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2 **BILL NO. S-17-02-26**

3 **SPECIAL ORDINANCE NO. S-26-17**

4 **AN ORDINANCE AUTHORIZING THE CITY OF FORT**  
5 **WAYNE, INDIANA, TO ISSUE ITS TAXABLE ECONOMIC**  
6 **DEVELOPMENT REVENUE BONDS (SUPERIOR LOFTS,**  
7 **LLC PROJECT), AND APPROVING OTHER ACTIONS IN**  
8 **RESPECT THERETO**

9 WHEREAS, the Common Council of the City of Fort Wayne, Indiana (the  
10 "Common Council") has previously adopted a resolution on January 24, 2017 (the  
11 "Inducement Resolution"), finding that the proposed economic development  
12 facilities project to be owned and operated by Superior Lofts, LLC (the "Company"),  
13 consisting of the acquisition, construction, installation and equipping of 72 high  
14 quality apartments, 21,000 square feet of commercial space for retail, restaurants and  
15 offices and 140 climate controlled self-storage units in a variety of sizes to be located  
16 at 102 West Superior Street in the City (the "Project"), will not have an adverse  
17 competitive impact on other facilities of the same or similar kind already constructed  
18 or operating in the City of Fort Wayne, Indiana (the "City"); and

19 WHEREAS, the Fort Wayne Economic Development Commission (the  
20 "Commission") has rendered a Report of the Commission (the "Report") concerning  
21 the proposed financing of a portion of the costs of the Project; and

22 WHEREAS, the Commission after a public hearing conducted on February  
23 16, 2017, adopted a resolution on that date, which resolution has been transmitted  
24 hereto, finding that the financing of a portion of the costs of the Project of the  
25 Company complies with the purposes and provisions of Indiana Code 36-7-11.9 and  
26 Indiana Code 36-7-12, as amended (collectively, the "Act"), and that such financing  
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2 will be of benefit to the health, prosperity, economic stability and general welfare  
3 and public interest of the City and its citizens; and

4 WHEREAS, the Commission has ratified the Financing Agreement by and  
5 between the Company and the City dated as of December 22, 2016 (the "Financing  
6 Agreement") and approved in substantially final form, subject to changes by the  
7 Mayor, City Clerk and City Controller, the Bond Purchase Agreement by and  
8 between the Company and the Commission (the "Bond Agreement") and the form of  
9 the City of Fort Wayne, Indiana, Taxable Economic Development Revenue Bond  
10 (Superior Lofts, LLC), by such resolution; and  
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12 WHEREAS, the Commission has heretofore approved and recommended the  
13 adoption of this form of Ordinance by the Common Council, has considered the  
14 issue of adverse competitive effect; and  
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16 WHEREAS, no member of the Common Council has any pecuniary interest  
17 in any employment, financing agreement or other contract made under the provisions  
18 of the Act and relating to the Project or to the issuance of the Bonds, which  
19 pecuniary interest has not been fully disclosed to the Common Council and no such  
20 member has voted on any such matter, all in accordance with the provisions of  
21 Indiana Code 36-7-12-16;  
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23 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL  
24 OF THE CITY OF FORT WAYNE, INDIANA:

25 SECTION 1. The Common Council hereby ratifies and confirms its  
26 findings and determinations contained in the Inducement Resolution that the Project  
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2 will not have an adverse competitive impact on other facilities of the same or similar  
3 kind already constructed or operating in the City.

4 SECTION 2. The Common Council hereby finds that the financing of a  
5 portion of Project previously approved by the Commission and presented to the  
6 Common Council, the issuance and sale of the Fort Wayne, Indiana, Economic  
7 Development Revenue Bonds (Superior Lofts Project) (the "Bonds"), the provision  
8 of the net proceeds of the Bonds to the Company for the financing of a portion of the  
9 costs of the Project, the payment of the Bonds from TIF Revenues (as defined in the  
10 Financing Agreement), and the securing of said Bonds under the Bond Purchase  
11 Agreement complies with the purposes and provisions of the Act and will be of  
12 benefit to the health, prosperity, economic stability, general welfare and public  
13 interest of the City and its citizens and complies with the purposes and provisions of  
14 the Act.  
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16 SECTION 3. The proposed financing and the Financing Agreement ratified  
17 and the form of Bond Purchase Agreement approved by the Commission are hereby  
18 approved and all such documents shall be incorporated herein by reference and shall  
19 be inserted in the minutes of the Common Council and kept on file by the Clerk. In  
20 accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of each of  
21 the Financing Agreement and Bond Purchase Agreement are on file in the office of  
22 the Clerk for public inspection.  
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24 SECTION 4. The City shall issue its Bonds in an aggregate principal  
25 amount not to exceed One Million Dollars (\$1,000,000) for the purpose of procuring  
26 funds to pay the costs of a portion of the acquisition, construction, installation and  
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2 equipping of the Project, as more particularly set out in the Financing Agreement and  
3 the Bond Purchase Agreement, incorporated herein by reference, which Bonds will  
4 be payable as to principal and interest solely from TIF Revenues or as otherwise  
5 provided in the above-described Bond Purchase Agreement. The Bonds shall be  
6 issued in fully registered form in denominations of One Hundred Thousand Dollars  
7 (\$100,000) and integral multiples of Five Thousand Dollars (\$5,000) in excess  
8 thereof or as otherwise provided in the Bond Purchase Agreement, and shall be  
9 subject to redemption or prepayment as provided in the Bond Purchase Agreement.  
10 Payments of principal and interest are payable in lawful money of the United States  
11 of America by check mailed or delivered to the registered owners as provided in the  
12 Bond Purchase Agreement. The Bonds shall never constitute a general obligation of,  
13 an indebtedness of, or a charge against the general credit of the City nor are the  
14 Bonds payable in any manner from revenues raised by taxation (except to the extent  
15 of the pledge of TIF Revenues).  
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18 SECTION 5. The Mayor of the City (the "Mayor") and the Controller are  
19 authorized and directed to sell the Bonds upon such terms as are set forth in the Bond  
20 Purchase Agreement with a maximum term of not to exceed ten (10) years, at a rate  
21 of interest on the Bonds which shall not exceed 2.26% per annum, and at a price  
22 equal to not less than the principal amount thereof plus accrued interest to the date of  
23 delivery of the Bonds, if any.  
24

25 SECTION 6. The Mayor, the Controller and the Clerk are, and each of  
26 them is, authorized and directed to execute, attest and affix or imprint by any means  
27 the seal of the City to the documents constituting the Financing Agreement and Bond  
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2 Purchase Agreement approved herein on behalf of the City and any other document  
3 which may be necessary or desirable prior to, on or after the date hereof to  
4 consummate or facilitate the transaction, including the Bonds authorized herein. The  
5 Mayor and the Controller are, and each of them is, hereby expressly authorized to  
6 approve any modifications or additions to the documents constituting the Financing  
7 Agreement and Bond Purchase Agreement which take place after the date of this  
8 Ordinance with the review and advice of counsel to the City, it being the express  
9 understanding of the Common Council that said Financing Agreement and Bond  
10 Purchase Agreement are in substantially final form as of the date of this Ordinance.  
11 The approval of said modifications or additions shall be conclusively evidenced by  
12 the execution and attestation thereof and the affixing of the seal thereto or the  
13 imprinting of the seal thereon; provided, however, that no such modification or  
14 addition shall change the maximum principal amount of, maximum interest rate on,  
15 or terms of the Bonds described in Indiana Code 36-7-12-27 as approved by the  
16 Common Council by this Ordinance without further consideration by the Common  
17 Council. The signatures of the Mayor, Controller and the Clerk on the Bonds may be  
18 either manual or facsimile signatures. The Controller is authorized to arrange for  
19 delivery of such Bonds to the purchaser or purchasers of the Bonds as set forth in the  
20 Bond Purchase Agreement after receipt of payment for the Bonds made to the  
21 Controller. The Bonds shall be originally dated the date of issuance and delivery  
22 thereof.  
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26 SECTION 7. The provisions of this Ordinance, the Financing Agreement  
27 and the Bond Purchase Agreement securing the Bonds shall constitute a contract  
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2 binding between the City and the holders of the Bonds, and after the issuance of said  
3 Bonds, this Ordinance shall not be repealed or amended in any respect which would  
4 adversely affect the rights of such holders so long as said Bonds or the interest  
5 thereon remains unpaid.

6 SECTION 8. No recourse under or upon any obligation, covenant,  
7 acceptance or agreement contained in this Ordinance, or in the Bonds, the Financing  
8 Agreement, the Bond Purchase Agreement or under any judgment obtained against  
9 the City or by the enforcement of any assessment or by any legal or equitable  
10 proceeding by virtue of any constitution or statute or otherwise, or under any  
11 circumstances, under or independent of the Financing Agreement or the Bond  
12 Purchase Agreement, shall be had against any member, director, or officer or  
13 attorney, as such, past, present, or future, of the City, either directly or through the  
14 City, or otherwise, for the payment for or to the City or any receiver thereof, or for or  
15 to any holder of the Bonds secured thereby, or otherwise, of any sum that may be  
16 due and unpaid by the City upon any of such Bonds. Any and all personal liability of  
17 every nature, whether at common law or in equity, or by statute or by constitution or  
18 otherwise, of any such member, director, or officer or attorney, as such, to respond  
19 by reason of any act or omission on his or her part, or otherwise, for, directly or  
20 indirectly, the payment for or to the City or any receiver thereof, or for or to any  
21 owner or holder of the Bonds, or otherwise, of any sum that may remain due and  
22 unpaid upon the Bonds hereby secured or any of them, shall be expressly waived and  
23 released as a condition of and consideration for the execution and delivery of the  
24 Financing Agreement and Bond Purchase Agreement and the issuance of the Bonds.  
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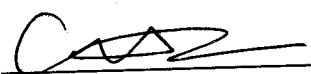
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SECTION 9. The Bonds shall not constitute a debt or pledge of the faith and credit of the City, the State or any political subdivision thereof, and the holders, or owners thereof shall have no right to have taxes levied by the City, the State or of any political subdivision, for the payment of the principal thereof or interest thereon. Except for the TIF Revenues as sort forth herein, moneys raised by taxation shall not be obligated or pledged for the payment of principal of or interest on the Bonds, and the Bonds shall be payable solely from the revenues and security interests pledged for their payment as authorized by the Trust Indenture.

SECTION 10. This Ordinance shall be in full force and effect from and after the time it has been adopted by the Common Council, approved by the Mayor, and otherwise executed and delivered in accordance with any and all laws pertaining thereto.

  
Council Member

APPROVED AS TO FORM AND LEGALITY:

  
Carol Helton, City Attorney

**City of Fort Wayne, Indiana,  
Taxable Economic Development Revenue Bond  
(Superior Lofts, LLC Project)**

**No.: 2017R-1**

<u>Maturity Date</u>	<u>Interest Rate</u>
[February/August] 1, 20__	2.26%

Registered Owner: SUPERIOR LOFTS, LLC

Principal Amount: NOT TO EXCEED ONE MILLION DOLLARS (\$1,000,000)

The City of Fort Wayne, Indiana, a municipal corporation and political subdivision duly created and validly existing under the laws of the State of Indiana ("Issuer"), for value received, hereby promises to pay the Registered Owner listed above (the "Purchaser") or to registered assigns, but solely from the Pledged Revenues hereinafter described, the Principal Amount in any coin or currency of the United States of America which on the date of payment thereof is the legal tender for the payment of public and private debts, and to pay, solely from such Pledged Revenues in like coin and currency, interest on the Principal Amount from the date hereof, such interest to be at the rate set forth above, and all such payments of principal or interest to be payable to the Purchaser, in accordance with the terms set forth in that certain Bond Purchase Agreement dated as of \_\_\_\_\_, 2017 (the "Bond Purchase Agreement") between the Issuer and Purchaser, on February 1 and August 1 while this Bond remains outstanding, beginning not earlier than [February/August] 1, 201\_\_\_. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Bond Purchase Agreement and the Financing Agreement by and between the Issuer and Purchaser, dated December 22, 2016 (the "Financing Agreement"). The Purchaser agrees to purchase this Bond on a draw down basis, meaning as the Purchaser makes capital expenditures with respect to the Project (as defined in the Financing Agreement) the Principal Amount of this Bond shall accrue. It is understood that the Principal Amount shall not be payable and interest shall not accrue until such principal has been advanced as a result of the Purchaser making capital expenditures on the Project equal to the Principal Amount hereof. To the extent Purchaser does not make capital expenditures of at least \$1,000,000 for the Project, the principal amount of this Bond shall be correspondingly reduced.

The Principal Amount of this Bond and interest thereon is payable solely from Project TIF Revenues (as defined in the Financing Agreement) (the "Pledged Revenues"). Notwithstanding anything contained herein, the Purchaser, by receipt of this Bond, acknowledges that the payment of the Principal Amount and interest thereon is limited to a period of ten (10) years and a maximum amount of Pledged Revenues which may be applied to the payment thereof of \$1,000,000. If amounts remain unpaid hereon at the expiration of the ten

year (10) period or \$1,000,000 of Pledged Revenues have been applied to the payment thereof prior to the expiration of the ten (10) year period, this Bond shall expire and be null and void.

**NEITHER THE CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OF INDIANA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, IS PLEDGED FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS BOND NOR SHALL THIS BOND BE DEEMED TO BE AN OBLIGATION OF THE ISSUER, THE STATE OF INDIANA OR ANY OTHER POLITICAL SUBDIVISION THEREOF. THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION TO WHICH THE FAITH AND CREDIT OF THE ISSUER ARE PLEDGED BUT IS A SPECIAL LIMITED OBLIGATION OF THE ISSUER, WHICH IS OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS BOND SOLELY AND EXCLUSIVELY OUT OF THE PLEDGED REVENUES. NO COVENANT OR AGREEMENT CONTAINED IN THIS BOND OR THE BOND PURCHASE AGREEMENT OR THE FINANCING AGREEMENT SHALL BE DEEMED TO BE A COVENANT OR AGREEMENT OF ANY MEMBER OF THE ISSUER OR OF ANY OFFICER OR EMPLOYEE OF THE ISSUER IN HIS OR HER INDIVIDUAL CAPACITY, AND NEITHER THE MEMBERS OF THE ISSUER NOR ANY OFFICER OR EMPLOYEE OF THE ISSUER EXECUTING THIS BOND SHALL BE LIABLE PERSONALLY ON THIS BOND OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THIS BOND.**

This Bond is subject to prepayment upon the terms and conditions set forth in the Bond Purchase Agreement.

It is hereby certified, recited and declared that all acts, conditions and things required to exist to happen and to be performed precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the Constitution and laws of the State of Indiana applicable thereto and that the issuance of this Bond is in full compliance with all Constitutional and statutory limitations, provisions and restrictions.

\* \* \* \* \*

## **BOND PURCHASE AGREEMENT**

THIS BOND PURCHASE AGREEMENT (“Purchase Agreement”) having been made and entered into this \_\_\_\_\_ day of February, 2017, by and between Superior Lofts, LLC, an Indiana limited liability company (“Purchaser”), and the City of Fort Wayne, Indiana (“City”),

WITNESSETH:

WHEREAS, City has entered into a Financing Agreement with Purchaser, dated December 22, 2016, wherein City has agreed to pursue the issuance of Economic Development Revenue Bonds to be purchased by Purchaser as provided in this Purchase Agreement (“Financing Agreement”);

WHEREAS, the City of Fort Wayne Economic Development Commission (“Commission”) adopted a resolution, which is attached hereto and incorporated herein by reference as Exhibit A (the “Resolution”), which authorizes the issuance of “City of Fort Wayne, Indiana, Taxable Economic Development Revenue Bonds (Superior Lofts, LLC)” (the “Bonds”), in an aggregate principal amount not to exceed One Million Dollars (\$1,000,000), the principal of and interest on which are payable solely from Project TIF Revenues (as defined in the Financing Agreement), to provide financing for certain improvements within the Riverfront 1 Columbia Street EDA (the “Area”), including the design and construction of an economic development facility more particularly described on Exhibit B, attached hereto (the “Project”); and

WHEREAS, the Resolution authorizes this Bond Purchase Agreement for the purpose of providing for the issuance and sale of the Bonds, and the Purchaser desires to purchase the Bonds in such aggregate principal amount pursuant to the terms contained in the Financing Agreement, the Resolution and herein;

NOW, THEREFORE, Purchaser and City agree as follows:

1. Purchaser hereby agrees to purchase the Bonds in an aggregate principal amount of One Million Dollars (\$1,000,000) at par, which Bonds shall bear interest at a rate of two and 26/100 percent (2.26%) per annum and mature in the amounts and on the dates when Project TIF Revenues, as pledged by the City of Fort Wayne Redevelopment Commission, shall become available. The Purchaser shall be deemed to have purchased the Bonds on a draw down basis as the Purchaser makes capital expenditures with respect to the Project. To the extent Purchaser does not make capital expenditures of at least \$1,000,000 in the Project, the principal amount of the Bonds shall be correspondingly reduced. Project TIF Revenues shall be applied first to the payment of principal until all principal is paid in full and then to the payment of all accrued and unpaid interest, provided that in no event shall any payment (principal or interest) be due under the Bonds after the expiration of ten (10) years or the payment of an aggregate amount of One Million Dollars (\$1,000,000), whichever shall occur first, all as provided in the Resolution. The Bond shall be in the form set forth at Exhibit C.

2. The principal of and interest on the Bonds shall be payable solely from the Project TIF Revenues, to the extent available therefor, on a limited recourse basis as further described in the Resolution. Interest on the Bonds shall be calculated on the basis of a three hundred sixty-day year comprised of twelve 30-day months. The Bonds shall be originally dated the date of delivery.

3. The Bonds are subject to prepayment by City, in whole or in part, at a price of par plus accrued interest to the prepayment date, at any time upon seven (7) days' notice to the Purchaser, and without any premium.

4. The terms of the Bonds referred to in Section 1 are more fully set forth in the Resolution.

5. Simultaneously with the delivery to the Purchaser of the Bonds, which Bonds shall be registered in the name of Purchaser, City shall furnish to Purchaser a transcript of proceedings and an opinion of Faegre Baker Daniels LLP, Fort Wayne, Indiana, bond counsel, which shall set forth, among other things, the unqualified approval of the Bonds.

6. The Bonds are transferable or exchangeable by Purchaser, but only in accordance with the Resolution and, additionally, in the case of a transfer, only upon receipt by City from the transferee of a "sophisticated investor" letter substantially in the form of the "sophisticated investor" letter of the Purchaser included in the transcript of which this Purchase Agreement is a part.

7. If any provision of this Purchase Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Purchase Agreement and this Purchase Agreement shall be construed and in force as if such invalid or unenforceable provision had not been contained herein.

8. This Purchase Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Purchaser and City each agree that it will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Purchase Agreement.

9. No waiver by either Purchaser or City of any term or condition of this Purchase Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Purchase Agreement.

10. This Purchase Agreement merges and supersedes all prior negotiations, representations and agreements between Purchaser and City relating to the subject matter hereof and, together with the Resolution and the Bonds, constitutes the entire agreement between the Purchaser and City in respect hereof.

\* \* \* \* \*

The City and the Purchaser have caused this Bond Purchase Agreement to be entered into on the date first above written.

**SUPERIOR LOFTS, LLC,**  
an Indiana limited liability company

By: REALAMERICA DEVELOPMENT, LLC  
an Indiana limited liability company  
Its: Member

By: \_\_\_\_\_  
Ronda Shrewsbury Weybright, President

**CITY OF FORT WAYNE, INDIANA**

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

*(Signature Page to Bond Purchase Agreement)*

**EXHIBIT A**

**RESOLUTION**

[To be inserted upon the adoption  
of the Resolution by the Commission]

**EXHIBIT B**

**THE PROJECT**

The acquisition, construction, installation and equipping of 72 high quality apartments, 21,000 square feet of commercial space for retail, restaurants and offices and 140 climate controlled self-storage units in a variety of sizes to be located at 102 West Superior Street in the City of Fort Wayne, Indiana.

IN WITNESS WHEREOF, City of Fort Wayne, Indiana has issued this Bond and has caused the same to be signed by the signature of its authorized representative this \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

ATTEST:

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City

(SEAL)

**CERTIFICATE OF AUTHENTICATION**

This bond is one of the bonds described in the within-mentioned Financing Agreement.

By: \_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne, Indiana

**EXHIBIT C**  
**FORM OF BOND**

## **FINANCING AGREEMENT**

This FINANCING AGREEMENT (the "Financing Agreement") dated as of December 22, 2016, between SUPERIOR LOFTS, LLC, an Indiana limited liability company (the "Company"), and the CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the "Issuer"),

### **PRELIMINARY STATEMENT**

WHEREAS, Indiana Code 36-7-11.9 and 36-7-12, each as supplemented and amended (collectively, the "Act"), authorizes and empowers the Issuer to issue revenue bonds and enter into agreements with companies to allow companies to construct economic development facilities and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and Indiana Code 5-3-1, the City of Fort Wayne Economic Development Commission held a public hearing and the Issuer, upon finding that the Project (as defined herein) and the proposed financing of a portion of the acquisition, construction, installation and equipping thereof (the "Financed Portion") will create additional employment opportunities in the City of Fort Wayne, Indiana; will benefit the health, safety, morals and general welfare of the citizens of the City of Fort Wayne and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, the Issuer intends to issue its Taxable Economic Development Revenue Bond, Series 2017 (Superior Lofts Project), in the aggregate principal amount of One Million Dollars (\$1,000,000) (the "2017 Bonds") pursuant to the Bond Purchase Agreement of even date herewith (the "Bond Purchase Agreement"), between the Issuer and the Company, as the purchaser of the 2017 Bonds (the "Bond Purchaser"), and to provide the proceeds of the 2017 Bonds pursuant to the provisions of this Financing Agreement to the Company to finance the Project to be located in the Riverfront 1 – Columbia Street EDA within the City of Fort Wayne, Indiana (the "Allocation Area"), which is an "allocation area" as described in Indiana Code 36-7-14-39; and

WHEREAS, this Financing Agreement provides for the use by the Company of the proceeds of the 2017 Bonds to finance the Financed Portion of the Project; and

WHEREAS, the City of Fort Wayne, Indiana, Department of Redevelopment and the Company entered into an Economic Development Agreement dated December 22, 2016 (the "Development Agreement") providing for the development of the Project and other related matters; and

WHEREAS, the 2017 Bonds issued pursuant to this Financing Agreement and sold pursuant to the Bond Purchase Agreement will be payable solely out of Project TIF Revenues (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises, the representations, warranties and commitments given by the Company to the Issuer, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Issuer hereby further covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1. **Terms Defined.** As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“2017 Bond Fund” means the Series 2017 Bond Fund established by the Bond Purchase Agreement.

“2017 Bondholder” or “owner of a 2017 Bond” or any similar term means the owner of a 2017 Bond.

“2017 Bonds” means the City of Fort Wayne, Indiana, Taxable Economic Development Revenue Bonds, Series 2017 (Superior Lofts Project), in the aggregate principal amount of One Million Dollars (\$1,000,000).

“Allocation Area” shall have the meaning set forth in the Preamble hereof.

“Bond Purchase Agreement” means the Bond Purchase Agreement between the Issuer and the Bond Purchaser and all amendments and supplements thereto.

“Bond Purchaser” means the Company, as the purchaser of the 2017 Bonds pursuant to the Bond Purchase Agreement.

“Company” means Superior Lofts, LLC, an Indiana limited liability company, or any successors thereto permitted under Section 3.2 hereof.

“Development Agreement” means the Economic Development Agreement dated December 22, 2016, among the City of Fort Wayne, Department of Redevelopment, and the Company.

“Financed Portion” means that portion of the Project financed from the proceeds of the 2017 Bonds.

“Issuer” means the City of Fort Wayne, Indiana, a municipal corporation duly organized and validly existing under the laws of the State.

“Project” means the acquisition, construction, installation and equipping of an economic development facility as more particularly described on Exhibit A attached hereto, which is located in the Allocation Area.

**"Project TIF Revenues"** means the property tax proceeds received by the Redevelopment Commission and pledged to the Issuer pursuant to a resolution adopted by the Redevelopment Commission from the assessed valuation of the real property and improvements included in the Project located in the Allocation Area in excess of the assessed valuation described in Indiana Code 36-7-14-39(b)(1), as such statutory provision exists on the date of execution of this Financing Agreement or may be amended from time to time, provided, however, that such Project TIF Revenues shall not exceed the amount of such revenue collected over ten (10) years or the amount of One Million Dollars (\$1,000,000), whichever shall occur first.

**"Redevelopment Commission"** means the City of Fort Wayne Redevelopment Commission.

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

Section 1.2. **Rules of Interpretation.** For all purposes of this Financing Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) **"This Financing Agreement"** means this instrument as originally executed and as it may from time to time be supplemented, modified or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated **"Articles," "Sections"** and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words **"herein," "hereof"** and **"hereunder"** and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied in the United States of America.

(e) Any terms not defined herein but defined in the Bond Purchase Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

Section 1.3. **Exhibits.** The following exhibit is attached to and incorporated by reference and made a part of this Financing Agreement.

**Exhibit A. Project Description.**

## ARTICLE II

### REPRESENTATIONS; USE OF 2017 BOND PROCEEDS

Section 2.1. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Financing Agreement. The Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) Pursuant to the Development Agreement, the Issuer agrees to provide funds from the issuance of the 2017 Bonds in the amount of One Million Dollars (\$1,000,000) to the Company for the costs associated with the acquisition, construction, installation and equipping of the Financed Portion of the Project, subject to the execution and delivery of this Financing Agreement, all for the benefit of the holders of the 2017 Bonds, to create additional employment opportunities in the City of Fort Wayne, Indiana and to benefit the health, safety, morals and general welfare of the citizens of the City of Fort Wayne and the State.

Section 2.2. Representations by Company. The Company represents and warrants that:

(a) It is a limited liability company validly existing under the laws of the State and authorized to do business in the State, is not in violation of any laws in any manner material to its ability to perform its obligations under this Financing Agreement, and has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) All of the proceeds from the 2017 Bonds provided to the Company hereunder (including any income earned on the investment of such proceeds) will be used to finance the Financed Portion of the Project.

(c) The provision of financial assistance to be made available to it under this Financing Agreement from the proceeds of the 2017 Bonds and the commitments therefor made by the Issuer have induced the Company to undertake the Project and such Project will preserve and create additional jobs and employment opportunities within the boundaries of the City of Fort Wayne, Indiana. Further, the Company intends to operate or cause the Project to be operated for commercial business purposes (which operation may not include facilities described in Indiana Code 36-7-11.9-3(a)(2)(A) through (N)), until the expiration or earlier termination of this Financing Agreement as provided herein.

(d) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any restriction or any agreement or instrument to

which the Company is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Company to perform its obligations hereunder) of any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement.

(e) The execution, delivery and performance by the Company of this Financing Agreement do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(f) This Financing Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization or other similar laws affecting the enforcement of creditors' rights in general.

(g) There are no actions, suits or proceedings pending, or, to the knowledge of the Company, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might impair the ability of the Company to perform its obligations under this Financing Agreement.

(h) The Company represents that it will perform its obligations and covenants under the Development Agreement.

### ARTICLE III

#### PARTICULAR COVENANTS OF THE COMPANY

Section 3.1. Payment of Principal and Interest; Payment of Project TIF Revenues. In accordance with the Bond Purchase Agreement, the 2017 Bonds are payable solely and only from Project TIF Revenues as pledged to the Issuer by the Redevelopment Commission pursuant to a resolution adopted by the Redevelopment Commission. Under no circumstances shall the Company be liable for making any payments due under the Bond Purchase Agreement or the 2017 Bonds, including any payment of the principal of or premium, if any, or interest on the 2017 Bonds. In addition, under no circumstances shall the Company be liable for payment of any other costs or expenses under or in connection with this Financing Agreement or the transactions contemplated by this Financing Agreement, the Bond Purchase Agreement or the 2017 Bonds. The Bond Purchase Agreement provides that the Issuer shall transfer Project TIF Revenues to the Bond Fund for payment to the 2017 Bondholder as and when Project TIF Revenues are received in the amounts set forth herein.

Section 3.2. Maintenance of Existence. The Company agrees that it will maintain its existence as a limited liability company, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit

one or more other entities to consolidate or merge with it; provided, that the Company may, without violating the agreement contained in this Section 3.2, consolidate or merge with another entity, permit one or more other entities to consolidate or merge into it, or transfer to another entity organized under the laws of one of the states of the United States all or substantially all of its assets as an entirety and thereafter dissolve provided (a) the surviving, resulting or transferee entity, as the case may be, is organized under the laws of one of the states of the United States, and (b) to the extent that the Company is not the surviving entity, such entity assumes in writing all of the obligations of the Company herein, including the obligations of the Company under the Development Agreement.

Section 3.3. Development Agreement. The Company agrees to perform all material matters provided by the Development Agreement to be performed by the Company and to comply with all material provisions of the Development Agreement applicable to the Company, in each case to the extent that a failure to so perform or comply is expressly provided under the terms of the Development Agreement to be an "Event of Default" by the Company or, with the passage of time or the giving of notice, or both, would constitute an "Event of Default" on the part of the Company under the Development Agreement.

Section 3.4. Payment of Costs of Issuance of 2017 Bonds, Other Fees and Expenses. The Issuer shall pay from the Project TIF Revenues, as necessary, the costs of issuance of the 2017 Bonds after the payment in full of the 2017 Bonds. The Company is not obligated to pay any costs of issuance of the 2017 Bonds or any related costs, fees or expenses in connection with the issuance, sale or offering of the 2017 Bonds; nor is the Company obligated to pay any fees, charges or expenses in connection with or related to the 2017 Bonds after the 2017 Bonds have been issued, which fees, charges and expenses include financial advisory and/or accounting fees, charges and expenses, fiduciary fees and expenses and Issuer fees and expenses (including in each instance legal fees and expenses), all of which are obligations of the Issuer.

Section 3.5. Completion and Use of Project. The Company agrees that it will make, execute, acknowledge and deliver contracts, orders, receipts, writings and instructions with any other persons, firms or corporations in connection with the Project and in general do all things reasonably within its power which may be requisite or proper, for the acquisition, construction, installation and equipping of the Project and, upon completion, the Company will operate and maintain the Project in such manner as reasonably within the Company's power so as to conform with all applicable zoning, planning, building, environmental and other applicable governmental regulations and so as to be consistent with the Act.

The Issuer does not make any warranty, either express or implied, that the moneys, which under the provisions of this Financing Agreement will be available for payment of the costs of the Financed Portion of the Project, will be sufficient to pay all the costs which will be incurred with respect to the Financed Portion. The Company agrees that if, after exhaustion of such moneys, the Company should pay the costs of completing the Financed Portion, it shall not be entitled to any reimbursement therefor from the Issuer.

Section 3.6. Sale, Substitution or Lease of Facilities. Subject to Section 6.4 hereof, the Company may sell, lease or transfer or otherwise dispose of the Project or any portion thereof only if the sale, lease or transfer or other disposition shall require the purchaser, lessee, transferee

or other party, as the case may be, to assume all of the obligations of the Company under this Financing Agreement. Notwithstanding the above, Company and Issuer agree that Company may enter into a master lease with Superior Lofts MT, LLC, an Indiana limited liability company, without requiring Superior Lofts MT, LLC to assume any of the obligations of the Company under this Financing Agreement.

Section 3.7. Fees and Expenses of Company. The Company hereby covenants and agrees to pay any and all fees, charges and expenses, including legal counsel fees, of the Company incurred in connection with this Financing Agreement and the Development Agreement.

## ARTICLE IV

### IMMUNITY

Section 4.1. Extent of Covenants of the Issuer: No Personal Liability. No recourse shall be had for the payment of the principal of or interest on any of the 2017 Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the 2017 Bonds, the Bond Purchase Agreement or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, as such, either directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Bond Purchase Agreement and this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the 2017 Bonds.

Section 4.2. Liability of Issuer. Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the Project TIF Revenues and as otherwise provided under this Financing Agreement and the Bond Purchase Agreement. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

## ARTICLE V

### SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 5.1. Supplements and Amendments to this Financing Agreement. The Company and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof; provided, that to the extent that such supplements and amendments materially adversely affect the rights of the holders of the 2017 Bonds, any such supplement or amendment

shall require the consent of the holders of one hundred percent (100%) of the principal amount of the 2017 Bonds.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

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

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

Section 6.3. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The Issuer and the Company may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer:           The City of Fort Wayne, Indiana  
                                  Department of Redevelopment  
                                  Attention: Executive Director  
                                  Citizen's Square  
                                  200 East Berry Street, Room 320  
                                  Fort Wayne, IN 46802  
                                  Telephone: 260-427-2323  
                                  Facsimile: 260-427-1375

With a copy to:        The City of Fort Wayne, Indiana  
                                  Attention: Lawrence E. Shine  
                                  Citizen's Square  
                                  200 East Berry Street, Suite 430  
                                  Fort Wayne, IN 46802  
                                  Telephone: 260-427-1190  
                                  Facsimile: 260-427-5678

With a copy to: Jon A. Bomberger  
Faegre Baker Daniels LLP  
110 W. Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Telephone: 260-424-8000  
Facsimile: 260-460-1700  
Email: [jon.bomberger@faegrebd.com](mailto:jon.bomberger@faegrebd.com)

To the Company: Superior Lofts, LLC  
Attn: Ronda Shrewsbury Weybright  
10711 America Way, Suite 200  
Fishers, IN 46038  
Telephone: 317-815-5929  
Facsimile: 317-815-5930  
Email: [ronda@realamericallc.com](mailto:ronda@realamericallc.com)

With a copy to: Mark D. Grant  
Kuhl & Grant LLP  
707 E. North Street, Suite 800  
Indianapolis, IN 46202  
Telephone: 317-423-9407  
Facsimile: 317-423-9901  
Email: [mgrant@kuhlgrantlaw.com](mailto:mgrant@kuhlgrantlaw.com)

Section 6.4. Successors and Assigns. Whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Company, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not; provided, however, that the Company may not assign the Project or its rights and obligations under this Financing Agreement if the successors and assigns do not intend to utilize the Project for manufacturing, warehousing, distribution, processing, commercial, business or health care purposes (which use may not include facilities described in Indiana Code 36-7-11.9-3(a)(2)(A) through (N))

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


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

Section 6.7. Condition. The rights and obligations of the Issuer and the Company pursuant to this Financing Agreement are expressly conditioned upon the due authorization of the issuance of the 2017 Bonds pursuant to all required legal proceedings.

IN WITNESS WHEREOF, the Issuer and the Company have caused this Financing Agreement to be executed in their respective names, and attested by their duly authorized officers, all as of the date first above written.

SUPERIOR LOFTS, LLC,  
an Indiana limited liability company

By: RealAmerica Development, LLC,  
an Indiana limited liability company,  
a member

By:   
Ronda Shrewsbury Weybright, President

“Company”

THE CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

“Issuer”

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

IN WITNESS WHEREOF, the Issuer and the Company have caused this Financing Agreement to be executed in their respective names, and attested by their duly authorized officers, all as of the date first above written.

SUPERIOR LOFTS, LLC,  
an Indiana limited liability company

By: RealAmerica Development, LLC,  
an Indiana limited liability company,  
a member

By: \_\_\_\_\_  
Ronda Shrewsbury Weybright, President

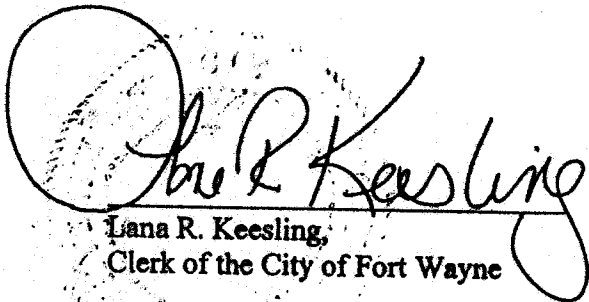
"Company"

THE CITY OF FORT WAYNE, INDIANA

By:   
Thomas C. Henry, Mayor

"Issuer"

BY KARL BANDEMER  
DEPUTY MAYOR

  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

The Financed Portion of the Project consists of the payment of the costs of acquisition, construction, installation and equipping of all or any or any portion of the following economic development facilities:

The acquisition, construction, installation and equipping of 72 high quality apartments, 21,000 square feet of commercial space for retail, restaurants and offices and 140 climate controlled self-storage units in a variety of sizes to be located at 102 West Superior Street in the City of Fort Wayne, Indiana.

**City of Fort Wayne, Indiana,  
Taxable Economic Development Revenue Bond  
(Superior Lofts, LLC Project)**

**No.: 2017R-1**

<u>Maturity Date</u>	<u>Interest Rate</u>
[February/August] 1, 20__	2.26%

Registered Owner: SUPERIOR LOFTS, LLC

Principal Amount: NOT TO EXCEED ONE MILLION DOLLARS (\$1,000,000)

The City of Fort Wayne, Indiana, a municipal corporation and political subdivision duly created and validly existing under the laws of the State of Indiana ("Issuer"), for value received, hereby promises to pay the Registered Owner listed above (the "Purchaser") or to registered assigns, but solely from the Pledged Revenues hereinafter described, the Principal Amount in any coin or currency of the United States of America which on the date of payment thereof is the legal tender for the payment of public and private debts, and to pay, solely from such Pledged Revenues in like coin and currency, interest on the Principal Amount from the date hereof, such interest to be at the rate set forth above, and all such payments of principal or interest to be payable to the Purchaser, in accordance with the terms set forth in that certain Bond Purchase Agreement dated as of \_\_\_\_\_, 2017 (the "Bond Purchase Agreement") between the Issuer and Purchaser, on February 1 and August 1 while this Bond remains outstanding, beginning not earlier than [February/August] 1, 201\_\_ . All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Bond Purchase Agreement and the Financing Agreement by and between the Issuer and Purchaser, dated December 22, 2016 (the "Financing Agreement"). The Purchaser agrees to purchase this Bond on a draw down basis, meaning as the Purchaser makes capital expenditures with respect to the Project (as defined in the Financing Agreement) the Principal Amount of this Bond shall accrue. It is understood that the Principal Amount shall not be payable and interest shall not accrue until such principal has been advanced as a result of the Purchaser making capital expenditures on the Project equal to the Principal Amount hereof. To the extent Purchaser does not make capital expenditures of at least \$1,000,000 for the Project, the principal amount of this Bond shall be correspondingly reduced.

The Principal Amount of this Bond and interest thereon is payable solely from Project TIF Revenues (as defined in the Financing Agreement) (the "Pledged Revenues"). Notwithstanding anything contained herein, the Purchaser, by receipt of this Bond, acknowledges that the payment of the Principal Amount and interest thereon is limited to a period of ten (10) years and a maximum amount of Pledged Revenues which may be applied to the payment thereof of \$1,000,000. If amounts remain unpaid hereon at the expiration of the ten

year (10) period or \$1,000,000 of Pledged Revenues have been applied to the payment thereof prior to the expiration of the ten (10) year period, this Bond shall expire and be null and void.

**NEITHER THE CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OF INDIANA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, IS PLEDGED FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS BOND NOR SHALL THIS BOND BE DEEMED TO BE AN OBLIGATION OF THE ISSUER, THE STATE OF INDIANA OR ANY OTHER POLITICAL SUBDIVISION THEREOF. THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION TO WHICH THE FAITH AND CREDIT OF THE ISSUER ARE PLEDGED BUT IS A SPECIAL LIMITED OBLIGATION OF THE ISSUER, WHICH IS OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS BOND SOLELY AND EXCLUSIVELY OUT OF THE PLEDGED REVENUES. NO COVENANT OR AGREEMENT CONTAINED IN THIS BOND OR THE BOND PURCHASE AGREEMENT OR THE FINANCING AGREEMENT SHALL BE DEEMED TO BE A COVENANT OR AGREEMENT OF ANY MEMBER OF THE ISSUER OR OF ANY OFFICER OR EMPLOYEE OF THE ISSUER IN HIS OR HER INDIVIDUAL CAPACITY, AND NEITHER THE MEMBERS OF THE ISSUER NOR ANY OFFICER OR EMPLOYEE OF THE ISSUER EXECUTING THIS BOND SHALL BE LIABLE PERSONALLY ON THIS BOND OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THIS BOND.**

This Bond is subject to prepayment upon the terms and conditions set forth in the Bond Purchase Agreement.

It is hereby certified, recited and declared that all acts, conditions and things required to exist to happen and to be performed precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the Constitution and laws of the State of Indiana applicable thereto and that the issuance of this Bond is in full compliance with all Constitutional and statutory limitations, provisions and restrictions.

\* \* \* \* \*

IN WITNESS WHEREOF, City of Fort Wayne, Indiana has issued this Bond and has caused the same to be signed by the signature of its authorized representative this \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

ATTEST:

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City

(SEAL)

**CERTIFICATE OF AUTHENTICATION**

This bond is one of the bonds described in the within-mentioned Financing Agreement.

By: \_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne, Indiana

**City of Fort Wayne, Indiana,  
Taxable Economic Development Revenue Bond  
(Superior Lofts, LLC Project)**

**No.: 2017R-1**

<u>Maturity Date</u>	<u>Interest Rate</u>
[February/August] 1, 20__	2.26%

Registered Owner: SUPERIOR LOFTS, LLC

Principal Amount: NOT TO EXCEED ONE MILLION DOLLARS (\$1,000,000)

The City of Fort Wayne, Indiana, a municipal corporation and political subdivision duly created and validly existing under the laws of the State of Indiana ("Issuer"), for value received, hereby promises to pay the Registered Owner listed above (the "Purchaser") or to registered assigns, but solely from the Pledged Revenues hereinafter described, the Principal Amount in any coin or currency of the United States of America which on the date of payment thereof is the legal tender for the payment of public and private debts, and to pay, solely from such Pledged Revenues in like coin and currency, interest on the Principal Amount from the date hereof, such interest to be at the rate set forth above, and all such payments of principal or interest to be payable to the Purchaser, in accordance with the terms set forth in that certain Bond Purchase Agreement dated as of \_\_\_\_\_, 2017 (the "Bond Purchase Agreement") between the Issuer and Purchaser, on February 1 and August 1 while this Bond remains outstanding, beginning not earlier than [February/August] 1, 201\_\_. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Bond Purchase Agreement and the Financing Agreement by and between the Issuer and Purchaser, dated December 22, 2016 (the "Financing Agreement"). The Purchaser agrees to purchase this Bond on a draw down basis, meaning as the Purchaser makes capital expenditures with respect to the Project (as defined in the Financing Agreement) the Principal Amount of this Bond shall accrue. It is understood that the Principal Amount shall not be payable and interest shall not accrue until such principal has been advanced as a result of the Purchaser making capital expenditures on the Project equal to the Principal Amount hereof. To the extent Purchaser does not make capital expenditures of at least \$1,000,000 for the Project, the principal amount of this Bond shall be correspondingly reduced.

The Principal Amount of this Bond and interest thereon is payable solely from Project TIF Revenues (as defined in the Financing Agreement) (the "Pledged Revenues"). Notwithstanding anything contained herein, the Purchaser, by receipt of this Bond, acknowledges that the payment of the Principal Amount and interest thereon is limited to a period of ten (10) years and a maximum amount of Pledged Revenues which may be applied to the payment thereof of \$1,000,000. If amounts remain unpaid hereon at the expiration of the ten

year (10) period or \$1,000,000 of Pledged Revenues have been applied to the payment thereof prior to the expiration of the ten (10) year period, this Bond shall expire and be null and void.

**NEITHER THE CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OF INDIANA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, IS PLEDGED FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS BOND NOR SHALL THIS BOND BE DEEMED TO BE AN OBLIGATION OF THE ISSUER, THE STATE OF INDIANA OR ANY OTHER POLITICAL SUBDIVISION THEREOF. THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION TO WHICH THE FAITH AND CREDIT OF THE ISSUER ARE PLEDGED BUT IS A SPECIAL LIMITED OBLIGATION OF THE ISSUER, WHICH IS OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS BOND SOLELY AND EXCLUSIVELY OUT OF THE PLEDGED REVENUES. NO COVENANT OR AGREEMENT CONTAINED IN THIS BOND OR THE BOND PURCHASE AGREEMENT OR THE FINANCING AGREEMENT SHALL BE DEEMED TO BE A COVENANT OR AGREEMENT OF ANY MEMBER OF THE ISSUER OR OF ANY OFFICER OR EMPLOYEE OF THE ISSUER IN HIS OR HER INDIVIDUAL CAPACITY, AND NEITHER THE MEMBERS OF THE ISSUER NOR ANY OFFICER OR EMPLOYEE OF THE ISSUER EXECUTING THIS BOND SHALL BE LIABLE PERSONALLY ON THIS BOND OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THIS BOND.**

This Bond is subject to prepayment upon the terms and conditions set forth in the Bond Purchase Agreement.

It is hereby certified, recited and declared that all acts, conditions and things required to exist to happen and to be performed precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the Constitution and laws of the State of Indiana applicable thereto and that the issuance of this Bond is in full compliance with all Constitutional and statutory limitations, provisions and restrictions.

\* \* \* \* \*

IN WITNESS WHEREOF, City of Fort Wayne, Indiana has issued this Bond and has caused the same to be signed by the signature of its authorized representative this \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

ATTEST:

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City

(SEAL)

**CERTIFICATE OF AUTHENTICATION**

This bond is one of the bonds described in the within-mentioned Financing Agreement.

By: \_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne, Indiana

## BOND PURCHASE AGREEMENT

THIS BOND PURCHASE AGREEMENT ("Purchase Agreement") having been made and entered into this \_\_\_\_\_ day of February, 2017, by and between Superior Lofts, LLC, an Indiana limited liability company ("Purchaser"), and the City of Fort Wayne, Indiana ("City"),

WITNESSETH:

WHEREAS, City has entered into a Financing Agreement with Purchaser, dated December 22, 2016, wherein City has agreed to pursue the issuance of Economic Development Revenue Bonds to be purchased by Purchaser as provided in this Purchase Agreement ("Financing Agreement");

WHEREAS, the City of Fort Wayne Economic Development Commission ("Commission") adopted a resolution, which is attached hereto and incorporated herein by reference as Exhibit A (the "Resolution"), which authorizes the issuance of "City of Fort Wayne, Indiana, Taxable Economic Development Revenue Bonds (Superior Lofts, LLC)" (the "Bonds"), in an aggregate principal amount not to exceed One Million Dollars (\$1,000,000), the principal of and interest on which are payable solely from Project TIF Revenues (as defined in the Financing Agreement), to provide financing for certain improvements within the Riverfront 1 Columbia Street EDA (the "Area"), including the design and construction of an economic development facility more particularly described on Exhibit B, attached hereto (the "Project"); and

WHEREAS, the Resolution authorizes this Bond Purchase Agreement for the purpose of providing for the issuance and sale of the Bonds, and the Purchaser desires to purchase the Bonds in such aggregate principal amount pursuant to the terms contained in the Financing Agreement, the Resolution and herein;

NOW, THEREFORE, Purchaser and City agree as follows:

1. Purchaser hereby agrees to purchase the Bonds in an aggregate principal amount of One Million Dollars (\$1,000,000) at par, which Bonds shall bear interest at a rate of two and 26/100 percent (2.26%) per annum and mature in the amounts and on the dates when Project TIF Revenues, as pledged by the City of Fort Wayne Redevelopment Commission, shall become available. The Purchaser shall be deemed to have purchased the Bonds on a draw down basis as the Purchaser makes capital expenditures with respect to the Project. To the extent Purchaser does not make capital expenditures of at least \$1,000,000 in the Project, the principal amount of the Bonds shall be correspondingly reduced. Project TIF Revenues shall be applied first to the payment of principal until all principal is paid in full and then to the payment of all accrued and unpaid interest, provided that in no event shall any payment (principal or interest) be due under the Bonds after the expiration of ten (10) years or the payment of an aggregate amount of One Million Dollars (\$1,000,000), whichever shall occur first, all as provided in the Resolution. The Bond shall be in the form set forth at Exhibit C.

2. The principal of and interest on the Bonds shall be payable solely from the Project TIF Revenues, to the extent available therefor, on a limited recourse basis as further described in the Resolution. Interest on the Bonds shall be calculated on the basis of a three hundred sixty-day year comprised of twelve 30-day months. The Bonds shall be originally dated the date of delivery.

3. The Bonds are subject to prepayment by City, in whole or in part, at a price of par plus accrued interest to the prepayment date, at any time upon seven (7) days' notice to the Purchaser, and without any premium.

4. The terms of the Bonds referred to in Section 1 are more fully set forth in the Resolution.

5. Simultaneously with the delivery to the Purchaser of the Bonds, which Bonds shall be registered in the name of Purchaser, City shall furnish to Purchaser a transcript of proceedings and an opinion of Faegre Baker Daniels LLP, Fort Wayne, Indiana, bond counsel, which shall set forth, among other things, the unqualified approval of the Bonds.

6. The Bonds are transferable or exchangeable by Purchaser, but only in accordance with the Resolution and, additionally, in the case of a transfer, only upon receipt by City from the transferee of a "sophisticated investor" letter substantially in the form of the "sophisticated investor" letter of the Purchaser included in the transcript of which this Purchase Agreement is a part.

7. If any provision of this Purchase Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Purchase Agreement and this Purchase Agreement shall be construed and in force as if such invalid or unenforceable provision had not been contained herein.

8. This Purchase Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Purchaser and City each agree that it will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Purchase Agreement.

9. No waiver by either Purchaser or City of any term or condition of this Purchase Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Purchase Agreement.

10. This Purchase Agreement merges and supersedes all prior negotiations, representations and agreements between Purchaser and City relating to the subject matter hereof and, together with the Resolution and the Bonds, constitutes the entire agreement between the Purchaser and City in respect hereof.

\* \* \* \* \*

The City and the Purchaser have caused this Bond Purchase Agreement to be entered into on the date first above written.

**SUPERIOR LOFTS, LLC,**  
an Indiana limited liability company

By: REALAMERICA DEVELOPMENT, LLC  
an Indiana limited liability company  
Its: Member

By: \_\_\_\_\_  
Ronda Shrewsbury Weybright, President

**CITY OF FORT WAYNE, INDIANA**

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

*(Signature Page to Bond Purchase Agreement)*

**EXHIBIT A**

**RESOLUTION**

[To be inserted upon the adoption  
of the Resolution by the Commission]

**EXHIBIT B**

**THE PROJECT**

The acquisition, construction, installation and equipping of 72 high quality apartments, 21,000 square feet of commercial space for retail, restaurants and offices and 140 climate controlled self-storage units in a variety of sizes to be located at 102 West Superior Street in the City of Fort Wayne, Indiana.

**EXHIBIT C**  
**FORM OF BOND**

## BOND PURCHASE AGREEMENT

THIS BOND PURCHASE AGREEMENT ("Purchase Agreement") having been made and entered into this \_\_\_\_\_ day of February, 2017, by and between Superior Lofts, LLC, an Indiana limited liability company ("Purchaser"), and the City of Fort Wayne, Indiana ("City"),

WITNESSETH:

WHEREAS, City has entered into a Financing Agreement with Purchaser, dated December 22, 2016, wherein City has agreed to pursue the issuance of Economic Development Revenue Bonds to be purchased by Purchaser as provided in this Purchase Agreement ("Financing Agreement");

WHEREAS, the City of Fort Wayne Economic Development Commission ("Commission") adopted a resolution, which is attached hereto and incorporated herein by reference as Exhibit A (the "Resolution"), which authorizes the issuance of "City of Fort Wayne, Indiana, Taxable Economic Development Revenue Bonds (Superior Lofts, LLC)" (the "Bonds"), in an aggregate principal amount not to exceed One Million Dollars (\$1,000,000), the principal of and interest on which are payable solely from Project TIF Revenues (as defined in the Financing Agreement), to provide financing for certain improvements within the Riverfront 1 Columbia Street EDA (the "Area"), including the design and construction of an economic development facility more particularly described on Exhibit B, attached hereto (the "Project"); and

WHEREAS, the Resolution authorizes this Bond Purchase Agreement for the purpose of providing for the issuance and sale of the Bonds, and the Purchaser desires to purchase the Bonds in such aggregate principal amount pursuant to the terms contained in the Financing Agreement, the Resolution and herein;

NOW, THEREFORE, Purchaser and City agree as follows:

1. Purchaser hereby agrees to purchase the Bonds in an aggregate principal amount of One Million Dollars (\$1,000,000) at par, which Bonds shall bear interest at a rate of two and 26/100 percent (2.26%) per annum and mature in the amounts and on the dates when Project TIF Revenues, as pledged by the City of Fort Wayne Redevelopment Commission, shall become available. The Purchaser shall be deemed to have purchased the Bonds on a draw down basis as the Purchaser makes capital expenditures with respect to the Project. To the extent Purchaser does not make capital expenditures of at least \$1,000,000 in the Project, the principal amount of the Bonds shall be correspondingly reduced. Project TIF Revenues shall be applied first to the payment of principal until all principal is paid in full and then to the payment of all accrued and unpaid interest, provided that in no event shall any payment (principal or interest) be due under the Bonds after the expiration of ten (10) years or the payment of an aggregate amount of One Million Dollars (\$1,000,000), whichever shall occur first, all as provided in the Resolution. The Bond shall be in the form set forth at Exhibit C.

2. The principal of and interest on the Bonds shall be payable solely from the Project TIF Revenues, to the extent available therefor, on a limited recourse basis as further described in the Resolution. Interest on the Bonds shall be calculated on the basis of a three hundred sixty-day year comprised of twelve 30-day months. The Bonds shall be originally dated the date of delivery.

3. The Bonds are subject to prepayment by City, in whole or in part, at a price of par plus accrued interest to the prepayment date, at any time upon seven (7) days' notice to the Purchaser, and without any premium.

4. The terms of the Bonds referred to in Section 1 are more fully set forth in the Resolution.

5. Simultaneously with the delivery to the Purchaser of the Bonds, which Bonds shall be registered in the name of Purchaser, City shall furnish to Purchaser a transcript of proceedings and an opinion of Faegre Baker Daniels LLP, Fort Wayne, Indiana, bond counsel, which shall set forth, among other things, the unqualified approval of the Bonds.

6. The Bonds are transferable or exchangeable by Purchaser, but only in accordance with the Resolution and, additionally, in the case of a transfer, only upon receipt by City from the transferee of a "sophisticated investor" letter substantially in the form of the "sophisticated investor" letter of the Purchaser included in the transcript of which this Purchase Agreement is a part.

7. If any provision of this Purchase Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Purchase Agreement and this Purchase Agreement shall be construed and in force as if such invalid or unenforceable provision had not been contained herein.

8. This Purchase Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Purchaser and City each agree that it will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Purchase Agreement.

9. No waiver by either Purchaser or City of any term or condition of this Purchase Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Purchase Agreement.

10. This Purchase Agreement merges and supersedes all prior negotiations, representations and agreements between Purchaser and City relating to the subject matter hereof and, together with the Resolution and the Bonds, constitutes the entire agreement between the Purchaser and City in respect hereof.

\* \* \* \* \*

The City and the Purchaser have caused this Bond Purchase Agreement to be entered into on the date first above written.

**SUPERIOR LOFTS, LLC,**  
an Indiana limited liability company

By: REALAMERICA DEVELOPMENT, LLC  
an Indiana limited liability company  
Its: Member

By: \_\_\_\_\_  
Ronda Shrewsbury Weybright, President

**CITY OF FORT WAYNE, INDIANA**

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

*(Signature Page to Bond Purchase Agreement)*

**EXHIBIT A**

**RESOLUTION**

[To be inserted upon the adoption  
of the Resolution by the Commission]

**EXHIBIT B**

**THE PROJECT**

The acquisition, construction, installation and equipping of 72 high quality apartments, 21,000 square feet of commercial space for retail, restaurants and offices and 140 climate controlled self-storage units in a variety of sizes to be located at 102 West Superior Street in the City of Fort Wayne, Indiana.

**EXHIBIT C**  
**FORM OF BOND**

## **FINANCING AGREEMENT**

This FINANCING AGREEMENT (the "Financing Agreement") dated as of December 22, 2016, between SUPERIOR LOFTS, LLC, an Indiana limited liability company (the "Company"), and the CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the "Issuer"),

### **PRELIMINARY STATEMENT**

WHEREAS, Indiana Code 36-7-11.9 and 36-7-12, each as supplemented and amended (collectively, the "Act"), authorizes and empowers the Issuer to issue revenue bonds and enter into agreements with companies to allow companies to construct economic development facilities and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and Indiana Code 5-3-1, the City of Fort Wayne Economic Development Commission held a public hearing and the Issuer, upon finding that the Project (as defined herein) and the proposed financing of a portion of the acquisition, construction, installation and equipping thereof (the "Financed Portion") will create additional employment opportunities in the City of Fort Wayne, Indiana; will benefit the health, safety, morals and general welfare of the citizens of the City of Fort Wayne and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, the Issuer intends to issue its Taxable Economic Development Revenue Bond, Series 2017 (Superior Lofts Project), in the aggregate principal amount of One Million Dollars (\$1,000,000) (the "2017 Bonds") pursuant to the Bond Purchase Agreement of even date herewith (the "Bond Purchase Agreement"), between the Issuer and the Company, as the purchaser of the 2017 Bonds (the "Bond Purchaser"), and to provide the proceeds of the 2017 Bonds pursuant to the provisions of this Financing Agreement to the Company to finance the Project to be located in the Riverfront 1 – Columbia Street EDA within the City of Fort Wayne, Indiana (the "Allocation Area"), which is an "allocation area" as described in Indiana Code 36-7-14-39; and

WHEREAS, this Financing Agreement provides for the use by the Company of the proceeds of the 2017 Bonds to finance the Financed Portion of the Project; and

WHEREAS, the City of Fort Wayne, Indiana, Department of Redevelopment and the Company entered into an Economic Development Agreement dated December 22, 2016 (the "Development Agreement") providing for the development of the Project and other related matters; and

WHEREAS, the 2017 Bonds issued pursuant to this Financing Agreement and sold pursuant to the Bond Purchase Agreement will be payable solely out of Project TIF Revenues (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises, the representations, warranties and commitments given by the Company to the Issuer, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Issuer hereby further covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“2017 Bond Fund” means the Series 2017 Bond Fund established by the Bond Purchase Agreement.

“2017 Bondholder” or “owner of a 2017 Bond” or any similar term means the owner of a 2017 Bond.

“2017 Bonds” means the City of Fort Wayne, Indiana, Taxable Economic Development Revenue Bonds, Series 2017 (Superior Lofts Project), in the aggregate principal amount of One Million Dollars (\$1,000,000).

“Allocation Area” shall have the meaning set forth in the Preamble hereof.

“Bond Purchase Agreement” means the Bond Purchase Agreement between the Issuer and the Bond Purchaser and all amendments and supplements thereto.

“Bond Purchaser” means the Company, as the purchaser of the 2017 Bonds pursuant to the Bond Purchase Agreement.

“Company” means Superior Lofts, LLC, an Indiana limited liability company, or any successors thereto permitted under Section 3.2 hereof.

“Development Agreement” means the Economic Development Agreement dated December 22, 2016, among the City of Fort Wayne, Department of Redevelopment, and the Company.

“Financed Portion” means that portion of the Project financed from the proceeds of the 2017 Bonds.

“Issuer” means the City of Fort Wayne, Indiana, a municipal corporation duly organized and validly existing under the laws of the State.

“Project” means the acquisition, construction, installation and equipping of an economic development facility as more particularly described on Exhibit A attached hereto, which is located in the Allocation Area.

“Project TIF Revenues” means the property tax proceeds received by the Redevelopment Commission and pledged to the Issuer pursuant to a resolution adopted by the Redevelopment Commission from the assessed valuation of the real property and improvements included in the Project located in the Allocation Area in excess of the assessed valuation described in Indiana Code 36-7-14-39(b)(1), as such statutory provision exists on the date of execution of this Financing Agreement or may be amended from time to time, provided, however, that such Project TIF Revenues shall not exceed the amount of such revenue collected over ten (10) years or the amount of One Million Dollars (\$1,000,000), whichever shall occur first.

“Redevelopment Commission” means the City of Fort Wayne Redevelopment Commission.

“State” means the State of Indiana.

Section 1.2. Rules of Interpretation. For all purposes of this Financing Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) “This Financing Agreement” means this instrument as originally executed and as it may from time to time be supplemented, modified or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied in the United States of America.

(e) Any terms not defined herein but defined in the Bond Purchase Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following exhibit is attached to and incorporated by reference and made a part of this Financing Agreement.

Exhibit A. Project Description.

## ARTICLE II

### REPRESENTATIONS; USE OF 2017 BOND PROCEEDS

Section 2.1. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Financing Agreement. The Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) Pursuant to the Development Agreement, the Issuer agrees to provide funds from the issuance of the 2017 Bonds in the amount of One Million Dollars (\$1,000,000) to the Company for the costs associated with the acquisition, construction, installation and equipping of the Financed Portion of the Project, subject to the execution and delivery of this Financing Agreement, all for the benefit of the holders of the 2017 Bonds, to create additional employment opportunities in the City of Fort Wayne, Indiana and to benefit the health, safety, morals and general welfare of the citizens of the City of Fort Wayne and the State.

Section 2.2. Representations by Company. The Company represents and warrants that:

(a) It is a limited liability company validly existing under the laws of the State and authorized to do business in the State, is not in violation of any laws in any manner material to its ability to perform its obligations under this Financing Agreement, and has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) All of the proceeds from the 2017 Bonds provided to the Company hereunder (including any income earned on the investment of such proceeds) will be used to finance the Financed Portion of the Project.

(c) The provision of financial assistance to be made available to it under this Financing Agreement from the proceeds of the 2017 Bonds and the commitments therefor made by the Issuer have induced the Company to undertake the Project and such Project will preserve and create additional jobs and employment opportunities within the boundaries of the City of Fort Wayne, Indiana. Further, the Company intends to operate or cause the Project to be operated for commercial business purposes (which operation may not include facilities described in Indiana Code 36-7-11.9-3(a)(2)(A) through (N)), until the expiration or earlier termination of this Financing Agreement as provided herein.

(d) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any restriction or any agreement or instrument to

which the Company is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Company to perform its obligations hereunder) of any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement.

(e) The execution, delivery and performance by the Company of this Financing Agreement do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(f) This Financing Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization or other similar laws affecting the enforcement of creditors' rights in general.

(g) There are no actions, suits or proceedings pending, or, to the knowledge of the Company, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might impair the ability of the Company to perform its obligations under this Financing Agreement.

(h) The Company represents that it will perform its obligations and covenants under the Development Agreement.

### ARTICLE III

#### PARTICULAR COVENANTS OF THE COMPANY

Section 3.1. Payment of Principal and Interest; Payment of Project TIF Revenues. In accordance with the Bond Purchase Agreement, the 2017 Bonds are payable solely and only from Project TIF Revenues as pledged to the Issuer by the Redevelopment Commission pursuant to a resolution adopted by the Redevelopment Commission. Under no circumstances shall the Company be liable for making any payments due under the Bond Purchase Agreement or the 2017 Bonds, including any payment of the principal of or premium, if any, or interest on the 2017 Bonds. In addition, under no circumstances shall the Company be liable for payment of any other costs or expenses under or in connection with this Financing Agreement or the transactions contemplated by this Financing Agreement, the Bond Purchase Agreement or the 2017 Bonds. The Bond Purchase Agreement provides that the Issuer shall transfer Project TIF Revenues to the Bond Fund for payment to the 2017 Bondholder as and when Project TIF Revenues are received in the amounts set forth herein.

Section 3.2. Maintenance of Existence. The Company agrees that it will maintain its existence as a limited liability company, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit

one or more other entities to consolidate or merge with it; provided, that the Company may, without violating the agreement contained in this Section 3.2, consolidate or merge with another entity, permit one or more other entities to consolidate or merge into it, or transfer to another entity organized under the laws of one of the states of the United States all or substantially all of its assets as an entirety and thereafter dissolve provided (a) the surviving, resulting or transferee entity, as the case may be, is organized under the laws of one of the states of the United States, and (b) to the extent that the Company is not the surviving entity, such entity assumes in writing all of the obligations of the Company herein, including the obligations of the Company under the Development Agreement.

Section 3.3. Development Agreement. The Company agrees to perform all material matters provided by the Development Agreement to be performed by the Company and to comply with all material provisions of the Development Agreement applicable to the Company, in each case to the extent that a failure to so perform or comply is expressly provided under the terms of the Development Agreement to be an “Event of Default” by the Company or, with the passage of time or the giving of notice, or both, would constitute an “Event of Default” on the part of the Company under the Development Agreement.

Section 3.4. Payment of Costs of Issuance of 2017 Bonds, Other Fees and Expenses. The Issuer shall pay from the Project TIF Revenues, as necessary, the costs of issuance of the 2017 Bonds after the payment in full of the 2017 Bonds. The Company is not obligated to pay any costs of issuance of the 2017 Bonds or any related costs, fees or expenses in connection with the issuance, sale or offering of the 2017 Bonds; nor is the Company obligated to pay any fees, charges or expenses in connection with or related to the 2017 Bonds after the 2017 Bonds have been issued, which fees, charges and expenses include financial advisory and/or accounting fees, charges and expenses, fiduciary fees and expenses and Issuer fees and expenses (including in each instance legal fees and expenses), all of which are obligations of the Issuer.

Section 3.5. Completion and Use of Project. The Company agrees that it will make, execute, acknowledge and deliver contracts, orders, receipts, writings and instructions with any other persons, firms or corporations in connection with the Project and in general do all things reasonably within its power which may be requisite or proper, for the acquisition, construction, installation and equipping of the Project and, upon completion, the Company will operate and maintain the Project in such manner as reasonably within the Company’s power so as to conform with all applicable zoning, planning, building, environmental and other applicable governmental regulations and so as to be consistent with the Act.

The Issuer does not make any warranty, either express or implied, that the moneys, which under the provisions of this Financing Agreement will be available for payment of the costs of the Financed Portion of the Project, will be sufficient to pay all the costs which will be incurred with respect to the Financed Portion. The Company agrees that if, after exhaustion of such moneys, the Company should pay the costs of completing the Financed Portion, it shall not be entitled to any reimbursement therefor from the Issuer.

Section 3.6. Sale, Substitution or Lease of Facilities. Subject to Section 6.4 hereof, the Company may sell, lease or transfer or otherwise dispose of the Project or any portion thereof only if the sale, lease or transfer or other disposition shall require the purchaser, lessee, transferee

or other party, as the case may be, to assume all of the obligations of the Company under this Financing Agreement. Notwithstanding the above, Company and Issuer agree that Company may enter into a master lease with Superior Lofts MT, LLC, an Indiana limited liability company, without requiring Superior Lofts MT, LLC to assume any of the obligations of the Company under this Financing Agreement.

Section 3.7. Fees and Expenses of Company. The Company hereby covenants and agrees to pay any and all fees, charges and expenses, including legal counsel fees, of the Company incurred in connection with this Financing Agreement and the Development Agreement.

## ARTICLE IV

### IMMUNITY

Section 4.1. Extent of Covenants of the Issuer; No Personal Liability. No recourse shall be had for the payment of the principal of or interest on any of the 2017 Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the 2017 Bonds, the Bond Purchase Agreement or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, as such, either directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Bond Purchase Agreement and this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the 2017 Bonds.

Section 4.2. Liability of Issuer. Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the Project TIF Revenues and as otherwise provided under this Financing Agreement and the Bond Purchase Agreement. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

## ARTICLE V

### SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 5.1. Supplements and Amendments to this Financing Agreement. The Company and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof; provided, that to the extent that such supplements and amendments materially adversely affect the rights of the holders of the 2017 Bonds, any such supplement or amendment

shall require the consent of the holders of one hundred percent (100%) of the principal amount of the 2017 Bonds.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

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

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

Section 6.3. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The Issuer and the Company may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer:           The City of Fort Wayne, Indiana  
                                  Department of Redevelopment  
                                  Attention: Executive Director  
                                  Citizen's Square  
                                  200 East Berry Street, Room 320  
                                  Fort Wayne, IN 46802  
                                  Telephone: 260-427-2323  
                                  Facsimile: 260-427-1375

With a copy to:         The City of Fort Wayne, Indiana  
                                  Attention: Lawrence E. Shine  
                                  Citizen's Square  
                                  200 East Berry Street, Suite 430  
                                  Fort Wayne, IN 46802  
                                  Telephone: 260-427-1190  
                                  Facsimile: 260-427-5678

With a copy to: Jon A. Bomberger  
Faegre Baker Daniels LLP  
110 W. Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Telephone: 260-424-8000  
Facsimile: 260-460-1700  
Email: [jon.bomberger@faegrebd.com](mailto:jon.bomberger@faegrebd.com)

To the Company: Superior Lofts, LLC  
Attn: Ronda Shrewsbury Weybright  
10711 America Way, Suite 200  
Fishers, IN 46038  
Telephone: 317-815-5929  
Facsimile: 317-815-5930  
Email: [ronda@realamericallc.com](mailto:ronda@realamericallc.com)

With a copy to: Mark D. Grant  
Kuhl & Grant LLP  
707 E. North Street, Suite 800  
Indianapolis, IN 46202  
Telephone: 317-423-9407  
Facsimile: 317-423-9901  
Email: [mgrant@kuhlgrantlaw.com](mailto:mgrant@kuhlgrantlaw.com)

Section 6.4. Successors and Assigns. Whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Company, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not; provided, however, that the Company may not assign the Project or its rights and obligations under this Financing Agreement if the successors and assigns do not intend to utilize the Project for manufacturing, warehousing, distribution, processing, commercial, business or health care purposes (which use may not include facilities described in Indiana Code 36-7-11.9-3(a)(2)(A) through (N))

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

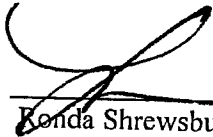
Section 6.6. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and enforced in accordance with, the laws of Indiana.

Section 6.7. Condition. The rights and obligations of the Issuer and the Company pursuant to this Financing Agreement are expressly conditioned upon the due authorization of the issuance of the 2017 Bonds pursuant to all required legal proceedings.

IN WITNESS WHEREOF, the Issuer and the Company have caused this Financing Agreement to be executed in their respective names, and attested by their duly authorized officers, all as of the date first above written.

SUPERIOR LOFTS, LLC,  
an Indiana limited liability company

By: RealAmerica Development, LLC,  
an Indiana limited liability company,  
a member

By:   
Konda Shrewsbury Weybright, President

**“Company”**

THE CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

**“Issuer”**

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

IN WITNESS WHEREOF, the Issuer and the Company have caused this Financing Agreement to be executed in their respective names, and attested by their duly authorized officers, all as of the date first above written.

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an Indiana limited liability company

By: RealAmerica Development, LLC,  
an Indiana limited liability company,  
a member

By: \_\_\_\_\_  
Ronda Shrewsbury Weybright, President

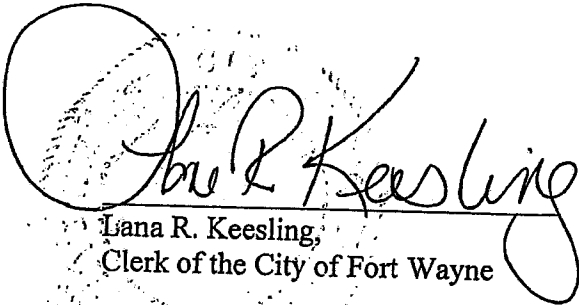
“Company”

THE CITY OF FORT WAYNE, INDIANA

By: *Thomas C. Henry*  
Thomas C. Henry, Mayor

“Issuer”

BY KARL BANDEMER  
DEPUTY MAYOR

  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

The Financed Portion of the Project consists of the payment of the costs of acquisition, construction, installation and equipping of all or any or any portion of the following economic development facilities:

The acquisition, construction, installation and equipping of 72 high quality apartments, 21,000 square feet of commercial space for retail, restaurants and offices and 140 climate controlled self-storage units in a variety of sizes to be located at 102 West Superior Street in the City of Fort Wayne, Indiana.

## FINANCING AGREEMENT

This FINANCING AGREEMENT (the "Financing Agreement") dated as of December 22, 2016, between SUPERIOR LOFTS, LLC, an Indiana limited liability company (the "Company"), and the CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the "Issuer"),

### PRELIMINARY STATEMENT

WHEREAS, Indiana Code 36-7-11.9 and 36-7-12, each as supplemented and amended (collectively, the "Act"), authorizes and empowers the Issuer to issue revenue bonds and enter into agreements with companies to allow companies to construct economic development facilities and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and Indiana Code 5-3-1, the City of Fort Wayne Economic Development Commission held a public hearing and the Issuer, upon finding that the Project (as defined herein) and the proposed financing of a portion of the acquisition, construction, installation and equipping thereof (the "Financed Portion") will create additional employment opportunities in the City of Fort Wayne, Indiana; will benefit the health, safety, morals and general welfare of the citizens of the City of Fort Wayne and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, the Issuer intends to issue its Taxable Economic Development Revenue Bond, Series 2017 (Superior Lofts Project), in the aggregate principal amount of One Million Dollars (\$1,000,000) (the "2017 Bonds") pursuant to the Bond Purchase Agreement of even date herewith (the "Bond Purchase Agreement"), between the Issuer and the Company, as the purchaser of the 2017 Bonds (the "Bond Purchaser"), and to provide the proceeds of the 2017 Bonds pursuant to the provisions of this Financing Agreement to the Company to finance the Project to be located in the Riverfront 1 – Columbia Street EDA within the City of Fort Wayne, Indiana (the "Allocation Area"), which is an "allocation area" as described in Indiana Code 36-7-14-39; and

WHEREAS, this Financing Agreement provides for the use by the Company of the proceeds of the 2017 Bonds to finance the Financed Portion of the Project; and

WHEREAS, the City of Fort Wayne, Indiana, Department of Redevelopment and the Company entered into an Economic Development Agreement dated December 22, 2016 (the "Development Agreement") providing for the development of the Project and other related matters; and

WHEREAS, the 2017 Bonds issued pursuant to this Financing Agreement and sold pursuant to the Bond Purchase Agreement will be payable solely out of Project TIF Revenues (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises, the representations, warranties and commitments given by the Company to the Issuer, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Issuer hereby further covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“2017 Bond Fund” means the Series 2017 Bond Fund established by the Bond Purchase Agreement.

“2017 Bondholder” or “owner of a 2017 Bond” or any similar term means the owner of a 2017 Bond.

“2017 Bonds” means the City of Fort Wayne, Indiana, Taxable Economic Development Revenue Bonds, Series 2017 (Superior Lofts Project), in the aggregate principal amount of One Million Dollars (\$1,000,000).

“Allocation Area” shall have the meaning set forth in the Preamble hereof.

“Bond Purchase Agreement” means the Bond Purchase Agreement between the Issuer and the Bond Purchaser and all amendments and supplements thereto.

“Bond Purchaser” means the Company, as the purchaser of the 2017 Bonds pursuant to the Bond Purchase Agreement.

“Company” means Superior Lofts, LLC, an Indiana limited liability company, or any successors thereto permitted under Section 3.2 hereof.

“Development Agreement” means the Economic Development Agreement dated December 22, 2016, among the City of Fort Wayne, Department of Redevelopment, and the Company.

“Financed Portion” means that portion of the Project financed from the proceeds of the 2017 Bonds.

“Issuer” means the City of Fort Wayne, Indiana, a municipal corporation duly organized and validly existing under the laws of the State.

“Project” means the acquisition, construction, installation and equipping of an economic development facility as more particularly described on Exhibit A attached hereto, which is located in the Allocation Area.

“Project TIF Revenues” means the property tax proceeds received by the Redevelopment Commission and pledged to the Issuer pursuant to a resolution adopted by the Redevelopment Commission from the assessed valuation of the real property and improvements included in the Project located in the Allocation Area in excess of the assessed valuation described in Indiana Code 36-7-14-39(b)(1), as such statutory provision exists on the date of execution of this Financing Agreement or may be amended from time to time, provided, however, that such Project TIF Revenues shall not exceed the amount of such revenue collected over ten (10) years or the amount of One Million Dollars (\$1,000,000), whichever shall occur first.

“Redevelopment Commission” means the City of Fort Wayne Redevelopment Commission.

“State” means the State of Indiana.

Section 1.2. Rules of Interpretation. For all purposes of this Financing Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) “This Financing Agreement” means this instrument as originally executed and as it may from time to time be supplemented, modified or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied in the United States of America.

(e) Any terms not defined herein but defined in the Bond Purchase Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following exhibit is attached to and incorporated by reference and made a part of this Financing Agreement.

Exhibit A. Project Description.

## ARTICLE II

### REPRESENTATIONS; USE OF 2017 BOND PROCEEDS

Section 2.1. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Financing Agreement. The Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) Pursuant to the Development Agreement, the Issuer agrees to provide funds from the issuance of the 2017 Bonds in the amount of One Million Dollars (\$1,000,000) to the Company for the costs associated with the acquisition, construction, installation and equipping of the Financed Portion of the Project, subject to the execution and delivery of this Financing Agreement, all for the benefit of the holders of the 2017 Bonds, to create additional employment opportunities in the City of Fort Wayne, Indiana and to benefit the health, safety, morals and general welfare of the citizens of the City of Fort Wayne and the State.

Section 2.2. Representations by Company. The Company represents and warrants that:

(a) It is a limited liability company validly existing under the laws of the State and authorized to do business in the State, is not in violation of any laws in any manner material to its ability to perform its obligations under this Financing Agreement, and has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) All of the proceeds from the 2017 Bonds provided to the Company hereunder (including any income earned on the investment of such proceeds) will be used to finance the Financed Portion of the Project.

(c) The provision of financial assistance to be made available to it under this Financing Agreement from the proceeds of the 2017 Bonds and the commitments therefor made by the Issuer have induced the Company to undertake the Project and such Project will preserve and create additional jobs and employment opportunities within the boundaries of the City of Fort Wayne, Indiana. Further, the Company intends to operate or cause the Project to be operated for commercial business purposes (which operation may not include facilities described in Indiana Code 36-7-11.9-3(a)(2)(A) through (N)), until the expiration or earlier termination of this Financing Agreement as provided herein.

(d) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any restriction or any agreement or instrument to

which the Company is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Company to perform its obligations hereunder) of any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement.

(e) The execution, delivery and performance by the Company of this Financing Agreement do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(f) This Financing Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization or other similar laws affecting the enforcement of creditors' rights in general.

(g) There are no actions, suits or proceedings pending, or, to the knowledge of the Company, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might impair the ability of the Company to perform its obligations under this Financing Agreement.

(h) The Company represents that it will perform its obligations and covenants under the Development Agreement.

### ARTICLE III

#### PARTICULAR COVENANTS OF THE COMPANY

Section 3.1. Payment of Principal and Interest; Payment of Project TIF Revenues. In accordance with the Bond Purchase Agreement, the 2017 Bonds are payable solely and only from Project TIF Revenues as pledged to the Issuer by the Redevelopment Commission pursuant to a resolution adopted by the Redevelopment Commission. Under no circumstances shall the Company be liable for making any payments due under the Bond Purchase Agreement or the 2017 Bonds, including any payment of the principal of or premium, if any, or interest on the 2017 Bonds. In addition, under no circumstances shall the Company be liable for payment of any other costs or expenses under or in connection with this Financing Agreement or the transactions contemplated by this Financing Agreement, the Bond Purchase Agreement or the 2017 Bonds. The Bond Purchase Agreement provides that the Issuer shall transfer Project TIF Revenues to the Bond Fund for payment to the 2017 Bondholder as and when Project TIF Revenues are received in the amounts set forth herein.

Section 3.2. Maintenance of Existence. The Company agrees that it will maintain its existence as a limited liability company, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit

one or more other entities to consolidate or merge with it; provided, that the Company may, without violating the agreement contained in this Section 3.2, consolidate or merge with another entity, permit one or more other entities to consolidate or merge into it, or transfer to another entity organized under the laws of one of the states of the United States all or substantially all of its assets as an entirety and thereafter dissolve provided (a) the surviving, resulting or transferee entity, as the case may be, is organized under the laws of one of the states of the United States, and (b) to the extent that the Company is not the surviving entity, such entity assumes in writing all of the obligations of the Company herein, including the obligations of the Company under the Development Agreement.

Section 3.3. Development Agreement. The Company agrees to perform all material matters provided by the Development Agreement to be performed by the Company and to comply with all material provisions of the Development Agreement applicable to the Company, in each case to the extent that a failure to so perform or comply is expressly provided under the terms of the Development Agreement to be an “Event of Default” by the Company or, with the passage of time or the giving of notice, or both, would constitute an “Event of Default” on the part of the Company under the Development Agreement.

Section 3.4. Payment of Costs of Issuance of 2017 Bonds, Other Fees and Expenses. The Issuer shall pay from the Project TIF Revenues, as necessary, the costs of issuance of the 2017 Bonds after the payment in full of the 2017 Bonds. The Company is not obligated to pay any costs of issuance of the 2017 Bonds or any related costs, fees or expenses in connection with the issuance, sale or offering of the 2017 Bonds; nor is the Company obligated to pay any fees, charges or expenses in connection with or related to the 2017 Bonds after the 2017 Bonds have been issued, which fees, charges and expenses include financial advisory and/or accounting fees, charges and expenses, fiduciary fees and expenses and Issuer fees and expenses (including in each instance legal fees and expenses), all of which are obligations of the Issuer.

Section 3.5. Completion and Use of Project. The Company agrees that it will make, execute, acknowledge and deliver contracts, orders, receipts, writings and instructions with any other persons, firms or corporations in connection with the Project and in general do all things reasonably within its power which may be requisite or proper, for the acquisition, construction, installation and equipping of the Project and, upon completion, the Company will operate and maintain the Project in such manner as reasonably within the Company’s power so as to conform with all applicable zoning, planning, building, environmental and other applicable governmental regulations and so as to be consistent with the Act.

The Issuer does not make any warranty, either express or implied, that the moneys, which under the provisions of this Financing Agreement will be available for payment of the costs of the Financed Portion of the Project, will be sufficient to pay all the costs which will be incurred with respect to the Financed Portion. The Company agrees that if, after exhaustion of such moneys, the Company should pay the costs of completing the Financed Portion, it shall not be entitled to any reimbursement therefor from the Issuer.

Section 3.6. Sale, Substitution or Lease of Facilities. Subject to Section 6.4 hereof, the Company may sell, lease or transfer or otherwise dispose of the Project or any portion thereof only if the sale, lease or transfer or other disposition shall require the purchaser, lessee, transferee

or other party, as the case may be, to assume all of the obligations of the Company under this Financing Agreement. Notwithstanding the above, Company and Issuer agree that Company may enter into a master lease with Superior Lofts MT, LLC, an Indiana limited liability company, without requiring Superior Lofts MT, LLC to assume any of the obligations of the Company under this Financing Agreement.

Section 3.7. Fees and Expenses of Company. The Company hereby covenants and agrees to pay any and all fees, charges and expenses, including legal counsel fees, of the Company incurred in connection with this Financing Agreement and the Development Agreement.

## ARTICLE IV

### IMMUNITY

Section 4.1. Extent of Covenants of the Issuer; No Personal Liability. No recourse shall be had for the payment of the principal of or interest on any of the 2017 Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the 2017 Bonds, the Bond Purchase Agreement or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, as such, either directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Bond Purchase Agreement and this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the 2017 Bonds.

Section 4.2. Liability of Issuer. Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the Project TIF Revenues and as otherwise provided under this Financing Agreement and the Bond Purchase Agreement. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

## ARTICLE V

### SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 5.1. Supplements and Amendments to this Financing Agreement. The Company and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof; provided, that to the extent that such supplements and amendments materially adversely affect the rights of the holders of the 2017 Bonds, any such supplement or amendment

shall require the consent of the holders of one hundred percent (100%) of the principal amount of the 2017 Bonds.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

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

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

Section 6.3. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The Issuer and the Company may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer:           The City of Fort Wayne, Indiana  
Department of Redevelopment  
Attention: Executive Director  
Citizen's Square  
200 East Berry Street, Room 320  
Fort Wayne, IN 46802  
Telephone: 260-427-2323  
Facsimile: 260-427-1375

With a copy to:        The City of Fort Wayne, Indiana  
Attention: Lawrence E. Shine  
Citizen's Square  
200 East Berry Street, Suite 430  
Fort Wayne, IN 46802  
Telephone: 260-427-1190  
Facsimile: 260-427-5678

With a copy to: Jon A. Bomberger  
Faegre Baker Daniels LLP  
110 W. Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Telephone: 260-424-8000  
Facsimile: 260-460-1700  
Email: [jon.bomberger@faegrebd.com](mailto:jon.bomberger@faegrebd.com)

To the Company: Superior Lofts, LLC  
Attn: Ronda Shrewsbury Weybright  
10711 America Way, Suite 200  
Fishers, IN 46038  
Telephone: 317-815-5929  
Facsimile: 317-815-5930  
Email: [ronda@realamericallc.com](mailto:ronda@realamericallc.com)

With a copy to: Mark D. Grant  
Kuhl & Grant LLP  
707 E. North Street, Suite 800  
Indianapolis, IN 46202  
Telephone: 317-423-9407  
Facsimile: 317-423-9901  
Email: [mgrant@kuhlgrantlaw.com](mailto:mgrant@kuhlgrantlaw.com)

Section 6.4. Successors and Assigns. Whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Company, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not; provided, however, that the Company may not assign the Project or its rights and obligations under this Financing Agreement if the successors and assigns do not intend to utilize the Project for manufacturing, warehousing, distribution, processing, commercial, business or health care purposes (which use may not include facilities described in Indiana Code 36-7-11.9-3(a)(2)(A) through (N))

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


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

Section 6.7. Condition. The rights and obligations of the Issuer and the Company pursuant to this Financing Agreement are expressly conditioned upon the due authorization of the issuance of the 2017 Bonds pursuant to all required legal proceedings.

IN WITNESS WHEREOF, the Issuer and the Company have caused this Financing Agreement to be executed in their respective names, and attested by their duly authorized officers, all as of the date first above written.

SUPERIOR LOFTS, LLC,  
an Indiana limited liability company

By: RealAmerica Development, LLC,  
an Indiana limited liability company,  
a member

By:   
Konda Shrewsbury Weybright, President

**“Company”**

THE CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Thomas C. Henry, Mayor

**“Issuer”**

\_\_\_\_\_  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

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SUPERIOR LOFTS, LLC,  
an Indiana limited liability company

By: RealAmerica Development, LLC,  
an Indiana limited liability company,  
a member

By: \_\_\_\_\_  
Ronda Shrewsbury Weybright, President

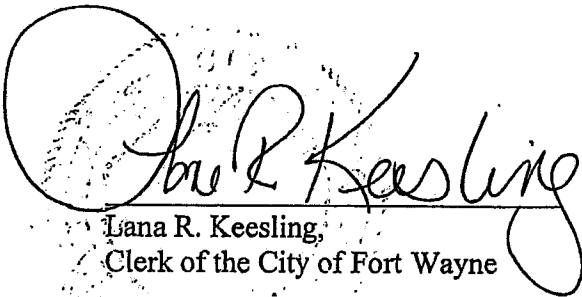
**"Company"**

THE CITY OF FORT WAYNE, INDIANA

By: *Thomas C. Henry*  
Thomas C. Henry, Mayor

**"Issuer"**

BY KARL BANDEMER  
DEPUTY MAYOR

  
Lana R. Keesling,  
Clerk of the City of Fort Wayne

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

The Financed Portion of the Project consists of the payment of the costs of acquisition, construction, installation and equipping of all or any or any portion of the following economic development facilities:

The acquisition, construction, installation and equipping of 72 high quality apartments, 21,000 square feet of commercial space for retail, restaurants and offices and 140 climate controlled self-storage units in a variety of sizes to be located at 102 West Superior Street in the City of Fort Wayne, Indiana.

**BILL NO. S-17-02-26**

**REPORT OF COMMITTEE ON FINANCE**

**March 7, 2017**

***Geoff Paddock Chair***

***Jason Arp Co-Chair***

***All Council Members***

An Ordinance authorizing the City of Fort Wayne, Indiana, to issue its Taxable Economic Development Revenue Bonds and approving other actions in respect thereto

*Superior Lofts, LLC*

***Request for the City to issue its Bonds in an aggregate principal amount not to exceed \$1,000,000.00***

**COMMITTEE ON FINANCE HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

DO PASS

DO NOT PASS

ABSTAIN

NO REC

*Geoff Paddock*

*Jason Arp*

*[Signature]*

*[Signature]*

*John N. Cranney*  
*Thomas H. Bicker*  
*John F. Truff*

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**LANA R. KEESLING  
CITY CLERK**

*Lana R. Keesling*

Public Hearing Date: N/A

Read the first time in full and on motion by Councilman Paddock.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilman Paddock, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


DATED: March 14, 2017

  
LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Special Ordinance No. S-17-02-26 on the 14th day of March, 2017

ATTEST:

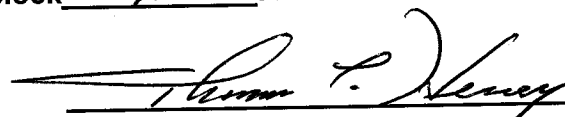
  
LANA R. KEESLING  
CITY CLERK

  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th of March 2017, at the hour of 10:30 o'clock A.M. E.S.T.

  
LANA R. KEESLING, CITY CLERK

Approved and signed by me this 15<sup>th</sup> day of MARCH 2017, at the hour of 4:00 O'clock PM E.S.T.

  
THOMAS C. HENRY, MAYOR