1. The required minimum number of parking spaces for the entire property shall comply with the parking ratios for each individual use/tenant.
2. Uses shall be limited to one (1) restaurant with drive-thru and those identified in the C-1 General Commercial Zoning District.
3. Current stormwater management standards and grease-traps shall be implemented per City of Mishawaka Engineering Department.
4. Access drive improvements shall be reviewed as a part of the site plan submittal and implemented as determined by the City of Mishawaka Engineering Department.

Respectfully,

Kari Myers

Kari Myers, Administrative Planner
Secretary, Board of Zoning Appeals

cc: Mike Huber

RECEIVED
DEBORAH S. BLOCK, MMC
DEC 13 2018
CITY CLERK
MISHAWAKA, IN

STAFF REPORT

Location: Vacant Lot – Between 5102 & 5310 N. Main Street	Date: Dec. 11, 2018
Appeal: 18 - 44	Prepared By: DJS

GENERAL INFORMATION

Applicant:	SCM 10X Mishawaka I LLC / Abonmarche Consultants
Status:	Property Owner / Agent and Consulting Engineer
Request:	Use variance to allow multiple buildings with multiple tenants and one (1) restaurant with a drive-thru facility on Lot 3 of Portillo's Main Street Minor Subdivision
Zoning Classification:	C-1 General Commercial
Lot Size:	4.21 acres
Applicable Regulations:	Section 137-42 / (5) Board of Zoning Appeals – Developmental Variance; Section 137-300 to 137-303 / C-1 General Commercial District

SPECIAL INFORMATION

Area Development Pattern:	North:	C-1 General Commercial (Restaurant/Qdoba)
	South:	C-7 Auto-Oriented Restaurant Commercial (Restaurant with Drive-Thru/Portillo's)
	East:	S-2 Planning Unit Development with C-1 General Commercial and C-2 Shopping Center Commercial Permitted Uses (Vacant/Agricultural Land)
	West:	C-1 General Commercial & S-2 Planned Unit Development (Commercial/Multi-Tenant & Single Use sites including a Drive-Thru Restaurant, Bank, Optometrist, Hotel, and Miscellaneous Retail)

Thoroughfare:	N. Main Street
School District:	South Bend Community School Corporation
Township:	Clay
Public Utilities:	All utilities are available and/or will be extended/connected to the site at the developer's expense
Comprehensive Plan:	The Mishawaka 2000 Comprehensive Plan identified a preferred or planned use for this property as medium density residential (apartment complexes and nursing facilities)

ANALYSIS

The appellant is requesting a use variance to allow multiple buildings with multiple tenants on a single lot and one (1) restaurant with a drive-thru facility.

The proposed commercial development will be located on a 4.21 acre parcel between Portillo's and Qdoba on the east side of N. Main Street. The property, which was recently subdivided as Lot 3 of Portillo's Main Street Minor Subdivision (Plat 17-20), is a vacant commercial property.

The petition request does not specifically mention the exact number of tenants. However, the preliminary site plan shows three separate buildings to be occupied by an undetermined number of tenants. The developer's intent is to create a multi-building development with a mix of office, restaurant, and retail uses. The total floor area for the proposed buildings is estimated at 38,980 sq. ft., which is likely the maximum square footage permitted based upon the required parking ratios for the anticipated tenant mix. Two of the buildings are proposed to be one-story with the third building being two-stories. At this point in time, no specific uses have been identified except for a restaurant with a drive-thru. All other permitted uses will be limited to those listed for the C-1 General Commercial District. Additionally, the property, as a whole, must provide the required minimum number of parking spaces based upon the use and square footage of each individual tenant space.

The property is zoned C-1 General Commercial which only allows for a maximum of two (2) separate tenants/uses on the property. In order to allow for multiple buildings with multiple tenants, the property would need to be rezoned to C-2 Shopping Center Commercial. However, the drive-thru restaurant use would not be allowed under the C-2 zoning classification and would need a zoning classification of C-7 Automobile Oriented Restaurant Commercial. Additionally, the 4.21 acre site falls just below the minimum 5 acres required for rezoning to the S-2 Planned Unit Development classification which would allow multiple tenants and specifically identified uses. For these reasons, Staff recommended that a use variance be submitted.

All pertinent City Departments have reviewed and approved the use variance request.

The Engineering Department provided the following comments which must be addressed with the first and/or all subsequent site plan submittals:

1. The relocated access drive may require additional improvements (deceleration lane, center lane modifications, etc.) along N. Main Street.
2. Any proposed restaurants will be required to have grease interceptors.

RECOMMENDATION

The Planning Staff recommends approval of Appeal 18-44 to allow a use variance for multiple buildings with multiple tenants and one (1) restaurant with a drive thru facility on Lot 3 of Portillo's Main Street Minor Subdivision subject to the following conditions:

1. The required minimum number of parking spaces for the entire property shall comply with the parking ratios for each individual use/tenant.
2. Uses shall be limited to one (1) restaurant with drive-thru and those identified in the C-1 General Commercial Zoning District.
3. Current stormwater management standards and grease-traps shall be implemented per City of Mishawaka Engineering Department.
4. Access drive improvements shall be reviewed as a part of the site plan submittal and implemented as determined by the City of Mishawaka Engineering Department.

This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed density and uses are consistent and compatible with the density and uses of the adjacent parcels. Furthermore, all state and local building codes will be adhered to during construction.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. The proposed multi-building development allows for greater flexibility in attracting tenants and users to the site, and is more consistent with the existing development within the corridor than traditional single building, multi-tenant strip development. The multi-building approach also allows a single developer to create a higher quality development. Drive-thru uses are currently present along the Main Street corridor including immediately to the south. Lastly, the proposed development will create additional traffic to support the existing adjacent commercial uses.

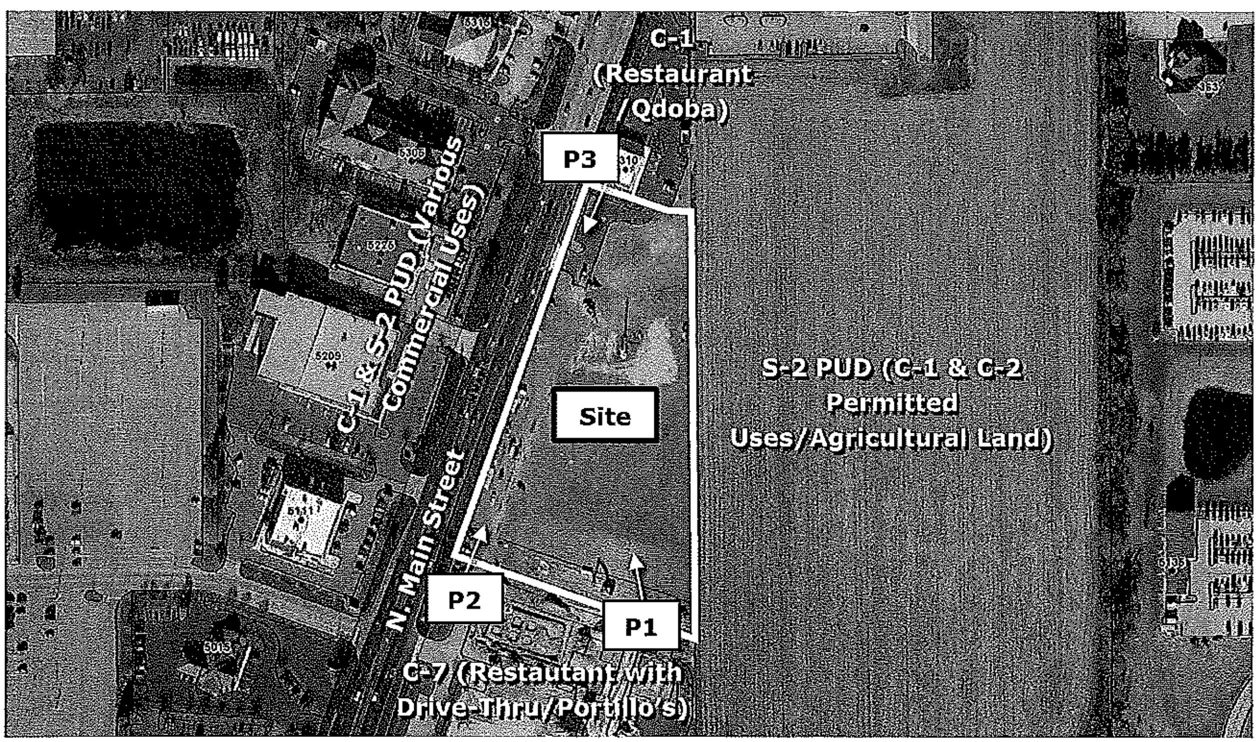
3. The need for the variance arises from some condition peculiar to the property. The property is zoned C-1 General Commercial and the City of Mishawaka Zoning Ordinance does not have a zoning classification that would allow for the proposed multi-building development to include multiple tenants and one (1) drive-thru restaurant use.

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought. The zoning does not allow the proposed multi-building development to include multiple tenants and one (1) drive-thru restaurant use. The preferred means by which to allow the proposed uses is through the use variance process;

5. The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The Plan, created in 1990, guided medium density resident development within this property as an extension of an existing apartment complex to the north on Douglas Road. However, due to changing market conditions and land development patterns along the N. Main Street corridor, medium density residential is not an ideal use for the property. The proposed office, retail, and restaurant uses, being a higher intensity use more compatible with the adjacent land uses, does not conflict with the goals and objectives of the Comprehensive Plan.

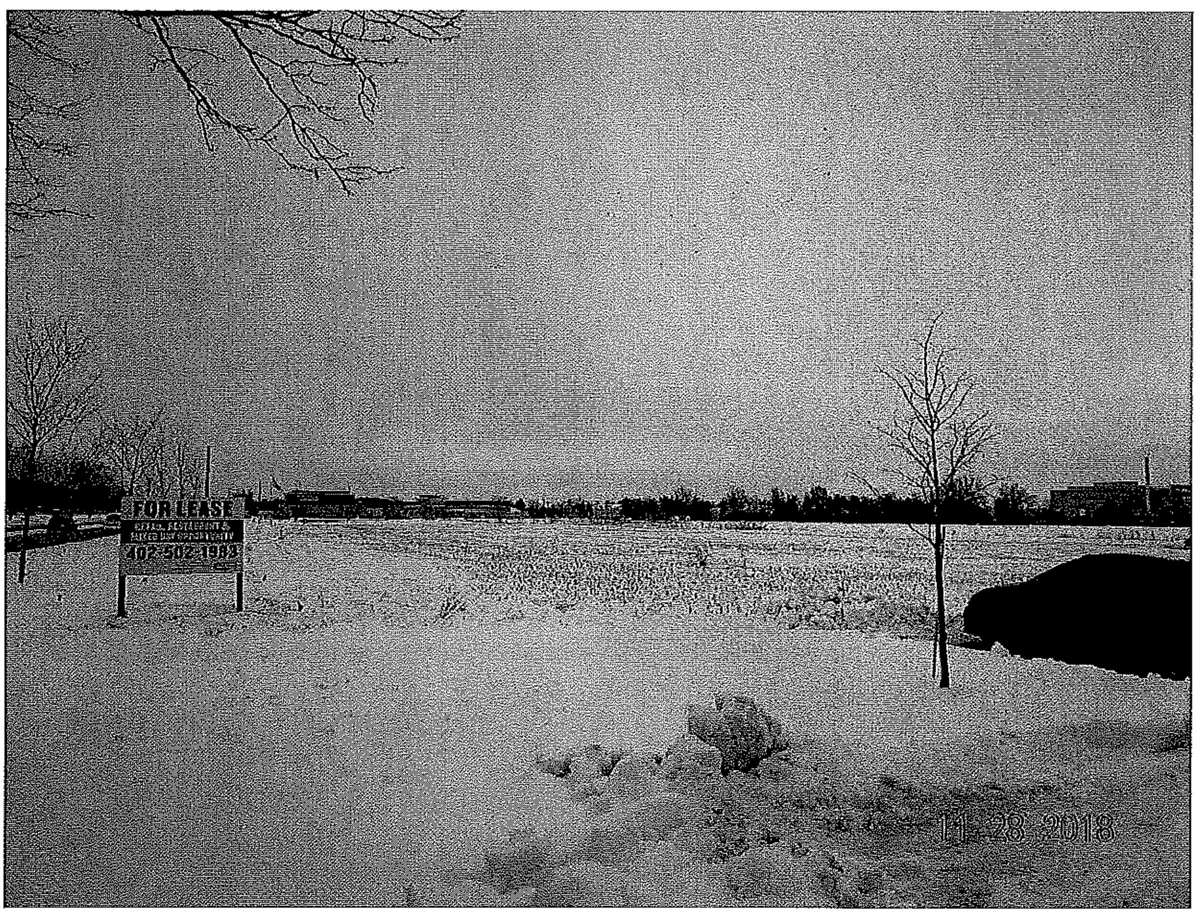
ATTACHMENTS

Photographs, Appeal, Site Plan, Site & Building Perspectives, Location Map



Aerial Photograph
Vacant Lot – Between 5102 & 5310 N. Main Street

P1. Looking northerly toward the site from east of Portillo's.



P2. Looking northerly along Main Street from west of Portillo's.

P4. Looking south toward the site from the existing access drive south of Qdoba.

City of Mishawaka

DAVID A. WOOD, MAYOR **DEPARTMENT OF CITY PLANNING**

December 12, 2018

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
December 11, 2018, Public Hearing
Certification of Proposed Ordinances

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed ordinance was considered:

PETITION #18-32 A petition submitted by John Coussens and Cressy Land Investments LLC requesting to amend the Coussens SE Main and Douglas Planned Unit Development to allow a commercial office, multi-family housing project, and a reduction in number of required parking spaces.

The Commission, with a vote of 7-0, recommended approval subject to the attached amended conditions, *with changes from the original approved conditions in italics:*

Pursuant to I.C. 36-7-4-605 the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed ordinance regarding the above matter.

Respectfully,

Kari Myers

Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

cc: Mike Huber

RECEIVED
DEBORAH S. BLOCK, MMC
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CITY CLERK
MISHAWAKA, IN

City Hall, 600 East Third Street, Mishawaka, IN 46544-2241 (574) 258-1625 FAX (574) 968-6999
E-mail planning @ Mishawaka.in.gov

PETITION #18-32
Coussens SE Main and Douglas Planned Unit Development

Uses:

1. Permitted uses *for all property in the original PUD* shall be limited to those uses identified in the C-1 (General Commercial) and C-2 (Shopping Center Commercial) zoning districts based on City of Mishawaka Zoning classification defined and in effect on the date of approval by the Mishawaka Common Council.

2. *Permitted uses on the south 10 acres of the original PUD shall be expanded to include R-3 Multifamily Residential* uses.

3. *Permitted uses on the area adjacent to the Edison Lakes Parkway including all or a portion of Lot 1 of Portillo's Main Street Minor Subdivision shall be limited to those uses identified in the C-1 (General Commercial) zoning district.*

4. Outside sale display for loose items shall be prohibited unless specifically approved by the Planning Commission as part of a final planned unit development site plan submission.

5. Off-premise signs/billboards shall be prohibited.

Traffic Impact:

1. Phasing of improvements, including the proposed internal collector drive (proposed street) shall be as determined by the City Director of Engineering.

2. The number and or type of curb cuts on any City Street and the internal access drive/street shall be as determined appropriate by the City Director of Engineering. Improvements shall take place consistent with an approved master plan as required herein.

Internal Road/*Sidewalk* connections:

1. Private vehicular connections between this property and adjacent properties shall be required, the location and number of connections required shall be determined as part of future planned unit development site plan submissions. Applicable private road connections shall be dedicated within easements as part of the each subsequent final planned unit development site plan. Actual construction shall occur concurrent with the development of the adjacent property or as directed by the City, whichever comes first. Modifications to the location of the easement /drive may be approved by the Planning Commission as part of any final planned unit development site plan approval. The applicant shall meet with the adjacent property owners to coordinate the exact connection locations between properties. The exact location of these connection points shall be subject to review and approval by the City.

2. *A minimum of two access points are required for the proposed multifamily residential apartment complex.*

3. *Sidewalks connecting the apartments and the hospital sites shall be constructed by the developer. A pedestrian access/sidewalk plan shall be submitted and approved by the City Director of Engineering.*

Stormwater Run-off/Utilities/Infrastructure:

1. The applicant/developer shall prepare a master plan to identify and provide for appropriate access and utility extensions. All improvements shall be subject to the review and approval of the City Director of Engineering.

2. The type of stormwater facilities proposed on the site shall be limited/restricted as directed by the City Director of Engineering. The 75' Drainage Easement on the east side of the property shall remain vegetated. Any proposed encroachment into this easement shall require compensatory improvements to the vegetation and or ditch as may be directed by the City Director of Engineering, subject to the review and approval of the St. Joseph County Drainage Board.

3. All costs associated with the extension of utilities, road improvements, or other infrastructure shall be the responsibility of the applicant/developer. Extension of utilities shall occur in a location and size as directed by the City Director of Engineering.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures.

2. A lighting plan shall be submitted with each subsequent planned unit development plan submission.

3. Ornamental fixtures matching the current City standard may be utilized in addition or instead of the lighting noted above.

Signage:

1. Standard Mishawaka On-Premise Sign Standards shall be varied to allow for a hierarchy of signage (given the large site) and to otherwise further the intent of this chapter as follows. No more than three freestanding site signs shall be located along Douglas Road, regardless of the number of lots proposed. All freestanding signs shall otherwise be designed as per the applicable City requirements:

    a. Each outlot/development parcel may be permitted one freestanding sign. These signs shall be limited to 8' in height and contain a display area of no more than 60 square feet. Each shall include a masonry base (to match the architecture of the building) no less than 3' in height. No more than 1/3 of the display area for each sign may be utilized as an electronic reader board. All freestanding signs shall be separated from each other by a minimum of 150 lineal feet.

b. One multi-tenant sign shall be permitted along Douglas Road (separate from the two outlots shown with Douglas Road Frontage). This sign shall be exclusively for properties that do not have a freestanding sign on Douglas Road. If constructed, this sign shall be constructed in a center landscape median within the proposed entry drive, or otherwise separated and made to be distinctly separate from the outlot signage located along Douglas Road. This sign shall be limited to 12' in height and contain a display area of no more than 60 square feet. No more than 1/3 of the display area for each sign may be utilized as an electronic reader board. The sign shall include a masonry base no less than 5' in height. All freestanding signs shall be separated from each other by a minimum of 150 lineal feet.

2. Temporary banners, flush mounted to a building shall be limited to one per building/use, and shall not exceed 80 square feet. These banners shall also be subject to any future more restrictive regulation that may be passed by the City.

3. General façade and directional signage standards shall be submitted concurrently with the first final planned unit development plan submission. Limits on the height of letters/signage for façade signs shall be reviewed and evaluated by the Planning Commission at that time.

4. *The parcels located along Edison Lakes Parkway and Holy Cross Parkway shall be permitted two (2) signs. One (1) for the outlot/development parcel and one (1) for the apartment site subject to the 1.a. requirements above.*

5. *An internal directional signage plan for the apartment site shall be submitted subject to Staff approval. Signs shall be not directly visible from the public right-of-way and shall be subject to the height and size requirement per 1.a above.*

<u>Building Limitations/Architecture:</u>

1. All proposed buildings shall be constructed of 100% approved materials as identified within Section 105.76 of the City of Mishawaka Municipal code as amended, except that hardi-board maybe used as an accent material, not to exceed 1/3 of the area of any single building face. Materials and colors shall be varied to provide architectural interest.

2. For all development parcels- there shall be a minimum building setback of 75' from all public right-of-way and private collector drives. A minimum side building setback of 10' shall be provided along lot/property lines. A minimum 25'building setback shall be provided from internal non-public access drives. A minimum 25' rear yard building setback shall be provided. A minimum 25' building setback from the Indiana Toll Road right-of-way shall be provided.

3. The maximum building height for the site shall be 48', except for hotel uses that shall be permitted to construct a maximum of four stories not to exceed 70' in height.

4. *The maximum building height for the proposed apartment complex shall be limited to five (5) stories.*

Parking/Landscaping:

1. *The number of parking spaces required for the proposed apartment complex shall be provided at a rate of 1.2 spaces per apartment unit.*

2. A minimum pavement setback of 5' in width shall be provided between internal lots/development parcels. A minimum 25' pavement setback shall be provided along all public right-of-way and private internal collector roadways. A minimum 10' pavement setback/green area shall be provided from internal non-public access drives and proposed parking/building areas.

3. For large shopping areas where shopping carts are utilized, cart corrals shall be provided. Corral's shall be identified and removed from total number of parking spaces provided. Curbed landscape islands shall be provided to break up large pavement areas as determined by the Planning Commission as part of the review of any planned unit development site plan.

4. Earth mounding shall be provided along public road right-of-way, between parking areas and public streets. A minimum 25-foot green buffer area shall be required along all public road right-of-way and internal collector drives. Each individual outlot within all development parcels shall comply with the landscape requirements of the C-1 General Commercial zoning district. All side property lines within 100' of Main Street right-of-way shall comply with the front yard landscaping standards identified within the C-1 General Commercial zoning district.

4. Sidewalks and utilities may be provided within required 25' green landscaped areas. If sidewalks and utilities are located within the required 25-foot green area, a minimum utility/sidewalk free area of 10 feet in width shall be required for planting.

5. Phasing of required landscaping shall be reviewed as part of every final planned unit development plan submission.

6. All loading docks, dumpsters, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall matching the building materials of the principle building. Dumpster locations shall be located away from any roads behind principle buildings and located away from public right-of-way and internal collector drives.

Phasing:

1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads and other related infrastructure.

STAFF REPORT

Location: North of the Edison Lakes Parkway & Holy Cross Parkway intersection	Date: Dec. 11, 2018
Petition: 18-32	Prepared By: DJS

GENERAL INFORMATION

Applicants:	John Coussens & Cressy Land Investments, LLC / Saxon Partners
Status:	Property Owners / Contingent Developer
Request:	Amend a preliminary Planned Unit Development to expand the PUD boundary, add R-3 Multiple Family Residential as a permitted use to allow for a 400 unit residential apartment complex, and reduce the parking requirements for the R-3 multiple family residential (apartment) use.
Existing Zoning:	S-2 Planned Unit Development specifically for C-1 General Commercial and C-2 Shopping Center Commercial uses
Proposed Zoning:	S-2 Planned Unit Development to include R-3 Multifamily Residential Uses on the southern 10 acres of the previously approved PUD and C-1 General Commercial Uses on the parcel to be added to the PUD
Lot Size:	10 acres being the south part of the previously approved PUD & a 1.63 acre lot to the west being Lot 1 of the Portillo's Main Street Minor Subdivision (Plat 17-20)
Applicable Regulations:	Section 137-671 thru 137-679 / S-2 Planned Unit Development District; Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern:	North:	S-2 Planned Unit Development (Vacant Land/Approved for C-1 General Commercial & C-2 Shopping Center Commercial uses)
	South:	C-1 General Commercial (Hospital/Vibra Hospital currently under construction & Vacant Land)
	East:	S-2 Planned Unit Development (Hospital/St. Joseph Health System Mishawaka Medical Center)
	West:	C-1 General Commercial (Restaurant/Cheddar's Scratch Kitchen) & C-7 Auto Oriented Restaurant Commercial (Drive-Thru Restaurant/Portillo's)
Thoroughfare:	Edison Lakes Parkway	
School District:	South Bend Community School Corporation	
Public Utilities:	All utilities are available and/or will be extended to/throughout the site at the developer's expense	
Comprehensive Plan:	The Mishawaka 2000 Comprehensive Plan identified a preferred or planned use of Medium Density Residential (apartment complexes and nursing	

facilities) for the 10 acre parcel and General Commercial (downtown retail sales and shopping centers) for the 1.63 acre parcel

ANALYSIS

The petitioner is requesting to expand the boundary and amend a part of the Coussens-Golden Corral Planned Unit Development, originally approved in 2012 (Petition 12-13/Ordinance 5348), to allow for the development of a residential apartment complex. The request also includes a reduction in the required number of parking spaces for the proposed R-3 multifamily residential (apartment) use.

The Planned Unit Development is generally located at the southeast corner of N. Main Street and Douglas Road. The part of the PUD included in this amendment is bound by vacant agricultural land to the north within the original PUD, the St. Joseph Health System Mishawaka Medical Center to the east, Vibra Hospital currently under construction and vacant commercial land to the south, and Cheddar's Scratch Kitchen and Portillo's restaurants to the west.

The amendment is seeking to permit R-3 Multiple Family Residential uses on the southern 10 acres of the existing PUD specifically for a 400 unit multifamily residential apartment complex. The property is currently vacant agricultural land. The proposed project, to be developed by Saxon Partners, will consist primarily of studio, one-bedroom, and two-bedroom apartments. The target market demographic is single employees of the adjacent hospitals. The preliminary Planned Unit Development site plan includes a total five (5) separate five-story buildings. Each building will consist of 80 apartment units within the upper stories with a covered parking area below.

In conjunction with the additional permitted use, the petitioner is requesting a reduction in the required number of parking spaces from 1.5 spaces per unit to 1.2 spaces per unit for the proposed apartment complex. The preliminary site plan shows a total of 538 parking spaces with approximately 200 parking spaces below the buildings and another 358 surface spaces within the parking lots. At 1.2 parking spaces per unit, a total of 480 spaces would be required. The petition states that the 1.2 parking spaces per unit will be sufficient based upon the anticipated occupancy densities and tenant mix of the project.

The boundary of the original PUD is also being expanded with this amendment to include Lot 1 of the Portillo's Main Street Minor Subdivision. This 1.63 acre parcel, which is currently owned by Cressy Land Investments LLC, is adjacent to the southwest corner of the existing PUD and is zoned C-1 General Commercial. Saxon Properties will be acquiring the parcel to allow vehicular access and connectivity to Main Street and Edison Lakes Parkway as well as utility access to the southern part of the existing PUD. Permitted uses on this lot will be limited to those identified in the C-1 General Commercial District.

The approximate 20 acre northern portion of the original PUD is not being affected by this amendment. Therefore, all prior C-1 General Commercial and C-2 Shopping Center Commercial permitted uses, development regulations, and conditions of approval (Ord. 5348) are applicable to this area.

The landscaping, as conceptually shown on the preliminary site plan, shows the developer's intent to comply with the City's landscaping and screening regulations. A detailed landscape plan conforming to the C-1 General Commercial District requirements shall be submitted with all Final Planned Unit development site plans, and will be subject to review and approval by the Planning Staff.

The preliminary site plan shows that the apartment complex will only have one access from Edison Lakes Parkway connecting to the existing access drive east of Cheddar's restaurant. An additional access will be required either to the north or northwest to provide a connection to N. Main Street or Douglas Road.

Except for the requested reduction in the number of parking spaces, all other R-3 Multiple Family Residential development standards are applicable to the south 10 acres proposed for development as an apartment complex. The C-1 General Commercial development standards are applicable to all or the portion of Lot 1 of the Portillo's Main Street Minor Subdivision to be developed as the outlot.

Similar to when the original Planned Unit Development was approved, the petitioner is only proposing to establish, or in this case, amend the range of permitted uses and basic development requirements of the planned unit development. If approved, a detailed Final Planned Unit Development site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

All pertinent City Departments have reviewed and approved the request with Engineering, Fire, and Water Departments providing the following comments:

Engineering Department

1. Master planning for the utilities and streets is needed to see overall conflicts.
2. Access to the site is not adequate for the proposed density of the apartment complex. Alternative (i.e. a second) site access will be required to provide multiple entrance/exits.

Fire Department

1. A minimum of two (2) entrances is required.

Water Department

1. A water main extension is required to serve the project. The Water Department should be contacted to discuss water service, metering and/or backflow needs.
2. The property is located within a 10 year time of travel wellhead protection area.

RECOMMENDATION

Staff recommends **approval** of Petition 18-32 to expand the boundary and amend a part of the Coussens-Golden Corral PUD to allow for the development of a 400 unit multifamily residential apartment complex, and permit a reduction in the required number of parking spaces.

This recommendation includes the following amended conditions, *with changes from the original approved conditions in italics*.

Uses:

1. Permitted uses *for all property in the original PUD* shall be limited to those uses identified in the C-1 (General Commercial) and C-2 (Shopping Center Commercial) zoning districts based on City of Mishawaka Zoning classification defined and in effect on the date of approval by the Mishawaka Common Council.

2. *Permitted uses on the south 10 acres of the original PUD shall be expanded to include R-3 Multifamily Residential* uses.

3. *Permitted uses on the area adjacent to the Edison Lakes Parkway including all or a portion of Lot 1 of Portillo's Main Street Minor Subdivision shall be limited to those uses identified in the C-1 (General Commercial) zoning district.*

4. Outside sale display for loose items shall be prohibited unless specifically approved by the Planning Commission as part of a final planned unit development site plan submission.

5. Off-premise signs/billboards shall be prohibited.

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Stormwater Run-off/Utilities/Infrastructure:

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3. The maximum building height for the site shall be 48', except for hotel uses that shall be permitted to construct a maximum of four stories not to exceed 70' in height.

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1. *The number of parking spaces required for the proposed apartment complex shall be provided at a rate of 1.2 spaces per apartment unit.*

2. A minimum pavement setback of 5' in width shall be provided between internal lots/development parcels. A minimum 25' pavement setback shall be provided along all public right-of-way and private internal collector roadways. A minimum 10' pavement setback/green area shall be provided from internal non-public access drives and proposed parking/building areas.

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5. Phasing of required landscaping shall be reviewed as part of every final planned unit development plan submission.

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Phasing:

1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads and other related infrastructure.

This recommendation is based on the following findings of fact:

1. Existing Conditions - The subject property, located east of N. Main Street and north of Edison Lakes Parkway, is undeveloped agricultural land currently zoned for commercial purposes. N. Main Street is a highly travelled corridor with an average annual daily traffic count of nearly 33,000 vehicles per counts taken in 2015. Adjacent land uses include vacant agricultural land to the north within the original PUD, the St. Joseph Health System Mishawaka Medical Center to the east, Vibra Hospital currently under construction and vacant commercial land to the south, and Cheddar's Scratch Kitchen and Portillo's restaurants to the west.

2. Character of Buildings in Area - The area is predominantly commercial and medical-related uses. The character of many of the buildings in vicinity of this site are high quality commercial.

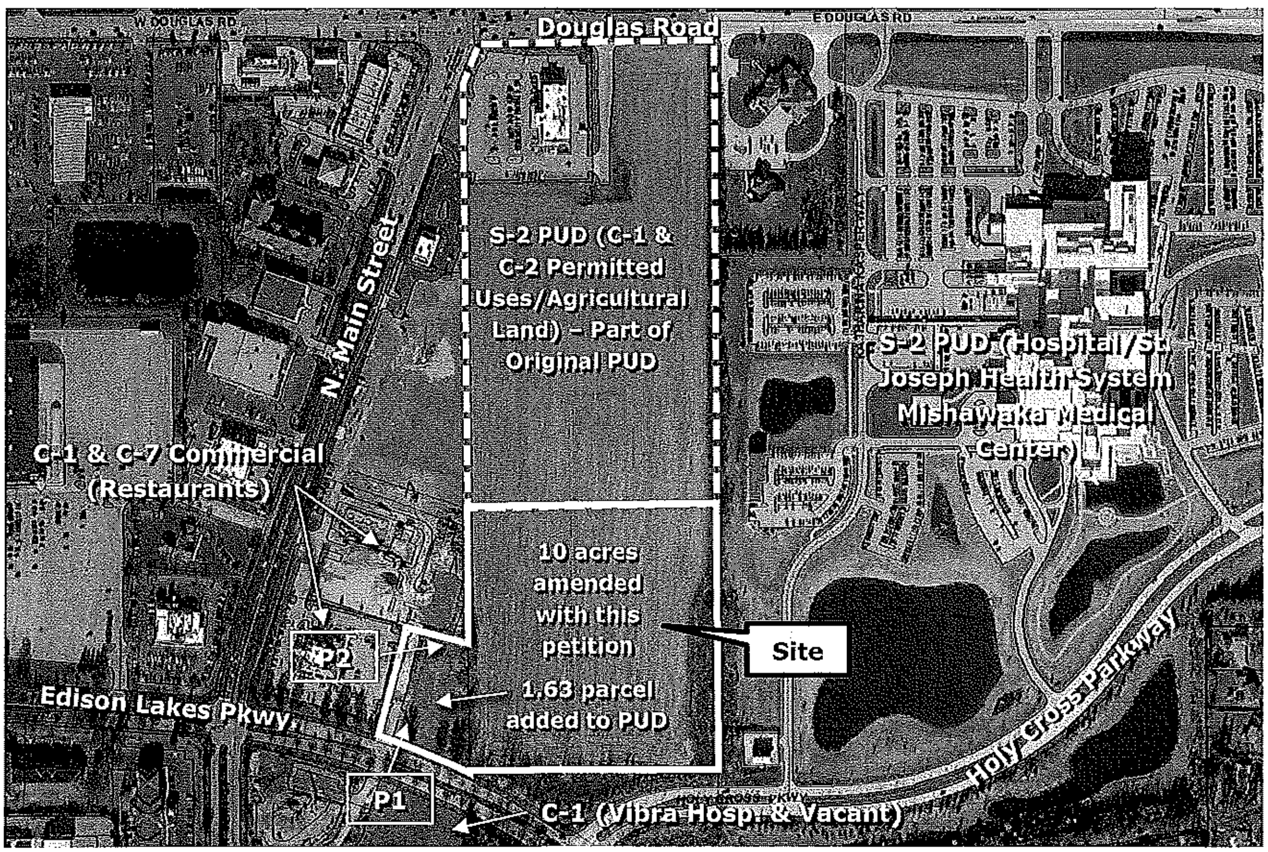
3. The most desirable/highest and best use - Because of the parcels' location and the significant commercial development on the north side of the City, serving as a regional area of commerce, combined with the proximity of Main Street, makes the most desirable use for the property a heavy mix of intensive commercial, professional office and service, and multifamily residential uses.

4. Conservation of property values - The proposed zoning will not be injurious to property values in the surrounding area, because the vast majority of adjacent property is commercial.

5. Comprehensive Plan - This property has been guided as medium density residential as part of the City's 2000 Comprehensive Plan.

ATTACHMENTS

Aerial Map, Photographs, Petition, Preliminary Planned Unit Development Site Plan, Location Map, Conceptual Building Elevations/Perspectives provided for illustrative purposes only to demonstrate the general character of the proposed apartment complex



Aerial Photograph – Part of the Coussens-Golden Corral PUD & Lot 1 of Portillo's Main Street Minor Subdivision

P1. Looking northeasterly toward of the site from the southwest corner of Lot 1 of Portillo's Main Street Minor Subdivision.

P2. Looking easterly toward the site for the access drive east of Cheddar's.

Attached is a proposed form of Ordinance for consideration by the Common Council relating to the EDP Ironwood LP (the "Borrower") project to be known as the Ironwood Village Apartments Project (formerly known as Arbors at Ironwood) (the "Project"). The Common Council adopted an inducement resolution (R2018-14) on July 2, 2018, providing preliminary approval for the proposed bond financing for the Project. The Project consists of the acquisition and rehabilitation of the Arbors at Ironwood complex (located near the intersection of Ironwood and Ewing). The proposed ordinance authorizes the issuance of bonds by the City as conduit issuer and the loan of the proceeds to the Borrower to finance the acquisition and rehabilitation of the apartments. The maximum principal amount of the bonds is not to exceed $7,800,000 as set out in the ordinance. The Borrower has filed an application with the Indiana Housing and Community Development Authority and expects final approval early in 2019.

The City's Economic Development Commission met Monday evening and conducted a public hearing and adopted its final resolution recommending that the Common Council consider adoption of the bond ordinance. A pdf of the executed EDC resolution is attached.

The City is being asked to serve as issuer of the bonds so that the bonds may be issued on a tax-exempt basis. The ordinance states that the City is not in any way responsible or at risk with respect to the payment of the principal of and interest on the Bonds. The Bondholders may only look to the Borrower for the payment of debt service. Additionally, these bonds will not affect the City's credit rating at all. The credit decisions made by the purchaser of the bonds will be solely based upon the representations made by the Borrower.

The ordinance approves the issuance of the bonds and approves the forms of the various documents that will be necessary in connection with the issuance of the bonds. Substantially final forms of those documents (the trust indenture, loan agreement, bond purchase agreement and land use restriction agreement) are attached also.

The Borrower asks that the ordinance be placed on the agenda for the Council's December 17th meeting for first reading. A representative of the Borrower and myself (serving as bond counsel) will be in attendance at the January 7th meeting of the Council to present and answer any questions. Please confirm that you have received this and that it may be placed on the agenda for the Council meeting on the 17th. Thanks! Any questions, give me a call. Randy

Randy Rompola | Partner
Barnes & Thornburg LLP
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Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles | Michigan | Minneapolis | Ohio | Washington, D.C.

1st Reading 12-17-18
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2018- 38

ORDINANCE NO. ______________

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, AUTHORIZING THE ISSUANCE OF ECONOMIC DEVELOPMENT REVENUE BONDS IN ONE (1) OR MORE SERIES IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SEVEN MILLION EIGHT HUNDRED THOUSAND DOLLARS ($7,800,000) AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Common Council of the City of Mishawaka, Indiana (the "Common Council"), has previously adopted a resolution on June 25, 2018 (the "Inducement Resolution"), finding that the proposed economic development facilities project to be owned and operated by EDP Ironwood, LP (the "Borrower"), consisting of the acquisition, rehabilitation, and equipping of a 128-unit multi-family affordable housing facility to be known as Ironwood Village Apartments (formerly known as Arbors at Ironwood and Arbors at Ironwood Phase II), together with functionally related and subordinate facilities, located at 1310 Blossom Drive, Mishawaka, Indiana (the "Project"), will not have a material adverse competitive impact on other facilities of the same or similar kind already constructed or operating in the City of Mishawaka, Indiana (the "City"); and

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

WHEREAS, pursuant to the Act, 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, rehabilitation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

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

WHEREAS, the Borrower has advised the City of Mishawaka, Indiana, Economic Development Commission (the "Commission") and the City concerning the Project, and requested that the City issue one or more series of its taxable or tax-exempt Multifamily Housing Revenue Bonds (Ironwood Village Apartments Project), Series 2019 (with such further series or other designation as determined to be necessary, appropriate or desirable), in an aggregate principal amount not to exceed Seven Million Eight Hundred Thousand Dollars ($7,800,000) (the "Bonds"), under the Act and lend all or a portion of the proceeds of such Bonds to the Borrower for the purpose of paying all or a portion of the costs of the Project, funding a debt service reserve fund and/or other permissible reserves, if necessary, paying capitalized interest, if necessary and paying all or a portion of the incidental expenses incurred on account of the issuance of the Bonds; and

WHEREAS, the Commission has rendered a report concerning the proposed financing of economic development facilities for the Borrower and has been given the opportunity to comment thereon; and

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

WHEREAS, pursuant to Section 24 of the Act and certain provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, (the "Code"), the Commission held a public hearing on December 10, 2018, following publication of notice duly given (the "Public Hearing") for the purpose of receiving evidence and testimony on the Project and matters related to the proposed financing thereof and heard all persons interested in the proceedings and considered written remonstrances and objections, if any; and

WHEREAS, following the Public Hearing, 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 through the requirements that the Project serve persons and families of low and moderate income, that the amount of tax credits to be allocated to the Project under Section 42 of the 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 satisfied the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan; and

WHEREAS, 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; and

WHEREAS, the City intends to issue the Bonds consistent with the terms of this Ordinance and 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 a corporate trustee to be selected by the Borrower (the "Trustee"), in order to obtain funds to lend to the Borrower for the purpose of financing all or a portion of the Project, funding a debt service reserve fund and/or other permissible reserves, if necessary, paying capitalized interest, if necessary and paying all or a portion of the incidental expenses incurred on account of the issuance of the Bonds 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 $7,800,000; 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, no member of the Common 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 the Common 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, the Commission approved the terms of the following documents in substantially final form: the Indenture (including a form of the Bonds), the Loan Agreement, the Bond Purchase Agreement among the City, the Borrower and FMSbonds, Inc. (the "Underwriter") for sale of the Bonds (the "Purchase Agreement"), and the Land Use Restriction Agreement among the City, the Borrower and the Trustee (the "Land Use Restriction Agreement" and collectively with the Indenture, the Loan Agreement, and the Purchase Agreement, the "Financing Documents"), and this proposed form of ordinance, each of which were incorporated by reference in the Commission's Resolution adopted on December 10, 2018, which Resolution has been transmitted hereto; and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the Common Council hereby finds and determines that the funding approved by the Commission for all or a portion of 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 all or a portion of the costs of the Project will require the issuance, sale and delivery of one or more series of the Bonds in an aggregate principal amount not to exceed $7,800,000.

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

SECTION 1. It is hereby found, determined, ratified and confirmed 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 proceeds thereof to the Borrower for the purpose of financing all or a portion of the Project (i) will result in the diversification of industry, the creation or retention of business opportunities 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 diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment and providing quality affordable multifamily housing within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near 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 of the Common Council or City Controller. In compliance with Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk of the Common Council for public inspection.

SECTION 3. The City shall issue its Bonds in one or more series, as described above, in the maximum aggregate principal amount not to exceed Seven Million Eight Hundred Thousand Dollars ($7,800,000), with a maximum term not to exceed forty (40) years and with a maximum interest rate not to exceed eight percent (8%) per annum, for the purpose of procuring funds to loan to the Borrower in order to finance all or a portion of the Project, fund a debt service reserve fund and/or other permissible reserves, if necessary, pay capitalized interest, if necessary, and pay all or a portion of the incidental expenses incurred on account of the issuance of the Bonds. The Bonds will be payable as to principal and interest solely from payments made by the Borrower pursuant to the Financing Documents, and upon such terms and conditions as otherwise provided in the Financing

Documents and this Ordinance. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

SECTION 4. The Mayor and Controller of the City are authorized and directed to sell such Bonds to the purchaser or purchasers thereof at a price not less than 98% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed eight percent (8%) per annum, and with a final maturity no later than forty (40) years from the date of the issuance of any series of Bonds. The Purchase Agreement in form and substance acceptable to the Mayor and the Controller, may be, and hereby is, approved, and the Mayor and the Controller are hereby authorized and directed to execute and deliver the Purchase Agreement in form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance. If necessary or desirable in connection with the sale of the Bonds, each of the Mayor, the Controller and any other officer of the City is authorized to enter into a continuing disclosure undertaking agreement, in compliance with Rule l5c2-12 of the Securities and Exchange Commission (the "SEC Rule"), which will be in such a form as may be deemed necessary, appropriate or desirable by each of the Mayor, the Controller and any other officer of the City, with such to be conclusively evidenced by execution thereof by any such officer. The Mayor, the Controller, or any other officer of the City familiar with the matters with respect to the City set forth in the Official Statement is hereby authorized to certify to the underwriter of the Bonds that the information in the Official Statement with respect to the City is deemed to be final within the meaning of the SEC Rule. The Underwriter is hereby authorized to distribute the Official Statement to potential investors in the Bonds.

SECTION 5. The Mayor and the Clerk are authorized and directed to execute the Financing Documents, and the Mayor, the Controller and the Clerk and any officer of the City are authorized and directed to execute such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk on the Bonds which may be necessary or desirable to consummate the transaction and their execution are hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk on the Bonds may be facsimile signatures. The Mayor, the Controller, the Clerk and any other officer of the City are 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, the Clerk and any other officer of the City may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor, the Clerk or any other officer of the City without further approval of this Common Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 6. 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 7. It is hereby determined that the amount of the tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Common Council has relied upon the 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. The Common Council hereby authorizes and directs the Mayor of the City 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 Indiana Housing and Community Development Authority ("IHCDA") and either written representations of the Borrower or of IHCDA to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfied 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. In reliance solely upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan.

SECTION 8. Subject to the obligations of the Borrower set forth in the Loan Agreement, the Land Use Restriction Agreement and/or the certificates or other agreements of the Borrower to be executed upon the issuance of the Bonds, the City will use its best efforts to restrict the use of the proceeds of the Bonds in such a manner and to expectations at the time the Bonds are delivered to the purchasers thereof, so that they will not constitute "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, or to preserve any other desired tax status of any series of Bonds under the Code, if necessary. The Mayor, the Controller and the Clerk, or any other officer having responsibility with respect to the issuance of the Bonds, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 of the Code and the regulations thereunder.

SECTION 9. 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, including without limitation its Commission, 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, including without limitation its 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 at 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 10. The Borrower will indemnify and hold the City, including its officials, attorneys, employees and agents, free and harmless from any loss, claim, damage, tax, penalty, liability, disbursement, litigation expenses, attorneys' fees and expenses and other court costs arising out of, or in any way relating to, the execution or performance of the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the 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 arising out of a failure or breach of performance by the Borrower, all as further described in the Loan Agreement, except in any case as a result of the intentional misrepresentation or willful misconduct of the City or its agents.

SECTION 11. The Mayor, the Controller, the Clerk and any other officer of the City are each hereby authorized and directed to execute, attest and deliver such further instruments and documents and to take such further actions, in the name and on behalf of the City, as in their judgment shall be necessary, desirable or appropriate in order to fully consummate the transaction and to effect the purposes of this Ordinance, and any such instruments or documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved. The Mayor or his designee is hereby authorized to enter into one or more project agreements with the Borrower, on terms and conditions acceptable to the Mayor, together with any all changes as may be necessary, desirable or appropriate, which shall be evidenced by his execution thereof.

SECTION 12. 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 13. 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 14. It is hereby determined that all formal actions of the Common Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the Common 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, as amended.

SECTION 15. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code 36-4-6.

* * * * *

PASSED AND ADOPTED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this _____ day of ________________, 2019.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED to the Mayor of the City of Mishawaka, Indiana, this ____ day of ______________, 2019, at ____________ o'clock, _____.M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED, this _____ day of _______________, 2019, ___________, o'clock, ____.M.

____
David S. Wood, Mayor

DMS 13599159v2

Prepared by and return to:
Randolph R. Rompola
Barnes & Thornburg LLP
100 N. Michigan Street, Suite 700
South Bend, Indiana 46601

LAND USE RESTRICTION AGREEMENT

By and Among

CITY OF MISHAWAKA, INDIANA

And

UMB BANK, N. A.
as Trustee

And

EPD Ironwood, LP

Dated as of __________ 1, 2019

Relating to

CITY OF MISHAWAKA, INDIANA
MULTIFAMILY HOUSING REVENUE BONDS
(IRONWOOD VILLAGE APARTMENTS PROJECT), SERIES 2019

TABLE OF CONTENTS

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 ___________1, 2019, by and among the CITY OF MISHAWAKA, 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"), UMB BANK, N.A. (the "Trustee"), and EPD Ironwood, LP, an Indiana limited partnership (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the "Borrower").

WITNESSETH:

WHEREAS, the Borrower wishes to finance the cost of the acquisition, renovation, installation and equipping of a multifamily rental housing facility, consisting of a total of 128 units and related personal property and equipment, and located at 1310 Blossom Drive, Mishawaka, Indiana (the "Project"), to be partially occupied by individuals of low or moderate 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 Common Council of the Issuer (the "Common Council") adopted an ordinance on _____________, 2019, authorizing the issuance and sale of its Multifamily Housing Revenue Bonds (Ironwood Village Apartments Project), Series 2019 (the "Bonds"), in the aggregate principal amount $______________ 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 ______________1, 2019 (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 ___________ 1, 2019 (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 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 South Bend – Mishawaka, IN Metropolitan Statistical Area.

"Bonds" means the City of Mishawaka, Indiana Multifamily Housing Revenue Bonds (Ironwood Village Apartments Project), Series 2019.

"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 Indiana Housing and Community Development Authority or the Internal Revenue Service.

"Closing Date" means the date of the issuance and delivery of the Bonds, being ____________________, 2019.

"Housing Act" means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. 14101 et. seq., or its successor.

"Income Certification" means a Verification of Income 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%) or less of median gross income for the Area with adjustments for family size. If all the occupants of a unit are students not described under Section 42(i)(3)(D) of the Code, such occupants shall not qualify as Low Income Tenants. The determination of a tenant's status as a Low Income Tenant shall be made by the Borrower upon initial occupancy of a unit in the Project by such tenant, on the basis of an Income Certification executed by the tenant.

"Low Income Units" means the units in the Project required to be rented, or held available for occupancy by, Low Income Tenants pursuant to Section 4(a) hereof.

"Manager" means ______________________, an _________________ corporation.

"Mortgage" means the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of _____________ 1, 2019 by EPD Ironwood, LP, as mortgagor to UMB Bank N.A., as mortgagee.

"Project" means the rental housing 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 said Exhibit A.

"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 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.

"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

Tax 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 Mishawaka, County of St. Joseph, 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 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 St. Joseph 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 Bonds or the execution and delivery of this Land Use Restriction Agreement,

(ii) affects or questions the validity or enforceability of the Bonds or this Land Use Restriction Agreement,

(iii) questions the Tax-Exempt status of the 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 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 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 multifamily residential rental property. The Borrower will own, manage and operate the Project during the term of this Agreement as a project to provide multifamily residential rental property comprised of a building or structure or several interrelated buildings or structures, each containing at least one dwelling unit and all of which contain dwelling units and facilities functionally related and subordinate thereto, and no other facilities, in accordance with Section 142(d) of the Code, Section 1.103-8(b) of the Regulations and the provisions of the Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project will be similarly constructed units, and each dwelling unit in the Project will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a microwave oven, refrigerator and sink.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis, or will ever be leased or rented for an initial lease term of less than thirty (30) days, nor will any part of the Project be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, 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 the Act.

(m) The Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

(n) The Project is financed by the Loan or otherwise pursuant to a common plan of financing and consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property functionally related and subordinate in purpose and size to the Project, e.g., parking areas, laundries, swimming pools, tennis courts and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, e.g., heating and cooling equipment, trash disposal equipment or units for residential managers or maintenance personnel.

Section 4. **Low Income Tenants; Reporting Requirements.** Pursuant to the requirements of the Code, the Borrower hereby represents, warrants and covenants as follows:

(a) For the Qualified Project Period, no less than 40% of the total number of completed units of the Project shall at all times be rented to and occupied by Low Income Tenants. For the purposes of this paragraph (a), 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.

(b) No tenant qualifying as a Low Income Tenant shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's Adjusted Income increases to exceed the qualifying limit for Low Income Tenants. However, should a Low Income Tenant's Adjusted Income, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for a Low Income Tenant of the same family size, the next available unit of comparable or smaller size must be rented to (or, held vacant and available for immediate occupancy by) a Low Income Tenant. Until such next available unit is rented to a Low Income Tenant, the former Low Income Tenant, who has ceased to qualify as such shall be deemed to continue to be a Low Income Tenant, for purposes of the forty percent (40%) of Section 4(a) hereof until the rental of an available unit of comparable or smaller size to a tenant who is not a Low Income Tenant.

(c) For the Qualified Project Period, the Borrower will obtain, complete, and maintain on file Income Certifications for each Low Income Tenant, including (i) an Income Certification dated immediately prior to the initial occupancy of such Low

Income Tenant in the Project, and (ii) thereafter, an annual Income Certification with respect to each Low Income Tenant, within thirty days before or after the anniversary of such tenant's initial occupancy of a unit in the Project. The Borrower will provide such additional information as may be required in the future by the 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.

(d) 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.

(e) For the Qualified Project Period, 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.

(f) 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.

(g) Each lease or rental agreement pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the Verification of Income and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit, 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.

(h) The Low Income Units will be intermingled reasonably with all other dwelling units and on all floors in the Project and shall be of a quality, and offer a range of sizes and number of bedrooms, comparable to those units which are available to other tenants. Tenants in the Low Income Units in the Project shall have equal access and enjoyment to all common facilities of the Project.

(i) 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.

(j) The Borrower shall send to the Issuer a written Land Use Restriction Agreement compliance review on or before ____________ 1 of each year, commencing ____________ 1, 2019, 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 ____________.

Section 5. **Tax-Exempt Status of 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 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 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:

(a) To the extent any amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the 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.

(b) To the extent that the Act, the Regulations or the Code, or any amendments thereto, shall, in the written opinion of Bond Counsel filed with the 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 Bonds or violate the requirements of the Act, and otherwise in accordance with Section 22 hereof.

(c) The Borrower, the Issuer (upon the written request of the Borrower) and, if applicable, the Trustee, 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 hereby covenants and agrees that it shall indemnify and hold harmless the Issuer, the Economic Development Commission of the Issuer (the "Commission") and the Trustee and their respective officers, directors, officials, employees and agents as set forth in the Loan Agreement.

To the extent not included in the indemnification provisions of the Loan Agreement, the Borrower shall pay and discharge and shall indemnify and hold harmless the Issuer, the Commission and the Trustee including their respective officials, attorneys, employees and agents, free from (i) any lien or charge upon payments by the Borrower to the Issuer and the Trustee hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project. In the event that any action or proceeding is brought against the Trustee with respect to which indemnity may be sought under 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 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 will pay upon demand all of the fees and expenses paid or incurred by the Trustee, the Commission and/or the Issuer in enforcing the provisions hereof.

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

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 Bonds, in the exemption from Indiana personal income taxation of interest on the Bonds and in the Tax-Exempt status of the interest on the 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. The Borrower may sell, transfer, or otherwise dispose of the Project only upon satisfaction of the following conditions: (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 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 satisfaction of the foregoing conditions shall not be required in the case of any transfer of the Project to an entity wholly-owned by the Borrower 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 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 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 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, 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 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:

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

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

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

(iv) declare a default under the 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 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.

In addition, during the Qualified Project Period, the Borrower hereby grants to the Trustee the option, subject to Section 9.1(1) of the Indenture, upon the expiration of sixty (60) days after the giving of the notice to the Borrower referred to in the first paragraph of this Section 17 of the Borrower's default under this Agreement (subject to any extensions to such sixty (60) day period granted in the first paragraph of this Section 17), to lease up to forty percent (40%) of the units in the Project for the purpose of subleasing such units to Low Income Tenants but only to the extent necessary to comply with the provisions of Sections 3, 4, 6 and 7 of this Agreement and only at the option of the Trustee. The option granted in the preceding sentence shall be effective only if the Borrower has not cured such default within such sixty (60) day period, or if the default is of such a nature that it can be cured, but not within sixty (60) days, by instituting corrective action within such sixty (60) day period. Such option shall be exercisable first with respect to units which are vacant at the time of exercise of this option and shall be exercised with respect to occupied units only to the extent that subleasing of additional units is necessary in order to bring the Project into compliance with the provisions of Sections 3, 4 and 6 of this Agreement, and any eviction carried out in connection with the exercise of such option shall be carried out in compliance with applicable laws. The option and any leases to the Trustee under this provision shall terminate with respect to each default upon the achievement, by the Borrower or the Trustee, of compliance with the requirements of Sections 3, 4 and 6 of this Agreement, and any subleases entered into pursuant to the Trustee's option shall be deemed to be leases from the Borrower. The Trustee shall make diligent efforts to rent Low Income Units to Low Income Tenants for monthly rental amounts equivalent to those collected from tenants of similar units in the Project but shall not be required to obtain such rental amounts. The Trustee shall seek, but shall not be required, to rent such units for the highest possible rents that may be charged, consistent with the rent and occupancy restrictions of this Agreement. Tenant selection shall be performed utilizing the Borrower's reasonable management and selection policies. The Trustee subleases to Low Income Tenants pursuant to this paragraph shall not exceed six months in term and shall expressly permit the Borrower to increase the rents to the maximum amounts as may be permitted hereunder for the respective households at the time the Borrower assumes the Trustee's position hereunder. Any rental paid under any such sublease shall be paid to the Borrower after the Trustee has been reimbursed for any expenses incurred in connection with such sublease. All rents received by the Trustee from such subleases, less the Trustee's expenses incurred in connection with such subleases, shall be placed into an escrow reasonably approved by the Borrower. All funds in such escrow shall be continuously pledged by the Issuer for the benefit of the Borrower. The Trustee agrees to allow the Borrower access to the Trustee's books and records relating to the collection and disbursement of rents received pursuant to such subleases.

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. **The Trustee.** The Trustee shall act as specifically provided herein and in the Indenture and may exercise such additional powers as are reasonably incidental hereto and thereto. The Trustee shall have no duty to act with respect to enforcement of the Borrower's performance hereunder as described in Section 17 unless it shall have actual knowledge of any such default. The Trustee shall act as the agent of and on behalf of the Issuer, and any act required to be performed by the Issuer as herein provided shall be deemed taken if such act is performed by the Trustee. In connection with any such performance, however, the Trustee is acting solely as Trustee under the Indenture, and not in its individual capacity, and all provisions of the Indenture relating to the rights, privileges, powers and protections of the Trustee, including without limitation those set forth in Article IX thereof, shall apply with equal force and effect to all actions taken (or omitted to be taken) by the Trustee in connection with this Land Use Restriction Agreement. Neither the Trustee nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith except for its or their own gross negligence or willful misconduct. The Trustee may consult with legal counsel selected by it (the reasonable fees of which counsel shall be paid by the Borrower) and any action taken or suffered by it reasonably and in good faith in accordance with the opinion of such counsel shall be full justification and protection to it.

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 St. Joseph, 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.

(a) 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.

(b) 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.

Section 21. **Governing Law.** This Agreement shall be governed by the laws of the State of Indiana. The Trustee's rights, duties and obligations hereunder are governed in their entirety by the terms and provisions of the Indenture.

Section 22. **Amendments.** This Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of St. Joseph, Indiana, and only upon receipt by the Issuer and the Trustee of an opinion from Bond Counsel that such amendment will not adversely affect the Tax-Exempt status of interest on the Bonds and is not contrary to the provisions of the Act.

(a) Anything to the contrary contained herein notwithstanding, the Issuer, the Trustee and the Borrower hereby agree to amend this Agreement to the extent required, in the opinion of Bond Counsel, in order that interest on the Bonds remain Tax-Exempt. The parties requesting such amendment shall notify the other parties to this Agreement of the proposed amendment, with a copy of such requested amendment to Bond Counsel and a request that such Bond Counsel render to the Issuer and the Trustee an opinion as to the effect of such proposed amendment upon the Tax-Exempt status of interest on the Bonds. This provision shall not be subject to any provision of any other agreement requiring any party hereto to obtain the consent of any other person in order to amend this Agreement.

Section 23. **Notices.** Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, or by electronic means which produces receipt of transmission, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

To the Issuer:	City of Mishawaka, Indiana Controller 600 East Third Street Mishawaka, Indiana 46544 Telephone: (574) 258-1622
With a copy to:	City of Mishawaka, Indiana Corporation Counsel 600 East Third Street Mishawaka, Indiana 46544 Telephone: (574) 258-1702
To the Borrower:	EPD Ironwood LP c/o Eagle Point Development

125 John Roberts Road, Suite 12
South Portland, Maine 04106
Attn: President
Telephone: (___) ___________

With a copy to:

____
____
Attention: ____________________

E-mail: ______________________

With a copy to:

____
____
Attention: ____________________

E-mail: ______________________

With a copy to:

____
____
Attention: ____________________
E-mail: ______________________

To the Trustee:

UMB Bank N.A.
1010 Grand Blvd
Kansas City, MO 64106
Attention: Corporate Trust Services
Telephone: (___) ___-_____
Email: liz.angotti@umb.com

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 MISHAWAKA, INDIANA

By:____________________________________
David A. Wood, Mayor

ATTEST:

By:____________________________________
Deborah S. Block, IAMC, MMC

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.

UMB BANK, N.A., as trustee

By: ______________________________
Name:
Title:

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.

EPD IRONWOOD, LP, an Indiana limited partnership

By: [____________], a Maine limited liability company, its General Partner

By:______________________________
Name:
Title: Authorized Signatory

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

On this ____ day of__________, 201____, before me appeared David A. Wood and Deborah S. Block, to me personally known who, being by me sworn did say that they are the Mayor and City Clerk, respectively, of the City of Mishawaka, Indiana, a political subdivision and municipal corporation of the State of Indiana, and that the seal affixed to the foregoing instrument is the official seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said municipal corporation, by authority of its Common Council and said Mayor and City Clerk, acknowledged said instrument to be the free act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

____
Notary Public in and for said County and State

(SEAL)

My Commission expires:____________________

My Commission number:____________________

My County of Residence: ____________________

STATE OF ______________)
) SS:
COUNTY OF ____________)

On this _____ day of________________, 2019, before me appeared ________________ to me personally known, who being by me duly sworn did say that he/she is an authorized officer of UMB Bank, N.A., and that he/she is the person 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 his/her free act and deed as such officer of said association.

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

____
Notary Public in and for said County and State

(SEAL)

My Commission expires:____________________

My Commission number:____________________

My County of Residence:____________________

STATE OF ___________)
) SS:
COUNTY OF ___________)

On this ____ day of ____________, 2019, before me appeared__________________, to me personally known, who being by me duly sworn did say that he/she is the ______________________of ______________________, a Maine limited liability company, the General Partner of EPD Ironwood, LP, an Indiana limited liability company, and that he/she is the person who executed the foregoing instrument as such person acting for and on behalf of said limited partnership, and acknowledged that he executed the same as his free act and deed.

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

____
Notary Public in and for said County and State

(SEAL)

My Commission expires:_____________________

My Commission number:_____________________

My County of Residence:_____________________

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.

Randolph R. Rompola

This instrument was prepared by Randolph R. Rompola, 100 N. Michigan Street, Suite 700, South Bend, Indiana 46601.

<u>EXHIBIT A</u>

DESCRIPTION OF PROJECT SITE

Address of Property: 1310 Blossom Drive, Mishawaka, Indiana 46544

Land Description

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: Ironwood Village Apartments

The undersigned hereby (certify)(certifies) that:

This Certification of Tenant Eligibility is being delivered in connection with the undersigned's application for occupancy of Apartment #___in the Ironwood Village Apartments in Mishawaka, Indiana.

List all the occupants of the apartment, the relationship (if any) of the various occupants, their ages, and indicate whether they are students (for this purpose, a student is any individual who has been, or will be, a full-time student at an educational institution during five months (whether consecutive or not) of the year in which this application is submitted, other than a correspondence school, with regular facilities and students).

	Occupant	Relationship	Age	Student (Yes or No)	Social Security Number
(a)	___________	___________	___________	___________	___________
(b)	___________	___________	___________	___________	___________
(c)	___________	___________	___________	___________	___________
(d)	___________	___________	___________	___________	___________
(e)	___________	___________	___________	___________	___________
(f)	___________	___________	___________	___________	___________

If the occupants are students, are any of the students listed in paragraph 2 described under Section 42(i)(3)(D) of the Internal Revenue Code of 1986?

Yes _______ No _______ Not Applicable ________

The total anticipated income for each person listed in paragraph 2 above during the 12 month period commencing with the date occupancy will begin including:

> full amount, before any payroll deductions, of wages, salaries, overtime, commissions, fees, tips, and bonuses; net income from the operation of a business or profession or from the rental of real or personal property (without deducting

expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets); interest and dividends (including income from assets excluded below); the full amount of periodic payments from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic payments including any lump sum payment for the delayed start of a periodic payment; payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay; all public assistance income; periodic and determinable allowances such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling; all regular and special pay and allowances of members of the Armed Forces (whether or not living in the dwelling) who are the head of the family or spouse; and any earned income tax credit to the extent that it exceeds income tax liability;

but excluding:

income from employment of children (including foster children) under the age of 18 years; payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone); lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses; amounts which are specifically for reimbursement of medical expenses; amounts of educational scholarships paid directly to the student or the educational institutions, and amounts paid to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; amounts received under training programs funded by HUD; amounts received under Plan to Attain Self-Sufficiency; amounts for out-of-pocket expenditures incurred in connection with other public assistance programs; resident service stipend (not in excess of $200 per month); amounts from state or local employment training programs; temporary, nonrecurring or sporadic income (including gifts); reparation payments paid by a foreign government to persons who were persecuted during the Nazi era; earnings in excess of $480 for each full-time student 18 years old or other (excluding head of family and spouse); adoption assistance payments in excess of $480 per adopted child; deferred periodic payments of supplemental social security income and benefits received in a lump sum; refunds or rebates of property taxes paid on the unit; payments from state agency to allow developmentally disabled family member to stay home; relocation payments under Title II of the Uniform Relocation Assistance and Real Property acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charges for the allotments; and payments to volunteers under the Domestic Volunteer Service Act of 1973; is as follows:

Occupant	Anticipated Annual Income	Source of Income or Employer
(a)__________________________	$___________________	__________________________
(b)__________________________	$___________________	__________________________
(d)__________________________	$___________________	__________________________
(d)__________________________	$___________________	__________________________
(e)	$___________________	__________________________
TOTAL:	$___________________	

(a) Do the persons whose income or contributions are included in Item 4 above have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interest in Indian trust land)?

Yes _________ No ______

(b) Have the persons whose income or contributions are included in Item 4 above disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value?

Yes _________ No ______

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than $5,000?

Yes _________ No ______

(d) If the answer to (c) above is yes,

insert the total value of all such assets owned or disposed of $__________________; and

state:

the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent:
$_____
the amount of such income, if any, that was included in Item 4 above:
$_____

Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter, the

"Owner"), has any family relationship to the Owner or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member and ownership, direct or indirect, by a partner of the individual.

This Income Certification is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit, and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 4 is reasonable and based upon such investigation as the undersigned deemed necessary.

I/we will assist the Owner in obtaining any information or documents required to verify the statements made therein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

I/we acknowledge that I/we have been advised that the making of any misrepresentation or misstatement (whether or not intentional) in this Income Certification will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent my/our occupancy of the unit and will be cause for immediate termination of such lease.

The undersigned hereby acknowledge and agree that on or before _____________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.

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 Ewe 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]

Calculation of Eligible Income:

Enter the amount entered for entire household in 4 above: $______
Enter income derived from assets (line 5(d)(2)(a): $______
Subtract b. from a. $______
Multiply the amount entered in 5(d)(1) by the current passbook savings rate to determine the total annual earnings on assets [5(d)(1)] if invested in passbook savings.

Passbook rate ___________ % X______ = $______

Enter the greater of b or d $______
TOTAL ELIGIBLE INCOME (Line e + c) $______

The amount entered in 12(f):

______ Qualifies the applicant(s) as a (s)
______ Does not qualify the applicant(s) as (s).

Number of apartment unit assigned:

Bedroom size:________ Rent:$______

Tenant-paid Utilities:

Water______ Gas______ Electric________

Trash_______ Other (list type)____________

Was this apartment unit last occupied for a period of 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as Low Income Tenants?

Yes ________ No ______

Method used to verify applicant(s) income:

______ Employer income verification
______ Social Security Administration verification
______ Department of Social Services verification
______ Copies of tax returns
______ Other (___________)

OWNER'S STATEMENT: Based on the representations herein and upon the proofs and documentation submitted pursuant to paragraph 8 hereof, the family or individual(s) names in paragraph 2 of this Income Certification is/are eligible under the provisions of the 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:_____

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:______________________________

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 Mishawaka, Indiana for persons of low or moderate 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 EPD Ironwood, LP in order that they may determine my income eligibility for rental of an apartment located in their project which has been financed by an issuance of bonds issued by the City of Mishawaka, Indiana.

____

Signature

____

Date

Please send form to:

EPD Ironwood, LP
c/o Eagle Point Development
125 John Roberts Road, Suite 12
South Portland, Maine 04106
Attention: President

[INCOME VERIFICATION SIGNATURE PAGE]

INCOME VERIFICATION
(for self-employed persons)

I hereby attach copies of my individual federal and state (if applicable) income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

____
Signature

____
Date

EXHIBIT C

OCCUPANCY CERTIFICATE

To be filed with a Verification of Income
upon the rental of a unit to any tenant.

Project: ______

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

EPD IRONWOOD, LP, an Indiana limited partnership

By: [____________], a Maine limited liability company, its General Partner

By:______________________________
Name:
Title: Authorized Signatory

____
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.

EPD IRONWOOD, LP, an Indiana limited partnership

By: [_____________], a Maine limited liability company, its General Partner

By:______________________________
Name:
Title: Authorized Signatory

____
Witness

____
Date

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

SECTION 8	BLDG/UNIT	# OF BDRMS	TENANT NAME	# IN HSHLD	DATE OF OCCUPANCY	INCOME AT OCCUPANCY	INCOME AT RE-CERTIFICATION	INITIAL RENT	CURRENT RENT	VACATE DATE

DMS 13641297v1

INDENTURE OF TRUST

by and between

CITY OF MISHAWAKA, INDIANA

and

UMB BANK, N.A.,

as Trustee

Dated as of __________ 1, 2019

Relating to:

$7,600,000
City of Mishawaka, Indiana
Multifamily Housing Revenue Bonds
(Ironwood Village Apartments Project), Series 2019

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INDENTURE OF TRUST

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this "Indenture"), dated as of ______ 1, 2019, made and entered into by and between **CITY OF MISHAWAKA, INDIANA**, a municipal corporation and a political subdivision of the State of Indiana (together with its successors and assigns, the "Issuer"), and **UMB BANK, N.A.**, a national banking association, as trustee (together with any successor trustee hereunder and their respective successors and assigns, the "Trustee"),

WITNESSETH:

WHEREAS, by virtue of the authority of the laws of the State of Indiana, and particularly the Act (as hereinafter defined), the Issuer is empowered to issue its revenue bonds to finance low-and-moderate income multifamily rental housing projects participating in programs established in Section 42 of the Internal Revenue Code of 1986, as amended, within the State (hereinafter defined); and

WHEREAS, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds (Ironwood Village Apartments Project), Series 2019 in the original aggregate principal amount of $7,600,000 (the "Bonds"), for the purpose of financing the cost of the acquisition, renovation, installation and equipping of a multifamily rental housing facility, consisting of a total of 128 units and related personal property and equipment, and located at 1310 Blossom Drive, Mishawaka, Indiana (the "Project Facilities") all pursuant to this Indenture and the Loan Agreement, dated as of _______ 1, 2019 (as amended, modified or supplemented from time to time, the "Loan Agreement"), between the Issuer and EPD Ironwood, LP, a limited partnership duly organized and existing under the laws of the State of Indiana (together with its permitted successors and assigns, the "Borrower"); and

WHEREAS, pursuant to Ordinance No. _______ adopted by the Common Council of the Issuer on _____________ __, 2019 (the "Ordinance"), the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Project Costs by the issuance of the Bonds, all as hereinafter provided; and

WHEREAS, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

WHEREAS, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE COVENANTS AND UNDERTAKINGS HEREIN EXPRESSED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

GRANTING CLAUSES

The Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a), (b), (c) and (d) below (said property being herein referred to as the "Security"), to wit:

(a) All moneys from time to time paid by the Borrower pursuant to the terms of the Loan Agreement, the Note and the Bond Documents and all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement, the Bond Documents and the Note (but in each instance excluding the Reserved Rights, as defined herein); and

(b) All other moneys and securities from time to time held by the Trustee under the terms of this Indenture, excluding the Rebate Fund and excluding amounts required to be rebated to the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended, whether or not held in the Rebate Fund; and

(c) Any and all property, rights and interests (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder to the Trustee, which the Trustee is hereby authorized to receive at any and all times and to hold and apply the same subject to the terms of this Indenture; and

(d) All of the proceeds of the foregoing (except the amounts payable to or on behalf of the Issuer on account of its Reserved Rights), including without limitation investments thereof;

TO HAVE AND TO HOLD, all and singular, the Security with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

IN TRUST NEVERTHELESS, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection of this Indenture of one Bond over or from the others, except as herein otherwise expressly provided;

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of and premium, if any, on such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by the provisions of Article V (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or interest on Bonds, except Bonds purchased and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and interest thereon payable to the Holders thereof), and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Security is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee, for the benefit of the respective Holders from time to time of the Bonds as follows:

ARTICLE I
DEFINITIONS

Section 1.1 **Defined Terms**. In addition to terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

"Accountant" means Cohn Reznick, or such other accounting firm approved in writing by the Controlling Person.

"Accounts" means all funds and accounts established under this Indenture, including the Bond Fund, the Surplus Fund, the Operating Reserve Fund, the Rebate Fund, the Project Fund, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund and the Redemption Fund.

"Act" means Indiana Code 36-7-11.9 and 12.

"Advance" means any disbursement from the Project Fund established under this Indenture made or to be made by the Trustee pursuant to the terms of the Loan Agreement.

"Affiliate" means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

"Annual Budget" means, for any Fiscal Year, the capital and operating budget adopted by the Borrower and approved by the Controlling Person, or deemed approved, pursuant to Section 6.24 of the Loan Agreement.

"Anti-Terrorism Regulations" shall have the meaning ascribed to such term in Section 6.23 of the Loan Agreement.

"Architect" means [____].

"Architect's Agreement" means the contract dated ____________, 2019 between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the renovation thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of Final Completion, among other things, as the same may be amended, modified or supplemented from time to time.

"Assignment of Capital Contributions" shall have the meaning provided in Section 3.1 of the Loan Agreement.

"Assignment of Management Agreement and Consent" shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

"Assignment of Project Documents" shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

"Assignment of Rents" shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

"Authorized Denomination" means $100,000, and any amount in excess of $100,000, but not in excess of the aggregate principal amount of Bonds then Outstanding.

"Authorized Person" means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Persons of the Borrower are Richard Nelson and Laura Burns.

"Bankruptcy Code" means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

"Beneficial Owner" means the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository or a DTC Participant or an Indirect Participant on the records of such Securities Depository, DTC Participant or Indirect Participant, as the case may be, or such Person's subrogee.

"Bond" or **"Bonds"** shall have the meaning given to such term in the recitals to this Indenture.

"Bond Counsel" means an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, reasonably acceptable to the Controlling Person.

"Bond Coupon Rate" means [5.20% per annum from the Issue Date through and including November 30, 2020 and 5.35% per annum thereafter.]

"Bond Documents" means, collectively, the Bonds, this Indenture, the Loan Agreement, the Note, the Land Use Restriction Agreement, the Tax Agreement, the Purchase Agreement, the Mortgage, the Environmental Indemnity, the Assignment of Management Agreement and Consent, the Continuing Disclosure Agreement, the Assignment of Rents, the Replacement Reserve Agreement, the Assignment of Project Documents, the General Partner Pledge, the Developer Fee Pledge, the Assignment of Capital Contributions, the Guaranty of Recourse Obligations, the Guaranty of Debt Service and the Guaranty of Completion, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Bonds, including all modifications, amendments or supplements thereto.

"Bond Fund" means the fund of that name created pursuant to Section 4.1(a) hereof.

"Bondholder" or **"Holder"** or **"Owner"** or words of similar import, when used with reference to the Bonds, means the registered owner or owners or Beneficial Owner or Beneficial Owners of the Bonds, as applicable.

"Book-Entry System" means a book-entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to Section 2.14 hereof.

"Borrower" shall have the meaning given to such term in the recitals to this Indenture.

"Business Day" means any day on which the offices of the Trustee are open for business and on which The New York Stock Exchange is not closed.

"Capital Expenditures" means the capital expenditures relating to any construction, renovation, rehabilitation, repair and replacement of the Improvements or made pursuant to the recommendations of the Engineering Consultant.

"Capitalized Interest Account" means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

"Change Order" means a change made to the Plans and Specifications relating to the Project Facilities, as evidenced by a written change order request in accordance with the terms of the Construction Contract.

"Code" means the Internal Revenue Code of 1986, as amended, and the rulings and regulations (including temporary and proposed regulations) promulgated thereunder.

"Collateral" means all property of the Borrower in which the Trustee is granted a security interest to secure payment of the Bonds.

"Completion Date" means the date by which the renovation of the Improvements must achieve Final Completion. The initial Completion Date for the renovations is July 1, 2020; provided, however, that at the written request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended for six (6) months or for such period as the Controlling Person may approve in its sole discretion, upon delivery of (i) such information and funds as reasonably requested by the Controlling Person or the Majority Owner and (ii) an extension fee equal to fifty (50) basis points multiplied by the original principal amount of the Bonds to the Red Stone Servicer LLC.

"Condemnation Award" means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the property subject to the Mortgage less the actual costs incurred, including attorneys' fees, in obtaining such award.

"Construction Contract" means the contract, dated as of [_______________], between the Borrower and the Contractor, providing for the renovation of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

"Contamination" means the uncontained release, discharge or disposal of any Hazardous Substances at, on, upon or beneath the Project Facilities, whether or not originating at the Project Facilities, or arising from the Project Facilities into or upon any land or water or air, or otherwise into the environment, which may require remediation under any applicable Legal Requirements.

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement dated as of ________ 1, 2019, between the Borrower and UMB Bank, N.A., as dissemination agent, as the same may be amended, modified or supplemented from time to time.

"Contractor" means [____].

"Control" (including, with the correlative meanings, the terms "controlling", "controlled by" and "under common control with") means, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

"Controlling Person" means any entity designated in writing by the Majority Owner to act as a Controlling Person hereunder, in accordance with Article IX hereof. If at any time a Controlling Person has not been designated by the Majority Owner, all references herein and in other Bond Documents to "Controlling Person" shall refer to the Majority Owner. The initial Controlling Person is Red Stone Servicer, LLC.

"Costs of Issuance Account" means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

"Counsel" means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

"Default" means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

"Default Interest" means interest payable at the Default Rate.

"Default Rate" means a rate per annum equal to ten percent (10%) per annum; provided that such rate shall in no event exceed the maximum rate allowed by law.

"Determination of Taxability" means a determination that the interest accrued or paid on any of the Bonds is included in gross income of the Holders or former Holders for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(i) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(ii) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received (1) a notice in writing by any Holder or former Holder that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Holder or former Holder that asserts in effect that the interest on the Bonds received by such Holder or former Holder is included in the gross income of such Holder or former Holder for federal income tax purposes, or (2) an Opinion of Bond Counsel that concludes in effect that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(iii) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes; or

(iv) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

provided, however, no Determination of Taxability shall occur if the interest on any of the Bonds is included in the gross income of any Holder or former Holder for federal income tax purposes solely because such Bond was held by a Person who is a Substantial User or a Related Person.

"Developer Fee Pledge" shall have the meaning provided in Section 3.1 of the Loan Agreement.

"Development Budget" means the budget for the implementation and completion of the acquisition, renovation, installation and equipping of the Project Facilities, initially as attached to the Loan Agreement as Schedule 4, together with any modifications or amendments thereto made in accordance with the Loan Agreement and with the prior written consent of the Controlling Person.

"DTC Participant" means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

"Effective Gross Revenues" of the Borrower means, for the period being tested, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person's reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person's judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) five percent (5%), or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; (v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Controlling Person.

"Engineering Consultant" means [Terracon Consultant's Inc.], or any other engineer licensed to practice in the State and chosen by the Controlling Person.

"Environmental Audit" means the written Phase I environmental site assessment for the Project Facilities prepared by [Terracon Consultants, Inc.] dated [____________, 2019].

"Environmental Indemnity" shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

"**Environmental Laws**" means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (i) activities at any of the Project Facilities, (ii) repairs or renovation of any Improvements, (iii) handling of any materials at any of the Project Facilities, (iv) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (v) storage, distribution, use, treatment, transport or disposal of any waste at or connected with any activity at any of the Project Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. §§ 9601 et seq., as amended from time to time; the Hazardous Materials Transportation Act 49 U.S.C. §§ 5101 et seq., as amended from time to time; the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq., as amended from time to time; the Federal Water Pollution Control Act 33 U.S.C. §§ 1251 et seq., as amended from time to time; and comparable State statutes.

"**Environmentally Sensitive Area**" means (i) a wetland or other "water of the United States" for purposes of Section 404 of the federal Clean Water Act or any similar area regulated under any State or local Legal Requirements, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable state Legal Requirements, (iii) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (iv) any other area development of which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

"**EPA**" shall have the meanings ascribed to such term in Section 6.14(e) of the Loan Agreement.

"**Equity Account**" means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

"**ERISA**" shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

"**ERISA Affiliate**" shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

"**Event of Default**" means, with respect to this Indenture, any of the events specified in Section 6.1 hereof, or with respect to the Loan Agreement, any of the events specified in Section 7.1 thereof.

"**Executive**" means the Mayor of the Issuer.

"**Expenses**" means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person. In determining Expenses, the Controlling Person will take into account: (i) the actual amount of aggregate annualized Expenses, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; and (ii) the annual Expenses that the Controlling Person used in the original underwriting of the Project Facilities, as set forth on Schedule 11 of the Loan Agreement. Any expense adjustment as reasonably determined by the Controlling Person may result in a line item which may be more or less than the actual annual expense for that line item for the period covered by the financial statements submitted by the Borrower to the Controlling Person.

"**Favorable Opinion of Bond Counsel**" means an opinion of Bond Counsel, addressed to the Issuer, the Trustee and the Majority Owner, with a copy to the Controlling Person, to the effect that a proposed action, event or circumstance (i) does not affect the exclusion from gross income of interest on the Bonds for federal income tax purposes, and (ii) does not affect the treatment of interest on the Bonds as not being an item of tax preference for purposes of the federal alternative minimum tax, which opinion may be subject to customary assumptions and exclusions.

"Final Completion" means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

(i) the Controlling Person shall have received a copy of the final Plans and Specifications containing all Change Orders and there shall have been no Material Change Orders other than Material Change Orders approved by the Controlling Person;

(ii) the Borrower shall have obtained the Governmental Actions, if any, required by the Legal Requirements and all Governmental Authorities associated with the Project Facilities, including use and occupancy permits (if any are required), and shall have furnished true copies of all such Governmental Actions to the Controlling Person. Temporary certificates of occupancy, as opposed to final certificates of occupancy or their equivalent, shall be acceptable provided (A) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions), (B) such Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities, (C) such Punchlist Items do not include major appliances or materially affect the systems (including plumbing, electrical, HVAC, mechanical, roofing and sprinklers) serving the Project Facilities or major structural components of the Project Facilities, and (D) adequate reserves, in amounts equal to 110% of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

(iii) as to all such Governmental Actions, no appeal or other action or proceeding challenging any such Governmental Actions shall have been filed or, if filed and decided, there shall have been no appeal (or further appeal) taken and all other statutory appeal periods must have expired, and there shall be no claim, litigation or governmental proceeding pending against the Borrower or the Project Facilities challenging the validity or the issuance of any zoning, subdivision or other land use ordinance, variance, permit or approval, or any Governmental Action of the kind described in this subparagraph (iii). In addition, as to all of such permits, approvals and certificates having statutory, regulatory or otherwise expressly specified and determinable appeal periods, such periods, if any, must have expired without an appeal having been taken (or any such appeal shall have been denied or shall have affirmed the granting of such Governmental Action);

(iv) the Controlling Person shall have received from the Architect, a certificate of the Architect in the form customary for projects of the scope of the Work for the Project Facilities with respect to completion of the Work at the Project Facilities;

(v) all Work set forth in the Plans and Specifications for the Project Facilities shall have been substantially completed and incorporated into the Improvements at the Project Facilities;

(vi) except for Permitted Encumbrances and Impositions not then due and payable, the Project Facilities shall be free of any and all private or governmental charges, claims or Liens (filed or not) of any nature, excepting only the liens and Security Interests in favor of the Trustee and any other encumbrances approved by the Controlling Person in writing;

(vii) with respect to all contractors and subcontractors and materialmen (for contracts less than $50,000, only as required by the Title Company; provided that the Title Company insures over any mechanics' and materialmen's liens arising from such excepted contractors, subcontractors or materialmen), either (i) the Borrower shall have obtained an unconditional waiver and release upon final payment of mechanics' and materialmen's liens if there are no Punchlist Items, or (ii) if there are Punchlist Items, the Borrower shall have obtained an unconditional waiver and release upon progress payment of mechanics' and materialmen's liens for all of the Improvements at the Project Facilities except for the Punchlist Items, and true copies thereof have been delivered to the Controlling Person;

(viii) the final complete use of proceeds and completion certificates in the form required under the Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person; and

(ix) the Trustee shall have received an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances.

"Financing Statements" means any and all financing statements (including continuation statements) or other instruments filed or recorded to perfect the Security Interest created in this Indenture.

"Fiscal Year" means the annual accounting year of the Borrower, which currently begins on January 1 of each calendar year.

"Fitch" means Fitch, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

"Force Majeure" means any acts of God, strikes, walkouts or other labor disputes, riots, civil strife, war, acts of a public enemy, lightning, fires, explosions, storms or floods or shortages of labor or materials or other causes of a like nature beyond the control of the Borrower; provided, however, that the unavailability of sources of financing, the insufficiency of funds, the loss of a tenant or changes in market conditions shall not constitute Force Majeure.

"GAAP" means generally accepted accounting principles in effect in the United States from time to time, consistently applied.

"General Partner" means [________________________________], a Maine limited liability company authorized to conduct its business in the State, the general partner of the Borrower, together with its successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of "Permitted Transfer" herein.

"General Partner Pledge" shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

"Government Obligations" means (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

"Governmental Action" means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority and shall include all permits and licenses required to renovate, use, operate and maintain any of the Project Facilities.

"Governmental Authority" means any federal, state, or local governmental or quasi - governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Borrower and/or the Project Facilities.

"Guarantor" means collectively, [Eagle Point Development, LLC, a Maine limited liability company, and Eagle Point Development – Series 2, LLC], a Maine limited liability company, together with its permitted successors and assigns.

"Guaranty of Completion" shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

"Guaranty of Debt Service" shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

"Guaranty of Recourse Obligations" shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

"Hazardous Substances" means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of "hazardous substances" as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, "regulated substances" within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

"Impositions" means, with respect to the Project Facilities, all taxes including, without limitation, all real and personal property taxes, water charges and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Project Facilities.

"Improvements" means all buildings and other improvements included in the Project Facilities.

"Indebtedness" means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the Issuer, the Controlling Person, the Trustee or to the Holders from time to time of the Bonds, now existing and hereafter arising, under or in connection with this Indenture or any of the other Bond Documents, including all Repayments and all future advances, principal, interest, indemnities, other fees, late charges, enforcement costs and other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Controlling Person, the Trustee, the Issuer or the Holders from time to time of the Bonds.

"Indemnified Parties" shall have the meaning given to such term in Section 2.5 of the Loan Agreement.

"Indenture" shall have the meaning given to such term in the first paragraph hereof.

"Indirect Participant" means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository through a DTC Participant.

"Insurance and Condemnation Proceeds Account" means the account within the Project Fund created pursuant to Section 4.1(a) hereof.

"Insurance Proceeds" means the total proceeds of insurance actually paid or payable by an insurance company in respect of the required insurance on the Project Facilities, less the actual costs incurred, including attorneys' fees, in the collection of such proceeds.

"Interest Payment Date" means the first Business Day of each month that the Bonds are Outstanding, beginning February 1, 2019.

"Issue Date" means ________ ________, 2019, the date on which the Bonds are issued and delivered to the purchaser or purchasers thereof.

"Issuer" means the City of Mishawaka, Indiana, a municipal corporation and political subdivision, duly organized and existing under the laws of the State of Indiana, including the Act, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

"Land Use Restriction Agreement" means the Land Use Restriction Agreement, dated as of __________ 1, 2019, among the Issuer, the Trustee and the Borrower, as the same may be amended, modified, supplemented and restated from time to time.

"Lease" shall have the meaning assigned to such term in the Mortgage.

"Legal Requirements" means all statutes, codes, laws, ordinances, regulations, rules, policies, or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to the health, safety or the environment).

"**Lien**" means any lien, mortgage, security interest, tax lien, pledge, encumbrance, title exception, conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

"**Loan**" means the loan of proceeds of the Bonds from the Issuer to the Borrower, as evidenced by the Note and pursuant to the terms of the Loan Agreement.

"Loan Agreement" shall have the meaning given to such term in the recitals to this Indenture.

"Local Time" means eastern time (daylight or standard, as applicable) in New York, New York.

"Majority Owner" means any one Person that is the Beneficial Owner of the Outstanding Bonds; provided, however, if no one Person is the Beneficial Owner of all of the Outstanding Bonds, "Majority Owner" means the Beneficial Owner or Owners of at least a majority in aggregate principal amount of all Outstanding Bonds.

"Management Agreement" shall have the meaning ascribed to such term in Section 6.19 of the Loan Agreement.

"Manager" means Eagle Point Management, LLC, a Maine limited liability company, together with any successor manager of the Project Facilities approved by the Controlling Person and their respective successors and assigns.

"Material Change Order" means, with respect to the Project Facilities, a Change Order which (i) would result in an increase or decrease of $50,000 in the aggregate contract price of the Work to be performed on the Project Facilities; (ii) when aggregated with other Change Orders previously effected, would result in an increase or decrease in excess of $250,000 in the aggregate contract price for the Work to be performed on the Project Facilities; (iii) would reduce the number of apartment units in the Project Facilities; (iv) would materially reduce the aggregate useable square footage of the apartment units or the parking areas in the Project Facilities; (v) would change the number of one, two and three bedroom apartments in the Project Facilities; (vi) would alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (vii) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (viii) makes a substitution for any material or product that is of lesser quality, in the Controlling Person's determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (ix) would materially adversely impair the value of the Project Facilities once the Work is completed.

"Material Contract" means each indenture, mortgage, agreement or other written instrument or contract to which the Borrower is a party or by which any of its assets are bound (including, without limitation, any employment or executive compensation agreement, collective bargaining agreement, agreement relating to an Obligation, agreement for the acquisition, renovation, repair or disposition of real or personal property, agreement for the purchasing or furnishing of services, operating lease, joint venture agreement, agreement relating to the acquisition or disposition of an Affiliate or agreement of merger or consolidation) which (i) evidences, secures or governs any outstanding obligation of the Borrower of $100,000 or more per annum, or (ii) if canceled, breached or not renewed by any party thereto, would have a material adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

"Maturity Date" means December 1, 2058.

"Moisture Management Program" shall have the meaning ascribed to such term in Section 6.14(e) of the Loan Agreement.

"Mold" shall have the meaning ascribed to such term in Section 6.14(e) of the Loan Agreement.

"**Monitoring Fee**" shall have the meaning given to such term in Section 2.2(a) of the Loan Agreement.

"Monthly Tax and Insurance Amount" means an amount equal to the sum of (i) one-twelfth (1/12th) of the annual Impositions, plus (ii) one-twelfth (1/12th) of the annual insurance premiums for the insurance coverages for the Project Facilities required by Section 6.4 of the Loan Agreement, as any such amounts may be increased if the Controlling Person determines that funds in the Tax and Insurance Escrow Fund will be insufficient to pay Impositions and insurance premiums when due.

"Moody's" means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

"Mortgage" shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

"Note" means the promissory note of the Borrower, dated the Issue Date, as endorsed by the Issuer to the Trustee, without recourse, in the form attached as Exhibit A to the Loan Agreement.

"Obligations" means any and all obligations of the Borrower for the payment of money including without limitation any and all (i) obligations for money borrowed, (ii) the Indebtedness and all other obligations evidenced by bonds, debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) obligations under any applicable ground lease, (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations incurred and payable in the ordinary course of Borrower's business under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the pension paid and paid within thirty (30) days of the date such amounts are due.

"OFAC Violation" shall have the meanings ascribed to such term in Section 6.23 of the Loan Agreement.

"Operating Reserve Fund" means the fund of that name created pursuant to Section 4.1(a) hereof.

"Opinion of Bond Counsel" means any opinion of Bond Counsel delivered pursuant to this Indenture with respect to the excludability of interest on the Bonds from gross income of the Holders thereof for federal income tax purposes. Each such opinion shall be addressed to the Trustee, the Majority Owner, the Controlling Person and the Issuer.

"Origination Fee" shall have the meaning given to such term in Section 2.2(a) of the Loan Agreement.

"Outstanding" means, when used with reference to the Bonds at any date as of which the amount of outstanding Bonds is to be determined, all Bonds that have been authenticated and delivered by the Trustee hereunder, except:

(i) Bonds cancelled by the Trustee or delivered to the Trustee for cancellation at or prior to such date;

(ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;

(iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof; and

(iv) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Borrower or any Affiliate of the Borrower; provided, however, that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Borrower or any affiliate of the Borrower, then such Bonds shall be deemed to be Outstanding at such time for the purposes of this subparagraph (iv).

"Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of [________________].

"PBGC" shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

"Permitted Encumbrances" means only:

(i) the Land Use Restriction Agreement;

(ii) the Mortgage;

(iii) the Assignment of Rents;

(iv) for Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;

(v) statutory liens of landlords and liens of carriers, warehouseman, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (1) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided (2) such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person; and

(vi) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

"Permitted Investments" means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

(i) Bonds or other obligations of the United States;

(ii) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;

(iii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;

(iv) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody's or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody's;

(v) Prime commercial paper rated either "A-1" by S&P or "P-1" by Moody's and, if rated by both, not less than "A-1" by S&P and "P-1" by Moody's;

(vi) Bankers' acceptances drawn on and accepted by commercial banks;

(vii) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (vi) of this definition or obligations determined to be of comparable quality by the board of directors of such fund or trust, including, without limitation, any such money market fund or trust for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (a) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (b) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (c) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates; and

(viii) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person, provided that the Trustee may require as a condition to the investment of funds under this clause (viii) there having first been delivered to the Trustee an opinion of Counsel to the effect that investment is permitted under any applicable laws of the State.

"Permitted Transfer" means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or indirect ownership interest in the General Partner for estate planning purposes, so long as such transfer does not result in a change of management or control of the General Partner, (iii) a transfer of partnership interests in Borrower to the Tax Credit Investor and/or the Special Limited Partner, (iv) a transfer of the limited partner interests of the Tax Credit Investor and/or the Special Limited Partner in the Borrower to an Affiliate of such Tax Credit Investor and/or Special Limited Partner, (v) a transfer of the limited partner interests of the Tax Credit Investor and/or the Special Limited Partner in the Borrower to non-affiliates of such Tax Credit Investor and/or Special Limited Partner with simultaneous notice of such transfer provided to the Controlling Person, (vi) a transfer of any shares or ownership interests in the Tax Credit Investor and/or Special Limited Partner, (vii) transfers of any interests in the General Partner so long as the Guarantor, or one or more members of the Guarantor, controls the Borrower after such transfer occurs, (viii) the removal and replacement of the General Partner pursuant to the Partnership Agreement, (ix) after the payment in full of all capital contributions under the Partnership Agreement, any other transfer, assignment, pledge, hypothecation or conveyance of limited partner interests in, or change in the limited partners of, the Borrower (and the owners of such limited partners) not described above, in accordance with the terms of the Partnership Agreement, or (x) the extension, amendment or replacement of commercial leases approved by the Controlling Person.

"Person" means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Plans and Specifications" means, with respect to the Project Facilities, the plans and specifications for the renovation of Improvements prepared by the Architect and more particularly identified on Schedule 5 attached to the Loan Agreement and approved by the Controlling Person, as the same may be amended, modified or supplemented as permitted under the Loan Agreement through Change Orders or otherwise.

"Principal Payment Date" means (i) the first (1st) Business Day of each January, April, July and October that the Bonds are Outstanding, commencing on January 1, 2021, (ii) any other redemption date for the Bonds, and (iii) the Maturity Date for the Bonds.

"Project Costs" means the costs, fees, and expenses associated with the acquisition, renovation, installation and equipping of the Project Facilities for use as affordable rental housing including but not limited to the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, and the payment of certain costs and expenses incidental to the issuance of the Bonds.

"Project Facilities" means the land and the multifamily apartment housing facilities consisting of a total of 128 units and related improvements, personal property and equipment, located at 1310 Blossom Drive, Mishawaka, Indiana, the acquisition, renovation, installation and equipping of which are being financed by the proceeds of the Bonds.

"Project Fund" means the fund of that name created pursuant to Section 4.1(a) hereof.

"Proposed Budget" shall have the meaning given to such term in Section 6.24 of the Loan Agreement.

"Punchlist Items" means any items necessary at the time of the issuance of a temporary use and occupancy permit to complete fully the renovation of the Project Facilities in accordance with the Plans and Specifications for the Project Facilities, or required for the issuance of a final certificate of occupancy or its equivalent.

"Purchase Agreement" means the Bond Purchase Agreement, dated [________________], among the Issuer, the Borrower and [______________], relating to the initial sale of the Bonds.

"Qualified Project Costs" means the actual costs incurred to acquire, renovate, install and equip the Project Facilities which (i) are or were incurred after [____________], (ii) are (A) chargeable to the Project Facilities' capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(l), and if charged or chargeable to the Project Facilities' capital account are or would have been deducted only through an allowance for depreciation or (B) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code, and (iii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code.

"Rebate Amount" shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

"Rebate Analyst" shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement and shall be reasonably acceptable to the Controlling Person.

"Rebate Fund" means the fund of that name created pursuant to Section 4.1(a) hereof.

"Rebate Report" shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

"Record Date" means with respect to each Interest Payment Date, the Trustee's close of business on the day before such Interest Payment Date occurs, regardless of whether such day is a Business Day.

"Redemption Fund" means the account of that name created pursuant to Section 4.1(a) hereof.

"Register" means the register of the record Owners of Bonds maintained by the Trustee.

"Regulatory Agreement Default" shall have the meaning given to such term in Section 7.9(b) of the Loan Agreement.

"Related Person" with reference to any Substantial User, means a "related person" within the meaning of Section 147(a)(2) of the Code.

"Rents" shall have the meaning assigned to such term in the Mortgage.

"Repayments" means all payments of principal and interest on the Loan required to be paid by the Borrower to the Trustee, as the assignee of the Issuer pursuant to the Loan Agreement.

"Replacement Reserve Agreement" shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

"Replacement Reserve Fund" means the fund of that name created pursuant to Section 4.1(a) hereof.

"Required Equity Funds" means [____________], comprised of [____________] (__) separate installments of equity contributions to be made to the Borrower by the Tax Credit Investor, subject to and in accordance with the terms of the Partnership Agreement.

"Requisition" means a requisition in the form attached to the Loan Agreement as Exhibit B, together with all invoices, bills of sale, schedules, applications for payment, certifications and other submissions required for the disbursement of the proceeds of the Bonds from the Project Fund pursuant to the terms hereof.

"Reserved Rights" means the rights of the Issuer pursuant to Sections 2.5, 4.2, 6.10, 10.5 and 10.13 of the Loan Agreement and the rights of the Issuer pursuant to other sections of the Loan Agreement providing that notices, reports and other statements be given to the Issuer.

"Retainage" means (i) until such time as the Project Facilities achieves 50% completion, a holdback of ten percent (10%) of the hard costs of renovation of the Improvements under each contract or subcontract, (ii) after the Project Facilities achieves 50% completion and until such time as the Project Facilities achieves 75% completion, a holdback of five percent (5%) of the hard costs of renovation of the Improvements under each contract or subcontract, and (iii) after the Project Facilities achieves 75%

completion, a holdback of zero percent (0%) of the hard costs of renovation of the Improvements under each contract or subcontract.

"Sale" means the direct or indirect sale, agreement to sell, assignment, transfer, conveyance, hypothecation, lien, mortgage, grant of a security interest in or a deed to secure debt or deed of trust with respect to, encumbrance, lease, sublease or other disposition of the Project Facilities, or any part thereof or interest therein whether voluntary, involuntary, by operation of law or otherwise, other than (i) the leasing of individual residential units to tenants, (ii) the extension, amendment, renewal or replacement of commercial leases currently in effect, and (iii) the grant of easements for utilities and similar purposes in the ordinary course provided, such easements do not impair the use of the Project Facilities or diminish the value of the Project Facilities. "Sale" shall also include the direct or indirect sale, transfer, assignment, pledge, hypothecation or conveyance of legal or beneficial ownership of (a) equity ownership interests in the Borrower, (b) a controlling interest in the aggregate, at any time or times, of the equity ownership interests in the General Partner, or (c) the substitution of a new general partner in the Borrower without the Controlling Person's prior written consent, which it may withhold in its sole discretion; provided, however, that "Sale" shall not include a Permitted Transfer.

"S&P" means Standard & Poor's Ratings Services, a division of Standard & Poor's Financial Services LLC, a limited liability company organized and existing under the laws of the State of New York, its successors and assigns and, if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

"Secondary Market Transaction" shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

"Securities Depository" means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

"Securities Depository Nominee" means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Register the Bonds to be delivered to such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

"Securities" shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

"Securities Group" shall have the meaning given to such term in Section 10.12(c) of the Loan Agreement.

"Security" shall have the meaning given to such term in the Granting Clauses of this Indenture.

"Security Interest" or **"Security Interests"** means the security interests created herein and shall have the meanings set forth in the U.C.C.

"Special Limited Partner" means [____], and its successors and assigns in such capacity pursuant to the Partnership Agreement.

"**Stabilization**" means the point at which (i) the Improvements have been ninety percent (90%) occupied by tenants meeting the requirements of the Bond Documents in each of the prior three (3) consecutive months; (ii) the ratio of Stabilized NOI in the prior three (3) consecutive months in the aggregate to the maximum principal, interest, Issuer fees and Trustee fees payable in any three month period in the aggregate on the amount of Bonds Outstanding equals or exceeds 1.15 to 1.0; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Final Completion; (v) the Borrower shall have deposited an amount equal to approximately $486,258, or such other amount as approved by the Controlling Person, in the Operating Reserve Fund; and (vi) a portion of the Bonds shall have been redeemed in accordance with Section 2.12(b)(vii) hereof (which can occur not later than sixty (60) days following the Stabilization Date), all as determined or approved by the Controlling Person.

"**Stabilization Date**" means ________ 1, 2020; provided, however, that at the written request of the Borrower and with the prior written approval of the Controlling Person, the Stabilization Date may be extended for six (6) months or for such lesser period as the Controlling Person may approve in its sole discretion, upon delivery of (i) such information and funds as reasonably requested by the Controlling Person or the Majority Owner and (ii) an extension fee equal to fifty (50) basis points multiplied by the original principal amount of the Bonds to the Red Stone Servicer LLC.

"**Stabilized NOI**" means, for any period, (x) Effective Gross Revenues for such period less (y) Expenses for such period, as determined or approved by the Controlling Person.

"**State**" means the State of Indiana.

"**Substantial User**" means, with respect to any "facilities" (as the term "facilities" is used in Section 144(a) of the Code), a "substantial user" of such "facilities" within the meaning of Section 147(a) of the Code.

"**Surplus Bond Proceeds**" means all moneys and any unliquidated investments remaining in the Bond Proceeds Account or Capitalized Interest Account of the Project Fund upon Final Completion and after payment in full of the Project Costs (except for proceeds of the Bonds being retained to pay for Project Costs not then due and payable for which the Trustee shall have retained amounts pursuant to the Loan Agreement).

"**Surplus Fund**" means the fund of that name created pursuant to Section 4.1(a) hereof.

"**Tax Agreement**" means with respect to the Issuer, the Arbitrage Certificate executed by the Issuer and, with respect to the Borrower, the Tax Representation Certificate executed by the Borrower, each dated as of the Closing Date, and any exhibits, schedules, amendments and supplements to the foregoing certificates.

"**Tax and Insurance Escrow Fund**" means the fund of that name created pursuant to Section 4.1(a) hereof.

"**Tax Credit Investor**" means [________________________________], and its successors and assigns in such capacity pursuant to the Partnership Agreement.

"**Third Party Costs**" means the ongoing fees of the Issuer, the Trustee the Rebate Analysts or any other third party in connection with the Bonds.

"Title Company" means First American Title Insurance Company.

"Title Policy" means the mortgagee's title insurance policy relating to the Project Facilities issued by the Title Company to the Trustee, effective on the date of recording of the Mortgage, as the same may be subsequently down-dated or endorsed from time to time, with the approval of the Controlling Person.

"Trustee" shall have the meaning given to such term in the first paragraph of this Indenture.

"U.C.C." means the Uniform Commercial Code of the State as now in effect or hereafter amended.

"Work" means the items of renovation of the Improvements required to be performed under the Plans and Specifications for the Improvements.

Section 1.2 **Rules of Construction**. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) All terms defined in the Loan Agreement and not defined herein shall have the meaning given to such terms in the Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture, unless otherwise indicated.

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. The total principal amount of Bonds that may be issued and Outstanding hereunder is expressly limited to $____________. The Bonds shall be designated City of Mishawaka, Indiana Multifamily Housing Revenue Bonds (Ironwood Village Apartments Project), Series 2019. The form of Bonds attached as Exhibit A to this Indenture shall be the form of Bonds referred to herein.

Section 2.2 **Issuance of Bonds**.

(a) The Bonds shall bear interest from the Issue Date until paid or exchanged, as applicable, at the rate set forth in Section 2.3 hereof computed on the basis set forth in the form of the Bonds, and the Bonds shall mature, unless sooner paid, on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable.

(b) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations only. The Bonds shall be numbered from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee.

(c) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the Issuer. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of, premium, if any, and interest on the Bonds shall be due and payable. The Bonds are subject to mandatory sinking fund redemption as provided in Section 2.12(c) hereof.

(d) The principal of, premium, if any, and the interest on the Bonds shall be payable in lawful currency of the United States. The principal of and premium, if any, on the Bonds shall be payable at the principal office of the Trustee upon presentation and surrender of the Bonds (or in the case of Bonds that are administered in the Book-Entry System, will be paid by wire transfer of immediately available funds to the Securities Depository); provided, however, that Bonds need not be presented for payment upon redemption pursuant to Section 2.12(c) of this Indenture. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, any Holder of a Bond or Bonds in an aggregate principal amount of not less than $250,000 may, by prior written instructions filed with the Trustee (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

Section 2.3 **Interest Rate on Bonds**. The Bonds shall bear interest at the Bond Coupon Rate from the Issue Date to the date of payment in full of the Bonds, calculated in the manner set forth in the form of the Bonds. Interest accrued on the Bonds shall be paid on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of or interest payable on the Bonds is not paid when due or when any other Event of Default shall occur and be continuing, there shall be payable on the Bonds or on any amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof.

Section 2.4 **Execution; Limited Obligation**.

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Executive of the Issuer and attested by the manual or facsimile signature of its Clerk under the official seal, or facsimile thereof, of the Issuer. In case any officer whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes.

(b) The Bonds shall be limited obligations of the Issuer. The Bonds and the interest thereon and redemption premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the Issuer, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency. The Bonds and the interest thereon are payable solely from and secured by the Security, all as described in and subject to limitations set forth in this Indenture, for the equal and ratable benefit of the Holders, from time to time, of the Bonds.

Section 2.5 **Certificate of Authentication**. No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond referred to in Section 2.1 hereof, executed by an authorized representative of the Trustee and such certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

Section 2.6 Form of Bonds.

(a) The Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the form set forth as Exhibit A hereto, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officer of the Issuer executing such Bonds, as evidenced by such officer's execution of the Bonds.

(b) Bonds shall be in either typewritten or printed form, as the Issuer shall direct, with approval of the Trustee. Any expenses, including but not limited to expenses of printing, incurred in connection with the preparation of the form of the Bonds shall be paid by the Borrower.

Section 2.7 Delivery of Bonds.

(a) Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them through the Securities Depository in the manner described in Section 2.14(a) hereof.

(b) Prior to the delivery by the Trustee of the Bonds, there shall be filed with the Trustee:

(i) A certified copy of all Ordinances adopted and proceedings had by the Issuer authorizing execution of this Indenture, the Loan Agreement and the other Bond Documents to which the Issuer is a party and the issuance of the Bonds; and

(ii) Executed copies of the Bond Documents (and with respect to the Note, an original executed counterpart endorsed without recourse by the Issuer to the Trustee); and

(iii) Copies of any Financing Statements that are required to be filed to perfect the security interests in the Security or under Section 3.2 of the Loan Agreement; and

(iv) A copy of completed IRS Form 8038 to be filed by or on behalf of the Issuer pursuant to Section 149(e) of the Code; and

(v) An executed copy of the Tax Agreement; and

(vi) An Opinion of Bond Counsel or counsel to the Issuer to the effect that this Indenture, the Loan Agreement and the Purchase Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer; and

(vii) An approving Opinion of Bond Counsel that the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Bonds will be excludable from gross income of the Holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax, that the Bonds are not required to be registered under the Securities Act of 1933, as amended, and that this Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and

(viii) An opinion of Counsel for the Borrower to the effect that (A) the Borrower is duly organized and validly existing and in good standing under the laws of the State and in good standing under the laws of each other state in which the Borrower transacts business, (B) the Borrower has full power and authority to enter into the Bond Documents to which it is a party, and (C) such Bond Documents have been duly authorized, executed and delivered by the Borrower, the Borrower's execution and delivery of, and performance of its covenants set forth in, such documents do not contravene the law or any provision of any other agreement to which it is a party or by which it or its property is bound or affected, and all such Bond Documents are legal, valid and binding agreements of the Borrower and such other opinions as are required by the Purchase Agreement or reasonably requested by the Controlling Person or the Majority Owner; and

(ix) A pro forma title insurance policy reasonably acceptable to the Controlling Person; and

(x) Reliance letters for, or address of the opinions to, the Controlling Person and Majority Owner of each of the opinions filed with the Trustee; and

(xi) Such other documents, opinions and certificates as may be required by the Issuer, Trustee, Bond Counsel, Majority Owner or Controlling Person.

(c) Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds as provided in the written instructions of the Issuer to the Trustee.

Section 2.8 **<u>Mutilated, Lost, Stolen or Destroyed Bonds</u>**. If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Trustee evidence satisfactory to it and the Issuer of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable regulations as the Issuer and the Trustee may prescribe. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in connection with this Section.

Section 2.9 **<u>Exchangeability and Transfer of Bonds; Persons Treated as Owners</u>**.

(a) The Register and all other records relating to the registration of the Bonds and for the registration of transfer of the Bonds as provided herein shall be kept by the Trustee.

(b) Any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the principal office of the Trustee, by providing the Trustee with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or such Holder's attorney, duly authorized in writing, and thereupon, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations.

(c) Bonds may be exchanged upon surrender thereof at the principal office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the Holder or such Holder's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same tenor as the Bonds being exchanged and of any Authorized Denomination or Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds that the Holder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

(d) Such registrations of transfer or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration of transfer or exchange and all reasonable expenses of the Issuer shall be paid by the Borrower.

(e) 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 or on account of either principal or interest shall be made only to or upon the order of the registered owner thereof or his/her duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(f) All Bonds issued upon any registration of transfer or exchange of Bonds shall be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such registration of transfer or exchange.

(g) Notwithstanding the foregoing, for so long as the Bonds are held under the Book-Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository, as more fully described in Section 2.14 hereof.

Section 2.10 Non-presentment of Bonds. In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay the principal of, premium, if any, and interest on such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, payment of such Bond or portion thereof as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to any applicable escheat laws, to hold such fund or funds uninvested in the Bond Fund, without liability to the Holder of such Bond for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his/her part on, or with respect to, said Bond, or portion thereof.

Section 2.11 Ratably Secured. All Bonds issued hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date.

Section 2.12 **Redemption of Bonds.**

(a) Optional Redemption of Bonds. The Bonds are subject to optional redemption in whole but not in part, at the direction of the Borrower upon not less than forty-five (45) days written notice to the Trustee and the Controlling Person (which notice shall be unconditional and irrevocable), in Authorized Denominations on any Interest Payment Date occurring on or after December 1, 2033, at a redemption price equal to 100% of the principal amount thereof, plus accrued interest thereon to, but not including, the redemption date.

(b) Mandatory Redemption of Bonds.

(i) The Bonds are subject to mandatory redemption from, and to the extent of, amounts on deposit in the Surplus Fund (subject to Section 4.4 hereof) on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, following the deposit of Surplus Bond Proceeds in the Surplus Fund at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(ii) The Bonds are subject to mandatory redemption in whole or in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Project Fund and are not to be used to repair or restore the Project Facilities at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iii) On or after the Stabilization Date and upon at least five Business Days written notice thereof, the Bonds are subject to mandatory redemption in part on any Interest Payment Date in the amount as specified by the Controlling Person in writing to the Trustee necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of "Stabilization," at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iv) The Bonds are subject to extraordinary mandatory redemption in whole or in part, at the direction of the Controlling Person to the Trustee and the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture following receipt by the Trustee of the direction of the Controlling Person, within one hundred eighty (180) days of the occurrence of any of the following events:

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Controlling Person (A) it cannot reasonably be restored within a period of twelve (12) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental

Authority (including such a taking as, in the judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months);

(3) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Loan Agreement or the other Bond Documents shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein, in each case, as determined by the Controlling Person;

(4) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Indenture that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(5) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (ii) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months; or

(6) the Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Loan Agreement.

(v) The Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory redemption on account of a Determination of Taxability of less than all the Bonds would result, in the opinion of Bond Counsel, in the interest on the Bonds Outstanding following such mandatory redemption being excludable from the gross income of the Holders of such Bonds Outstanding, then the Bonds are subject to mandatory redemption upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such redemption must be in an Authorized Denomination.

(vi) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person on or after December 1, 2034, if the Controlling Person directs redemption by providing notice of redemption to the Borrower, the Trustee and the Issuer at least six (6) months prior to the Interest Payment Date specified in such notice on which the Bonds are to be redeemed at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the redemption date. The direction of the Controlling Person to redeem the Bonds shall be irrevocable and shall be binding on the Holders of all of the Bonds and on any transferee(s) of such Holders.

(vii) The Bonds are subject to mandatory redemption in part on any Interest Payment Date specified by the Controlling Person, but not later than sixty (60) days following the Stabilization Date, in the principal amount of $680,000 at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed without premium or penalty plus interest accrued thereon to, but not including, the redemption date.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption in part on each Principal Payment Date, from amounts paid by the Borrower to the Trustee for deposit into the Redemption Fund pursuant to Sections 2.3(d) and 8.4 of the Loan Agreement (in the amount set forth on Schedule 3 of the Loan Agreement), at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(d) Selection of Bonds to be Redeemed. If less than all the Outstanding Bonds shall be called for redemption, the Trustee or, if the Bonds are held in Book-Entry System, the Securities Depository shall select or arrange for the selection of the Bonds to be redeemed in Authorized Denominations, by lot, pursuant to its rules and procedures; provided that, any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination. If the Bonds are held in the Book-Entry System, the Securities Depository shall, acting pursuant to its rules and procedures, reflect in said system the partial redemption and the Trustee shall either (i) exchange the Bond or Bonds held by the Securities Depository for a new Bond or Bonds in the appropriate principal amount, if such Bond is presented to the Trustee by the Securities Depository, or (ii) obtain from the Securities Depository a written confirmation of the reduction in the principal amount of the Bonds held by such Securities Depository.

(e) Partial Redemption of Bonds; Reamortization. In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the operations office of the Trustee of such Bond by the Holder thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 2.12(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture. In the event of a partial redemption of Bonds other than pursuant to Section 2.12(c), the mandatory sinking fund schedule set forth on Schedule 3 of the Loan Agreement shall be adjusted to provide for level debt service in respect of the Bonds remaining Outstanding after such partial redemption, on the basis of the original amortization schedule. The Controlling Person shall provide the Trustee and the Borrower with a new Schedule 3 reflecting such adjustment promptly following any such partial redemption.

(f) Redemption Price. Other than as described in Section 6.8 hereof, any redemption of Bonds shall be at a redemption price equal to 100% of the principal amount of Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, without premium, penalty or charge.

(g) Right of Borrower to Purchase Bonds. Subject to delivery of a Favorable Opinion of Bond Counsel, provided that such opinion shall not be required if the Bonds are held by a Substantial User or Related Person to a Substantial User, the Borrower shall have the option, by written notice to the Trustee and the Controlling Person given not less than five (5) Business Days (forty-five (45) days in case of a redemption pursuant to Section 2.12(b)(vi) hereof), in advance of any redemption date, to cause purchase of the Bonds in lieu of redemption on the redemption date. The purchase price of the Bonds so purchased in lieu of redemption shall be equal to the redemption price thereof, and shall be payable on the redemption date. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.

Section 2.13 **Notice of Redemption**. Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Controlling Person, but no defect in or failure to give such notice of redemption shall affect the validity of the redemption; provided, however, that (i) notice of redemption shall be mailed by the Trustee not less than five (5) Business Days prior to the date fixed for redemption pursuant to Section 2.12(b)(iii) and Section 2.12(b)(vii) hereof, and (ii) no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 2.12(c) hereof. All Bonds properly called for redemption will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed. Notwithstanding the foregoing, with respect to any Bonds held under the Book Entry System, notices of redemption shall be provided in accordance with the rules and procedures established by the Securities Depository, as more fully described in Section 2.14 hereof.

Section 2.14 **Book-Entry System**.

(a) On the date of issuance and delivery of the Bonds, one Bond in the aggregate principal amount of the Bonds and registered in the name of the Securities Depository Nominee will be issued and deposited with the Securities Depository and held in its custody. The Book-Entry System will be maintained by the Securities Depository and the DTC Participants and Indirect Participants and will evidence beneficial ownership of the Bonds in Authorized Denominations, with registration of transfers of ownership effected on the records of the Securities Depository, the DTC Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the DTC Participants and the Indirect Participants. The principal of, premium, if any, and interest on each Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Register as the registered Holder of such Bond or his/her registered assigns or legal representative at the principal office of the Trustee. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the Holder of the Bonds for all purposes. Transfer of, premium, if any, principal and interest payments or notices to DTC Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfer of principal of, premium, if any, and interest payments or notices to Beneficial Owners will be the responsibility of the DTC Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the DTC Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Bonds, notwithstanding any other provisions set forth herein, payments of principal of, premium, if any, and interest on the Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of said Holder as may be specified in the Register maintained by the Trustee or by such other method of payment as the Trustee may determine to be necessary or advisable with the concurrence of the Securities Depository.

(b) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, or (ii) the Borrower, on behalf of the Issuer, with the consent of the Trustee and the Controlling Person, elects to remove the Securities Depository, then the Borrower, on behalf of the Issuer, with the consent of the Trustee and the Controlling Person, may appoint a new Securities Depository.

(c) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds or has been removed and the Borrower fails to appoint a new Securities Depository, or (ii) the Controlling Person or the Borrower, with the consent of the Trustee and the Controlling Person, determines that continuation of a Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Beneficial Owners, the Book-Entry System will be discontinued, in which case the Trustee will deliver replacement Bonds in the form of fully registered certificates in Authorized Denominations in exchange for the Outstanding Bonds as required by the Trustee and the Beneficial Owners.

ARTICLE III
SECURITY

Section 3.1 **Security**. The Bonds and the interest and any premium thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof, and shall be secured by and payable solely from the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof. **THE BONDS TOGETHER WITH INTEREST THEREON 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. 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.**

Section 3.2 **Payment of Bonds and Performance of Covenants**. The Issuer shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Bonds or in the other Bond Documents to which the Issuer is a party on its part to be performed or observed. The Issuer shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement and the other Bond Documents to which the Issuer is a party.

Section 3.3 **Authority**. The Issuer represents and warrants that (i) it is duly authorized under the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and delivery of the Bond Documents to which it is a party has been duly taken; (iii) the Bonds, upon issuance and authentication, and the Bond Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the Issuer in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) it has not received any payments under the Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; and (vii) the execution, delivery and performance of the Bond Documents to which it is a party and issuance of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound and no other approval, consent or notice from any Governmental Authority is required on the part of the Issuer.

Section 3.4 No Litigation. The Issuer represents and warrants that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the other Bond Documents to which the Issuer is a party, or (ii) the exclusion from gross income of interest on the Bonds.

Section 3.5 Further Assurances. The Issuer covenants that it will cooperate to the extent necessary with the Borrower and the Trustee in their defenses of the Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the Issuer in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better pledging of the Security. Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by Article VIII hereof.

Section 3.6 No Other Encumbrances; No Dissolution. The Issuer covenants that, (i) except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Bonds are Outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Bonds having assumed its obligations hereunder and under the Bonds.

Section 3.7 No Personal Liability. No recourse under any obligation, covenant, warranty or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim or judgment based hereon or thereon or otherwise relating hereto or thereto, shall be had against any director, member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or its Economic Development Commission or of any successor to the Issuer, either directly or through the Issuer or its Economic Development Commission or any successor to the Issuer, whether by virtue of any constitutional provision, statute or rule of law or equity, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever, whether at common law or in equity or by constitution or statute or otherwise, shall attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or its Economic Development Commission or of any successor to the Issuer, either directly or through the Issuer or its Economic Development Commission or any successor to the Issuer, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, member, officer, agent, attorney and employee is, by the execution of this Indenture and the issuance of the Bonds, and as a condition of, and as part of the consideration for, the execution of this Indenture and the issuance of the Bonds, expressly waived and released.

ARTICLE IV
FUNDS

Section 4.1 **Establishment of Funds and Accounts; Applications of Proceeds of the Bonds and Other Amounts**.

(a) The following Funds and Accounts are hereby created and established as special trust funds:

(i) the Project Fund, consisting of:

(A) the Bond Proceeds Account;

(B) the Costs of Issuance Account;

(C) the Equity Account;

(D) the Capitalized Interest Account; and

(E) the Insurance and Condemnation Proceeds Account;

(ii) the Replacement Reserve Fund;

(iii) the Tax and Insurance Escrow Fund;

(iv) the Rebate Fund;

(v) the Bond Fund;

(vi) the Surplus Fund;

(vii) the Redemption Fund; and

(viii) the Operating Reserve Fund.

(b) All the Funds and Accounts created by subsection (a) of this Section shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

(c) The proceeds of the sale of the Bonds [____________], and the initial installment of Required Equity Funds ([____________] (net of the Tax Credit Investor's due diligence fee of [____________])) shall be applied as follows:

(i) [____________], representing a portion of the proceeds of the sale of the Bonds, shall be deposited in the Bond Proceeds Account of the Project Fund;

(ii) [____________], representing a portion of the proceeds of the sale of the Bonds, shall be deposited in the Capitalized Interest Account of the Project Fund;

(iii) [____________], representing a portion of the proceeds of the initial installment of Required Equity Funds, shall be deposited in the

Equity Account of the Project Fund, [____________] of which shall subsequently be transferred by the Trustee from the Equity Account of the Project Fund into the Costs of Issuance Account of the Project Fund.

Section 4.2 Bond Fund.

(a) There is hereby separately created and established with the Trustee the Bond Fund. There shall be deposited in the Bond Fund (a) all Repayments specified in the Loan Agreement to be deposited in the Bond Fund, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (b) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund.

(b) Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds, for the payment of principal of the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption prior to the Maturity Date, and for the payment of the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

(c) After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Bond Fund shall be paid to the Borrower.

Section 4.3 Project Fund.

(a) The Trustee shall deposit all amounts specified in Section 4.1 hereof into the specified accounts and subaccounts of the Project Fund. The Trustee will receive and deposit into the Equity Account amounts received which are identified by the Borrower as future installments of Required Equity Funds from the Tax Credit Investor and the General Partner, in accordance with the provisions of the Partnership Agreement and the Assignment of Capital Contributions.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement of Project Costs (or, in the case of moneys on deposit in the Bond Proceeds Account of the Project Fund, at least 95%, of such funds for payment or reimbursement of Qualified Project Costs) to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person, in accordance with the provisions of the Loan Agreement; provided, however, after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, all Surplus Bond Proceeds remaining in the Bond Proceeds Account of the Project Fund shall be transferred to the Surplus Fund. The Trustee shall have no obligation to review any invoices, schedules, etc., attached to the Requisition in the form of Exhibit B and shall be entitled to rely upon any Requisition that has been approved by the Controlling Party in making disbursements from the Project Fund. At the written request of a Borrower Representative, all remaining amounts in the Equity Account of the Project Fund upon the occurrence of Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed.

(c) The Trustee shall and is hereby authorized to transfer funds from the Capitalized Interest Account to the Bond Fund to pay interest on the Bonds accruing up to and including the date the Trustee receives written notice from the Borrower of the Completion Date without submission of any Requisition. With respect to any such transfer, the Trustee shall first transfer amounts from proceeds of the sale of the Bonds. The Trustee shall transfer any Surplus Bond Proceeds remaining in the Capitalized

Interest Account after the Borrower certifies to the Trustee the Final Completion of the Project Facilities, but in no event later than the Stabilization Date, to the Surplus Fund.

(d) Amounts in the Costs of Issuance Account shall be disbursed by the Trustee on the Issue Date and thereafter only to pay costs of issuance pursuant to a closing memorandum attached to a Requisition signed by the Borrower and the Controlling Person identifying the amount to be paid and the payee. Amounts remaining in the Costs of Issuance Account (including investment proceeds) after the payment of all costs of issuance, and in any event not later than thirty (30) days following the Issue Date, shall be transferred to the Equity Account of the Project Fund, as directed in writing by the Borrower.

(e) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Controlling Person and the Majority Owner. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended in accordance with the written direction of the Controlling Person for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Bond Fund and applied to the redemption of Bonds in accordance with Section 2.12 hereof, or (ii) released to the Borrower if the Borrower obtains an opinion of Bond Counsel that such release will not affect the excludability of the interest on the Bonds from gross income for federal income tax purposes, all in accordance with direction of the Controlling Person to the Trustee and subject to the provisions of the Bond Documents.

(f) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Project Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine.

Section 4.4 **Surplus Fund**. The Surplus Fund shall receive all Surplus Bond Proceeds transferred thereto in accordance with the provisions of this Indenture. The deposit of Surplus Bond Proceeds in the Surplus Fund shall be, and shall be deemed to be, a joint direction by the Borrower and the Controlling Person to the Trustee to redeem the greatest principal amount of the Bonds possible to be redeemed from such deposit pursuant to Section 2.12(b)(i) hereof on the earliest redemption date on which the Bonds may be redeemed, and on such redemption date (or, if such day is not a Business Day, the immediately preceding Business Day) an amount equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the redemption date shall be transferred from the Surplus Fund to the Bond Fund and used for such redemption. After such transfer, if and to the extent that there are moneys remaining in the Surplus Fund, such moneys in the Surplus Fund shall be transferred to the Bond Fund and shall be used for payment of interest on or principal of the Bonds.

Section 4.5 **Use of Certain Additional Funds and Accounts.**

(a) Redemption Fund.

(i) There shall be deposited in the Redemption Fund (a) all payments specified in Section 8.4 of the Loan Agreement to be deposited in the Redemption Fund, and (b) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the redemption of Bonds pursuant to Section 2.12 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written direction of the Controlling Person, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Section 2.12 hereof. After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

(ii) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Redemption Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine.

(b) Tax and Insurance Escrow Fund. There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 8.2 of the Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the written direction of the Controlling Person; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund shall be disbursed at the written direction of the Controlling Person to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine. Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

(c) Rebate Fund. The Issuer recognizes that investment of the Bond proceeds will be at the written direction of the Borrower but agrees that it will commit no act, or omit any action, that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the applicable regulations thereunder. There is hereby established with the Trustee a Rebate Fund. Any provisions in this Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder. The Issuer will observe the covenants contained in the Tax Agreement as if fully set forth herein and the Trustee will follow the written direction of the Borrower in disbursing any amounts in the Rebate Fund to satisfy rebate amounts the Borrower or Rebate Analyst determine are owed.

(d) Replacement Reserve Fund. There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Replacement Reserve Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the

Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Controlling Person, in accordance with the terms of the Replacement Reserve Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) shall be disbursed at the written direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable.

(e) Operating Reserve Fund. There shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.5 of the Loan Agreement. Funds shall be disbursed from the Operating Reserve Fund, at the request of the Borrower, but only with the Controlling Person's written consent, to fund any operating deficits or expenses of the Borrower or for any other operating or capital needs of the Project Facilities. Upon receipt by the Trustee from the Borrower of a written request together with the written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed, the Trustee shall disburse funds from the Operating Reserve Fund in accordance with such written request. Upon the occurrence and continuation of an Event of Default, all moneys and investments in the Operating Reserve Fund shall be disbursed at the written direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay any costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Interest earnings on amounts held in the Operating Reserve Fund shall be released not more frequently than annually to the Borrower upon its written request and with the prior written consent of the Controlling Person. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower.

Section 4.6 Records.

(a) The Trustee shall cause to be kept and maintained records pertaining to all funds and accounts maintained by the Trustee hereunder and all disbursements therefrom and shall periodically deliver to the Borrower statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Borrower and the Controlling Person, within a reasonable period of time, with a report stating the principal amount of Bonds outstanding and a list of the registered owners of the Bonds as of the date specified by the Borrower or the Controlling Person in its request.

(b) The Trustee shall provide the Borrower and the Controlling Person with a written report, on a monthly basis through the calendar month in which the last obligation of the Bonds is retired, identifying the Permitted Investments in which the moneys held as part of the Accounts were invested during the preceding period and the dates of such investments, together with such other information as the Trustee ordinarily provides to Persons such as the Borrower and the Controlling Person in its regular monthly investment reports.

Section 4.7 Investment of Funds. Subject to the provisions of Section 4.8 hereof, moneys held as part of all Accounts hereunder shall be invested and reinvested in Permitted Investments as instructed in writing by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Trustee to pay the principal of, premium, if any, or interest that has become payable with respect to the Bonds shall not be invested. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its affiliate and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. Absent specific instructions from the Borrower approved by the Controlling Person to invest cash balances in Permitted Investments hereunder, the Trustee shall invest in Permitted Investments constituting any money market fund that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than thirty (30) days.

Section 4.8 **Guaranties**. Any amounts realized by the Trustee under the Guaranty of Completion, the Guaranty of Debt Service, the Guaranty of Recourse Obligations, the Environmental Indemnity or the Developer Fee Pledge shall be deposited in the Equity Account of the Project Fund, shall be deemed a part of the Security, and used or applied or invested by the Trustee as directed in writing by the Controlling Person.

ARTICLE V
DISCHARGE OF LIEN

Section 5.1 **Discharge of Lien and Security Interest**. Upon payment in full of all of the Bonds and all amounts payable under the Loan Agreement and the other Bond Documents, these presents and the Security Interests shall cease, determine and be discharged, and thereupon the Trustee shall, upon receipt by the Trustee of an opinion of Counsel stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, (a) cancel and discharge this Indenture and the Security Interests; (b) execute and deliver to the Issuer and the Borrower, at the Borrower's expense, such instruments in writing as shall be required to cancel and discharge this Indenture and the Security Interests and reconvey to the Issuer and the Borrower the Security, and assign and deliver to the Issuer and the Borrower so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds; and (c) mark as cancelled the Note and satisfy the Mortgage; provided, however, that the cancellation and discharge of this Indenture pursuant to Section 5.3 hereof shall not terminate the powers and rights granted to the Trustee, with respect to the payment, registration of transfer and exchange of the Bonds; provided, further, that the rights of the Issuer and the Trustee to indemnity, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof.

Section 5.2 **Provision for Payment of Bonds**. Bonds shall be deemed to have been paid within the meaning of Section 5.1 hereof if:

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds of, premium, if any, and interest to accrue thereon through such maturity or redemption dates, as the case may be;

(b) there shall have been paid or provision duly made for the payment of all fees and expenses of the Issuer and the Trustee, due or to become due; and

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from the Borrower or the Controlling Person, as the case may be, in accordance with Section 2.12 hereof to cause a redemption of the Bonds, to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been granted to the Trustee.

(d) Limitations set forth elsewhere herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the Government Obligations described in this Section 5.2 for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. Notwithstanding any other provision of this Indenture to the contrary, all funds deposited with the Trustee as provided in this Section may be invested and reinvested, at the direction of the Borrower, in Government Obligations (or in a money market fund that invests solely in Government Obligations and is rated no lower than the second highest category by one of Fitch, Moody's or S&P and, if more than one of such rating agencies then rates such money market fund, is rated no less than the second highest rating category by each of such rating agencies then rating such money market fund) maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations (or money market fund) in the hands of the Trustee pursuant to this Section which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

Section 5.3 __Discharge of this Indenture__. Notwithstanding the fact that the lien of this Indenture upon the Security may have been discharged and cancelled in accordance with Section 5.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Security may have been discharged and cancelled, shall nevertheless continue and subsist after payment in full of the Bonds or the deemed payment in full of the Bonds in accordance with Section 5.2 hereof until the Trustee shall have returned to the Borrower, all funds held by the Trustee which the Borrower is entitled to receive pursuant to this Indenture after all Bonds have been paid at maturity or redeemed. Upon payment in full or defeasance of the Bonds, payment of amounts payable to the United States pursuant to any rebate requirement and payment of all other amounts owing under the Bond Documents, all remaining amounts held by the Trustee shall be paid to the Borrower.

ARTICLE VI
DEFAULT PROVISIONS AND REMEDIES

Section 6.1 __Events of Default__. Any one of the following shall constitute an Event of Default hereunder:

(a) Failure to pay interest on any Bond when and as the same shall have become due;

(b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due, whether at the stated maturity or redemption date thereof or by acceleration;

(c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the Issuer included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer and the Borrower has been given by the Trustee or by the Controlling Person (with a copy to the Trustee); or

(d) The occurrence of an Event of Default under the Loan Agreement or the failure by the Borrower to perform or comply with any of the other terms or conditions contained in any other Bond Documents to which the Borrower is a party and continuation of such failure for beyond the expiration of any notice, grace or cure period provided in the Loan Agreement or the Bond Documents (as applicable).

Section 6.2 **Acceleration.**

(a) Upon the occurrence of an Event of Default, at the direction of the Controlling Person, the Trustee immediately shall, by notice in writing sent to the Issuer, the Borrower, the Majority Owner and the Controlling Person, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Note to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 (if applicable).

(b) Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid (or, in the case of Bonds administered in the Book-Entry System, cause to be sent pursuant to the applicable procedures of the Securities Depository), to each Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

Section 6.3 **Other Remedies; Rights of Holders.**

(a) Upon the happening and continuance of an Event of Default hereunder, the Trustee may, with the prior written consent of the Controlling Person, and shall, subject to Section 7.1, upon the direction of the Controlling Person, with or without taking action under Section 6.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Bond Documents.

(b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee, the Controlling Person, the Majority Owner or the Holders 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, the Majority Owner, the Controlling Person or to the Holders hereunder or now or hereafter existing.

(c) 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 of any such Default or Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) The Trustee, as the assignee of substantially all right, title and interest of the Issuer in and to the Loan Agreement and the Note, shall be empowered to enforce each and every right granted to the Issuer under the Loan Agreement and the Note other than Reserved Rights.

Section 6.4 **Right of Controlling Person to Direct Proceedings**.

(a) Anything in this Indenture to the contrary notwithstanding, the Controlling Person shall have the right at any time, by an instrument or instruments in writing executed and delivered 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, 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.

(b) No Holder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Holder has given the Trustee and the Borrower written notice of an Event of Default, the Controlling Person shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, there shall have been offered to the Trustee indemnity satisfactory to it against the cost, expense and liability to be incurred in connection with such request and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within sixty (60) days after receipt of notice with no inconsistent direction given during such sixty (60) days by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder by the Act to enforce (i) the payment of the principal of, acceleration premium, if any, and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of, acceleration premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in this Indenture.

Section 6.5 **Discontinuance of Default 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 proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Issuer and the Trustee shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

Section 6.6 **Waiver**. The Trustee, with the consent of the Controlling Person may, and shall upon the written direction of the Controlling Person, waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer shall have been paid or provided for.

Section 6.7 **Application of Moneys**. Except for moneys deposited pursuant to Article V hereof, all moneys held by the Trustee (other than the Rebate Fund) or received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source other than moneys held for the redemption of Bonds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other outstanding fees and expenses of the Trustee, and (ii) any sums due to the Issuer under the Loan Agreement (other than Repayments), such moneys shall be applied in the order set forth below:

(a) Unless the principal of all Bonds shall have become or been declared due and payable, all such moneys shall be applied:

First: To the payment of all installments of interest then due on the Bonds in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

Second: To the payment of the unpaid principal of and acceleration premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Bonds from the respective dates upon which they became due (at the rate borne by the Bonds, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such acceleration premium, then to the ratable payment of the amounts due on such date;

Third: To the payment of the amounts required to reimburse the Issuer and the Owners of the Bonds for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder; and

Fourth: The balance shall be paid to the Borrower (subject to any required deposits to the Rebate Fund).

(b) If the principal of all the Bonds shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal, acceleration premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium, interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal on all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article then, subject to subsection (b) of this Section in the event that the principal of all the Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section.

(d) Notwithstanding anything contained herein to the contrary, the Controlling Person may, with express written consent of the Majority Owner, by written notice to the Trustee direct the application of funds other than in the manner set forth in Section 6.7(a) above, including, without limitation, the application of funds between the principal or acceleration premium of or interest on the Bonds.

(e) Whenever moneys are to be applied pursuant to this Section, the Trustee shall fix the date, which shall be not more than seven (7) calendar days after receipt of such moneys, upon which such application is to be made and upon such date interest on the principal amount of Bonds 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 moneys and of the fixing of any such date.

Section 6.8 **Default Interest and Acceleration Premium**. In the event that principal of, premium, if any, or interest payable on the Bonds is not paid when due or upon the occurrence and during the continuance of any other Event of Default, there shall be payable on the Bonds or on any amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before December 1, 2034, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

ARTICLE VII
THE TRUSTEE

Section 7.1 **Appointment of Trustee**. The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a) The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees. The Trustee may act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, selected by the Issuer or Borrower, in accordance with the Bond Documents. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) Except as provided in Section 7.8 hereof, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any financing statements or continuation statements, or for insuring the Security or the Project Facilities, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security. The Trustee shall not be liable to the Borrower, any Holder, any Beneficial Owner or any other Person for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.7 hereof in good faith as instructed by the Borrower in accordance with the provisions of this Indenture, and with the prior written consent of the Controlling Person, as applicable. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the Issuer or for the use by the Borrower of the proceeds of the Bonds advanced to the Borrower as provided in the Loan Agreement. The Trustee may become the owner of Bonds secured hereby with the same rights as any other Holder.

(d) The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any notices, directions, consents, approvals or requests provided to the Trustee pursuant to the terms of this Indenture or any of the Bond Documents shall not be effective until provided in writing. 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.

(e) The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its gross negligence, bad faith or willful misconduct in the performance of those express duties.

(f) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project Facilities.

(g) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trust and powers or otherwise in respect of this Indenture.

(h) Before taking any action requested hereunder by the Holders which may require it to expend its own funds or otherwise subject it to liability, the Trustee may require satisfactory security or indemnification for the reimbursement of all expenses and/or liabilities to which it may be put by reason of any action so taken. The Trustee shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Majority Owner or the Controlling Person if the Trustee determines that such actions shall not subject the Trustee to liability and if such actions do not require the Trustee to expend its own funds or for which funds have been advanced by the Majority Owner or the Controlling Person to the Trustee in advance of its taking such action.

(i) All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Indenture and for the benefit and security of the Holders of the Bonds as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Issuer under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under Section 6.1(a) or (b), or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) if the Trustee receives written notification of a Determination of Taxability by the Holder of any Bonds, (iv) if the Trustee receives written notification of such default by the Borrower, Controlling Person, the Majority Owner or two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, or (v) if the Trustee receives an Opinion of Bond Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Trustee may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(k) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs.

(l) In addition to the Trustee's other duties hereunder, the Trustee shall authenticate and cancel Bonds as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer and the Borrower at all reasonable times. All Bonds shall be made available for authentication, exchange and registration of transfer at the principal office of the Trustee.

(m) The Trustee shall have no duty to inspect or oversee the renovation or completion of the Improvements or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

(n) Without limiting the duties of the Trustee expressly set forth herein, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Bonds under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.

(o) No provision of this Indenture, the Loan Agreement or the Bonds 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 or powers.

(p) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith on its part and except as otherwise expressly set forth herein, rely upon a written certificate of the Controlling Person or the Majority Owner or prior to an Event of Default hereunder and in the absence of a conflicting direction from the Controlling Person, a Borrower Representative. The Trustee shall have no liability for any act or omission taken at the direction of the Controlling Person or Majority Owner.

(q) In the absence of a direction from the Controlling Person or the Majority Owner, if the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds may be deemed controlling and the Trustee shall be entitled to follow such directions unless the Trustee determines in good faith that any such direction would involve the Trustee in personal liability or shall materially prejudice the Holders not party to such direction.

(r) The Trustee's immunities and protections from liability and its rights to indemnification in connection with the performance of its duties under this Indenture 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 Indenture and the final payment of the Bonds.

(s) The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Bonds and may join in any action that any Holder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Borrower and may act as depository, trustee or agent for any committee of Holders secured hereby or other obligations of the Borrower, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the affiliates of the Trustee.

(t) The Trustee shall have no responsibility or obligation to DTC Participants, to Indirect Participants, or to the Persons for whom they act as nominees with respect to the Bonds, or to any Beneficial Owner of Bonds in respect of the accuracy of any records maintained by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant, the payment by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any amount in respect of the principal of or interest on the Bonds, any notice which is permitted or required to be given under this Indenture, the selection by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any Person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by the Securities Depository or the Securities Depository Nominee as Holder.

(u) Whether or not expressly so provided, each and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section.

Section 7.2 **<u>Compensation and Indemnification of Trustee and Rebate Analyst; Trustee's Prior Claim</u>.**

(a) The Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Trustee under this Indenture and all other amounts which may be payable to the Trustee under this Section, such fees and expenses to be paid when due and payable by the Borrower directly to the Trustee for its own account. The Issuer shall have no responsibility or liability whatsoever to pay any of the fees and expenses of the Trustee. Except as set forth in Section 6.7, the Trustee shall not have a lien on the Security for the payment of its fees or expenses and shall not be entitled to pay its fees and expenses from amounts held in the funds and accounts hereunder. The Loan Agreement provides that the Borrower will pay the fees and expenses of the Rebate Analyst. The Issuer shall have no responsibility or liability whatsoever to pay any of the fees and expenses of the Rebate Analyst.

(b) The Borrower shall (i) pay the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) for all services (including extraordinary services), (ii) pay or reimburse the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made, in accordance with any of the provisions of this Indenture and the Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own gross negligence, willful misconduct or bad faith, and (iii) indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of its duties hereunder or under the Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own gross negligence, willful misconduct or bad faith. "Trustee," for purposes of this Section shall include any predecessor Trustee, but the gross negligence, willful misconduct or bad faith of any Trustee, shall not affect the indemnification of any other Person. The obligations of the Borrower under this Section shall survive the termination of this Indenture.

Section 7.3 **Intervention in Litigation**. In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of Holders, and shall intervene if requested in writing by the Controlling Person, the Majority Owner or the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding.

Section 7.4 **Resignation; Successor Trustees**.

(a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days prior written notice to the Issuer, the Borrower, the Controlling Person and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. If no successor is appointed within sixty (60) days after the notice of resignation, the Controlling Person may appoint a Trustee or the resigning Trustee may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least $50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Issuer, the Controlling Person and the Borrower.

(b) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be the successor of the Trustee hereunder without the execution or filing of any paper of any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

Section 7.5 **Removal of Trustee**. The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer the Controlling Person and the Borrower and signed by the Holders of a majority in aggregate principal amount of Bonds then Outstanding. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed by an instrument or concurrent instruments in writing delivered to the Trustee and the Issuer and signed by the Controlling Person, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee all of its right, title and interest in this Indenture and the Security in the same manner as provided in Section 7.4 hereof.

Section 7.6 **Instruments of Holders**.

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A 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/her the execution thereof; or

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

(b) The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in clauses (a) (i) or (ii) above that the original such instrument is no longer reliable. In the absence of direction from the Controlling Person, if the Trustee shall receive conflicting directions from two or more groups of Holders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

Section 7.7 <u>**Power to Appoint Co-Trustees**</u>.

(a) At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project Facilities may at the time be located, the Issuer and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Holders of a majority of the aggregate principal amount of the Bonds then Outstanding, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more persons approved by the Trustee and the Borrower either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project Facilities, or to act as separate trustee or separate co-trustees of all or any part of the Project Facilities, and to vest in such person or persons, in such capacity, such title to the Project Facilities or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

(b) Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least $50,000,000.

(c) The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

(d) If the Issuer shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Borrower shall have the power to make such appointment.

(e) The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

(f) Every co-trustee or separate trustee appointed pursuant to this Section 7.7, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(i) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(iii) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(iv) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.

(vi) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(vii) Any moneys, paper, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

(g) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the Security Interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

(h) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the Security Interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 7.4 hereof.

Section 7.8 Filing of Financing Statements. The Borrower in the Loan Agreement and Mortgage has agreed to file or record or cause to be filed or recorded all Financing Statements that are required in order fully to protect and preserve the Security Interests in the Security and the priority thereof and the rights and powers of the Trustee in connection therewith The Trustee is not responsible for any original filings of financing statements. The Trustee shall cause to be filed continuation statements to such originally filed financing statements under the Uniform Commercial Code of the State, with the appropriate filing office of the State, in such manner as may be required by the Uniform Commercial Code of the State, provided a copy of the originally filed financing statement has been timely delivered to the Trustee. Notwithstanding anything to the contrary contained in this Indenture or any other Bond Document, except as expressly provided in the prior sentence of this Section, the Trustee shall not be responsible for any initial, amendment, or other filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings or any amendments or other changes required under Article 9 of the Uniform Commercial Code of the State. The Trustee shall be fully protected in relying on information with respect to such initial filing delivered to it by or on behalf of the Issuer or the Borrower, as applicable, and descriptions in filing any continuation statements required by this Section. The Trustee may seek advice of counsel at the sole expense of the Borrower if the collateral, the debtor or the jurisdiction with respect to the financing statement changes. The Borrower will pay all costs of filing the Financing Statements and all financing and continuation statements required under Section 3.2 of the Loan Agreement.

ARTICLE VIII
AMENDMENTS, SUPPLEMENTAL INDENTURES

Section 8.1 Supplemental Indentures.

(a) The Issuer and the Trustee, with the prior written consent of the Controlling Person, but without the consent of or notice to any Holders, may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(i) to grant to or confer upon the Trustee for the benefit of the Holders, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(ii) to grant or pledge to the Trustee for the benefit of Holders, any additional security other than that granted or pledged under this Indenture;

(iii) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute then 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;

(iv) to appoint a successor Trustee or co-trustees in the manner provided in Article VII hereof;

(v) to modify, amend or supplement this Indenture to permit a transfer of Bonds from one Securities Depository to another or the discontinuance of the Book-Entry System and issuance of replacement Bonds to the Beneficial Owners;

(vi) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not (in the judgment of the Controlling Person) materially adversely affect the interest of the Holders; or

(vii) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes.

(b) When requested by the Issuer, and if all conditions precedent under this Indenture have been met, and there shall have been delivered to the Trustee an opinion of Bond Counsel to the effect that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms and will not adversely affect the excludability of interest on the Bonds from the gross income of the Holders thereof for federal income tax purposes, the Trustee will join the Issuer in the execution of such supplemental indenture; provided the Trustee may, but shall not be required to, enter into any supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or the Bond Documents. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(c) The Trustee shall file copies of all such supplemental indentures with the Borrower. The Trustee shall cause notice of any supplemental indenture described above to be given by first-class mail, postage prepaid (or in the case of Bonds administered in the Book-Entry System, given pursuant to the applicable procedures of the Securities Depository), to the Holders of the Outstanding Bonds then shown on the Register.

Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower.

(a) Exclusive of supplemental indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section 8.2, and not otherwise, anything contained in this Indenture to the contrary notwithstanding, no indenture or indentures supplemental hereto 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 shall be effective without delivery of a Favorable Opinion of Bond Counsel, the written consent of the Majority Owner and execution and delivery by the Trustee (acting upon the direction of the Controlling Person) and the Issuer; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the prior written consent of the Holders of all Outstanding Bonds, (i) an extension of the maturity of the principal of, or the optional, extraordinary or mandatory redemption date of, or interest on, any Bond, (ii) a reduction in the principal amount of or the rate of interest on, any Bond, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien on the Security prior to the lien of this Indenture, or (v) a reduction in the aggregate principal amount of the Bonds required for any consent to any supplemental indenture; provided further, the Trustee may, but shall not be required to, enter into any supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or the Bond Documents. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained pursuant to Section 8.5 hereof.

(b) Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article that affects any rights or obligations of the

Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such supplemental indenture, amendment or other document.

Section 8.3 **Amendments to the Loan Agreement or the Note Not Requiring Consent of Holders.**

(a) The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Note without the prior written consent of the Trustee, the Borrower and the Controlling Person. The Issuer may, with the consent of the Controlling Person, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Note acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the exclusion of interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes, or (iv) in connection with any other change therein which, in the judgment of the Issuer acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

(b) The Issuer and the Borrower shall file copies of any such amendments to the Loan Agreement or the Note with the Trustee and the Controlling Person.

Section 8.4 **Amendments to the Loan Agreement or the Note Requiring Consent of Holders.** Except as provided in Section 8.3 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Note, nor shall any such modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Majority Owner, such consent to be obtained in accordance with Section 8.5 hereof. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement or the Note. The Issuer and the Borrower shall file copies of all such amendments to the Loan Agreement or the Note with the Trustee, the Controlling Person and the Majority Owner.

Section 8.5 **Notice to and Consent of Holders.** If consent of the Controlling Person, the Majority Owner or any other Holder is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Note or for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid (or pursuant to the applicable procedures of the Securities Depository, if applicable), to the Controlling Person, the Majority Owner or any other applicable Holder then shown on the Register whose consent is required. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal office of the Trustee for inspection by the Controlling Person and all Holders. If, within forty five (45) days or such longer period as shall be prescribed by the Trustee following the mailing or electronic dispatch of such notice, the Controlling Person, the Majority Owner or the Holders of all, of the principal amount of the Bonds Outstanding, as the case may be, by instruments filed with the Trustee, shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Controlling Person, the Majority Owner or the Holders, as applicable, shall thereby be conclusively presumed.

ARTICLE IX
CONTROLLING PERSON; SERVICING

Section 9.1 Majority Owner to Appoint Controlling Person. The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Majority Owner's sole cost and expense, to act on behalf of the Majority Owner under the Bond Documents as the "Controlling Person". The Majority Owner may at any time and from time to time terminate or remove and replace any such Controlling Person. The Majority Owner shall give notice to the Trustee and the Issuer of its appointment, termination, removal and replacement of any Controlling Person, and the parties may rely on any such notice until any subsequent notice is given. Initially, the Majority Owner has engaged Red Stone Servicer, LLC to act as the "Controlling Person" hereunder and Red Stone Servicer, LLC has accepted such engagement. The Majority Owner is under no obligation to appoint a Controlling Person; if at any time a Controlling Person has not been designated by the Majority Owner, all references to the "Controlling Person" herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion provided for herein, in the Loan Agreement or in any other Bond Document that is directed to the Controlling Person shall also be directed to, and may be relied upon by, the Majority Owner. Servicing. The Majority Owner will have no lender liability for any act or omission of the Controlling Person unless the Controlling Person is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case but not, in any event, with respect to any liabilities, damages, costs or expenses against which such Indemnified Party is indemnified under Section 2.5 of the Loan Agreement. The preceding sentence shall not affect the right and ability of the Trustee to rely on directions given by the Controlling Person or the Trustee's right to receive indemnification under the Bond Documents.

(a) The Majority Owner has appointed the Controlling Person to be the servicer of the Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the Borrower, the Majority Owner and the Trustee have no obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest payable under this Indenture or Bond Documents; provided, however that, to the extent permitted under the Bond Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Majority Owner.

(b) The Controlling Person shall be responsible for the performance of the following servicing duties:

(i) The Controlling Person shall perform the duties expressly given to the Controlling Person under the Bond Documents and this Indenture.

(ii) The Controlling Person shall prepare monthly bills to the Borrower in accordance with the Bond Documents for payments to the Trustee of principal and interest under the Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund. On the last Business Day of each calendar month, the Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Trustee on the Note on the next Business Day and will provide a copy thereof to the Trustee. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Indenture and Bond Documents:

(1) The principal and interest due and payable on the Note;

(2) The Trustee's fee and Issuer's fee, as applicable;

(3) Any monthly Replacement Reserve Fund deposit;

(4) Any Monthly Tax and Insurance Amounts;

(5) Any other escrow or reserve deposits required by this Indenture or Bond Documents;

(6) Any assumption or transfer fee required by this Indenture or Bond Documents; and

(7) Any acceleration premium.

(c) So long as no Event of Default has occurred or is continuing, all payments received under this Indenture or Bond Documents shall be applied in the following order unless otherwise instructed by the Majority Owner or expressly set forth in this Indenture or Bond Documents:

(i) To the principal and interest due and payable on the Note;

(ii) To the Issuer's fee and Trustee's fee, as applicable;

(iii) To the acceleration premium, if applicable;

(iv) To required deposits to the Replacement Reserve Fund;

(v) To required deposits in the Tax and Insurance Escrow Fund;

(vi) To other escrow or reserve deposits required by this Indenture or the other Bond Documents;

(vii) To Default Interest and any late fees; and

(viii) To other amounts due under the Bond Documents.

Any payment received by the Controlling Person from or on behalf of the Borrower under this Indenture or the Bond Documents shall be remitted by the Controlling Person to the Trustee no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Indenture or Bond Documents and the Trustee shall deposit such amount in accordance with the direction received from the Controlling Person. After the occurrence of an Event of Default and during the continuance thereof, the Controlling Person shall remit all amounts collected to the Trustee for application by the Trustee in accordance with Section 6.7.

(d) The Controlling Person shall make any remittance to the Trustee by wire transfer in accordance with the instructions received from the Trustee or to any other party entitled to such remittances pursuant this Indenture or the Bond Documents in accordance with the instructions received from the Majority Owner.

(e) The Controlling Person shall review the Tax and Insurance Escrow Fund and the Replacement Reserve Fund on an annual basis and adjust required monthly escrow payments in accordance with terms of Bond Documents. The Controlling Person shall notify the Majority Owner and the Trustee of such adjustment.

(f) The Controlling Person shall prepare monthly reports for the Majority Owner and the Trustee outlining the status of the Loan, including disbursements from the Replacement Reserve Fund, the Tax and Insurance Escrow Fund, the Operating Reserve Fund or any other Account under this Indenture, loan history schedules, outstanding loan balances and escrow balances and consents, approvals or waivers given by the Controlling Person, which reports shall be furnished to the Majority Owner no later than the fifteenth (15th) day of each calendar month (or the next Business Day thereafter if such fifteenth (15th) day is not a Business Day).

(g) The Controlling Person shall provide immediate written notice to the Majority Owner of any Event of Default of which it receives notice or has actual knowledge, or any event which, with the giving of notice or the passage of time, or both, would constitute any Event of Default of which it receives notice or has actual knowledge.

(h) The Controlling Person shall refer to the Trustee all Borrower requests for a quote of a payoff amount for the Loan, shall request a copy of any such quote from the Trustee, and shall notify the Majority Owner of the Borrower's request. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Bond Documents or this Indenture or otherwise as directed by the Majority Owner.

(i) The Controlling Person shall use its best efforts to obtain financial statements and other reports from the Borrower at the times and to the extent required under the Bond Documents and deliver the same to the Majority Owner and the Trustee.

(j) The Controlling Person shall obtain, and shall provide to the Majority Owner a copy of the Borrower's certificates of compliance with the Land Use Restriction Agreement or other evidence of such compliance submitted by the Borrower to the Issuer or the Issuer's designee within thirty (30) days after the later of (i) the date it is required to be submitted to the Issuer or the Issuer's designee, or (ii) the date it is actually so submitted.

(k) The Controlling Person may perform additional duties with respect to the Loan during rehabilitation of the Project Facilities or during the period following an Event of Default at the request of the Majority Owner.

ARTICLE X
MISCELLANEOUS

Section 10.1 Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon any part of such Project Facilities is not paid as required, the Trustee may, subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its "prime rate" shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security.

Section 10.2 Limitation of Rights. With the exception of 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 other than the parties hereto, the Holders, the Controlling Person and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Controlling Person and the Borrower as herein provided.

Section 10.3 <u>**Severability**</u>. If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

Section 10.4 <u>**Notices**</u>. Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or e-mail notice (with the original delivered via overnight mail) to the address or e-mail address set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Borrower, the Trustee, the Majority Owner, the Controlling Person and the Tax Credit Investor may, by written notice given hereunder, designate any different addresses, phone numbers and facsimile numbers to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

To the Issuer:	City of Mishawaka, Indiana 600 East Third Street Mishawaka, IN 46544 Attention: Clerk e-mail: [____________]
To the Borrower:	[____________________] c/o Eagle Point Development 125 John Roberts Road, Suite 12 South Portland, Maine 04106 Attention: President e-mail: rnelson@eaglepointco.com
With copies to:	Kutak Rock, LLP 1801 California Street, Suite 3000 Denver, Colorado 80202 Attention: John Henry, Esq. e-mail: john.henry@kutakrock.com
To the Trustee:	UMB Bank, N.A. 1010 Grand Blvd Kansas City, MO 64106 Attention: Corporate Trust e-mail: liz.angotti@umb.com
To the Majority Owner:	At the address set forth on the Register

maintained by the Trustee

To the Controlling Person

Red Stone Servicer, LLC
666 Old Country Road, Suite 603
Garden City, New York 11530
Attention: Kiki Mastorakis
e-mail: kmastorakis@redstoneco.com

With a copy to

Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Attention: Alexander L. Scarola, Esquire
e-mail: scarolaa@gtlaw.com

Section 10.5 **Payments Due on Non-Business Days**. In any case where the date of maturity of, interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

Section 10.6 **Binding Effect**. This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

Section 10.7 **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 10.8 **Governing Law**. This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles.

Section 10.9 **Limited Liability of Issuer**. The Bonds, together with interest thereon, are not general obligations of the Issuer and do not constitute an obligation, either general or special, or a pledge of the full faith and credit on taxing power of the Issuer, the State, or any political subdivision thereof, but are limited obligations of the Issuer payable solely and only from amounts, moneys and securities held from time to time by the Trustee as part of the Security. **THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER, ISSUED UNDER THE ACT. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS ARE PAYABLE SOLELY FROM THE SECURITY OR FROM ANY OTHER MONEYS MADE AVAILABLE TO THE ISSUER FOR SUCH PURPOSE. IN NO EVENT SHALL THE BONDS CONSTITUTE AN INDEBTEDNESS OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR AN INDEBTEDNESS FOR WHICH THE FAITH AND CREDIT OR TAXING POWERS OF THE ISSUER, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF, ARE PLEDGED. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION AND ARE NOT PAYABLE IN ANY MANNER BY TAXATION. .**

No recourse shall be had for the payment of the principal of, or premium, if any, or interest on, any of the Bonds or for any claim based thereon or upon any obligation, provision, covenant or agreement contained in this Indenture against any past, present or future member, director, officer, official, employee or agent of the Issuer or its Economic Development Commission, or any member, director, trustee, officer, official, employee or agent of any successor to the Issuer, as such, either directly or through the Issuer or its Economic Development Commission or any successor to the Issuer or tis 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 director, trustee, officer, official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of any of the Bonds. Neither the officers of the Issuer or its Economic Development Commission nor any person executing the Bonds shall be personally liable on the Bonds by reason of the issuance thereof.

Section 10.10 **Execution in Counterparts; Electronic Signatures**. 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. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Indenture.

Section 10.11 **Electronic Transactions.**

(a) The transactions described in this Indenture and the Bond Documents may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. Unless otherwise specifically instructed in an Opinion of Bond Counsel or to the extent otherwise provided in this Indenture, the Trustee shall retain and maintain these records until three years following the final maturity of (i) the Bonds or (ii) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22.

(b) The Trustee agrees 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 and the understanding of the Trustee of such instructions shall be deemed controlling; provided, however, that the Borrower shall immediately mail the original instructions or directions to the Trustee. The Borrower shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. 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 Borrower agrees 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 or interception and misuse by third parties.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed in its name and on its behalf by its authorized official and the Trustee has caused this Indenture to be executed, in its name by its duly authorized representative, all as of the day and year first above written.

CITY OF MISHAWAKA, INDIANA

By:______________________________
Name: David A. Wood
Title: Mayor

UMB BANK, N.A., as trustee

By: ______________________________
Name:
Title:

EXHIBIT A
FORM OF BOND

$7,600,000
City of Mishawaka, Indiana
Multifamily Housing Revenue Bonds
(Ironwood Village Apartments Project), Series 2019

No. R-___

DATED DATE	MATURITY DATE	BOND COUPON RATE	CUSIP NO.
[__________, 2019]	December 1, 2058	[5.20% per annum from the Dated Date through and including August 31, 2020 and 5.35% per annum thereafter]	[__________]

REGISTERED OWNER: CEDE & CO.
PRINCIPAL AMOUNT: SEVEN MILLION SIX HUNDRED THOUSAND DOLLARS ($7,600,000)

The City of Mishawaka, Indiana, (the "Issuer"), a ______________________________, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and premium, if any, and (B) interest thereon, at the Bond Coupon Rate specified above, payable on the first Business Day of each month, commencing February 1, 2019 to the person whose name appears on the registration books on the day before such day (whether or not a Business Day) (a "Record Date") and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of UMB Bank, N.A., as trustee (the "Trustee"), or its successor.

Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve 30 day months. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee. Payments in respect of the Bonds administered in the Book-Entry System (including principal, premium and interest) will be made by wire transfer of immediately available funds to the Securities Depository.

This Bond is one of an issue of duly authorized above captioned bonds issued in the aggregate principal amount of $____________ (the "Bonds"), pursuant to the provisions of the Act.

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of ________ 1, 2019 (as amended, modified or supplemented from time to time, the "Loan Agreement"), between the Issuer and the Borrower, to finance the acquisition, renovation, installment and equipping of a multifamily residential facility located in Mishawaka, Indiana, and known as "Ironwood Village Apartments." The Borrower's payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of _________ 1, 2019 (as amended, modified or supplemented from time to time, the "Indenture"), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

THE BONDS TOGETHER WITH THE INTEREST THEREON 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 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 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 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 THE BONDS.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds are issuable only as fully registered Bonds and, except as hereinafter provided, in printed or typewritten form, registered in the name of Cede & Co. as nominee of the Depository Trust Company, New York, New York ("DTC"), which shall be considered to be the Holder for all purposes of the Indenture, including, without limitation, payment by the Issuer of the principal and interest due on the Bonds, and receipt of notices to, giving of consents by and exercise of rights of, Holders. There shall be a single Bond representing each maturity, and all Bonds shall be immobilized in the custody of DTC with the owners of beneficial interests in those Bonds (the "book-entry interests") having no right to receive from the Issuer Bonds in the form of physical securities or certificates. Ownership of book-entry interests in the Bonds shall be shown by book entry on the system maintained and operated by DTC, its participants (the "DTC Participants") and certain Persons acting through the DTC Participants, and transfers of ownership of book-entry interests shall be made only by that book-entry system, the Issuer and the Trustee having no responsibility therefor. DTC is to maintain records of the positions of DTC Participants in the Bonds, and the DTC Participants and Persons acting through DTC Participants are to maintain records of the purchasers and owners of book-entry interests in the Bonds. The Bonds as such shall not be transferable or exchangeable, except for transfer to another securities depository (a "Depository") that is a clearing agency under a federal law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of book-entry interests in the Bonds and to effect transfers of book-entry interests in the Bonds, without further action by the Issuer and otherwise at the expense of the Borrower

If any Depository determines not to continue to act as a Depository for the Bonds for use in a Book-Entry System, the Issuer, solely at the expense of the Borrower, may attempt to have established a securities depository/book-entry system relationship with another qualified Depository under the Indenture. If the Issuer does not or is unable to do so, the Issuer and the Trustee, after the Trustee has made provision for notification of the owners of book-entry interests by the then Depository, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver Bond certificates in fully registered form (in denominations of $100,000, or any amount in excess of $100,000, but not in excess of the aggregate principal amount of Bonds then Outstanding) to the assignees of the Depository or its nominee, all at the cost and expense (including costs of printing or otherwise preparing and delivering replacement Bond certificates) of those Persons requesting such authentication and delivery, if the event is not the result of Issuer action or inaction (including action at the request of the Borrower).

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the Issuer to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the members, directors, officers, officials, agents or employees of the Issuer, nor any person executing the Indenture or the Bonds, shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof. No recourse shall be had for the payment of principal of or the premium or interest on the Bonds, or for any claim based on the Bonds, or otherwise in respect of the Bonds, or based on or in respect of the Indenture or any supplemental indenture, against any past, present or future member, director, officer, official, agent or employee of the Issuer or any successor to the Issuer, as such, either directly or through the Issuer or any successor to the Issuer, whether by virtue of any constitution, statute or rule of law or equity, or by the enforcement of any assessment or penalty, or otherwise, all such liability of any such member, director officer, official, agent or employee being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk all as of the Dated Date hereof.

CITY OF MISHAWAKA, INDIANA

By:____________________________________

Mayor

Attest:

____

Clerk

CERTIFICATE OF AUTHENTICATION

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

UMB BANK, N.A., as trustee

By:________________________________

Authorized Signatory

ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto ____ (Tax Identification or Social Security No. ____________________) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints ______________________________ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

____
Date:
Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

____
Signature

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Miller, Controller
Kurtis D. Vardaman, Deputy Controller

Date: December 13, 2018

To: Honorable Members of the Common Council

From: Rebecca Miller

Re: **New fund – Flexible Spending Account fund #225**

I am respectfully requesting first and second reading for the December 17th meeting. A new fund is to be established for our new Flexible Spending Account (FSA) benefit.

This fund will hold the employees' pretax contributions and pay out their respective claims.

Please contact me with any questions.

c: David A. Wood – Mayor

City Hall • 600 East 3rd Street • Mishawaka, Indiana 46544
Telephone: (574) 258-1622 • FAX (574) 258-1724 • www.mishawaka.in.gov

1st Reading 12-17-18
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK MMC

DEC 13 2018

CITY CLERK
MISHAWAKA, IN

Proposed Ordinance NO. 2018-39

ORDINANCE NO.__________

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING A FLEXIBLE SPENDING ACCOUNT FUND

WHEREAS, the City of Mishawaka provides medical insurance benefits for its eligible employees; and

WHEREAS, employees have copays, deductibles, and other out of pocket expenses not covered by insurance; and

WHEREAS, Flexible Spending Accounts are an established tool for eligible employees to set aside pretax monies to pay for these eligible expenses; and

WHEREAS, the City sees the benefit in providing this voluntary component.

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

Section 1. Effective January 1, 2019 the City of Mishawaka, Indiana hereby establishes Fund 225 Flexible Spending Account Fund to hold the employees' pretax Flexible Spending Account contributions and to pay out the related claims.

Section 2. Unused contributions will revert to the City to cover the FSA administrative costs.

Section 3. This Ordinance shall be in full force and effect from and after its passage, signing, attestation, and legal publication.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana

On this __________ day of ______________, 2018 at _________ o'clock, ____.M.

____
Matt Mammolenti, Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana

on this ___________day of __________________, 2018 at_______ o'clock, ____.M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this ___________day of __________________, 2018 at

_____________o'clock, _____.M.

____
David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC

DEC 13 2018

CITY CLERK
MISHAWAKA, IN

1st Reading 12-17-18
2nd Reading
Passed
Failed
Continued To

PETITION 18-32

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2018-40

ORDINANCE NO. ______

AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:

A PARCEL OF LAND BEING A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 3 EAST, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 00°40'40" EAST ALONG THE EAST LINE OF SAID QUARTER SECTION, 1,295.97 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE EAST LINE OF SAID QUARTER SECTION AND THE WEST LINE OF LOT 1 OF ST. JOSEPH MEDICAL EDISON LAKES SUBDIVISION AS RECORDED AS INSTRUMENT NUMBER 0551329 IN THE RECORDER'S OFFICE OF ST. JOSEPH COUNTY, INDIANA; THENCE CONTINUING SOUTH 00°40'40" EAST ALONG THE EAST LINE OF SAID QUARTER SECTION AND THE WEST LINE OF SAID LOT 1, 657.35 FEET TO A POINT ON THE EAST LINE OF SAID QUARTER SECTION AND A CORNER OF SAID LOT 1; THENCE SOUTH 89°40'57" WEST ALONG A NORTHERLY LINE OF SAID LOT 1, 663.14 FEET TO A POINT ON THE EAST LINE OF PORTILLO'S MAIN STREET MINOR SUBDIVISION AS RECORDED AS INSTRUMENT NUMBER 1725314 IN SAID RECORDER'S OFFICE; THENCE NORTH 00°35'56" WEST ALONG THE EAST LINE OF PORTILLO'S MAIN STREET MINOR SUBDIVISION, 657.35 FEET; THENCE NORTH 89°40'58" EAST, 662.24 FEET TO THE POINT OF BEGINNING; SAID PARCEL CONTAINING 10.00 ACRES, MORE OR LESS, AND SUBJECT TO EASEMENTS, COVENANTS, AND RIGHT OF WAY OF RECORD.

AND

Proposed Ordinance No: 2018-40

Ordinance No: ______________________

LOT 1 IN PORTILLO'S MAIN STREET MINOR SUBDIVISION, AS PER PLAT THEREOF, RECORDED UNDER INSTRUMENT NUMBER 1725314 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

COMMON ADDRESS: North of the Edison Lakes Parkway and Holy Cross Parkway Intersection

which real estate is now classified as PUD Planned Unit Development district shall hereafter be amended to expand the PUD boundary, add R-3 Multiple Family Residential as a permitted use to allow for a 400 unit apartment complex, and reduce the parking requirements for the R-3 use, per the attached amended conditions, *with changes from the original approved conditions in italics*.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions - The subject property, located east of N. Main Street and north of Edison Lakes Parkway, is undeveloped agricultural land currently zoned for commercial purposes. N. Main Street is a highly travelled corridor with an average annual daily traffic count of nearly 33,000 vehicles per counts taken in 2015. Adjacent land uses include vacant agricultural land to the north within the original PUD, the St. Joseph Health System Mishawaka Medical Center to the east, Vibra Hospital currently under construction and vacant commercial land to the south, and Cheddar's Scratch Kitchen and Portillo's restaurants to the west.

2. Character of Buildings in Area - The area is predominantly commercial and medical-related uses. The character of many of the buildings in vicinity of this site are high quality commercial.

3. The most desirable/highest and best use - Because of the parcels' location and the significant commercial development on the north side of the City, serving as a regional area of commerce, combined with the proximity of Main Street, makes the most desirable use for the property a heavy mix of intensive commercial, professional office and service, and multifamily residential uses.

4. Conservation of property values - The proposed zoning will not be injurious to property values in the surrounding area, because the vast majority of adjacent property is commercial.

5. Comprehensive Plan - This property has been guided as medium density residential as part of the City's 2000 Comprehensive Plan.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

Proposed Ordinance No: 2018-40

Ordinance No: ______________________________

PASSED by the Common Council of the City of Mishawaka, Indiana, this __________day of _____________________, 2018, at _________ o'clock ___.M.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ________ day of ____________________, 2018, at _________ o'clock _____.M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _________ day of __________________, 2018, at _________o'clock ____.M.

____
David A. Wood, Mayor

PETITION #18-32
Coussens SE Main and Douglas Planned Unit Development

Uses:

1. Permitted uses *for all property in the original PUD* shall be limited to those uses identified in the C-1 (General Commercial) and C-2 (Shopping Center Commercial) zoning districts based on City of Mishawaka Zoning classification defined and in effect on the date of approval by the Mishawaka Common Council.

2. *Permitted uses on the south 10 acres of the original PUD shall be expanded to include R-3 Multifamily Residential* uses.

3. *Permitted uses on the area adjacent to the Edison Lakes Parkway including all or a portion of Lot 1 of Portillo's Main Street Minor Subdivision shall be limited to those uses identified in the C-1 (General Commercial) zoning district.*

4. Outside sale display for loose items shall be prohibited unless specifically approved by the Planning Commission as part of a final planned unit development site plan submission.

5. Off-premise signs/billboards shall be prohibited.

Traffic Impact:

1. Phasing of improvements, including the proposed internal collector drive (proposed street) shall be as determined by the City Director of Engineering.

2. The number and or type of curb cuts on any City Street and the internal access drive/street shall be as determined appropriate by the City Director of Engineering. Improvements shall take place consistent with an approved master plan as required herein.

Internal Road/*Sidewalk* connections:

1. Private vehicular connections between this property and adjacent properties shall be required, the location and number of connections required shall be determined as part of future planned unit development site plan submissions. Applicable private road connections shall be dedicated within easements as part of the each subsequent final planned unit development site plan. Actual construction shall occur concurrent with the development of the adjacent property or as directed by the City, whichever comes first. Modifications to the location of the easement /drive may be approved by the Planning Commission as part of any final planned unit development site plan approval. The applicant shall meet with the adjacent property owners to coordinate the exact connection locations between properties. The exact location of these connection points shall be subject to review and approval by the City.

2. *A minimum of two access points are required for the proposed multifamily residential apartment complex.*

3. *Sidewalks connecting the apartments and the hospital sites shall be constructed by the developer. A pedestrian access/sidewalk plan shall be submitted and approved by the City Director of Engineering.*

Stormwater Run-off/Utilities/Infrastructure:

1. The applicant/developer shall prepare a master plan to identify and provide for appropriate access and utility extensions. All improvements shall be subject to the review and approval of the City Director of Engineering.

2. The type of stormwater facilities proposed on the site shall be limited/restricted as directed by the City Director of Engineering. The 75' Drainage Easement on the east side of the property shall remain vegetated. Any proposed encroachment into this easement shall require compensatory improvements to the vegetation and or ditch as may be directed by the City Director of Engineering, subject to the review and approval of the St. Joseph County Drainage Board.

3. All costs associated with the extension of utilities, road improvements, or other infrastructure shall be the responsibility of the applicant/developer. Extension of utilities shall occur in a location and size as directed by the City Director of Engineering.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures.

2. A lighting plan shall be submitted with each subsequent planned unit development plan submission.

3. Ornamental fixtures matching the current City standard may be utilized in addition or instead of the lighting noted above.

Signage:

1. Standard Mishawaka On-Premise Sign Standards shall be varied to allow for a hierarchy of signage (given the large site) and to otherwise further the intent of this chapter as follows. No more than three freestanding site signs shall be located along Douglas Road, regardless of the number of lots proposed. All freestanding signs shall otherwise be designed as per the applicable City requirements:

   a. Each outlot/development parcel may be permitted one freestanding sign. These signs shall be limited to 8' in height and contain a display area of no more than 60 square feet. Each shall include a masonry base (to match the architecture of the building) no less than 3' in height. No more than 1/3 of the display area for each sign may be utilized as an electronic reader board. All freestanding signs shall be separated from each other by a minimum of 150 lineal feet.

b. One multi-tenant sign shall be permitted along Douglas Road (separate from the two outlots shown with Douglas Road Frontage). This sign shall be exclusively for properties that do not have a freestanding sign on Douglas Road. If constructed, this sign shall be constructed in a center landscape median within the proposed entry drive, or otherwise separated and made to be distinctly separate from the outlot signage located along Douglas Road. This sign shall be limited to 12' in height and contain a display area of no more than 60 square feet. No more than 1/3 of the display area for each sign may be utilized as an electronic reader board. The sign shall include a masonry base no less than 5' in height. All freestanding signs shall be separated from each other by a minimum of 150 lineal feet.

2. Temporary banners, flush mounted to a building shall be limited to one per building/use, and shall not exceed 80 square feet. These banners shall also be subject to any future more restrictive regulation that may be passed by the City.

3. General façade and directional signage standards shall be submitted concurrently with the first final planned unit development plan submission. Limits on the height of letters/signage for façade signs shall be reviewed and evaluated by the Planning Commission at that time.

4. *The parcels located along Edison Lakes Parkway and Holy Cross Parkway shall be permitted two (2) signs. One (1) for the outlot/development parcel and one (1) for the apartment site subject to the 1.a. requirements above.*

5. *An internal directional signage plan for the apartment site shall be submitted subject to Staff approval. Signs shall be not directly visible from the public right-of-way and shall be subject to the height and size requirement per 1.a above.*

Building Limitations/Architecture:

1. All proposed buildings shall be constructed of 100% approved materials as identified within Section 105.76 of the City of Mishawaka Municipal code as amended, except that hardi-board maybe used as an accent material, not to exceed 1/3 of the area of any single building face. Materials and colors shall be varied to provide architectural interest.

2. For all development parcels- there shall be a minimum building setback of 75' from all public right-of-way and private collector drives. A minimum side building setback of 10' shall be provided along lot/property lines. A minimum 25'building setback shall be provided from internal non-public access drives. A minimum 25' rear yard building setback shall be provided. A minimum 25' building setback from the Indiana Toll Road right-of-way shall be provided.

3. The maximum building height for the site shall be 48', except for hotel uses that shall be permitted to construct a maximum of four stories not to exceed 70' in height.

4. *The maximum building height for the proposed apartment complex shall be limited to five (5) stories.*

Parking/Landscaping:

1. *The number of parking spaces required for the proposed apartment complex shall be provided at a rate of 1.2 spaces per apartment unit.*

2. A minimum pavement setback of 5' in width shall be provided between internal lots/development parcels. A minimum 25' pavement setback shall be provided along all public right-of-way and private internal collector roadways. A minimum 10' pavement setback/green area shall be provided from internal non-public access drives and proposed parking/building areas.

3. For large shopping areas where shopping carts are utilized, cart corrals shall be provided. Corral's shall be identified and removed from total number of parking spaces provided. Curbed landscape islands shall be provided to break up large pavement areas as determined by the Planning Commission as part of the review of any planned unit development site plan.

4. Earth mounding shall be provided along public road right-of-way, between parking areas and public streets. A minimum 25-foot green buffer area shall be required along all public road right-of-way and internal collector drives. Each individual outlot within all development parcels shall comply with the landscape requirements of the C-1 General Commercial zoning district. All side property lines within 100' of Main Street right-of-way shall comply with the front yard landscaping standards identified within the C-1 General Commercial zoning district.

4. Sidewalks and utilities may be provided within required 25' green landscaped areas. If sidewalks and utilities are located within the required 25-foot green area, a minimum utility/sidewalk free area of 10 feet in width shall be required for planting.

5. Phasing of required landscaping shall be reviewed as part of every final planned unit development plan submission.

6. All loading docks, dumpsters, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall matching the building materials of the principle building. Dumpster locations shall be located away from any roads behind principle buildings and located away from public right-of-way and internal collector drives.

Phasing:

1. The phasing and development of infrastructure for the development shall be reviewed and approved by the Planning Commission concurrently with the first planned unit development site plan submission. Future modifications and requirements may be placed by the Planning Commission concurrent with each subsequent planned unit development site plan submission to provide for the interconnectivity of roads and other related infrastructure.

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 28 2018

CITY CLERK
MISHAWAKA, IN

November 21, 2018

Honorable Members of the Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: PETITION FOR PUD AMENDMENT AND TO REZONE

The undersigned John Coussens and Cressy Land Investments LLC respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

A PARCEL OF LAND BEING A PART OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 3 EAST, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 00°40'40" EAST ALONG THE EAST LINE OF SAID QUARTER SECTION, 1,295.97 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE EAST LINE OF SAID QUARTER SECTION AND THE WEST LINE OF LOT 1 OF ST. JOSEPH MEDICAL EDISON LAKES SUBDIVISION AS RECORDED AS INSTRUMENT NUMBER 0551329 IN THE RECORDER'S OFFICE OF ST. JOSEPH COUNTY, INDIANA; THENCE CONTINUING SOUTH 00°40'40" EAST ALONG THE EAST LINE OF SAID QUARTER SECTION AND THE WEST LINE OF SAID LOT 1, 657.35 FEET TO A POINT ON THE EAST LINE OF SAID QUARTER SECTION AND A CORNER OF SAID LOT 1; THENCE SOUTH 89°40'57" WEST ALONG A NORTHERLY LINE OF SAID LOT 1, 663.14 FEET TO A POINT ON THE EAST LINE OF PORTILLO'S MAIN STREET MINOR SUBDIVISION AS RECORDED AS INSTRUMENT NUMBER 1725314 IN SAID RECORDER'S OFFICE; THENCE NORTH 00°35'56" WEST ALONG THE EAST LINE OF PORTILLO'S MAIN STREET MINOR SUBDIVISION, 657.35 FEET; THENCE NORTH 89°40'58" EAST, 662.24 FEET TO THE TO POINT OF BEGINNING; SAID PARCEL CONTAINING 10.00 ACRES, MORE OR LESS, AND SUBJECT TO EASEMENTS, COVENANTS, AND RIGHT OF WAY OF RECORD.

AND

LOT 1 IN PORTILLO'S MAIN STREET MINOR SUBDIVISION, AS PER PLAT THEREOF, RECORDED UNDER INSTRUMENT NUMBER 1725314 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

PET 18-32

RECEIVED

NOV 21 2018

BUILDING, PLANNING
COMMUNITY DEVELOPMENT

Petitioner(s) own one hundred (100%) percent of the above described parcels which carry zoning classifications of S-2 Planned Unit Development specifically for *C-1 (General Commercial) and C-2 (Shopping Center Commercial) uses and C-1 (General Commercial) Said parcels are currently vacant with the exception of a common access drive and parking area located within Lot 1 of the Portillo's Main Street Minor Subdivision.*

Petitioner(s) desire that the PUD and zoning for said real estate to be amended to allow for:

1. *Expansion of the PUD to include Lot 1 of the Portillo's Main Street Minor Subdivision being a 1.63 acre parcel owned by Cressy Land Investments and zoned C-1 (General Commercial). Saxon Partners, the contingent developer of the proposed multi-family housing project as described below under item #2, is acquiring the 1.63 acre site adjacent to the south west corner of the existing PUD. The parcel is currently zoned C-1 Commercial, which is consistent with the existing uses allowed within the PUD. The parcel will allow vehicular access and connectivity to Main Street and Edison Lakes Parkway as well as utility access to the southern portion of the existing PUD. Uses on this lot will be limited to those identified in the C-1 (General Commercial) zoning district.*

2. *R-3 (Multiple Unit Residential) zoning classification use for the southern 10 acres of the existing PUD. The contingent developer is proposing to develop a 400 unit multi-family housing project on the southern 10 acres of the existing PUD. The proposed multi-family housing development will consist primarily of studio, one bedroom, and two-bedroom apartments. The target market demographic is single employees of the adjacent hospital. The proposed multi-family residential is complementary to the existing C-1 and C-2 Commercial uses in that it provides additional potential customers in immediate proximity to the existing and proposed restaurant and retail businesses.*

3. *Reduction in parking requirements in R-3 Use from the required 1.5 spaces per unit to 1.2 spaces per unit. The proposed overall parking density of 1.2 spaces per unit is sufficient to serve to total number of units in the project based on the anticipated occupancy densities and tenant mix of the project. The design of the development will utilize a mix of on-street and off-street parking, along with parking provided under the structures to minimize the amount of land used for surface parking. Additionally, the project will be designed to accommodate bicycle and pedestrian access between the apartments and the hospital, reducing the number of vehicle trips generated.*

Accompanying this petition is a drawing, to scale, showing the above described parcel of real estate, together with a simple massing plan intended to provide a sense of the scale of the proposed apartment development on those parcels. Petitioners further agree to the remaining standards and conditions as they exist in the current PUD Ordinance #5348.

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above described parcel of land located in the City of Mishawaka.

John Coussens
Signed

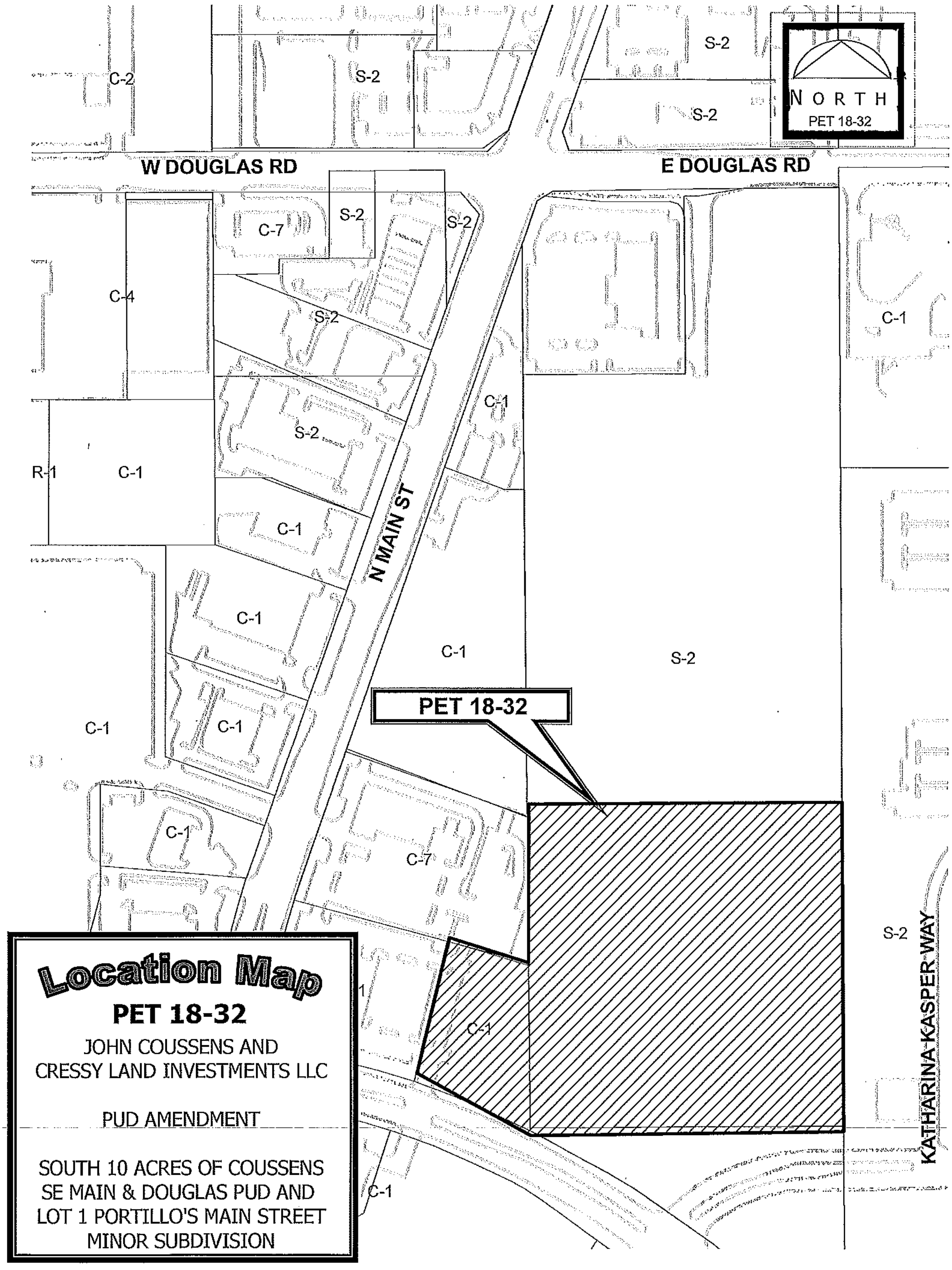
John Coussens

Signed

George Cressy
Cressy Land Investments LLC
MEMBER

CONTACT PERSON:

Name:	Mike Huber, Abonmarche Consultants
Address	750 Lincoln Way East, South Bend, IN 46601
Phone Number/ Fax	574.347.4610
Email	mhuber@abonmarche.com


NORTH
PET 18-32
W DOUGLAS RD
E DOUGLAS RD
N MAIN ST
KATHARINA-KASPER-WAY
C-2
S-2
S-2
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C-1
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C-1
C-1
C-1
S-2
C-1
C-1
PET 18-32
C-1
C-7
S-2
C-1
C-1
Location Map
PET 18-32
JOHN COUSSENS AND
CRESSY LAND INVESTMENTS LLC
PUD AMENDMENT
SOUTH 10 ACRES OF COUSSENS
SE MAIN & DOUGLAS PUD AND
LOT 1 PORTILLO'S MAIN STREET
MINOR SUBDIVISION

APPEAL #18-44

RESOLUTION NO. 2018-26

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

Vacant Land Between 5102 and 5310 North Main Street, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for vacant land located **between 5102 and 5310 North Main Street, Mishawaka, Indiana**, more particularly known and described as follows:

LOT 3 IN PORTILLO'S MAIN STREET MINOR SUBDIVISION, AS PER PLAT THEREOF, RECORDED UNDER INSTRUMENT NUMBER 1725314 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA

COMMON ADDRESS: Vacant Land Between 5102 and 5310 North Main Street

The Use Variance, if approved, will allow multiple buildings with multiple tenants and one drive-thru restaurant on C-1 General Commercial zoned property subject to the following:

1. The required minimum number of parking spaces for the entire property shall comply with the parking ratios for each individual use/tenant.
2. Uses shall be limited to one (1) restaurant with drive-thru and those identified in the C-1 General Commercial Zoning District.
3. Current stormwater management standards and grease-traps shall be implemented per City of Mishawaka Engineering Department.
4. Access drive improvements shall be reviewed as a part of the site plan submittal and implemented as determined by the City of Mishawaka Engineering Department.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed density and uses are consistent and compatible with the density and uses of the adjacent parcels. Furthermore, all state and local building codes will be adhered to during construction.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. The proposed multi-building development allows for greater flexibility in attracting tenants and users to the site, and is more consistent with the existing development within the corridor than traditional single building, multi-tenant strip development. The multi-building approach also allows a single developer to create a higher quality development. Drive-thru uses are currently present along the Main Street corridor including immediately to the south. Lastly, the proposed development will create additional traffic to support the existing adjacent commercial uses.

3. The need for the variance arises from some condition peculiar to the property. The property is zoned C-1 General Commercial and the City of Mishawaka Zoning Ordinance does not have a zoning classification that would allow for the proposed multi-building development to include multiple tenants and one (1) drive-thru restaurant use.

4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought. The zoning does not allow the proposed multi-building development to include multiple tenants and one (1) drive-thru restaurant use. The preferred means by which to allow the proposed uses is through the use variance process;

5. The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The Plan, created in 1990, guided medium density resident development within this property as an extension of an existing apartment complex to the north on Douglas Road. However, due to changing market conditions and land development patterns along the N. Main Street corridor, medium density residential is not an ideal use for the property. The proposed office, retail, and restaurant uses, being a higher intensity use more compatible with the adjacent land uses, does not conflict with the goals and objectives of the Comprehensive Plan.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this ________ day of____________________, 2018, at ______o'clock ____ .m.

____
Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ________day of ____________________2018, at _______ o'clock ___m.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _______ day of_____________________, 2018, at _______o'clock _____.m.

____
David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 28 2018

CITY CLERK
MISHAWAKA, IN

RECEIVED
NOV 21 2018
BUILDING, PLANNING
COMMUNITY DEVELOPMENT

AP 18-44

Wednesday, November 21, 2018

Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. I, *SCM 10X MISHAWAKA I, LLC*, am the owner of the following described real estate located within the City of Mishawaka, Township, St. Joseph County, State of Indiana, to-wit:

LEGAL DESCRIPTION:

LOT 3 IN PORTILLO'S MAIN STREET MINOR SUBDIVISION, AS PER PLAT THEREOF, RECORDED UNDER INSTRUMENT NUMBER 1725314 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA.

2. The above-described real estate presently has a zoning classification of C-1 *Commercial District* under the Zoning Ordinance of the City of Mishawaka.

3. Appellant proposes to occupy the above-described property in the following manner:
Mixed use commercial development.

4. Appellant desires to:
The proposed development will include multiple buildings that will accommodate multiple tenants. The proposed development will also accommodate one drive-thru restaurant building

5. The Zoning Ordinance of the City of Mishawaka requires
Currently, the C-2 Commercial zoning district is identified as the appropriate district for developments containing 3 or more contiguous uses. The proposed development will include up to 3 buildings containing multiple uses within and between the 3 buildings. Additionally, Section 137.031 of the C-1 Zoning District does not permit drive-thru restaurants. The proposed development will include a maximum of 1 building to accommodate a drive-thru restaurant tenant.

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.
It is the petitioner's intent to create a multi-building development with a mix of office, restaurant and retail uses, as the size and cost of the site are too large to justify a single tenant user for the site. However, at 4.23 acres the site falls just below the minimum 5 acres to qualify for a PUD zoning classification that might be considered as an alternative to requesting the use variances for both number of tenants and the drive-thru restaurant use. The proposed multi-tenant mixed use development is consistent with the character and the density of development and the uses found within the Main Street Commercial corridor where the property is located. The drive-thru use is currently present within the corridor, specifically at the adjacent property to the south. Strict

adherence to the C-1 Commercial district ordinance requirements will limit the density and uses that can be achieved on the site below what could be achieved through a PUD and relative to the surrounding properties.

7. Answer the following necessary questions for a USE VARIANCE:

(1) Will approval be injurious to the public health, safety, morals or general welfare of the community? *YES OR NO and explain your reason why.*
No. Approval of the use variance allowing multiple uses including a drive-thru restaurant will not impact the public health safety, morals or general welfare of the community. The proposed density and uses are all consistent with existing density and uses of the adjacent properties and similar properties in the Main Street commercial corridor.

(2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *YES OR NO and explain your reason why.*
No. The multi-building approach allows for greater flexibility in attracting tenants and users to the site, and is more consistent with existing development within the corridor than traditional single building, multi-tenant strip development. Additionally, the multi-building approach will allow the developer to create a higher level of architectural character and use higher quality building materials. Drive-thru uses are currently present within the corridor, specifically at the adjacent property to the south. Finally, the proposed office and commercial uses in the development will be a destination, and will create additional traffic to support the existing adjacent restaurants and shops.

(3) Does the need for the variance arise from some condition peculiar to the property involved? *YES OR NO and explain your reason why.*
Yes. The size of the site is too large to justify a single tenant user for the site. However, at 4.23 acres the site falls just below the minimum 5 acres to qualify for a PUD zoning classification that might be considered as an alternative to requesting the use variances for both number of tenants and the drive-thru restaurant use. There are currently 2 other PUD developments in the Main Street corridor, including the property adjacent to the East and across the street to the West.

(4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *YES OR NO and explain your reason why.*
Yes. The proposed multi-tenant mixed use development is consistent with the character and the density of development and the uses found within the Main Street Commercial corridor where the property is located. The drive-thru use is currently present within the corridor, specifically at the adjacent property to the south. Strict adherence to the C-1 Commercial district ordinance requirements will limit the density and uses that can be achieved on the site below what could be achieved through a PUD and relative to the surrounding properties.

(5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? *YES OR NO and explain your reason why.*
NO. The office, retail and restaurant uses included in the proposed development are consistent with the City of Mishawaka 2000 Comprehensive Plan, which identify general commercial and service commercial uses for the area surrounding the property.

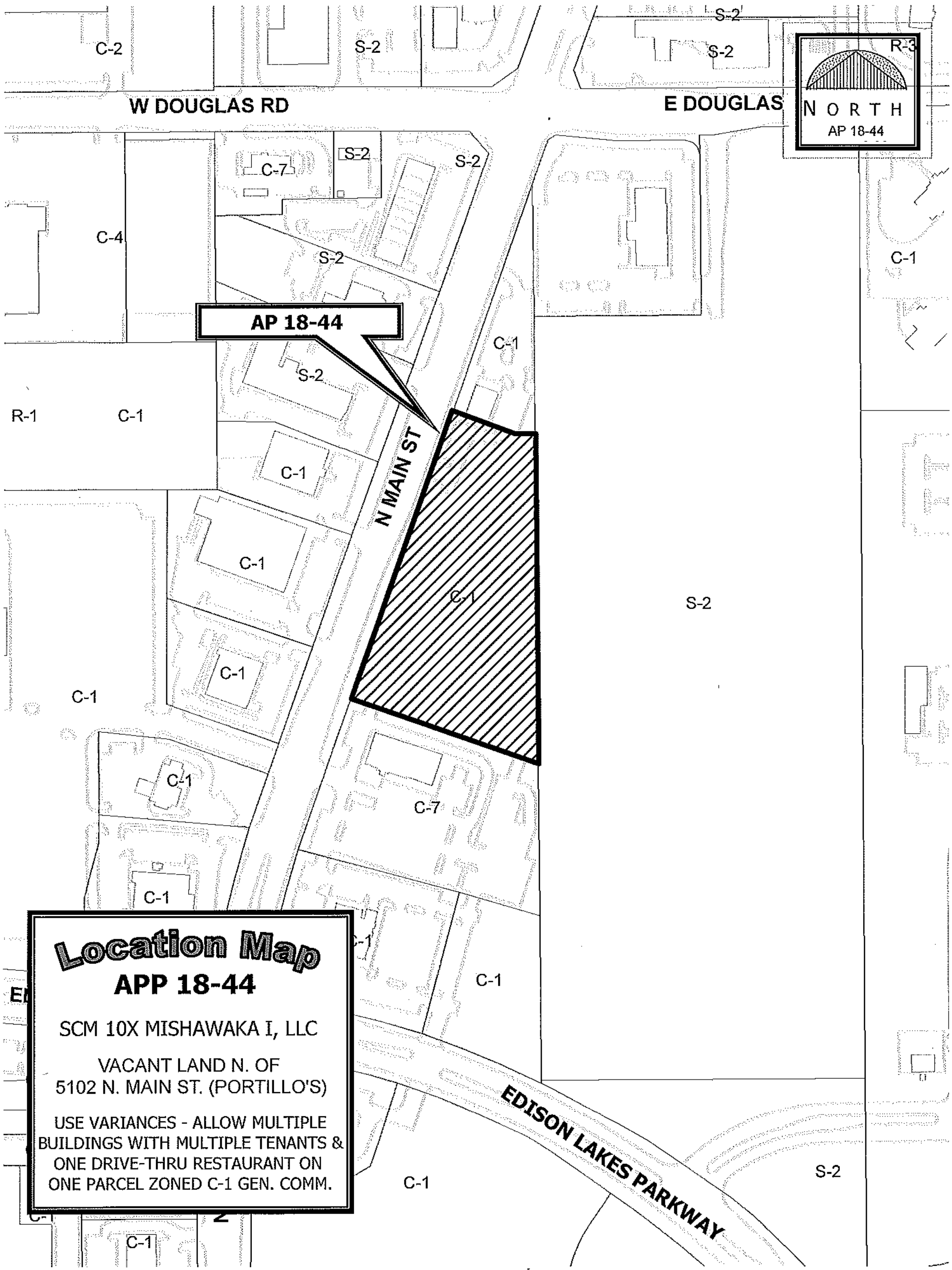
WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

SCM 10X MISHAWAKA I, LLC
BY: SCM 10X FUND, LLC-SOLE MEMBER
BY: SCM 10X MANAGERS, LLC-MANAGER

BY: KIRK HANSON, MANAGER

CONTACT PERSON:

Name:	Mike Huber, Abonmarche Consultants
Address:	750 Lincoln Way East, South Bend, IN 46601
Day Phone Number:	574.347.4610
Fax Number:	574.251.4400
Email:	mhuber@abonmarche.com


W DOUGLAS RD
E DOUGLAS
NORTH
AP 18-44
AP 18-44
N MAIN ST
EDISON LAKES PARKWAY
C-2
S-2
S-2
S-2
S-2
R-3
C-7
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C-1
C-1
S-2
C-1
C-1
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C-7
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S-2
C-1
Location Map
APP 18-44
SCM 10X MISHAWAKA I, LLC
VACANT LAND N. OF
5102 N. MAIN ST. (PORTILLO'S)
USE VARIANCES - ALLOW MULTIPLE
BUILDINGS WITH MULTIPLE TENANTS &
ONE DRIVE-THRU RESTAURANT ON
ONE PARCEL ZONED C-1 GEN. COMM.

1st Reading 12-3-18
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2018-31

ORDINANCE NO.____________

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2018

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Motor Vehicle Highway Fund budget adopted for the fiscal year ending December 31, 2018.

Section 2. There is hereby transferred and reappropriated the sum of $15,000.00 as follows:

Motor Vehicle Highway Fund

From: Street Department
Other Services and Charges
201-50-435-02 NIPSCO $15,000.00

To: Street Department
Supplies
201-50-422-02 Gas, Oil, Etc. $15,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this

______day of ____________, 2018 at ________ o'clock, ___.M.

____
Matt Mammolenti, Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this ______day of____________, 2018 at ________ o'clock, ____.M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this ______ day of, ____________, 2018 at ______ o'clock, ____.M.

____
David A. Wood, Mayor

CITY OF MISHAWAKA

STREET DEPARTMENT
Tim Ryan
Street Commissioner

DAVID A. WOOD, MAYOR

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 26 2018

CITY CLERK
MISHAWAKA, IN

November 26, 2018

Mishawaka Common Council
City Hall
600 East Third Street
Mishawaka, IN 46544

RE: Proposed Ordinance 2018- 31

Honorable Council Members:

At this time, we find the need to request a transfer of funds within the MVH budget. We will need to move $15,000 from NIPSCO (201-50-435-02), into GAS, OIL, ETC. (201-50-422-02).

If you have any questions concerning this transfer, please call or visit my office.

Sincerely,

Tim Ryan
Street Commissioner

700 Union Street, Mishawaka, IN 46544 (574) 258-1660 FAX (574) 258-1699
Street@mishawaka.in.gov

PROPOSED ORDINANCE NO. 2018-32

1st Reading 12-3-18
2nd Reading
Passed
Failed
Continued To

ORDINANCE NO.____________

AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2018

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA INDIANA, THAT:

Section 1. An emergency exists which requires the appropriation of additional funds for the fiscal year ending December 31, 2018 in addition to that set out in detail in the published budget.

Section 2. There is hereby appropriated from the Sidewalk and Curb Repair fund of the City of Mishawaka the sum of $20,359.58 for assignment as follows:

Sidewalk and Curb Repair

Capital Outlays		
220-50-442-04	Street/Sewer/Sdwlk/Curb	$ 20,359.58

Section 5. This Ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana

On this ____________ day of ________________, 2018 at __________ o'clock, ____. M.

____

Matt Mammolenti, Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana on this ____________day of ____________________, 2018 at________ o'clock, _____. M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this ____________day of ____________________, 2018 at ______________o'clock, ______. M.

____
David A. Wood, Mayor

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Miller, Controller
Kurtis D. Vardaman, Deputy Controller

Date: November 29, 2018

To: Honorable Members of the Common Council

From: Rebecca Miller

Re: **Additional Sidewalk/Curb Funds**

For first reading on December 3rd I have a request for an additional appropriation.

With the sidewalk and curb cost share program we do all we can to maximize the budget. This year, it is necessary to appropriate the citizen cost share funds received to pay all of the expenses incurred.

Please contact Chris or me with any questions.

c: David A. Wood – Mayor
Christine Jamrose – Dir. of Engineering/City Engineer

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 29 2018

CITY CLERK
MISHAWAKA, IN

1st Reading 12-3-18
2nd Reading
Passed
Failed
Continued To

Proposed Ordinance NO. 2018- 33

ORDINANCE NO.__________

AN ORDINANCE AMENDING ORDINANCE 5532 THAT ESTABLISHED

INTERNAL CONTROL STANDARDS

AND THE MATERIALITY THRESHOLD

WHEREAS, Ind. Code 5-11-1-27 requires all Indiana political subdivisions to adopt minimum levels of internal control standards developed by the State Board of Accounts as published in the Uniform Internal Control Standards for Indiana Political Subdivisions prior to June 30, 2016; and

WHEREAS, the Controller has reviewed and recommendations adoption of the proposed internal control standards and materiality threshold.

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

Section 1. The City of Mishawaka, Indiana hereby adopts the Internal Control Policy attached hereto and incorporated herein as Exhibit A.

Section 2. The Controller is directed to ensure that all appropriate personnel receive training concerning the internal control procedures adopted and approved herein prior to December 31, 2016.

Section 3. The City of Mishawaka, Indiana hereby adopts a materiality threshold of $2,500 for purposes of the internal control procedures adopted and approved herein.

Section 4. This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana

On this ___________ day of _______________, 2018 at __________ o'clock, ____.M.

____
Matt Mammolenti, Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana

on this __________ day of _________________, 2018 at_______ o'clock, ____.M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this __________ day of _________________, 2018 at

____________ o'clock, _____.M.

____
David A. Wood, Mayor

CITY OF MISHAWAKA, INDIANA

Internal Controls Policy Pursuant to Ind. Code 5-11-1-27

I. Policy

The purpose of this policy is to communicate the Common Council's internal control objectives to all employees and elected officials of the City of Mishawaka and to firmly commit the City to the seventeen (17) key principles of internal controls as established by the Indiana State Board of Accounts.

COMPONENT ONE: CONTROL ENVIRONMENT

Principle 1: The oversight body and management demonstrate a commitment to integrity and ethical values.

The City has the responsibility to establish and maintain an adequate system of internal control and to furnish to the Mishawaka Common Council, various boards and commissions, governmental agencies, creditors and others reliable financial information on a timely basis. An adequate system of internal control is necessary for the city to discharge these responsibilities.

Controls help ensure that assets are not exposed to unauthorized access and use, transactions are properly recorded in the financial records, and the resultant financial information is reliable. External organizations and stakeholders of the City rely on financial information to make decisions toward appropriations, loans and other debt, grants, and other contractual relationships. City resources are dependent upon the system of internal control. Auditors are required annually to report upon the adequacy of the City's systems for control over financial reporting and compliance per I.C. 5-11-1-27(e). The safeguarding of City assets and the reliability which the City and others can place upon its financial records is dependent upon the effectiveness of the internal control process.

As the fiscal body, Common Council expects the City administration to effect an internal control environment with policies and procedures necessary to provide reasonable assurance that practices cause effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations.

The system of internal control is meant to keep the City on course toward its mission and to minimize surprises. The system promotes efficiency, minimizes risks of asset loss, helps ensure the reliability of financial information, and compliance with applicable laws, rules, and regulations.

Internal control is a process; a means to an end, and not an end unto itself. The control environment is the foundation upon which all components of internal control are based. It sets the tone for City operations. Internal control is about people, operations, communications, and the work environment. It is not about policies and forms though it takes shape through the implementation of relevant policies, procedures, and practices. Internal Control can provide reasonable assurance, but no system of control can provide absolute assurance to the Common Council and other users of financial information.

The Finance Department shall be charged with:

. Conveying periodic messages of the City's internal control philosophy and expectations to all employees;

. Evaluating the City's internal control system for weaknesses on a periodic (but no less frequently than annual) basis, providing solutions to any discovered weaknesses, and inform employees of necessary changes in procedures;

. Working with the Human Resources Department to establish a confidential reporting system for individuals to report suspected fraud and abuse of internal control policies; and

. Working with the Human Resources Department to institute procedures to address violations of policies and consequences for violations

Principle 2: The oversight body oversees the entity's internal control system.

As the fiscal body for the City, the Common Council is responsible for setting the institutional expectations for internal control, ensuring management is aware of those expectations, requiring the upward communications channels are open through all levels of management, and evaluating management's effectiveness toward monitoring the control environment and implementing sound control policies and procedures. As the City's Chief Fiscal Officer, the Controller will be the Common Council's chief agent in implementing and managing the internal control policies and procedures.

Principle 3: Management establishes an organizational structure, assigns responsibility, and delegates authority to achieve the entity's objectives.

Individuals with delegated approval authority, e.g. Elected Officials and Department Heads are responsible for establishing, maintaining, and supporting a system of internal controls within their areas of responsibility and for creating the control environment that encourages compliance with City policies and procedures.

Adequate supervision is necessary to monitor that internal controls are operating as intended, and to help ensure the reliability of accounting and operational controls by pointing out errors, omissions, exceptions, and inconsistencies in procedures. Staff in leadership roles are responsible for the application of this policy and the design, development, implementation, and maintenance of systems of internal controls focusing on the effectiveness of operations and the safeguarding of assets within their respective areas of responsibility. All levels of management and supervision are responsible for strengthening internal controls when weaknesses are detected. Department managers should periodically review departmental procedures to ensure that the general principles of internal control are being followed.

The Finance Department has the primary responsibility for internal control over financial reporting and compliance with applicable laws, rules, and regulations. The Controller is the City's chief source for information and assistance to staff and Department Heads on this topic and will make resources available to assist in administering this policy.

The Human Resources Department is responsible for internal controls over employee recruitment, hiring, separation, promotion, job classification, employee rights, and salary administration. The Benefits

Coordinator and Corporation Counsel are the City sources for information and assistance on this topic and will make resources available to assist in administering this policy.

All levels of internal control are subject to examination by external auditors who are required to report on the adequacy of internal controls over finance and compliance.

Department Heads are responsible for prompt corrective action on all internal control findings and recommendations made by internal and external auditors. The audit process is completed only after Department Heads receive the audit results and take action to correct internal control weaknesses, improve systems, or demonstrate that management action is not warranted. Department Heads have the responsibility to ensure that those who report to them have adequate knowledge, skills, and abilities to function within, and contribute to, an effective internal control environment. This includes providing access to appropriate training on topics relevant to their job responsibilities.

Principle 4: Management demonstrates a commitment to recruit, develop, and retain competent individuals.

The City Employee Handbook provides a roadmap for recruiting and maintaining quality employees. Prior to employment individuals may be subject to pre-employment background screening and/or a credit history check. While employed City Employees are entitled to a benefits package including Health and Disability Insurance and certain other Post-Employment Benefits. The City will continue to assess the best recruitment pools and tools for the different skill sets of skills necessary to adequately implement and maintain quality internal controls.

Job descriptions will be updated where necessary to reflect internal control responsibilities and duties. Employees will be regularly trained in internal control methods and all training will be documented in employees' personnel files. Employees will be regularly evaluated by their supervisors on internal control duties and receive feedback on possible improvements.

Principle 5: Management evaluates performance and holds individuals accountable for their internal control responsibilities.

Individuals are held accountable for their internal control responsibilities through a recognized structure which includes relevant job descriptions, operating procedures, periodic reviews, regular feedback, and a progressive disciplinary policy. Additionally, City Administration seeks to address issues in specific departments and positions through regular one-on-ones with Department Heads.

COMPONENT TWO: RISK ASSESSMENT

Principle 6: Management defines objectives clearly to enable the identification of risks and risk tolerances.

Through the creation of standard operating procedures and accurate organizational reporting charts management conveys and identifies objectives, missions, policies and risk tolerances to employees. The Finance Department will lead a risk analysis of three major areas:

1. The effectiveness and efficiency of operations.
2. The reliability of reporting for internal and external use.

3. Compliance with applicable laws and regulations.

For each category, the Finance Department will define objectives in specific measurable terms in order to enable the design of internal control for related risk, increase understanding at all levels, assess performance, identify what is to be achieved, who is to achieve it, how it will be achieved, when it will be achieved and incorporate external requirements.

Principle 7: Management identifies, analyzes, and responds to risks related to achieving the defined objectives.

The Finance Department will identify, analyze and respond to the risks identified in Principle 6 by determining:

1. How likely is the risk to occur?
2. How will it impact the objective?
3. Is the risk based on complex or unusual transactions?
4. Is the risk based on fraud?

Once each risk has been identified and analyzed, the Finance Department will work with Department Heads to determine how to respond to each risk with a specific solution and action.

Principle 8: Management considers the potential for fraud when identifying, analyzing, and responding to risks.

Management is committed to fraud prevention by utilizing a "trust but verify" approach. The potential for fraud, misappropriation, and outright theft are contemplated as controls are designed for various City divisions. Fraud responses will include statutorily required responses to fraud, including, but not limited to Ind. Code 5-11-1-27(1) relating to the Report of Misappropriation of Funds to State Board of Accounts and Prosecuting Attorney and Ind. Code 5-11-1-27(j) relating to the Report of Material Variances, Losses, Shortages or Thefts to the State Board of Accounts. The City shall utilize a materiality threshold of $500.

Principle 9: Management identifies, analyzes, and responds to significant changes that could impact the internal control system.

The Finance Department, in coordination with Department Heads, will regularly evaluate and adjust internal control policies in order to accommodate for the impact of future changes, including but not limited to, personnel changes, newly elected officials, new programs, new technology, new laws and regulations, and financial fluctuations.

COMPONENT THREE: CONTROL ACTIVITIES

Principle 10: Management designs control activities to achieve objectives and respond to risks.

The Finance Department will establish and maintain a system of internal controls that satisfies the City's objectives in the following categories:

1. Risks are identified and effectively managed
2. Safeguarding of City assets

3. Reliability and integrity of financial information
4. Compliance with City policy, plans, procedures, laws and regulations
5. Economical and efficient use of City resources
6. Meeting established objectives and goals for City operations and programs.

A. General internal control principles for Departments are:

1. Separation of duties
   a. Duties are separated so that one person's work routinely serves as a check on another's work.
   b. No one person has complete control over more than one key function or activity (e.g., authorizing, approving, certifying, disbursing, receiving, or reconciling).

2. Authorization and approval
   a. Proposed transactions are authorized when proper and consistent with City policy and the department's plans.
   b. Transactions are approved by the person who has delegated approval authority, which is usually delegated on the basis of special competency or knowledge.

3. Custodial and security arrangements
   a. Responsibility for physical security/custody of City assets is separated from record keeping/accounting for those assets.
   b. Unauthorized access to City assets and institutional data is prevented.

4. Timely and accurate review and reconciliation
   a. Departmental accounting records and documents are examined by employees who have sufficient understanding of the City accounting and financial systems to verify that recorded transactions actually took place and were made in accordance with City policies and procedures.
   b. Departmental accounting records and documentation are compared with City accounting system reports and financial statements to verify their reasonableness, accuracy, and completeness.
5. The general internal control principles should be applied to all departmental operations, especially accounting records and reports, payroll, purchasing/receiving/disbursement approval, equipment and supply inventories, cash receipts, petty cash and change funds, billing and accounts receivable.

B. All City systems, processes, operations, and activities are subject to evaluations of internal control systems. The results of these evaluations provide information regarding the City's overall system of control.

C. Information and communication – Information must be timely and communicated in a manner that enables people to carry out their responsibilities.

1. All covered employees must be trained on Internal Controls according to Ind. Code 5-11-1-27(g). All personnel must receive a clear message from the City's administration that control responsibilities are to be taken seriously. Failure to comply with established practices will subject individuals to the terms of disciplinary action or dismissal.

2. Employees must understand their own roles in the internal control system, as well as how individual activities relate to the work of others. To this end, whenever a new budgetary unit, financial activity, etc. is set up, the Controller will provide notification to the appropriate parties of the responsibilities incumbent on them for good business practices and sound financial management, including reference to the principles within this policy.
3. Employees must have a means of communicating significant information to the City's administration.
4. The City must communicate effectively with external parties, such as auditors, creditors, contractors, suppliers, regulators and other stakeholders.

F. Internal control is meant to keep the City focused on achieving its mission while avoiding surprises. There is a balance between effective controls and mission accomplishment. Costs associated with internal controls should not exceed their benefit, nor should controls be allowed to stifle mission effectiveness and timely action. All levels of management must assess the costs, benefits, and risks when designing controls to develop a positive control environment and compensate for the risks of non-compliance, loss of assets, or unreliable reporting while accomplishing the City mission.

The following specific internal control policies are adopted for use by City Departments:

Payroll Activities

. Salaries and wage rates are verified by the Human Resources Department.

. The responsibilities for hiring, terminating, and approving promotions are segregated from those preparing payroll transactions or inputting data.

. The responsibilities for approving time sheets are segregated from those for preparing payroll transactions or inputting data.

. Payroll adjustment reports are submitted by someone outside of the payroll process.

. Employees' time and attendance records are approved by their supervisors.

. Corrections to recorded time and attendance records are approved by the employee and employee's supervisor.

. Procedures are in place to ensure that changes in employment status are promptly reported to the payroll processing unit.

. Payroll disbursements are reviewed and approved by an authorized individual prior to payment.

. Access to payroll applications is appropriately controlled by user logins and passwords.

. Changes to a payroll disbursement are approved by an individual other than the ones authorized to process the changes.

. Payroll checks are accounted for in numerical order and reconciled to the payroll check register.

. Access to the signature stamp used to sign payroll checks is adequately controlled.

- Payroll checks are mailed or distributed by someone outside the normal payroll distribution function.

- Unclaimed payroll checks are returned to Finance Department via the Department Head.

- Employees are cross-trained on the payroll process; those assigned to payroll take regular vacations.

DISBURSEMENT ACTIVITIES

- The responsibility for approving claims is segregated from those preparing the claims.

- Checks are written by an individual other than the one approving the claim.

- Checks are signed by an individual other than the one preparing them.

- Claims for payment are reviewed and approved by the governing body prior to payment.

- A reconcilement is completed between the claims for payment approved by the board and the actual disbursements posted to the ledger.

- The responsibility for acknowledging the receipt of goods or services is segregated from those preparing claims and writing checks.

- Vendor checks are accounted for in numerical order and reconciled to the disbursement ledger.

- Invoices or other receipts are attached to each claim to support the disbursement.

- A review is completed by an individual outside the disbursement process in which the claim amount is compared to the supporting documentation attached to the claim and the amount of the check.

- Access to disbursement applications is appropriately controlled by user logins and passwords.

Receipting Activities

- The responsibility for collecting money and issuing receipts is segregated from those preparing the bank deposit.

- The responsibility for making bank deposits is segregated from those preparing the monthly bank reconcilement.

- Pre-numbered receipts are issued for all money collected and the receipt is retained with supporting documentation.

- Receipts are reconciled to the cash receipts ledger by an individual other than the one collecting money and issuing receipts.

- Posting of receipts to the ledger is completed by an individual other than the one who collects money and makes the deposit.

. Receipts indicate the type of payment received (cash, check, etc.) and this is reconciled to the make-up of the bank deposit.

. Accounts receivable records are maintained by an individual other than the one(s) involved in the billing process.

. The billing process is completed by an individual other than the one who collects cash payments from customers.

. Adjustments to customer accounts above our managerial threshold are approved by the governing body only after review.

Cash Activities

. A reconcilement between the recorded cash balance and the bank balance is completed monthly by an individual separate from the receipting and disbursing processes.

. A reconcilement between the receipts ledger and the credits to the bank account is completed periodically by an individual separate of the receipting process.

. A reconcilement between the disbursement ledger and the debits to the bank account is completed periodically by an individual separate of the disbursement process.

. The monthly reconcilement between the cash balance and the bank balance is thoroughly reviewed and approved by the Controller.

. Disbursements from and reimbursements to petty cash funds are periodically reviewed by an individual other than the one responsible for maintaining the petty cash fund.

Credit Card Transactions

. A designed official or employee oversees the issuance and use of the credit cards.

. An ordinance or resolution specifically states the purposes for which the credit card may be used.

. A designed person separate from disbursement process reviews transactions listed on the credit card statements for sufficient documentation and inclusion in claim to the Board.

Principle 11: Management designs the political subdivision's information system and related control activities to achieve objectives and respond to risks.

The Finance Department and Department Heads will work with the Information Technology Department to ensure that information technology is used as an integral part of the internal control system. This may include, but not be limited to:

. Setting permission such that only certain users may perform certain tasks
. Using technology to accomplish segregation of duties by forcing duties to be completed by different users

. Automating certain processes and calculations
. Limiting the authority to access different components of various softwares to employees with duties specifically related to that component
. Prohibiting user ID and password sharing among employees
. Restricting the authority to correct or make adjustments to records to key employees
. Requiring the use of prescribed forms or the approval of alternative forms

Principle 12: Management implements control activities through policies.

The City has an employee handbook that is regularly updated to communicate policies to employees. Additionally, the Finance Department regularly works with departments and employees who hand financial transactions to recommend and ensure best practices. All procedures are in writing and communicated frequently to all relevant employees. Policies are available both electronically and in hard copy form.

COMPONENT FOUR: INFORMATION AND COMMUNICATION

Principle 13: Management uses quality information to achieve the political subdivision's objectives.

The City strives to lead in the areas of financial transparency and accountability. By adopting standards and investing in systems that exceed State mandated minimums, City management provides employees and stakeholders with high quality information and informatics systems. The City Finance Department and Legal Department attend training and industry seminars to stay abreast of changes and developments in requirements and communicate that information to impacted employees.

Principle 14: Management internally communicates the necessary quality information to achieve the political subdivision's objectives.

Internal communications on internal controls are communicated through adoption of formal policies by relevant boards and commissions and/or the legislative body or documented through memos from the Finance, Legal or relevant Department Head. Internal memos and reports are maintained to document communication.

Principle 15: Management externally communicates the necessary quality information to achieve the entity's objectives.

Communications with the State Board of Accounts, other State agencies, grantor agencies, and regulatory agencies are documented by email, memos, letters, and other forms of written correspondence. Logs are kept for information provided verbally. All documents are maintained in accordance with the City and state's record retention policies. Reports and policies are cross checked for accuracy, relevancy, and timeliness of information.

COMPONENT FIVE: MONITORING ACTIVITIES

Principle 16: Management establishes and operates monitoring activities to monitor the internal control system and evaluate the results.

City Administration monitors and evaluates compliance with internal control policies via multiple vectors. Separation of duties, redundancy policies, layered approval systems, monthly reports, and physical controls such as video monitoring allow management to both review and evaluate control systems.

The Finance Department shall implement a system of monitoring that includes:

- . Periodic checks to determine if controls are in place and working effectively
- . Reviewing control activities to determine if the actual activities are in compliance with established procedures
- . Documenting deficiencies in the internal control processes and remediating them quickly

Monitoring activities will be documented by signatures, initials, or other appropriate methods.

Principle 17: Management remediates identified internal control deficiencies on a timely basis.

Breaches of internal controls are subject to significant levels of internal scrutiny. If informed of a material breach of internal controls, the Finance Department and Mayor's Office actively investigate and address said breach and adjust policies and procedures to prevent such breaches in the future. Once breaches are identified and investigated, a formal or informal corrective action plan will be developed.

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Miller, Controller
Kurtis Vardaman, Deputy Controller

RECEIVED
DEBORAH S. BLOCK, MMC
NOV 29 2018
CITY CLERK
MISHAWAKA, IN

Date: November 29, 2018

To: Honorable Members of the Common Council

From: Rebecca Miller

Re: Amend Internal Control Ordinance

IC 5-11-1-27 requires all Indiana political subdivisions to adopt the minimum level of internal control standards developed by the State Board of Accounts. Each political subdivision must adopt these standards, train appropriate personnel, and implement policies and procedures consistent with the standards.

At the December 3rd meeting I am requesting on first reading that our Internal Control Ordinance 5532 be amended. Since originally approved in June of 2016, I have found two items that need to be updated.

In Section 2 of the ordinance, the original states that "...all personnel receive training concerning the internal control procedures..." Presently, all current, new, and seasonal employees do have the training if they work with money. With many of our non-financial employees on shift work and/or working outdoors, it seems reasonable to change the wording to "...all appropriate personnel receive training concerning the internal control procedures..."

Under Cash Activities of Principle 10 in the policy, the original states, "The monthly reconcilement between the cash balance and the bank balance is thoroughly reviewed and approved by the governing body". This should be changed to "...and approved by the Controller". As I do not process the checks or reconcile the banking to the ledger, I am an appropriate employee to do this review.

Thank you for your consideration. Please contact me with any questions.

c: David A. Wood, Mayor

City Hall • 600 East 3rd Street • Mishawaka, Indiana 46544
Telephone: (574) 258-1622 • FAX (574) 258-1724 • www.mishawaka.in.gov

1st Reading 12-3-18
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC
NOV 29 2018
CITY CLERK
MISHAWAKA, IN

Proposed Ordinance NO. 2018- 34

ORDINANCE NO.___________

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, ESTABLISHING AN AMBULANCE FUND

WHEREAS, the City of Mishawaka provides an ambulance service for its citizens and receives revenue for this service; and

WHEREAS, a capital improvement plan has been established to provide regular, orderly replacement of the City's ambulance fleet; and

WHEREAS, it has been determined that a dedicated revenue stream for these replacements will benefit the City.

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

Section 1. Effective January 1, 2019 the City of Mishawaka, Indiana hereby establishes Fund 230 Ambulance Fund to receive 10% of the City's EMS revenue for the sole purpose to fund EMS equipment.

Section 2. This percentage may be modified upon agreement between the Fire Chief and Controller.

Section 3. This Ordinance shall be in full force and effect from and after its passage, signing, attestation, and legal publication.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana

On this ___________day of ________________, 2018 at __________ o'clock, _____.M.

____
Matt Mammolenti, Presiding Officer

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana

on this ___________ day of __________________, 2018 at _______ o'clock, _____.M.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this ___________ day of __________________, 2018 at

_____________ o'clock, _____.M.

____
David A. Wood, Mayor

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Miller, Controller
Kurtis D. Vardaman, Deputy Controller

Date: November 29, 2018

To: Honorable Members of the Common Council

From: Rebecca Miller

Re: **New fund – Ambulance Fund #230**

For first reading on December 3rd is an ordinance for a new fund in which to deposit 10% of our ambulance revenue.

With the need to purchase new ambulances approximately every four to five years, it is prudent to set aside funds. EMS revenue provides approximately $1.3 - $1.5 million per year and a portion will be earmarked specifically for ambulance purchases.

Please contact me with any questions.

c: David A. Wood – Mayor
Bryon Woodward – Fire Chief

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 29 2018

CITY CLERK
MISHAWAKA, IN

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Miller, Controller
Kurtis D. Vardaman, Deputy Controller

Date: November 29, 2018

To: Honorable Members of the Common Council

From: Rebecca Miller

Re: **Ordinance – Deferred Comp Match**

For first reading on December 3rd is an ordinance for the City's participation in the State's Deferred Compensation Matching plan for employees. Along with the ordinance, the agreement and amendment I are included for approval.

This benefit will match eligible employees' contributions up to 100% with a maximum match equal to 1% of the employee's base pay.

Please contact me with any questions.

c: David A. Wood – Mayor
Geoff Spiess – HR Director/Corporation Counsel

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DEBRA S. BLOCK MMC
NOV 29 2018
CITY CLERK
MISHAWAKA, IN

1st Reading 12-3-18
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 29 2018

CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2018- 35

ORDINANCE NO.________

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING THE PARTICIPATION IN THE STATE OF INDIANA DEFERRED COMP MATCHING PLAN, ADOPTION AGREEMENT, AND AMENDMENT 1

WHEREAS, the City of Mishawaka, Indiana, (hereinafter referred to as the "Participating Employer") has determined that in the interest of attracting and retaining qualified employees, it wishes to offer a defined contribution plan, funded by employer contributions;

WHEREAS, the Participating Employer has reviewed the State of Indiana Deferred Compensation Matching Plan ("Plan");

WHEREAS, the Participating Employer wishes to participate in the Plan to provide certain benefits to its employees, reduce overall administrative costs, and afford attractive investment opportunities;

WHEREAS, the Participating Employer is an Employer as defined in the Plan;

WHEREAS, the Mishawaka Common Council ("Governing Body") is authorized by law, IC 5-10-1.1-7.3, to adopt this ordinance approving the Adoption Agreement on behalf of the Participating Employer;

Therefore, the Governing Body of the Participating Employer hereby resolves:

Section 1. The Participating Employer adopts the Plan and the Trust Agreement ("Trust") for the Plan for its Employees.

Section 2. The Participating Employer acknowledges that the Deferred Compensation Committee ("Trustees") are only responsible for the Plan and have no responsibility for other employee benefit plans maintained by the Participating Employer.

Section 3. The Participating Employer hereby adopts the terms of the Adoption Agreement, which is attached hereto and made a part of this ordinance. The Adoption Agreement sets forth the Employees to be covered by the Plan, the benefits to be provided by the Participating Employer under the Plan, and any conditions imposed by the Participating Employer with respect to, but not inconsistent with, the Plan. The Participating Employer reserves the right to amend its elections under the Adoption Agreement, so long as the amendment is not inconsistent with the Plan or the Internal Revenue Code or other applicable law and is approved by the Trustees of the Plan.

Section 4. The Participating Employer hereby authorizes the Auditor of the State of Indiana ("Administrator"), in conjunction with the Deferred Compensation Committee ("Trustees"), to amend the Plan on its behalf as provided under Section 18.01 of the Plan.

The Trustees and the Administrator will maintain or have maintained on their behalf a record of the Participating Employers, and the Trustees and the Administrator will make reasonable and diligent efforts to ensure that Participating Employers have actually received and are aware of all Plan amendments.

Section 5.

(a) The Participating Employer shall abide by the terms of the Plan and the Trust, including amendments to the Plan and the Trust made by the Trustees of the Plan, all investment, administrative, and other service agreements of the Plan and the Trust, and all applicable provisions of the Internal Revenue Code and other applicable law.

(b) The Participating Employer accepts the administrative services to be provided by the Administrator of the Plan and any services provided by a Service Manager (as defined in the Plan) as delegated by the Administrator or Trustees. The Participating Employer acknowledges that fees will be imposed with respect to the services provided and that such fees will be charged to the Participants' Accounts, and not to the Participating Employer.

Section 6.

(a) The Participating Employer may terminate its participation in the Plan, including but not limited to, its contribution requirements, if it takes the following actions:

(i) A ordinance must be adopted terminating its participation in the Plan.

(ii) The ordinance must specify when the participation will end.

The Trustees shall determine whether the ordinance complies with the Plan, and all applicable federal and state laws, shall determine an appropriate effective date, and shall provide appropriate forms to terminate ongoing participation. However, distributions under the Plan of existing accounts to Participants will be made in accordance with the Plan.

(b) The Participating Employer acknowledges that the Plan contains provisions for involuntary Plan termination.

Section 7. The Participating Employer acknowledges that all assets held in connection with the Plan, including all contributions to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan. All amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan, shall be transferred to the Trustees to be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must be transferred by the Participating Employer to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan. Only the assets attributable to a particular Participating Employer and its Employees are available to pay benefits to those Employees and their Beneficiaries.

Section 8. This ordinance and the Adoption Agreement shall be submitted to the Trustees for their approval. The Trustees shall determine whether the ordinance complies with the Plan, and, if it does, shall provide appropriate forms to the Participating Employer to implement participation in the Plan. The Trustees may refuse to approve an Adoption Agreement by an Employer that does not have state statutory authority to participate in the Plan. The Trustees may also refuse to approve an Adoption Agreement that is ambiguous or that does not comply with the requirements of the Plan. The Governing Body hereby acknowledges that it is responsible to assure that this ordinance and the Adoption Agreement are adopted and executed in accordance with the requirements of applicable law.

Section 9. This Adoption Agreement may be used only in conjunction with the Plan. Failure to properly complete this Adoption Agreement may result in the failure of the Plan to qualify.

Section 10. This ordinance shall be in full force and effect from and after its passage, signing, attestation and legal publication.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this

______ day of ____________, 2018 at ________ o'clock, ___.M.

____

Matt Mammolenti, Presiding Officer

ATTEST:

____

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this ______ day of ____________, 2018 at

________ o'clock, ____.M.

____

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this ______ day of, ____________, 2018 at ______ o'clock,

____.M.

____
David A. Wood, Mayor

THE STATE OF INDIANA DEFERRED COMPENSATION MATCHING PLAN ADOPTION AGREEMENT

ADMINISTRATOR

Auditor of the State of Indiana
200 West Washington Street
State House Suite 240
Indianapolis, Indiana 46204
Telephone: (317) 233-3300
Facsimile: (317) 233-2794

PARTICIPATING EMPLOYER

Name: City of Mishawaka

GOVERNING BODY

Name: City of Mishawaka Common Council
Address: 600 E. 3rd Street, Mishawaka, IN 46544
Phone: 574-258-1616
Facsimile: 574-258-1628
E-mail: dblock@mishawaka.in.gov

Person Authorized to receive Official Notices from the Plan or Administrator and to access account and Plan information: Rebecca S. Miller

DISCLOSURE OF OTHER 401(a) PLAN(S)

This Participating Employer ☐ does or **X** does not have an existing defined contribution plan(s). If the Participating Employer does have one or more defined contribution plans, the Governing Body must provide the plan name and name of the provider and such other information requested by the Administrator.

Section I. Types of Employer Contributions Under the Plan. The Participating Employer shall provide the following types of contributions to Eligible Employees under this Plan (check all that apply):

X Matching Contributions.

☐ Non-Matching Contributions.

Section II. Eligibility Requirements. Only Employees as defined in the Plan may be covered by the Adoption Agreement. Independent contractors may not participate in the Plan. Subject to other conditions in the Plan and this Adoption Agreement, the Participating Employer may designate which categories of employees are eligible to participate in the Plan. The Employer shall provide the Trustees with the name, address, Social Security Number, and date of birth for each Eligible Employee, as defined by the Adoption Agreement. A Participating Employer may also establish a waiting period before an Eligible Employee may become a Participant in the Plan. For purposes of determining a period of service, any period of time during which an individual is considered employed by the Participating Employer (including sick leave, personal leave, vacation leave, and paid time off) shall be included in the period of service calculation).

A. Eligibility For Matching Contributions

1. Eligible Classes of Employees (check one)

☐ All Employees.

X All Employees with the following exclusions (select all that apply):

- ☐ Elected or appointed officials
- X Employees who are not covered by the Participating Employer's defined benefit retirement plan(s)
- ☐ Other (must specify):____________________________________

If "Other" is selected, the exclusion must be described in a manner that is definitely determinable and that does not allow for Participating Employer discretion.

2. Waiting Period - The Employer hereby elects the following (elect "no waiting period" or one of the waiting period options below):

X **No waiting period**. An Eligible Employee may become a Participant for matching contributions immediately upon meeting the eligibility conditions of the Plan.

☐ Matching contributions will be made only after satisfying a waiting period described under one of the following options (check one):

☐ **Minimum Period of Service (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be ______________ (not to exceed 12 months) of service, calculated from the commencement of the Eligible Employee's employment with the Employer.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior service as an Employee for purposes of satisfying the waiting period.

Separate periods of service ☐ will be ☐ will not be added together to determine whether the waiting period has been satisfied.

☐ **Minimum Period of Contributions to the Deferred Compensation Plan (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be ______________ (not to exceed 12 months) from the date the Eligible Employee first makes contributions to the Deferred Compensation Plan. An eligible employee ☐ will ☐ will not be required to continuously make contributions throughout the waiting period in order to be eligible for matching contributions.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior periods of time they were making contributions to a 457(b) Plan for purposes of satisfying the waiting period.

After initially meeting the waiting period, any interruption of employee contributions to the Deferred Compensation Plan ☐ will ☐ will not require the employee to meet another waiting period to qualify for matching contributions.

Separate periods of service in which deferrals are made as an Eligible Employee ☐ will ☐ will not be added together to determine if the waiting period has been satisfied.

B. Eligibility For Non-Matching Contributions

1. <u>Eligible Classes of Employees</u> (check one)

☐ All Employees.

☐ All Employees with the following exclusions (select all that apply):

☐ Elected or appointed officials

☐ Employees who are not covered by the Participating Employer's defined benefit retirement plan(s)

☐ Other (must specify):________________________________

If "Other" is selected, the exclusion must be described in a manner that is definitely determinable and that does not allow for Participating Employer discretion.

2. **Waiting Period** - The Employer hereby elects the following (elect "no waiting period" or one of the waiting period options below):

☐ **No waiting period**. An Eligible Employee may become a Participant for non-matching contributions immediately upon meeting the eligibility conditions of the Plan.

☐ Non-matching contributions will be made only after satisfying a waiting period described under one of the following options (check one):

☐ **Minimum Period of Service (if checked, please complete all items below):**

The waiting period for participation in the Plan shall be ________________ (not to exceed 12 months) of service, calculated from the commencement of the Eligible Employee's employment with the Employer.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior service as an Employee for purposes of satisfying the waiting period.

Separate periods of service ☐ will be ☐ will not be added together to determine whether the waiting period has been satisfied.

☐ **Minimum Period of Contributions to the Deferred Compensation Plan (if checked, please all complete items below)**

The waiting period for participation in the Plan shall be ________________ (not to exceed 12 months) from the date the Eligible Employee first makes contributions to the Deferred Compensation Plan.

Eligible Employees who are employed on the date the plan is adopted ☐ will be ☐ will not be given credit for prior contributions made to a prior 457(b) Plan for purposes of satisfying the waiting period.

After initially meeting the waiting period, any interruption of employee contributions to the Deferred Compensation Plan ☐ will ☐ will not require the employee to meet another waiting period to qualify for matching contributions.

Separate periods of service in which deferrals are made as an Eligible Employee ☐ will ☐ will not be added together to determine if the waiting period has been satisfied.

Section III. Amount of Employer Contributions. A Participating Employer may make Matching Contributions and/or Non-Matching Contributions, pursuant to a definite, pre-determined formula, as specified below. Matching Contributions and Non-Matching Contributions that are tied to Payroll Periods (as defined in this Adoption Agreement) must be remitted to the Administrator no later than 15 business days after the Payroll Period. Annual Contributions must be remitted to the Administrator no later than 15 days after the end of the Plan Year.

A Participating Employer may impose conditions on the receipt of Matching and Non-Matching Contributions – such as the requirement to be employed as of a particular date, the requirement to have made employee contributions for a specified period of time or any other objectively determinable requirement.

For purposes of computing matching or non-matching contributions, "Compensation" is subject to the limits imposed by Internal Revenue Code 401(a)(17).

The Participating Employer hereby elects to make contributions as follows:

A. Matching Contributions.

1. Matching Contribution Amount (check one)

☐ **<u>Flat Dollar Match</u>:** For each Payroll Period in which the Participant contributed at least $__________ ($15 to $25) to the Deferred Compensation Plan, the Participating Employer will contribute a flat dollar amount as shown below (complete as applicable; amount may not result in a zero flat dollar match):

$________ per weekly Payroll Period
$________ per bi-weekly Payroll Period
$________ per semi-monthly Payroll Period
$________ per monthly Payroll Period

The amount of the matching contribution ☐ is ☐ is not subject to a maximum cap as elected in Item 2 below.

X **<u>Percentage Match</u>:** For each Payroll Period in which the Participant contributed to the Deferred Compensation Plan, the Employer will contribute _100_% (insert percentage; may not be zero) of the dollar amount contributed to the Deferred Compensation Plan. **(For example, if an Employer elects a 50% match, then for every $10 the Participant contributes to the Deferred Compensation Plan, the Employer will contribute $5 to this Plan).**

The amount of the matching contribution X is ☐ is not subject to a maximum cap as elected in Item 2 below.

2. Maximum Matching Contribution (if a matching contribution cap is elected in item 1 above, check one of the following):

☐ **Flat Dollar Cap** - In no event will Matching Contributions made on behalf of a Participant exceed a flat dollar amount equal to (may not result in zero dollar amount):

$________ per weekly Payroll Period
$________ per bi-weekly Payroll Period
$________ per semi-monthly Payroll Period
$________ per monthly Payroll Period
$________ per Plan Year

X **Cap Equal to Percentage of Total Compensation:** In no event will Matching Contributions made on behalf of a Participant exceed ___1__% (may not be zero) of the Participant's Compensation **X** per Payroll Period ☐ per Plan Year.

3. Additional Allocation Conditions. In order to receive a matching contribution, each Eligible Employee must satisfy the following additional conditions (conditions must be objectively determinable): ____.

B. Non-Matching Contributions.

1. Non-Matching Contribution Amount (check one):

☐ Annual Contributions: An annual contribution each Plan Year of $_______ or _____% of Compensation per Eligible Employee Participant (may not result in total contribution of zero).

☐ Special One-Time Contribution: A one-time contribution of $_______ or _____% of Compensation per Eligible Employee (may not result in total contribution of zero) to be made as of the following date: ____________.

☐ Per Payroll Period Contribution: _____% (may not be zero) of Compensation per Payroll Period or a flat dollar amount per Payroll

Period as shown below (complete as applicable; amount may not result in a zero flat dollar amount):

$________ per weekly Payroll Period
$________ per bi-weekly Payroll Period
$________ per semi-monthly Payroll Period
$________ per monthly Payroll Period

2. **Additional Allocation Conditions.** In order to receive a non-matching contribution, each Eligible Employee must satisfy the following additional conditions (conditions must be objectively determinable): ______________

____

Conditions for Annual Contribution: ______________________________
Conditions for Special One-Time Contribution: ____________________
Conditions for Per Payroll Period Contribution: ___________________

Section IV. Payroll Period. The payroll period of the Participating Employer is:

☐ Weekly
X Bi-Weekly
☐ Semi-Monthly
☐ Monthly

Section V. Modification and Termination of the Adoption Agreement. If a Participating Employer desires to amend any of its elections contained in this Adoption Agreement, the Governing Body by official action must adopt an amendment of the Adoption Agreement or a new Adoption Agreement must be adopted and forwarded to the Trustees for approval. The amendment of the new Adoption Agreement is not effective until approved by the Trustees and other procedures required by the Plan have been implemented. The Administrator shall inform the Participating Employer of any amendments made to the Plan.

Adoption Agreement may be terminated only in accordance with the Plan. The Administrator shall inform the Participating Employer of the discontinuance or abandonment of the Plan.

Effective Date. This Plan will be effective for this Employer as of the later of (1) the first day of the Plan Year (January 1) in which this Adoption Agreement is executed by the Employer; or (2) __________________, 20___.

EXECUTION BY EMPLOYER

The foregoing Adoption Agreement is hereby adopted and approved on the ____ day of ______________, 20__.

Signed:____

Printed Name:____________________

Title:____

Date of Signature:________________________________

NOTICE TO EMPLOYER

This Adoption Agreement may only be used in conjunction with The State of Indiana Deferred Compensation Matching Plan.

The failure to properly complete this Adoption Agreement or to, operate and maintain the Plan and Trust in accordance with the terms of the completed Adoption Agreement, Master Plan Document, and Trust may result in disqualification of the Plan under the Code. Inquiries regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the IRS advisory letter should be directed to the Administrator. The Administrator is the Auditor of the State of Indiana, with its primary business offices located at: 200 West Washington Street, State House Suite 240, Indianapolis, Indiana 46204. The business telephone number is: (317) 233-3300. The primary person to contact is: ______________________________.

TRUSTEES APPROVAL

The Adoption Agreement is approved by the Board of Trustees of the State of Indiana Deferred Compensation Matching Plan. Contributions shall first be remitted as follows:

☐ within 15 business days after the Payroll Period ending _____________, 20___.

☐ other (must specify): ____.

Dated: ______________________________

By: ________________________________

Title: ______________________________
on behalf of the Board of Trustees

State of Indiana Deferred Compensation Matching Plan Amendment
City of Mishawaka

Amendment 1

Pursuant to Section III.A.2 of the State of Indiana Deferred Compensation Matching Plan Adoption Agreement, for purposes of calculating the cap on an employer contribution, only the participant's "base salary" will be considered.

EXECUTION BY EMPLOYER

The foregoing Adoption Agreement is hereby adopted and approved on the ____ day of _______________, 20__.

Signed:_______________________________________

Printed Name:__________________________________

Title:____

Date of Signature:______________________________

TRUSTEES APPROVAL

The Adoption Agreement is approved by the Board of Trustees of the State of Indiana Deferred Compensation Matching Plan. Contributions shall first be remitted as follows:

☐ within 15 business days after the Payroll Period ending _____________, 20___.

☐ other (must specify): ____.

Dated: ______________________________

By:________________________________

Title:______________________________
on behalf of the Board of Trustees

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Miller, Controller
Kurtis D. Vardaman, Deputy Controller

Date: November 29, 2018

To: Honorable Members of the Common Council

From: Rebecca Miller

Re: Amend Civil City 2019 Salary Ordinance 5627

I am requesting first reading on the salary amendment as some changes have been made since the original approval.

Fire:

1. Fire Chief and Assistant Chiefs receive an additional $5,000 in salary.
2. Lead Paramedic Tier 2 Specialty Pay is now $50/shift. Was $6,000 stipend.

Police:

1. Police Chief and Assistant Chiefs receive an additional $5,000 in salary.
2. Increase in annual equipment stipend from $271.43 to $680.00.

Engineering:

1. GIS position increase from $1,976.03 biweekly to $2,027.46 to be in line with the Water department GIS position.

Mayor:

1. Secretary promoted to Executive Secretary position. Increase from $1,318.16 biweekly to $1,329.24.

Section 5. Deferred Compensation Match language added. Note: the FOP negotiated to not accept this match.

Please contact me with any questions.

c: David A. Wood, Mayor
Geoff Spiess, HR Director/Corporation Counsel
Ken Witkowski, Police Chief
Bryon Woodward, Fire Chief
Chris Jamrose, Director of Engineering/City Engineer

1st Reading 12-3-18
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 29 2018

CITY CLERK
MISHAWAKA, IN

PROPOSED ORDINANCE NO. 2018 – 36

ORDINANCE NO. _______

AN ORDINANCE AMENDING ORDINANCE 5627 THE FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2019.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The biweekly salaries of all employees of the City of Mishawaka except the Mishawaka Park Department, Elected Officials and the Mishawaka Utilities for the year beginning January 1, 2019 and shall be payable in 26 bi-weekly pay periods commencing on January 11, 2019.

	BIWEEKLY SALARY
MAYOR'S ADMINISTRATIVE ASSISTANT	1,571.28
MAYOR'S EXECUTIVE SECRETARY	**1,329.24**
CONTROLLER	2,962.89
DEPUTY CONTROLLER	2,026.67
ACCOUNTANT	1,608.88
PAYROLL CLERK	1,465.14
BOOKKEEPER A	1,500.66
BOOKKEEPER B	1,300.51
BOOKKEEPER C	1,216.42
PURCHASING AGENT	1,516.47
CPA CERTIFICATION FT	192.31
CHIEF DEPUTY CLERK I	1,554.03
CHIEF DEPUTY CLERK II	1,506.71
HR DIRECTOR	2,169.59
ASST DIRECTOR	1,515.77
HR OFFICE MANAGER	1,318.16
HR CERTIFICATION	19.23
DIRECTOR OF IT	2,503.72
SYSTEM SPECIALIST IV.	1,896.67-2,064.42
SYSTEM SPECIALIST III	1,751.13
SYSTEM SPECIALIST II.	1,667.59
SYSTEM SPECIALIST I.	1,538.46
CORPORATE COUNSEL/HR DIRECTOR	2,242.04
1st DEPUTY CITY ATTORNEY	2,348.50
2nd DEPUTY ASST CITY ATTORNEY	662.77
PART TIME SECRETARY	288.46
COUNCIL ATTORNEY	662.77

DIRECTOR OF ENGINEERING	2,962.89
ASSISTANT DIRECTOR	2,456.75
TRAFFIC MANAGER	2,027.14
PROJECT MANAGER	2,079.41
CONSTRUCTION COORDINATOR	1,821.17
TECHNICIAN	1,809.22
GIS COORDINATOR	**2,027.46**
PROJECT COORDINATOR	1,505.93
LOCATOR/INSPECTOR	1,545.87
OFFICE MANAGER	1,318.16
PE BONUS FT	192.31
IDEM REVIEW BOARD BONUS	153.85
DIRECTOR OF CODE ENFORCEMENT	2,235.09
OFFICE MANAGER	1,318.16
CODE ENF OFFICER A	1,816.48
CODE ENF OFFICER B	1,521.98
BUILDING COMMISSIONER	2,287.25
ASSISTANT BUILDING COMMISSIONER	2,154.52
OFFICE ADMINISTRATOR	1,337.56
OFFICE MANAGER	1,318.16
INSPECTOR A	2,190.78
INSPECTOR B	1,988.25
FIRE CHIEF	**2,955.51**
ASSISTANT CHIEF	**2,742.44**
CHIEF FIRE PREVENTION	2,401.94
BATTALION CHIEF	2,494.31
CAPTAINS	2,373.87
LIEUTENANT	2,309.07
FIRE INSPECTOR	2,309.07
DRIVER OPERATOR	2,245.67
MASTER FIREFIGHTER	2,137.46
1st CLASS FIREFIGHTER	2,224.07
PROBATION - FF/EMT	1,944.80
FIRE EXECUTIVE SECRETARY	1,329.24
FIRE OFFICE MANAGER	1,318.16
POLICE CHIEF	**2,973.00**
ASSISTANT CHIEF	**2,759.89**
CAPTAIN	2,350.80
LIEUTENANT	2,306.30
SERGEANT	2,263.16
1st CLASS OFFICER	2,233.80
2nd CLASS OFFICER	2,064.26
PROBATION	1,875.18
2ND SHIFT DIFFERENTIAL	13.46
3RD SHIFT DIFFERENTIAL	26.92
POLICE RECRUIT	1,638.44
PROPERTY MANAGER	1,461.27
EXEC SECRETARY	1,329.24
ADMIN SECRETARY	1,318.16
SERVICES ADMINISTRATOR	1,509.06

PROPERTY CLERK	1,286.93
SECRETARY	1,300.67
PARKING PERSONNEL	1,300.67
CROSSING GUARDS	21 pays@ 353.70
CITY PLANNER	2,962.89
SENIOR PLANNER/ECON DEVEL SPLIST	2,017.65
SENIOR PLANNER	1,836.59
ASSOCIATE PLANNER	1,742.74
ADMINISTRATIVE PLANNER	1,554.34
OFFICE MANAGER	1,318.16
DIRECTOR COMMUNITY DEVELOPMENT	2,512.81
TIF CONSTRUCTION MANAGER	2,380.43
PROGRAM CONSTRUCTION MANAGER	2,159.36
PROGRAM COORDINATOR	1,524.09
GRANT MANAGER	1,978.69
GRANT SPECIALIST	1,342.44
CENTRAL SERVICES ASSISTANT	2,027.88
STREET COMMISSIONER	2,406.35
OFFICE ADMINISTRATOR	1,337.56
OFFICE MANAGER	1,318.16
SECRETARY	1,300.67
	BIWEEKLY HOURLY
PART-TIME HELP	7.25-25.00
CENTRAL SERVICES:	
FLEET MAINTENANCE TECHNICIAN	21.10
CENTRAL SERVICES/MVH:	
GROUP 1	20.04
GROUP 2	18.99
GROUP 3	18.11
NIGHT BONUS/SHIFT DIFFERENTIAL	.55/.60
PROJECT COORDINATOR	1.00

		ANNUAL/MISC
FIRE:		
SPECIALTY PAY:		
	TIER1	TIER 2
ADVANCED EMT	1,000	3,000
PARAMEDIC	2,000	4,000
LEAD PARAMEDIC	4,000	**50/shift**
WATER RESCUE/RECOVERY LEADER	1,050	
WATER DIVE/RESCUE TEAM MEMBER	950	
SELF-CONTAINED BREATHING APPARATUS TEAM TECHNICIAN	1,000	
MECHANIC	2,500	
INFORMATION TECHNOLOGY	1,500	
UNIFORM ALLOWANCE		1,250

POLICE:	
IDACS SPECIALIST	370
PARKING PERSONNEL CLOTHING	600
CROSSING GUARD SUBSTITUTE	20 per day
SUMMER SCHOOL CROSS GUARD	20 per day
UNIFORM ALLOWANCE	2,050
EQUIPMENT MAINT ALLOWANCE	**680**
PLAN COMMISSION	600
BZA MEMBER	375
INSURANCE STIPEND:	
ASST CITY ATTORNEY & COUNCIL ATTORNEY	500 per month

Section 2. The City will contribute the employee portion of 3% to the Public Employees Retirement fund for all employees eligible for participation in the Public Employees Retirement Fund.

Section 3. The City will contribute 3% of the employee portion to the 1977 Fire Pension for all employees eligible for participation in the 1977 Fire Pension Fund.

Section 4. The City will contribute 2% of the employee portion to the 1977 Police Pension for all employees eligible for participation in the 1977 Police Pension Fund.

Section 5. The City will contribute a match of 100% of the employee's contribution not to exceed 1% of the employee's base biweekly pay for all employees eligible for participation in the State's 457B plan. Employees under the FOP collective bargaining agreement are exempt from this match.

Section 6. Longevity Bonus will be provided annually to the Central Service and Motor Vehicle Highway Teamster employees (as amended). The Longevity Bonus will be offered to the employees as additional pay. The Longevity Bonus shall be payable annually on the first paycheck following each employees anniversary date with the regular payroll. The annual Longevity Bonus will be based on the following schedule. Said schedule is based upon completed years of service.

Years of Service	Annual Increments	Bonus
5	0	150
6	75	225
7	75	300
8	75	375
9	75	450
10	75	525

An additional $80.00 will be added for each year of service after the 10th year.

Section 7. The Administration may pay up to 15% less than annual salaries listed to new employees during the first twelve-month period, except for those public safety salaries which have been negotiated by the Common Council and all other salaries negotiated as part of a Collective Bargaining Agreement.

Section 8. This ordinance shall be in full force and effect from and after its signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on

this __________ day of _________________2018, at _________o'clock, ____.m.

____
Matt Mammolenti, President

ATTEST:

____
Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME, to the Mayor on this ______ day of ____________ 2018, at _____o'clock, __.m.

____
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this ______ day of ______________, 2018, at _______ o'clock, __.m.

____
David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 29 2018

CITY CLERK
MISHAWAKA, IN

1st Reading 12-3-18
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2018- 37

ORDINANCE NO.____________

AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN THE BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2018

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Park and Recreation Department budget in the Park and Recreation Fund adopted for the fiscal year ending December 31, 2018

Section 2. There is hereby transferred and reappropriated the sum of $57,000.00 as follows:

Park and Recreation Fund

From:	Personal Services		
	204-50-411-03	Temporary	40,000.00
	Supplies		
	204-50-422-02	Gas, Oil, Parts, Etc.	6,000.00
	Other Services and Charges		
	204-50-439-18	Instructor Fees	6,000.00
	204-50-439-19	Official/Ref Fees	5,000.00
			57,000.00
To:	Other Services and Charges		
	204-50-435-01	Utilities - MU	57,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on

This ___________day of _____________________, 2018 at ____________o'clock, _____.M.

Matt Mammolenti, Council President

ATTEST;

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED BY ME to the Mayor this ____________day of

______________________, 2018 at __________________o'clock, _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED BY ME this __________day of ______________________, 2018

at _____________o'clock, _____.M.

David A. Wood, Mayor

CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

PARKS AND RECREATION DEPARTMENT
ADMINISTRATION OFFICE

Date: November 29, 2018
To: Mishawaka Common Council
From: Phil Blasko, Superintendent of Parks
Re: Transfer of Park Department Funds

Mr. President and Honorable Council Members:

This letter will provide background information for our request to transfer funds within the Parks and Recreation operating budget.

After examining the operating budget and estimated expenditures for through the end of the year for the Parks and Recreation Department, a total of **$57,000.000** will need to be transferred into one specific line. See below:

435.01	Utilities-MU		$57,000.00
	TOTAL		**$57,000.00**

In order to accommodate the transfer of additional funds into the above account, we have scrutinized our general fund accounts and determined the transfers will come from four accounts. See Below:

411.03	Temporary		$40,000.00
422.02	Gas, Oil, Parts, etc.		$6,000.00
439.18	Instructor Fees		$6,000.00
439.19	Official/Ref Fees		$5,000.00
	TOTAL		**$57,000.00**

Thank you for your consideration of this matter. Your approval will continue to allow the Parks and Recreation Department to operate efficiently and professionally to serve our customers and the City of Mishawaka. Should you have any questions, please do not hesitate to contact me at (574) 258-1664 or pblasko@mishawaka.in.gov.

Respectfully submitted,

RECEIVED
DEBORAH S. BLOCK, MMC

NOV 29 2018

CITY CLERK
MISHAWAKA, IN

Phil Blasko, Superintendent of Parks

cc: Honorable Mayor Dave Wood
Rebecca Miller, City Controller

Battell Center • 904 N. Main Street • Mishawaka IN • 46545-6631
Building Phone: (574) 258-1664 • Fax: (574) 258-1736 • Website: www.mishawaka.in.gov