

1 **BILL NO. S-20-01-38 – AS AMENDED**

2 **SPECIAL ORDINANCE NO. S-20-20**

3 A SPECIAL ORDINANCE AUTHORIZING THE CITY OF FORT
4 WAYNE, INDIANA, TO ISSUE ONE OR MORE SERIES OF ITS CITY
5 OF FORT WAYNE, INDIANA MULTIFAMILY HOUSING REVENUE
6 BONDS OF 2020 (McCORMICK PLACE APARTMENTS) AND ITS
7 NOTE (WITH SUCH FURTHER SERIES OR OTHER DESIGNATION
8 AS DETERMINED TO BE NECESSARY, DESIRABLE OR
9 APPROPRIATE), IN A MAXIMUM AGGREGATE PRINCIPAL
10 AMOUNT NOT TO EXCEED TEN MILLION FIVE HUNDRED
11 THOUSAND DOLLARS (\$10,500,000), AND APPROVING AND
12 AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.

13 **WHEREAS**, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively,
14 the “Act”) declares that the financing and refinancing of economic development facilities
15 constitutes a public purpose; and

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

22 **WHEREAS**, McCormick Rehabilitation, LLC, an Indiana limited liability
23 company (the “Borrower”) desires to finance a portion of the costs of a certain project
24 constituting an economic development facility under the Act within the City, including
25 all or any portion of the acquisition, design, construction, rehabilitation and equipping of
26 the existing apartment buildings located in the City at 2811 McCormick Avenue
27 consisting of 96 units, 2 of which are used as a resident resource center and 94 are used
28 as residential units, and certain functionally-related improvements (the “Project”); and

29 **WHEREAS**, the Borrower has advised the Fort Wayne Economic Development
30 Commission (the “Commission”) and the City concerning the Project, and requested that
the City issue, pursuant to the Act, (i) one or more series of its Multifamily Housing
Revenue Bonds of 2020 (McCormick Place Apartments) (the “Bonds”) and (ii) its note
to the Housing Authority of the City of Fort Wayne (the “Housing Authority”) (the
“Note” and together with the Bonds, the “Obligations”) (with such further or different
series designation as may be necessary, desirable or appropriate, including such series
designation to indicate the year in which the Bonds or Note are issued), in an aggregate
principal amount not to exceed Ten Million Five Hundred Thousand Dollars
(\$10,500,000) and lend all or a portion of the proceeds of such Obligations to the
Borrower for the purpose of providing funds (a) to pay all or a part of the cost of design,
acquisition, construction, rehabilitation and equipping of the Project, and (b) to pay
incidental expenses of issuance, including but not limited to, the funding of a debt service
reserve fund, if necessary, and capitalized interest, if necessary; and

1 **WHEREAS**, the Commission and this Common Council of the City (the
2 “Council”) each have studied the Project and the proposed financing of the Project and
its effect on the health and general welfare of the City and its citizens; and

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

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

9 **WHEREAS**, the Borrower has advised the Commission that it has determined
10 that the amount of tax credits to be allocated to the Project under Section 42 of the
Internal Revenue Code of 1986, as amended (the “Code”) does not exceed the amount
11 necessary for the financial feasibility of the Project and its viability as a qualified housing
project throughout the credit period for the Project and that the Project satisfies the
12 requirements for the allocation of a housing credit dollar amount under the Indiana
Housing and Community Development Authority’s (the “IHCD”) qualified allocation
13 plan; and

14 **WHEREAS**, pursuant to and in accordance with the Act, the City desires to
15 provide funds necessary to finance a portion of the Project by issuing the Obligations;
and

16 **WHEREAS**, the City intends to issue the Bonds pursuant to a Bond Purchase and
17 Loan Agreement, to be dated the day of the month in which the Bonds are sold or
delivered (or such other date as the officers of the City may hereafter approve) (the
18 “Bond Purchase and Loan Agreement”), by and between the City, the Borrower and
Merchants Bank of Indiana (the “Purchaser”), in order to obtain funds to lend to the
19 Borrower for the purpose of financing a portion of the Project in accordance with the
terms of the Bond Purchase and Loan Agreement, provided, however, that the aggregate
20 principal amount of the Bonds together with the face amount of the Note shall not exceed
Ten Million Five Hundred Thousand Dollars (\$10,500,000); and

21 **WHEREAS**, pursuant to the Bond Purchase and Loan Agreement and a note
22 from the Borrower to the City, the Borrower will make certain representations,
warranties and commitments with respect to the Project and will agree to make payments
23 sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same
becomes due and payable, and to pay administrative expenses in connection with the
24 Bonds; and

25 **WHEREAS**, there has been submitted to this Council for its approval the
26 substantially final forms of the Financing Documents (as hereinafter defined) and the
form of the proposed Special Ordinance of the Common Council of the City (the
27 “Council”) with respect to the Project and the Obligations (the “Ordinance”); and

1 **WHEREAS**, the Obligations shall never constitute a general obligation of, an
2 indebtedness of, or charge against the general credit of the City; and

3 **WHEREAS**, pursuant to Indiana Code Title 36, Article 7, Chapter 12, Section 24
4 and Section 147(f) of the Code, and the rules promulgated thereunder, as amended, the
5 Commission published notice of a public hearing (the "Public Hearing") on the proposed
6 issuance of the Obligations to finance a portion of the costs of the Project; and

7 **WHEREAS**, on January 23, 2020, the Commission held the Public Hearing on
8 the Project for the purpose of receiving evidence and testimony on the Project and
9 matters related to the proposed financing thereof and heard all persons interested in the
10 proceedings and considered written remonstrances and objections, if any; and

11 **WHEREAS**, the Commission has rendered its report dated as of May 22, 2019
12 (the "Report") concerning the proposed financing of the Project and the Secretary of the
13 Commission has previously caused such Report to be submitted to the executive director
14 or chairman of the Fort Wayne Plan Commission, pursuant to the Act.; and

15 **WHEREAS**, no member of this Council has any pecuniary interest in any
16 employment, financing agreement or other contract made under the provisions of the Act
17 and related to the Bonds authorized herein, which pecuniary interest has not been fully
18 disclosed to the Commission and no such member has voted on any such matter, all in
19 accordance with the provisions of Indiana Code 36-7-12-16.

20 **WHEREAS**, there has been submitted to the Commission for its approval the
21 forms of the Financing Documents, and a form of this proposed Ordinance, which were
22 incorporated by reference in the Commission's Resolution adopted on January 23, 2020,
23 which Resolution has been transmitted hereto; and

24 **WHEREAS**, the Issuer expects to pay for certain costs of the Obligations or costs
25 related to the Project (collectively, the "Expenditures") prior to the issuance of the
26 Obligations, and to reimburse the Expenditures with proceeds received by the City upon
27 the issuance of the Obligations; and

28 **WHEREAS**, the Common Council desires to reaffirm its intent to reimburse the
29 Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

30 **WHEREAS**, based upon the Report and EDC Resolution, the Common Council
hereby finds and determines that the funding approved by the Commission for all or a
portion of the Project will be of benefit to the health and general welfare of the citizens
of the City, complies with the provisions of the Act and the amount necessary to finance
all or a portion of the costs of the Project, together with incidental expenses incurred in
connection therewith, will require the issuance, sale and delivery of one or more series of
its Obligations in an aggregate combined principal amount not to exceed Ten Million
Five Hundred Thousand Dollars (\$10,500,000).

1 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL**
2 **OF THE CITY OF FORT WAYNE AND OF ALLEN COUNTY AS FOLLOWS:**

3 After considering the evidence presented at the Public Hearing and in the findings
4 of fact set forth in the Report, this Council hereby finds, determines, ratifies and confirms
5 that the financing of the economic development facilities referred to in the Financing
6 Documents consisting of the Project, the issuance and sale of the Bonds and delivery of
7 the Note, and the loan of the net proceeds thereof by the Borrower to finance all or a
8 portion of the Project will: (i) promote a substantial likelihood of the diversification of
9 industry, the creation or retention of business opportunities, the creation or retention of
10 opportunities for gainful employment and the provision of quality, affordable,
11 multifamily rental housing within the jurisdiction of the Issuer; (ii) serve a public
12 purpose, and will be of benefit to the health and general welfare of the Issuer; (iii)
13 comply with the purposes and provisions of the Act and it is in the public interest that the
14 Issuer take such lawful action as determined to be necessary or desirable to encourage the
15 diversification of industry, the creation or retention of business opportunities, and the
16 creation or retention of opportunities for gainful employment and the provision of
17 quality, affordable, multifamily rental housing within the jurisdiction of the Issuer and
18 (iv) not have a material adverse competitive effect on any similar facilities already
19 constructed or operating in or near Allen County, Indiana.

20 The forms of the Bond Purchase and Loan Agreement and a corresponding
21 promissory note from the Borrower to the City, including the Allonge thereto from the
22 City to the Purchaser, Land Use Restriction Agreement by and among the City, the
23 Borrower and the Purchaser, Leasehold Mortgage, Assignment, Security Agreement and
24 Fixture Filing (City Seller Loan to Developer), Leasehold Mortgage, Assignment,
25 Security Agreement and Fixture Filing (Housing Authority Seller Loan to City),
26 promissory note from the City to the Housing Authority, a Subordinate Master Agency
27 Agreement between the City and the Borrower and a Subordinate Master Pledge and
28 Assignment among the City, the Borrower and the Agent (collectively, the "Financing
29 Documents") presented herewith are hereby approved, with any and all such changes as
30 may be deemed necessary, desirable or appropriate by the Mayor and the Clerk of the
Council (the "Clerk"). In compliance with Indiana Code Title 36, Article 1, Chapter 5,
Section 4, two (2) copies of the Financing Documents are on file in the office of the City
Clerk for public inspection.

 The City is authorized to issue one or more series of its Multifamily Housing
Revenue Bonds of 2020 (McCormick Place Apartments) and its Note (with such further
or different series designation as may be necessary, desirable or appropriate, including
such series designation to indicate the year in which the Bonds or Note are issued), in a
maximum aggregate principal amount not to exceed Ten Million Five Hundred Thousand
Dollars (\$10,500,000), with a maximum term not to exceed forty (40) years from the date
of the Bonds and of the Note, respectively, and with a maximum interest rate not to
exceed eight percent (8.00%) per annum, for the purpose of procuring funds to loan to
the Borrower in order to finance a portion of the Project, which Obligations will be
payable as to principal, premium if any, and interest solely from payments made by the
Borrower pursuant to the Bond Purchase and Loan Agreement and the Note issued
thereunder, and upon such terms and conditions as otherwise provided in the Financing
Documents and the Special Ordinance. The Obligations shall never constitute a general

1 obligation of, an indebtedness of, or charge against the general credit of the City. The
2 Mayor and Clerk are authorized to sell such bonds to the purchaser thereof at a price not
3 less than 98% of the aggregate principal amount thereof (excluding any original issue
premium or discount), plus accrued interest, if any.

4 The Mayor and the Clerk are authorized and directed to execute the Financing
5 Documents, and the Mayor, the Controller, the Clerk and any other officer of the City are
6 authorized and directed to execute such other documents approved or authorized herein
7 and any other document which may be necessary, appropriate or desirable to consummate
8 the transaction contemplated by the Financing Documents and this Ordinance, and their
9 execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the
10 Clerk on the Obligations and any other documents which may be necessary or desirable to
11 consummate the transaction are hereby confirmed on behalf of the City. The signatures
12 of the Mayor and the Clerk on the Obligations may be facsimile signatures. The Mayor,
13 the Clerk, the Controller and any other officer of the City are authorized to arrange for the
14 delivery of the Obligations to the purchaser, payment for which will be made in the manner
15 set forth in the Financing Documents. The Mayor and the Clerk may, by their execution of
16 the Financing Documents requiring their signatures and imprinting of their facsimile
17 signatures thereon, approve any and all such changes therein and also in those Financing
18 Documents which do not require the signature of the Mayor or the Clerk without further
19 approval of this Common Council or the Commission if such changes do not affect terms
20 set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

21 The provisions of this Ordinance and the Financing Documents shall constitute a
22 contract binding between the City and the holder or holders of the Bonds and after the
23 issuance of said Obligations, this Ordinance shall not be repealed or amended in any
24 respect which would adversely affect the right of such holder or holders so long as any of
25 said Obligations or the interest thereon remains unpaid.

26 Subject to the obligations of the Borrower set forth in the Financing Documents
27 and/or the certificates or agreements of such Borrower to be executed upon the issuance
28 of the Obligations, if any of the Obligations are issued on a tax-exempt basis for purposes
29 of federal income taxation, the City will use its best efforts to restrict the use of the
30 proceeds of the Obligations in such a manner and to expectations at the time the
Obligations are delivered to the purchasers thereof, so that they will not constitute
"arbitrage bonds" under Section 148 of the Code and the regulations promulgated
thereunder, or to preserve any other desired tax status under the Code. The Mayor, the
Controller and the Clerk, or any other officer having responsibility with respect to the
issuance of the Obligations, are authorized and directed, alone or in conjunction with any
of the foregoing, or with any other officer, employee, consultant or agent of the City, to
deliver a certificate for inclusion in the transcript of proceedings for the Obligations,
setting forth the facts, estimates and circumstances and reasonable expectations
pertaining to the use of the proceeds of the Obligations as of the date of issuance thereof.

No recourse under or upon any obligation, covenant, acceptance or agreement
contained in this Ordinance, the Financing Documents or under any judgment obtained
against the City, including without limitation its Economic Development Commission, or
by the enforcement of any assessment or by any legal or equitable proceeding by virtue
of any constitution or statute or otherwise, or under any circumstances, under or

1 independent of the Financing Documents, shall be had against any member, director, or
2 officer or attorney, as such, past, present, or future, of the City, including without
3 limitation its Economic Development Commission, either directly or through the City, or
4 otherwise, for the payment for or to the City or any receiver thereof or for or to any
5 holder of the Obligations secured thereby, or otherwise, of any sum that may remain due
6 and unpaid by the City upon any of the Obligations. Any and all personal liability of
7 every nature, whether at common law or in equity, or by statute or by constitution or
8 otherwise, of any such member, director, or officer or attorney, as such, to respond by
9 reason of any act or omission on his or her part or otherwise for, directly or indirectly,
10 the payment for or to the City or any receiver thereof, or for or to any owner or holder of
11 the Obligations, or otherwise, of any sum that may remain due and unpaid upon the
12 Obligations hereby secured or any at them, shall be expressly waived and released as a
13 condition of and consideration for the execution and delivery of the Financing
14 Documents and the issuance, sale and delivery of the Obligations.

15 If any section, paragraph or provision of this Ordinance shall be held to be invalid
16 or unenforceable for any reason, the invalidity or unenforceability of such section,
17 paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

18 All ordinances, resolutions and orders or parts thereof, in conflict with the
19 provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

20 It is hereby determined that all formal actions of this Council relating to the
21 adoption of this Ordinance were taken in one or more open meetings of the Council, that
22 all deliberations of this Council and of its committees, if any, which resulted in formal
23 action, were in meetings open to the public, and that all such meetings were convened,
24 held and conducted in compliance with applicable legal requirements, including Indiana
25 Code 5-14-1.5, as amended.

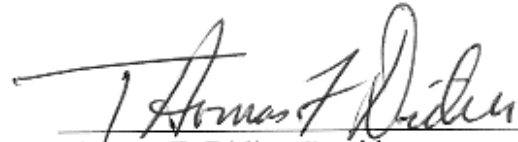
26 The Mayor, the Controller, the Clerk and any other officer of the City are hereby
27 authorized and directed, in the name and on behalf of the City, to execute, attest and
28 deliver such further instruments and documents, and to take such further actions, in the
29 name of the City as in their judgment shall be necessary or advisable in order fully to
30 consummate the transactions described herein and carry out the purposes of this
Ordinance, and any such documents heretofore executed and delivered and any such
actions heretofore taken, be, and hereby are, ratified and approved.

This Council hereby declares its official intent, to the extent permitted by law, to
issue the Obligations in one or more series or issues, not to exceed the maximum
aggregate principal amount authorized herein, and to reimburse costs of the Project
consisting of the Expenditures from proceeds of the sale of the Obligations.

This Council finds and determines that the amount of tax credits to be allocated to
the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not
exceed the amount necessary for the financial feasibility of the Project and its viability as
a qualified housing project throughout the credit period for the Project. In making the
foregoing determination, this Council has relied upon representations of the Borrower.
The foregoing determination shall not be construed to be a representation or warranty by
this Council as to the feasibility or viability of the Project. In reliance upon the

1 representations of the Borrower, it is hereby found and determined that the Project
2 satisfies the requirements for the allocation of a housing credit dollar amount under the
3 Indiana Housing and Community Development Authority's qualified allocation plan.

4 This ordinance shall be in full force and effect immediately upon passage by this
5 Council and signing by the President of this Council and by the Mayor.

6 
7 _____
8 Thomas F. Didier, President

9 APPROVED AS TO FORM AND LEGALITY:

10 
11 _____
12 Carol Helton, City Attorney

BILL NO. _____

SPECIAL ORDINANCE NO. _____

A SPECIAL ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO ISSUE ONE OR MORE SERIES OF ITS CITY OF FORT WAYNE, INDIANA MULTIFAMILY HOUSING REVENUE BONDS OF 2020 (McCORMICK PLACE APARTMENTS) AND ITS NOTE (WITH SUCH FURTHER SERIES OR OTHER DESIGNATION AS DETERMINED TO BE NECESSARY, DESIRABLE OR APPROPRIATE), IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$10,500,000), AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.

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

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

WHEREAS, McCormick Rehabilitation, LLC, an Indiana limited liability company (the "Borrower") desires to finance a portion of the costs of a certain project constituting an economic development facility under the Act within the City, including all or any portion of the acquisition, design, construction, rehabilitation and equipping of the existing apartment buildings located in the City at 2811 McCormick Avenue consisting of 96 units, 2 of which are used as a resident resource center and 94 are used as residential units, and certain functionally-related improvements (the "Project"); and

WHEREAS, the Borrower has advised the Fort Wayne Economic Development Commission (the "Commission") and the City concerning the Project, and requested that the City issue, pursuant to the Act, (i) one or more series of its Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) (the "Bonds") and (ii) its note to the Housing Authority of the City of Fort Wayne (the "Housing Authority") (the "Note" and together with the Bonds, the "Obligations") (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds or Note are issued), in an aggregate principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000) and lend all or a portion of the proceeds of such Obligations to the Borrower for the purpose of providing funds (a) to pay all or a part of the cost of design, acquisition, construction, rehabilitation and equipping of the Project, and (b) to pay incidental expenses of issuance, including but not limited to, the funding of a debt service reserve fund, if necessary, and capitalized interest, if necessary; and

WHEREAS, the Commission and this Common Council of the City (the "Council") each have studied the Project and the proposed financing of the Project and its effect on the health and general welfare of the City and its citizens; and

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

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

WHEREAS, the Borrower has advised the Commission that it has determined that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's (the "IHEDA") qualified allocation plan; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance a portion of the Project by issuing the Obligations; and

WHEREAS, the City intends to issue the Bonds pursuant to a Bond Purchase and Loan Agreement, to be dated the day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Bond Purchase and Loan Agreement"), by and between the City, the Borrower and Merchants Bank of Indiana (the "Purchaser"), in order to obtain funds to lend to the Borrower for the purpose of financing a portion of the Project in accordance with the terms of the Bond Purchase and Loan Agreement, provided, however, that the aggregate principal amount of the Bonds together with the face amount of the Note shall not exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000); and

WHEREAS, pursuant to the Bond Purchase and Loan Agreement and a note from the Borrower to the City, the Borrower will make certain representations, warranties and commitments with respect to the Project and will agree to make payments sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds; and

WHEREAS, there has been submitted to this Council for its approval the substantially final forms of the Financing Documents (as hereinafter defined) and the form of the proposed Special Ordinance of the Common Council of the City (the "Council") with respect to the Project and the Obligations (the "Ordinance"); and

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

WHEREAS, pursuant to Indiana Code Title 36, Article 7, Chapter 12, Section 24 and Section 147(I) of the Code, and the rules promulgated thereunder, as amended, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Obligations to finance a portion of the costs of the Project; and

WHEREAS, on January 23, 2020, the Commission held the Public Hearing on the Project for the purpose of receiving evidence and testimony on the Project and matters related to the proposed financing thereof and heard all persons interested in the proceedings and considered written remonstrances and objections, if any; and

WHEREAS, the Commission has rendered its report dated as of May 22, 2019 (the "Report") concerning the proposed financing of the Project and the Secretary of the Commission has previously caused such Report to be submitted to the executive director or chairman of the Fort Wayne Plan Commission, pursuant to the Act.; and

WHEREAS, no member of this Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Commission and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16.

WHEREAS, there has been submitted to the Commission for its approval the forms of the Financing Documents, and a form of this proposed Ordinance, which were incorporated by reference in the Commission's Resolution adopted on January 23, 2020, which Resolution has been transmitted hereto; and

WHEREAS, the Issuer expects to pay for certain costs of the Obligations or costs related to the Project (collectively, the "Expenditures") prior to the issuance of the Obligations, and to reimburse the Expenditures with proceeds received by the City upon the issuance of the Obligations; and

WHEREAS, the Common Council desires to reaffirm its intent to reimburse the Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

WHEREAS, based upon the Report and EDC Resolution, the Common Council hereby finds and determines that the funding approved by the Commission for all or a portion of the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance all or a portion of the costs of the Project, together with incidental expenses incurred in connection therewith, will require the issuance, sale and delivery of one or more series of its Obligations in an aggregate combined principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000).

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE AND OF ALLEN COUNTY AS FOLLOWS:

SECTION 1. After considering the evidence presented at the Public Hearing and in the findings of fact set forth in the Report, this Council hereby finds, determines, ratifies and

confirms that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds and delivery of the Note, and the loan of the net proceeds thereof by the Borrower to finance all or a portion of the Project will: (i) promote a substantial likelihood of the diversification of industry, the creation or retention of business opportunities, the creation or retention of opportunities for gainful employment and the provision of quality, affordable, multifamily rental housing within the jurisdiction of the Issuer; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the Issuer; (iii) comply with the purposes and provisions of the Act and it is in the public interest that the Issuer take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment and the provision of quality, affordable, multifamily rental housing within the jurisdiction of the Issuer and (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near Allen County, Indiana.

SECTION 2. The forms of the Bond Purchase and Loan Agreement and a corresponding promissory note from the Borrower to the City, including the Allonge thereto from the City to the Purchaser, Land Use Restriction Agreement by and among the City, the Borrower and the Purchaser, Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing (City Seller Loan to Developer), Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing (Housing Authority Seller Loan to City), promissory note from the City to the Housing Authority ~~and~~ a Subordinate Master Agency Agreement between the City and the Borrower ~~(and a Subordinate Master Pledge and Assignment among the City, the Borrower and the Agent collectively,~~ the "Financing Documents") presented herewith are hereby approved, with any and all such changes as may be deemed necessary, desirable or appropriate by the Mayor and the Clerk of the Council (the "Clerk"). In compliance with Indiana Code Title 36, Article 1, Chapter 5, Section 4, two (2) copies of the Financing Documents are on file in the office of the City Clerk for public inspection.

SECTION 3. The City is authorized to issue one or more series of its Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) and its Note (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds or Note are issued), in a maximum aggregate principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000), with a maximum term not to exceed forty (40) years from the date of the Bonds and of the Note, respectively, and with a maximum interest rate not to exceed eight percent (8.00%) per annum, for the purpose of procuring funds to loan to the Borrower in order to finance a portion of the Project, which Obligations will be payable as to principal, premium if any, and interest solely from payments made by the Borrower pursuant to the Bond Purchase and Loan Agreement and the Note issued thereunder, and upon such terms and conditions as otherwise provided in the Financing Documents and the Special Ordinance. The Obligations shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City. The Mayor and Clerk are authorized to sell such bonds to the purchaser thereof at a price not less than 98% of the aggregate principal amount thereof (excluding any original issue premium or discount), plus accrued interest, if any.

SECTION 4. The Mayor and the Clerk are authorized and directed to execute the Financing Documents, and the Mayor, the Controller, the Clerk and any other officer of the City are authorized and directed to execute such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk on the Obligations and any other documents which may be necessary or desirable to consummate the transaction are hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk on the Obligations may be facsimile signatures. The Mayor, the Clerk, the Controller and any other officer of the City are authorized to arrange for the delivery of the Obligations to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and the Clerk may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor or the Clerk without further approval of this Common Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 5. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Bonds and after the issuance of said Obligations, this Ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as any of said Obligations or the interest thereon remains unpaid.

SECTION 6. Subject to the obligations of the Borrower set forth in the Financing Documents and/or the certificates or agreements of such Borrower to be executed upon the issuance of the Obligations, if any of the Obligations are issued on a tax-exempt basis for purposes of federal income taxation, the City will use its best efforts to restrict the use of the proceeds of the Obligations in such a manner and to expectations at the time the Obligations are delivered to the purchasers thereof, so that they will not constitute "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, or to preserve any other desired tax status under the Code. The Mayor, the Controller and the Clerk, or any other officer having responsibility with respect to the issuance of the Obligations, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Obligations, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds of the Obligations as of the date of issuance thereof.

SECTION 7. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, the Financing Documents or under any judgment obtained against the City, including without limitation its Economic Development Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Documents, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation its Economic Development Commission, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof or for or to any holder of the Obligations secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of the Obligations. Any and

all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of the Obligations, or otherwise, of any sum that may remain due and unpaid upon the Obligations hereby secured or any at them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Documents and the issuance, sale and delivery of the Obligations.

SECTION 8. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 9. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 10. It is hereby determined that all formal actions of this Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of this Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

SECTION 11. The Mayor, the Controller, the Clerk and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute, attest and deliver such further instruments and documents, and to take such further actions, in the name of the City as in their judgment shall be necessary or advisable in order fully to consummate the transactions described herein and carry out the purposes of this Ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

SECTION 12. This Council hereby declares its official intent, to the extent permitted by law, to issue the Obligations in one or more series or issues, not to exceed the maximum aggregate principal amount authorized herein, and to reimburse costs of the Project consisting of the Expenditures from proceeds of the sale of the Obligations.

SECTION 13. This Council finds and determines that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, this Council has relied upon representations of the Borrower. The foregoing determination shall not be construed to be a representation or warranty by this Council as to the feasibility or viability of the Project. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan.

SECTION 14. This ordinance shall be in full force and effect immediately upon passage by this Council and signing by the President of this Council and by the Mayor.

(Signature page follows.)

Thomas F. Didier, President

APPROVED AS TO FORM AND LEGALITY:

Carol Helton, City Attorney

SPECIAL ORDINANCE NO. _____

A SPECIAL ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO ISSUE ONE OR MORE SERIES OF ITS CITY OF FORT WAYNE, INDIANA MULTIFAMILY HOUSING REVENUE BONDS OF 2020 (McCORMICK PLACE APARTMENTS) AND ITS NOTE (WITH SUCH FURTHER SERIES OR OTHER DESIGNATION AS DETERMINED TO BE NECESSARY, DESIRABLE OR APPROPRIATE), IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$10,500,000), AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.

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

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

WHEREAS, McCormick Rehabilitation, LLC, an Indiana limited liability company (the "Borrower") desires to finance a portion of the costs of a certain project constituting an economic development facility under the Act within the City, including all or any portion of the acquisition, design, construction, rehabilitation and equipping of the existing apartment buildings located in the City at 2811 McCormick Avenue consisting of 96 units, 2 of which are used as a resident resource center and 94 are used as residential units, and certain functionally-related improvements (the "Project"); and

WHEREAS, the Borrower has advised the Fort Wayne Economic Development Commission (the "Commission") and the City concerning the Project, and requested that the City issue, pursuant to the Act, (i) one or more series of its Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) (the "Bonds") and (ii) its note to the Housing Authority of the City of Fort Wayne (the "Housing Authority") (the "Note" and together with the Bonds, the "Obligations") (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds or Note are issued), in an aggregate principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000) and lend all or a portion of the proceeds of such Obligations to the Borrower for the purpose of providing funds (a) to pay all or a part of the cost of design, acquisition, construction, rehabilitation and equipping of the Project, and (b) to pay incidental expenses of issuance, including but not limited to, the funding of a debt service reserve fund, if necessary, and capitalized interest, if necessary; and

1 **WHEREAS**, the Commission and this Common Council of the City (the
2 "Council") each have studied the Project and the proposed financing of the Project and
3 its effect on the health and general welfare of the City and its citizens; and

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

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

11 **WHEREAS**, the Borrower has advised the Commission that it has determined
12 that the amount of tax credits to be allocated to the Project under Section 42 of the
13 Internal Revenue Code of 1986, as amended (the "Code") does not exceed the amount
14 necessary for the financial feasibility of the Project and its viability as a qualified housing
15 project throughout the credit period for the Project and that the Project satisfies the
16 requirements for the allocation of a housing credit dollar amount under the Indiana
17 Housing and Community Development Authority's (the "IHCD") qualified allocation
18 plan; and

19 **WHEREAS**, pursuant to and in accordance with the Act, the City desires to
20 provide funds necessary to finance a portion of the Project by issuing the Obligations;
21 and

22 **WHEREAS**, the City intends to issue the Bonds pursuant to a Bond Purchase and
23 Loan Agreement, to be dated the day of the month in which the Bonds are sold or
24 delivered (or such other date as the officers of the City may hereafter approve) (the
25 "Bond Purchase and Loan Agreement"), by and between the City, the Borrower and
26 Merchants Bank of Indiana (the "Purchaser"), in order to obtain funds to lend to the
27 Borrower for the purpose of financing a portion of the Project in accordance with the
28 terms of the Bond Purchase and Loan Agreement, provided, however, that the aggregate
29 principal amount of the Bonds together with the face amount of the Note shall not exceed
30 Ten Million Five Hundred Thousand Dollars (\$10,500,000); and

WHEREAS, pursuant to the Bond Purchase and Loan Agreement and a note
from the Borrower to the City, the Borrower will make certain representations,
warranties and commitments with respect to the Project and will agree to make payments
sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same
becomes due and payable, and to pay administrative expenses in connection with the
Bonds; and

WHEREAS, there has been submitted to this Council for its approval the
substantially final forms of the Financing Documents (as hereinafter defined) and the
form of the proposed Special Ordinance of the Common Council of the City (the
"Council") with respect to the Project and the Obligations (the "Ordinance"); and

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

1 **WHEREAS**, pursuant to Indiana Code Title 36, Article 7, Chapter 12, Section 24
2 and Section 147(f) of the Code, and the rules promulgated thereunder, as amended, the
3 Commission published notice of a public hearing (the “Public Hearing”) on the proposed
4 issuance of the Obligations to finance a portion of the costs of the Project; and

5 **WHEREAS**, on January 23, 2020, the Commission held the Public Hearing on
6 the Project for the purpose of receiving evidence and testimony on the Project and
7 matters related to the proposed financing thereof and heard all persons interested in the
8 proceedings and considered written remonstrances and objections, if any; and

9 **WHEREAS**, the Commission has rendered its report dated as of May 22, 2019
10 (the “Report”) concerning the proposed financing of the Project and the Secretary of the
11 Commission has previously caused such Report to be submitted to the executive director
12 or chairman of the Fort Wayne Plan Commission, pursuant to the Act.; and

13 **WHEREAS**, no member of this Council has any pecuniary interest in any
14 employment, financing agreement or other contract made under the provisions of the Act
15 and related to the Bonds authorized herein, which pecuniary interest has not been fully
16 disclosed to the Commission and no such member has voted on any such matter, all in
17 accordance with the provisions of Indiana Code 36-7-12-16.

18 **WHEREAS**, there has been submitted to the Commission for its approval the
19 forms of the Financing Documents, and a form of this proposed Ordinance, which were
20 incorporated by reference in the Commission’s Resolution adopted on January 23, 2020,
21 which Resolution has been transmitted hereto; and

22 **WHEREAS**, the Issuer expects to pay for certain costs of the Obligations or costs
23 related to the Project (collectively, the “Expenditures”) prior to the issuance of the
24 Obligations, and to reimburse the Expenditures with proceeds received by the City upon
25 the issuance of the Obligations; and

26 **WHEREAS**, the Common Council desires to reaffirm its intent to reimburse the
27 Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

28 **WHEREAS**, based upon the Report and EDC Resolution, the Common Council
29 hereby finds and determines that the funding approved by the Commission for all or a
30 portion of the Project will be of benefit to the health and general welfare of the citizens
of the City, complies with the provisions of the Act and the amount necessary to finance
all or a portion of the costs of the Project, together with incidental expenses incurred in
connection therewith, will require the issuance, sale and delivery of one or more series of
its Obligations in an aggregate combined principal amount not to exceed Ten Million
Five Hundred Thousand Dollars (\$10,500,000).

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE AND OF ALLEN COUNTY AS FOLLOWS:**

SECTION 1. After considering the evidence presented at the Public Hearing
and in the findings of fact set forth in the Report, this Council hereby finds, determines,
ratifies and confirms that the financing of the economic development facilities referred to
in the Financing Documents consisting of the Project, the issuance and sale of the Bonds

1 and delivery of the Note, and the loan of the net proceeds thereof by the Borrower to
2 finance all or a portion of the Project will: (i) promote a substantial likelihood of the
3 diversification of industry, the creation or retention of business opportunities, the
4 creation or retention of opportunities for gainful employment and the provision of
5 quality, affordable, multifamily rental housing within the jurisdiction of the Issuer; (ii)
6 serve a public purpose, and will be of benefit to the health and general welfare of the
7 Issuer; (iii) comply with the purposes and provisions of the Act and it is in the public
8 interest that the Issuer take such lawful action as determined to be necessary or desirable
9 to encourage the diversification of industry, the creation or retention of business
10 opportunities, and the creation or retention of opportunities for gainful employment and
11 the provision of quality, affordable, multifamily rental housing within the jurisdiction of
12 the Issuer and (iv) not have a material adverse competitive effect on any similar facilities
13 already constructed or operating in or near Allen County, Indiana.

9 **SECTION 2.** The forms of the Bond Purchase and Loan Agreement and the
10 corresponding promissory note from the Borrower to the City, including the Allonge
11 thereto from the City to the Purchaser, Land Use Restriction Agreement by and among
12 the City, the Borrower and the Purchaser, Leasehold Mortgage, Assignment, Security
13 Agreement and Fixture Filing (City Seller Loan to Developer), Leasehold Mortgage,
14 Assignment, Security Agreement and Fixture Filing (Housing Authority Seller Loan to
15 City), and promissory note from the City to the Housing Authority (the "Financing
16 Documents") presented herewith are hereby approved, with any and all such changes as
17 may be deemed necessary, desirable or appropriate by the Mayor and the Clerk of the
18 Council (the "Clerk"). In compliance with Indiana Code Title 36, Article 1, Chapter 5,
19 Section 4, two (2) copies of the Financing Documents are on file in the office of the City
20 Clerk for public inspection.

16 **SECTION 3.** The City is authorized to issue one or more series of its
17 Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) and its
18 Note (with such further or different series designation as may be necessary, desirable or
19 appropriate, including such series designation to indicate the year in which the Bonds or
20 Note are issued), in a maximum aggregate principal amount not to exceed Ten Million
21 Five Hundred Thousand Dollars (\$10,500,000), with a maximum term not to exceed
22 forty (40) years from the date of the Bonds and of the Note, respectively, and with a
23 maximum interest rate not to exceed eight percent (8.00%) per annum, for the purpose of
24 procuring funds to loan to the Borrower in order to finance a portion of the Project,
25 which Obligations will be payable as to principal, premium if any, and interest solely
26 from payments made by the Borrower pursuant to the Bond Purchase and Loan
27 Agreement and the Note issued thereunder, and upon such terms and conditions as
28 otherwise provided in the Financing Documents and the Special Ordinance. The
29 Obligations shall never constitute a general obligation of, an indebtedness of, or charge
30 against the general credit of the City. The Mayor and Clerk are authorized to sell such
bonds to the purchaser thereof at a price not less than 98% of the aggregate principal
amount thereof (excluding any original issue premium or discount), plus accrued interest,
if any.

27 **SECTION 4.** The Mayor and the Clerk are authorized and directed to execute
28 the Financing Documents, and the Mayor, the Controller, the Clerk and any other officer of
29 the City are authorized and directed to execute such other documents approved or
30

1 authorized herein and any other document which may be necessary, appropriate or
2 desirable to consummate the transaction contemplated by the Financing Documents and
3 this Ordinance, and their execution is hereby confirmed on behalf of the City. The
4 signatures of the Mayor and the Clerk on the Obligations and any other documents which
5 may be necessary or desirable to consummate the transaction are hereby confirmed on
6 behalf of the City. The signatures of the Mayor and the Clerk on the Obligations may be
7 facsimile signatures. The Mayor, the Clerk, the Controller and any other officer of the City
8 are authorized to arrange for the delivery of the Obligations to the purchaser, payment for
9 which will be made in the manner set forth in the Financing Documents. The Mayor and
10 the Clerk may, by their execution of the Financing Documents requiring their signatures
11 and imprinting of their facsimile signatures thereon, approve any and all such changes
12 therein and also in those Financing Documents which do not require the signature of the
13 Mayor or the Clerk without further approval of this Common Council or the Commission if
14 such changes do not affect terms set forth in Sections 27(a)(1) through and including
15 (a)(10) of the Act.

16 **SECTION 5.** The provisions of this Ordinance and the Financing Documents
17 shall constitute a contract binding between the City and the holder or holders of the
18 Bonds and after the issuance of said Obligations, this Ordinance shall not be repealed or
19 amended in any respect which would adversely affect the right of such holder or holders
20 so long as any of said Obligations or the interest thereon remains unpaid.

21 **SECTION 6.** Subject to the obligations of the Borrower set forth in the
22 Financing Documents and/or the certificates or agreements of such Borrower to be
23 executed upon the issuance of the Obligations, if any of the Obligations are issued on a
24 tax-exempt basis for purposes of federal income taxation, the City will use its best efforts
25 to restrict the use of the proceeds of the Obligations in such a manner and to expectations
26 at the time the Obligations are delivered to the purchasers thereof, so that they will not
27 constitute "arbitrage bonds" under Section 148 of the Code and the regulations
28 promulgated thereunder, or to preserve any other desired tax status under the Code. The
29 Mayor, the Controller and the Clerk, or any other officer having responsibility with
30 respect to the issuance of the Obligations, are authorized and directed, alone or in
conjunction with any of the foregoing, or with any other officer, employee, consultant or
agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for
the Obligations, setting forth the facts, estimates and circumstances and reasonable
expectations pertaining to the use of the proceeds of the Obligations as of the date of
issuance thereof.

SECTION 7. No recourse under or upon any obligation, covenant, acceptance
or agreement contained in this Ordinance, the Financing Documents or under any
judgment obtained against the City, including without limitation its Economic
Development Commission, or by the enforcement of any assessment or by any legal or
equitable proceeding by virtue of any constitution or statute or otherwise, or under any
circumstances, under or independent of the Financing Documents, shall be had against
any member, director, or officer or attorney, as such, past, present, or future, of the City,
including without limitation its Economic Development Commission, either directly or
through the City, or otherwise, for the payment for or to the City or any receiver thereof
or for or to any holder of the Obligations secured thereby, or otherwise, of any sum that
may remain due and unpaid by the City upon any of the Obligations. Any and all

1 personal liability of every nature, whether at common law or in equity, or by statute or by
2 constitution or otherwise, of any such member, director, or officer or attorney, as such, to
3 respond by reason of any act or omission on his or her part or otherwise for, directly or
4 indirectly, the payment for or to the City or any receiver thereof, or for or to any owner
5 or holder of the Obligations, or otherwise, of any sum that may remain due and unpaid
6 upon the Obligations hereby secured or any at them, shall be expressly waived and
7 released as a condition of and consideration for the execution and delivery of the
8 Financing Documents and the issuance, sale and delivery of the Obligations.

9 **SECTION 8.** If any section, paragraph or provision of this Ordinance shall be
10 held to be invalid or unenforceable for any reason, the invalidity or unenforceability of
11 such section, paragraph or provision shall not affect any of the remaining provisions of
12 this Ordinance.

13 **SECTION 9.** All ordinances, resolutions and orders or parts thereof, in
14 conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby
15 repealed.

16 **SECTION 10.** It is hereby determined that all formal actions of this Council
17 relating to the adoption of this Ordinance were taken in one or more open meetings of the
18 Council, that all deliberations of this Council and of its committees, if any, which
19 resulted in formal action, were in meetings open to the public, and that all such meetings
20 were convened, held and conducted in compliance with applicable legal requirements,
21 including Indiana Code 5-14-1.5, as amended.

22 **SECTION 11.** The Mayor, the Controller, the Clerk and any other officer of
23 the City are hereby authorized and directed, in the name and on behalf of the City, to
24 execute, attest and deliver such further instruments and documents, and to take such
25 further actions, in the name of the City as in their judgment shall be necessary or
26 advisable in order fully to consummate the transactions described herein and carry out
27 the purposes of this Ordinance, and any such documents heretofore executed and
28 delivered and any such actions heretofore taken, be, and hereby are, ratified and
29 approved.

30 **SECTION 12.** This Council hereby declares its official intent, to the extent
permitted by law, to issue the Obligations in one or more series or issues, not to exceed
the maximum aggregate principal amount authorized herein, and to reimburse costs of
the Project consisting of the Expenditures from proceeds of the sale of the Obligations.

SECTION 13. This Council finds and determines that the amount of tax credits
to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as
amended, does not exceed the amount necessary for the financial feasibility of the Project
and its viability as a qualified housing project throughout the credit period for the
Project. In making the foregoing determination, this Council has relied upon
representations of the Borrower. The foregoing determination shall not be construed to
be a representation or warranty by this Council as to the feasibility or viability of the
Project. In reliance upon the representations of the Borrower, it is hereby found and
determined that the Project satisfies the requirements for the allocation of a housing
credit dollar amount under the Indiana Housing and Community Development
Authority's qualified allocation plan.

1 **SECTION 14.** This ordinance shall be in full force and effect immediately
2 upon passage by this Council and signing by the President of this Council and by the
3 Mayor.

4 _____
Thomas F. Didier, President

5
6 APPROVED AS TO FORM AND LEGALITY:

7 *Carol Helton, City Attorney*
8 _____
9 Carol Helton, City Attorney

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This instrument was prepared by and
after recording please return to:
Krieg DeVault LLP
12800 North Meridian Street, Suite 300
Carmel, Indiana 46032
Attention: James T. Crawford, Jr., Esq.

LAND USE RESTRICTION AGREEMENT

by and among

**CITY OF FORT WAYNE, INDIANA, as Issuer,
McCORMICK REHABILITATION, LLC, as Borrower
and
MERCHANTS BANK OF INDIANA, as Bond Purchaser**

Relating to:

**\$3,814,752 City of Fort Wayne, Indiana
Multifamily Housing Revenue Bonds of 2020
(McCormick Place Apartments)**

and

**\$6,685,218 City of Fort Wayne, Indiana Note
(McCormick Place Apartments)**

Dated as of _____, 2020

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LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (as amended, modified or supplemented from time to time, the "Regulatory Agreement") is made and entered into as of _____, 2020, by and among **MCCORMICK REHABILITATION, LLC**, an Indiana limited liability company (together with its permitted successors, assigns and transferees of the Project (as hereinafter defined), the "Borrower"), the **CITY OF FORT WAYNE, INDIANA** (together with its successors and assigns, the "Issuer"), a municipal corporation created and existing under the laws of the State of Indiana, and **MERCHANTS BANK OF INDIANA**, an Indiana state bank, as purchaser of the Bonds (together with any successor bondholder under the Bond Purchase and Loan Agreement described below and their respective successors and assigns, the "Bond Purchaser").

WITNESSETH:

WHEREAS, the Issuer is authorized to issue bonds and notes for the purpose of financing the acquisition, renovation and equipping of economic development facilities consisting of residential facilities for low and moderate income families or persons as provided in Indiana Code 36-7-11.9 and -12 (the "Act"); and

WHEREAS, the Borrower has applied to the Issuer to issue bonds and notes to pay a portion of the costs of the acquisition, construction, rehabilitation and equipping of a multifamily housing facility to be (i) occupied in part by persons of low and moderate income, (ii) known as McCormick Place (the "Project"), and (iii) located in the City of Fort Wayne, Indiana on the real property described in Exhibit "C" attached hereto and by this reference made a part hereof (the "Real Property"); and

WHEREAS, the Issuer is unwilling to make the Loan (as defined below) unless the Borrower agrees to be regulated in the manner set forth herein, and the Borrower is willing to execute and abide by this Regulatory Agreement as a condition of obtaining the Loan.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto, their successors and assigns, as follows:

1. Definitions. As used in this Regulatory Agreement, the following terms shall have the following respective meanings.

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

"Adjusted Family Income" means the anticipated annual income of a person (together with the anticipated annual income of all persons who intend to reside with such person in one residential unit), as determined in a manner consistent with Section 8 of the United States Housing Act of 1937 or if such program is terminated under such program as in effect immediately before such termination.

"Authorized Borrower Representative" means any person who, at any time and from time to time, is designated as the Borrower's authorized representative by written certificate furnished to the Issuer and the Bondholder containing the specimen signature of such person and

signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Bondholder and the Issuer may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer) a written certificate revoking such person's authority to act in such capacity.

"Available Units" means residential units in a residential rental project that are actually occupied and residential units in the project that are unoccupied and have been leased at least once after becoming available for occupancy, provided that (a) in the case of an acquisition of an existing residential rental project, a residential unit that is unoccupied on the later of (i) the date the project is acquired or (ii) the issue date of the First Bonds is not an Available Unit and does not become an Available Unit until it has been leased for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been leased for the first time after the renovations are completed.

"Bondholder" means the Bond Purchaser and any subsequent holders of the Bonds.

"Bond Counsel" means Krieg DeVault LLP or any other law firm of nationally recognized standing in the field of municipal finance law whose opinions are generally accepted by purchasers of tax-exempt obligations and who is acceptable to the Issuer.

"Bond Purchase and Loan Agreement" means the Bond Purchase and Loan Agreement dated as of _____, 2020 by and among the Issuer, the Borrower and the Bond Purchaser, as it may be amended from time to time.

"Bonds" means the \$3,814,782 City of Fort Wayne, Indiana Multifamily Housing Revenue Bonds of 2020 (McCormick Place), including any refunding obligations.

"Borrower" means McCormick Rehabilitation, LLC, an Indiana limited liability company, together with its permitted successors and assigns.

"Business Day" means any day other than (a) a Saturday or a Sunday, (b) any day on which banking institutions located in the city or cities in which the principal office or payment office of the Bondholder are located or the city or cities in which any paying agent is located are required or authorized by law or executive order to close, (c) any day on which banking institutions located in the city of New York, New York are required or authorized by law or executive order to close or (d) a day on which The New York Stock Exchange is closed.

"Code" means the Internal Revenue Code of 1986, as amended and supplemented from time to time, or any successor statute, and applicable final, temporary or proposed regulations thereunder.

"Commercial Facilities" means that part of the Project not consisting of (i) that portion of the building or buildings of the Project containing residential units and (ii) any facilities, or

portions thereof, that are approved by the Issuer and are properly allocable and are directly related and essential to the portions of such building or buildings containing residential units for purposes of Section 142(d) of the Code, including the Recreation Facilities hereinafter defined and the portion of the parking facilities hereinafter described and the tenant laundry facilities which are intended for use by the Project's residential tenants.

"Compliance Certificate" means the Compliance Certificate substantially in the form of Exhibit "B" hereto, as such form may be revised by the Issuer from time to time upon advice of Bond Counsel.

"Electronic Means" means an email or a facsimile transmission or other similar electronic means of communication, including a telephonic communication promptly confirmed by writing or written transmission.

"Equity Investor" NEF Assignment Corporation, and its respective successors and/or assigns.

"First Bonds" means the first issue of bonds pursuant to Section 142(d) of the Code to finance the acquisition of an existing residential rental project.

"HUD" means the United States Department of Housing and Urban Development.

"Income Certification" means an Income Certification substantially in the form of Exhibit "A" hereto or such other form which contains all pertinent information requested in Exhibit "A," as such form may be revised by the Issuer from time to time upon advice of Bond Counsel.

"Income Tax Regulations" means any applicable final, proposed or temporary regulations and revenue rulings under the Code. References to a section of the Income Tax Regulations shall be deemed to include any analogous section of revised or successor regulations.

"Issuer" means the City of Fort Wayne, Indiana, a municipal corporation organized and existing under the laws of the State of Indiana, together with its permitted successors and assigns.

"Loan" means, collectively, (i) the proceeds provided by the Issuer to the Borrower pursuant to the Bond Purchase and Loan Agreement and (ii) that certain \$6,685,218 loan made by the Issuer to the Borrower.

"Low-Income Persons or Families/Low-Income Tenants" means persons whose aggregate Adjusted Family Income does not exceed 60% of the Median Gross Income for the Area determined by the Secretary of Housing and Urban Development in a manner consistent with determinations of lower income families under Section 8(f)(3) of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such termination), with adjustments for smaller and larger families. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Low-Income Persons or Families/Low-Income Tenants if all the occupants of such residential unit are "students", as defined in Section 151(c)(4) of the Code, provided however, the occupants of a residential unit shall not be disqualified as Low-Income Persons or Families/Low-Income Tenants merely because it is occupied (i) by an individual who is (a) a student receiving assistance under

title IV of the Social Security Act, (b) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or (c) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, state or local laws or (ii) entirely by full-time students if such students are (a) single parents and their children and such parents and children are not dependents of another individual, (b) single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children, or (c) married and file a joint return.

“Median Gross Income for the Area” means the median income for the households in the area which includes the City of Fort Wayne, Indiana, as determined from time to time by the Secretary of Housing and Urban Development, under Section 8(f)(3) of the United States Housing Act of 1937, as amended (or if such program is terminated, median income determined under the program in effect immediately before such termination), in each case as adjusted for family size, all in accordance with Section 142(d) of the Code.

“NEF” means NEF Assignment Corporation.

“Note” means, collectively, the promissory notes of the Borrower, dated the date of issuance and delivery of the Bonds, evidencing the Borrower’s obligation to repay the Loan, as the same may be amended, modified or supplemented from time to time.

“Plans” means the final plans and specifications for the Project, as such plans and specifications may be revised from time to time. Modifications to the Plans do not require the approval of the Issuer or the Bondholder.

“Project” means the multifamily housing project located on the Real Property in the City of Fort Wayne, Indiana and known as “McCormick Place.”

“Qualified Project Period” means that period, beginning on the first day on which 10% of the residential units in the Project are first occupied and ending on the latest of:

- (i) the date which is 15 years after the date on which at least 50% of the residential units in the Project are first occupied, or
- (ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or
- (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates.

“Qualified Residential Rental Project” means any project for residential rental property if at all times during the Qualified Project Period, such project meets the requirements of Section 142(d)(1)(A) or (B) of the Code, whichever is elected by the Issuer at the time of issuance of the Bonds.

“RAD Use Agreement” means Rental Assistance Demonstration Use Agreement dated on or about the date of this Regulatory Agreement and to be filed in the Office of the Recorder of Allen County, Indiana.

“Real Property” means the land described in Exhibit “C” attached hereto.

“Recreation Facilities” means any recreational or exercise facilities located on the Real Property.

“Rental Housing” means similarly constructed proximate housing units made available for rental, and not ownership, to members of the general public, each of which units shall contain complete living facilities which are to be used on other than a transient basis and facilities which are functionally related and subordinate to the living facilities and which meet the requirements of Section 142(d) of the Code. Notwithstanding the foregoing, a unit shall not fail to qualify as Rental Housing merely because the unit is a single room occupancy unit within the meaning of Section 42 of the Code. Rental Housing shall at all times be constructed, rehabilitated and maintained in accordance with the applicable building code standards within the jurisdiction in which it is located.

“Substantial Rehabilitation” means the acquisition of an existing residential rental project where more than 90% of the residential units in the project are not Available Units at any time within 60 days after the later of (1) the date the Project is acquired or (2) the issue date of the First Bonds.

Other capitalized terms used herein and not otherwise defined shall have the respective meanings accorded such terms in the Bond Purchase and Loan Agreement .

2. **Completion of the Project.** The Borrower covenants to complete the acquisition, rehabilitation and equipping of the Project with due diligence substantially in accordance with the Plans and the Bond Purchase and Loan Agreement . Promptly upon such completion, the Borrower shall furnish to the Bondholder and the Issuer a certificate stating that all renovation and construction to the Project has been completed. In the event the proceeds of the Loan are insufficient to complete the Project, the Borrower shall pay from other sources additional moneys as are necessary to complete the Project. No proceeds of the Bonds will be used to finance any Commercial Facilities.

3. **Qualified Residential Rental Project.** The Issuer and the Borrower hereby declare their understanding and intent that the Project is to be owned, managed and operated, as a Qualified Residential Rental Project. The Issuer and the Borrower hereby elect the “40-60” test as set forth in Section 142(d)(1)(A) of the Code. To that end, and in compliance with the Act, the Borrower hereby represents, covenants and agrees as follows:

(a) that the Project is being acquired, rehabilitated and equipped for the purpose of providing multifamily residential rental property, and the Project shall be owned, managed and operated as multifamily Rental Housing, all in accordance with Section 142(d)(1) of the Code and Section 1.103-8(b) of the Income Tax Regulations, as the same may be amended from time to time and applicable to the Project;

(b) that all of the dwelling units in the Project will be similarly constructed and each such dwelling unit shall contain complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family;

(c) that during the Qualified Project Period:

(i) none of the dwelling units in the Project shall ever be leased or rented for a period of less than thirty (30) days; and

(ii) neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer court or park;

(d) that during the Qualified Project Period (i) the dwelling units in the Project shall be leased and rented or made available for rental on a continuous basis to members of the general public, (ii) at least 40% of the Available Units in the Project shall be leased and rented or made available for rental on a continuous basis to Low-Income Tenants; and (iii) the Borrower shall not give preference in renting dwelling units in the Project to any particular class or group of persons, other than Low-Income Tenants as provided herein; provided, however, that an insubstantial number of dwelling units in the Project, may be occupied by maintenance, security or managerial employees of the Borrower or its property manager, which employees must be reasonably necessary for operation of the Project;

(e) that during the Qualified Project Period no part of the Project will at any time be owned or used by a cooperative housing corporation;

(f) that the Project will consist of one or more discrete edifices or other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more tracts of land which are contiguous except for being separated only by a road, street, stream or similar property (tracts are contiguous if their boundaries meet at one or more points), and (iii) financed by the Loan of the Issuer or otherwise pursuant to a common plan of financing, and which will consist entirely of:

(i) units which are similarly constructed; and

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

(g) that during the Qualified Project Period the Project will not include a unit in a building where all units in such building are not also included in the Project;

(h) that during the Qualified Project Period the Borrower will not convert the Project from residential rental property to condominium ownership or other use;

(i) that during the Qualified Project Period no dwelling unit in the Project shall be occupied by the Borrower at any time unless the Borrower resides in a dwelling unit in a building or structure which contains at least five dwelling units and unless the resident of such dwelling unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);

(j) that less than 25% of the proceeds of the Bonds will be used for the acquisition of land;

(k) that during the Qualified Project Period, the Borrower will not discriminate on the basis of age, race, creed, religion, color, sex, marital status, or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project;

(l) that during the Qualified Project Period, the Borrower will require all tenants moving into units with existing leases, which units have previously qualified as Low-Income Tenant units, to be put on the lease in addition to the current tenant on the lease and to require recertification of said unit;

(m) that the Borrower will provide the Issuer and the Bondholder with the "Certificate of Commencement of Qualified Project Period" in the form set forth in Exhibit "D" attached hereto indicating the date on which 10% of the residential units were first occupied, i.e. the commencement of the Qualified Project Period; and

(n) that the Borrower will provide the Issuer and the Bondholder with the "Certificate of 50% Occupancy" in the form set forth in Exhibit "E" attached hereto indicating the date on which 50% of the residential units were first occupied.

Unless the provisions of this Section 3 are amended as permitted under Section 18 hereof, the provisions of this Section shall remain in effect during the Qualified Project Period; provided, however, the Borrower may be discharged from its obligations under this Section 3 and Section 4 hereof to the extent only that the same are assumed by any successor in interest to the Borrower pursuant to Section 8 hereof.

4. Low-Income Tenants. In order to satisfy the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, covenants and agrees that, as follows:

(a) commencing on the later of the first date on which 10% of the units in the Project are occupied or the issue date of the Bonds, (i) at least 40% of the Available Units in the Project shall be occupied by Low-Income Tenants, prior to the satisfaction of which no additional units shall be rented or leased and (ii) after initial rental occupancy of such dwelling units by Low-Income Tenants, at least 40% of the Available Units in the Project at all times shall be rented to and occupied (or held available for rent if previously rented to and occupied by a Low-Income Tenant) by Low-Income Tenants as required by Section 142(d) of the Code. For the purpose of the requirement that not less than 40% of the Available Units be occupied by Low-Income Tenants, if a tenant qualified as a Low-Income Tenant upon occupancy, the income of that tenant shall be treated as continuing to not exceed the applicable income limit, notwithstanding that such tenant's income may

subsequently exceed the applicable income limit; provided, however, that such person shall no longer be qualified as a Low-Income Tenant as of the most recent determination (as provided in Section 4(f) below) if the tenant's Adjusted Family Income exceeds 140% of the then applicable income limit. If it is determined that a tenant's Adjusted Family Income exceeds 140% of the applicable income limit, the Borrower may avoid non-compliance with the rules set forth herein if the next available unit of comparable or smaller size in the Project (building, if tax credits under Section 42 of the Code are being provided with respect to the Project) is leased to a Low-Income Tenant;

(b) notwithstanding Section 4(a) above, if (i) the proceeds of the Bonds are financing the acquisition, rehabilitation and equipping of an existing residential rental project (other than Substantial Rehabilitation, to which Section 4(a) above will apply) and (ii) at least 40% of the Available Units are not occupied by Low-Income Tenants on the date of issuance of such Bonds, the Borrower shall have twelve months beginning on the date of issuance of the First Bonds (the "Transition Period") to satisfy such requirement. The failure to satisfy the set-aside requirement of this Section 4(b) by the last day of the Transition Period will cause the Project to not be a Qualified Residential Rental Project as of the issue date of the Bonds issued to finance the Project unless all the Bonds issued to finance the Project are redeemed as soon as possible, but in no event later than eighteen months after the issue date of the First Bonds;

(c) the income of all tenants who occupy or will occupy the units in the Project will be verified by obtaining an Income Certification and with respect to Low-Income Tenants, (i) if the occupant is employed, an employer's written verification of current anticipated annual income or (ii) if the occupant is self-employed, the occupant shall provide an annualized profit and loss statement or a tax return or (iii) if the occupant is not employed, the occupant shall provide evidence of governmental income or rental assistance and of any other income. Each such certification shall be dated (i) not later than the date of execution of the lease, but in no event more than 120 days prior to the initial occupancy of such tenant in the Project, (and the Borrower shall require such tenant to notify the Borrower of any material change of information in the Income Certification between execution thereof and initial occupancy of such tenant in the Project), and (ii) at least annually thereafter, in each case in the form and containing such information as may be required by Section 142(d) of the Code (initially in the form attached hereto as Exhibit "A" or in such other form as contains all the pertinent information requested in Exhibit "A", as the same may be from time to time amended by the Issuer on the advice of Bond Counsel (a copy of which amendments shall be provided to the Issuer, the Bondholder and the Borrower), or in such other form and manner as may be required by applicable rules, rulings, procedures, official statements, regulations or policies now or hereafter promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(a)(7) of the Code. Photocopies of each such Income Certification shall be submitted to the Bondholder (x) within 15 days following the end of the calendar month after such tenant's initial occupancy of the Project, (y) within 15 days following the end of each calendar month thereafter, together with the Compliance Certificate required under Section 4(e) below and any recertification of tenants required by Section 4(e) below, and (z) as requested by the Bondholder and the Issuer, which may be as often as may be necessary, in the opinion of

Bond Counsel, to comply with the provisions of Section 142(d) of the Code. The Bondholder shall review the certificates submitted to it under Sections 4(c), 4(e) and 4(g) to confirm completion, but the Bondholder shall bear no liability for the Borrower's failure to provide a complete certificate after the Bondholder has notified the parties listed in Section 23 hereof that a certificate submitted to the Bondholder by the Borrower under Sections 4(c), 4(e) or 4(g) is incomplete and the Bondholder shall have no responsibility for verifying the accuracy of the information submitted to it as provided in this Section 4(c) or Sections 4(e) and 4(g);

(d) during the Qualified Project Period, the Borrower shall maintain complete and accurate records pertaining to the dwelling units occupied or to be occupied by Low-Income Tenants, including Income Certifications, and will permit any duly authorized representative of the Issuer, the Bondholder, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Income Certifications of Low-Income Tenants residing in the Project for the purpose of verifying compliance by the Borrower hereunder upon reasonable notice and at reasonable times. The Borrower agrees that in the event of an Internal Revenue Service, Department of Treasury or Issuer audit of compliance with this Regulatory Agreement as authorized by this Section 4(d), the Borrower will pay all reasonable fees and expenses of the Issuer and the Bondholder and their respective authorized representatives, and their respective counsel in connection with such audit. The Borrower shall keep information as set forth in this Section 4(d) for a period of three years following the end of the Qualified Project Period;

(e) during the Qualified Project Period, the Borrower shall immediately notify the Bondholder and the Issuer if at any time the dwelling units in the Project are not occupied or available for occupancy as provided in Section 4(a) or 4(b) above, as applicable, and the Borrower shall prepare and submit to the Bondholder, not later than the fifteenth (15th) day of each month following the initial occupancy of any of the units in the Project, the Income Certification required under Section 4(c) above, together with a Compliance Certificate substantially in the form attached hereto as Exhibit "B" executed by the Borrower stating, among other matters, the number of dwelling units of the Project which were occupied or were deemed to be occupied by Low-Income Tenants during such period;

(f) during the Qualified Project Period, the Borrower shall make the determination of whether the income of a tenant of a unit in the Project exceeds the applicable limit at least annually on the basis of the current income of the tenant by causing each tenant to execute a recertification of their annual income. The Borrower shall require in the lease of each Low-Income Tenant that the tenant fill out an annual income recertification to help the Borrower determine whether the tenant still qualifies as a Low-Income Tenant. The Borrower shall provide in each tenant's lease that completion and execution of such certificates by the tenant is a substantial obligation, noncompliance with which can result in termination of tenancy. Copies of the recertification of a tenant shall be provided to the Bondholder as provided in Section 4(b) above; and

(g) the Borrower shall prepare and file with the Bondholder and the Issuer true copies of each IRS Form 8703 - "Annual Certification of a Residential Rental Project" (or

any successor form thereto) as completed and filed with the Internal Revenue Service for each calendar year during the Qualified Project Period, which certification shall be filed at such time as may be prescribed in the Income Tax Regulations promulgated under Section 142(d)(7) of the Code provided, however, the provisions of this paragraph (g) shall cease to apply if 100% of the units in the Project are tax credit units under Section 42 of the Code.

The benefits of Sections 3 and 4 shall inure to, and may be enforced by, the Bondholder and the Issuer and their respective successors and assigns for the Qualified Project Period.

5. Compliance with Act, Code and Rules.

(a) The Borrower covenants and agrees that (i) it will comply with all requirements of the Act, and the rules applicable to it or to the Project; (ii) at no time will it take any action, or fail to take any action, which action or failure to act would adversely affect the exclusion from gross income of the interest on the Bonds for federal income tax purposes; (iii) at least 95% of the net proceeds of the Bonds will be applied to finance a Qualified Residential Rental Project; and (iv) it will maintain the Project at all times during the Qualified Project Period in such a manner that the Project qualifies as a Qualified Residential Rental Project and pursuant thereto forty percent (40%) or more of the residential units in such Project will be occupied by Low-Income Persons or Families, with adjustments for smaller and larger families within the respective meanings ascribed to such quoted terms in Section 142(d) of the Code and for the greatest number of buildings as possible the proceeds of the Loan shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code and the Borrower further covenants that it will not exercise any option to redeem the Bonds under the Indenture except upon the express written consent of the Equity Investor; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither the Issuer nor the Bondholder shall have any obligation to enforce this covenant nor shall they incur any liability to any person, including without limitation, the Borrower, the members of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or "Event of Default" under this Agreement or the Bond Purchase and Loan Agreement. In connection with the foregoing and with Section 18(b) hereof, the Borrower agrees to execute and deliver such amendments and supplements to this Regulatory Agreement as the Issuer (with a copy to Bond Counsel and the Bondholder) or Bond Counsel (with a copy to the Issuer and the Bondholder) reasonably shall determine to be necessary to preserve the exclusion of the interest on the Bonds of the holders thereof from gross income for federal income tax purposes.

(b) The Borrower agrees that, except with the prior written approval of the Issuer, it will not request, and the Bondholder will not be obligated to make any disbursement under the Loan for:

(i) the acquisition of a building (and any fixtures thereto as of the date of acquisition), the "first use" of which is not pursuant to such acquisition within the meaning of Section 147(d) of the Code, unless the Borrower shall expend from Loan proceeds or other available sources, an amount at least equal to fifteen percent (15%) of "the portion of the cost of acquiring such building (and equipment) financed with the proceeds" of the Bonds for "rehabilitation expenditures" within the meaning of Section 147(d) and of the Code with respect to such building and fixtures;

(ii) the acquisition of land (or an interest therein) in any amount which would cause the aggregate amount therefore and thereupon disbursed for such costs to equal or exceed twenty-five percent (25%) of the net proceeds of the sale of the Bonds; or

(iii) any portion of the Project which would cause the "average reasonably expected economic life", as determined in the manner and as of the time provided by Section 147(b) of the Code, of the portion of the Project that has been, or pursuant to such requested disbursement is to be, financed with proceeds of the Loan to be less than one day more than eighty-three and one-third percent (83 1/3%) of the "average maturity" of the Bonds within the meaning of Section 147(b) of the Code.

If for any reason disbursements under this Section 5(b) in excess of the limits imposed by paragraphs (i), (ii) or (iii) set forth above shall be made, or if, assuming after any disbursement that no further disbursements were made under the Bond Purchase and Loan Agreement, such limits would be violated by measurement against the amount of disbursements theretofore made, the Borrower agrees to reimburse the Bondholder under the Bond Purchase and Loan Agreement for the portion of any such excess as would be necessary to assure the exclusion of the interest payable on the Bonds of the holders thereof from gross income for federal income tax purposes.

(c) The Borrower agrees that it will not request any disbursement under the Loan for any costs of:

(i) any portion of the Project constituting a "health club facility," a "facility primarily used for gambling," or a "store the principal business of which is the sale of alcoholic beverages for consumption off premises" within the meaning of Section 147(e) of the Code;

(ii) land, or an interest therein, to be used for "farming purposes" within the meaning of Section 147(c)(2) of the Code; and

(iii) any property, other than a building (and fixtures located therein as of the date of the building's acquisition), the "first use" of which is not pursuant to such acquisition within the meaning of Section 147(c)(3) of the Code.

6. Commercial, Recreation and Parking Facilities.

(a) The Project will include no Commercial Facilities.

(b) The Recreation Facilities are intended and shall be available for use solely by tenants of the Project and their guests. Such use shall be included in the rent charged to each tenant, and no additional fees or charges may be assessed.

(c) The Project shall include 96 units, 2 of which are used as a resident resource center and 94 are used as residential units. None of the automobile parking spaces located on the Project will be used by persons other than the residential tenants or their guests or invitees; there will be no charge for such parking.

7. **Non-Recourse.** Notwithstanding any other provisions of this Regulatory Agreement to the contrary, the Borrower, its partners, members, managers, directors and officers, either individually or as partners, members, managers, directors or officers, shall have no personal liability by virtue of this Regulatory Agreement. In any action or proceeding brought on this Regulatory Agreement, no deficiency or other money judgment shall be sought or obtained by virtue of this Regulatory Agreement against the Borrower or its partners, members, managers, directors and officers, either individually or as partners, members, managers, directors or officers.

8. **Sale, Lease or Transfer of Project.**

(a) Except as may be required by HUD, the Borrower shall not sell, lease (other than to resident tenants in the normal course of business), exchange, assign, convey, transfer or otherwise dispose of all or substantially all of the Project or shall not have a change in any managing member of the Borrower (herein collectively called "Disposition") without the prior written consent of the Issuer (such consent not unreasonably to be withheld). Notwithstanding anything to the contrary contained in the Loan Documents, the withdrawal, removal and/or replacement of Borrower's managing member for cause in accordance with the Amended and Restated Operating Agreement of the Borrower (the "Operating Agreement") shall not require the consent of Issuer and shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan so long as the managing member is replaced with an affiliate of NEF. Issuer shall not unreasonably withhold its consent to the substitute managing member if it is other than an affiliate of NEF. Notwithstanding the foregoing, the substitute managing member shall assume all of the rights and obligations of the removed managing member under all of the Loan Documents. It is expressly agreed that in connection with determining whether to grant or withhold such consent to a Disposition, the Issuer may (but is not obligated to) (i) consider the creditworthiness of the party to whom such Disposition will be made, its ability to provide services specifically to Low-Income Tenants, its prior operation of lower income rental housing, its operation of other housing facilities in Indiana, if any, and its management ability with respect to the Project; (ii) consider whether or not any security for the performance of the obligations hereunder will be impaired in any material way by the proposed Disposition; (iii) consider such other factors as the Issuer may deem appropriate; (iv) require that the Issuer be reimbursed for all reasonable costs and expenses incurred by the Issuer for investigating the creditworthiness and management ability of the party to whom such Disposition will be made and in determining whether the Issuer's security will be impaired by the proposed Disposition; (v) require the payment to the Issuer of a transfer fee equal to the reasonable costs of investigating and approving the Disposition and documenting the Disposition in its records; (vi) require the payment of its reasonable

attorney's fee in connection with such Disposition; (vii) require the execution of modification agreements, supplemental security documents and financing statements, where appropriate, reasonably satisfactory in form and substance to the Issuer, it being understood and agreed that no material change shall be required to any of the terms and conditions of the Bond Purchase and Loan Agreement, this Regulatory Agreement or any related instrument or agreement as a condition for the approval of any such Disposition; (viii) require endorsements (to the extent available under applicable law) to any existing Issuer title insurance policies or construction binders insuring the Bondholder's liens and security interest covering the Project; and (ix) require the payment of any outstanding Issuer's fees pursuant to the Bond Purchase and Loan Agreement prorated to the date of disposition of the Project. The foregoing provisions shall not operate to limit in any manner any requirements that the Borrower obtain the consent of any other party to such Disposition under the terms of the Bond Purchase and Loan Agreement or any of the other documents executed in connection with the Bonds.

(b) The Borrower covenants that upon a Disposition, it will require the party to whom a Disposition will be made to assume in writing, in a form acceptable to the Issuer and delivered to the Bondholder, all duties and obligations of the Borrower under this Regulatory Agreement, including this Section 8, in the event of a subsequent Disposition by such party prior to expiration of the Qualified Project Period. The Borrower shall deliver the assumption agreement to the Issuer and the Bondholder concurrently with the Disposition.

(c) It is hereby expressly stipulated and agreed that any Disposition of the Project by the Borrower in violation of this Section 8 shall, to the extent permitted by law, be null, void and without effect, shall cause a reversion of title to the Borrower as the purported transferor and shall be ineffective to relieve the Borrower of its obligations under this Regulatory Agreement, the Bond Purchase and Loan Agreement and the Security Instrument. The Borrower shall include by incorporation by reference or verbatim the requirements and restrictions contained in this Regulatory Agreement in any deed or other documents transferring any interest in the Project to another person to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express agreement from any transferee so to abide. In the event that the Issuer approves the Disposition of the Project in accordance with this Section 8, and the transferee has agreed to perform the obligations of the Borrower under the Bond Purchase and Loan Agreement, this Regulatory Agreement, the Security Instrument and the other loan documents in accordance with the terms and conditions of the Bond Purchase and Loan Agreement, this Regulatory Agreement and the Security Instrument, the Borrower shall be released from its obligations hereunder automatically and without further action by the Issuer, and the Issuer shall confirm such release by recordable written instrument, if requested to do so by the Borrower.

(d) Other than transfers allowed pursuant to Section 8(a), so long as any portion of the Bonds remains outstanding, there shall be no transfer by any party of more than a 50% ownership interest in the Borrower, nor shall there be any other similarly significant change in the ownership interest, control or relative distribution thereof, of the Borrower by any other method or means including, but not limited to, increased capitalization,

merger, corporate or other amendments, issuance of additional or new stock or classification of stock, or otherwise, without the prior written consent of the Issuer, which consent shall not be unreasonably withheld; provided, however, that this subsection 8(d) shall not apply to transfers of the interests of the Equity Investor in the Borrower.

(e) Any Disposition will be subject to the Issuer and the Bondholder receiving an opinion of Bond Counsel that the transaction contemplated and as carried out will not adversely affect the exclusion of the interest on the Bonds of the holders thereof from gross income for federal income tax purposes.

(f) The restrictions contained in the foregoing provisions of this Section 8 shall not be applicable to any of the following exceptions, and the prior consent of the Issuer shall not be required as to such exceptions: (i) any transfer pursuant to or in lieu of a foreclosure or deed in lieu of foreclosure under the Security Instrument or other deed to secure debt with respect to the Project or other similar disposition of the Project, (ii) grants of utility related easements and utility and other service related leases or easements, including without limitation, laundry service leases or television cable easements, over portions of the Project, provided the same are granted in the ordinary course of business in connection with the operation of the Project as contemplated by this Regulatory Agreement, (iii) leases of apartment units to Low-Income Tenants or other tenants in accordance with the requirements of this Regulatory Agreement, (iv) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof, and (v) any change in allocations of preferred return capital, depreciation or losses or any final adjustments in capital accounts (all of which may be freely transferred or adjusted by Borrower pursuant to Borrower's operating agreement).

9. Default.

(a) Upon a violation of any of the provisions of this Regulatory Agreement by the Borrower; the Bondholder or the Issuer, to the extent such party has knowledge of such violation, shall give written notice thereof to the Borrower and the Equity Investor, by registered or certified mail, addressed to the address stated in this Regulatory Agreement, or such other address as may subsequently, upon appropriate written notice thereof as provided in Section 23 hereof to the Issuer and the Bondholder, be designated by the Borrower as its legal business address. The Borrower or the Equity Investor on behalf of the Borrower, shall have sixty (60) days after the date such notice is received (or such longer period as may be consented to by the Issuer and approved in an opinion of Bond Counsel) to correct the violation. If the violation be such that it cannot be corrected within the applicable period, it shall nonetheless be deemed to be corrected if corrective action is instituted by the Borrower or the Equity Investor on behalf of the Borrower, within the applicable period and diligently pursued until the violation is corrected; provided, however, that corrective action shall be required to be completed within the applicable period if Bond Counsel determines it necessary to preserve the exclusion of the interest on the Bonds of the holders thereof from gross income for federal income tax purposes.

(b) If a violation of this Regulatory Agreement is not corrected by or on behalf of the Borrower to the satisfaction of the Bondholder and the Issuer within the time and otherwise as provided in Section 9(a), without further notice the Bondholder, with the prior written consent of the Issuer, may declare an "Event of Default" under this Regulatory Agreement effective on the date of such declaration of default and upon such default the Bondholder may,

(i) declare the Note and all amounts due under the Bond Purchase and Loan Agreement immediately due and payable;

(ii) collect all rents and charges in connection with the operation of the Project and use such collections to satisfy the Borrower's obligations under this Regulatory Agreement and the necessary expenses of preserving the property and operating the Project;

(iii) take possession of the Project, bring any action necessary to enforce any rights of the Borrower growing out of the Project operation, and operate or cause the Project to be operated in accordance with the terms of this Regulatory Agreement until such time as the Issuer in its discretion determines that the Borrower is again in a position to operate the Project in accordance with the terms of this Regulatory Agreement; or

(iv) apply to any court, State or federal, for specific performance of this Regulatory Agreement, for an injunction against any violation of this Regulatory Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Regulatory Agreement, or for such other relief as may be appropriate, since the injury to the Issuer arising from a default under any of the terms of this Regulatory Agreement would be irreparable and the amount of damage would be difficult to ascertain.

The Borrower acknowledges and agrees that the Issuer's and the Bondholder's remedies at law, in the event of a violation of this Regulatory Agreement, would be inadequate to assure the Issuer's public purpose under the Act or compliance with Section 142(d) of the Code, as applicable.

(c) If, after the Bondholder, with the consent of the Issuer, has declared an Event of Default as provided in Section 9(b) hereof, the Borrower refuses immediately to permit and facilitate the exercise of the remedies described in Section 9(b)(ii) or (iii) hereof by the Issuer or the Bondholder, the Issuer or the Bondholder shall be entitled to the appointment of a receiver for the Project and of the rents, issues, and profits thereof as a matter of right without regard to the solvency or insolvency of the Borrower of the Project and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction and all rents, issues and profits, income and revenue therefrom shall be applied by such receiver for the purposes described in Section 9(b)(ii) or (iii) in such order as applicant may request, according to the law and subject to the orders and directions of the court.

(d) If the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Sections 3, 4, or 5 of this Regulatory Agreement on its part to be observed or performed, then and in such event, the Bondholder and the Issuer shall be entitled, individually or collectively, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under Sections 3, 4, or 5 of this Regulatory Agreement, it being recognized that the beneficiaries of the Borrower's obligations under said Sections 3, 4, or 5 cannot be adequately compensated by monetary damages in the event of the Borrower's default.

10. Agreement Binding. This Regulatory Agreement and the covenants contained herein shall run with the Real Property and, except as provided in Section 7 hereof, shall bind the Borrower (including each member of the Borrower, each of whom the Borrower hereby represents to have authorized the Borrower to bind by this Regulatory Agreement, and, to the extent controlled by the Borrower or any of the foregoing, each person who is "related" to any of the foregoing within the meaning of Section 144(a)(3) of the Code), its heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and all subsequent owners of the Project or any interest therein, and the benefits shall inure to the Issuer, the Bondholder and their respective successors and assigns, for the term provided in Section 11 hereof.

11. Term of Agreement. This Regulatory Agreement shall be in full force and effect from the date hereof for the Qualified Project Period regardless of whether the Bonds remain outstanding; provided, however, that the requirements of this Regulatory Agreement shall:

(a) terminate in the event that involuntary non-compliance with this Regulatory Agreement is caused by fire, seizure, requisition, change in federal law or an action of a federal agency which prevents the Issuer from enforcing this Regulatory Agreement, or condemnation or similar event, and if the Borrower, within a reasonable period, either prepays the Loan in full or uses the amounts received as a consequence of such event to construct another project meeting the requirements of Section 142(d) of the Code; or

(b) terminate in the event of foreclosure or transfer of title by deed in lieu of foreclosure of the Security Instrument or other deed to secure debt with respect to the Project, so long as, within a reasonable time period, either the Bonds are retired in full or the amounts received as a consequence of such event are used to provide a Qualified Residential Rental Project. Notwithstanding the foregoing, the termination provisions of this Section 11(b) shall cease to apply in the event of foreclosure pursuant to any mortgage with respect to the Project, transfer of title by deed-in-lieu of foreclosure, or similar event if, at any time subsequent to such event and during the Qualified Project Period, the Borrower or a related person (as defined in Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for tax purposes.

12. Equal Opportunity. The Borrower will comply with the provisions of any federal, State, or local law prohibiting discrimination in housing on the grounds of age, race, color, religion or creed, sex, marital status or national origin, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968 (Public Law 90-284, 82 Stat. 73), and Executive Order 11063.

13. Indemnification. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer, the Bondholder and their respective officers, commissioners, officials, employees and agents (collectively, the “Indemnified Parties” and individually, an “Indemnified Party”), from and against (i) any and all claims of or on behalf of any person asserted against the Indemnified Parties arising from any cause whatsoever in connection with the Project or the financing thereof except for the payment of principal and interest on the Bonds, but including any expenses arising from the failure to make payment of principal and interest on the Bonds; (ii) any and all claims asserted against the Indemnified Parties arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees, in connection with the Project or financing thereof; and (iii) all costs, reasonable counsel fees (actually incurred), expenses or liabilities incurred by the Indemnified Parties in connection with any such claim or proceeding brought thereon, except to the extent the claim or claims are caused by the negligent act or willful misconduct of the Indemnified Party seeking indemnification. In the event that any action or proceeding is brought against the Indemnified Parties, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel of Borrower’s choosing (acceptable to the Issuer and the Bondholder, which acceptance will not be unreasonably withheld) and the payment of all expenses. The Indemnified Party shall have the right to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable, actually incurred fees and expenses of such separate counsel; provided, however, unless such separate counsel is approved by the Borrower, the Borrower shall not be required to pay such fees. The Borrower shall not unreasonably withhold or condition approval. The right to indemnification set forth herein shall survive the resignation or removal of the Bondholder.

14. Expenses. The Borrower covenants and agrees to pay all expenses, including reasonable attorneys’ fees and expenses, paid or to be paid by the Issuer and the Bondholder in connection with execution or performance of the obligations of the Borrower under this Regulatory Agreement or the enforcement by the Bondholder or the Issuer of the provisions hereof.

15. Severability. The invalidity of any clause, part or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

16. Governing Law. This Regulatory Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Indiana.

17. Property. The Real Property covered by this Regulatory Agreement is owned by Housing Authority of the City of Fort Wayne, Indiana (“FWHA”) and is leased by FWHA to the Borrower pursuant to a Ground Lease, dated _____, 2020, between the Borrower and the FWHA and is described in Exhibit “C” attached hereto.

18. Amendment.

(a) Subject to the provisions of Section 18(b) below, this Regulatory Agreement may not be amended except (i) by a writing duly executed by each of the parties hereto, and (ii) with an opinion of Bond Counsel selected by the Issuer to the effect that

such amendment does not adversely affect the exclusion of the interest on the Bonds of the holders thereof from gross income for federal income tax purposes.

(b) To the extent the Code and the regulations promulgated thereunder, or any amendments thereto, shall impose requirements upon the ownership or operation of the Project, which requirements shall be applicable by their terms to the Project and which are more restrictive than those imposed by this Regulatory Agreement, the Borrower, the Issuer and the Bondholder agree that this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements; and the Borrower, the Bondholder and the Issuer shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary in the opinion of Bond Counsel to maintain the exclusion from gross income of the interest on the Bonds, and if the Borrower, the Bondholder or the Issuer defaults in the performance of their obligation under this Section 18(b), the Borrower and the Issuer hereby appoint the Bondholder as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower, or the Issuer, as is applicable, any such document or instrument.

19. No Individual Liability. No covenant or agreement contained in this Regulatory Agreement shall be deemed to be the covenant or agreement of any officer, commissioner, agent or employee of the Issuer, or any general or limited partner, manager, officer or member of the Borrower, or any officer, agent or employee of the Bondholder or the Borrower, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution hereof.

20. Covenants Run With the Land and the Real Property; Term. The Issuer and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth in Sections 3 and 4 herein shall be deemed covenants running with the land, shall run with the Real Property, and shall pass to and be binding upon the Borrower's successors in title and the Borrower's successors and assigns. Each and every contract, deed or other instrument hereafter executed covering or conveying the Real Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth in such contract, deed or other instrument. Unless sooner terminated in accordance with Section 11 hereof, such covenants shall continue in full force and effect for the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the expiration of the Bond Purchase and Loan Agreement and the retirement of the Bonds, if such expiration and retirement occur prior to the end of the Qualified Project Period. Upon the expiration of the Qualified Project Period, or if the provisions hereof are terminated (in the opinion of Bond Counsel), the Issuer and the Bondholder hereby covenant to execute a release of the covenants of the Borrower herein and provide such release to the Borrower for recordation in the real property records of Allen County, Indiana.

21. Post Defeasance or Redemption. The Borrower represents, warrants and covenants that in the event that the Bonds are redeemed or defeased and the lien of the Bond Purchase and Loan Agreement released or the seller note from Issuer to the Housing Authority of the City of Fort Wayne, Indiana is paid off, prior to the end of the Qualified Project Period, it shall contract, at the Borrower's expense, with the Issuer or the Bondholder or a compliance monitoring agent (which may be the Bondholder), to review compliance by the Borrower with the

requirements of this Regulatory Agreement until the end of the Qualified Project Period. During the period of time following the release of the lien of the Bond Purchase and Loan Agreement and prior to the execution of a new compliance monitoring agreement, the Bondholder shall continue to perform its duties hereunder in the capacity of monitoring agent to the Borrower, and the Borrower shall pay the Bondholder an annual fee of \$750.00, payable in advance for such services.

22. Subordination of Regulatory Agreement.

(a) This Regulatory Agreement and the restrictions hereunder are subordinate to the RAD Use Agreement, and that certain HUD Form - 52624 agreement executed by the Borrower and the Issuer with respect to conversion of public housing units to RAD units (the "**RAD Conversion Commitment**" and, collectively with the Consolidated and Further Continuing Appropriations Act of 2012 and the RAD Use Agreement, the "**RAD Requirements**"). In the event of foreclosure or transfer of title by deed in lieu of foreclosure, this Regulatory Agreement and the restrictions hereunder will automatically terminate.

(b) The Subordination of this Regulatory Agreement extends to and continues in effect with respect to any and all extensions, renewals and modifications made to this Regulatory Agreement.

(c) The Subordination of this Regulatory Agreement shall remain in effect notwithstanding any future amendment, modification or extension of the RAD Use Agreement.

(d) In the event of a conflict between the provisions of this Regulatory Agreement and the RAD Use Agreement, the provisions of the RAD Use Agreement shall control.

(e) This Regulatory Agreement shall not be amended, supplemented or extended in any material respect without the prior written consent of HUD's Office of Recapitalization.

23. Notices. All notices to be given pursuant to this Regulatory Agreement shall be sent by first-class, certified or registered mail, postage prepaid, return receipt requested, or by private courier service or overnight delivery which provides evidence of delivery, or sent by Electronic Means, which produces evidence of transmission, confirmed by first-class mail, and in each case shall be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Borrower: McCormick Rehabilitation, LLC
c/o Bear Development, LLC
4011 80th Street
Kenosha, Wisconsin 53142
Attention: Adam Templer
Telephone: (608) 230-6206
Email: adam@beardevelopment.com

With a copy to: Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, Illinois 60605
Attention: Warren P. Wenzloff, Esq.
Telephone: (312) 491-3321
Email: wwenzloff@att-law.com

To the Equity Investor: NEF Assignment Corporation
10 South Riverside Plaza, Suite 1700
Chicago, Illinois 60606-3908
Attention: General Counsel

With a copy to: Barnes & Thornburg LLP
41 South High Street, Suite 3300
Columbus, Ohio 43215
Attention: Jordan Carr

To the Issuer: City of Fort Wayne, Indiana
Fort Wayne Community Development Division
Citizens Square
200 East Berry Street, Suite 320
Fort Wayne, Indiana 46802
Attention: Director
Telephone: (260) 427-5814

With a copy to: Lawrence S. Shine, Esq.
City of Fort Wayne, Indiana
Citizens Square
200 East Berry Street, 4th Floor
Fort Wayne, Indiana 46802
Telephone: (260) 427-1124
Email: lawrence.shine@cityoffortwayne.org

To the Bond Purchaser: Merchants Bank of Indiana
410 Monon Blvd.
Carmel, Indiana 46032
Attention: Philip Daubenmire
Telephone: _____
Email: _____

With a copy to:

Wooden & McLaughlin, LLP
One Indiana Square, Suite 1800
Indianapolis, Indiana 46204
Attention: John Hamilton
Telephone: _____
Email: _____

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Regulatory Agreement under seal on the date first above written.

CITY OF FORT WAYNE, INDIANA

By: _____
Thomas C. Henry, Mayor

ATTEST:

By: _____
Lana R. Keesling, City Clerk

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared Thomas C. Henry and Lana R. Keesling, the Mayor and City Clerk, respectively of the City of Fort Wayne, Indiana, who, after having been duly sworn, acknowledged the execution of the foregoing Regulatory Agreement for and on behalf of the City of Fort Wayne.

Witness my hand and Notarial Seal this _____ day of _____, 2020.

My commission expires:

(_____) Notary Public
My County of residence:

MERCHANTS BANK OF INDIANA

By: _____

Name: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of Merchants Bank of Indiana, who, after having been duly sworn, acknowledged the execution of the foregoing Regulatory Agreement for and on behalf of such bank.

Witness my hand and Notarial Seal this _____ day of _____, 2020.

My commission expires:

(_____) Notary Public

My County of residence:

Initial Certification _____
Annual Recertification _____
(Check One)

EXHIBIT "A"
(To Land Use Restriction Agreement)

CERTIFICATION OF TENANT ELIGIBILITY

RE: McCormick Place
City of Fort Wayne, Indiana

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment project for which application is made, all of whom are listed below:

1. Name of Members of the <u>Household</u>	2. Relationship to Head of <u>Household</u>	3. <u>Age</u>	4. <u>Social Security Number</u>	5. <u>Place of Employment</u>

6. The anticipated income of all the above persons during the 12-month period beginning this date,

(a) including all wages and salaries, over-time pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or the allowance for depreciation of capital assets); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse or other person whose

dependents are residing in the unit; and any earned income tax credit to the extent that it exceeds income tax liability, but

(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expense; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs.

And the total for each member is as follows:

<u>Name</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____

7. If any of the persons described above (or whose income or contributions was included in item 6) has any savings, stocks, bonds, equity in real property or other form of capital investment, provide:

(a) the total value of all such assets owned by all such persons:
\$ _____,

(b) the amount of income expected to be derived from such assets in the 12-month period commencing this date: \$ _____ and

(c) the amount of such income which is included in item 6:
\$ _____.

8. (a) Will all of the persons listed in column 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _____ No _____

(b) Is any such person an individual who is a student receiving assistance under title IV of the Social Security Act?

Yes _____ No _____

(c) Is any such person an individual who is a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act?

Yes _____ No _____

(d) Is any such person an individual who is a student who is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, state or local laws?

Yes _____ No _____

(e) Will all of the persons listed in column I who are full-time students be either:

(i) Single parents and their children, and such single parents and their children are not dependents of another individual?

Yes _____ No _____

(ii) Single parents and their children, and such single parents are not dependents of another individual, and such children are not dependents of another individual, other than a parent of such children?

Yes _____ No _____

(iii) Married and file a joint return ?

Yes _____ No _____

We acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on bonds issued to finance construction and/or rehabilitation of the Project for which application is being made. We consent to the disclosure of such information to the issuer of such bonds, the holders of such bonds, any bondholder acting on their behalf and any authorized agent of the Treasury Department or the Internal Revenue Service.

Head of Household

Other

Spouse

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____.

(NOTARY SEAL)

Notary Public in and for the State of _____.

My Commission Expires: _____

BORROWER'S STATEMENT: The family or individual(s) named in Section 1 of this Income Certification is (are) eligible under the provisions of the Land Use Restriction Agreement to live in a unit in McCormick Place, as defined in the Bond Purchase and Loan Agreement, dated as of _____, 2020, between McCormick Rehabilitation, LLC (the "Borrower") and the City of Fort Wayne, Indiana (the "Issuer"), and the anticipated annual income from paragraph 6 and, if applicable, from paragraph 7 will be \$ _____. In determining whether an individual or a family qualifies as a "lower-income" tenant, appropriate adjustments for the size of the family have been made. Thus, the family or individual(s):

_____ constitutes a Lower-Income Tenant.

_____ does not constitute a Lower-Income Tenant.

Signature of Borrower's Authorized Agent

Date

REQUEST FOR VERIFICATION OF EMPLOYMENT

PART I - REQUEST

1. Name and Address of Employer

2. Name and Address of Apt. Project

McCormick Place
2811 McCormick Avenue
Fort Wayne, Indiana

3. My signature below authorizes verification of my employment information

4. I certify that this verification has been sent directly to the employer and has not passed through the hands of the applicant or any other interested party.

Signature of Apartment Manager

5. Employer Identification #

6. Name and Address of Applicant

Date

PART II - VERIFICATION

7. Present Position: _____

8. Date of Employment: _____

9. Current Base Pay \$ _____

(check one)

____ Annual ____ Monthly ____ Hourly ____ Weekly

10. Average hours worked each week: _____

11. Year-to-Date Earnings \$ _____

Overtime _____ Commissions _____ Bonus _____

PART III - EMPLOYER CERTIFICATION

Signature

Name and Title

Date

SUBJECT: Income Certification - explanation of income certificates

In order for the revenue bonds issued to finance this multifamily housing project to qualify as tax-exempt under Sections 103 (a) and 142 (a) (7) of the Internal Revenue Code of 1986, as amended, either (i) 20 percent or more of the units in each multi-family residential rental project must be occupied by individuals whose income is 50 percent or less of the "area median gross income" or (ii.) 40 percent or more of the units must be occupied by individuals whose income is 60 percent or less of the area median gross income, depending on which test is elected. The Housing Authority of the City of Eatonton has elected the 40-60 test as its "applicable income limit." In determining whether an individual or family meets the "applicable income limit," appropriate adjustments for family size must be made. The purpose of the Income Certification is to assist in determining whether the occupants of a particular unit satisfy the "applicable income limit" requirements for federal tax purposes.

Sections 1, 2, 3 and 8 of the Certificate asks the occupants to list their names, relationship, ages, and whether they are students. Section 3 of the Certificate asks whether any of the students listed in Section 1 are able to file a joint return for federal income tax purposes (i.e., are they married). Section 6 of the Certificate asks each occupant to list his/her anticipated annual income, as defined. Finally, Section 7 asks the occupants to estimate the value of all "capital investments" (excluding "necessary items"), the estimated amount of income expected to be derived from these "capital investments", and the amount of income (that has already been included in Section 6 of the Certificate) expected to be derived from these "capital investments".

The information provided in Sections 1 through 8 of the Certificate should be sufficient to determine whether an individual(s) or the family meets the "applicable income limit" for federal income tax purposes.

The Income Tax Regulations provide that the occupants of a unit shall not be considered to be within the "applicable income limit" if all of the occupants are students no one of whom is entitled to file a joint return for federal income tax purposes. Thus, if Section 1 of the Certificate indicates that all of the occupants are students, and if Section 8 of the Certificate indicates that none of the students are able to file a joint return for federal income tax purposes, the occupants are not within the "applicable income limit" even if the occupants have no income. The foregoing limitation on student occupancy shall not apply if the household meets one of the following exceptions:

(i) At least one member of the household receives assistance under title IV of the Social Security Act (i.e., payments under AFDC or TANF).

(ii) At least one member of the household is currently enrolled in a job training program that receives assistance under the Job Training Partnership Act (JTPA) or is funded by a state or local public agency.

(iii) The head of household is a single parent, and such parent is not the dependent of another individual for tax purposes, and the child or children of such parent are not claimed as a dependent by someone other than the head of household parent.

(iv) The members of the household are married and eligible file a joint federal tax return.

(v) At least one household member was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act (Foster Care).

Assuming the occupants of the units are not all students, none of whom are entitled to file a joint return for federal income tax purposes or fit within the foregoing exceptions (i) through (v) above, the next step in filling out the Certificate is to determine the "anticipated annual income" of the occupants of the unit for the "certification year." The "certification year" is the twelve-month period of time that begins on the date the unit is first occupied. Thus, if the Certification is completed before the prospective occupants move in, the occupants should recertify the Certificate on the date they actually move into the unit so that you may determine whether they qualify as being within the "applicable income limit."

All payments from all sources received by the Family head (even if temporarily absent) and each additional member of the Family household excluding only the income from employment of children (including foster children) under the age of 18 years that are members of the household should be included in "anticipated annual income." For example, if a 17-year old son or daughter has a part- or full-time job that pays \$5,000 per year and has income from bank deposits of \$100 per year, only the \$100 should be listed. Sections 2 and 3 of the Certificate indicates the various relationships of the occupants in a household and their ages. Once the anticipated annual income in Section 6 of the Certificate has been totaled, you should determine whether the occupants have "capital investments", including capital investments of any children in the family, of more than \$5,000 listed in Section 1) of the Certificate. If the "capital investments" exceed \$5,000, "anticipated annual income" will be the sum of the amount totaled in Section 6 of the Certificate plus the greater of, if any, (a) the actual amount of income in Section 7(b), minus the amount of income enumerated in Section 7(c), if any, or (b) the "imputed amount of income" minus the amount of income enumerated in Section 7(c), if any. The "imputed amount of income" is the value of the assets listed in Section 7(a) of the Income Certification multiplied by the "current passbook savings rate" as determined by the United States Department of Housing and Urban Development. The "anticipated annual income" of Section 6 of the Certificate plus, if the capital investments exceed \$5,000, the necessary adjustments of Section 7 of the Certificate, as discussed in the preceding paragraph, should be entered in the blank in Section 6 of the Certificate. If the amount entered into the blank in Section 6 of the Certificate does not exceed (1) 42% of the median gross income for the area, in the case of an individual; (2) 48% of the median gross income for the area in the case of a family of two; (3) 54% of the median gross income for the area in the case of a family of three; or (4) 60% of the median gross income for the area in the case of a family of

four, then the occupants qualify as being within the “applicable income limit”. The appropriate line within action of the Certificate should be checked. (In the case of a family that has more than four members, you should consult the Issuer for the applicable percentages.) If the amount entered in the blank in Section 8 of the Certificate exceeds the applicable percent of median gross income in the area described in the previous sentence, the occupants do not qualify as being within the “applicable income limit”.

The “applicable income limit” requirement must be met for the “qualified project period.” Thus, 40 percent of the occupants at any one time must satisfy the “applicable income limit requirements” beginning at the time when 10 percent of the units are first occupied. For example, if a project contains 200 units, the “applicable income limit” restrictions need not be met until 20 units have been occupied. However, as soon as 20 units have been occupied, 8 units must actually be occupied by occupants whose income is 60 percent or less of the area median gross income, i.e., it is not sufficient that 8 units are reserved for individuals whose income is 60 percent or less of the area median gross income.

It should be noted that a unit occupied by an individual or family whose income at the commencement of such occupancy falls within the “applicable income limit” is treated as occupied by such an individual or family during their occupancy of such unit, even though their income subsequently exceeds the “applicable income limit,” until their income exceeds 140 percent of the “applicable income limit”, at which time such unit will cease to be treated as occupied by a tenant who meets the “applicable income limit.” Further, if a tenant has occupied a unit for a length of time and decides to add a roommate, the “anticipated annual income” of the new tenant when he/she first occupies the unit, and the “anticipated annual income” of the existing tenant when he/she first occupied the unit must be aggregated to determine whether the unit may continue to be certified as being occupied by individuals whose income falls within the “applicable income limit.” If, however, the occupants of a unit move into another unit in the project, the second unit will be treated as occupied by an occupant whose income falls within the “applicable income limit” only if the occupant qualified as being within the “applicable income limit” at the time of the move. Moreover, if a qualifying occupant moves out of a unit, such unit is treated as occupied by an individual or family whose income falls within the “applicable income limit” until reoccupied at which time the character of the unit shall be redetermined.

Finally, if in Section 5 of the Certificate an occupant is unable to provide an Employer verification because he/she is currently unemployed and the occupant is unable to provide a copy of his/her federal income tax return because a return was not filed, such occupant may not be included as meeting the “applicable income limit.”

EXHIBIT "B"
(To Land Use Restriction Agreement)

COMPLIANCE CERTIFICATE

To: City of Fort Wayne, Indiana, as Bond Issuer

Re: McCormick Place, City of Fort Wayne, Indiana

Pursuant to Section 3 of the Land Use Restriction Agreement, dated as of August 1, 2018 (the "Land Use Restriction Agreement"), the undersigned [_____] of McCormick Rehabilitation, L.L.C, an Indiana limited liability company (the "Borrower"), hereby certifies with respect to the operation and management of McCormick Place (the "Project"), that as of the date shown above:

- (1) The total number of Low-Income Tenants, as defined in the Land Use Restriction Agreement, is ___.
- (2) The number of units in the Project rented is ___ and the number of Available Units, as defined in the Land Use Restriction Agreement, is ___.
- (3) The percentage that the number of units occupied constitutes of the total number of units is ___%.
- (4) ___% of the Available Units are occupied by Low-Income Tenants.
- (5) The information contained in this report is true, accurate and correct as of the date hereof.
- (6) As of the date hereof, the Borrower is not in default under any covenant or agreement contained in the Land Use Restriction Agreement.
- (7) At least 40% of the Available Units in the Project were occupied by Low-Income Tenants as required in Section 4 of the Land Use Restriction Agreement.
- (8) All new tenants of the Project and all Low-Income Tenants whose incomes are subject to annual verification since the date of the immediately preceding report and certification have executed an income certification as required by Section 4 of the Land Use Restriction Agreement.
- (9) The lowest percentage of the Available Units in the Project that were occupied or treated as being occupied by Low-Income Tenants during the month preceding the date hereof was ___%.

- (10) The attached rent roll, which designates the date of initial occupancy, the number of bedrooms, the unit number, the tenant name, the household size (if applicable), and whether the tenant is a Low-Income Tenant, is true, accurate and correct.
- (11) As of the first day of the month hereof, the following is true, accurate and correct.

NEW TENANTS

Unit #___	Street <u>Address</u>	Tenant Name <u>Last, First</u>	Date In. <u>Occup.</u>	# <u>Bdr.</u>	# <u>HH</u>	Ten. <u>Type</u>	Annual <u>Income</u>	Rent <u>\$___</u>
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TENANT DELETIONS

Unit #___	Street <u>Address</u>	Tenant Name <u>Last, First</u>	Date In. <u>Occup.</u>	# <u>Bdr.</u>	# <u>HH</u>	Ten. <u>Type</u>	Annual <u>Income</u>	Rent <u>\$___</u>
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IN WITNESS WHEREOF, the undersigned has signed this Compliance Certificate as of

_____.

MCCORMICK REHABILITATION, LLC

By: _____
Authorized Borrower Representative

(to be accompanied by current income certifications as required by Section 4 of the Land Use Restriction Agreement)

(to be accompanied by exceptions, if any)

EXHIBIT "C"

**LEGAL DESCRIPTION FOR
MCCORMICK PLACE, FORT WAYNE, INDIANA (ALLEN COUNTY)**

The real property situated in the County of Allen, State of Indiana, described as follows:

LOTS 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 AND 66 IN HOMESTEADPARK AMENDED ADDITION TO THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA; EXCEPT THAT PART OF LOT 54 CONVEYED TO THE CITY OF FORT WAYNE FOR STREET PURPOSES BY A DEED RECORDED IN DEED RECORD 300, PAGE 171, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; EXCEPT LAND CONVEYED TO THE CITY OF FORT WAYNE FOR ALLEY PURPOSES ON THE 17TH DAY OF AUGUST, 1946, BY WORKERS' HOUSING CORP., AS SHOWN BY DEED RECORD 390, PAGE 581, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA;

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 AND 48 IN TOOLE'S EAST WAYNE ADDITION TO THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA, ACCORDING TO THE RECORDED PLAT THEREOF, RECORDED IN DEED RECORD 109, PAGE 256, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; ALSO THAT PORTION OF PITT STREET LYING BETWEEN LOTS 11 AND 12, 32 AND 33 IN SAID TOOLE'S ADDITION, VACATED UNDER DECLARATORY RESOLUTION 465-1923; EXCEPT FROM THE ABOVE LOTS, THE NORTH 12 FEET OF LOTS 23 AND 24 TOOLE'S ADDITION TO THE CITY OF FORT WAYNE, APPROPRIATED FOR THE WIDENING OF SCHELE AVENUE UNDER DECLARATORY RESOLUTION 295-1914; ALSO, EXCEPT A STRIP 25 FEET WIDE OFF THE EAST SIDE OF LOTS 38, 39 AND 40 IN TOOLE'S ADDITION TO THE CITY OF FORT WAYNE, APPROPRIATED FOR THE OPENING OF FENKER AVENUE UNDER DECLARATORY RESOLUTION 465-1923; EXCEPT LAND CONVEYED TO THE CITY OF FORT WAYNE FOR ALLEY PURPOSES ON THE 17TH DAY OF AUGUST, 1946, BY WORKERS' HOUSING CORP., AS SHOWN BY DEED RECORD 390, PAGES 581, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA;

COMMENCING AT THE NORTHEAST CORNER OF TWO ACRES OF LAND CONVEYED BY SIMON EDSALL TO ANNA M. MCMAKEN AND SYLVENIS S. COLEMAN ON NOVEMBER 22, 1893; THENCE WEST ALONG THE NORTH LINE OF SAID MCMAKEN'S AND COLEMAN'S LAND, 581.57 FEET TO THE EAST LINE OF FENKER AVENUE FOR A POINT OF BEGINNING; THENCE NORTH 72-10/12 FEET; THENCE EAST PARALLEL WITH MCMAKEN'S AND COLEMAN'S NORTH LINE, 132.84 FEET; THENCE SOUTH 72-10/12 FEET; THENCE WEST 132.07 FEET TO THE PLACE OF BEGINNING; COMMENCING 20-2/12 FEET NORTH OF THE NORTHEAST CORNER OF A PARCEL OF LAND CONVEYED BY SIMON EDSALL TO GEORGE MICHAEL ON MAY 25, 1889, CONTAINING TWO ACRES SITUATED IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 30 NORTH, RANGE 13 EAST; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID MICHAEL'S LINE, 449.5 FEET TO THE NORTHWEST CORNER OF THE INTERSECTION OF EDSALL AVENUE AND MCCORMICK STREET, IN THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA, FOR A POINT OF BEGINNING; THENCE WEST 130.76 FEET TO THE EAST LINE OF FENKER AVENUE; THENCE NORTH 125.5 FEET; THENCE EAST 132.07 FEET; THENCE SOUTH 125.5 FEET TO THE PLACE OF BEGINNING.

EXHIBIT "D"
(To Land Use Restriction Agreement)

**CERTIFICATE OF COMMENCEMENT
OF QUALIFIED PROJECT PERIOD**

1. The undersigned, on behalf of McCormick Rehabilitation, LLC, as borrower (the "Borrower"), under the Land Use Restriction Agreement among the City of Fort Wayne, Indiana, Merchants Bank of Indiana, as bondholder and the Borrower dated as of _____, 2020 (the "Land Use Restriction Agreement"), hereby certifies that 10% of the Available Units of McCormick Place were first occupied on _____, 20__.

2. This certificate is being provided to the Issuer and Bondholder pursuant to Section 3(m) of the Land Use Restriction Agreement.

3. All capitalized undefined terms used herein shall have the meanings given them in the Land Use Restriction Agreement.

MCCORMICK REHABILITATION, LLC

By: _____
Authorized Borrower Representative

EXHIBIT "E"
(To Land Use Restriction Agreement)

CERTIFICATE OF 50% OCCUPANCY

1. The undersigned, on behalf of McCormick Rehabilitation, LLC, as borrower (the "Borrower"), under the Land Use Restriction Agreement among the City of Fort Wayne, Indiana, Merchants Bank of Indiana, as bondholder, and the Borrower, dated as of _____, 2020 (the "Land Use Restriction Agreement"), hereby certifies that 50% of the residential units in McCormick Place were first occupied on _____, 20__.
2. This certificate is being provided to the Issuer and Bondholder pursuant to Section 3(n) of the Land Use Restriction Agreement.
3. All capitalized undefined terms used herein shall have the meanings given them in the Land Use Restriction Agreement.

MCCORMICK REHABILITATION, LLC

By: _____
Authorized Borrower Representative

EXHIBIT "F"
(To Land Use Restriction Agreement)

HUD RIDER TO RESTRICTIVE COVENANTS

This RIDER TO RESTRICTIVE COVENANTS is made as of _____, 2020, by McCormick Rehabilitation, LLC ("Borrower") and the City of Fort Wayne, Indiana ("Agency").

WHEREAS, Borrower has obtained financing from Merchants Capital Corp. ("Lender") for the benefit of the project known as McCormick Place ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of _____, 2020, and recorded in the Recorder's Office of Allen County, Indiana ("Records") on _____, 2020 as Document Number _____, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received tax exempt bonds from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

WHEREAS Borrower entered into that certain Land Use Restriction Agreement ("Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of _____, 2020 and recorded in the Records;

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Security Agreement in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Merchants Capital Corp., its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Agency acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency’s reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity. [or
- iv. [A HUD-approved collateral assignment of any HAP contract.]

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

AGENCY:

CITY OF FORT WAYNE, INDIANA

By: _____
Thomas C. Henry, Mayor

ATTEST:

By: _____
Lana R. Keesling, City Clerk

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared Thomas C. Henry and Lana R. Keesling, the Mayor and City Clerk, respectively of the City of Fort Wayne, Indiana, who, after having been duly sworn, acknowledged the execution of the foregoing Regulatory Agreement for and on behalf of the City of Fort Wayne.

Witness my hand and Notarial Seal this _____ day of _____, 2020.

My commission expires: _____
_____) Notary Public
My County of residence: _____

(Agency Signature page to HUD Rider to Restrictive Covenants)

EXHIBIT "G"
(To Land Use Restriction Agreement)

RAD REQUIREMENTS RIDER TO LAND USE RESTRICTION AGREEMENT

The following modifications are made to the Land Use Restriction Agreement (the "**Instrument**") that precedes this RAD Requirements Rider. The provisions hereof shall be deemed incorporated by reference in each document (each, a "**Loan Document**", and collectively, "**Loan Documents**") entered into by and among the City of Fort Wayne, Indiana (the "**Issuer**"), McCormick Rehabilitation, LLC, an Indiana limited liability company ("**Borrower**") and Merchants Bank of Indiana (the "**Bond Purchaser**") that, together with the Instrument, evidences, secures, or otherwise relates to the same financing transaction as the Instrument (the "**Financing Transaction**" or "**Loan**").

1. **Inconsistent Provisions.** If the provisions of this Rider are inconsistent with the provisions of the Loan Documents, the provisions of this Rider shall be controlling.

2. **Defined Terms.** Capitalized terms not defined herein are as defined in the Loan Documents.

3. **HUD Regulatory Documents.** By the acceptance, execution and/or recording of this Rider, the Bondholder acknowledges that _____ (___) dwelling units to be developed on the real property that is described in Exhibit A of the Instrument (the "**Property**") (such _____ (___) units, the "**RAD Housing Units**") will be assisted by funding provided through the Authority under the RAD Program under the Consolidated and Further Continuing Appropriations Act of 2012 (the "**CFCA Act**"). As such, the RAD Housing Units and the Bondholder's security interest in the RAD Housing Units, are subordinate and subject to (a) the CFCA Act, (b) that certain agreement executed by Borrower and the U.S. Department of Housing and Urban Development ("**HUD**") (the "**RAD Use Agreement**"), and that certain HUD Form - 52624 agreement executed by the Borrower and Authority with respect to conversion of public housing units to RAD units (the "**RAD Conversion Commitment**", and collectively with the CFCA Act and RAD Use Agreement, the "**RAD Requirements**"). If there is a conflict between a provision of the Instrument or any Loan Document that affects the RAD Units and a requirement in any RAD Requirement, then the RAD Requirement shall govern, except as such RAD Requirement may have been expressly waived in writing by HUD or the Authority, as appropriate.

4. **Subordination to RAD Use Agreement.** The Instrument is subordinate and subject to the RAD Use Agreement; and (ii) encumbers the leasehold estate of the Borrower.

5. **Notices.** Any notices of Borrower default provided pursuant to the Loan Documents shall also be provided to the Authority and HUD as follows:

If to Authority: City of Fort Wayne, Indiana
Fort Wayne Community Development Division
Citizens Square
200 East Berry Street, Suite 320
Fort Wayne, Indiana 46802

Attention: Director
Telephone: (260) 427-5814

And a copy to: Lawrence S. Shine, Esq.
City of Fort Wayne, Indiana
Citizens Square
200 East Berry Street, 4th Floor
Fort Wayne, Indiana 46802
Telephone: (260) 427-1124
email: Lawrence.shine@cityoffortwayne.org

If to HUD, to United States Department of Housing and Urban
Development
451 Seventh Street, S.W.
Washington, DC 20410
Attn: Office of the General Counsel

[End of Rider]

Prepared By/Return To:

**James T. Crawford, Jr.
KRIEG DEVAULT LLP
12800 North Meridian Street, Suite 300
Carmel, Indiana 46032**

**LEASEHOLD MORTGAGE, ASSIGNMENT,
SECURITY AGREEMENT AND FIXTURE FILING
(CITY SELLER LOAN TO DEVELOPER)**

by

**MCCORMICK REHABILITATION, LLC,
an Indiana limited liability company,
as Grantor,**

to and in favor of

**CITY OF FORT WAYNE, INDIANA
a municipal corporation duly organized and validly existing
under the laws of the State of Indiana,
as Grantee**

Grantor's Organizational Identification Number is 8233582.

THIS INSTRUMENT IS A CONSTRUCTION MORTGAGE WITHIN THE MEANING OF SECTION 334(h) OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE AND SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER THE INDIANA UNIFORM COMMERCIAL CODE. GRANTEE DESIRES THIS FIXTURE FILING TO BE INDEXED AGAINST THE RECORD OWNER OF THE REAL ESTATE DESCRIBED HEREIN.

**LEASEHOLD MORTGAGE, ASSIGNMENT,
SECURITY AGREEMENT AND FIXTURE FILING**

(CITY SELLER LOAN TO DEVELOPER)

This LEASEHOLD MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FIXTURE FILING (CITY SELLER LOAN TO DEVELOPER) is made as of the ____ day of _____, 2020, by MCCORMICK REHABILITATION, LLC, an Indiana limited liability company (herein referred to as "Grantor"), whose address is c/o Bear Development, LLC, 4011 80th Street, Kenosha, Wisconsin 53142, to and for the benefit of the CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (together with its successors, participants, and assigns, "Grantee"), whose address is 200 East Berry Street, Suite 32, Fort Wayne, Indiana 46802.

Recitals

Grantor has requested that Grantee make the Loan (as hereinafter defined) to Grantor. As a condition precedent to making the Loan, Grantee has required that Grantor execute and deliver this Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing to Grantee.

As a condition precedent to making the Loan, Grantor has entered into the Ground Lease (as hereinafter defined) with the Housing Authority (as hereinafter defined), and the Housing Authority has sold, assigned and conveyed all of its interest in the Improvements (as hereinafter defined), to the Grantor.

Grants and Agreements

Now, therefore, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Grantor, and in order to induce Grantee to make the Loan to Grantor, Grantor agrees as follows:

Article I
Definitions.

As used in this Leasehold Mortgage, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Accessories" means all fixtures, fittings, apparatus, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property and replacements thereof, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Grantor, which are now or hereafter attached to, affixed to, placed upon or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Grantor within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

“Additions” means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

“Claim” means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

“Company Agreement” means the Amended and Restated Operating Agreement of Grantor, dated as of _____, 2020.

“Condemnation” means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Contract of Sale” means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

“Default” means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Leasehold Mortgage.

“Encumbrance” means any Lien, easement, right of way, roadway (public or private), declaration, condition, covenant, or restriction (including any declaration, condition, covenant, or restriction in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

“Event of Default” means an event or circumstance specified in Article VI and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in Article VI.

“Expenses” means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Grantee in making, funding, administering or modifying the Loan, in protecting the security of this Leasehold Mortgage, in negotiating or entering into any “workout” of the Loan, or in exercising or enforcing any rights, powers and remedies provided in this Leasehold Mortgage or any of the other Loan Documents, including reasonable attorneys’ fees actually incurred, court costs, receiver’s fees, management fees and costs incurred in the completion, repair, maintenance and operation of, or taking possession of, or selling, the Property.

“Housing Authority” means the City of Fort Wayne Housing Authority, a municipal corporation duly organized and existing pursuant to the laws of the State of Indiana.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

“Ground Lease” means that certain Ground Lease Agreement dated as of _____, 2020 by and between Grantor, as lessee, and the Housing Authority, as lessor, and as further described in that certain Memorandum of Lease dated as of _____, 2020.

“Improvements” means all buildings, structures and replacements thereof and other improvements now or hereafter existing, erected or placed on the Land, including all plant, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

“Insurance Proceeds” means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

“Investor Member” means NEF Assignment Corporation and its permitted successors and assigns.

“Land” means the real property described in Exhibit “A” attached hereto and made a part hereof.

“Law(s)” means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“Lease(s)” means all leases, usufructs, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

“Leasehold Mortgage” means this Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Lien” means any mortgage, Leasehold Mortgage, pledge, security title, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

“Loan” means the loan from Grantee to Grantor, the repayment obligations in connection with which are evidenced by the Note.

“Loan Documents” means this Leasehold Mortgage, the Note, and any and all other documents which Grantor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Managing Member” means McCormick Manager, LLC, an Indiana limited liability company, the Grantor’s managing member.

“NEF” means NEF Assignment Corporation.

“Note” means the Promissory Note dated _____, 2020, in the original principal amount of Six Million Six Hundred Eighty-Five Thousand Two Hundred Eighteen and 00/100 Dollars (\$6,685,218) having a stated maturity date of _____, 2060 made by Grantor to the order of Grantee, as the same may from time to time be extended, renewed, amended, restated, supplemented or otherwise modified.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of this Leasehold Mortgage.

"Obligations" means all present and future debts, advances, obligations and liabilities of Grantor to Grantee arising pursuant to, and/or on account of, the provisions of this Leasehold Mortgage, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this Leasehold Mortgage or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to perform, observe and comply with all of the other terms, covenants and conditions, expressed or implied, which Grantor is required to perform, observe or comply with pursuant to this Leasehold Mortgage or any of the other Loan Documents; and (e) to pay and perform all future advances and other obligations that Grantor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Grantee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Leasehold Mortgage.

"Permitted Encumbrances" means (a) any matters set forth in Exhibit "B" attached hereto and made a part hereof, and in any policy of title insurance issued to Grantee and insuring Grantee's interest in the Property which are acceptable to Grantee as of the date hereof, (b) the Liens, security title and interests of this Leasehold Mortgage, and (c) any other Encumbrance that Grantee shall expressly approve in writing in its sole but reasonable discretion.

"Person" means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

"Personalty" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Grantor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Leasehold Mortgage, and Grantee shall have no responsibility for the performance of Grantor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols, but excluding federal and state tax credits) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, letter-of-credit rights, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, deposits or escrows for taxes, insurance or other matters, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all insurance policies held by Grantor with respect to the Property or Grantor's operation thereof; and (g) all money, instruments, chattel paper, or mortgages and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Grantor with Grantee related to the Property, including any such deposit account from which Grantor may from time to time authorize Grantee to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

"Proceeds" when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Grantor now has or hereafter acquires a leasehold interest in, to or for the use and benefit of the Real Property and/or the Personalty, pursuant to the Ground Lease (the "Leasehold Estate"), and all other property and rights used or useful in connection therewith, including all

Leases, all Rents, all Condemnation Awards, all Proceeds, all Contracts of Sale and all Refinancing Commitments.

“Property Assessments” means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner’s association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

“Real Property” means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, royalties, appurtenances, air space, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Grantor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Grantor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Grantor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

“Refinancing Commitment” means any commitment from or other agreement with any Person providing for the financing of the Property, some or all of the proceeds of which are intended to be used for the repayment of all or a portion of the Loan.

“Rents” means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

“State” means the state in which the Land is located.

“Taxes” means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Grantor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

“Transfer” means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, in whole or in part, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

Article II Granting Clauses: Condition of Grant.

Section 2.1 Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, Grantor (a) hereby irrevocably and unconditionally grants, bargains, sells, conveys, transfers and assigns to Grantee with power of sale and right of entry and possession, all estate, right, title and interest that Grantor now has or may later acquire in and to the Real Property; (b) grants to Grantee a security interest in the Personalty; (c) assigns to Grantee, and grants to Grantee a security interest in, all Condemnation Awards and all Insurance Proceeds; and (d) assigns to Grantee, and grants to Grantee a security interest in, all of Grantor’s right, title and interest in, but not any of Grantor’s obligations or liabilities under, all Contracts

of Sale and all Refinancing Commitments; to have and to hold to the use, benefit and behoof of Grantee forever, in fee simple, subject to the terms, provisions and conditions herein set forth. All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Such terms include any provisions in the Note and any other Loan Document which provide that the interest rate on one or more of the Obligations may vary from time to time. The definition of "Obligations" includes future advances.

Section 2.2 Absolute Assignment of Leases and Rents.

In consideration of the making of the Loan by Grantee to Grantor, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor absolutely and unconditionally assigns the Leases and Rents to Grantee. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Grantor to Grantee of all of Grantor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist, however, and so long as Grantor is not in default in the performance of any obligation, covenant or agreement contained in the Leases, Grantor shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default or a default by Grantor under the Leases) to collect, but not prior to accrual, all Rents. Grantor agrees to collect and hold all Rents in trust for Grantee and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

Section 2.3 Security Agreement and Financing Statement.

This Leasehold Mortgage creates a security interest in the Personalty (including all of the Property which is or is to become fixtures), and, to the extent the Personalty is not real property, this Leasehold Mortgage constitutes a security agreement from Grantor to Grantee under the Uniform Commercial Code of the State. In addition to all of its other rights under this Leasehold Mortgage and otherwise, Grantee shall have all of the rights of a secured party under the Uniform Commercial Code of the State, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law. Grantor hereby irrevocably authorizes Grantee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by Grantee to establish or maintain the validity, perfection and priority of the security interests granted in this Leasehold Mortgage.

Section 2.4 Fixture Financing Statement.

From the date of its recording, this Leasehold Mortgage shall be effective as a "fixture filing" with respect to all of the Property which is or is to become fixtures. The addresses of Grantor (Debtor) and Grantee (Secured Party) are set forth below. This Leasehold Mortgage is to be filed for recording with the Recorder's Office of Allen County, Indiana where the Land (including such fixtures) is located. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

McCormick Rehabilitation, LLC
c/o Bear Development, LLC
4011 80th Street
Kenosha, Wisconsin 53142
Attention: Adam Templer

(b) Name and Address of Secured Party:

City of Fort Wayne, Indiana
Fort Wayne Community Development Division
Citizens Square
200 East Berry Street, Suite 32
Fort Wayne, Indiana 46802
Attn: Director

(c) This document covers any portion of the Property now is or later may become a fixture attached to the Land.

(d) Pursuant to the Ground Lease and Memorandum of Lease, Debtor is the record ground lessee of the Property.

Section 2.5 Satisfaction and Cancellation of Leasehold Mortgage and Termination of Assignments and Financing Statements.

If and when Grantor has paid and performed all of the Obligations, and no further advances are to be made under the Loan Documents, Grantee will provide a satisfaction and cancellation of this Leasehold Mortgage and termination statements for filed financing statements, if any, to Grantor. Grantor shall be responsible for the recordation of such cancellation and satisfaction and the payment of any recording and filing costs. Upon the recording of such cancellation and satisfaction and the filing of such termination statements, the absolute assignments set forth in Section 2.2 shall automatically terminate and become null and void.

Article III
Representations and Warranties.

Grantor makes the following representations and warranties to Grantee:

Section 3.1 Title to Real Property.

Grantor owns leasehold title to the Real Property pursuant to the Ground Lease. Grantor has the right and authority to mortgage its Leasehold Estate interest in the Real Property and has mortgaged its Leasehold Estate interest in the Real Property pursuant to this Leasehold Mortgage, subject to Section 8.15. Grantor's interest in the Real Property is subject to no Encumbrances entered into by Grantor other than the Permitted Encumbrances.

Section 3.2 Title to Other Property.

Grantor obtained title to the Personalty from the Housing Authority, and Grantor's interest in the Personalty is not subject to any Encumbrance entered into by Grantor, other than the Permitted Encumbrances. None of the Leases or Rents is subject to any Encumbrance entered into by Grantor, other than the Permitted Encumbrances.

Section 3.3 Property Assessments.

The Real Property is assessed for purposes of Property Assessments as tax parcel number 93-4111-001. Grantor will never cause the Real Property to become subject to the Lien of Property Assessments, if any, levied or assessed against any property other than the Real Property.

Section 3.4 Independence of the Real Property.

No buildings or other improvements on property not covered by this Leasehold Mortgage rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence of such property, building or improvements; and none of the Real Property relies, or will rely,

on any property not covered by this Leasehold Mortgage or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5 Existing Improvements.

To Grantor's knowledge, the existing Improvements were constructed, and are being used and maintained, in accordance with all applicable Laws, including zoning Laws.

Section 3.6 Leases and Tenants.

To Grantor's knowledge, the Leases are valid and are in full force and effect, and Grantor is not in default under any of the terms thereof. Except as expressly permitted in the Loan Documents, Grantor has not accepted any Rents in advance of the time the same became due under the Leases and has not forgiven, compromised or discounted any of the Rents. Grantor has title to and the right to assign the Leases and Rents to Grantee, and no other assignment of the Leases or Rents has been granted, other than pursuant to other prior and subordinate leasehold deeds to secure debt of record.

Article IV
Affirmative Covenants.

Section 4.1 Obligations.

Grantor agrees to promptly pay and perform all of the Obligations, time being of the essence in each case.

Section 4.2 Property Assessments; Documentary Taxes.

Grantor (a) will promptly pay in full and discharge all Property Assessments, and (b) will furnish to Grantee, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. Grantor will promptly pay all stamp, documentary, recordation, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Loan, the Note, this Leasehold Mortgage or any of the other Loan Documents.

Section 4.3 Permitted Contests.

Grantor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as Grantor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such Property Assessments or enforcement of the Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) Grantee or the Property is not subject to any Claim as a result of such contest, and (d) Grantor provides assurances satisfactory to Grantee (including the establishment of an appropriate reserve account with Grantee) of its ability to pay such Property Assessments or comply with such Law in the event Grantor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Grantor shall indemnify and save Grantee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Grantor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

Section 4.4 Compliance with Laws.

Grantor will comply with and not violate, and cause to be complied with and not violated, all present and future Laws applicable to the Property and its use and operation.

Section 4.5 Maintenance and Repair of the Property.

Grantor, at Grantor's sole expense, will (a) keep and maintain Improvements and Accessories in good condition, working order and repair, (b) make all necessary or appropriate repairs and Additions to Improvements and Accessories, so that each part of the Improvements and all of the Accessories shall at all times be in good condition and fit and proper for the respective purposes for which they were originally intended, erected, or installed, and (c) commit or permit no waste.

Section 4.6 Additions to Security.

All right, title and interest of Grantor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further mortgage, conveyance, assignment or other act by Grantor, become subject to the Lien and security title of this Leasehold Mortgage as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the granting clauses hereof. Grantor agrees, however, to execute and deliver to Grantee such further documents as may be required by the terms of the Loan Documents.

Section 4.7 Subrogation.

To the extent permitted by Law, Grantee shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Grantee whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Grantee to pay or discharge any Lien.

Section 4.8 Leases.

(a) Except for leases to tenants in the normal course of Grantor's business and cable, laundry and similar leases and agreements in the normal course of Grantor's business, Grantor shall not enter into any Lease with respect to all or any portion of the Property without the prior written consent of Grantee.

(b) Grantee shall not be obligated to perform or discharge any obligation of Grantor under any Lease. The assignment of Leases provided for in this Leasehold Mortgage in no manner places on Grantee any responsibility for (i) the control, care, management or repair of the Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown).

(c) No approval of any Lease by Grantee shall be for any purpose other than to protect Grantee's security and to preserve Grantee's rights under the Loan Documents, and no such approval shall result in a waiver of a Default or Event of Default.

Article V
Negative Covenants.

Section 5.1 Encumbrances.

Grantor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Grantor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Grantee's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Grantee in its sole but reasonable discretion, Grantor shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that Grantor does so diligently and without prejudice to Grantee or delay in completing construction of the Improvements.

Grantor shall give Grantee Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property. Grantor agrees that it shall indemnify and hold Grantee harmless against any loss or liability, cost or expense, including any judgments, attorneys' fees and costs, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging priority over the lien of this Leasehold Mortgage.

Section 5.2 Transfer of the Property.

Grantor will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for certain Transfers of the Accessories expressly permitted in this Leasehold Mortgage). The Transfer of any membership interest in Grantor shall be deemed to be a prohibited Transfer of the Property unless such transfer is permitted as an Allowed Transfer as set forth below in this Section 5.2:

Grantee agrees that, subject to the terms and conditions set forth below, the following transfers of membership interests shall be allowed transfers (each, an "Allowed Transfer") and shall not constitute an Event of Default hereunder.

(a) Approved Transferee. For purposes hereof, "Approved Transferee" shall mean an Investor Member or any "Approved Affiliate" of an Investor Member. For purposes hereof, an Approved Affiliate means any limited partnership or limited liability company in which (i) NEF or an affiliate of NEF is a general partner or managing member, or (ii) the entity which is the general partner or managing member of such Approved Affiliate is a partnership or limited liability company with NEF or an affiliate of NEF as its general partner, it being the intention of the parties that NEF or an affiliate of NEF be ultimately liable as a general partner or managing member for the obligations of the Approved Affiliate.

(b) Transfer of Managing Member's Interest. In the event that (i) Managing Member is in default under the Company Agreement; (ii) Managing Member withdraws from Grantor in violation of the Company Agreement, and/or (iii) an Event of Default or unmatured Event of Default has occurred and is continuing hereunder, Investor Member or Bear Development may have rights under the Company Agreement to remove and replace such Managing Member. Investor Member and Bear Development shall be allowed to remove and replace any such Managing Member.

(c) Transfer Permitted by Company Agreement. Any transfer of membership interest permitted under the Company Agreement shall be an Allowed Transfer under this Leasehold Mortgage.

Section 5.3 Removal, Demolition or Alteration of Accessories and Improvements.

Except to the extent permitted by the following sentence, no Improvements or Accessories shall be removed, demolished or materially altered without the prior written consent of Grantee. Grantor may remove and dispose of, free from the Lien and security title of this Leasehold Mortgage, such Accessories as from time to time become worn out or obsolete, provided that, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Grantor shall be deemed to have subjected such Accessories to the Lien of this Leasehold Mortgage), or (b) so long as a prepayment may be made without the imposition of any premium pursuant to the Note, such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Grantee to be applied to the prepayment of the principal of the Loan.

Section 5.4 Additional Improvements.

Grantor will not construct any Improvements other than those presently on the Land without the prior written consent of Grantee. Grantor will complete and pay for, within a reasonable time, any Improvements which Grantor is permitted to construct on the Land. Grantor will construct and erect any

permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5 Restrictive Covenants, Zoning, etc.

Without the prior written consent of Grantee, Grantor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property, other than Permitted Encumbrances, all restrictive and regulatory agreements entered into in connection with prior or subordinate leasehold deeds to secure debt of record and the Extended Use Commitment pursuant to Section 42 of the Internal Revenue Code. Grantor (a) will promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property, and (b) will do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Article VI
Events of Default.

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Leasehold Mortgage:

Section 6.1 Payment Obligations.

Grantor fails to pay any of the Obligations when due, whether on the scheduled due date or upon acceleration, maturity or otherwise and not cured within applicable cure periods after written notice.

Section 6.2 Transfers.

Grantor Transfers, or contracts to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for Transfers of the Accessories expressly permitted under this Leasehold Mortgage). Except as permitted in Section 5.2, the Transfer of Managing Member's interest in Grantor or any managing member interest in Grantor, or the Transfer of the investor membership interests in Grantor (whether in one or more transactions during the term of the Loan) shall be deemed to be a prohibited Transfer of the Property constituting an Event of Default.

Section 6.3 Other Obligations.

Grantor fails to promptly perform or comply with any of the Obligations set forth in this Leasehold Mortgage (other than those expressly described in other Sections of this Article), and such failure continues uncured for a period of thirty (30) days after Notice from Grantee to Grantor, unless (a) such failure, by its nature, is not capable of being cured within such period, and (b) within such period, Grantor commences to cure such failure and thereafter diligently prosecutes the cure thereof, and (c) Grantor causes such failure to be cured no later than ninety (90) days after the date of such Notice from Grantee.

Section 6.4 Event of Default Under Other Loan Documents.

An Event of Default (as defined therein) occurs under the Note or other Loan Documents, or Grantor fails to promptly pay, perform, observe or comply with any obligation or agreement contained in any of the other Loan Documents (within any applicable grace or cure period).

Section 6.5 Change in Zoning or Public Restriction.

Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Loan Documents, would be in violation of such

zoning ordinance or regulation or public restriction, as changed, and the Property does not constitute a permitted legal non-conforming use.

Section 6.6 Default Under Leases.

Grantor fails duly to perform its obligations under any Lease, and such failure is not cured within the grace period, if any, provided in the Lease.

Section 6.7 Default Under Other Lien Documents.

A default occurs under any other mortgage, Leasehold Mortgage or security agreement conveying or encumbering the Property, including any Permitted Encumbrances, not cured within applicable cure periods after written notice.

Section 6.8 Execution; Attachment.

Any execution or attachment is levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Article VII
Rights and Remedies.

Upon the happening of any Event of Default, after Notice to the Investor Member and the Investor Member's lender, and an opportunity to cure within the time granted to Grantor, Grantee shall have the right, in addition to any other rights or remedies available to Grantee under any of the Loan Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

Section 7.1 Acceleration.

Grantee may accelerate any or all (as determined by Grantee in its sole discretion) of the Obligations, whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Grantor).

Section 7.2 Foreclosure: Power of Sale.

Grantee may sell and dispose of the Property at public auction, at the usual place for conducting sales at the courthouse in the county where the Property or any part thereof may be, to the highest bidder for cash, first advertising the time, terms and place of such sale by publishing a notice thereof once a week for four consecutive weeks (without regard to the actual number of days) in a newspaper in which sheriff's advertisements are published in said county, all other notice being hereby waived by Grantor and Lessor; and Grantee may thereupon execute and deliver to the purchaser at said sale a sufficient conveyance of the Property, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of sale, herein granted, depends, the said recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with; and Grantor hereby constitutes and appoints Grantee or its assigns agent and attorney-in-fact to make such recitals, sale and conveyance, and all of the acts of such attorney-in-fact are hereby ratified, and Grantor agrees that such recitals shall be binding and conclusive upon Grantor and that the conveyance to be made by Grantee, or its assigns, (and in the event of a deed in lieu of foreclosure, then as to such conveyance) shall be effectual to bar all right, title and interest, equity of redemption, including all statutory redemption, homestead, dower, curtesy and all other exemptions of Grantor, or its successors in interest, in and to the Property; at the election of Grantee, the Property, or any part thereof, may be sold in one parcel and as an entirety, or in such parcels, manner or order as Grantee in its sole discretion may elect, and one or more exercises of the powers herein granted shall not extinguish or exhaust the power unless the entire Property is sold or the Obligations satisfied in full, and Grantee, or its assigns, shall collect the proceeds of such sale, applying such proceeds as provided in Section 7.8 (in the event of

deficiency, Grantor shall immediately on demand from Grantee pay over to Grantee, or its nominee, such deficiency); and Grantor agrees that in case of a sale, as herein provided, Grantor or any Person in possession under Grantor shall then become and be tenants holding over, and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of Law applicable to tenants holding over; the power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are in addition to any and all other remedies which Grantee may have at law or in equity.

Section 7.3 Judicial Action.

Grantee shall have the right from time to time to sue Grantor for any sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other sums required to be paid under the terms of this Leasehold Mortgage, as the same become due), without regard to whether or not any of the other Obligations shall be due, and without prejudice to the right of Grantee thereafter to enforce any appropriate remedy against Grantor, including an action of foreclosure or an action for specific performance, for a Default or Event of Default existing at the time such earlier action was commenced.

Section 7.4 Collection of Rents.

Upon the occurrence of an Event of Default, the license granted to Grantor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Grantor. Grantee may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Grantee may, but shall not be obligated to, exercise and enforce any or all of Grantor's rights under the Leases. Without limitation to the generality of the foregoing, Grantee may notify the tenants under the Leases that all Rents are to be paid to Grantee, and following such notice all Rents shall be paid directly to Grantee and not to Grantor or any other Person other than as directed by Grantee, it being understood that a demand by Grantee on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Grantee without the necessity of further consent by Grantor. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Grantee instead of to Grantor, upon receipt of written notice from Grantee, without the necessity of any inquiry of Grantor and without the necessity of determining the existence or non-existence of an Event of Default. Grantor hereby appoints Grantee as Grantor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Grantor's name or in Grantee's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Grantee; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Grantee may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied first to pay all Expenses and next in reduction of the other Obligations. Grantor shall pay, on demand, to Grantee, the amount of any deficiency between (i) the Rents received by Grantee, and (ii) all Expenses incurred together with interest thereon as provided in the Loan Documents.

Section 7.5 Taking Possession or Control of the Property; Appointment of Receiver.

As a matter of right without bond and without regard to the adequacy of the security or the solvency of any Person liable for the Obligations, and to the extent permitted by Law without notice to Grantor, Grantee shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Property and the Rents, whether such receivership may be incidental to a proposed sale of the Property or otherwise, and Grantor hereby consents to the appointment of such a receiver and agrees that such receiver shall have all of the rights and powers

granted to Grantee pursuant to Section 7.4. In addition, to the extent permitted by Law, and with or without the appointment of a receiver, or an application therefor, Grantee may (a) enter upon, and take possession of (and Grantor shall surrender actual possession of), the Property or any part thereof, without notice to Grantor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude Grantor and its agents and employees therefrom.

Section 7.6 Management of the Property.

Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 7.5, Grantee or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and Additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, and (c) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Grantor (the costs of completing such Improvements shall be Expenses secured by this Leasehold Mortgage and shall accrue interest as provided in the Loan Documents). Grantee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as Grantee shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

Section 7.7 Uniform Commercial Code.

Grantee may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Upon the occurrence of any Event of Default, Grantor shall assemble all of the Accessories and make the same available within the Improvements. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Leasehold Mortgage at least ten (10) days before any sale or other disposition of the Personalty. Disposition of the Personalty shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for Grantee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties. Alternatively, Grantee may choose to dispose of some or all of the Property, in any combination consisting of both Personalty and Real Property, in accordance with the Law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Grantor agrees that such a sale of Personalty together with Real Property constitutes a commercially reasonable sale of the Personalty.

Section 7.8 Application of Proceeds.

Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article and any other proceeds received by Grantee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Obligations, in such manner and order as Grantee may elect.

Section 7.9 Grantee as Purchaser.

Grantee or, at Grantee's option, its designee, shall have the right to bid and become the purchaser at any sale held by Grantee, its substitute or successor, or by any receiver or public officer at any public

sale, and Grantee (or, as applicable, its designee) shall have the right to credit upon the amount of Grantee's (or, as applicable, its designee's) successful bid, to the extent necessary to satisfy such bid, all or any part of the Obligations, in such manner and order as Grantee may elect in its sole discretion.

Section 7.10 Other Remedies.

Grantee shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Grantor provided under the Loan Documents or by applicable Laws.

Section 7.11 Acknowledgement of Land Use Restrictive Covenants.

Grantee acknowledges that Grantor and the Indiana Housing and Finance Authority intend to enter into a Notice of Lien and Extended Use Agreement ("EUA") which constitutes the extended low-income housing commitment described in Section 42(h) (6)(B) of the Code. Grantee acknowledges and agrees that in the event of foreclosure of its interests under this Leasehold Mortgage and/or other Loan Documents or delivery by the Grantor of a deed in lieu thereof (collectively, the "Foreclosure"), the following rule contained in Section 42(h)(6)(E)(ii) of the Code shall apply:

For a period of three years from the date of Foreclosure, with respect to any unit that had been regulated by the EUA, (i) none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause, including but not limited to the tenants' ineligibility pursuant to Section 42 of the Code), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

This section shall apply notwithstanding the order of recording of the Leasehold Mortgage and the EUA, which has been or will be executed in connection with the allocation of federal low income housing tax credits to Grantor for the Property securing the Loan.

Article VIII
Miscellaneous.

Section 8.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Grantee as provided for in this Leasehold Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Leasehold Mortgage, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Grantee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Grantee of any or all such other rights, powers or remedies.

Section 8.2 No Waiver by Grantee.

No course of dealing or conduct by or among Grantee and Grantor shall be effective to amend, modify or change any provisions of this Leasehold Mortgage or the other Loan Documents. No failure or delay by Grantee to insist upon the strict performance of any term, covenant or agreement of this Leasehold Mortgage or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Grantee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Grantee shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Grantor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Grantee to comply with any request of Grantor or of any other Person to take action to foreclose this Leasehold Mortgage or otherwise enforce any of the provisions of this Leasehold Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Grantee, or (c) Grantee's extending the time of payment or

modifying the terms of this Leasehold Mortgage or any of the other Loan Documents without first having obtained the consent of Grantor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Grantee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Leasehold Mortgage or any of the other Loan Documents without in any way impairing or affecting the Lien and security title of this Leasehold Mortgage or the priority of this Leasehold Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Leasehold Mortgage. Grantee may resort to the security or collateral described in this Leasehold Mortgage or any of the other Loan Documents in such order and manner as Grantee may elect in its sole discretion.

Section 8.3 Waivers and Agreements Regarding Remedies.

To the full extent Grantor may do so, Grantor hereby voluntarily and knowingly:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, reinstatement, extension and notice of election to accelerate the Obligations;

(b) waives all rights to a marshaling of the assets of Grantor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshaling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Grantee under the terms of this Leasehold Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Grantee to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Grantor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

Section 8.4 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Leasehold Mortgage shall run with the Land and shall apply to and bind the successors and assigns of Grantor (including any permitted subsequent owner of the Property), and inure to the benefit of Grantee, its successors and assigns and to the successors in trust of Grantee.

Section 8.5 No Warranty by Grantee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Grantor or to be given to Grantee pursuant to this Leasehold Mortgage or any of the other Loan Documents, Grantee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Grantee.

Section 8.6 Amendments.

This Leasehold Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 8.7 Severability.

In the event any one or more of the provisions of this Leasehold Mortgage or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Leasehold Mortgage or any of the other Loan Documents, then and in either of those events, at the option of Grantee, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 8.8 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address specified below (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Leasehold Mortgage or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

If to Grantor:

McCormick Rehabilitation, LLC
c/o Bear Development, LLC
4011 80th Street
Kenosha, Wisconsin 53142
Attn: Adam Templer

With copy to:

NEF Assignment Corporation
10 South Riverside Plaza, Suite 1700
Chicago, Illinois 60606-3908
Attention: General Counsel

If to Grantee:

City of Fort Wayne, Indiana
Fort Wayne Community Development Division
Citizens Square
200 East Berry Street, Suite 32
Fort Wayne, Indiana 46802
Attn: Director

Section 8.9 Joint and Several Liability.

If Grantor consists of two (2) or more Persons, the term "Grantor" shall also refer to all Persons signing this Leasehold Mortgage as Grantor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Grantee may release, compromise, modify or settle with any of Grantor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Grantor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Grantor.

Section 8.10 Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Leasehold Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Leasehold Mortgage are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Leasehold Mortgage unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code of the State, as in effect from time to time, which is not defined in this Leasehold Mortgage shall have the meaning ascribed to that term in the Uniform Commercial Code of the State. If a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term shall have the meaning specified in Article 9.

Section 8.11 Governing Law.

This Leasehold Mortgage shall be construed, governed and enforced in accordance with the Laws in effect from time to time in the State.

Section 8.12 Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Grantor and Grantee with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Grantor and Grantee with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Grantee to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 8.13 Rider.

The Loan Rider attached as Exhibit A to the Note is incorporated herein by this reference. In the event of any conflict or inconsistency between this Leasehold Mortgage and the Loan Rider, the terms of the Loan Rider shall control.

Section 8.14 No Merger.

Except upon expiration of the term or upon termination of the Ground Lease pursuant to an express right of termination set forth in the Ground Lease, there shall be no merger of the Ground Lease or the Ground Lease leasehold interest held by Grantor with the fee estate of the Land or the Property, or any part thereof, by reason of the interests granted to Grantee by Grantor hereby, or the fact that the same person may acquire, own or hold, directly or indirectly (a) the Ground Lease, the Grantor's estate created

thereunder or any interest in the Ground Lease or the Grantor's estate (including the Improvements), and (b) the fee estate in the Land, the Property or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of the Grantee and Grantor, having an interest in (i) the Ground Lease or the Grantor's estate created thereunder, and (ii) such fee estate shall join in a written instrument effecting such merger and shall duly record the same.

Section 8.15 Subordination of Leasehold Mortgage.

(a) Notwithstanding anything else to the contrary in this Leasehold Mortgage, this Leasehold Mortgage is and shall be subject and subordinate in all respects to the liens and encumbrances contained in the following documents, all of which have been recorded in the Office of the Recorder of Allen County, Indiana prior to the recording of this Leasehold Mortgage (or for which a separate subordination agreement will be executed): (i) the RAD Use Agreement (defined below); (ii) Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement from Grantor to Merchants Capital Corp. securing a loan in the amount of Seven Million Four Hundred Sixty Thousand and 00/100 Dollars (\$7,460,000.00), and any other documents evidencing such indebtedness; (iii) the Land Use Restriction Agreement by and among the City of Fort Wayne, Indiana, Grantor, and Merchants Bank of Indiana; and (iv) the EUA.

(b) This Leasehold Mortgage shall at all times be subordinate to that certain Rental Assistance Demonstration Use Agreement dated on or about the date of this Leasehold Mortgage and to be filed in the Office of the Recorder of Allen County, Indiana (the "RAD Use Agreement"), and:

- (i) such subordination shall extend to and continue in effect with respect to any and all extensions, renewals, and modifications made to this Leasehold Mortgage;
- (ii) such subordination shall remain in effect notwithstanding any future amendment, modification or extension of the RAD Use Agreement;
- (iii) in the event of a conflict with the RAD Use Agreement and the Loan Documents, the RAD Use Agreement shall control; and
- (iv) the Loan Documents shall not be amended, supplemented or extended in any material respect without the prior written consent of HUD's Office of Recapitalization.

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EXHIBIT A

Legal Description

The land situated in the County of Allen, State of Indiana, described as follows:

LOTS 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 AND 66 IN HOMESTEADPARK AMENDED ADDITION TO THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA; EXCEPT THAT PART OF LOT 54 CONVEYED TO THE CITY OF FORT WAYNE FOR STREET PURPOSES BY A DEED RECORDED IN DEED RECORD 300, PAGE 171, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; EXCEPT LAND CONVEYED TO THE CITY OF FORT WAYNE FOR ALLEY PURPOSES ON THE 17TH DAY OF AUGUST, 1946, BY WORKERS' HOUSING CORP., AS SHOWN BY DEED RECORD 390, PAGE 581, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA;

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 AND 48 IN TOOLE'S EAST WAYNE ADDITION TO THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA, ACCORDING TO THE RECORDED PLAT THEREOF, RECORDED IN DEED RECORD 109, PAGE 256, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; ALSO THAT PORTION OF PITT STREET LYING BETWEEN LOTS 11 AND 12, 32 AND 33 IN SAID TOOLE'S ADDITION, VACATED UNDER DECLARATORY RESOLUTION 465-1923; EXCEPT FROM THE ABOVE LOTS, THE NORTH 12 FEET OF LOTS 23 AND 24 TOOLE'S ADDITION TO THE CITY OF FORT WAYNE, APPROPRIATED FOR THE WIDENING OF SCHELE AVENUE UNDER DECLARATORY RESOLUTION 295-1914; ALSO, EXCEPT A STRIP 25 FEET WIDE OFF THE EAST SIDE OF LOTS 38, 39 AND 40 IN TOOLE'S ADDITION TO THE CITY OF FORT WAYNE, APPROPRIATED FOR THE OPENING OF FENKER AVENUE UNDER DECLARATORY RESOLUTION 465-1923; EXCEPT LAND CONVEYED TO THE CITY OF FORT WAYNE FOR ALLEY PURPOSES ON THE 17TH DAY OF AUGUST, 1946, BY WORKERS' HOUSING CORP., AS SHOWN BY DEED RECORD 390, PAGES 581, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA;

COMMENCING AT THE NORTHEAST CORNER OF TWO ACRES OF LAND CONVEYED BY SIMON EDSALL TO ANNA M. MCMAKEN AND SYLVENIS S. COLEMAN ON NOVEMBER 22, 1893; THENCE WEST ALONG THE NORTH LINE OF SAID MCMAKEN'S AND COLEMAN'S LAND, 581.57 FEET TO THE EAST LINE OF FENKER AVENUE FOR A POINT OF BEGINNING; THENCE NORTH 72-10/12 FEET; THENCE EAST PARALLEL WITH MCMAKEN'S AND COLEMAN'S NORTH LINE, 132.84 FEET; THENCE SOUTH 72-10/12 FEET; THENCE WEST 132.07 FEET TO THE PLACE OF BEGINNING; COMMENCING 20-2/12 FEET NORTH OF THE NORTHEAST CORNER OF A PARCEL OF LAND CONVEYED BY SIMON-EDSALL TO GEORGE MICHAEL ON MAY 25, 1889, CONTAINING TWO ACRES SITUATED IN THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 7, TOWNSHIP 30 NORTH, RANGE 13 EAST; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID MICHAEL'S LINE, 449.5 FEET TO THE NORTHWEST CORNER OF THE INTERSECTION OF EDSALL AVENUE AND MCCORMICK STREET, IN THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA, FOR A POINT OF BEGINNING; THENCE WEST 130.76 FEET TO THE EAST LINE OF FENKER AVENUE; THENCE NORTH 125.5 FEET; THENCE EAST 132.07 FEET; THENCE SOUTH 125.5 FEET TO THE PLACE OF BEGINNING.

EXHIBIT B

Permitted Encumbrances

All matters of record and all leases and tenancies.

PROMISSORY NOTE

\$3,814,782.00

_____, 2020

FOR VALUE RECEIVED, MCCORMICK REHABILITATION, LLC, an Indiana limited liability company, having an address of c/o Bear Development, LLC, 4011 80th Street, Kenosha, Wisconsin 53142 (hereinafter referred to as "**Borrower**" or "**Maker**"), unconditionally promises to pay to the order of CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (hereinafter referred to as "**Issuer**"), at its offices having an address of 200 East Berry Street, Suite 320, Fort Wayne, Indiana 46802 or at such other place or to such other party as Issuer may from time to time designate, the principal sum of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00), or so much thereof as shall be advanced to or for the benefit of Maker, with interest on the principal balance from time to time remaining unpaid as provided for in this Promissory Note (hereinafter referred to as this "**Note**").

TERMS, PROVISIONS AND CONDITIONS

1. Definitions. In addition to the words and phrases defined elsewhere in this Note, the following terms shall have the meaning indicated when capitalized and used herein:

"**Adjusted LIBOR**" shall mean, for each LIBOR Interest Period, a rate per annum determined by Issuer to be equal to a fraction, (a) the numerator of which is equal to LIBOR for such LIBOR Interest Period, and (b) the denominator of which is equal to the sum of (i) 1 minus (ii) the Reserve Requirement (if any) for such LIBOR Interest Period. Notwithstanding anything expressed or implied herein to the contrary, the Adjusted LIBOR shall never be deemed to be less than zero percent (0.0%) per annum.

"**Applicable Rate**" shall mean the rate of interest which the terms of this Note expressly provide shall be in effect from time to time with respect to the principal outstanding under this Note.

"**Basis Points**" shall mean an arithmetic expression of a percentage measured in hundredths of a percent (i.e. 50 Basis Points equals one half of one percent).

"**Bond Purchase and Loan Agreement**" shall mean that certain Bond Purchase and Loan Agreement dated of even date herewith, executed by and among Borrower, Issuer and Bondholder, and/or any direct or remote agreement amending or restating such Bond Purchase and Loan Agreement, as from time to time amended or modified.

"**Bondholder**" shall mean Merchants Bank of Indiana.

"**Business Day**" shall mean any day of the week (but not a Saturday, Sunday or holiday) on which the offices of Issuer are open to the public for carrying on substantially all of Issuer's

business functions and on which banks in London, England settle payments and on which banks in London, England settle payments. Unless specifically referenced in this Note as a Business Day, all references to "days" shall be to calendar days.

"Consequential Loss" shall mean, with respect to the termination or cancellation of the LIBOR-Based Rate in effect for the principal balance outstanding under this Note pursuant to the provisions of this Note earlier than the last applicable Eurodollar Business Day of the LIBOR Interest Period, any loss, expense, penalty or premium incurred by Issuer on account of such premature termination or cancellation of such LIBOR-Based Rate.

"Construction Rate" shall mean the LIBOR-Based Rate.

"Default Rate" shall mean the rate of interest to take effect under this Note during any period in which an Event of Default exists hereunder, such rate of interest shall be equal to a rate or rates per annum which is Four percent (4%) above the interest rate or rates otherwise applicable under this Note, not to exceed, however, the Maximum Rate.

"Event of Default" shall mean the occurrence of any event or condition under Section 11 of this Note and the expiration of any applicable cure period specified therein.

"Eurodollar Business Day" shall mean a day on which transactions in U.S. dollars are conducted in the Interbank Eurodollar market in London, England at 11:00 o'clock a.m. London time and on which Issuer is open to conduct normal banking business in Carmel, Indiana.

"Governmental Authority" shall mean any foreign governmental authority, the United States of America, any State of the United States and any political subdivision of any of the foregoing and any agency, department, commission, board or bureau or court which has jurisdiction over Issuer or Maker or their respective assets or property, including the loan evidenced hereby, or is charged with the interpretation or administration of any law, rule, regulation or treaty which affects the ability of Issuer to establish a loan.

"HUD Loan" shall mean that certain loan in the amount of Seven Million Four Hundred Sixty Thousand and 00/100 Dollars (\$7,460,000.00) from Merchants Capital to Borrower and insured by the Secretary of Housing and Urban Development under Section 221(d)(4) of the National Housing Act of 1934, as amended.

"HUD Mortgage" shall mean that certain Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement dated as of _____, 2020 and executed by Borrower in favor of Merchants Capital.

"Investor Member" shall mean NEF Assignment Corporation and its permitted successors and assigns.

"LIBOR" shall mean for each LIBOR Interest Period, as of the applicable date and time for determination provided herein, a per annum rate of interest equal to the rate which Issuer determines, in its sole discretion, is generally the market rate offered by leading banks in the London interbank market as of 11:00 a.m., London time, two (2) Eurodollar Business Days prior to the first day of the applicable LIBOR Interest Period, for United States dollar deposits in the

amount of the stated principal amount of this Note having a term coinciding with such LIBOR Interest Period, adjusted for any reserve requirements and any subsequent costs arising from a change in government regulation [such rate shall be expressed as a percentage rounded, if necessary, to the next highest multiple of 1/100 of a percent if the rate is not such a multiple]. Issuer may make such determination based on the rate reported by any publicly available source of market data selected by Issuer that, in its sole judgment, accurately reflects such rate offered by leading banks in the London interbank market, including without limitation any of the following sources which Issuer may select to use in its sole discretion: (i) Reuters Screen LIBOR01 Page, (ii) the Wall Street Journal, "Money Rates" table (and currently defined as the British Bankers' Association average of interbank offered rates for dollar deposits in the London market), (iii) Bloomberg Financial Markets, (iv) such other comparable financial information reporting service used by Issuer at the time such rate is determined, or (v) in the event (i) through (iv) are not available or in effect at any point in time, a comparable rate selected by the holder of this Note.

"LIBOR-Based Rate" shall mean, for each LIBOR Interest Period, a per annum rate of interest equal to the sum of (a) Adjusted LIBOR, plus (b) the LIBOR Margin.

"LIBOR Interest Period" shall mean a period extending from (and including) the tenth (10th) day of each calendar month during which any portion of the principal balance of this Note is outstanding and ending on (and including) the ninth (9th) day of the following calendar month, provided however, if the effective date of this Note occurs other than on the tenth (10th) day of a calendar month, then the initial LIBOR Interest Period shall be the period which begins with the effective date of this Note and ends on (and including) the ninth (9th) day of the calendar month following the month in which the effective date of this Note occurs.

"LIBOR Margin" shall mean two hundred twenty-five (225) Basis Points.

"Loan Document" and **"Loan Documents"** shall have the meaning set forth in the Bond Purchase and Loan Agreement.

"Maturity Date" shall mean the earliest to occur of (i) the Original Maturity Date, or (ii) the date on which the outstanding principal balance of this Note otherwise becomes due and payable, whether by declaration or acceleration upon the occurrence of an Event of Default or by other circumstances.

"Maximum Rate" shall mean the maximum rate of interest permitted by applicable law to be in effect from time to time under this Note.

"Merchants Capital" shall mean Merchants Capital Corp., an Indiana corporation.

"Operating Agreement" shall mean the Amended and Restated Operating Agreement of Borrower by and among the Investor Member and McCormick Manager, LLC, an Indiana limited liability company (the "Managing Member"), dated as of _____, 2020.

"Original Maturity Date" shall mean June 1, 2022.

"Project" shall have the meaning set forth in the Bond Purchase and Loan Agreement.

"Prime Base Rate" shall mean the Prime Rate as of the date Issuer elects to replace the LIBOR-Based Rate with the Prime Equivalent Rate in accordance with Section 2.5 of this Note.

"Prime Differential Amount" shall mean the positive difference between the Prime Base Rate and the Prime Rate, as of the date of any change in the Prime Rate.

"Prime Equivalent Rate" shall mean, as of any date of determination of a Prime Differential Amount, (i) in the event that the Prime Rate is equal to or greater than the Prime Base Rate, the Prime Equivalent Rate shall equal the Last LIBOR-Based Rate plus the Prime Differential Amount, or (ii) in the event that the Prime Rate is less than the Prime Base Rate, the Prime Equivalent Rate shall equal the Last LIBOR-Based Rate minus the Prime Differential Amount.

"Prime Rate" shall mean a per annum rate of interest equal to the rate which Issuer determines, in its sole discretion, is approximately the average base rate charged by large U.S. money center commercial banks on corporate loans. Issuer may make such determination based on the rate reported by any publicly available source of market data selected by Issuer that, in its sole judgment, accurately reflects the approximate average base rate charged by large U.S. money center commercial banks on corporate loans, including without limitation any of the following sources which Issuer may select to use in its sole discretion: (i) the Wall Street Journal, "Money Rates" table, (ii) Bloomberg Financial Markets, or (iii) such other comparable financial information reporting service used by Issuer at the time such rate is determined.

"Regulatory Change" shall mean, with respect to Issuer, any change after the effective date of this Note in federal, state or foreign law or regulations (including Regulation D) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks including Issuer of or under any federal, state or foreign law or regulations (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any Governmental Authority or monetary authority charged with the interpretation or administration thereof.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System from time to time in effect and shall include any successor or other regulation relating to reserve requirements applicable to member banks of the Federal Reserve System.

"Regulation K" shall mean Regulation K of the Board of Governors of the Federal Reserve System from time to time in effect and shall include any successor or other regulation relating to reserve requirements applicable to member banks of the Federal Reserve System.

"Reserve Requirement" shall mean, for any LIBOR Interest Period, the average maximum rate (expressed as a percentage) at which reserves (including, without limitation, any basic, marginal, supplemental or emergency reserves) are required by the Board of Governors of the Federal Reserve System (or any successor) to be maintained by Issuer during such LIBOR Interest Period under Regulation D with respect to "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall include any other reserves required to be maintained by Issuer by reason of any Regulatory Change with respect to (i) any category of liabilities that includes deposits by reference to which LIBOR

is to be determined as provided in the definition of "LIBOR" in this Note or (ii) any category of extensions of credit or other assets that includes loans accruing interest at a LIBOR-Based rate. Each determination by Issuer of a Reserve Requirement, in the absence of manifest error, shall be conclusive and binding.

The meanings given to a term defined herein shall apply equally to the singular and plural forms thereof.

2. Interest Rate.

2.1 Computation of Interest. The principal balance of this Note from time to time outstanding shall bear interest at the Construction Rate unless and except to the extent that the Default Rate is applicable in accordance with the terms and provisions of this Note.

2.2 Application of Default Rate of Interest. Notwithstanding anything expressed or implied herein to the contrary, the principal balance of this Note from time to time outstanding shall bear interest at the Default Rate during the following times: (i) during any period in which an Event of Default exists hereunder, and (ii) from and after the Maturity Date.

2.3 360 Day Year. Interest shall be calculated daily on the basis of a 360-day year applied to the actual number of days in each interest-payment period.

2.4 Limited to Maximum Rate. Notwithstanding anything expressed or implied herein to the contrary, if at any time the Applicable Rate exceeds the Maximum Rate, then the rate of interest on this Note shall be limited to the Maximum Rate, but any subsequent reduction in the Applicable Rate shall not reduce the rate of interest on this Note below the Maximum Rate until the total amount of interest accrued on this Note equals the amount of interest which would have accrued if the Applicable Rate had at all times been in effect.

2.5 Use of Prime Equivalent Rate. If, with respect to any LIBOR Interest Period, Issuer determines (which determination, in the absence of manifest error, shall be conclusive and binding) that:

(a) for any reason, Issuer is unable, through its customary general practices, to obtain a quote offered by prime banks in the Interbank Eurodollar market in London, England, for deposits in U.S. dollars in the appropriate amounts for the appropriate period; or

(b) for any reason, it is impracticable, unlawful or impossible for Issuer to utilize LIBOR for setting the interest rate from time to time in effect under this Note;

and Issuer gives notice thereof to Borrower, then the obligation of Issuer to accept or implement the LIBOR-Based Rate shall be automatically canceled and terminated with respect to any new LIBOR Interest Period and the principal balance of this Note from time to time outstanding shall bear interest at the Prime Equivalent Rate, unless and except to the extent that the Default Rate is applicable in accordance with the terms and provisions of this Note.

2.6 If any applicable law, treaty, rule or regulation (whether domestic or foreign) now or hereafter in effect, or any Regulatory Change therein, or any interpretation or change in interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance by Issuer with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority shall:

(a) subject Issuer (or makes it apparent that it is subject) to any tax (including without limitation any U.S. interest equalization or other tax, however named), levy, impost, duty, charge, fee (collectively "Taxes"), or any deduction or withholding for any Taxes on or from any payment due from Borrower with respect to any portion of this Note, other than income and franchise taxes of the United States and its political subdivisions imposed on Issuer;

(b) change the basis of taxation of payments due from Borrower to Issuer under any portion of this Note (other than by a change in the rate of taxation of the overall net income of Issuer or franchise taxes imposed on Issuer);

(c) impose, modify, increase or deem applicable any reserve requirement (but excluding that portion of any reserve requirement included in the calculation of the Reserve Requirement), special deposit requirement or similar requirement (including, but not limited to, state law requirements, Regulation D and Regulation K) imposed or deemed applicable by any Governmental Authority charged with the interpretation or administration of such requirements or deemed applicable against foreign assets held by or against loans made by Issuer or against any other funds, obligations or other property owned or held by Issuer;

(d) affect the amount of capital required or expected to be maintained by Issuer or any corporation controlling Issuer and Issuer determines the amount of capital required is increased by or based upon the existence of this Note or its obligation to make the loans evidenced hereby; or

(e) impose on Issuer any other condition regarding any portion of this Note;

and the result of any of the foregoing is to increase (by an amount deemed by Issuer to be material) the cost to Issuer of having the LIBOR-Based Rate applicable to any portion of this Note (or in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on Issuer's capital taking into account Issuer's customary policies with respect to capital adequacy), or to reduce the amount of principal or interest or other sum received or receivable by Issuer (by an amount deemed by Issuer to be material), then upon five (5) days' written notice from Issuer to Borrower, Borrower shall pay to Issuer, from time to time as specified by Issuer, such additional amount or amounts as will compensate Issuer for such increased cost or reduced receipts or receivables. Issuer's determination of the amount of any such increase in cost or reduction in amounts received or receivable, in the absence of manifest error, shall be conclusive and binding. Any certificate of Issuer delivered to Borrower setting forth the determination of any additional amounts payable pursuant to this Section shall be conclusive and binding, absent manifest error.

as to such determination and amount. The obligations, agreements and covenants of Borrower contained in this Section shall survive the termination of this Note and the payment in full of all indebtedness evidenced by this Note.

3. Payments. Principal and interest shall be payable as follows:

(a) Interest Payments. Interest accruing from the effective date of this Note, through and including the ninth (9th) day of the calendar month following the effective date hereof shall be payable in advance on the effective date of this Note; thereafter accrued and unpaid interest shall be payable commencing on the tenth (10th) day of the second calendar month following the effective date of this Note and continuing on the tenth (10th) day of each calendar month thereafter until this Note is paid in full; and

(b) Principal Payments. Principal payments shall be made as follows:

(i) Within ten (10) days of Investor Member's payment of its second capital contribution pursuant to Section 3.2 of the Operating Agreement, Maker shall make a partial principal payment on the outstanding principal balance of this Note on the date of such payment, and within ten (10) days of Investor Member's payment of its third capital contribution pursuant to Section 3.2 of the Operating Agreement, Maker shall make a principal payment in the amount of the outstanding principal balance of this Note on the date of such payment; and

(c) Payment on Maturity. The entire unpaid principal balance and all accrued interest shall be due and payable on the Maturity Date.

If the due date of any payment under this Note shall be a day that is not a Business Day, then the due date shall be extended to the next succeeding Business Day and such extended time shall be included in the computation of interest. All amounts payable from time to time under this Note, including without limitation principal and interest payments, shall be due and payable in immediately available funds on the date each such payment is due at the principal office of Issuer before the time of day which Issuer from time to time designates as its cut-off time for considering deposits received as being received on such date (hereinafter referred to as the "**Cut-Off Time**"). In the event any payment is received by Issuer after the Cut-Off Time on any day, such payment shall be deemed to be received as of the start of business on the next Business Day and, to the extent interest accrues on such amounts paid, interest shall continue to accrue until the next Business Day.

4. Prepayments. Provided Maker has paid in full all accrued interest, fees and other amounts then due and payable to Issuer, Maker shall have the privilege of prepaying this Note in full on any Business Day, after at least fifteen (15) Business Days prior written notice to Issuer without any prepayment premium or penalty. In order to exercise such option to prepay this Note, in whole or in part, Borrower must cause funds to be deposited with Issuer to pay the principal of and accrued interest on the portion of the Note to be prepaid and the corollary redemption of the Bonds (as such term is defined in the Bond Purchase and Loan Agreement). Any amount so paid which is less than the full unpaid principal amount of the Bonds shall be credited against the

installment or installments of principal due on the Note corresponding to the maturity of the Bonds being redeemed.

5. Cost of Collection and Additional Default Rate Interest. In addition to all other sums payable under this Note, Maker shall pay to Issuer (a) reasonable attorneys' fees incurred by Issuer in connection with (i) the protection of any security for or rights arising in connection with this Note, (ii) the enforcement of any provision contained in this Note or in any document executed in connection herewith, or (iii) the collection of any indebtedness evidenced hereby or arising in connection herewith (including without limitation reasonable attorneys' fees incurred by Issuer in connection with any bankruptcy, reorganization, receivership or other proceeding affecting creditor's rights and involving a claim under this Note or any document executed in connection herewith), (b) costs of collection, (c) interest at the Default Rate on all accrued interest which is not paid when due, and (d) interest at the Default Rate on all fees, costs and expenses incurred by Issuer which are to be reimbursed by Maker pursuant to this section, from the date demand for payment is made by Issuer. If, after the occurrence of an Event of Default hereunder, Issuer employs an attorney or attorneys to protect Issuer's rights or remedies arising in connection with this Note or any security for this Note, then Maker shall pay to Issuer upon demand all reasonable attorneys' fees and expenses incurred by Issuer in connection with such Event of Default, regardless of whether any action is actually commenced against Maker by reason of any such Event of Default.

6. Valuation and Appraisalment Laws. All principal, interest and other amounts payable under or with respect to this Note shall be payable without relief from valuation and appraisalment laws.

7. Late Charge. Maker shall pay a "late charge" for the purpose of defraying expense incident to handling with respect to any monthly installment of interest and/or principal, or portion thereof, payable hereunder not paid within ten (10) days after the date when first due, at the rate of five cents (5¢) for each One and 00/100 Dollar (\$1.00) so overdue, with a minimum charge of Twenty-Five and 00/100 Dollars (\$25.00) and an additional "late charge" for purposes of defraying expense incident to handling on the first day of each successive calendar month thereafter at the rate of five cents (5¢) for each One and 00/100 Dollar (\$1.00) so overdue, with a minimum charge of Twenty-Five and 00/100 Dollars (\$25.00) per month until any such installment, or portion thereof, has been paid in full. Maker acknowledges and agrees that any expenses and damages that Issuer might incur as a result of any payment not paid within ten (10) days after the date when first due will be extremely difficult and impractical to ascertain and agrees that the late charge imposed by this section is a reasonable estimate of such expenses and damages and shall not be deemed to be a penalty. Notwithstanding anything contained herein to the contrary, no "late charge" shall be payable with respect to the final payment due upon the maturity, or the early acceleration, of this Note. Provided, however, nothing herein contained shall be construed as a waiver by Issuer of its option to declare a default if any payment of any monthly installment of interest and/or principal, or portion thereof, is not made when due, and the assessment of a late charge shall not affect the right of Issuer to increase the rate of interest as herein provided on all amounts not paid when due.

8. Security. This Note is given to evidence indebtedness of Maker arising in connection with the terms, provisions and conditions of the Bond Purchase and Loan Agreement.

This Note shall be entitled to the benefits of and is secured by (a) a certain Collateral Assignment of Equity Payments of even date herewith executed by Borrower to Bondholder, as from time to time amended or modified, (b) a certain Collateral Assignment of Member Interest of even date herewith executed by Managing Member to Bondholder, as from time to time amended or modified, (c) any other security agreements or documents, as from time to time amended or modified, executed in connection with the Bond Purchase and Loan Agreement, and (d) any funds of Maker on deposit with Bondholder. Notwithstanding anything contained herein to the contrary, until such time as the HUD Loan is paid in full, the Loan shall be non-recourse against the Project and Borrower, and Issuer shall have no claim against the Project, proceeds of the HUD Loan or any reserve or deposit made with Merchants Capital in connection with the HUD Loan.

9. Application of Payments. Each payment hereunder shall be applied to the payment of accrued and unpaid interest, the principal balance outstanding under this Note and any other sums payable to Issuer in connection with this Note or any documents entered into by Maker in connection herewith, in such order and in such amounts as Issuer shall determine in its sole discretion. Such order may include, without limitation, the application first to any advance made by Issuer under the terms of any instruments securing this Note which has not been repaid, then to any costs of collection or other costs or expenses for which Maker is obligated to reimburse Issuer pursuant to this Note or pursuant to any document executed in connection with this Note, then to any late charges due and owing under this Note, then to any accrued and unpaid interest, and then to the principal balance outstanding. All amounts advanced by Issuer (in addition to the principal advanced under this Note) pursuant to applicable provisions of the Bond Purchase and Loan Agreement or any other document entered into by Maker in connection with this Note, together with interest at the Default Rate or other charges as provided therein, shall be added to and immediately due and payable under this Note. In the event any such advance is not so repaid by Maker, Issuer may, at its option, first apply any payments received hereunder to repay such advances together with any interest thereon or other charges, and the balance, if any, shall be applied toward the payment of interest and principal then due hereunder in such order as Issuer shall determine, in its sole discretion.

10. Advancements. All advancements of the indebtedness evidenced by this Note shall be subject to and governed by the terms and provisions of the Bond Purchase and Loan Agreement and other Loan Documents.

11. Events of Default. The occurrence of an "Event of Default" under the Loan Agreement shall constitute an event of default under this Note and each such occurrence is herein referred to as an "**Event of Default**". Accordingly, the provisions of the Loan Agreement are by reference incorporated herein and made a part hereof. For purposes of clarification, an "Event of Default" under the Loan Agreement shall mean the occurrence of any event or circumstance that would constitute an "Event of Default" as that term is defined in the Loan Agreement.

12. Remedies. Upon the occurrence of an Event of Default, all of the indebtedness evidenced by this Note and remaining unpaid, including without limitation the entire unpaid principal balance, any accrued and unpaid interest, all prepayment premiums payable hereunder, if any, and all other amounts payable under this Note, shall, at the option of Issuer and without demand or notice, become immediately due and payable, anything contained in this Note to the contrary notwithstanding. Issuer may exercise this option to accelerate regardless of any prior

forbearance. Issuer, at its option, shall have the right to perform all acts necessary for the performance, sale, collection and enforcement of any collateral securing this Note and/or any other agreement or document executed in connection herewith. Enforcement by Issuer of any security for Maker's obligations under this Note shall not constitute an election by Issuer of remedies so as to preclude the exercise of any other right or remedy available to Issuer. In addition to all other remedies available to Issuer after an Event of Default hereunder, Issuer may, without demand or notice of any kind, apply any funds of Maker on deposit with or in the possession of Issuer toward the payment of any indebtedness outstanding under this Note, in such manner of application as Issuer may choose. All rights and remedies of Issuer herein specified are cumulative and in addition to, not in limitation of, any rights and remedies which Issuer may have by law or at equity.

13. [This section is intentionally left blank].

14. [This section is intentionally left blank].

15. Waiver and Consent. Presentment, notice of intent to accelerate, notice of acceleration, notice of dishonor and demand, valuation and appraisal, protest and diligence in collection and bringing suit are hereby severally waived by Maker and each endorser or guarantor, each of whom further consents that the time for the payment of this Note, or of any installment hereunder, may be extended from time to time without notice by Issuer. All guarantors, sureties and accommodation parties of this Note hereby waive generally and specifically, to the extent waivable, any and all rights that they may have, by contract, at equity or under any state or federal law, to any defense, offset, claim in recoupment or counterclaim not specifically set forth herein or in the Loan Documents.

16. No Waiver. No waiver of any default or failure or delay to exercise any right or remedy by Issuer shall operate as a waiver of any other default or of the same default in the future or as a waiver of any right or remedy with respect to the same or any other occurrence. The acceptance by Issuer of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Issuer's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment.

17. Usury Laws. It is the intention of the parties hereto to comply strictly with all applicable usury laws. All agreements between Maker and Issuer, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, or otherwise, shall the amount paid, or agreed to be paid to Issuer for the use, forbearance, or detention of the money to be loaned hereunder or otherwise or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing, or pertaining to the indebtedness evidenced hereby, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Issuer shall ever receive as interest or otherwise an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the principal indebtedness of Maker to Issuer,

and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to Maker. All sums paid or agreed to be paid by Maker for the use, forbearance or detention of the indebtedness of Maker to Issuer hereunder shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full in such manner that there will be no violation of applicable laws pertaining to the Maximum Rate or amount of interest which may be contracted for, charged or received with respect to such indebtedness. Maker shall not institute any action or file any defense based upon the charging or collecting of usurious interest hereunder unless (i) Maker shall give Issuer written notice of an intent to do so and (ii) Issuer shall fail to comply with the terms hereof by making necessary adjustments as required by this section, and notify Maker of such compliance within fifteen (15) days after receipt by Issuer of such written notice from Maker. The provisions of this section shall be given precedence over any other provision contained herein or in any other agreement between the parties hereto that is in conflict with the provisions of this section.

18. Payment on Bonds. Any and all payments of interest or principal hereunder shall be deemed a payment on the Bonds (as such term is defined in the Bond Purchase and Loan Agreement).

19. Waiver of Trial by Jury. Maker hereby agrees that any suit, action or proceeding, whether a claim or counterclaim, brought or instituted by any party on or with respect to this Note or any other document executed in connection herewith or which in any way relates, directly or indirectly to the Bond Purchase and Loan Agreement or any event, transaction or occurrence arising out of or in any way connected with this Note or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. MAKER, AND ISSUER BY ACCEPTANCE OF THIS NOTE, HEREBY EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. Maker acknowledges that Maker may have a right to a trial by jury in any such suit, action or proceeding and that Maker hereby is knowingly, intentionally and voluntarily waiving any such right. Maker further acknowledges and agrees that this section is material to this Note and that adequate consideration has been given by Issuer and received by Maker in exchange for the waiver made by Maker pursuant to this section.

20. Waiver of Special Damages. Maker waives, to the extent waivable, any right Maker may have to claim or recover from Issuer any special, exemplary, punitive or consequential damages in any legal action or proceeding related in any way to this Note or any of the Loan Documents.

21. Notices. Any written notice required or permitted to be given to Issuer, MBI or Borrower hereunder shall be deemed effective when given in the manner as provided for in the Borrower Agreement of even date herewith for the sending of notices to Issuer, MBI and Borrower.

22. Legal Tender. This Note is negotiable and is payable in lawful money of the United States of America which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

23. Successors and Assigns. The obligations of Maker hereunder shall be binding upon Maker and Maker's successors, assigns and legal representatives (the reference to "Maker" in this

Note shall be deemed to include, without limitation, such successors, assigns and legal representatives) and shall inure to the benefit of Issuer and Issuer's successors, assigns and legal representatives (the reference to "Issuer" in this Note shall be deemed to include, without limitation, such successors, assigns and legal representatives, including, without limitation, any subsequent holder of this Note); provided however, that this Note cannot be assigned by Maker without the prior written consent of Issuer, and any such assignment or attempted assignment by Maker shall be void and of no effect with respect to Issuer.

24. Joint and Several Obligations. The obligations, agreements and covenants of the persons or entities constituting Maker hereunder are joint and several and unconditional.

25. Governing Law. This Note is delivered to Issuer in the State of Indiana and is executed under and shall be governed by and construed in accordance with the laws of the State of Indiana, notwithstanding that Indiana conflicts of law rules might otherwise require the substantive rules of law of another jurisdiction to apply.

26. Time of the Essence. Time is of the essence with respect to each obligation and agreement of Maker under this Note.

27. Invalidity of Any Provision. If any provision (or portion thereof) of this Note or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Note or the application of such provision (or portion thereof) to any other person or circumstance shall be valid and enforceable to the fullest extent permitted by law.

28. Commercial Purpose. Maker represents that the indebtedness evidenced by this Note is being incurred by Maker solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family or household purposes. Maker represents to Issuer that this Note evidences a business loan exempt from the Federal Truth in Lending Act (15 USC 1601, et seq.), and Regulations G, U, X and Z of the Board of Governors of the Federal Reserve System.

29. Continuing Enforcement. If, after receipt of any payment of all or any part of this Note, Issuer is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Note and the other Loan Documents shall continue in full force and effect or be reinstated, as the case may be, and Maker shall be liable for, and shall indemnify, defend and hold harmless Issuer with respect to, the full amount so surrendered. The provisions of this section shall survive the cancellation or termination of this Note and shall remain effective notwithstanding the payment of the obligations evidenced hereby, the release of any security interest, lien or encumbrance securing this Note or any other action which Issuer may have taken in reliance upon its receipt of such payment. Any cancellation, release or other such action shall be deemed to have been conditioned upon any payment of the obligations evidenced hereby having become final and irrevocable.

30. Captions. The captions or headings herein have been inserted solely for the convenience of reference and in no way define or limit the scope, intent or substance of any

provision of this Note. Whenever the context requires or permits the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

31. Issuer Determinations. Issuer, pursuant to the terms and provisions of the Bond Purchase and Loan Agreement, shall assign its rights and title to the loan evidenced by this Note to Bondholder who will administer such loan. Notwithstanding anything contained in any Loan Document to the contrary and by acceptance of this Note, Issuer acknowledges and agrees that any determinations, discretionary actions, approvals, consents, discretionary decisions or waivers to be made by Issuer pursuant to the Loan Documents shall not be made without written direction from Bondholder. Notwithstanding anything contained in any Loan Document to the contrary, Borrower hereby acknowledges and agrees that any determinations, discretionary actions, approvals, consents, discretionary decisions or waivers made by Issuer that are not accompanied by a written direction from Bondholder shall be void and have no force and effect unless and until accompanied by a written direction from Bondholder.

[the remainder of this page is intentionally left blank,
see following page for signatures of parties]

PROMISSORY NOTE
(CITY SELLER LOAN TO DEVELOPER)

\$6,685,218.00

_____, 2020

FOR VALUE RECEIVED, **MCCORMICK REHABILITATION, LLC**, an Indiana limited liability company, having an address of c/o Bear Development, LLC, 4011 80th Street, Kenosha, Wisconsin 53142 (together with its permitted successors and assigns and/or any other permitted holder of this Note, "Borrower"), hereby promises to pay to the order of the **CITY OF FORT WAYNE, INDIANA**, a municipal corporation duly organized and existing under the laws of the State of Indiana, having an address of 200 East Berry Street, Suite 320, Fort Wayne, Indiana 46802 (together with its permitted successors and assigns and/or any other permitted holder of this Note "Lender"), without offset, in immediately available funds in lawful money of the United States of America, at Fort Wayne, Indiana, or at such other place as the holder of this Note may from time to time designate in writing, the principal sum of SIX MILLION SIX HUNDRED EIGHTY-FIVE THOUSAND TWO HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$6,685,218.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

Section 1. Security; Loan Documents. The security for this Note includes a Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing (as the same may from time to time be amended, restated, modified or supplemented, the "Security Instrument"), dated as of the date hereof, from Borrower to Lender. This Note, the Security Instrument, and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same may from time to time be amended, restated, modified or supplemented, are herein sometimes called individually a "Loan Document" and together the "Loan Documents."

Section 2. Maturity Date. The entire principal balance of this Note then unpaid and all accrued interest then unpaid shall be due and payable in full on _____, 2060 (the "Maturity Date"), if not sooner paid.

Section 3. Payments. Principal and interest payments on this Note shall be payable solely from available Cash Flow, as such term is defined in the Amended and Restated Operating Agreement of McCormick Rehabilitation, LLC, in the amounts and in the priority provided in Section 5.1 thereof, prior to the Maturity Date.

Section 4. Interest Rate. Interest on the outstanding principal balance of, and all other sums owing under this Note, which are not past due, shall accrue and be payable at a rate which is equal to an annual compounding rate of six and one-half percent (6.50%) per annum.

Section 5. Prepayment. Borrower may prepay the principal balance of this Note, in full at any time or in part from time to time, without notice, fee, premium or penalty.

Section 6. Default Rate. After the occurrence of an Event of Default (including the expiration of any applicable cure period), Lender may raise the rate of interest accruing on the outstanding principal balance of this Note by Five Hundred (500) basis points above the rate of interest otherwise applicable (the "Default Rate"), independent of whether Lender elects to accelerate the outstanding principal balance of this Note.

Section 7. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Note:

(a) Borrower fails to pay when and as due and payable any amounts payable by Borrower to Lender under the terms of this Note, not cured within ten (10) days after written notice.

(b) Any covenant, agreement or condition in the Loan Documents is not fully and timely performed, observed or kept, subject to any applicable grace or cure period, after written notice.

(c) A default or Event of Default (as defined or otherwise described therein) occurs under any of the Loan Documents other than this Note, not cured within applicable cure periods after written notice.

(d) Borrower fails to cure default under any of the Loan Documents within thirty (30) days after written notice from Lender.

Section 8. Remedies. Upon the occurrence of an Event of Default, Lender may at any time thereafter exercise any one or more of the following rights, powers and remedies:

(a) Lender may accelerate the maturity of the Loan and declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts payable hereunder and under the other Loan Documents, at once due and payable, and upon such declaration the same shall at once be due and payable.

(b) Lender may set off the amount owed by Borrower to Lender, whether or not matured and regardless of the adequacy of any other collateral securing this Note, against any and all accounts, credits, money, securities or other property now or hereafter on deposit with, held by or in the possession of Lender to the credit or for the account of Borrower, without notice to or the consent of Borrower.

(c) Lender may foreclose or otherwise realize upon any liens or security interests securing payment hereof.

(d) Lender may exercise any of its other rights, powers and remedies under the Loan Documents or at law or in equity.

Without limitation of the foregoing, upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code (Title 11 of the United States Code, as in effect from time to time), any obligation of Lender to make advances shall automatically terminate, and the unpaid principal amount of the Loan outstanding and all interest and other amounts payable hereunder and under the other Loan Documents shall automatically become due and payable, in each case without further act of Lender.

Section 9. Remedies Cumulative. All of the rights and remedies of Lender under this Note and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy, including but not limited to the right to accelerate the maturity of this Note, shall operate as a waiver of such right or remedy or as a waiver of any Event of

Default. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Lender to accelerate the maturity of this Note or to exercise any other right or remedy under this Note and/or any other Loan Document at the time or at any subsequent time, or nullify any prior exercise of any such right or remedy, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

Section 10. Costs and Expenses of Enforcement. Borrower agrees to pay to Lender on demand all costs and expenses incurred by Lender in seeking to collect this Note or to enforce any of Lender's rights and remedies under the Loan Documents, including court costs and reasonable attorneys' fees and expenses actually incurred, whether or not suit is filed hereon, or whether in connection with arbitration, bankruptcy, insolvency or appeal.

Section 11. Service of Process. Borrower hereby designates and appoints Cogency Global Inc., 9221 Crawfordsville Road, Indianapolis, Indiana 46231, as Borrower's authorized agent to accept and acknowledge on Borrower's behalf service of any and all process that may be served in any suit, action, or proceeding instituted in connection with this Note in any state or federal court sitting in the State of Indiana. If such agent shall cease so to act, Borrower shall irrevocably designate and appoint without delay another such agent in the State of Indiana satisfactory to Lender and shall promptly deliver to Lender evidence in writing of such agent's acceptance of such appointment and its agreement that such appointment shall be irrevocable.

Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower and (b) serving a copy thereof upon the agent hereby designated and appointed by Borrower as Borrower's agent for service of process. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action, or proceeding. Nothing in this Note shall affect the right of Lender to serve process in any manner otherwise permitted by Law and nothing in this Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions, subject to any provision or agreement for arbitration or dispute resolution set forth in the Loan Documents.

Section 12. Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the representatives, successors and assigns of the parties.

Section 13. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one Person executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower hereby (a) waives demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agrees to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agrees that Lender shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consents to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; (e) waives the benefit of all homestead and similar exemptions as to this Note; (f) agrees that its liability under this Note shall not be

affected or impaired by any determination that any title, security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (g) subordinates to the Loan and the Loan Documents any and all rights against Borrower and any security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any Person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other Persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. This Note and its validity, enforcement and interpretation shall be governed by the Laws of the State of Indiana (without regard to any principles of conflicts of laws) and applicable United States federal Law. Whenever a time of day is referred to herein, unless otherwise specified such time shall be the local time of the place where payment of this Note is to be made. The term "Business Day" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

Section 14. Notices; Time. All notices, requests, consents, approvals or demands (collectively, "Notice") required or permitted by this Note to be given by any party to any other party hereunder shall, unless specified otherwise, be in writing (including facsimile (fax) transmission) and shall be given to such party at its address or fax number set forth in above, or at such other address or fax number as such party may hereafter specify for the purpose by notice to the other party. Each such notice shall be effective when actually received by the addressee or when the attempted initial delivery is refused or when it cannot be made because of a change of address of which the sending party has not been notified; provided, that notices to Lender, and notices of changed address or fax number, shall not be effective until received.

Section 15. No Usury. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the maturity of the Loan, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of this Note and all other indebtedness secured by the Security Instrument, and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 16. Non-Recourse Loan. Notwithstanding anything to the contrary set forth in this Note or any other Loan Document, neither Borrower nor its members nor any third party shall have any personal liability for any amounts owing under this Note and/or under any Loan Document, and in the

event of any default under this Note or any other Loan Document, Lender shall look solely to the Borrower's interest in the property encumbered by the Security Instrument and shall not be entitled to seek any deficiency from Borrower or affiliate of Borrower or any of its members, or any third person.

Section 17. Rider. The Loan Rider attached hereto as Exhibit A is incorporated herein by this reference. In the event of any inconsistency between this Promissory Note and the Loan Rider, the Loan Rider shall control.

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IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above written.

BORROWER:

MCCORMICK REHABILITATION, LLC,
an Indiana limited liability company

By: McCormick Manager, LLC,
an Indiana limited liability company,
its Managing Member

By: Bear Development, LLC,
a Wisconsin limited liability company,
its Authorized Member

By: _____
Name: Stephen R. Mills
Title: Authorized Member

EXHIBIT A

LOAN RIDER
(CITY SELLER LOAN TO DEVELOPER)

This Loan Rider (the "*Rider*") is attached to and made a part of that certain Promissory Note (City Seller Loan to Developer) dated as of _____, 2020, (the "*Promissory Note*") entered into by and between the **CITY OF FORT WAYNE, INDIANA**, a municipal corporation duly organized and validly existing under the laws of the State of Indiana ("*Lender*") and the **MCCORMICK REHABILITATION, LLC**, an Indiana limited liability company (the "*Borrower*"), and modifies the Promissory Note and all of the other documents entered into by Borrower in connection with the Loan (collectively, the "*Loan Documents*") respecting that certain \$6,685,218.00 loan from Lender (the "*Loan*"), all with respect to the development of that certain 96 unit, 2 of which are used as a resident resource center and 94 are used as residential units, multifamily residential development, situated in Fort Wayne, Indiana and known as McCormick Place (the "*Project*"). The Borrower and Lender hereto agree that the following terms and agreements shall be part of and shall modify or supplement each of the Loan Documents, and the following terms and agreements shall prevail in the event of conflict or inconsistency between this Rider and the Loan Documents, or any of them:

1. **Non-recourse Obligation.** Payment and performance of the obligations set forth in the Loan Documents shall be non-recourse to Borrower and Borrower's members, and the Lender's sole recourse with respect to the Loan shall be the right to foreclose under the Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing (Seller Loan) and other collateral forming part of the Loan Documents.

2. **Managing Member Change.** The withdrawal, removal, transfer and/or replacement of the managing member of Borrower pursuant to the terms of the Amended and Restated Operating Agreement of Borrower ("*Borrower's Operating Agreement*") shall not require the consent of Lender nor constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan; provided that Borrower agrees to notify the Lender of any proposed replacement managing member prior to replacement, and, upon replacement, shall notify the Lender of the name and contact information of the replacement managing member with reasonable promptness.

3. **Transfer of Investor Member Interests.** Nothing in the Loan Documents shall limit or restrict the ability of Borrower's investor member, National Equity Fund, Inc. and its affiliates, including without limitations, NEF Assignment Corporation and its permitted successors and assigns (collectively, the "*Investor Member*") to transfer, sell or assign its membership interest in Borrower, from time to time, without the consent of or notice to Lender, provided that any new Investor Member remains liable for payment of any then unpaid capital contributions to Borrower, as and when payable, as set forth in Borrower's Operating Agreement, notwithstanding any such transfer, sale or assignment. In particular, Lender hereby consents to any transfers, sales or assignments of Investor Member's interests in Borrower to any affiliate of the Investor Member or any entity in which the National Equity Fund, Inc., or an affiliate, is the manager, managing member, or managing member and agrees that such transfers shall not constitute a default under the Loan Documents.

4. **Replacement of Management Agent.** The Lender acknowledges that the Investor Member has the right, under the Borrower's Operating Agreement, to direct the managing member to remove the Project's property management agent. Borrower agrees to give Lender notice of the proposed replacement property management agent, and the Lender agrees to consent to same, assuming that such

replacement property management agent is acceptable to the Investor Member and has experience in managing projects occupied by low-income households pursuant to Section 42 of the Internal Revenue Code.

5. **Notice.** All notices to the Investor Member shall be sent in accordance with the procedures for delivering notices set forth in the Loan Documents to the following address or such alternate or additional contact names and/or addresses of which Lender is so notified in writing by the Investor Member:

NEF Assignment Corporation
10 South Riverside Plaza, Suite 1700
Chicago, Illinois 60606-3908
Attention: General Counsel

With a copy to:

Barnes & Thornburg LLP
41 South High Street, Suite 3300
Columbus, Ohio 43215
Attn.: Jordan Carr

6. **Notice and Cure Rights.** The Lender agrees to give Investor Member written notice of any and all defaults by the Borrower under the Loan Documents, and an opportunity, at the Investor Member's option, to cause the cure of such default within the cure periods set forth below, prior to exercising any remedies under the Loan Documents. The Lender agrees that Investor Member will have ten (10) days after the Investor Member's receipt of notice of such default to cure, or cause the cure of a monetary default under the Loan Documents, and thirty (30) days (or such longer period as is set forth in the Loan Documents) after the Investor Member's receipt of such notice to cure any non-monetary defaults under the Loan Documents, or, as to non-monetary defaults, such longer period as is reasonably necessary for the Investor Member to effect a cure, provided that curative action is commenced within the above stated cure period and diligently prosecuted, including, without limitation, such time as may be necessary to remove Borrower's managing member, if necessary to effect a cure. The Lender agrees to accept cure by the Investor Member as if such cure were made by Borrower.

7. **Insurance and Condemnation Proceeds.** The Lender agrees that insurance and condemnation proceeds shall be used to rebuild or restore the Project, subject to the prior rights of any and all senior lenders, which rights shall prevail in the event of inconsistency or conflict.

8. **Partial Subordination to Section 42 Extended Use Agreement.** Notwithstanding anything in the Loan Documents to the contrary, if the Lender takes title to the Project through foreclosure or deed in lieu of foreclosure, the Project shall remain subject to the provisions of Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986 ("*Code*") or any similar successor provision of the Code. This section shall apply notwithstanding the order of recording of any of the Loan Documents and the Extended Use Agreement (as such term is defined in the Borrower's Operating Agreement), executed in connection with the allocation of federal low-income housing tax credits to the Borrower for the Project pursuant to Section 42 of the Code.

9. **Debt Service Coverage Requirements.** So long as Borrower is current on all debt service payments payable under the Loan, the failure to meet any debt service coverage requirements at any time or times shall not constitute a default under the Loan, nor prohibit any distribution or payment to Borrower's partners or to Affiliates of Borrower or its partners.

10. **Force Majeure.** There shall be no default under the Loan Documents for construction or rehabilitation delays beyond the reasonable control of the Borrower.

11. **Purchase Rights.** The Lender consents to those purchase options, put rights and rights of first refusal in favor of the managing member of Borrower or its designee which are set forth in Borrower's Operating Agreement, and agrees that transfer of title to the Project in accordance therewith shall not constitute a default under the Loan Documents.

12. **Lender Approvals.** Lender agrees that all approvals and consents of the Lender under the Loan Documents shall not be unreasonably withheld, delayed or conditioned. Further, amendments to Borrower's Operating Agreement entered into in order to effect transfers or assignments of the Investor Member's or the managing member's interest pursuant to Sections 2, 3 and 11 above shall not require the consent or approval of the Lender.

13. **Third Party Beneficiary.** Investor Member, and its successors and assigns, is a third-party beneficiary of the rights of Borrower under the Loan Documents, as modified by this Rider and has the right to directly enforce such rights.

14. **Loan Sale or Assignment.** Lender agrees that it shall not assign or transfer the Loan (or any interest therein) to any third party without the prior written consent of the Borrower and Investor Member.

15. **Defaults.** From and after the date of the Promissory Note through and including the end of the Compliance Period (as such term is defined in the Borrower's Operating Agreement), Lender shall not declare any defaults arising from or due to acts or omissions of McCormick Manager, LLC, an Indiana limited liability company (the "*Managing Member*"), which arise or occur during the period that the Managing Member is the managing member of the Borrower.

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PROMISSORY NOTE
(HOUSING AUTHORITY SELLER LOAN TO CITY)

\$6,685,218.00

_____, 2020

FOR VALUE RECEIVED, the **CITY OF FORT WAYNE, INDIANA**, a municipal corporation duly organized and validly existing under the laws of the State of Indiana, having an address of 200 East Berry Street, Suite 320, Fort Wayne, Indiana 46802 (together with its permitted successors and assigns and/or any other permitted holder of this Note, "Borrower"), hereby promises to pay to the order of the **HOUSING AUTHORITY OF THE CITY OF FORT WAYNE, INDIANA**, a municipal corporation duly organized and existing under the laws of the State of Indiana having an address of 7315 Hanna Street, Fort Wayne, Indiana 46816 (together with its permitted successors and assigns and/or any other permitted holder of this Note "Lender"), without offset, in immediately available funds in lawful money of the United States of America, at Fort Wayne, Indiana, or at such other place as the holder of this Note may from time to time designate in writing, the principal sum of SIX MILLION SIX HUNDRED EIGHTY-FIVE THOUSAND TWO HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$6,685,218.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

Section 1. Security; Loan Documents. The security for this Note includes a Collateral Assignment from Borrower to Lender (the "Collateral Assignment") of that certain Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing (as the same may from time to time be amended, restated, modified or supplemented, the "Security Instrument"), dated as of the date hereof, from McCormick Rehabilitation, L.L.C, as grantor, to Borrower, as grantee. This Note, the Collateral Assignment, the Security Instrument, and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same may from time to time be amended, restated, modified or supplemented, are herein sometimes called individually a "Loan Document" and together the "Loan Documents."

Section 2. Maturity Date. The entire principal balance of this Note then unpaid and all accrued interest then unpaid shall be due and payable in full on _____, 2060 (the "Maturity Date"), if not sooner paid.

Section 3. Payments. Principal and interest payments on this Note shall be payable solely from payments received by the Borrower from the Promissory Note (City Seller Loan to Developer) made by McCormick Rehabilitation, LLC, in favor of the City of Fort Wayne, Indiana, dated as of _____, 2020 (the "Developer Note") attached hereto as Exhibit A.

Section 4. Interest Rate. Interest on the outstanding principal balance of, and all other sums owing under this Note, which are not past due, shall accrue and be payable at a rate which is equal to an annual compounding rate of six and one-half percent (6.50%) per annum.

Section 5. Prepayment. Borrower may prepay the principal balance of this Note, in full at any time or in part from time to time, without notice, fee, premium or penalty. In the event Borrower receives any prepayment on the Developer Note, Borrower shall prepay the principal balance of this Note in a like amount.

Section 6. Default Rate. After the occurrence of an Event of Default (including the expiration of any applicable cure period), Lender may raise the rate of interest accruing on the outstanding principal balance of this Note by Five Hundred (500) basis points above the rate of interest

otherwise applicable (the "Default Rate"), independent of whether Lender elects to accelerate the outstanding principal balance of this Note.

Section 7. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Note:

(a) Borrower fails to pay when and as due and payable any amounts payable by Borrower to Lender under the terms of this Note, not cured within ten (10) days after written notice.

(b) Any covenant, agreement or condition in the Loan Documents is not fully and timely performed, observed or kept, subject to any applicable grace or cure period, after written notice.

(c) A default or Event of Default (as defined or otherwise described therein) occurs under any of the Loan Documents other than this Note, not cured within applicable cure periods after written notice.

(d) Borrower fails to cure default under any of the Loan Documents within thirty (30) days after written notice from Lender.

Section 8. Remedies. Upon the occurrence of an Event of Default, Lender may at any time thereafter exercise any one or more of the following rights, powers and remedies:

(a) Lender may accelerate the maturity of the Loan and declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts payable hereunder and under the other Loan Documents, at once due and payable, and upon such declaration the same shall at once be due and payable.

(b) Lender may set off the amount owed by Borrower to Lender, whether or not matured and regardless of the adequacy of any other collateral securing this Note, against any and all accounts, credits, money, securities or other property now or hereafter on deposit with, held by or in the possession of Lender to the credit or for the account of Borrower, without notice to or the consent of Borrower.

(c) Lender may foreclose or otherwise realize upon any liens or security interests securing payment hereof.

(d) Lender may exercise any of its other rights, powers and remedies under the Loan Documents or at law or in equity.

Without limitation of the foregoing, upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code (Title 11 of the United States Code, as in effect from time to time), any obligation of Lender to make advances shall automatically terminate, and the unpaid principal amount of the Loan outstanding and all interest and other amounts payable hereunder and under the other Loan Documents shall automatically become due and payable, in each case without further act of Lender.

Section 9. Remedies Cumulative. All of the rights and remedies of Lender under this Note and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof,

and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy, including but not limited to the right to accelerate the maturity of this Note, shall operate as a waiver of such right or remedy or as a waiver of any Event of Default. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Lender to accelerate the maturity of this Note or to exercise any other right or remedy under this Note and/or any other Loan Document at the time or at any subsequent time, or nullify any prior exercise of any such right or remedy, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

Section 10. Costs and Expenses of Enforcement. Borrower agrees to pay to Lender on demand all costs and expenses incurred by Lender in seeking to collect this Note or to enforce any of Lender's rights and remedies under the Loan Documents, including court costs and reasonable attorneys' fees and expenses actually incurred, whether or not suit is filed hereon, or whether in connection with arbitration, bankruptcy, insolvency or appeal.

Section 11. Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower and (b) serving a copy thereof upon the agent hereby designated and appointed by Borrower as Borrower's agent for service of process. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action, or proceeding. Nothing in this Note shall affect the right of Lender to serve process in any manner otherwise permitted by Law and nothing in this Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions, subject to any provision or agreement for arbitration or dispute resolution set forth in the Loan Documents.

Section 12. Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the representatives, successors and assigns of the parties.

Section 13. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one Person executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower hereby (a) waives demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agrees to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agrees that Lender shall not be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consents to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; (e) waives the benefit of all homestead and similar exemptions as to this Note; (f) agrees that its liability under this Note shall not be affected or impaired by any determination that any title, security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (g) subordinates to the Loan and the Loan Documents any and all rights against Borrower and any security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any Person or circumstance is illegal

or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other Persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. This Note and its validity, enforcement and interpretation shall be governed by the Laws of the State of Indiana (without regard to any principles of conflicts of laws) and applicable United States federal Law. Whenever a time of day is referred to herein, unless otherwise specified such time shall be the local time of the place where payment of this Note is to be made. The term "Business Day" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

Section 14. Notices; Time. All notices, requests, consents, approvals or demands (collectively, "Notice") required or permitted by this Note to be given by any party to any other party hereunder shall, unless specified otherwise, be in writing (including facsimile (fax) transmission) and shall be given to such party at its address or fax number set forth in above, or at such other address or fax number as such party may hereafter specify for the purpose by notice to the other party. Each such notice shall be effective when actually received by the addressee or when the attempted initial delivery is refused or when it cannot be made because of a change of address of which the sending party has not been notified; provided, that notices to Lender, and notices of changed address or fax number, shall not be effective until received.

Section 15. No Usury. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state Law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the maturity of the Loan, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of this Note and all other indebtedness secured by the Security Instrument, and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 16. Non-Recourse Loan. Notwithstanding anything to the contrary set forth in this Note or any other Loan Document, neither Borrower nor its members nor any third party shall have any personal liability for any amounts owing under this Note and/or under any Loan Document, and in the event of any default under this Note or any other Loan Document, Lender shall look solely to the Borrower's interest in the property encumbered by the Security Instrument and shall not be entitled to seek any deficiency from Borrower or affiliate of Borrower or any of its members, or any third person.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above written.

BORROWER:

CITY OF FORT WAYNE, INDIANA

By: _____
Thomas C. Henry, Mayor

ATTEST:

By: _____
Lana R. Keesling, City Clerk

EXHIBIT A
DEVELOPER NOTE

(See Attached)

RESOLUTION NO. 01-23-2020

**A RESOLUTION OF THE FORT WAYNE ECONOMIC DEVELOPMENT
COMMISSION APPROVING AND AUTHORIZING CERTAIN ACTIONS
AND PROCEEDINGS WITH RESPECT TO CERTAIN PROPOSED
ECONOMIC DEVELOPMENT REVENUE BONDS AND NOTE
FOR THE McCORMICK PLACE APARTMENTS**

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

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

WHEREAS, McCormick Rehabilitation, LLC, an Indiana limited liability company (the "Borrower") desires to finance a portion of the costs of a certain project constituting an economic development facility under the Act within the City, including all or any portion of the acquisition, design, construction, rehabilitation and equipping of the existing apartment buildings located in the City at 2811 McCormick Avenue consisting of 96 units, 2 of which are used as a resident resource center and 94 are used as residential units, and certain functionally-related improvements (the "Project"); and

WHEREAS, the Borrower has advised the Fort Wayne Economic Development Commission (the "Commission") and the City concerning the Project, and requested that the City issue, pursuant to the Act, (i) one or more series of its Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) (the "Bonds") and (ii) its note to the Housing Authority of the City of Fort Wayne (the "Housing Authority") (the "Note" and together with the Bonds, the "Obligations") (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds or Note are issued), in an aggregate principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000) and lend all or a portion of the proceeds of such Obligations to the Borrower for the purpose of providing funds (a) to pay all or a part of the cost of design, acquisition, construction, rehabilitation and equipping of the Project, and (b) to pay incidental expenses of issuance, including but not limited to, the funding of a debt service reserve fund, if necessary, and capitalized interest, if necessary; and

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

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

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

WHEREAS, the Borrower has advised the Commission that it has determined that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's (the "IHCDA") qualified allocation plan; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance a portion of the Project by issuing the Obligations; and

WHEREAS, the City intends to issue the Bonds pursuant to a Bond Purchase and Loan Agreement, to be dated the day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Bond Purchase and Loan Agreement"), by and between the City, the Borrower and Merchants Bank of Indiana (the "Purchaser"), in order to obtain funds to lend to the Borrower for the purpose of financing a portion of the Project in accordance with the terms of the Bond Purchase and Loan Agreement, provided, however, that the aggregate principal amount of the Bonds together with the face amount of the Note shall not exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000); and

WHEREAS, pursuant to the Bond Purchase and Loan Agreement and a note from the Borrower to the City, the Borrower will make certain representations, warranties and commitments with respect to the Project and will agree to make payments sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds; and

WHEREAS, there has been submitted to the Commission for its approval the substantially final forms of the Bond Purchase and Loan Agreement (including the form of the Bonds), the Land Use Restriction Agreement by and among the City, the Purchaser and the Borrower to be dated as of the day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve), the Note from the City to the Housing Authority, Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing (City Seller Loan to Developer), Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing (Housing Authority Seller Loan to City) (collectively, the "Financing Documents") and the form of the proposed Special Ordinance of the Common Council of the City (the "Council") with respect to the Project and the Obligations (the "Ordinance"); and

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

WHEREAS, pursuant to Indiana Code Title 36, Article 7, Chapter 12, Section 24 and Section 147(f) of the Code, and the rules promulgated thereunder, as amended, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Obligations to finance a portion of the costs of the Project; and

WHEREAS, on the date hereof the Commission held the Public Hearing on the Project; and

WHEREAS, the Commission has rendered its report dated as of May 22, 2019 (the "Report") concerning the proposed financing of the Project and the Secretary of the Commission has previously caused such Report to be submitted to the executive director or chairman of the Fort Wayne Plan Commission, pursuant to the Act; and

WHEREAS, no member of the Commission has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Commission and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT WAYNE ECONOMIC DEVELOPMENT COMMISSION AS FOLLOWS:

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

SECTION 2. The Commission hereby approves the terms of the Financing Documents and the proposed Special Ordinance. The forms of the Financing Documents and the Special Ordinance presented herewith are hereby approved, with any and all such changes as may be deemed necessary, desirable or appropriate by the Mayor, the Controller or any other officer of the City and all such documents shall be kept on file by the Clerk of the City (the "Clerk") or the Secretary of the Commission. The Commission recommends to the Council that it adopt the Special Ordinance. The provisions of such Special Ordinance, if and when adopted, and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Obligations and after the issuance of said Bonds, this resolution shall not be repealed or amended, in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 3. The Commission hereby approves and recommends to the Council that the City issue one or more series of its Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) and its Note (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds or Note are issued), in a maximum aggregate principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000), with a maximum term not to exceed forty (40) years from the date of the Bonds and of the Note, respectively, and with a maximum interest rate not to exceed eight percent (8.00%) per annum, for the purpose of procuring funds to loan to the Borrower in order to finance a portion of the Project, which Obligations will be payable as to principal, premium if any, and interest solely from payments made by the Borrower pursuant to the Bond Purchase and Loan Agreement and the Note issued thereunder, and upon such terms and conditions as otherwise provided in the Financing Documents and the Special Ordinance. The Obligations shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City. The Commission further recommends that the Council authorized the Mayor and Clerk to sell such bonds to the purchaser thereof at a price not less than 98% of the aggregate principal amount thereof (excluding any original issue premium or discount), plus accrued interest, if any.

SECTION 4. The Commission recommends that the Mayor and Clerk be authorized and directed to execute those Financing Documents approved herein which require the signature of the Mayor and Clerk and any other document which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk on the Bonds may be facsimile signatures. The Commission also recommends that the Clerk be authorized to arrange for the delivery of such Bonds to the purchaser thereof, and the Note to the Housing Authority payment for which will be made in the manner set forth in the Financing Documents. The Mayor and Clerk may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve changes therein and also in those Financing Documents which do not require the signature of the Mayor and/or Clerk without further approval of the Council or the Commission if such changes do not affect terms set forth in Indiana Code Title 36, Article 7, Chapter 12, Section 27(a)(1) through (a)(10).

SECTION 5. Any officer of the Commission is hereby authorized and directed, in the name and on behalf of the Commission, to execute any and all other agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by such officer to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this resolution (including the preambles hereto and the documents mentioned herein), the Project and the issuance and sale of the Bonds and the Note, and any such execution, performance, approval or doing of other things heretofore effected be, and hereby is, ratified and approved.

SECTION 6. The Commission hereby determines that, based solely on the representations provided by the Borrower, the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Commission has relied upon the representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by the City or the Commission as to the feasibility or viability of the Project. In reliance upon the representation of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHEDA's qualified allocation plan.

SECTION 7. The Secretary of this Commission shall transmit this resolution, together with two (2) copies of the forms of the Financing Documents and the Special Ordinance approved by this Resolution, to the Office of the Clerk for presentation to the Council with the recommendation that the Council approve the forms of the Financing Documents and adopt the proposed Ordinance hereby recommended to the Council. The provisions of such Special Ordinance, if and when adopted, and the Financing Documents shall constitute a contract binding between the Issuer and the holder or holders of the Obligations and after the issuance of said Obligations, the special resolution shall not be repealed or amended, in any respect which would adversely affect the right of such holder or holders so long as said Obligations or the interest thereon remains unpaid.

SECTION 8. This resolution shall be in full force and effect upon adoption.

[Remainder of page intentionally left blank.]

Adopted this 23rd day of January, 2020.

FORT WAYNE ECONOMIC
DEVELOPMENT COMMISSION

By: 
Its: President

Attest:

By: 
Its: Secretary

BOND PURCHASE AND LOAN AGREEMENT

THIS BOND PURCHASE AND LOAN AGREEMENT (hereinafter referred to as the "**Agreement**"), is made and entered into effective as of the ____ day of _____, 2020, by and among MCCORMICK REHABILITATION, LLC, an Indiana limited liability company (hereinafter referred to as "**Borrower**"), the CITY OF FORT WAYNE, INDIANA (hereinafter referred to as "**Issuer**") and MERCHANTS BANK OF INDIANA, an Indiana banking and financial institution having a principal corporate office in the City of Carmel, Indiana and its successors and assigns (hereinafter referred to as "**MBI**" or "**Bondholder**").

PRELIMINARY RECITALS

A. Borrower holds a leasehold interest to certain real estate located in Allen County, Indiana, more particularly described in Exhibit "A" attached hereto and by reference made a part of this Agreement (hereinafter referred to as the "**Real Estate**"), and upon which it proposes to acquire, design, construct, renovate, improve and/or equip the existing apartment buildings located in the City of Fort Wayne, Indiana at 2811 McCormick Avenue consisting of 96 units, 2 of which are used as a resident resource center and 94 are used as residential units, and certain functionally-related improvements (the "**Project**").

B. Borrower has applied to Issuer for a construction loan in the principal amount of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00) to finance, among other things as hereinafter described, the acquisition and rehabilitation of the Improvements (defined below) thereon, which loan will be funded by the sale of certain tax-exempt bonds issued by the Issuer.

C. Pursuant to and in accordance with the laws of the State, including without limitation, the Act, the Issuer has determined to issue and sell the Bonds in the aggregate principal amount of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00) and to loan the proceeds to be derived from the sale thereof to the Borrower to assist in the financing of the Project to be undertaken by the Borrower;

D. All acts and conditions required to happen, exist and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Agreement have happened, do exist and have been performed, or at the delivery of the Bonds will exist, will have happened and will have been performed (i) to make the Bonds, when issued, delivered and authenticated, valid special obligations of the Issuer in accordance with the terms thereof and hereof and (ii) to make this Agreement a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

E. Issuer, pursuant to the terms and provisions of this Agreement, will assign its rights and title to the aforementioned construction loan to Bondholder who will administer such loan.

F. Borrower desires that MBI purchase the tax-exempt bonds in the principal amount of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00) (hereinafter referred to as the "**Bonds**") to fund the construction loan from Issuer to Borrower.

NOW, THEREFORE, in consideration of MBI purchasing such Bonds, and taking an assignment of the Loan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Issuer and MBI hereby agree as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATIONS**

Section 1.1 Definitions. In addition to the words and phrases defined elsewhere in this Agreement, the terms defined in this Section shall have the meaning indicated when capitalized and used herein.

“**Accounts**” shall mean the accounts created pursuant to Article IV hereof.

“**Act**” shall mean Indiana Code 36-7-11.9 and 36-7-12, as amended.

“**Applicable Rate**” shall mean the rate of interest which the terms of the Note expressly provide shall be in effect from time to time with respect to the principal outstanding under the Note.

“**Agreement**” shall mean this Bond Purchase and Loan Agreement as from time to time amended or modified.

“**Appraised Value**” shall mean the market value of the Real Estate and Improvements, on an assumed completion basis, arrived at under any appraisal from time to time furnished to MBI pursuant to the terms of this Agreement, which is in form and substance and prepared by an appraiser acceptable to MBI.

“**Architect**” shall mean Hooker DeJong, Inc.

“**Architect Agreement**” shall mean that certain Standard AIA Form Agreement dated April 1, 2019 executed by and between Borrower and Architect, pursuant to which the Architect has agreed to provide certain architectural services for the construction of the Project.

“**Assignment of Capital Contributions**” shall mean that certain Assignment of Capital Contributions of even date herewith, executed or to be executed by Borrower in favor of MBI, as from time to time amended, modified, replaced or restated.

“**Assignment and Pledge of Member Interest and Contract Rights**” shall mean that certain Assignment and Pledge of Member Interest and Contract Rights of even date herewith, executed or to be executed by Managing Member in favor of MBI, as from time to time amended, modified, replaced or restated

“**Authority**” shall mean the Indiana Housing and Community Development Authority.

“**Authorized Representative**” shall mean any officer of the Borrower.

“**Bond Fund**” shall mean the Bond Fund created in Section 4.2 of this Agreement, including the various accounts created thereunder.

“**Bond Issuance Costs**” shall mean the costs, fees and expenses incurred or to be incurred by the Issuer and the Borrower in connection with the issuance and sale of the Bonds, including placement or other financing fees (including applicable counsel fees), the fees and disbursements of bond counsel, fees of the Issuer’s financial advisor, acceptance fee of MBI, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under the Agreement or to perfect the lien thereof, the out-of-pocket costs of the Issuer, the fees and disbursements of counsel to the Borrower, the fees and disbursements of the Borrower’s accountants, the fees and disbursements of counsel to the Issuer, the fees and disbursements of counsel to the purchasers of the Bonds, the costs of preparing or

printing the Bonds and the documentation supporting the issuance of the Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred.

"Bondholder" shall mean a holder of a Bond.

"Bond Ordinance" shall mean Special Ordinance ____-20 adopted by the Common Council of the Issuer on February 11, 2020.

"Bond Principal and Interest Account" shall mean the Bond Principal and Interest Account created in Section 4.2 of this Agreement.

"Bonds" shall mean the City of Fort Wayne, Indiana, Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) in the original aggregate principal drawing amount of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00).

"Borrower's Receipt and Certification" shall mean that certain Borrower's Receipt and Certification to be executed by Borrower in conjunction with a request for a Draw under the Loan.

"Business Day" shall mean any day of the week (but not a Saturday, Sunday or holiday) on which the offices of MBI are open to the public for carrying on substantially all of MBI's business functions. Unless specifically referenced in this Agreement as a Business Day, all references to "days" shall be to calendar days.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

"Collateral" shall mean the funds and accounts, the Note, the Loan Documents, and other property described in the Granting Clause of this Agreement.

"Completion Date" shall mean the latest date of completion of the Project, as evidenced in accordance with the requirements of Section 15.3 of this Agreement.

"Completion Schedule" shall mean the construction draw schedule satisfactory to and approved by MBI.

"Computation Date" shall mean the last day of each fifth bond year (or such earlier bond year or bond years selected by the Issuer) and the date on which the final payment in full of all outstanding Bonds is made.

"Construction Account" shall mean the Construction Account created in the Construction Fund in Section 4.3 of this Agreement.

"Construction Contract" shall mean that certain HUD-92442M Construction Contract dated as of _____, 2020, executed by and between Borrower and General Contractor.

"Construction Consultant" shall mean any architect, engineer or other consultant as MBI may engage from time to time to (i) review the Development Budget, the Plans and Specifications and any other report or information relating to the development of the Project and the construction or rehabilitation of the Improvements, (ii) review the progress and quality of the construction or rehabilitation of the Improvements and installation of the Personal Property, (iii) review any Draw Request and application for an advancement

of the Loan, and (iv) perform such other consulting services as MBI may require in connection with the development of the Project and the construction or rehabilitation of the Improvements.

“**Construction Fund**” shall mean the Construction Fund created in Section 4.3 of this Agreement, including the various accounts created thereunder.

“**Contingent Required Equity**” shall mean, from time to time, that portion of the Required Equity (i) that has not been contributed toward the payment of the costs of the Project as shown on the Development Budget and (ii) for which the conditions set forth in the Operating Agreement for the contribution of such funds to Borrower have not yet been fully satisfied.

“**Costs of Construction**” shall mean, at any applicable point in time, the remaining unpaid costs and expenses incurred and/or estimated by MBI, in its sole but reasonable discretion, to be incurred in connection with the following:

- (i) all Bond Issuance Costs;
- (ii) the cost of insurance of all kinds that may be required or necessary in connection with the acquisition, construction, equipping or installation of the Project;
- (iii) all costs and expenses of site preparation and engineering services, including the costs of Issuer or Borrower for test borings, surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper acquisition, construction or installation of the Project;
- (iv) all costs and expenses which the Issuer or the Borrower shall be required to pay under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto) for the acquisition, construction or installation of the Project;
- (v) the purchase and installation of the Personal Property which is contemplated by the Development Budget to be purchased and installed;
- (vi) the payment of all operating expenses through the date MBI, in its sole but reasonable discretion, estimates will be the earlier of the date the Project will reach breakeven operations or the date the Loan will be repaid, including without limitation interest expense;
- (vii) the payment of any other item included in the Development Budget or not included but which MBI anticipates Borrower will incur in connection with the Project, including but not limited to all unpaid costs and expenses incurred, or estimated by MBI to be incurred, in connection with the Loan and all unpaid development fees (other than Deferred Development Fee) and soft costs incurred or estimated to be incurred by Borrower in connection with the Project; and
- (viii) any sums required to reimburse the Issuer or the Borrower for advances made by either of them subsequent to the date of the reimbursement resolution adopted by the Issuer for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Project.

“**Costs of Issuance Account**” shall mean the Costs of Issuance Account created in the Construction Fund pursuant to Section 4.3 of this Agreement.

“Deferred Developer Fees” shall mean all developer fees, deferred contractor profit and other fees payable to any party in connection with the development, construction, rehabilitation or operation of the Project that are specifically designated on the Development Budget as being deferred until such time as the Loan is paid in full. Notwithstanding anything contained herein to the contrary, no Project cost shown on the Development Budget shall be deemed to be a Deferred Developer Fee unless Borrower has furnished evidence acceptable to MBI that (i) the party to whom such fee is owed has no rights to any lien upon the Project in the event such fee is not paid, or (ii) the party to whom such fee is owed has waived in writing all rights to any lien upon the Project in the event such fee is not paid.

“Developer” shall mean, collectively, Bear Development, L.L.C, a Wisconsin limited liability company, and Housing Opportunities of Fort Wayne, Inc., an Indiana nonprofit corporation.

“Development Agreement” shall mean the Development Agreement between the Borrower and the Developer dated _____, 2020, relating to the development of the Project and providing for the payment of a Development Fee.

“Development Budget” shall mean a detailed hard and soft cost budget for (i) the costs of the construction or rehabilitation of the Improvements in accordance with the Plans and Specifications, (ii) the costs of the purchase and installation of the Personal Property, (iii) the payment of all operating expenses through the earlier of the date the Project will reach breakeven operations taking into account revenue from the Project generated prior to the point in time that the Project will reach breakeven operations or the date the Loan will be repaid, including without limitation interest expense, (iv) the payment of all professional fees and financing fees, and (v) the payment of all other related closing costs and soft costs to be incurred in connection with the development and construction or rehabilitation of the Project, all of which if requested by MBI shall be certified by Borrower and, as to the costs of construction or rehabilitation of the Improvements, by the general contractor or construction manager for the Project. The Development Budget shall not be revised without the prior written consent of MBI. The Development Budget, as from time to time modified, must be in form and detail acceptable to MBI in its reasonable discretion. The Development Budget submitted to MBI by Borrower is attached hereto as Exhibit B and by this reference made a part of this Agreement and shall not be revised without the prior written consent of MBI as set forth in Section 10.8 hereof.

“Development Fee” shall mean the total development fee in the amount of One Million Five Hundred Seventy-Four Thousand Five Hundred and 00/100 Dollars (\$1,574,500.00) payable to the Developer in respect to the Project in accordance with the terms and conditions set forth in the Development Agreement.

“Draw Request” shall mean each written request from Borrower for an advancement of the Loan which shall be in the form of a Borrower’s Receipt and Certification executed by Borrower which shall contain a request for an advancement of the Loan, a certification that the warranties and representations set forth in this Agreement are true and that there has been full compliance with the covenants set forth in this Agreement and such other certifications and representations as MBI may require. Each Draw Request shall be accompanied by such supporting documentation as may be required by the terms of this Agreement for the advancement of the Loan, including without limitation all documentation and materials required by Article X of this Agreement for any advancement of the Loan.

“Economic Development Commission” shall mean the Fort Wayne Economic Development Commission.

“Environmental Law(s)” shall mean any present and future federal, state or local statute, law (including common law), ordinance, code, rule, regulation, guideline, order or decree regulating, relating

to, or imposing liability or standards of conduct concerning (i) any Hazardous Substance, (ii) the protection of human health or the environment or (iii) any Wetlands, each as now or at any time hereafter in effect. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended from time to time, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations, guidelines and the like addressing similar issues: (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq. and the regulations promulgated thereunder, (ii) the Clean Air Act, 42 U.S.C. 7401, et seq. and the regulations promulgated thereunder, (iii) the Clean Water Act, 33 U.S.C. 1251, et seq. and regulations promulgated thereunder, (iv) the Resource, Conservation and Recovery Act, 42 U.S.C. 6901, et seq. and regulations promulgated thereunder, (v) the Oil Pollution Act of 1990, 33 U.S.C. 2701, et seq. and regulations promulgated thereunder, and (vi) the Hazardous Materials Transportation Act, 49 U.S.C. 1801, et seq. and regulations promulgated thereunder.

"Event of Default" shall have the meaning as defined in Section 17.1 of this Agreement.

"Extended Use Agreement" shall mean that certain Notice of Lien and Extended Use Agreement executed or to be executed by Borrower and the Authority in conjunction with the Tax Credits for the Project; which lien will be subordinated to the lien of the HUD Mortgage.

"Fiscal Year" shall mean a period of twelve consecutive months constituting the fiscal year of the Borrower commencing on the first day of January of any year and ending on the last day of December of such year, both inclusive, or such other period as hereafter may be established from time to time for budgeting and accounting purposes by the Borrower or by the governing body of any successor entity to the Borrower.

"Funds" shall mean the funds created pursuant to Article IV hereof.

"General Contractor" shall mean Construction Management Associates, Inc.

"Hazardous Substance(s)" shall mean any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as "pollutants," "hazardous wastes," "hazardous substances," "hazardous materials," "extremely hazardous wastes," "toxic substances," "oil," "waste oil," and "used oil" or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health, property value or the environment, including but not limited to Mold, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, lead-based paints, radon, radioactive materials, flammables and explosives.

"HUD" shall mean the U.S. Department of Housing and Urban Development.

"HUD Loan" shall mean the loan in the amount of Seven Million Four Hundred Sixty Thousand and 00/100 Dollars (\$7,460,000.00) extended by Senior Lender to Borrower, and insured by HUD pursuant to Section 221(d)(4) of the National Housing Act.

"HUD Mortgage" shall mean that certain Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement executed or to be executed by Borrower in favor of Senior Lender, which secures the obligations of Borrower under the HUD Loan.

"HUD Mortgage Documents" shall mean the HUD Mortgage, the HUD Note and any and all other documents executed or to be executed by Borrower in connection with the HUD Loan.

“HUD Note” shall mean that certain Note (Multi-State) executed or to be executed by Borrower in favor of Senior Lender in the principal amount of Seven Million Four Hundred Sixty Thousand and 00/100 Dollars (\$7,460,000.00) to evidence the HUD Loan.

“Improvements” shall mean the site development and improvements to be made on and to the Real Estate pursuant to this Agreement and according to the Plans and Specifications which includes a 96-unit multifamily housing project, 2 of which are used as a resident resource center and 94 are used as residential units, and certain functionally related improvements located at 2811 McCormick Place, Fort Wayne, Indiana, together with (i) any paved driveways and parking facilities and sidewalks to be located on the Real Estate required under the Plans and Specifications or any other construction contract or agreement entered into in connection with the Project, (ii) any mechanical, electrical, plumbing, heating, ventilating, air conditioning and life safety equipment and systems; appliances, elevators and escalators and other similar systems and items of equipment installed in or upon, and affixed to such improvements, whether or not the same may be movable and whether or not removal thereof would cause damage to such improvements, (iii) any improvements off the Project required to be completed by Borrower as a condition to the approval of the Project by any applicable governmental authorities, (iv) any appropriate surrounding street improvements, and (v) all site demolition, site clearance, well capping, utility pipeline removal and relocation, site grading, landscaping, signage, installation of utilities, curb and gutter and any other items of construction required under the Plans and Specifications or any other construction contract or agreement entered into in connection with the Project.

“In-Balance” shall mean, from time to time, with respect to the Loan, that the following conditions are all satisfied, as determined by MBI in its sole but reasonable discretion: (i) the unadvanced portion of the Loan plus the Contingent Required Equity plus the unadvanced portion(s) of the Other Available Sources of Funds plus any other sums deposited with MBI pursuant Section 16.1, is sufficient to pay the Costs of Construction and will be available to Borrower to pay the Costs of Construction when such costs become due and payable, and (ii) the Contingent Required Equity expected to be funded to Borrower will be sufficient to pay the Loan in full on or before its maturity. For purposes of determining if the Loan is In-Balance, MBI shall use its sole but reasonable judgment to determine the timing of when the Contingent Required Equity and the Other Available Sources of Funds will be advanced and available to Borrower for the payment of Costs of Construction and for the payment of sums owing under the Loan, including without limitation whether the conditions that must be satisfied for the funding of the Contingent Required Equity and the funding of the Other Available Sources of Funds will be satisfied within the time frames needed to pay the Costs of Construction and the sums owing under the Loan when such costs and amounts become due and payable.

“Indebtedness” shall mean all obligations and liabilities of Borrower to pay money to any Person (including without limitation all debts, claims and indebtedness) whether primary, secondary, direct, contingent, fixed or payable, heretofore, now and/or from time to time hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing and however arising, whether under written or oral agreement, operation of law, or otherwise. Indebtedness includes, without limiting the generality of the foregoing, (a) obligations or liabilities of any Person secured by any lien, claim, encumbrance, or security interest upon property owned by Borrower even though Borrower has not assumed or become liable for the payment therefore; and (b) obligations or liabilities created or arising under any lease of real or personal property or conditional sale or other title retention agreement with respect to property used and/or acquired by Borrower, even though the rights and remedies of the lessor, seller and/or MBI thereunder are limited to repossession of such property.

“Interest Payment Date” or **“Interest Payment Dates”** shall mean the 10th day of each month, commencing [March 10], 2020, through and including the Maturity Date.

“**Interest Rate**” shall mean the Tax-Exempt Interest Rate (as defined in this Agreement, as in effect on the Issue Date).

“**Interest Reserve Amount**” shall mean a principal portion of the Loan equal to the amount allocated in the Development Budget for the payment of the monthly installments of accrued interest payable under the terms of the Note.

“**Investor Member**” shall mean NEF Assignment Corporation and its permitted successors and assigns.

“**Investor Member’s Equity**” shall mean the total amount of equity contributions Investor Member shall pay to Borrower to acquire its investor member interest in Borrower, which total shall be in the amount set forth in the Development Budget, as such amount may be adjusted in accordance with the Operating Agreement.

“**Investor Member’s Initial Equity Payment**” shall mean the initial payment by the Investor Member of a portion of the Investor Member Equity in the amount of not less than that set forth in the Development Budget.

“**Investor Member’s Second Equity Payment**” shall mean the second payment by the Investor Member of a portion of the Investor Member Equity in the amount set forth in the Development Budget, as such amount may be adjusted in accordance with the Operating Agreement.

“**Investor Member’s Third Equity Payment**” shall mean the third payment by the Investor Member of a portion of the Investor Member Equity in the amount set forth in the Development Budget, as such amount may be adjusted in accordance with the Operating Agreement.

“**Investor Member’s Fourth Equity Payment**” shall mean the fourth payment by the Investor Member of a portion of the Investor Member Equity in the amount set forth in the Development Budget, as such amount may be adjusted in accordance with the Operating Agreement.

“**Issue Date**” shall mean _____, 2020.

“**Issuer**” shall mean the City of Fort Wayne, Indiana.

“**Loan**” shall mean the construction loan to be made by Issuer to Borrower pursuant to the terms of this Agreement in a principal amount of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00) as such loan may be from time to time amended or modified.

“**Loan Document**” and “**Loan Documents**” shall mean individually and collectively, this Agreement, the Note, Assignment of Capital Contributions, Assignment and Pledge of Member Interest and Contract Rights, each Draw Request and all other documents evidencing, securing or entered into in connection with the Loan or the Bonds as such documents and agreements may be modified or amended from time to time and/or any documents and agreements which replace or restate such documents and agreements. The Loan Documents and the terms and conditions thereof are hereby incorporated by reference and made a part of this Agreement.

“**LURA**” shall mean that certain Regulatory Agreement executed by and among Issuer, MBI and Borrower in conjunction with the Bonds.

“**Management Agreement**” shall mean the Management Agreement between the Borrower and the Property Manager dated _____, 20__, which agreement provides for the marketing and management services for the Project by the Property Manager.

“**Managing Member**” shall mean McCormick Manager, LLC, an Indiana limited liability company.

“**Maturity Date**” shall have the meaning for such term as defined in the Note.

“**MBI**” shall mean Merchants Bank of Indiana or its permitted successors and assigns.

“**Members**” shall mean collectively, the Managing Member and the Investor Member.

“**Minimum Set-Aside Test**” shall mean the set-aside test selected by the Borrower pursuant to Section 42(g) of the Code with respect to the percentage of units in the Project to be occupied by tenants with incomes equal to no more than a certain percentage of area median gross income. The Borrower has selected the 40/60 Set-Aside Test as the Minimum Set-Aside Test.

“**Mold**” shall mean mold or any fungus, bacteria, spores or other airborne microbial contaminants of a type that could pose a risk of any kind to human health or the indoor or outdoor environment or could negatively impact the value of the Project.

“**NEF**” shall mean NEF Assignment Corporation.

“**Net Income**” shall mean, for any period, gross revenues (excluding extraordinary income) less all operating expenses (including without implied limitation any monthly management fees), determined in accordance with generally accepted accounting principles. In determining Net Income, real estate taxes, insurance premiums and any other expenses which are incurred or are payable less frequently than on a monthly basis shall be annualized and treated as expenses incurred in equal monthly amounts based upon the amount of the most recent bills and invoices for such items (regardless of whether the same shall have been paid or have become due and payable during such period).

“**Non-Contingent Required Equity**” shall mean, from time to time, that portion of the Required Equity for which the conditions set forth in the Operating Agreement for the contribution of such funds to Borrower have been fully satisfied.

“**Note**” shall mean that certain Promissory Note of even date herewith evidencing the Loan, executed by Borrower in favor of Issuer and negotiated to MBI in the principal amount of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00) as such promissory note may be modified or amended from time to time and/or any promissory note which is a direct or remote renewal, extension, restatement or replacement of such promissory note.

“**Operating Agreement**” shall mean the Amended and Restated Operating Agreement, executed by the Members, as amended from time to time.

“**Original Maturity Date**” shall mean have the meaning for such terms as set forth in the Note.

“**Other Available Sources of Funds**” shall mean, from time to time, the HUD Loan and the \$6,685,218 tax exempt seller note (the “TE Seller Note”).

“**Paying Agent**” shall mean the Controller of the Issuer.

“Permitted Encumbrances” shall mean the lien of the HUD Mortgage, the Extended Use Agreement, the LURA, the Leasehold Mortgage, Assignment, Security Agreement and Fixture Filing (City Seller Loan to Developer), the lien of current real estate taxes not delinquent, easements, rights of way and other restrictions of record, and those liens and encumbrances as shall be approved in writing by MBI in its sole discretion.

“Person” shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including without limitation, any instrumentality, division, agency, body or department thereof).

“Personal Property” shall mean all personal property, appliances, equipment, furniture, fixtures, fittings, furnishings and landscaping now or hereafter attached to, located at, or placed in the Improvements or on the Real Estate which will be owned or leased by Borrower or in which Borrower will otherwise acquire an interest, including without limitation all personal property contemplated by the Plans and Specifications to be incorporated into the Improvements or on the Real Estate. Personal Property shall exclude the trade fixtures, inventory, equipment or removable property of any tenant of the Project.

“Plans and Specifications” shall mean, collectively, the architectural and engineering plans and specifications relating to the Improvements which shall include without limitation the graphic documents showing the design, location and dimensions of the Improvements and the written documents designating the materials, equipment, construction systems, standards and workmanship required in the construction or rehabilitation and installation of the Improvements, all of which must be acceptable to MBI in its sole but reasonable discretion. Plans and Specifications shall include, without limitation, all architectural and engineering plans and specifications relating to any tenant improvements to be incorporated into the Improvements or on the Real Estate by Borrower pursuant to the terms of any current or future leases for all or any portion of the Project.

“Principal Advance” shall mean any advance of principal on any Bond made pursuant to this Agreement.

“Prohibited Transfer” shall mean an occurrence of any of the following events without the prior written approval of MBI being first obtained, whether such event is voluntary, involuntary or by operation of law: (a) Borrower sells, conveys, transfers, assigns, changes the form of ownership, or disposes of the Project, or any part thereof, or any interest therein (including without limitation any right to collect any income therefrom), or agrees so to do; (b) Borrower further mortgages, encumbers, collaterally assigns, pledges or grants a security interests in any portion of the direct or beneficial interest of Borrower in the Project, or any part thereof, or any interest therein (including without limitation any right to collect any income therefrom), or agrees so to do; or (c) any stock, partnership, membership or beneficial interest of Borrower is sold, conveyed, transferred, collaterally assigned, pledged or encumbered (or a security interest is granted therein), or there is an agreement so to do. Notwithstanding the foregoing or anything contained herein or in the Loan Documents to the contrary, the following events (each such permitted event is herein referred to as a **“Limited Permitted Transfer”**) shall not be deemed to be Prohibited Transfers and shall not require the consent of the MBI: (A) the removal, or withdrawal in lieu of removal, and replacement of the Managing Member with an Affiliate of NEF (the **“Replacement GP”**), in accordance with the terms and provisions of the Operating Agreement, provided the following condition is satisfied prior to any such event: (i) the Replacement GP has executed and delivered to MBI a collateral assignment of its managing member interest in form and substance substantially similar to the Assignment of Member Interest, (B) the interest of the Investor Member is transferred to an affiliate of NEF (the **“Affiliated Replacement ILP”**), in accordance with the terms and provisions of the Operating Agreement and any amendment to the Operating Agreement, provided that prior to any such transfer the Affiliated Replacement ILP (i) has

assumed in writing all of the Investor Member's obligations under the Operating Agreement for any and all unpaid portions of Investor Member's Equity and MBI has been provided a copy of such written assumption, and (ii) the Investor Member has certified in writing to MBI that the Affiliated Replacement ILP has the funds necessary to pay any and all unpaid portions of the Investor Member's Equity, if any, pursuant to the terms and conditions of the Operating Agreement, and (C) the interests of the Investor Member is transferred to anyone, including Affiliates of NEF (the "**Unrestricted Replacement ILP**"), in accordance with the terms and provisions of the Operating Agreement and any amendment to the Operating Agreement, provided that prior to any such transfer (i) the Investor Member and/or the Affiliated Replacement ILP have paid all of the Investor Member's Equity in accordance with the Operating Agreement, and (ii) the Unrestricted Replacement ILP has assumed in writing all of the Investor Member's obligations under the Operating Agreement and MBI has been provided a copy of such written assumption. An amendment to the Operating Agreement to effectuate a Limited Permitted Transfer shall not require the consent of MBI and shall not constitute a Prohibited Transfer.

"Project" shall mean collectively the Real Estate, Improvements and Personal Property.

"Property Manager" shall mean HOFW Property Management, LLC, an Indiana limited liability company, in its capacity as management and rental agent for the Project.

"Purchaser" shall mean MBI.

"Qualified Basis" shall mean the amount of the "eligible basis" (as defined in Section 42 of the Code) in the Project attributable to the units in the Project occupied by Tenants meeting the income limitations of the Minimum Set-Aside Test and whose rental payments are limited by the provisions of the Rent Restriction Test.

"Qualified Investments" shall mean any of the following investments which mature (or are redeemable at the option of MBI) at such time or times as to enable disbursements to be made from the fund in which such investment is held in accordance with the applicable terms:

(a) Direct obligations of the United States of America, including the Initial Investment, or obligations the full and prompt payment of which is secured by the pledge of the full faith and credit of the United States of America, provided that the obligation has an interest accrual period and interest payment dates that provide for timely payments in amounts sufficient to meet the payment obligations under this Agreement;

(b) Non-callable, non-prepayable obligations of the following federal government agencies: Federal Home Loan Bank, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Tennessee Valley Authority, Farm Credit System, Washington Metropolitan Area Transit Authority, United States Import-Export Bank, United States Department of Housing and Urban Development, Farmers Home Administration, General Services Administration and United States Maritime Administration, provided the entity maintains a rating of "Aaa" from a rating agency and provided, further, that the obligation has an interest accrual period and interest payment dates that provide for timely payments in amounts sufficient to meet the payment obligations under this Agreement;

(c) Obligations of any state or any political subdivision of any state, which are rated in the highest category for long-term debt by the rating agency, the interest on which is excluded from gross income for federal income tax purposes and the full and timely payment of the principal of and any premium and the interest on which is fully and unconditionally payable from obligations of the character described in (a) or (b) above, provided that the obligation has an interest accrual period and

interest payment dates that provide for timely payments in amounts sufficient to meet the payment obligations under this Agreement; and

(d) (1) the following money market funds, so long as they invest solely in direct obligations issued by the U.S. Treasury or repurchase agreements backed by those obligations: First American U.S. Treasury Money Market Fund; Wells Fargo Advantage 100% Treasury Money Market Funds; Federated U.S. Treasury Cash Reserves (Fund 125); and Federated Treasury Obligations Fund (Fund 68); or (2) in the event those funds cease to exist or no longer have a rating of the highest category (without regard to gradation within a category) by the Rating Agency, money market funds conforming to Rule 2a-7 of the Federal Investment Company Act of 1940, including any money market fund the investment advisor of which is the Bondholder or an affiliate of the Bondholder, (i) whose shares are registered under the Federal Securities Act of 1933 that invest solely in direct obligations issued by the U.S. Treasury and repurchase agreements backed by those obligations, (ii) which have a rating of the highest category (without regard to gradation within a category) by the Rating Agency and (iii) which are acceptable to a rating agency and MBI.

“Rebate Amount” shall mean as of each Computation Date an amount equal to the sum of (i) plus (ii) where:

(i) is the excess of

(a) the aggregate amount earned from the date of issuance of the Bonds to such Computation Date on all nonpurpose investments in which gross proceeds of the Bonds are invested (other than investments attributable to excess earnings described in this clause (i)) including any gain or deducting any loss from disposition of nonpurpose investments, over

(b) the amount which would have been earned during such period if those nonpurpose investments (other than amounts attributable to an excess described in this clause (i)) had been invested at a rate equal to the yield on the Bonds; and

(ii) is any income attributable to the excess described in this definition.

The foregoing sums shall be determined in accordance with Section 148 of the Code. As used herein, the terms “gross proceeds”, “nonpurpose investments” and “yield” have the meanings assigned to them for purposes of Section 148(f) of the Code.

“Rebate Fund” shall mean the Rebate Fund created in Section 4.4 of this Agreement.

“Record Date” shall mean for the first Interest Payment Date, the Issue Date, and for months thereafter, means the fifteenth day of the month preceding any Interest Payment Date.

“Requisite Bondholders” shall mean the holders 66⅔% in aggregate principal amount of Bonds.

“Real Estate” shall have the meaning as defined in the Preliminary Recitals of this Agreement.

“Rent Restriction Test” shall mean the test pursuant to Section 42 of the Code whereby the gross rent charged to tenants of the low-income units of the Project cannot exceed thirty percent (30%) of the qualifying income levels for the area in which the Project is located.

“Required Equity” shall mean the equity contribution made by Borrower toward the acquisition, development and construction or rehabilitation of the Project which shall be in an amount equal to the greater of (i) Six Million Eight Hundred Ninety-One Thousand Eight Hundred Seventeen and 00/100

Dollars (\$6,891,817.00) or (ii) the amount from time to time by which the total of the Development Budget (as from time to time amended with the consent of MBI) exceeds the sum of (A) principal amount of the Loan, plus (B) the total Other Available Sources of Funds, plus (C) the total Deferred Developer Fees.

“Restricted Distribution” shall mean any of the following: (i) any direct or indirect distribution of cash or other assets to any Beneficial Owner, including distributions made for the purpose of paying income or other taxes owed by the Beneficial Owners of Borrower, (ii) any repayment of all or any portion of a loan to a Beneficial Owner or to any Affiliate of a Beneficial Owner, (iii) any return of capital contributions to a Beneficial Owner, (iv) any distribution to a Beneficial Owner upon the termination, liquidation or dissolution of Borrower, or (v) the payment of any development, construction, property management, accounting or other fee to a Beneficial Owner or to any Affiliate of a Beneficial Owner except to the extent such fee is reasonable in comparison to the cost of similar services from an independent third party and is specifically provided for in the Development Budget.

“Senior Lender” shall mean Merchants Capital Corp., an Indiana corporation, and its successors and/or assigns.

“Special Record Date” shall mean the date established by MBI for the payment of defaulted interest on the Bonds.

“Supporting Agreement” or **“Supporting Agreements”** shall mean, individually or collectively, the Architect Agreement, the Construction Contract, the Management Agreement, and the Development Agreement.

“Target Completion Date” shall mean [October 1, 2021] which is the date by which the construction of the Improvements shall be substantially completed in strict accordance with the Plans and Specifications and all of the Personal Property which is contemplated by the Development Budget shall be purchased and installed.

“Tax Credits” shall mean the aggregate amount of the low-income housing tax credits available for the Project in the total annual amount of not less than Six Million Eight Hundred Ninety-Two Thousand Five Hundred Six and 00/100 Dollars (\$6,892,506.00) per annum which shall be available to the Project by the Authority pursuant to its 2019 State of Indiana Housing Credit Qualified Allocation Plan under Section 42 of the Code and the regulations applicable thereto.

“Tax-Exempt Interest Rate” shall mean the Applicable Rate as defined in the Note.

“Termination Date” shall mean that date which is sixty (60) days after the effective date of this Agreement.

“Unsatisfactory Work” shall mean any portion of the construction or rehabilitation of the Improvements which the Construction Consultant or MBI determines has not been completed (i) in a good and workmanlike manner, (ii) in substantial conformity with the Plans and Specifications, (iii) in accordance with all applicable laws, or (iv) in a manner consistent with sound design principles and/or sound construction practices.

“Wetland(s)” shall have the meaning ascribed in 33 C.F.R. §328.3, as hereinafter amended, or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any such Wetlands, as now or at any time hereafter in effect.

Section 1.2 Accounting Terms and Determinations. All accounting calculations and reports shall be prepared, and all accounting terms shall be construed, in accordance with generally accepted accounting principles for financial accounting purposes, as in effect from time to time, unless otherwise hereinafter specified.

Section 1.3 Uniform Commercial Code Terms. To the fullest extent reasonably possible, all terms defined herein shall be construed to be complementary with any of the meanings set forth and ascribed to such terms in the Uniform Commercial Code as from time to time adopted in the State(s) in which the Project is located and, if different, in which Borrower is organized.

Section 1.4 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time modified, amended or restated (subject to any restrictions on such modifications set forth herein), (b) any reference herein to any person or entity shall be construed to include such person's or entities successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Paragraphs, Articles, Sections, and Exhibits shall be construed to refer to Paragraphs, Articles and Sections of, and Exhibits to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) whenever this Agreement provides that any consent or approval will not be "unreasonably withheld" or words of like import, the same shall be deemed to include within its meaning that such consent or approval will not be unreasonably delayed or conditioned.

Section 1.5 Exhibits. The Exhibits attached to this Agreement are by reference made a part of this Agreement.

ARTICLE II. AUTHORIZATION, ISSUANCE, EXECUTION AND PURCHASE OF BONDS

Section 2.1 Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Agreement except in accordance with this Article. The principal amount of the Bonds (other than Bonds issued in substitution therefor pursuant to Section 2.8 hereof) that may be issued is hereby expressly limited to Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00).

Section 2.2 Issuance and Purchase of Bonds. The Bonds shall be designated "City of Fort Wayne, Indiana Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments)." The Bonds shall be originally issuable in fully registered form without coupons in denominations of \$100,000 and any \$1 integral multiples in excess thereof and shall be lettered and numbered R-1 and upward. Interest on any Bonds shall be paid to the owners of such Bonds (determined as of the close of business of the Record Date next preceding each Interest Payment Date) at the registered addresses of such owners as they shall appear on the registration books of the Issuer notwithstanding the cancellation of any such Bonds upon any exchange or transfer thereof subsequent to the Record Date and prior to such Interest Payment Date, except that, if and to the extent that there shall be a default in the payment of the interest due on such Interest Payment Date, such defaulted interest shall be paid to the owners in whose name any such Bonds (or any Bond issued upon transfer or exchange thereof) are registered at the close of business of the Special Record

Date next preceding the date of payment of such defaulted interest. Payment of interest to all Bondholders shall be by check drawn on the main office of the Paying Agent and mailed to such Bondholder to the registered owner thereof as shown on the registration books of the Issuer or, if prior written instructions have been provided to the Issuer and the Borrower, by wire transfer of immediately available funds on the interest payment date. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Bonds shall be dated as of the date of their delivery. Interest shall be computed on the basis of a 360-day year applied to the actual number of days in each interest payment period. The interest on the Bonds shall be payable commencing on the first day of the first calendar month following the first Principal Advance and continuing on the first day of each calendar month thereafter, through and including the Original Maturity Date or until the total sum of all Principal Advances is paid in full and the Borrower has made its final draw request under this Agreement and has filed the Certificate of Substantial Completion for the Project as described in Section 15.3 of this Agreement. Each Principal Advance of the Bonds shall bear interest at the Interest Rate from the date of such Principal Advance; provided, however, that if, as shown by the records of MBI, interest on the Bonds shall be in default, then the Bonds shall bear interest at the Default Rate (as defined in the Note) from the date of such default until it is cured. Bonds issued in exchange for Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the Bonds or, if no interest has been paid on the Bonds, interest will accrue on each Principal Advance from the date of each Principal Advance.

The Bonds shall mature on the Maturity Date.

Section 2.3 Purchase, Sale and Delivery of Bonds. On the basis of the representations, warranties and agreements contained herein, but subject to the terms and conditions herein set forth, MBI shall purchase the Bonds from the Issuer at a purchase price equal to 100% of the amount from time to time drawn on the Bonds. MBI agrees to purchase the Bonds on a draw basis as conditions precedent set forth in this Agreement for each draw on the Loan are satisfied.

The Issuer shall deliver the Bonds to the order of MBI for the account of MBI against payment of the purchase price therefor by wire transfer payable in immediately available funds (the "Closing") at the office of Krieg DeVault LLP on _____, 2020 (the "Closing Date").

The Issuer (in reliance on the MBI's representations with regard to (a) below) and the Borrower acknowledge in connection with the purchase and sale of the Bonds, the offering of the Bonds for sale and the discussions and negotiations relating to the terms of the Bonds pursuant to and as set forth in this Agreement that (a) MBI has acted at arm's length, is acting solely as principal for its own account and is not agent of or advisor (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)) and owes no fiduciary duty to, the Issuer, the Borrower or any other person, (b) MBI's duties and obligations to the Issuer and the Borrower shall be limited to those contractual duties and obligations set forth in this Agreement and those prescribed by applicable law, (c) MBI may have interests that differ from those of the Issuer and the Borrower and (d) the Issuer and the Borrower have consulted their legal and financial advisors to the extent they deemed appropriate in connection with the offering and sale of the Bonds. The Issuer and the Borrower further acknowledge and agree that each is responsible for making its respective judgment with respect to the offering and sale of the Bonds and the process leading thereto. The Issuer and the Borrower agree that they will not claim that MBI acted as a Municipal Advisor to the Issuer or the Borrower or rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Issuer or the Borrower, in connection with the offering or sale of the Bonds or the process leading thereto.

Section 2.4 Payment on Bonds. The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is

legal tender for the payment of public and private debts. The final payments on the Bonds shall be payable at the principal corporate office of the Bondholder. All other payments on the Bonds shall be made to the person appearing on the Bond registration books of the Issuer as the registered owner of the Bonds by check mailed to the registered owner thereof as shown on the registration books of the Issuer or, if prior written instructions have been provided to the Issuer and the Borrower, by wire transfer of immediately available funds on the interest payment date. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day.

Section 2.5 Execution; Limited Obligation. The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of its Mayor and attested with the manual or facsimile signature of its Clerk and shall have impressed or printed thereon the corporate seal of the Issuer. Such facsimiles shall have the same force and effect as if such officer had manually signed each of the Bonds. If any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof. The Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special and limited obligation of the Issuer and are payable solely and only from the Collateral, consisting of funds and accounts held under this Agreement and payments to be made on the Note issued under this Agreement pledged and assigned for their payment in accordance with this Agreement. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or premium, if any, or interest on the Bonds. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any, or interest on the Bonds. No covenant or agreement contained in the Bonds or this Agreement shall be deemed to be a covenant or agreement of the Economic Development Commission, the Issuer or of any member, director, officer, agent, attorney or employee of the Economic Development Commission or the Issuer in his or her individual capacity, and neither the Economic Development Commission, the Issuer nor any member, director, officer, agent, attorney or employee of the Economic Development Commission or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 2.6 Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Agreement unless and until the certificate of authentication on such Bond substantially in the form set forth in **Exhibit D** hereto shall have been duly executed by the City Clerk of the Issuer, and such executed certificate of the City Clerk of the Issuer upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Agreement. The City Clerk of the Issuer's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the City Clerk of the Issuer, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 2.7 Form of Bonds. The Bonds and the City Clerk of the Issuer's certificate of authentication to be endorsed thereon shall be substantially in the forms set forth in **Exhibit D** hereto, with

such appropriate variations, omissions and insertions as are permitted or required by this Agreement or deemed necessary by the Mayor and City Clerk of the Issuer.

Section 2.8 Delivery of Bonds. Upon the execution and delivery of this Agreement, the Issuer shall execute and deliver to MBI the Bonds in the maximum aggregate stated principal drawing amount of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00). The City Clerk of the Issuer shall authenticate such Bonds and deliver them to MBI, as purchaser thereof, upon receipt of:

- (a) A copy, duly certified by the City Clerk of the Issuer, of the ordinance adopted and approved by the Issuer authorizing the execution and delivery of the Loan Documents and this Agreement and the issuance of the Bonds;
- (b) Executed counterparts of the Loan Documents and this Agreement;
- (c) The Note in the principal amount equal to the principal amount of the Bonds, duly executed by the Borrower and endorsed by the Issuer to the order of the Bondholder; and
- (d) A written request of the Borrower requesting the Issuer to authenticate, or cause to be authenticated, and deliver the Bonds in the stated principal amount of Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00), of which \$50,001.00 shall be paid over to the Issuer and deposited to the credit of various Funds as provided under Section 3.1 hereof.

Section 2.9 Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the City Clerk of the Issuer may authenticate a new Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Issuer, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City Clerk of the Issuer evidence of such loss, theft or destruction satisfactory to MBI, together with indemnity satisfactory to it.

If any such Bond shall have matured, instead of issuing a duplicate Bond, the Issuer may pay the same without surrender thereof; provided, however, that in the case of a lost, stolen or destroyed Bond, there shall be first furnished to the City Clerk of the Issuer evidence of such loss, theft or destruction satisfactory to the City Clerk of the Issuer, together with indemnity satisfactory to it. The Issuer may charge the holder or owner of such Bond with its reasonable fees and expenses in this connection. Any Bond issued pursuant to this Section 2.9 shall be deemed part of the original series of Bonds in respect of which it was issued and an original additional contractual obligation of the Issuer.

Section 2.10 Registration and Exchange of Bonds: Persons Treated as Owners. The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Agreement to be kept by the City Clerk of the Issuer, which is hereby constituted and appointed the registrar of the Issuer (the "Registrar"). Upon surrender for transfer of any fully registered Bond at the office of the City Clerk of the Issuer, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the City Clerk of the Issuer, and duly executed by the registered owner or his attorney duly authorized in writing, the Issuer shall execute and the City Clerk of the Issuer shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same series and maturity for a like aggregate principal amount. The execution by the Issuer of any fully registered Bond without coupons of any denomination shall constitute full and due authorization of such denomination, and the City Clerk of the Issuer shall thereby be authorized to authenticate and deliver such registered Bond. The City Clerk of the Issuer shall not be required to transfer or exchange any fully registered Bond during the

period between the Record Date and any Interest Payment Date of such Bond, nor to transfer or exchange any Bond after the mailing of notice calling such Bond for redemption has been made, nor during a period of 15 days next preceding mailing of a notice of redemption of any Bonds.

The City Clerk of the Issuer shall be under no obligation to transfer any Bond until the Issuer has been provided (i) a satisfactory opinion of counsel that the sale or transfer will not violate the 1933 Act, the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, or regulations issued pursuant to such Acts, or (ii) a no-action letter of the staff of the Securities and Exchange Commission that the staff will recommend that no action be taken with respect to such sale or transfer, or (iii) a certificate stating that the transferor reasonably believes that the transferee is a "Qualified Institutional Buyer" within the meaning of Section (a) of Rule 144A ("Rule 144A") promulgated by the Securities and Exchange Commission pursuant to the 1933 Act and that the transferor informed the transferee of the transfer restrictions applicable to the Bonds and that the transferor may be relying upon Rule 144A with respect to the transfer of the Bonds.

If ownership of the Bond is transferred prior to MBI having made all Principal Advances contemplated under this Agreement, the transferee shall take ownership subject to the obligation to make additional Principal Advances until the maximum Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00) of purchase price has been advanced or until the Borrower makes its final draw request under this Agreement and files the completion certificate for the Project, as described in Section 4.3(b) of this Agreement.

As to any fully registered Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal or interest thereon shall be made only to or upon the order of the registered owner thereof or its legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 2.11 Indemnification. The Borrower will indemnify and hold harmless the Purchaser and the Issuer and each person, if any, who controls the Purchaser and the Issuer within the meaning of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, from and against any and all losses, claims, damages, expenses or liabilities, joint or several, to which they or any of them may become subject under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, or under any other statute or at common law or otherwise, or pursuant to a breach of contract by the Borrower or an intentional, negligent or reckless untruthful representation by the Borrower and, except as hereinafter provided, will reimburse the Purchaser, the Issuer and each such controlling person, if any, for any legal or other fees and expenses reasonably incurred by them or any of them in connection with investigating or defending any actions whether or not resulting in any liability, insofar as such losses, claims, damages, expenses, liabilities or actions against the Issuer or the Purchaser, arise out of or are based upon any untrue or alleged untrue statement of a material fact concerning the Borrower or the Project or arise out of or are based upon the omission or alleged omission to state a material fact concerning the Borrower or the Project required to be stated or necessary in order to make the statements not misleading. Promptly after receipt by the Purchaser, the Issuer or any such controlling person of notice of the commencement of any action in respect of which indemnity may be sought against the Borrower under this Section, such person will notify the Borrower in writing of the commencement thereof. The Purchaser, the Issuer or any such controlling person shall have the right to employ separate counsel in any such action and to participate in the defense thereof. This indemnity agreement will be in addition to any liability which the Borrower may otherwise have.

The Borrower also agrees to notify the Purchaser and the Issuer promptly of the assertion against it or any of its officers, directors, employees or agents of any claim or the commencement of any action or

proceeding arising from any act or omission of the Borrower, including its independent contractors, consultants, and legal counsel, or any of its agents, servants, partners or employees. No party shall be liable to indemnify any person for any settlement of any aforementioned action effected without the consent of the indemnifying party.

The indemnities contained herein shall survive the Closing under this Agreement and any investigation made by or on behalf of the Purchaser or any person who controls any of such parties of any matters described in or related to the transactions contemplated hereby and by the Bond Ordinance and any Loan Documents.

ARTICLE III. APPLICATION OF BOND PROCEEDS

Section 3.1 Deposit of Funds. In accordance with Article IV hereof, on the Issue Date, MBI shall deposit the initial Principal Advance of the purchase price for the Bonds, which shall be an amount in excess of \$50,000 as follows: MBI shall deposit \$0.00 of the initial Principal Advance into the Costs of Issuance Account of the Construction Fund and \$[] of the initial Principal Advance into the Construction Account of the Construction Fund for the Project.

Thereafter, as the Borrower makes requests for disbursements to pay Costs of Construction from the Construction Account of the Construction Fund, upon approval of each request for disbursement from the Borrower, MBI shall, subject to the terms and conditions in this Agreement, make additional Principal Advances in amounts and at such times as are required to fully fund the Costs of Construction, up to the maximum total Principal Advance amount (being the total purchase price of the Bonds), and MBI shall deposit said funds into the Construction Account. MBI has no duty to confirm that the requirements for each Principal Advance have been satisfied. Upon receipt of each Principal Advance MBI shall make a notation on its books and records of such Principal Advance. The books and records of MBI shall be determinative of the amounts so advanced.

Throughout the term of the Bonds, all Principal Advances of Bond proceeds shall be allocated for tracing purposes to the Cost of Issuance Account of the Construction Fund or the Construction Account of the Construction Fund.

Notwithstanding anything else in this Agreement or the Loan Documents, the proceeds of the Bonds shall be used exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code, and (ii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code and that for the greatest number of buildings the proceeds of the Bonds shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds and the TE Seller Note collectively for the purpose of complying with Section 42(h)(4)(B) of the Code; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither MBI nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any person, including without limitation, the Borrower, the members of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or Event of Default under this Agreement.

**ARTICLE IV.
REVENUE AND FUNDS**

Section 4.1 Source of Payment of Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder are not general obligations of the Issuer but are special and limited obligations payable solely from the Collateral as authorized by the Act and as provided herein. No covenant or agreement contained in the Bonds or this Agreement shall be deemed to be a covenant or agreement of the Issuer or of any member, director, officer, agent, attorney or employee of the Issuer in his or her individual capacity, and neither the Issuer nor any member, director, officer, agent, attorney or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 4.2 Bond Fund. MBI shall establish and maintain, so long as any of the Bonds are outstanding, a separate fund to be known as the "Bond Fund." There shall be deposited into the Bond Fund, as and when received, (a) all payments received pursuant to the Note, respectively; (b) all payments specified in this Agreement, unless this Agreement provides for those payments to be made to another payee; (c) any amount remaining in the Construction Fund to be transferred to the Bond Fund pursuant to this Agreement upon completion of the Project, and any amount remaining in the Construction Fund to be transferred to the Bond Fund pursuant to this Agreement upon acceleration of the maturity of the Bonds; (d) all interest and other income derived from investments of Bond Fund moneys as provided herein; and (e) all other moneys received by MBI under and pursuant to any of the provisions of the Loan Documents which are required, or which are accompanied by directions that such moneys are to be paid, into the Bond Fund. The Issuer hereby covenants and agrees that, so long as any of the Bonds issued hereunder are outstanding, it will deposit, or cause to be paid to MBI for deposit into the Bond Fund, all revenues derived from the Note and the Loan Documents, promptly to meet and pay the principal of and premium, if any, and interest on the Bonds as the same become due and payable. Nothing herein should be construed as requiring the Issuer to deposit or cause to be paid to MBI for deposit into the Bond Fund money from any source other than receipts derived from the Note, and the Loan Documents.

Moneys in the Bond Principal and Interest Account shall first be used by MBI to pay interest on the Bonds as it becomes due. MBI shall transmit such funds to the Paying Agent for the Bonds in sufficient time to ensure that such payment will be made as it becomes due. Money deposited in the Bond Principal and Interest Account for the payment of payments specified in the Loan Documents, other than principal and interest, shall be paid to the holder of the Bonds, unless the Loan Documents provide for a different payee.

Money remaining in the Bond Principal and Interest Account after each principal and interest payment and after payment of other amounts specified under the Loan Documents shall remain in said account until the next Interest Payment Date.

Section 4.3 Construction Fund. The Issuer shall establish with MBI a separate fund to be known as the "Construction Fund", to the credit of which the deposits are to be made as required by Section 3.1 hereof. The Construction Fund shall consist of the Construction Account and the Costs of Issuance Account.

(a) On the Issue Date, \$0.00 of the proceeds of the initial Principal Advance of the Bonds shall be deposited in the Costs of Issuance Account of the Construction Fund and the remaining proceeds of the initial Principal Advance in the amount of \$[] of the Bonds shall be deposited into the Construction Account as described in Article III hereof.

(b) When received in connection with any subsequent Principal Advance, the proceeds of the Bonds shall be deposited in the applicable sub-account of the Construction Account of the Construction Fund, as described in Article III hereof.

Amounts on deposit in the Construction Account and the Costs of Issuance Account shall be paid out from time to time by MBI to or upon the order of the Borrower to pay, or as reimbursement to the Borrower for its payment of, the Costs of Construction and Bond Issuance Costs for the Project within two Business Days of receipt by MBI of the written request in the form attached hereto as Exhibit E signed by the Authorized Representative of the Borrower and approved in writing by MBI:

(1) stating that the costs of an aggregate amount set forth in such written request have been made or incurred and were necessary for the acquisition, construction, equipping or installation of the Project and were made or incurred in accordance with the construction contracts, plans and specifications, or purchase contracts therefor then in effect or that the amounts set forth in such written request are for allowable Costs of Construction of the Project;

(2) stating that the amount paid or to be paid, as set forth in such written request, is reasonable and represents a part of the amount payable for the Costs of Construction of the Project, and that such payment was not paid in advance of the time, if any, fixed for payment and was made in accordance with the terms of any contracts applicable thereto and in accordance with usual and customary practice under existing conditions;

(3) stating that no part of said costs was included in any written request previously filed with MBI under the provisions hereof;

(4) stating that such costs are appropriate for the expenditure of proceeds of the Bonds under the Act; and

MBI shall rely fully on any such written request delivered pursuant to this Section 4.3(a) and shall not be required to make any investigation in connection therewith.

(c) The Borrower shall deliver to the Issuer and the Bondholders within 30 days of completion of the Project a certificate of the Authorized Representative of the Borrower:

(i) stating the date that the Project was completed; and

(ii) stating that it has made such investigation of such sources of information as are deemed by him to be necessary, including pertinent records of the Issuer, and that it is of the opinion that the Project has been fully paid for, and that no claim or claims exist against the Borrower or the Issuer or against the properties of either out of which a lien based on furnishing labor or material for the Project exists or might ripen; provided, however, that there may be excepted from the foregoing statement any claim or claims out of which a lien exists or might ripen if the Borrower intends to contest such claim or claims, in which event such claim or claims shall be described; provided, further, however, that it shall be stated that funds are on deposit in the Construction Account sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims.

If such certificate shall state that there is a claim or claims in controversy which create or might ripen into a lien, there shall be filed with the Issuer and the Bondholders a certificate of the Borrower when and as such claim or claims shall have been fully paid.

If, after payment by MBI of all orders theretofore tendered to MBI under the provisions of subparagraph (a) of this Section 4.3 and after receipt of the statement mentioned in subparagraph (b)(i) and (ii) of this Section 4.3, there shall remain any balance of moneys in the Construction Fund, MBI shall transfer all moneys then in the Construction Fund (except any disputed claims described in the completion certificate required in Section 4.3(b) hereof) to the Bond Fund. MBI, as directed in writing by the Issuer at the request of the Borrower, shall use any amount transferred to the Bond Fund to prepay the Note and thereby redeem all or a portion of the Bonds, at the earliest redemption date.

Section 4.4 Rebate Fund. Any provision hereof to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder.

Within five days after each Computation Date, the Borrower, or an independent accounting firm or other firm knowledgeable with regard to the computation of the Rebate Amount engaged by the Borrower, shall calculate the Rebate Amount as of that Computation Date and provide the results of such calculations to the Issuer and MBI. If the amount then on deposit in the account in the Rebate Fund is in excess of the Rebate Amount, MBI shall forthwith pay that excess amount to the Borrower. If the amount then on deposit in the applicable account in the Rebate Fund is less than the Rebate Amount, the Borrower shall, within five days after receipt of the aforesaid notice from MBI, pay to MBI for deposit in the Rebate Fund an amount sufficient to cause the applicable account to contain an amount equal to the Rebate Amount. Within 30 days after the initial Computation Date, and every Computation Date thereafter, upon written direction from the Borrower, MBI, acting on behalf of the Issuer, shall pay to the United States in accordance with Section 148(f) of the Code from the moneys then on deposit in the Rebate Fund an amount equal to 90% (or such greater percentage not in excess of 100% as the Borrower may direct MBI to pay) of the Rebate Amount as of such Computation Date. Within 60 days after the payment in full of all outstanding Bonds, upon written direction from the Borrower, MBI shall pay to the United States in accordance with Section 148(f) of the Code from the moneys then on deposit in the Rebate Fund an amount equal to 100% of the Rebate Amount as of such final Computation Date and any moneys remaining in the Rebate Fund following such payment shall be paid to the Borrower as described herein.

The Issuer and MBI shall be entitled to rely on the calculations made pursuant to this Section and shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in reliance upon those calculations.

MBI shall keep such records of the computations made and provided by the Borrower pursuant to this Section as are required under Section 148(f) of the Code.

MBI shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Borrower in order to enable the Borrower to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebate Amounts referred to in this Section and Section 3.8 of this Agreement need not be made to the extent that neither the Issuer nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an Opinion of Bond Counsel.

Section 4.5 Funds Investment. Moneys on deposit in the Funds established in this Article IV hereof shall be invested as provided in Section 6.8 hereof.

**ARTICLE V.
REDEMPTION OF BONDS BEFORE MATURITY**

Section 5.1 Redemption Dates and Prices.

(a) The Bonds are subject to optional redemption by the Issuer, prior to maturity, at the option of the Borrower, on any date on or after the Completion Date, in whole or in part, in such order of maturity as the Borrower shall direct and by lot within maturities, at face value, without premium, plus accrued interest to the date fixed for redemption.

(b) Redemption Price. In accordance with the terms of this Agreement, the Bonds may be redeemed at any time prior to maturity at 100% of par and without a premium.

Section 5.2 Notice of Redemption. In the case of an optional redemption of Bonds pursuant to Section 5.1 hereof, notice of the call for any such redemption identifying the Bonds, or portions of Bonds, to be redeemed shall (unless waived by the registered owners of the Bonds to be redeemed) be given by mailing a copy of the redemption notice by first class mail not less than 30 days nor more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books. Such notice of redemption shall specify any applicable CUSIP number and, in the event of a partial redemption, the Bond numbers and called amounts of each Bond, the redemption date, redemption price, interest rate, maturity date and the name and address of the Issuer and the Paying Agent; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any such Bond shall not affect the validity of any proceedings for the redemption of other Bonds. Notices of optional redemption provided hereunder must be unconditional.

On and after the redemption date specified in the aforesaid notice, such Bonds, or portions thereof, thus called shall not bear interest, shall no longer be protected by this Agreement and shall not be deemed to be outstanding under the provisions of this Agreement, and the holders thereof shall have the right only to receive the redemption price thereof plus accrued interest thereon to the date fixed for redemption.

Section 5.3 Cancellation. All Bonds which have been redeemed in whole shall be canceled and cremated or otherwise destroyed by MBI and shall not be reissued, and a counterpart of the certificate of cremation or other destruction evidencing such cremation or other destruction shall be furnished by MBI to the Issuer and the Borrower.

Section 5.4 Redemption Payments. Prior to the date fixed for redemption, funds shall be deposited with MBI to pay, and MBI is hereby authorized and directed to apply such funds to the payment of, the Bonds or portions thereof called, together with accrued interest thereon to the redemption date. Upon the giving of notice (unless waived as set forth above) and the deposit of funds for redemption, interest on the Bonds thus called shall no longer accrue after the date fixed for redemption. No payment shall be made by the Paying Agent upon any Bond until such Bond shall have been delivered for payment or cancellation or MBI shall have received the items required by Section 2.8 hereof with respect to any mutilated, lost, stolen or destroyed Bond.

Section 5.5 Partial Redemption of Bonds. If fewer than all of the Bonds at the time outstanding are to be called for redemption, the maturities of Bonds or portions thereof to be redeemed shall be selected by the Issuer at the direction of the Borrower. If fewer than all of the Bonds within a maturity are to be redeemed, the Issuer shall select by lot (meaning also random selection by computer) in such manner as the Issuer, in its discretion, may determine, the Bonds or portions of Bonds within such maturity that shall be

redeemed. The Issuer shall call for redemption in accordance with the foregoing provisions as many Bonds or portions thereof as will, as nearly as practicable, exhaust the moneys available therefor. Particular Bonds or portions thereof shall be redeemed only in amounts such that the Bonds remaining outstanding thereafter will be in the minimum principal amount of \$100,000 and any \$1 integral multiples in excess thereof.

If less than the entire principal amount of any registered Bond then outstanding is called for optional redemption pursuant to Section 5.1, then, upon notice of redemption given as provided in Section 5.2 hereof, the owner of such registered Bond shall forthwith surrender such Bond to the Paying Agent in exchange for (a) payment of the redemption price and accrued interest on the principal amount called for redemption and (b) a new Bond or Bonds of like series in an aggregate principal amount equal to the unredeemed balance of the principal amount of such registered Bond, which shall be issued without charge therefor. The books and records of MBI shall be determinative of the amounts so redeemed.

ARTICLE VI. GENERAL COVENANTS

Section 6.1 Payment of Principal and Interest. The Issuer covenants that it will promptly pay the principal of and premium, if any, and interest on every Bond issued under this Agreement at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal of and interest and premium, if any, on the Bonds are payable solely and only from the Collateral, consisting of funds and accounts held under this Agreement and the payments to be made on the Note which payments are hereby specifically pledged and assigned to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Agreement should be considered as pledging any other funds or assets of the Issuer. **The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special and limited obligation of the Issuer and are payable solely and only from the Collateral, consisting of funds and accounts held under this Agreement and payments to be made on the Note issued under this Agreement pledged and assigned for their payment in accordance with this Agreement. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or premium, if any, or interest on the Bonds. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any, or interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or this Agreement shall be deemed to be a covenant or agreement of the Economic Development Commission, the Issuer or of any member, director, officer, agent, attorney or employee of the Economic Development Commission or the Issuer in his or her individual capacity, and neither the Economic Development Commission, the Issuer nor any member, director, officer, agent, attorney or employee of the Economic Development Commission or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.**

Section 6.2 Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its members pertaining thereto. The Issuer represents that it is duly authorized under the constitution and laws of the State of Indiana to issue the Bonds authorized hereby and to execute this Agreement, and to pledge and assign the Note, and assign the Loan Documents in the manner and to the extent herein set forth; that all

action on its part for the issuance of the Bonds and the execution and delivery of this Agreement has been duly and effectively taken, and that the Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights generally and subject to the valid exercise of the constitutional powers of the Issuer, the State of Indiana and the United States of America.

Section 6.3 Ownership; Instruments of Further Assurance. The Issuer represents that at the time of the pledge and assignment thereof it will lawfully own the Note and that such pledge and assignment and the assignment of the Loan Documents to MBI hereby made will be valid and lawful. The Issuer covenants that it will defend the title to the Note and its interest in the Loan Documents to MBI, for its benefit as the holders and owners of the Bonds, against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such supplemental agreements hereto and such further acts, instruments and transfers as MBI may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto MBI the Note, the Loan Documents and all payments thereon and thereunder pledged hereby to the payment of the principal of and premium, if any, and interest on the Bonds.

Section 6.4 Filing of Loan Documents and Security Instruments. The Issuer, at the sole expense of the Borrower, shall cause the Loan Documents and all supplements thereto as well as such other security instruments, financing statements and all supplements thereto and other instruments as may be required from time to time to be filed in such manner and in such places as may be required by law in order to fully preserve and protect the lien hereof and the security of the holders and owners of the Bonds and the rights of MBI hereunder. This Section shall impose no duty to record or file the instruments noted above where filing or recordation is not required by law in order to perfect a security interest. Continuation of financing statements may be filed without consent of the debtor party thereto.

Section 6.5 Inspection of Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the revenues derived from the Project shall at all times be open to inspection by such accountants or other agents as MBI may from time to time designate.

Section 6.6 List of Bondholders. MBI will keep on file at its principal office a list of names and addresses of the holders of all Bonds. At reasonable times and under reasonable regulations established by MBI, said list may be inspected and copied by the Borrower or by holders and/or owners (or a designated representative thereof) of 25% or more in principal amount of Bonds then outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of MBI.

Section 6.7 Rights Under Loan Documents. The Issuer agrees that MBI in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Loan Documents for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

Section 6.8 Investment of Funds. Moneys in the Funds established under this Agreement may be invested in Qualified Investments. MBI shall not be liable or responsible for any loss resulting from any such investment. The interest accruing thereon and any profit realized from such investments shall be credited, and any loss resulting from such investments shall be charged, to the fund in which the money was deposited. At no time shall the Borrower direct that any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code.

Section 6.9 Non-presentment of Bonds. If any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or

otherwise, if funds sufficient to pay any such Bond shall have been made available to the Paying Agent for the benefit of the holder or holders thereof, all liability of the Issuer to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds for five years without liability for interest thereon, for the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Agreement or on, or with respect to, such Bond.

Any moneys so deposited with and held by the Paying Agent not so applied to the payment of Bonds within five years after the date on which the same shall become due shall be repaid by the Paying Agent to the Borrower, and, thereafter, Bondholders shall be entitled to look only to the Borrower for payment, and then only to the extent of the amount so repaid, and the Borrower shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 6.10 Direction of Bondholders. Whenever any action, direction or consent is required of the Issuer, the Issuer shall consult with the holders of the Bonds and shall take such action, give such direction or give such consent as shall be directed by the Requisite Bondholders.

ARTICLE VII. CONSTRUCTION LOAN

Section 7.1 Construction Loan. Upon the written request of an authorized representative of Borrower and subject to the terms and conditions of this Agreement and the compliance by Borrower with its obligations to MBI hereunder, MBI shall advance principal of the Bonds and pay such proceeds to Borrower as provided herein and Borrower shall borrow from the Loan as shall be necessary for the purpose of the construction or rehabilitation of the Improvements and the purchase and installation of the Personal Property which is contemplated by the Development Budget to be purchased and installed. The Loan shall be advanced as provided for in Article X of this Agreement and the proceeds shall be used by Borrower solely for the purposes permitted under the terms of this Agreement. The Loan shall bear interest on amounts advanced as provided for under the Note. The Loan shall be evidenced by and payable in the manner specified in the Note.

Section 7.2 Loan Repayment; Delivery of Note. Upon the terms and conditions of this Agreement, the Issuer will make the Loan to Borrower. In consideration of and in repayment of the Loan, Borrower shall deliver or cause to be delivered to MBI, on or before each date payment is due under the Note, payments equal to the amount necessary to pay interest on and principal of the Bonds next due. All such Loan payments shall be paid to MBI in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of this Agreement.

To the extent that amounts are in the Bond Fund for the payment of the Bonds, the Borrower shall be entitled to a credit against the Loan payments required to be made with respect to the Bonds on any date equal to the amount withdrawn from the Bond Fund for the payment of principal and interest on the Bonds on that date.

To secure the Borrower's performance of its obligations under this Agreement, the Borrower shall execute and deliver the Loan Documents concurrently with the issuance and delivery of the Bonds.

Upon payment in full of the Bonds, in accordance with this Agreement, whether at the Original Maturity Date or otherwise, or upon provision for the payment thereof having been made in accordance with this Agreement, (i) the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be surrendered to the Borrower, and shall be cancelled by the Borrower, or (ii) an appropriate notation shall be endorsed thereon evidencing the date and amount of the

principal payment (or prepayment) equal to the Bonds so paid, or with respect to which provision for payment has been made, and the Note shall be surrendered by MBI to the Borrower for cancellation if all Bonds shall have been paid and cancelled as aforesaid.

The Borrower and the Issuer each acknowledge that neither the Borrower nor the Issuer has any interest in the Bond Fund and any moneys deposited therein shall be in the custody of and held for the benefit of the holders of the Bonds.

Section 7.3 Assignment of Agreement. To secure the payment of the Loan, the Issuer shall assign to MBI, by this Agreement and an allonge to the Note, its rights under and interest in the Loan Documents. The Borrower hereby agrees and consents to those assignments. The Issuer shall not attempt to further assign, transfer or convey its interest in this Agreement or the Loan Documents or create any pledge or Lien of any form or nature with respect to its interest herein or Loan payments hereunder. The Borrower shall make payments directly to MBI as provided in the Note without defense or set-off by reason of any dispute between the Borrower and the Issuer, and hereby agrees that its obligations to make payments hereunder and to perform its other agreements contained herein are absolute and unconditional. Until the principal of and interest on the Bonds shall have been fully in accordance with this Agreement, the Borrower (a) will not suspend or discontinue any payments provided for in this Agreement, (b) will perform all its other duties and responsibilities called for by this Agreement, and (c) will not terminate this Agreement for any cause including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the laws of the United States or the State of Indiana or any political subdivision of either or any failure of the Issuer to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Loan.

ARTICLE VIII. COLLATERAL AND GUARANTEES OF CONSTRUCTION LOAN

Section 8.1 Collateral. The indebtedness and obligations of Borrower under the Loan, and any other agreement, instrument or document executed in connection herewith shall be secured by: (a) an assignment of all rights, title and interests Borrower has to receive payments of the Investor Member's Equity, all granted under the terms of the Collateral Assignment of Equity Payments, (c) an assignment of all rights, title and interests Managing Member has under the Operating Agreement and under any contracts and agreements entered into by the Managing Member in connection with the development, construction, management, operation or maintenance of the Project, all granted under the terms of the Collateral Assignment of Member Interest, and (d) any other security agreements or documents from time to time executed in connection with this Agreement or the Loan. Notwithstanding anything contained in the Loan Documents to the contrary, until such time as the HUD Loan is paid in full, the Loan shall be non-recourse against the Project and the Borrower, and Issuer and MBI shall have no claim against the Project, proceeds of the HUD Loan or any reserve or deposit made with Senior Lender in connection with the HUD Loan. Notwithstanding anything contained in the Loan Documents to the contrary, in the event HUD acquires title to the Project by foreclosure or deed in lieu of foreclosure, Borrower's obligations under the Loan shall automatically terminate and Borrower shall be released of its obligations with respect to the Loan.

Section 8.2 Release of Collateral. When all of the indebtedness evidenced by the Loan Documents secured as provided in Section 8.1 hereof has been paid, there is no default, or event which with the giving of notice or the lapse of time would become a default, MBI shall release the collateral securing the loan.

ARTICLE IX.
CONDITIONS PRECEDENT TO INITIAL ADVANCEMENT OF THE LOAN

Section 9.1 Conditions Precedent to Initial Advancement of the Loan. In addition to the conditions set forth in Section 10.1 of this Agreement, each of the following conditions shall be a condition precedent to the initial advancement of the Loan by MBI pursuant to this Agreement, provided, however, that any condition not satisfied at the time of the initial advancement of the Loan shall not be deemed waived but shall be satisfied as MBI may later require:

(a) Borrower has executed and delivered to Issuer the Note, the Collateral Assignment of Equity Payments, and any other Loan Documents which Issuer may require that Borrower execute.

(b) Borrower has caused the Borrower Agreement and any other Loan Documents which Issuer may require that any Maker or other third party execute in connection with the Loan, to be executed and delivered to MBI.

(c) Borrower has drawn down and invested the Non-Contingent Required Equity toward the construction or rehabilitation of the Improvements and the purchase and installation of the Personal Property on the Project, with the balance of the Investor Member's Equity proceeds to be paid in accordance with the Operating Agreement, all in accordance with the terms and provisions herein.

(d) [This paragraph is intentionally left blank].

(e) Borrower has furnished to MBI copies of all documents and agreements entered into by Borrower in connection with the Other Available Sources of Funds and the form of the documents evidencing the Other Available Sources of Funds are acceptable to MBI.

(f) Borrower has furnished to MBI evidence that the Required Equity and Other Available Sources of Funds are sufficient to allow the purchase of the Real Estate, the construction or rehabilitation of the Improvements, the purchase and installation of the Personal Property which is contemplated by the Development Budget to be purchased and installed, and the payment of any other item included in the Development Budget, including the construction of all landscaping and site improvements.

(g) [This paragraph is intentionally left blank].

(h) Borrower has furnished to MBI evidence of hazard insurance coverage for the Project which during construction or rehabilitation of the Improvements shall be on a "Builder's Risk" non-reporting "Completed Value" form, and after completion of construction or rehabilitation on an "All Risk" coverage form, all in such amounts and in form and with insurers acceptable to MBI. Such insurance shall be in amounts equal to the full replacement costs of the Improvements plus borrower's interest in any leasehold improvements and shall include such special coverages as MBI may require, including without limitation coverage for earthquakes and mudslides. All policies shall include a standard mortgagee endorsement and loss payee endorsement in favor of MBI.

(i) Borrower has furnished to MBI evidence of public liability insurance with MBI named as an additional insured, in such amounts and in form and with insurers acceptable to MBI.

(j) Borrower has furnished, or caused the general contractor to furnish, to MBI evidence of worker's compensation and other insurance required by the laws of the State in which the Project is located, or any other applicable jurisdiction, with MBI named as a certificate holder, such insurance to be with companies and in amounts acceptable to MBI.

(k) Borrower has either furnished to MBI evidence that the Real Estate is not located in a flood hazard area as defined under the Flood Disaster Protection Act of 1973 and the National Flood Insurance Act of 1968 or furnished to MBI evidence of flood insurance coverage, with a standard mortgage endorsement in favor of MBI, such insurance to be with a company and in an amount acceptable to MBI.

(l) Borrower has furnished to MBI a Development Budget for the Project which is in form and substance acceptable to MBI.

(m) Borrower has furnished to MBI executed copies of all agreements, quotations and estimates between or for Borrower and contractors or, to the extent requested by MBI, subcontractors with respect to the construction or rehabilitation of the Improvements and the purchase and installation of the Personal Property, including but not limited to a fixed price, contract with the general contractor.

(n) [This Section is intentionally left blank].

(o) Borrower has furnished to MBI a copy of (1) Borrower's Operating Agreement, and (2) Borrower's certificate of organization filed with the Office of the Secretary of State of Indiana, and all amendments thereto, certified by the Managing Member of Borrower.

(p) Borrower has furnished to MBI an original, current Certificate of Existence for Borrower issued by the Office of the Secretary of State of Indiana.

(q) [This paragraph is intentionally left blank].

(r) Borrower has furnished to MBI copies of organizational documents for the Managing Member, the Developer, and any partner, manager or member of Borrower, Managing Member, and Developer, as applicable, which will be executing any Loan Document for and on behalf of Borrower or Managing Member or Developer and which is a partnership, corporation, limited liability company or other organized entity, together with certificates of existence/good standing issued by the state in which such partner, manager or member was formed and resolutions authorizing such partner, manager or member to execute any documents required in connection with the extension of the Loan to Borrower.

(s) Borrower has furnished to MBI an opinion of Borrower's counsel which is acceptable to MBI.

(t) Borrower has furnished to MBI a satisfactory schedule or chart for the development of the Project and the construction or rehabilitation of the Improvements.

(u) Borrower has furnished to MBI evidence satisfactory to MBI that the Real Estate is in compliance with current zoning use and restrictions and is adequately zoned for Borrower's intended use and that all appropriate or necessary private and governmental approvals and permits have been obtained in connection with the construction or rehabilitation of the Improvements and Borrower's intended use of the Project, including without limitation all applicable development and building permits and approvals and all consents and approvals required from applicable property

owner associations, architectural review committees and other private third parties with approval rights relating to the construction or rehabilitation of improvements on the Real Estate.

(v) Borrower has furnished to MBI evidence satisfactory to MBI that all public utility services are currently available to the Real Estate and Improvements.

(w) Borrower has furnished to MBI copies of all applicable building and construction permits for the Improvements, which are in form and substance satisfactory to MBI.

(x) Borrower has furnished to MBI an environmental inspection report in form and substance acceptable to MBI that at a minimum meets the Standard Practice for Environmental Site Assessments: Phase 1, Environmental Site Assessment Process, ASTM E-1527 of the American Society for Testing and Materials, prepared and certified by an environmental consultant acceptable to MBI, stating that there are not present on, under, in or about the Project any Hazardous Substances and that the condition of the Real Estate currently complies with all applicable state and federal environmental protection laws.

(y) Borrower has furnished to MBI one (1) complete set of the Plans and Specifications sealed by a responsible professional architect or engineer, which shall contain mechanical and electrical designs and the original approval of the appropriate building authority.

(z) If required by MBI, Borrower has furnished to MBI a current written geotechnical and soil assessment of the Project performed by a licensed geotechnical and soil engineer satisfactory to MBI, indicating no geotechnical and soil matters unsatisfactory to MBI and otherwise acceptable to MBI.

(aa) Borrower has caused to be executed and delivered to MBI a certification from the architect or engineer involved in preparing the Plans and Specifications which certifies the existence of such conditions as MBI may require.

(bb) Borrower has caused to be executed and delivered to MBI such written consents, in form and substance acceptable to MBI, as MBI may require from any architect, engineer, general contractor, construction manager or other subcontractors and suppliers as MBI may require, who have entered into, or who Borrower contemplates will enter into, one or more contracts or agreements to (i) provide construction related services in connection with the Project and/or (ii) to construct or rehabilitate all or certain portions of the Project.

(cc) MBI has received, reviewed and approved an appraisal of the Real Estate and Improvements, on an assumed completion basis, conforming to Title XI of the Financial Institution Reform, Recovery & Enforcement Act of 1989 and stating an as-is value of not less than Nineteen Million Seven Hundred Twenty-Three Thousand Nine Hundred Ninety-One and 00/100 Dollars (\$19,723,991.00). Such appraisal shall be certified to MBI, made by an appraiser acceptable to MBI which is licensed by the State in which the Project is located and shall be in form and substance acceptable to MBI.

(dd) Borrower has furnished to MBI a copy of the fully executed Management Agreement for the Project containing terms and conditions acceptable to MBI.

(ee) Borrower has furnished to MBI a copy of executed non-residential lease, if any, affecting any portion of the Project and all such leases must contain terms and conditions acceptable to MBI.

(ff) Borrower has furnished to MBI evidence that the Project is compliant with all zoning requirements, including, but not limited to, all necessary zoning variances and approvals.

(gg) If required by MBI, the Construction Consultant shall have reviewed the Plans and Specifications and the Development Budget and shall have delivered to MBI a report and analysis, in form and substance acceptable to MBI, which (i) confirms the reasonable expectation that the Project can be built in accordance with the Plans and Specifications for the total cost set forth in the Development Budget, and (ii) addresses such other issues as MBI may require.

(hh) [This paragraph is intentionally left blank].

(ii) [This paragraph is intentionally left blank].

(jj) Borrower has furnished written confirmation, in form and substance acceptable to MBI, that the Tax Credits are available to the Project.

(kk) [This paragraph is intentionally left blank].

(ll) [This paragraph is intentionally left blank].

(mm) [This paragraph is intentionally left blank].

(nn) [This paragraph is intentionally left blank].

(oo) Borrower has furnished to MBI written confirmation, in form and substance acceptable to MBI, that Issuer has authorized the issuance of, and has issued, the Bonds.

(pp) [This paragraph is intentionally left blank].

(qq) Borrower has furnished to MBI fully executed copies of this Agreement, the LURA, and all other documents executed in connection with the Bonds, in form and substance satisfactory to MBI.

(rr) Borrower has furnished to MBI an opinion of bond counsel in form and substance satisfactory to MBI.

Section 9.2 Conditions to be Satisfied in a Manner Acceptable to MBI. All conditions required to have occurred or be satisfied under Section 4.1 shall have occurred or have been satisfied in a manner acceptable to MBI. All documents required to be delivered to MBI under Section 9.1 shall be satisfactory in form and substance to MBI.

Section 9.3 No Waiver of Full Compliance. Any of the conditions set forth in Section 9.1 may be waived by MBI at the time of each advancement; however, any such waiver by MBI at the time of a particular advancement shall not be deemed or construed as a waiver of the right of MBI to require full compliance with all conditions precedent prior to the next succeeding advancement. In the event MBI, in its sole discretion, shall require further evidence of the occurrence or satisfaction of any condition precedent set forth in Section 4.1 or in the event circumstances occur whereby any condition precedent is no longer wholly satisfied, MBI may at any time require Borrower to provide further evidence of the occurrence or satisfaction of any condition precedent set forth in Section 9.1.

Section 9.4 Termination Date. In the event all of the conditions set forth in Section 9.1 have not occurred or otherwise been satisfied on or before the Termination Date, then, without limitation of any

other right or remedy of MBI hereunder or at law or in equity, the obligation of MBI under this Agreement to extend the Loan shall terminate. In such event, Borrower shall pay upon demand all costs and expenses incurred by MBI which Borrower is obligated to pay pursuant to the terms of this Agreement and MBI shall be entitled to retain any fees paid to MBI as provided for under this Agreement.

**ARTICLE X.
CONDITIONS PRECEDENT TO EACH ADVANCEMENT OF THE LOAN**

Section 10.1 Conditions Precedent to Each Advancement of the Loan. Each of the following conditions shall be a condition precedent to each advancement of the Loan by MBI pursuant to this Agreement, provided, however, that any condition not satisfied at the time of any advancement of the Loan shall not be deemed waived but shall be satisfied as MBI may later require:

(a) There exists no Event of Default under this Agreement or event which with the giving of notice or the lapse of time would become an event of default under the terms of this Agreement, the Note or any other Loan Document.

(b) Borrower is in full compliance with all terms and conditions of this Agreement and the other Loan Documents and all warranties and representations made hereunder remain true and correct.

(c) Borrower has furnished to MBI a completed Draw Request executed by Borrower, together with any supporting documentation which may be required pursuant to the terms of this Agreement for the requested advancement, including without limitation a list of each and every contractor, subcontractor and materialman to whom payment must be made and dollar amount owed and any other supporting documentation required pursuant to Article XV of this Agreement.

(d) Borrower has furnished to MBI a current cost budget on AIA Form G702/G703 (or such similar forms acceptable to MBI) for construction or rehabilitation of the Improvements and the purchase and installation of the Personal Property, executed by Borrower, the general contractor or construction manager for the Project and the architect of record for the Project; such AIA Form G702/G703 (or such similar forms acceptable to MBI) shall be in detail satisfactory to MBI and shall include, without limitation, an itemization of quantities, unit prices and extension for labor and material for all Project costs incurred to date and for the period for which the advancement is requested and such other breakdown of construction or rehabilitation and other costs as MBI may require.

(e) The Project and Improvements have been inspected by the Construction Consultant and the Construction Consultant has certified to MBI the percentage of completion of the Improvements and that the Draw Request and application for advancement of the Loan conforms with the Development Budget and the current cost budget on AIA Form G702/G703 (or such similar forms acceptable to MBI) and the requirements of this Agreement relating to the completion of the construction or rehabilitation of the Improvements.

(f) Borrower has furnished to MBI evidence that it has drawn down and invested all Non-Contingent Required Equity toward the costs on the Development Budget that have been incurred by Borrower.

(g) The Loan is In Balance as required by Article XVI of this Agreement.

(h) To the extent any condition precedent for the initial advancement of the Loan was waived by MBI for the initial advancement of the Loan or in the event circumstances occur whereby

any condition precedent for the initial advancement of the Loan is no longer wholly satisfied, Borrower has furnished to MBI such agreements, documentation, reports and information which MBI may require in order to cause such condition precedent to be fully satisfied.

(i) Borrower has paid all fees, costs and expenses which Borrower is required to pay pursuant to Article XII of this Agreement.

(j) No structure or improvement on the Project shall have been materially damaged by fire or other casualty, or in the event any such damage or casualty has occurred, MBI shall have received insurance proceeds or other funds from Borrower in an amount equal to the full cost, as estimated by the Construction Consultant, to fully repair and restore all such damage and casualty. The receipt by MBI of such insurance proceeds or other funds from Borrower shall not obligate MBI to advance such proceeds to restore and repair the Project unless all conditions and requirements specifically provided for under the terms of the Loan Documents for the use of insurance proceeds to restore the Project have been satisfied in full.

(k) [This paragraph is intentionally left blank].

(l) [This paragraph is intentionally left blank].

(m) If requested by MBI, Borrower has furnished to MBI (i) a complete updated list of all contractors, subcontractors, suppliers, materialmen, architects and other parties who have or will provide labor, materials or services in connection with the development of the Real Estate, the construction or rehabilitation of the Improvements and the delivery and installation of the Personal Property and who may be entitled to a lien thereon and (ii) such acknowledgments of payment and releases of liens and/or lien waivers required pursuant to Article XV of this Agreement from any contractor, architect, subcontractor, mechanic, journeyman, laborer, materialman, lessor leasing construction or other equipment and tools, or other person against the Project, covering all work performed or furnished and materials supplied in the construction or rehabilitation of the Improvements and the delivery and installation of the Personal Property.

(n) With respect to the final advancement of the Loan, the Improvements have been substantially completed in substantial accordance with the Plans and Specifications, free and clear of construction and mechanics' liens.

(o) With respect to the final advancement of the Loan, all fixtures and equipment required for the operation of the Project which are to be installed or paid for by Borrower have been installed free and clear of all liens and security interests, other than MBI's lien and the Permitted Encumbrances.

(p) With respect to the final advancement of the Loan for construction costs, Borrower has furnished to MBI applicable certificates of occupancy from the local governmental authority, and such other evidence reasonably satisfactory to MBI, certifying that the Project complies with all applicable zoning ordinances, building and use regulations and codes and all requirements with respect to licenses, permits and agreements necessary for the lawful use and operation of the Project and, upon request of MBI, Borrower's certificate that no notices of any claimed violations of ordinances were or have been served on Borrower. MBI may also require a written certification from Borrower's architect that the Improvements have been completed in accordance with the Plans and Specifications.

(q) [This paragraph is intentionally left blank].

(r) Borrower has executed and delivered to MBI such other documents, instruments, information and materials as may be required under the terms of this Agreement or otherwise by MBI in connection with the Loan.

(s) Borrower has furnished to MBI evidence that the payments of the Investor Member's Equity are being timely paid to the Borrower in full for the benefit of the Project by the Investor Member in accordance with the Operating Agreement.

(t) Borrower has executed and delivered to MBI such other documents, instruments, information and materials as may be reasonably required under the terms of this Agreement or otherwise by MBI in connection with the Loan.

(u) There exists no "Event of Default" under any of the documents executed in connection with the Other Available Sources of Funds or event which with the giving of notice or the lapse of time would become an event of default under the terms of any of the Other Available Sources of Funds.

(v) There exists no "Event of Default" under any of the documents executed in connection with the Bonds or event which with the giving of notice or the lapse of time would become an event of default under the terms of any of the documents executed in connection with the Bonds.

Section 10.2 Conditions to be Satisfied in a Manner Acceptable to MBI. All conditions required to have occurred or be satisfied under Section 10.1 shall have occurred or have been satisfied in a manner acceptable to MBI. All documents required to be delivered to MBI under Section 10.1, including without limitation the Draw Request and all supporting documentation, shall be satisfactory in form and substance to MBI, and shall be submitted by Borrower to MBI at least seven (7) Business Days prior to the date upon which Borrower is requesting that MBI make the requested disbursement.

Section 10.3 No Waiver of Full Compliance. Any of the conditions set forth in Section 10.1 may be waived by MBI at the time of any advancement; however, any such waiver by MBI at the time of a particular advancement shall not be deemed or construed as a waiver of the right of MBI to require full compliance with all such conditions prior to all subsequent advancements. In the event MBI, in its sole but reasonable discretion, shall require further evidence of the occurrence of any condition precedent set forth in Section 10.1 or in the event circumstances occur whereby any condition precedent is no longer wholly satisfied, MBI may at any time require Borrower to provide further evidence of the occurrence of any condition precedent set forth in Section 10.1.

ARTICLE XI. CONSTRUCTION OR REHABILITATION OF IMPROVEMENTS

Section 11.1 Construction or Rehabilitation of Improvements. Except for delays beyond the reasonable control of Borrower, on or before the Target Completion Date, Borrower shall (i) construct or rehabilitate the Improvements on the Real Estate in strict accordance with the Plans and Specifications and shall substantially complete the Improvements, (ii) cause to be purchased and installed all of the Personal Property which is contemplated by the Development Budget to be purchased and installed, (iii) provide MBI with copies of all applicable certificates of occupancy for the use and occupancy of the Project from the local governmental authority, and (iv) provide MBI with an executed Certificate of Substantial Completion issued by Borrower's architect with respect to the Improvements. The Improvements shall be constructed or rehabilitated strictly in accordance with all applicable building codes, ordinances and statutes and the requirements of all regulatory authorities having jurisdiction and the Board of Fire Underwriters,

or similar body, entirely on the Real Estate without any encroachments or overhangs, within the building restriction lines, however established, and without any violation of any applicable use restrictions or other restrictions. The Plans and Specifications shall be certified by the architect employed by Borrower as in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and the Americans with Disabilities Act of 1990 Architectural Guidelines (as amended from time to time). Borrower shall from time to time upon request by MBI furnish satisfactory evidence of compliance with the foregoing, together with any surveys required by MBI to show that the Improvements are entirely on the Real Estate and no violations as aforesaid exist.

Section 11.2 Changes in Plans and Specifications. Borrower shall make no material changes in the Plans and Specifications, any architect's contract, any engineer's contract, any construction manager contract, any contract for the purchase or installation of the Personal Property, or any construction contract, nor shall any change orders be made thereunder, without the prior written consent of MBI, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, MBI's consent shall not be required for any change order which does not (i) involve a reduction in the scope of the Project, (ii) involve a reduction in the value of the Project, (iii) materially affect the electrical, plumbing, mechanical, HVAC or structural portions of the Project, (iv) materially change the gross square footage of the Improvements or the number of rooms, floors, or basic layout of the Improvements, (v) materially change the parking layout for the Project, (vi) materially change the quality of any materials for the Improvements, (vii) extend the estimated completion date for the Improvements beyond the Target Completion Date, (viii) involve an expenditure exceeding five percent (5%) of the contract amount as to any individual change order, provided after such change order the Loan remains "In Balance" as required by Section 16.1, or (ix) involve, as to the aggregate of all change orders, an expenditure exceeding five percent (5%) of the total construction cost for the Improvements as set forth in the Development Budget, provided after such change order the Loan remains "In Balance" as required by Section 16.1. All change orders must be included on AIA Form G702/G703 (or such similar forms acceptable to MBI) and copies must be promptly furnished to MBI. Borrower hereby authorizes MBI to contact any contractor, subcontractor or material supplier to discuss the course of construction or rehabilitation of the Improvements.

ARTICLE XII. PAYMENT OF FEES AND EXPENSES

Section 12.1 Payment of Loan Fees and Expenses. In addition to all of the terms and conditions to be performed by Borrower under this Agreement, Borrower shall pay to MBI at the time of the execution of this Agreement, if Borrower has not previously paid, a commitment and service fee of Thirty-Eight Thousand One Hundred Forty-Seven and 82/100 Dollars (\$38,147.82) or one percent (1.00%) of the Loan, whichever is greater, and shall reimburse MBI upon demand for all costs and expenses incurred in connection with the Loan and the Bonds, including but not limited to premiums and fees of title insurance companies, recording fees, lien search fees, survey expenses, the fees of inspecting architects or engineers, fees and expenses of MBI's counsel, appraisal fees, fees for environmental studies, mortgage and intangible taxes and other miscellaneous expenses connected with the Loan or the Bonds. All of such fees, costs and expenses may be deducted by MBI from the advancements made hereunder.

Section 12.2 Construction Consultant Fees. Borrower shall, within ten (10) days of written demand, pay or reimburse MBI for all fees and expenses charged by any Construction Consultant engaged in connection with the Loan or the Bonds.

Section 12.3 Fees and Expenses Incurred after Event of Default. If, after the occurrence of an Event of Default hereunder, MBI employs an attorney or attorneys to protect MBI's rights or remedies arising in connection with this Agreement or any security for the Loan, then Borrower shall pay to MBI

upon demand all reasonable attorneys' fees and expenses incurred by MBI in connection with such Event of Default, regardless of whether any action is actually commenced against Borrower by reason of any such Event of Default.

Section 12.4 Payment of Related Expenses. Borrower shall, within ten (10) days of written demand, pay or reimburse MBI for all reasonable attorneys' fees and expenses incurred by MBI in any proceedings involving the estate of a deceased Borrower, an insolvent or a bankrupt Borrower, or in any action, proceeding or dispute of any kind in which MBI is made a party, or appears as an intervenor or party plaintiff or defendant, affecting or relating to this Agreement or any of the other Loan Documents, Borrower, or the Project, including, without limitation, the foreclosure of the collateral for the Loan, any condemnation action involving the Project, or any action to protect the security for the Loan.

Section 12.5 Amounts Payable Upon Demand. Any amounts payable by Borrower pursuant to this Article VII shall be due and payable within ten (10) days of written demand.

Section 12.6 No Advancements if Fees and Expenses are Unpaid. MBI shall not be obligated to fund any additional advances of the Loan until Borrower has paid all amounts then due under this Article VII. Furthermore, MBI hereby reserves the right (without any obligation) to disburse to itself under the Loan, any or all of such amounts which are not received by MBI within ten (10) days after demand has been made by MBI for such payment.

ARTICLE XIII. WARRANTIES AND REPRESENTATIONS

Section 13.1 Warranties and Representations. Borrower warrants and represents to the Issuer and MBI that:

(a) Borrower is a limited liability company duly organized and validly existing under the laws of the State of Indiana, and has full power under its certificate of organization and Operating Agreement, and any amendments thereto, and under all applicable provisions of law to purchase, develop, own, lease and operate the Project;

(b) Borrower holds a leasehold interest in the Real Estate subject only to the Permitted Encumbrances;

(c) The Plans and Specifications are final and are in full compliance with all applicable building codes, zoning ordinances and the requirements of regulatory agencies having jurisdiction [including but not limited to the specifications required to be complied with under the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) as from time to time amended and the Americans With Disabilities Act of 1990 Architectural Guidelines as from time to time amended] and have been approved by all applicable governmental authorities;

(d) The contracts for the construction or rehabilitation of the Improvements and the furnishing of the Personal Property contemplated by the Plans and Specifications are now in full force and effect and have not been modified or amended;

(e) No security interests in or title retention claims exist against any Personal Property except for the lien and security interest granted in favor of MBI and the interests granted by virtue of the Permitted Encumbrances;

(f) All governmental authorizations, certificates, licenses, filings, registrations, consents, approvals and permits necessary (with regard to anyone other than MBI) to (i) make,

execute and deliver this Agreement, (iii) perform all of its obligations under this Agreement, and (iii) construct or rehabilitate the Improvements and use the Project, including but not limited to building permits, storm water drainage permits and those approvals concerning flood hazards and Wetlands, have been obtained and no appeal thereof is pending or threatened;

(g) After construction or rehabilitation of the Improvements is completed, the Project will be in conformity with all applicable building, zoning and environmental laws, regulations, ordinances, rules and regulations and all variances and exceptions granted with respect thereto, including but not limited to set-back requirements, minimum parking requirements and height restrictions;

(h) All utilities necessary for the intended use of the Project including without limitation for gas, electricity, water, drainage or storm sewers, sanitary sewers, and telephone directly and adequately serve the Project through publicly dedicated easements without the necessity of private easement agreements and all necessary hook-up permits for such utilities have been obtained and no appeal thereof is pending or threatened;

(i) All environmental impact statements for the Project required by any governmental authority have been duly filed and approved;

(j) The Real Estate directly abuts a publicly dedicated and maintained road or street and has legal access to the same through governmentally approved curb cut permits or no such permits are required for legal access;

(k) All required federal, state and other tax returns have been filed by or on behalf of Borrower and the taxes in connection therewith paid to date and no additional taxes or assessments have been asserted or are anticipated;

(l) There is no litigation, or proceeding pending or, to the knowledge of Borrower, threatened against or otherwise affecting Borrower or any of its properties or assets, before any court or before or by any governmental agency;

(m) Except in connection with litigation set forth on Exhibit "C" attached hereto, there is no litigation, or proceeding pending or, to the knowledge of Borrower, threatened against or otherwise affecting any Maker or any properties or assets of any Maker, before any court or before or by any governmental agency which would materially and adversely impact the ability of any Maker to perform its obligations under the Loan Documents executed by such Maker;

(n) None of Borrower's representations or warranties set forth in this Agreement or in any document or certificate taken together with any related document or certificate furnished pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any untrue statements of a material fact or omits or will omit to state a financial fact necessary to make any statement of fact contained herein or therein, in light of the circumstances under which it was made, not misleading;

(o) The execution of this Agreement and all other agreements, instruments and documents executed by Borrower in connection herewith, the consummation of all transactions connected herewith, and the construction or rehabilitation of the Improvements on the Real Estate, have been duly authorized by all necessary action required on the part of Borrower;

(p) Each of the Loan Documents has been duly authorized, executed and delivered by Borrower and is legal, valid, binding and enforceable against Borrower in accordance with its terms;

(q) Each individual Maker is of legal age and is under no legal disability, and has all power, authority, permits, consents, authorizations and licenses necessary to execute, deliver and perform the Loan Documents to which such Maker is a party and any other document to be executed and delivered by such Maker in connection with the Loan;

(r) Each document to be executed and delivered by each Maker in connection with the Loan has been duly authorized, executed and delivered by each Maker, as applicable, so as to constitute the valid and binding obligations of each such Maker, enforceable in accordance with their respective terms;

(s) Borrower has provided true and accurate copies of all documents and agreements between Borrower and its Members and there are no other agreements existing between Borrower and its Members;

(t) Neither the execution of this Agreement (or the consummation of the transactions contemplated hereby) nor compliance with the terms and provisions hereof or of any agreements, documents and instruments required of Borrower hereunder conflict with, result in a breach of or constitute a default under the terms, conditions or provisions of the certificate of organization and Operating Agreement of Borrower or any amendments thereto, any agreement to which Borrower is a party or by which Borrower is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction;

(u) If any Maker is a limited liability company, a corporation, a partnership or other legally created entity, neither the execution of any Loan Documents (or the consummation of the transactions contemplated thereby) nor compliance with the terms and provisions hereof or of any agreements, documents and instruments required of such Maker under the Loan Documents executed by such Maker conflict with, result in a breach of or constitute a default under the terms, conditions or provisions of the articles of organization, operating agreement, articles of incorporation, bylaws, partnership agreement or other organizational documents of such Maker or any amendments thereto, any agreement to which such Maker is a party or by which such Maker is bound or any law, regulation, order, writ, injunction or decree of any court or governmental agency or instrumentality having jurisdiction;

(v) To the best of Borrower's knowledge after diligent inquiry, Borrower is in full compliance with all federal, state and local health, safety, building, zoning, environmental and other statutes, regulations and ordinances;

(w) To the best of Borrower's knowledge after diligent inquiry, Borrower is in full compliance with all federal, state and local laws, statutes and ordinances, rules or regulations pertaining to Wetlands;

(x) The financial statements of Borrower and, to the best of Borrower's knowledge after diligent inquiry, each Maker heretofore delivered to MBI are true and correct in all material respects and fairly present the financial condition of Borrower and each Maker as of the dates indicated therein, and there has been no material adverse change in the financial condition of Borrower or any Maker since the date of such statements.

(y) To the best of Borrower's knowledge after diligent inquiry, any and all employee pension plans of Borrower are in full compliance with the terms and provisions of the Employee Retirement Income Security Act of 1974 and all other federal, state and local statutes, regulations and ordinances governing the establishment and administration of pension plans;

(z) The Loan is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family or household purposes and the Note evidences a business loan exempt from the Federal Truth in Lending Act (15 USC 1601, et seq.), Regulations G, U, X and Z of the Board of Governors of the Federal Reserve System, and the Indiana Uniform Consumer Credit Code (IC 24-4.5-3-101, et seq.);

(aa) Neither Borrower nor any Maker is a "foreign person" within the meaning of Section 1445 or 7701 of the Internal Revenue Code;

(bb) Borrower, Managing Member, the Project and, to the knowledge of Borrower, the Investor Member are in compliance with all of the terms and conditions of the Operating Agreement;

(cc) [This paragraph is intentionally left blank];

(dd) (i) Borrower is not now engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System); (ii) no part of the proceeds of any credit hereunder has been or will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock; and (iii) no part of the proceeds of any credit hereunder has been or will be used for any purpose that violates or which is inconsistent with the provisions of Regulations G, U or X of said Board of Governors;

(ee) As of the date hereof, no construction activity has commenced on the Real Estate;

(ff) Managing Member is a limited liability company duly organized and validly existing under the laws of the State of Indiana, and has full power under its Operating Agreement to perform its obligations under the Loan Documents;

(gg) Developer consists of Bear Development, LLC which is a limited liability company duly organized and validly existing under the laws of the State of Wisconsin, and has full power under its articles of organization and operating agreement to perform its obligations under the Loan Documents to which it is a party, and Housing Opportunities of Fort Wayne, Inc. which is a nonprofit corporation duly organized and validly existing under the laws of the State of Indiana, and has full power under its articles of incorporation and by-laws to perform its obligations under the Loan Documents to which it is a party;

(hh) The Tax Credits are available to the Project;

(ii) The Project has received an allocation of private activity bond volume in an aggregate amount of not less than Ten Million Five Hundred Thousand and 00/100 Dollars (\$10,500,000.00), of which Three Million Eight Hundred Fourteen Thousand Seven Hundred Eighty-Two and 00/100 Dollars (\$3,814,782.00) is being used for the Bonds and the allocation for such bonds has not expired and remains in full force and effect;

(jj) The provision of financial assistance to be made available to it under this Agreement and the commitments therefor made by the Issuer have induced the Borrower to undertake the transactions contemplated by this Agreement;

(kk) Borrower presently intends to use or operate the Project in a manner consistent with the Act and in accordance with the LURA for the life of the Bonds, or for such longer period as may be required by the LURA and knows of no reason why the Project will not be so operated. If, in the future, while the Bonds are outstanding, there is a cessation of that operation, Borrower will use its best efforts to resume that operation or accomplish an alternate use by the Borrower or others approved by the Issuer which will be consistent with the Act and the LURA;

(ll) The Project will be completed in accordance with the Plans and Specifications and the portion of the Project funded with the proceeds of the Bonds will constitute a qualified residential rental project within the meaning of Section 142(d) of the Code and will be operated and maintained in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other applicable governmental regulations and as to be consistent with the Act;

(mm) The Project will be located entirely within the boundaries of the Issuer;

(nn) At least 95% of the net proceeds of the Bonds (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code), and the Borrower will not request or authorize any disbursement pursuant to Section 9.1 hereof, which, if paid, would result in less than 95% of the net proceeds of the Bonds being so used;

(oo) The costs of issuance financed by the Bonds will not exceed 2% of the proceeds of the Bonds (within the meaning of Section 147(g) of the Code), and the Borrower will not request or authorize any disbursement pursuant to Section 4.1 hereof or otherwise, which, if paid, would result in more than 2% of the proceeds of the Bonds being so used;

(pp) At least 95% of the proceeds of the Bonds shall be used or deemed used exclusively to pay costs that are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code;

(qq) The proceeds of the Bonds shall be used or deemed used exclusively to pay costs that are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code and that for the greatest number of buildings the proceeds of the Bonds shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds, collectively, of the Bonds and the TE Seller Note for the purpose of complying with Section 42(h)(4)(B) of the Code;

(rr) [This paragraph is intentionally left blank];

(ss) Neither the Borrower nor any related person thereto shall acquire any Bonds in any amount;

(tt) The Borrower understands the nature and structure of the transactions relating to the financing of the Project; it is familiar with the provisions of all of the documents and instruments relating to such financing to which it is a party or of which it is a beneficiary, including the Loan Documents; it understands the risks inherent in such transactions, including, without limitation, the

risk of loss of the Project; and it has not relied on any other party to the transaction or their counsel for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement or otherwise relied on any other party to the transaction or their counsel in any manner;

(uu) The Project is, as of the date hereof, in compliance with all requirements of the LURA, including all applicable requirements of the Act and Code. The residential units in the Project are to and will be rented or available for rental on a basis which satisfies the requirements of the LURA, including all applicable requirements of the Act and the Code. All current leases comply, and all future leases will comply, with all applicable laws and the LURA. The Project meets the requirements of this Agreement, the LURA, the Act and the Code with respect to multifamily rental housing;

(vv) The Borrower hereby represents that it has taken or caused to be taken, and covenants that it will take or cause to be taken, all actions that may be required of it, alone or in conjunction with the Issuer, for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, and represents that it has not taken or permitted to be taken on its behalf, and covenants that it will not take or permit to be taken on its behalf, any actions that would adversely affect such exclusion under the provisions of the Code.

Section 13.2 Representations of the Issuer. The Issuer represents and warrants to Borrower and MBI that:

(a) It is a municipal corporation of the State of Indiana (the "State") organized and validly existing and, pursuant to the Act, has full legal right, power and authority (i) to enter into this Agreement; (ii) to adopt the ordinance authorizing the Bonds (the "Bond Legislation") and cause the delivery of the Bonds pursuant to the Bond Legislation and this Agreement as provided herein; (iii) to loan the proceeds of the Bonds to the Borrower for the purpose set forth in this Agreement; and (iv) to carry out and consummate the transactions contemplated by the Loan Documents;

(b) The Issuer, with respect to the Bonds, as advised by Bond Counsel, has complied, and will, on the date of issuance of the Bonds, be in compliance in all material respects with the Loan Documents and the relevant laws of the State;

(c) (i) On or prior to the date of issuance of the Bonds, the Issuer will have taken all action required to be taken by it to authorize the issuance and sale of the Bonds and the performance of its obligations hereunder; (ii) the Issuer has full legal right, power and authority to enter into the Loan Documents, will have full legal right, power and authority to deliver the Bonds to the purchaser and to perform its obligations under the Loan Documents, and all other documents to be executed by the Issuer in accordance with the issuance of the Bonds, and to carry out and effectuate the transactions contemplated by the Loan Documents; (iii) on or prior to the issuance of the Bonds, the execution and delivery of, and the performance by the Issuer of the obligations contained in the Bonds, the Loan Documents shall have been duly authorized, and when executed the Loan Documents will constitute valid and legally binding limited obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally and the application of equitable principles where equitable remedies are sought and limitations on the enforcement of judgments against public bodies; (iv) the Issuer has duly authorized the consummation by it of all transactions contemplated by this Agreement; and (v) the Loan

Documents have been duly and validly adopted by the Issuer and are at the time of acceptance hereof in full force and effect;

(d) The Issuer, with respect to the Bonds, has not received notice that it is in material breach of or default under any applicable law or administrative regulation of the State, any department, division, agency or instrumentality thereof, or the United States or any applicable judgment or decree or any loan agreement, note, resolution, certificate, agreement or other instrument to which the Issuer is a party or is otherwise subject; and the adoption of and the execution and delivery of the Bonds, the Loan Documents and all other documents to be executed by the Issuer in connection with the issuance of the Bonds, and compliance with the provisions of each thereof do not, to the Issuer's knowledge, conflict with or constitute a material breach of or default under any applicable law or administrative regulation of the State, any department, division, agency or instrumentality thereof, or the United States or any applicable judgment or decree, or any loan agreement, note, resolution, certificate, agreement or other instrument to which the Issuer is a party or is otherwise subject;

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

(f) The Issuer will not take or omit to take any action, which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds under the Code;

(g) The Bonds, when delivered and sold as provided herein, will have been duly authorized and executed and will constitute validly issued and binding limited obligations of the Issuer in conformity with, and entitled to the benefit and security of, the Act and the Loan Documents;

(h) The Issuer agrees that all representations, warranties and covenants made by it herein, and in certificates, agreements or other instruments delivered pursuant hereto or in connection herewith, shall be deemed to have been relied upon by the bondholders, and that all representations, warranties and covenants made by the Issuer herein and therein and all the bondholders' rights hereunder and thereunder shall survive the delivery of the Bonds;

(i) The Issuer covenants that it will not pledge the amounts derived from this Agreement other than as contemplated by this Agreement;

(j) The Issuer hereby finds and determines that financing the Project by the issuance of the Bonds will further the public purposes of the Act;

(k) To the best of its knowledge, no member or director of the Issuer, nor any other official or employee of the Issuer, has any interest, financial employment or other, in the Borrower, the Project or the transactions contemplated hereby;

(l) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer or its Economic Development Commission by or before any court, governmental agency or public board or body, which (i) affects or questions the existence or the title to office of any member of the Issuer or its Economic Development Commission; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any

of the Loan Documents, or the issuance, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of any of the Loan Documents or the Bonds; (iv) questions the exclusion from gross income for federal income taxation of interest on the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under any of the Loan Documents or the Bonds or to carry out the transactions contemplated by any of the Loan Documents or the Bonds; and

(m) THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE PROCEEDS OF THE BONDS WILL BE SUFFICIENT TO FINANCE THE REHABILITATION AND EQUIPPING OF THE PROJECT OR THAT THE PROJECT WILL BE ADEQUATE OR SUFFICIENT FOR THE BORROWER'S INTENDED PURPOSES. FURTHER, THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY AS TO THE PROJECT OR THE CONDITION THEREOF, OR THAT THE PROJECT WILL BE SUITABLE FOR THE PURPOSES OR NEEDS OF THE BORROWER. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE BORROWER WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PROJECT. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE BORROWER'S PURPOSES.

ARTICLE XIV. COVENANTS

Section 14.1 Covenants of Borrower. So long as Borrower has any liability hereunder or under or with respect to the Loan or any agreement, instrument or document executed in connection herewith or so long as MBI may be obligated to make any advancement to Borrower, Borrower covenants and agrees as follows:

(a) Borrower will use the proceeds of the Loan and Other Available Sources of Funds solely for the purpose of paying Costs of Construction and for no other purpose.

(b) Borrower will comply in all material respects with all the terms of, and take all actions necessary to comply in all material respects with, this Agreement, including without limitation executing and delivering to MBI such other documents as it may require to carry out the terms and provisions of this Agreement.

(c) [This paragraph is intentionally left blank].

(d) Borrower will promptly pay and discharge all taxes, assessments and governmental charges which may be lawfully levied, assessed or imposed upon it or its properties, or upon its income or profits, and all lawful claims for labor, material and services which, if unpaid, might become a lien or charge against any of the Project; provided, however, that Borrower shall have the right to contest in good faith any such tax, assessment, charge, levy or claim by appropriate proceedings without the prior payment thereof unless payment is required to contest.

(e) Borrower will keep and safeguard accurate and complete books and records, and maintain the same, together with all valuable papers and records at Borrower's principal offices.

(f) Borrower will defend, or cause to be defended, at all times any adverse claim by a third party relating to the possession of or any interest in the assets of Borrower.

(g) Borrower will furnish, or cause to be furnished, to MBI, at Borrower's expense, the following financial statements and other information of Borrower:

(i) As soon as available and in any event within ninety (90) days following the end of each calendar year, (i) the balance sheet and annual statements of income and surplus accounts for Borrower as of and for the calendar year then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved and audited, if requested by MBI after an occurrence of an Event of Default, by an independent certified public accountant which shall furnish to MBI a standard unqualified opinion regarding such financial statements, (ii) a cash flow analysis for Borrower for the calendar year then ended in such form and in such detail as MBI may require, and (iii) a current rent roll for the Project in such form and in such detail as MBI may require;

(ii) As soon as available and in any event within thirty (30) days from filing and in no event later than ninety (90) days following the end of each calendar year, a copy of the federal income tax return for Borrower for the calendar year then ended unless an extension is filed with the Internal Revenue Service (evidence of such extension to be promptly provided to MBI), and then within thirty (30) days of the extension date, but in no event later than October 15 of each calendar year;

(iii) Commencing upon the completion of the construction or rehabilitation of the Improvements and continuing thereafter, within thirty (30) days following the end of each calendar quarter, (i) the balance sheet and quarterly statements of income and surplus accounts for Borrower as of and for the calendar quarter then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved, and (ii) a current rent roll for the Project in such form and in such detail as MBI may require;

(iv) If at any time the financial statements for Borrower on file with MBI are more than twelve months old, within thirty (30) days of receiving a request from MBI, current financial statements for Borrower on such form and in such detail as MBI may require; and

(v) From time to time at such times as MBI may reasonably require, such further information regarding the business affairs and financial conditions of Borrower as MBI may require, including but not limited to, a certified rent roll, accounting and management recommendations and certificates of no default under this Agreement, all in form and detail satisfactory to MBI.

Borrower shall deliver to MBI at the same time as the delivery of any annual, quarterly or monthly financial statement required hereunder (i) a description in reasonable detail of any material variation between the application of accounting principles employed in the preparation of such statement and the application of accounting principles employed in the preparation of the immediately preceding annual, quarterly or monthly financial statements and (ii) reasonable estimates of the difference between such statements arising as a consequence thereof.

(h) Borrower will furnish, or cause to be furnished, to MBI, at Borrower's expense, the following financial statements and other information relating to Maker:

(i) As soon as available and in any event within ninety (90) days following the end of each calendar year, a current annual financial statement for Maker on such form and in such detail as MBI may require;

(ii) As soon as available and in any event within thirty (30) days from filing and in no event later than one hundred twenty (120) days following the end of each calendar year, a copy of the federal income tax return for Maker for the calendar year then ended unless an extension is filed with the Internal Revenue Service (evidence of such extension to be promptly provided to MBI), and then within thirty (30) days of the extension date, but in no event later than October 15 of each calendar year;

(iii) If at any time the financial statement for Maker on file with MBI is more than twelve months old, within thirty (30) days of receiving a request from MBI, a current financial statement for Maker on such form and in such detail as MBI may require;

(iv) As soon as available and in any event within ninety (90) days following the end of each calendar year, a cash flow analysis for Maker for the calendar year then ended on such form and in such detail as MBI may require; and

(v) From time to time at such times as MBI may require, such further information regarding the business affairs and financial conditions of Maker as MBI may require, all in form and detail satisfactory to MBI.

(i) Borrower will permit any authorized representative of MBI and its attorneys and accountants to inspect, examine and make copies and extracts of the books of account and records of Borrower at reasonable times during normal business hours.

(j) Borrower will permit any authorized representative of MBI, including but not limited to its attorneys and inspectors, to enter upon and inspect and examine the Project at reasonable times during normal business hours.

(k) Borrower will promptly correct or cause any applicable contractor to correct any defects in the Improvements or any departure from the Plans and Specifications not previously approved by MBI; Borrower agrees that the making of an advancement of the Loan shall not constitute a waiver of MBI's right to require compliance with this covenant.

(l) Borrower will give prompt written notice to MBI of any process or action taken or pending whereby a third party is asserting a material claim against Borrower or any of its assets.

(m) Borrower will pay when due all costs, expenses, fees, and other charges incurred in connection with the acquisition of the Real Estate, the construction or rehabilitation of the Improvements, the purchase and installation of the Personal Property, the operation of the Project, and any other items set forth on the Development Budget, except for claims contested in good faith by appropriate proceedings.

(n) [Borrower will maintain all of Borrower's depository accounts with MBI], including but not limited to an account for the receipt of advancements of the Loan.

(o) Borrower will maintain the following insurance and, upon request by MBI, furnish to MBI evidence of such insurance coverage and payment of premiums therefore:

(i) Commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Project, such insurance (A) to be on the so-called "occurrence" form with an occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by MBI by reason of changed economic conditions making such protection inadequate or changed due to changes in the standard practice of lenders in the business of making loans secured by collateral similar to the Project; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; and (3) blanket contractual liability for all legal contracts which liability it expressly assumes. All policies shall name MBI as an additional insured.

(ii) During the construction or rehabilitation of the Improvements and until such time as the construction or rehabilitation of the Improvements has been fully completed, Builder's Risk "All Risk" insurance in such amount as MBI shall require but in no event less than one hundred percent (100%) of the replacement cost value of the completed Improvements and one hundred (100%) percent of the replacement cost value of all tenant improvements. Such policy shall be written on a Builder's Risk Completed Value Form (100% non-reporting) or its equivalent and shall include coverage for loss by collapse, theft, flood, earthquake, transit coverage and water damage, with standard non-contributing mortgagee clauses. Such insurance policy shall also include coverage for: (A) loss suffered with respect to materials, equipment, machinery, and supplies whether on-site, in transit, or stored off-site and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property; (B) soft costs, plans, specifications, blueprints and models in connection with any restoration following a casualty; (C) demolition and increased cost of construction or rehabilitation, including, without limitation, increased costs arising out of changes in applicable laws and codes; and (D) operation of building laws. All policies shall name MBI as a "mortgagee" on a non-contributing New York type of standard mortgagee clause or an equivalent endorsement satisfactory to MBI and as "Loss Payee" as respects rental/business income insurance.

(iii) Upon the final completion of the Improvements and continuing thereafter, comprehensive all risk insurance on the Project (A) in an amount equal to one hundred percent (100%) of the full replacement cost value of the Improvements, which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and personal property at the Project waiving all co-insurance provisions; (C) providing for no deductible in excess of \$25,000 for all such insurance coverage; (D) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Project shall at any time constitute legal non-conforming structures or uses; and (E) shall also insure costs of demolition and increased cost of construction. The insurance policy shall be endorsed to also provide guaranteed building replacement cost to the Improvements in an amount to be subject to the consent of MBI, which consent shall not be unreasonably withheld. All policies shall name MBI as a "mortgagee" on a non-contributing New York type of standard mortgagee clause or an equivalent endorsement satisfactory to MBI and as the "Loss Payee" as respects rental/business income insurance. Such insurance shall include such special coverages as MBI may require, including without limitation coverage

for earthquakes and mudslides if the Project is located in an area which MBI determines is an area which is at risk for such events.

(iv) If applicable, comprehensive boiler and machinery insurance covering all mechanical and electrical equipment against physical damage, rent loss and improvements loss in an amount equal to 100% of the replacement costs of the equipment and the area surrounding the equipment and naming MBI as "mortgagee" on a non-contributing Standard Mortgagee Endorsement providing that any loss payable thereunder shall be paid solely to MBI.

(v) If any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (i) the principal balance of the Loan or (ii) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended.

(vi) If liquor is sold on the Project, liquor liability coverage in such amounts and with such special coverages as MBI may require.

(vii) Upon the final completion of the Improvements and continuing thereafter, rent loss insurance, without a co-insurance provision, in an amount which is not less than twelve (12) months of scheduled rental income from the Project, with a loss payable clause in favor of MBI, such insurance to be carried with such company or companies and upon such terms and conditions as MBI may require.

(viii) Such other types and amounts of insurance with respect to Borrower, the Project, the Improvements and the operation thereof that are commonly maintained by prudent owners of other property and buildings similar to the Project in nature, use, location, height, and type of construction, as may from time to time be reasonably required by MBI.

Borrower shall cause General Contractor to maintain the following insurance and, upon request by MBI, furnish to MBI evidence of such insurance coverage and payment of premiums therefore:

(i) Coverage for claims under worker's compensation, disability benefits and other similar employee benefit acts which are applicable to the construction or rehabilitation of the Improvements and the development of the Project in an amount equal to the statutory limit in the state where the Project are located. All policies shall name MBI as a certificate holder.

Borrower and MBI shall be named as insured, as their interests may appear, on each policy of insurance with the originals of such policies to be issued to MBI together with appropriate endorsement thereto, evidence of payment of premiums thereon and written agreements by the insurer or insurers therein to give MBI not less than thirty (30) days' prior written notice of any intention to cancel. All insurance coverages required by this Agreement and the other Loan Documents must be provided by insurance companies acceptable to MBI that are rated at least an "A- IX" or better by Best's Insurance Guide. All insurance policies shall contain terms and conditions acceptable to MBI. Borrower may satisfy the insurance requirements set forth in this Section by causing the general contractor to maintain all, or any part, of the required insurance coverage provided Borrower is named as an additional insured on all such insurance policies.

(p) Borrower will not carry any separate insurance on the Project concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without MBI's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed) and, in the event MBI grants its consent, any such policy shall nevertheless have attached thereto a standard non-contributing mortgagee clause, with loss payable to MBI, and shall otherwise meet all other requirements set forth in this Agreement.

(q) Borrower shall cause each contractor and subcontractor involved in the construction or rehabilitation of the Improvements to obtain and carry at all times (i) contractor's comprehensive general liability insurance including premises and operations liability, products and completed operating liability to be maintained for two years after the date the construction or rehabilitation of the Improvements is substantially completed, broad form property damage liability, blanket contingent liability operations, operations of subcontractors, completed operations, contractual liability insurance and comprehensive automobile liability insurance (including hired and non-owned liability) with severability of interests and with combined single limit and general aggregate coverage for personal and bodily injury and property damage of at least \$1,000,000.00 for each occurrence and with \$2,000,000 excess liability coverage, and (ii) coverage for claims under worker's compensation, disability benefits and other similar employee benefit acts which are applicable to the construction or rehabilitation of the Improvements and the development of the Project in an amount equal to the statutory limit in the State where the Project is located.

(r) Borrower shall cause each architect, engineer and other design professionals involved in the design or construction or rehabilitation of the Improvements to obtain and carry at all times (i) contractor's comprehensive general liability insurance including premises and operations liability, products and completed operating liability to be maintained for two years after the date the construction or rehabilitation of the Improvements is substantially completed, broad form property damage liability, blanket contingent liability operations, operations of subcontractors, completed operations, contractual liability insurance and comprehensive automobile liability insurance (including hired and non-owned liability) with severability of interests and with combined single limit and general aggregate coverage for personal and bodily injury and property damage of at least \$1,000,000.00 for each occurrence and with \$2,000,000 excess liability coverage, (ii) coverage for claims under worker's compensation, disability benefits and other similar employee benefit acts which are applicable to the construction or rehabilitation of the Improvements and the development of the Project in an amount equal to the statutory limit in the State where the Project are located, and (iii) Architects & Engineers Professional Liability insurance covering errors and/or omissions in the performance of professional services in conjunction with the Project in amounts satisfactory to MBI, with coverage continuing for a five-year discovery period after acceptance in which claims can be made.

(s) Borrower will maintain at all times Borrower's existence in good standing under the laws of the State of Indiana, and shall (1) retain its name as set forth on page 1 hereof, and (2) maintain its existence in good standing in each state in which it conducts business.

(t) Borrower will cause the construction or rehabilitation of the Improvements to commence on or before the Termination Date and to continue without stoppage or delay in excess of ten (10) Business Days, except for delays beyond the reasonable control of Borrower, until the construction or rehabilitation of Improvements has been completed in accordance with the Plans and Specifications, as approved by MBI.

(u) [This paragraph is intentionally left blank].

(v) [This paragraph is intentionally left blank].

(w) Borrower will cause all of the construction contracts for the Improvements to contain fixed-prices.

(x) Borrower will notify MBI, upon MBI's request at any time and from time to time, of all sites at which Borrower is conducting business or at which inventory, equipment or other assets of Borrower are located.

(y) Borrower will provide to MBI, promptly upon its execution, a copy of each contract executed by Borrower that is material to the operation of Borrower's businesses, and give prompt written notice to MBI of any act of default by Borrower under any existing or future contract, which default could have a material adverse effect on the financial condition or business operations of Borrower, or any acceleration of any indebtedness caused thereby.

(z) [This paragraph is intentionally left blank].

(aa) [This paragraph is intentionally left blank].

(bb) Borrower will comply with all applicable federal, state and local statutes, regulations and ordinances.

(cc) Borrower will from time to time upon the request of MBI, furnish to MBI information regarding arrangements between Borrower and its suppliers and further assurances that Borrower has the financial and operational ability and capacity, to perform its obligations hereunder.

(dd) Borrower will indemnify and hold MBI harmless from and against any and all claims, losses, damages, setoffs, counterclaims or expenses (including attorneys' fees and costs) which MBI may sustain as a result of the transactions evidenced by this Agreement or because of the breach of or inaccuracy in any of the representations and warranties contained in this Agreement or in any other document executed by Borrower in connection herewith or in any other written communication of Borrower to MBI in connection with the transactions secured hereby whether or not any such inaccuracy was known by Borrower to be incorrect, including but not limited to construction-related claims unless the claim for indemnification is the result of the gross negligence or intentional misconduct of MBI.

(ee) Borrower will indemnify, defend and hold MBI harmless from and against any claim, loss or damage to which MBI is subjected as a result of the presence of any Hazardous Material or the use, handling, storage, transportation or disposal thereof within or upon any real estate owned by Borrower or violation of the covenants, representations and warranties contained in this Agreement unless such matters arise solely out of the gross negligence or intentional misconduct of MBI.

(ff) Borrower will notify MBI in writing within ten (10) days after obtaining knowledge of the initiation of any criminal investigation or proceeding initiated by any federal, state or local agency, department, or instrumentality against (i) Borrower, (ii) any Maker, or (iii) any employee of Borrower if such investigation or proceeding could have a material adverse effect on the financial condition, business operations or assets of Borrower or result in any collateral granted to MBI in connection with the Loan being seized pursuant to 18 U.S.C. Sec. 1963, 21 U.S.C. Sec. 853, 21 U.S.C. Sec. 881, 46 App. U.S.C. Sec. 1904, I.C. 34-24-1 et seq. or any similar

federal, state or local law and/or regulation adopted in publications promulgated pursuant to such laws, or as such laws or regulations may be further amended, modified or supplemented.

(gg) Borrower will not create or permit to exist any mortgage, deed of trust, pledge, security interest, title retention device or other encumbrance on the Project or any other property, right, or asset owned or hereafter acquired by Borrower, except for the Permitted Encumbrances.

(hh) Borrower will not dispose of any of its assets or properties other than in the ordinary course of business for fair value.

(ii) Borrower will not directly or indirectly make (i) any loan, gift, distribution, transfer or advance of cash or other real, personal or intangible property, or (ii) any transfer of any other benefit or thing of value to any person except for fair value received by Borrower; it is intended that this paragraph prohibit, by way of example and not by way of limitation, any payment by Borrower characterized as a commission or referral fee, and any payments by Borrower characterized as the consideration for a purchase to the extent that such payment is not bona fide or exceeds the real value received by Borrower.

(jj) Borrower will not make payments to any affiliate of Borrower out of disbursements from the Loan except for payments approved by MBI to a general contractor or subcontractor for the construction or rehabilitation of the Improvements or as otherwise included in the Development Budget.

(kk) Borrower will not make any capital distributions to any member of Borrower.

(ll) Borrower will not assume, guarantee or otherwise become liable as guarantor or surety for the obligation of any person or entity except in connection with the endorsement of checks for deposit in the ordinary course of business and other similar collection transactions in the ordinary course of business and construction contracts for the Improvements.

(mm) [This paragraph is intentionally left blank].

(nn) Borrower will not make any financial arrangements for borrowed money through any financial institution, entity or party other than MBI, except as specifically permitted by this Agreement.

(oo) Borrower will not directly or indirectly make any payment or transfer to any affiliate, member or employee of Borrower, except for certain Costs of Construction in the amount and at the time set forth in the Development Budget.

(pp) Borrower will not perform or cause to be performed any excavation or fill activity or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with or otherwise affect any Wetlands unless in compliance with applicable laws or other governmental regulations.

(qq) Borrower will not take any action, allow any event to occur or permit a condition to exist which could materially and adversely affect Borrower's ability to complete its obligations under the terms of this Agreement, the Note or any other instruments, agreements or documents required of Borrower hereunder.

(rr) Borrower will not change the nature of Borrower's business.

(ss) Except as otherwise expressly permitted pursuant to the Loan Documents, Borrower will not make any change in the key management of Borrower.

(tt) Except as otherwise expressly permitted pursuant to the Loan Documents, Borrower will not sell, convey, transfer, further mortgage, change the form of ownership, or encumber or dispose of the Project, or any part thereof, or any interest therein (including without limitation any right to collect any income therefrom).

(uu) Borrower will not enter into any consolidation, acquisition or merger.

(vv) Except as otherwise expressly permitted pursuant to the Loan Documents, Borrower will prevent anyone having a direct or indirect legal or beneficial ownership interest in Borrower from selling, conveying, transferring, pledging or encumbering any stock, partnership, membership or beneficial interest in Borrower, or entering into any agreement to do so, whether such event is voluntary, involuntary or by operation of law.

(ww) Borrower shall remain at all times a single purpose entity which (i) is formed or organized solely for the purpose of acquiring, developing, operating and owning a real property interest in the Project and the activities incidental thereto, (ii) does not engage in any business unrelated to the Project, (iii) does not have any assets other than those related to its interest in the Project and the cash revenue generated therefrom, (iv) does not have any indebtedness (including contingent liabilities) other than the Loan, the Other Available Sources of Funds, and any indebtedness which is otherwise expressly permitted under the terms of the Loan Documents, (v) maintains its books and records, accounts separate and apart from the books, records and accounts of any other entity, and (vi) holds itself out as being an entity separate and apart from any other entity.

(xx) Borrower will comply in all material respects with all the terms of, and take all actions necessary to comply in all material respects with and keep in full force and effect all of the agreements providing for the payment to Borrower of the Required Equity and of the Other Available Sources of Funds, and will not terminate (except in accordance with its terms) or materially modify any such agreements without the prior written consent of MBI.

(yy) Borrower shall cause the Investor Member to contribute the Investor Member's Equity as set forth in the Operating Agreement as soon as Borrower is entitled to such funds. Borrower shall cause the Investor Member's Initial Equity Payment and other Investor Member's Equity to be paid out in the amounts and at the times required by the terms of the Operating Agreement, without any adjustments except as specifically provided for in the Operating Agreement.

(zz) Borrower shall take any and all lawful actions reasonably required to assure that: (i) the Borrower, Managing Member and the Project continue to comply with the Operating Agreement, (ii) Borrower, each Maker and the Managing Member will perform all of the requirements and acts set forth in the Operating Agreement as required by the Operating Agreement, and (iii) the Investor Member will fund the entire Investor Member's Equity in accordance with the Operating Agreement.

(aaa) Each installment of the Investor Member's Equity shall be made in accordance with the Operating Agreement.

(bbb) Borrower shall furnish to MBI copies of all correspondence and documents regarding any amendments, defaults or capital contributions (including but not limited to

correspondence and documents regarding any reductions in Investor Member's Equity) pertaining to the Tax Credits and the Operating Agreement, and shall do and cause all lawful acts and things reasonably necessary to preserve and maintain the Project's eligibility for the Tax Credits. Additionally, Borrower shall notify MBI if Borrower reasonably anticipates a reduction in any installment of Investor Member's Equity.

(ccc) [This paragraph is intentionally left blank].

(ddd) Borrower shall record on a timely basis the Extended Use Agreement in conjunction with the grant of low-income housing tax credits for the Project approved by MBI with respect to the Project.

(eee) Borrower shall develop the Project in a manner which satisfies, and shall continue to satisfy, all restrictions and requirements, including, without limitation, date placed in service, Qualified Basis, tenant income and rent restrictions applicable to projects that are allocated the Tax Credits.

(fff) Borrower shall provide a copy to MBI of any notice required to be given by the Investor Member pursuant to the terms of the Operating Agreement.

(ggg) Borrower shall furnish to MBI final certificates of occupancy for all units in the Project, if required by the authority with jurisdiction, and third-party verification acceptable to MBI that the Project is completed in accordance with the Plans and Specifications.

(hhh) Borrower shall not amend, terminate or breach any contract for the development, construction, rehabilitation or management of the Improvements (except for change orders permitted herein), including without limitation the general construction contract, the management agreement or the architect agreement relating to the Project.

(iii) Except as otherwise expressly permitted pursuant to the Loan Documents, Borrower shall not amend the Operating Agreement without MBI's prior written consent.

(jjj) Borrower shall tender (i) such portion of the Investor Member's Second Equity Payment to MBI necessary in an amount that is sufficient to repay a portion of the outstanding principal balance of the Loan and (ii) such portion of the Investor Member's Third Equity Payment to MBI necessary in an amount that is sufficient to repay the outstanding principal balance of the Loan, such portions of the Investor Member's Equity shall be immediately tendered by Borrower to MBI upon Borrower's receipt of such Investor Member's Equity, or any portion thereof, pursuant to the terms and conditions of the Operating Agreement.

(kkk) [This paragraph is intentionally left blank].

(lll) [This paragraph is intentionally left blank].

(mmm) Borrower shall cause a minimum of fifty percent (50%) of the costs of the Project to be funded with proceeds of the Bonds and the TE Seller Note and otherwise comply with the requirements of the Code to maintain the Bonds' tax-exempt status.

(nnn) Borrower shall record on a timely basis the LURA in conjunction with the issuance of tax-exempt bonds for the Project approved by MBI with respect to the Project.

(ooo) Prior to the date on which the Bonds have been paid in full, Borrower shall not make any payments of Deferred Developer Fees.

**ARTICLE XV.
LOAN ADVANCEMENTS AND USE OF PROCEEDS**

Section 15.1 Written Advancement Request. Upon the satisfaction of all terms and conditions contained in this Agreement for the advancement of proceeds of the Loan (including without limitation the conditions set forth in Section 9.1 and Section 10.1), MBI will from time to time, but not more than once per calendar month, advance principal on the Bonds to, or for the benefit of, Borrower upon the written request by an authorized representative of Borrower to finance Costs of Construction. The proceeds of all advancements obtained by Borrower under this Agreement shall be used solely for the payment of Costs of Construction and any other proper charge incurred by Borrower in making the Loan. Each application required for an advancement of the Loan shall be accompanied by a Draw Request from Borrower on a form approved by MBI and shall be only for work done upon the Real Estate or proper charges incurred by Borrower in the making of the Loan and shall be accompanied by copies of all invoices for hard and soft costs and such other supporting documentation required by the terms of this Agreement.

Section 15.2 Supporting Documentation for Each Request. Each Draw Request shall be supported by (i) an AIA Form G702/G703 (or such similar forms acceptable to MBI) for construction or rehabilitation of the Improvements and the purchase and installation of the Personal Property, executed by Borrower, the general contractor and the architect of record in form and substance acceptable to MBI, (ii) any further affidavits and requests for payment which MBI may require, (iii) if requested by MBI, a conditional acknowledgment of payment and release of lien from the general contractor which conditionally waives the general contractor's rights to file a lien against the Project as to any work performed or furnished and materials supplied in the construction or rehabilitation of the Improvements and furnishing of the Personal Property down to the date of the advancement contingent upon payment in full from the requested advancement of the amount specifically stated in the lien waiver as currently due and payable to the general contractor from Borrower, less any applicable retainage, and (iv) acknowledgments of payment and releases of liens down to the date covered by the last advancement from any contractor, architect, subcontractor, mechanic, journeyman, laborer, materialman, lessor leasing construction or other equipment and tools, or other person against the Project, covering all work performed or furnished and materials supplied in the construction or rehabilitation of the Improvements, and/or lien waivers from all contractors, subcontractors, architects, mechanics, journeymen, laborers, materialmen, lessors leasing construction or other equipment and tools, or other persons entitled to a lien, waiving their rights to file liens against the Project as to any work performed or furnished and materials supplied in the construction or rehabilitation of the Improvements and furnishing of the Personal Property down to the date of the last advancement. Each Draw Request for non-construction items shall be supported by whatever documentation MBI may reasonably require.

Section 15.3 Supporting Documentation for Final Request. Concurrently with the Draw Request for the final advancement of the Loan for construction costs, Borrower shall deliver to MBI (i) a Certificate of Substantial Completion executed by Borrower, the general contractor and the architect of record, (ii) a copy of a certificate of occupancy or completion for the Improvements issued by the appropriate governmental authority, if certificates of occupancy or completion are available and routinely issued for such types of improvements, and (iii) a complete list of all subcontractors, suppliers, materialmen, architects, contractors and any other party who has provided labor, materials or services in connection with the development, construction or rehabilitation of the Real Estate and Improvements and who may be entitled to a lien thereon. Within ten (10) days after making the final advancement of the Loan to Borrower, if requested by MBI, Borrower shall deliver to MBI acknowledgments of payment and releases of liens from any contractor, architect, subcontractor, mechanic, journeyman, laborer, materialman, lessor leasing

construction or other equipment and tools, or other person against the Project, covering all work performed or furnished or to be performed or furnished and materials supplied or to be supplied in the construction or rehabilitation of the Improvements, and/or final lien waivers from all contractors, architects, subcontractors, mechanics, journeymen, laborers, materialmen, lessors leasing construction or other equipment and tools, or other persons entitled to a lien, waiving their rights to file liens against the Project as to any work performed or furnished or to be performed or furnished and materials supplied or to be supplied in the construction or rehabilitation of the Improvements and furnishing of the Personal Property.

Section 15.4 Approval of Each Draw Request by Construction Consultant. MBI shall have the right to require a Construction Consultant to review the Development Budget and each Draw Request, and any supporting materials submitted by Borrower in connection with the Draw Request. Prior to making the requested advancement, the Construction Consultant must certify to MBI (i) that the construction or rehabilitation of the Improvements can be completed as shown by the Development Budget, (ii) what the percentage of completion of the Improvements is as of the time of such requested advancement, (iii) that the Draw Request conforms with the Development Budget, and (iv) such other matters as MBI may require in connection with such Draw Request. The certification of the Construction Consultant shall verify the percentage, cost and schedule of the completion of the construction or rehabilitation of the Improvements, the amount of the materials stored at the Real Estate, and the compliance of the construction with the Plans and Specifications and any applicable building codes, ordinances, regulations and requirements.

Section 15.5 Advancements Relating to Construction and Materials Costs. The advancements to which Borrower shall be entitled, with respect to construction and materials costs, shall be the total of (i) the purchase price of Uninstalled Materials for which MBI has approved funding pursuant to the terms of this Agreement, plus (ii) the cost of the portions of the work acceptably completed less prior advancements with respect thereto and any applicable retainages required by MBI all as certified by the Construction Consultant; provided however, Borrower shall not be entitled to and MBI shall have no obligation to make an advancement if either prior to such advancement or after the intended application of the proceeds of such advancement the Loan is not In Balance. No advancements for construction costs shall be made, however, unless and until all work requiring an inspection at the time by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities.

Section 15.6 Conditions Relating to Uninstalled Materials. The advancements to which Borrower shall be entitled with respect to Uninstalled Materials shall be subject to such funding conditions as MBI may from time to time require in its sole but reasonable discretion. Notwithstanding anything contained herein to the contrary, MBI shall have no obligation to advance more than One Hundred Thousand and 00/100 Dollars (\$100,000.00) at any time for Uninstalled Materials. The funding conditions required by MBI for Uninstalled Materials may include, without limitation, the following: (i) that Borrower provides proof the Uninstalled Materials are fully insured in a manner acceptable to MBI, (ii) the Uninstalled Materials have been inspected by a third party acceptable to MBI, (iii) MBI has been furnished with satisfactory evidence that title to the Uninstalled Materials has been transferred to Borrower free and clear of all liens and security interests except the lien and security interest granted to MBI, (iv) the Uninstalled Materials are stored in a manner and at a location that provides for a level of security acceptable to MBI, (v) the amount of the Loan funded for any Uninstalled Materials may not include any costs for the installation of such Uninstalled Materials into the Project, and (vi) all Uninstalled Materials must be incorporated into the project within sixty (60) days of either the date Loan proceeds were advanced for such Uninstalled Materials, or sixty (60) days from the date the Uninstalled Materials were purchased by Borrower as an equity contribution by Borrower to the Project. MBI shall have the right from time to time to inspect any Uninstalled Materials until they are incorporated into the Project. Borrower shall reimburse MBI upon demand for all costs incurred in connection with inspection of Uninstalled Materials.

Section 15.7 Retainage Requirements. MBI shall have the right, at its reasonable sole discretion, to require a ten percent (10%) retainage be withheld from advancements under the Loan for any construction cost. Any retainage reasonably required by MBI shall be funded upon the completion of the work, in a manner acceptable to MBI, of the construction item for which the retainage was required.

Section 15.8 Advancements for Line Items. The Development Budget includes as line items the cost of all labor, materials, equipment, fixtures and furnishings needed for the completion of the construction or rehabilitation of the Improvements, and all other costs, fees and expenses relating in any way whatsoever to the development of the Project and the operation of the Project prior to the Target Completion Date. Borrower agrees that each advancement under the Loan shall be used only for the payment of those line item costs on the Development Budget for which the Draw Request specifically references. Except as specifically permitted in this Agreement, MBI shall not be obligated to make any advancements for any category of costs set forth as a line item on the Development Budget which is greater than the amount set forth for such category in the Development Budget. Except for the line item for the Interest Reserve and subject to MBI's prior consent (which consent shall not be unreasonably withheld, conditioned, or delayed), Borrower may apply savings from one category of line item costs on the Development Budget to cost overruns in another category of line item costs on the Development Budget or to the contingency fund line item on the Development Budget, or to any other unbudgeted cost, provided: (i) no Event of Default then exists hereunder, (ii) all costs to be paid out of the category of line item costs from which funds are being reallocated have been paid or sufficient sums remain in said line item to pay such costs when the same become due, or (iii) said savings are actual savings and are documented to the satisfaction of MBI and the Construction Consultant in their discretion.

Section 15.9 Unsatisfactory Work. If the Construction Consultant or MBI shall determine that any Unsatisfactory Work has occurred, MBI shall be entitled to (i) withhold from advancements of the Loan such amounts which are intended to pay for the correction of the Unsatisfactory Work and (ii) require the construction work on such portion of the Improvements to be stopped until such time as MBI and the Construction Consultant are satisfied that the Unsatisfactory Work is corrected. No such action by MBI shall be deemed to affect Borrower's obligation to complete the Improvements on or before the Target Completion Date. MBI shall, subject to compliance by Borrower with all other applicable requirements of this Agreement, be required to make advancements of the Loan with respect to such Unsatisfactory Work only after the Construction Consultant and MBI shall have determined that the work which had been identified as Unsatisfactory Work has been corrected to the satisfaction of the Construction Consultant and MBI.

Section 15.10 Advancement Account, Other Advancement Requirements. Unless otherwise permitted by MBI, the advancements of the Loan shall be made by MBI to a special account maintained by Borrower with MBI for the receipt and disbursement of the proceeds of the Loan. MBI may, at its discretion, require that payments to the general contractor which relate to any work performed by any subcontractor be made by checks payable jointly to the general contractor and each such subcontractor that MBI designates. In addition, MBI may, at its discretion, require that all or any disbursements of the Loan be funded through a title insurance company with the title insurance company making payment directly to the parties who are to be paid from the proceeds of such advancement.

Section 15.11 Limitation on Total Amount Advanced. Anything contained herein to the contrary notwithstanding, it is stipulated and agreed that MBI shall not be obligated to advance under the Loan more than the lesser of (i) the total principal amount of the Loan, or (ii) the total of (A) the costs as shown on the Development Budget which are actually incurred by Borrower minus (B) the amount from time to time of the Non-Contingent Required Equity minus (C) the from time to time advanced portions of the Other Available Sources of Funds.

Section 15.12 MBI's Right to Advance without Borrower Request. MBI, without a request from Borrower, shall have the right, but not the obligation, from time to time to advance funds under the Loan to pay (i) any amounts owed by Borrower under the Loan, including, but not limited to, interest accrued on the Loan and any fees and expenses for which Borrower is obligated to reimburse MBI pursuant to the terms of this Agreement or any other Loan Document, (ii) any costs, premiums, fees, expenses, or other charges incurred in connection with the Loan, the Bonds or the Project which Borrower has agreed to pay pursuant to the terms of this Agreement or any other Loan Document, including without limitation real estate taxes and insurance premiums, and (iii) any other cost, expense or charge for which Borrower's failure to pay has created an Event of Default under this Agreement or under any of the other Loan Documents. In each such instance, the funds so advanced by MBI shall be paid directly to such other party to whom payment is owed, and evidenced by the Note and secured by the Loan Documents to the same effect as if such funds had been advanced directly to Borrower and MBI shall promptly provide Borrower with written notice after each such advance, if any.

Section 15.13 [This paragraph is intentionally left blank].

Section 15.14 Disbursement of Interest Reserve. The amount of the Loan was determined on the basis of the Development Budget approved by MBI, setting forth, among other things, the estimated accrued interest on the disbursed principal of the Note during the term of the Loan. Subject to the satisfaction of all terms and conditions in this Agreement for the advancement of proceeds of the Loan (including without limitation the conditions set forth in Section 4.1 and Section 5.1), Borrower shall be entitled to advancements of the Loan to pay interest as it accrues on the Loan up to the Interest Reserve Amount. Borrower hereby authorizes MBI to disburse on each day when interest is due and payable under the Note a portion of the Loan sufficient to pay accrued interest then due and payable on the Note, and the amount thereof shall increase the principal of the Note outstanding and shall reduce the balance of the Interest Reserve Amount. In lieu of disbursing Loan proceeds to Borrower for payment of accrued interest thereon, MBI may handle such disbursement and payment by making appropriate entries on the books and records of MBI. MBI shall have no obligation to disburse the Interest Reserve Amount (i) if any condition set forth in this Agreement for the advancement of proceeds of the Loan has not been satisfied or (ii) during any period in which there exists an Event of Default. Notwithstanding anything to the contrary contained in this Agreement, at such time as the Interest Reserve Amount has been fully funded, MBI shall have no obligation to disburse any portion of the Loan to pay accrued interest then due and payable on the Note.

Section 15.15 Interest Begins Accruing at Time of Advancement. Borrower expressly agrees that interest shall accrue, at the rate of interest specified in the Note, on the principal amount of each advancement of the Loan from the time such advancement is made by MBI, whether advanced directly to Borrower, or to the Title Company, or to any other applicable third party to whom Borrower has requested the advancement be made. With respect to each Loan advancement made by wire transfer, the advancement shall be deemed to have been made when funds are wired by MBI regardless of when such Loan proceeds are actually received, or applied, by such party.

Section 15.16 MBI's Right to Waive Advancement Procedures. Any of the advancement procedures or requirements set forth herein may be waived by MBI at the time of any advancement; however, any such waiver by MBI at the time of a particular advancement shall not be deemed or construed as a waiver of the right of MBI to require full compliance with all procedures and requirements with respect to any succeeding advancement.

Section 15.17 Disbursement of Investor Member's Equity. Borrower shall cause notice of all disbursements of Investor Member's Equity to be promptly provided to MBI along with copies of any and all lien waivers provided to any Maker and/or to Investor Member.

**ARTICLE XVI.
LOAN IN BALANCE**

Section 16.1 Loan in Balance. MBI shall have no obligation to make any advancement of the Loan at any time unless Borrower has contributed all Non-Contingent Required Equity toward the costs of the Project as shown on the Development Budget. The Non-Contingent Required Equity shall remain invested in the Project and Borrower shall not be entitled to any reimbursement for such equity funds from advancements of the Loan or otherwise until the Loan is paid in full. Borrower shall cause the Loan to be In-Balance at all times. If at any time MBI determines that the Loan is not In-Balance, then upon the demand of MBI, Borrower shall put the Loan In-Balance by depositing in a restricted account with MBI an amount equal to the amount MBI determines is needed to bring the Loan In-Balance, such amount to be held and disbursed as provided for in this Section. Borrower may not put the Loan In-Balance by amending the Development Budget to increase the Deferred Developer Fees unless such amendment is consented to in writing by MBI, provided MBI shall have no obligation to give any such consent and such consent may be withheld by MBI at its sole but reasonable discretion. If required by MBI at any time after the occurrence and during the continuance of an Event of Default, Borrower shall also deposit, or cause to be deposited, with MBI in one or more restricted accounts the Contingent Required Equity which Borrower is to contribute toward the cost of the Project. All such amounts deposited with MBI pursuant to this Section shall be advanced to Borrower from time to time, pursuant to the same advancement procedures set forth in this Agreement for advancements of the Loan, to fund the remaining Costs of Construction before any further advancements of the Loan shall be made. Until all Non-Contingent Required Equity and any other amounts required to be deposited with MBI pursuant to this Section have been paid or deposited with MBI and applied toward the payment of the Costs of Construction, MBI shall not be required to make any further advances of the Loan.

**ARTICLE XVII.
EVENTS OF DEFAULT**

Section 17.1 Events of Default. The occurrence of any of the following events or circumstances shall constitute an event of default hereunder (each such event or circumstance is herein referred to as an "Event of Default"):

- (a) A failure by Borrower to pay when due any installment of interest or principal due and payable pursuant to the terms of this Agreement or the Note and the continuation of such failure for a period of ten (10) days after written notice of such failure has been sent to Borrower; provided, however, after two (2) such notices in a twelve (12) month period, an Event of Default shall exist hereunder if such principal or interest is not paid when due;
- (b) A failure by Borrower or any other obligor to pay upon demand or when due, any other amounts due and payable pursuant to the terms of the Note, this Agreement or any of the other Loan Documents and the continuation of such failure for a period of ten (10) days after written notice of such failure has been sent to Borrower;
- (c) A failure by Borrower to maintain any insurance policies as required hereunder and the continuation of such failure for a period of ten (10) days after written notice of such failure has been sent to Borrower;
- (d) A default under or a failure by Borrower to observe or perform any agreement or covenant contained herein which default or failure can be cured by the payment of money and the continuation of such default or failure for a period of ten (10) days after written notice of such default or failure has been sent to Borrower;

(e) A default under or a failure by Borrower to observe or perform any other agreement or covenant contained herein or in the Loan Documents (for which a cure period is not already specified) and the continuation of such default or failure for a period of thirty (30) days after written notice of such default or failure has been sent to Borrower; provided, however, that if the nature of a default is such that it can be cured by Borrower but cannot be cured within the thirty (30) day period provided above or by the payment of money by Borrower, and if Borrower (i) commences efforts to effect such cure within such thirty (30) day period and thereafter diligently proceeds to take such actions as may be reasonably required to effect such cure and (ii) provides written notice to MBI within such thirty (30) day period describing what efforts it has commenced and intends to continue to effect such cure, the thirty (30) day cure period provided above shall be extended for a period ending the earlier of (i) ninety (90) days after the expiration of such thirty (30) day cure period provided above, (ii) the date as of which Borrower shall cease the diligent pursuit of such actions as may be reasonably required to effect such cure, or (iii) the date as of which the cure of such default by Borrower shall become impossible;

(f) Any warranty, representation, certification or statement made by Borrower in this Agreement, in any of the other Loan Documents or in any certification or other agreement or document executed or delivered in connection herewith is false or incorrect in any material respect upon the date when made or deemed to be made or repeated and is not cured to the satisfaction of MBI within thirty (30) days after MBI provides notice as required hereunder; provided, however, that if Investor Member (i) commences efforts to replace the Managing Member as managing member of the Borrower with an affiliate of the Investor Member as permitted by this Agreement and to effect a cure acceptable to MBI within such thirty (30) day period and thereafter diligently proceeds to take such actions as may be reasonably required to so replace Managing Member and effect such cure and (ii) provides written notice to MBI within such thirty (30) day period describing what efforts it has commenced and intends to continue to effect such cure, the thirty (30) day cure period provided above shall be extended for a period ending the earlier of (i) ninety (90) days after the expiration of such thirty (30) day cure period provided above, (ii) the date as of which Investor Member shall cease the diligent pursuit of such actions as may be reasonably required to effect such cure, or (iii) the date as of which the cure of such default by Investor Member shall become impossible;

(g) The occurrence of a Prohibited Transfer;

(h) The occurrence of an "Event of Default" under the Note or any of the other Loan Documents (for purposes of this paragraph, an "Event of Default" under shall mean the occurrence of any event or circumstance which is either defined as, or would constitute, an "Event of Default" under the terms of such Loan Document);

(i) With respect to any Loan Document which does not contain an express definition for an "Event of Default", the occurrence of any default under such Loan Document and a failure to cure such default within the applicable cure period specified herein or therein, if any;

(j) In the event the Project is abandoned or the construction or rehabilitation of the Improvements or installation of the Personal Property is stopped or delayed, except for delays beyond the reasonable control of Borrower, and such event continues for a period of thirty (30) days after written notice of such default or failure has been sent to Borrower; provided, however, that if Investor Member (i) commences efforts to replace the Managing Member as managing member of the Borrower with an affiliate of the Investor Member as permitted by this Agreement and to effect such cure within such thirty (30) day period and thereafter diligently proceeds to take such actions as may be reasonably required to so replace the Managing Member and effect such

cure and (ii) provides written notice to MBI within such thirty (30) day period describing what efforts it has commenced and intends to continue to effect such cure, the thirty (30) day cure period provided above shall be extended for a period ending the earlier of (i) ninety (90) days after the expiration of such thirty (30) day cure period provided above, (ii) the date as of which Investor Member shall cease the diligent pursuit of such actions as may be reasonably required to effect such cure, or (iii) the date as of which the cure of such default by Investor Member shall become impossible;

(k) In the event (i) the Improvements are not completed in substantial compliance with the Plans and Specifications, as approved by MBI and any applicable statutes, ordinances, codes, rules and regulations of civil authorities having jurisdiction, and all of the Personal Property required or contemplated by the Plans and Specifications has not been installed within 90 days after the Target Completion Date, or (ii) the construction or rehabilitation of the Improvements or installation of the Personal Property is delayed for any period of time for any reason whatsoever and MBI determines, in its reasonable judgment, that the construction or rehabilitation of the Improvements and the installation of the Personal Property required or contemplated by the Plans and Specifications will not be completed within 90 days after the Target Completion Date;

(l) In the event any mechanic's lien or other lien (other than the Permitted Encumbrances) shall be asserted or filed against the Project and such lien shall not be released, bonded over or insured over by a title insurance company in a manner satisfactory to MBI within sixty (60) days after the assertion or filing thereof;

(m) In the event any lawsuit shall be filed against Borrower (i) which enjoins the ongoing construction or rehabilitation of the Improvements or effectively causes the construction or rehabilitation of the Improvements to be stopped or delayed, or (ii) which, if adversely determined, would substantially impair the ability of Borrower to perform its obligations under the Loan Documents or complete the construction or rehabilitation of the Improvements by the Target Completion Date, and which is not dismissed within sixty (60) days after its filing;

(n) A failure of the Loan to be In-Balance as required by Section 16.1 of this Agreement and the continuation of such failure for a period of ten (10) days after written notice of such failure has been sent to Borrower;

(o) In the event all of the conditions set forth in Section 9.1 of this Agreement have not occurred or otherwise been satisfied or waived by MBI in writing on or before the Termination Date;

(p) The dissolution, liquidation, winding-up or termination of Borrower or the business of Borrower;

(q) Except for organizational changes otherwise expressly permitted under the Loan Documents, the occurrence of any material organizational change in Borrower or Managing Member, or the occurrence of any organizational change that requires a "transfer of physical assets" or a "modified review transfer of physical assets" as such terms are defined by HUD;

(r) A consolidation or merger of Borrower;

(s) An assignment by Borrower for the benefit of its creditors;

(t) The appointment of a receiver, trustee, custodian or liquidator for Borrower or any of its assets, which appointment is consented to or, if not consented to, shall not be removed or discharged within sixty (60) days after such appointment;

(u) The filing of a petition by or on behalf of Borrower for relief under the United States Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law, which petition is consented to or, if involuntary, remains undismissed for sixty (60) days after such filing;

(v) One or more uninsured judgments for the payment of money shall have been entered against Borrower or any Maker, which uninsured judgment or judgments exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) in the aggregate with respect to Borrower or any such Maker, and such judgment or judgments shall have remained undischarged and unstayed for a period of ninety (90) consecutive days, and, in the event such judgment or judgments are entered against any Maker, the failure of Borrower to provide a substitute accommodation party acceptable to MBI, in its sole but reasonable discretion, within ninety (90) days after such judgment or judgments have been entered;

(w) An assignment by any Maker for the benefit of its creditors and the failure of Borrower to provide a substitute accommodation party acceptable to MBI, in its sole but reasonable discretion, within sixty (60) days after such assignment;

(x) The appointment of a receiver, trustee, custodian or liquidator for any Maker or any of its assets, which appointment is consented to or, if not consented to, shall not be removed or discharged within sixty (60) days after such appointment, and the failure of Borrower to provide a substitute accommodation party acceptable to MBI, in its sole but reasonable discretion, within sixty (60) days after such appointment;

(y) The filing of a petition by or on behalf of any Maker for relief under the United States Bankruptcy Code, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law, which petition is consented to or, if involuntary, remains undismissed for sixty (60) days after such filing, and the failure of Borrower to provide a substitute accommodation party acceptable to MBI, in its sole but reasonable discretion, within sixty (60) days after the filing of such petition;

(z) A failure by any Maker to pay within ten (10) days upon demand or when due any amounts due under the Loan Documents executed by any Maker;

(aa) [This paragraph is intentionally left blank];

(bb) Any Maker gives written notice to MBI that (i) such Maker contests liability for any obligations under the Loan Documents executed by such Maker, (ii) such Maker does not intend to be liable for any future obligations under the Loan Documents executed by such Maker, or (iii) attempts to cancel or terminate the Loan Documents executed by such Maker, and the failure of Borrower to provide a substitute accommodation party acceptable to MBI, in its sole but reasonable discretion, within sixty (60) days after such written notice;

(cc) The death or insolvency of any Maker which causes the remaining Makers as a group to fail to meet any net worth and liquidity requirements of MBI as of the date of such death or insolvency and the failure of Borrower to provide an substitute accommodation party acceptable to MBI, in its sole but reasonable discretion, within ninety (90) days after such death or insolvency;

(dd) Any representation or warranty made or deemed to be made by or on behalf of any Maker in this Agreement or in any of the other documents executed by a Maker in connection herewith, or in any report, certificate, financial statement, document or other instrument delivered pursuant to or in connection with this Agreement, is false or incorrect in any material respect upon the date when made or deemed to be made or repeated and the failure by Borrower to provide a substitute accommodation party acceptable to MBI, in its sole but reasonable discretion, within sixty (60) days of such representation or warranty;

(ee) [This paragraph is intentionally left blank];

(ff) The Borrower defaults under the terms of the Supporting Agreements or the Borrower terminates any of the Supporting Agreements by virtue of a default by a party thereto without default by the Borrower thereunder and, upon such termination, the Borrower fails to promptly notify MBI or fails to retain another contracting party reasonably satisfactory to MBI within sixty (60) days after such termination or, within sixty (60) days after the termination, fails to cause the replacement contracting party to execute documents and make undertakings substantially comparable to those contained in the subject Supporting Agreement and additional loan documents substantially comparable to those Loan Documents executed by the contracting party;

(gg) The Borrower, Managing Member or any Maker fails for any reason to materially comply with any of the provisions or terms of the Operating Agreement and such failure is not cured or waived within any cure period allowed thereunder;

(hh) The occurrence of any default by Borrower under the documents or agreements executed in connection with the Other Available Sources of Funds and a failure to cure such default within the applicable cure period specified therein, if any;

(ii) [This paragraph is intentionally left blank];

(jj) [This paragraph is intentionally left blank];

(kk) A determination by MBI, in its sole reasonable discretion, that any action, inaction, commission, omission or circumstance has occurred or may occur which may subject any assets of Borrower, including but not limited to the Real Estate and Improvements, to be seized by any federal, state or local governmental department, agency or instrumentality pursuant to 18 U.S.C. Sec. 1963, 21 U.S.C. Sec. 853, 21 U.S.C. Sec. 881, 46 App. U.S.C. Sec. 1904 or any similar federal, state or local laws and/or regulations adopted in publications promulgated pursuant to such laws, or as such laws or regulations may be amended, modified or supplemented from time to time;

(ll) This Project loses its eligibility for any portion of the Tax Credits available to the Project which cause the Loan to no longer be In-Balance and failure of Borrower to deposit in a restricted account with MBI an amount equal to the deficiency and/or revise the Development Agreement to increase the amount of Deferred Developer Fee in order to put the Loan In-Balance as required in Article XVI hereof; or

(mm) The occurrence of an "Event of Default" under any of the documents executed in connection with the Bonds (for purposes of this paragraph, an "Event of Default" under the documents evidencing the Bonds shall mean the occurrence of any event or circumstance which is either defined as, or would constitute, an "Event of Default" under the terms of such document evidencing the Bonds); or

(nn) With respect to any document executed in connection with the Bonds, which does not contain an express definition for an "Event of Default", the occurrence of any default under such document executed in connection with the Bonds, and a failure to cure such default within the applicable cure period specified therein, if any;

Notwithstanding anything expressed or implied in this Section to the contrary, if MBI is prevented or prohibited by any applicable provision of the United States Bankruptcy Code or other applicable law from giving Borrower a notice of default hereunder, then in such event with respect to any default for which this Section provides that notice shall be given (i) no notice of a default shall be given to Borrower and any requirement that notice of a default must be given in order for an Event of Default to have occurred hereunder shall be deemed eliminated, and (ii) any applicable cure period which this Section provides shall follow such notice shall run from the occurrence of the event or condition of default rather than from the date of notice.

Notwithstanding anything contained in the Loan Documents to the contrary, the parties hereby agrees that any cure of any default or Event of Default made or tendered by the Investor Member during any applicable cure period set forth in Section 17.1 shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower, provided, however, it is expressly understood that such Investor Member shall be under no obligation to make or tender such cure.

ARTICLE XVIII. REMEDIES

Section 18.1 MBI Remedies. Upon the occurrence of any Event of Default hereunder, MBI may, in its sole discretion without further notice or demand to Borrower, pursue any one or more of the following rights, powers and remedies concurrently or successively, it being the intent hereof that none of such rights, powers and remedies shall be to the exclusion of any other:

(a) Declare all of the indebtedness evidenced by the Note and remaining unpaid, including without limitation the entire unpaid principal balance, any accrued and unpaid interest, all prepayment premiums payable under the Note, if any, and all other amounts payable under the Note, to be immediately due and payable, anything contained herein or in the Note to the contrary notwithstanding;

(b) Withhold making any further advancement under the Loan;

(c) Perform all acts necessary for the performance, sale, collection and enforcement of any collateral securing the Loan;

(d) Exercise any of the various rights, powers and remedies provided in any of the Loan Documents;

(e) Without demand or notice of any kind, apply any funds of Borrower on deposit with or in the possession of MBI toward the payment of any indebtedness outstanding under the Loan Documents, in such manner of application as MBI may choose, to the extent such funds are not Mortgaged Property (as defined in the HUD Mortgage); and

(f) In addition to the rights, powers and remedies herein expressly conferred upon MBI, MBI shall be entitled to exercise all rights, powers and remedies available to MBI by law or at equity.

Section 18.2 [This Section is intentionally left blank].

Section 18.3 Rights not Exclusive. All rights and remedies of MBI herein specified are cumulative and in addition to, not in limitation of, any rights and remedies which it may have by law or at equity. Enforcement by MBI of any security for Borrower's obligations under or in connection with the Loan or this Agreement shall not constitute an election by MBI of remedies so as to preclude the exercise of any other right or remedy available to MBI.

Section 18.4 No Waiver. MBI may exercise any remedy available to MBI hereunder regardless of any prior forbearance. No waiver of any default or failure or delay to exercise any right or remedy by MBI shall operate as a waiver of any other default or of the same default in the future or as a waiver of any right or remedy with respect to the same or any other occurrence. The acceptance by MBI of (i) any payment after the due date of such payment, (ii) any payment in an amount which is less than the required payment, or (iii) the partial performance of any other obligation of Borrower arising under the Loan, shall not be a waiver of MBI's right to require prompt payment when due of all other payments, prompt performance of all other obligations or to exercise any right or remedy with respect to any failure to make prompt payment or perform such obligations.

Section 18.5 Un-Cured Defaults. Notwithstanding anything expressed or implied herein to the contrary, MBI shall have no obligation to make any advancement under the Loan during any period in which an event or circumstance exists that, with the giving of notice or the lapse of time, would become an event of default under the terms of this Agreement or any other Loan Document. Without limitation, this shall include any period during which any failure, breach, or default specified under this Agreement or in any other Loan Document has occurred but the applicable cure period has not expired.

Section 18.6 Right to Order Updated Appraisal and Environmental Report. Upon the occurrence of an Event of Default hereunder, at the option of MBI and without further notice or demand to Borrower, MBI may (i) order an appraisal of the Project, to be in such form and scope and to be performed by an appraiser as MBI may choose in its sole discretion, and (ii) order a current phase I environmental assessment of the Project, to be in such form and scope and to be performed by an engineer as MBI may choose in its sole discretion. All costs and expenses of such appraisal and environmental assessment shall be immediately paid by Borrower upon demand by MBI and such amounts shall be added to the indebtedness evidenced by the Loan.

Section 18.7 Cooperation by Borrower. Upon an Event of Default hereunder, Borrower, immediately upon demand by MBI, shall assemble all collateral for the Loan and make it available to MBI at a place or places to be designated by MBI which are reasonably convenient to MBI and Borrower. Borrower recognizes that in the event Borrower fails to perform, observe or discharge any of its obligations under this Agreement or any other documents executed in connection herewith, MBI shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

Section 18.8 No Liability of MBI. Whether or not MBI elects to employ any or all of the remedies available upon the occurrence of an Event of Default, MBI shall not be liable for the construction of or failure to construct, rehabilitate, complete or protect the Improvements or the Project or for payment of any expenses incurred in connection with the exercise of any remedy available to MBI or for the performance or non-performance of any other obligation of Borrower.

ARTICLE XIX.

GENERAL CONDITIONS AND MISCELLANEOUS

Section 19.1 Extension of the Note. In the event that Borrower does not pay the Note at its maturity, the Note may be extended at the sole option of MBI for such period of time as MBI may determine.

Any such extension shall be made by appropriate notation on an attachment to the Note and Borrower shall be furnished with a copy of the same.

Section 19.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of MBI and Borrower provided that no assignment or alienation of any rights or obligations by Borrower shall be effective without the prior written consent of MBI and further provided that any party who takes any rights or obligations of Borrower by assignment, alienation or otherwise shall assume all of the rights and obligations of Borrower the same as if such party were an original party to this Agreement. This Agreement is entered into by MBI with Borrower in reliance upon Borrower and the current Members of Borrower and no assignment or alienation (except to MBI) of any rights or obligations of Borrower or the current Members of Borrower, hereunder shall be effective without the prior written consent of MBI, except as otherwise permitted in the Loan Documents.

Section 19.3 No Third-Party Beneficiaries. Except with respect to the Investor Member, nothing contained herein shall be deemed or construed to create an obligation on the part of MBI to any third party nor shall any third party have a right to enforce against MBI any rights which Borrower may have under this Agreement.

Section 19.4 No Waiver. No waiver by MBI of the breach of any term, condition, warranty, representation, covenant or agreement contained herein or in the agreements, instruments, guaranties or documents delivered pursuant thereto shall be considered as a waiver of the same default in the future or any other default and no delay or omission by MBI in exercising any right or remedy hereunder shall impair any such right or remedy or be construed as a waiver of any default. The acceptance by MBI of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of MBI's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. The inclusion of deadlines and the references to dates later than the maturity of any obligation shall not by implication or otherwise obligate MBI to renew or extend any maturity.

Section 19.5 Waiver of Presentment. Borrower waives presentment, demand and protest and notice of presentment, maturity, release, compromising settlement, extension or renewal of any or all promissory notes, commercial paper, accounts receivable, contract rights, documents, instruments, chattel paper and guaranties entered into by Borrower in connection herewith and at any time held by MBI and on which Borrower may be liable in any way.

Section 19.6 Amendments. Any modification of or amendment to this Agreement shall be ineffective unless in writing and signed by the duly authorized representatives of Borrower, the Issuer and MBI.

Section 19.7 Additional Rights of MBI. Each payment to MBI shall be applied to the payment of accrued and unpaid interest and to the reduction of the principal balance in such order and in such amounts as MBI shall determine, in its sole discretion. MBI may from time to time without notice to Borrower (a) release any collateral or substitute or exchange any collateral, (b) release, modify or compromise any liability of Borrower, the Maker or any other obligor, or the terms thereof and (c) apply any amounts paid to MBI with such marshalling of security as MBI may, in its sole discretion, determine appropriate; all without the consent of or proper notice to Borrower. The liability of Borrower shall not be released in part or in whole by reason of the foregoing, the addition of Makers, endorsers, guarantors or sureties, or a failure to perfect any security interest or lien in any collateral or a failure to proceed in any particular manner with respect to any collateral.

Section 19.8 Preferences. To the extent that Borrower makes a payment or payments to MBI, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations arising hereunder and under the Note, or such part thereof intended to be satisfied, shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by MBI.

Section 19.9 Notices. Any written notice required or permitted to MBI or Borrower hereunder shall be deemed effective when (a) mailed by certified United States mail, postage prepaid with return receipt requested or (b) sent by an overnight carrier which provides for a return receipt, to the applicable address specified below:

If to Borrower:	McCormick Rehabilitation, LLC c/o Bear Development, LLC 4011 80th Street Kenosha, Wisconsin 53142 Attention: Adam Templer
With a copy to:	Applegate & Thorne-Thomsen, P.C. 125 S. Financial Place, Suite 1900 Chicago, Illinois 60605 Attention: Warren P. Wenzloff, Esq.
With a copy to:	NEF Assignment Corporation 10 South Riverside Plaza, Suite 1700 Chicago, Illinois 60606-3908 Attention: General Counsel
With a copy to:	Barnes & Thornburg LLP 41 South High Street, Suite 3300 Columbus, Ohio 43215 Attention: Jordan Carr
If to MBI:	Merchants Bank of Indiana 410 Monon Blvd., 4 th Floor Carmel, Indiana 46032 Attention: Philip Daubenmire
With a copy to:	Wooden & McLaughlin, LLP One Indiana Square, Suite 1800 Indianapolis, Indiana 46204 Attention: John Hamilton
If to Issuer:	City of Fort Wayne, Indiana Fort Wayne Community Development Division Citizens Square 200 East Berry Street, Suite 320 Fort Wayne, Indiana 46802 Attention: Director

With a copy to: Lawrence S. Shine, Esq.
City of Fort Wayne, Indiana
Citizens Square
200 East Berry Street, 4th Floor
Fort Wayne, Indiana 46802

or at such other address as either Borrower or MBI may from time to time specify by notice hereunder. Any notice may be given on behalf of MBI or Borrower by such party's legal counsel. Notwithstanding anything contained herein to the contrary, any notice required to be given by MBI of a sale, lease, other disposition of the collateral or any other intended action by MBI, deposited in the United States Mail postage prepaid duly addressed as specified above no less than ten (10) days prior to such proposed action, or if sent by overnight carrier five (5) days prior to such proposed action shall constitute commercially reasonable and fair notice to Borrower of same.

Section 19.10 Prior Agreements. This Agreement replaces and supersedes any inconsistent provisions of any agreements heretofore made by MBI, Issuer and Borrower. This Agreement and the other Loan Documents are intended to be complementary and supplementary to one another. In the event of any conflict between the terms of one or more thereof, such terms shall, to the fullest extent reasonably possible, be construed to be complementary. However, if such terms cannot be construed as complementary, then the terms of this Agreement shall govern.

Section 19.11 No Partnership/Joint Venture. It is hereby acknowledged by MBI and Borrower that the relationship between MBI and Borrower created hereby and by any other document executed in connection with the Loan is that of creditor and debtor and is not intended to be and shall not in any way be construed to be that of a partnership, a joint venture or that of principal and agent; and it is hereby further acknowledged that any control of or supervision over the construction or rehabilitation of the Improvements by MBI or disbursement of the Loan to anyone other than Borrower shall not be deemed to make MBI a member, joint venturer or principal or agent of Borrower, but rather shall be deemed to be solely for the purpose of protecting MBI's security for the indebtedness evidenced by the Note and other indebtedness of Borrower to MBI.

Section 19.12 Advertising. Borrower agrees and authorizes MBI, if MBI desires, for a reasonable period of time to place a sign on the Real Estate (subject to applicable zoning ordinances and governmental approvals) advertising this financing or may otherwise refer to or describe this financing in its advertising.

Section 19.13 Governing Law. This Agreement has been entered into and shall be governed by and construed in accordance with the laws of the State of Indiana, notwithstanding that Indiana conflicts of law rules might otherwise require the substantive rules of law of another jurisdiction to apply.

Section 19.14 Brokers. Borrower hereby represents to MBI that it has not dealt with or engaged the services of any broker, underwriter, placement agent, or finder in connection with the Loan. Borrower hereby agrees to indemnify and hold MBI harmless from and against any and all claims, liabilities, losses, costs and expenses of any kind in any way relating to or arising from a claim by any party that such party acted on behalf of Borrower in connection with the Loan and is owed a fee or commission.

Section 19.15 Survival of Indemnities. All indemnities from Borrower to MBI set forth in this Agreement shall survive this Agreement.

Section 19.16 Invalidity of any Provision. It is the intent of this Agreement to confer to MBI the rights and benefits hereunder to the full extent allowable by law. If any provision (or a portion thereof) of this Agreement or of any other document executed in connection herewith is held invalid or unenforceable

or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable (each such provision, or applicable portion thereof, is herein referred to as an “**Invalid Provision**”), then (i) the remainder of this Agreement, or the application of such Invalid Provision to any other person or circumstance, shall be valid and enforceable to the fullest extent permitted by law, (ii) the Invalid Provision shall be deemed to be severable in such instance, and (iii) Borrower and MBI shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement.

Section 19.17 Authorization To Complete Blanks. In the event Borrower executes and delivers this Agreement or any other Loan Documents to MBI with any blank incomplete, Borrower authorizes MBI or its agents to complete any such open blanks, including without limitation any blanks relating to the effective date of any such Loan Documents, the maturity date of the Note, the address of any party to the Loan Document or the effective date of any other document referenced herein or therein.

Section 19.18 Additional Actions. Upon the request from time to time of MBI, Borrower shall execute and deliver such additional instruments, documents and agreements and shall take such further actions as may be reasonably requested by MBI to effectuate the transactions contemplated by this Agreement.

Section 19.19 Participants. MBI may transfer participation interests in the Bonds to other financial institutions without notice or consent by Borrower. Borrower agrees that MBI may deliver any and all information, including financial information, in MBI's possession concerning Borrower, Makers or the Project, to any prospective participant.

Section 19.20 No MBI Liability. To the extent permitted by applicable law, MBI shall have no liability to Borrower or any third party for any loss, damage, injury, cost or expense resulting from any action or omission by MBI, or any of its representatives, which was taken, omitted or made in good faith in connection with the Loan, this Agreement or any of the Loan Documents.

Section 19.21 Joint and Several Obligations. The obligations, agreements and covenants of the persons or entities constituting Borrower hereunder are joint and several and unconditional.

Section 19.22 Interpretation. The parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or schedules hereto. All references herein to a party's best knowledge shall be deemed to mean the best knowledge of such party based on a commercially reasonable inquiry. Unless specified to the contrary herein, all references herein to an exercise of discretion or judgment by MBI, to the making of a determination or designation by MBI, to the application of MBI's discretion or opinion, to the granting or withholding of MBI's consent or approval, to the consideration of whether a matter or thing is satisfactory or acceptable to MBI, or otherwise involving the decision making of MBI, shall be deemed to mean that MBI shall decide unilaterally using its sole but reasonable discretion or judgment. Where it expressly specifies herein, or in any of the Loan Documents, that the exercise of discretion or judgment by MBI shall be reasonable or that any consent, approval, decision or other determination by MBI shall not be unreasonably withheld, it is intended to mean that (i) MBI shall act in a commercially reasonable manner in the exercise of such discretion or judgment and in considering any such consent, approval, decision or other determination, and (ii) any such consent, approval, decision or other determination by MBI shall not be unreasonably withheld, conditioned or delayed. Where it expressly specifies herein, or in any of the Loan Documents, that a decision or determination shall be in the sole discretion of MBI, it is intended to mean that MBI shall decide unilaterally using its sole and absolute discretion or judgment.

Section 19.23 USA Patriot Act Notice; Compliance. The USA Patriot Act of 2001 (Public Law 107-56) and federal regulations issued with respect thereto require all financial institutions to obtain, verify and record certain information that identifies each individual or business entity which opens an "account" or establishes a relationship with such financial institution. Consequently, MBI may from time-to-time request, and Borrower shall provide to MBI, (i) Borrower's name, address, tax identification number, date of birth, and other information that will allow MBI to identify Borrower, (ii) the name, address, tax identification number, date of birth, and other information that will allow MBI to identify each guarantor of the Loan, (iii) the name, address, tax identification number, date of birth, and other information that will allow MBI to identify each officer, partner, member, shareholder or other stakeholder of Borrower, and/or (iv) such other identification information as shall be necessary for MBI to comply with federal law. An "account" for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

Section 19.24 Waiver of Trial by Jury. **Borrower, Issuer and MBI hereby agree that any suit, action or proceeding, whether a claim or counterclaim, brought or instituted by any party on or with respect to this Agreement or any other document executed in connection herewith or which in any way relates, directly or indirectly to the Note or any event, transaction or occurrence arising out of or in any way connected with this Agreement or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. BORROWER, ISSUER AND MBI HEREBY EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.** Borrower acknowledges that Borrower may have a right to a trial by jury in any such suit, action or proceeding and that Borrower hereby is knowingly, intentionally and voluntarily waiving any such right. Borrower further acknowledges and agrees that this Section is material to this Agreement between Borrower, Issuer and MBI and that adequate consideration has been given by MBI and Issuer and received by Borrower in exchange for the waiver made by Borrower pursuant to this Section.

Section 19.25 Submission To Jurisdiction. **Borrower irrevocably agrees that any suit, action or other legal proceeding arising directly, indirectly or otherwise in connection with, out of, related to or from the Loan, the Note, this Agreement or any of the other Loan Documents may be brought in a court located within the State of Indiana. Furthermore, Borrower irrevocably (i) consents and submits to the jurisdiction of any local, state or federal court located within the State of Indiana, (ii) waives any objection which Borrower may have to the laying of venue in any suit, action or proceeding in any such courts, and (iii) waives any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Notwithstanding anything contained in this paragraph to the contrary, Issuer and MBI shall have the right to commence and litigate any suit, action or proceeding against Borrower or any property of Borrower in any court of any other appropriate jurisdiction. Nothing herein shall be deemed to limit any rights, powers or privileges which Issuer and MBI may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Issuer and MBI which is lawful pursuant to, or which is permitted by, any of the foregoing.**

Section 19.26 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original though not fully executed, but all of which, when taken together, shall constitute but one instrument. Any party hereto may execute this Agreement by executing any such counterpart. The signature and acknowledgement page(s) of any counterpart may be detached from a counterpart without impairing the legal effect of the signature(s) thereon and attached to any other counterpart identical thereto except for the signature and acknowledgement page attached to it. Any executed counterpart which is transmitted to MBI or its attorneys by facsimile or electronic mail transmission shall be deemed to have

been properly executed and delivered by all parties executing such counterpart for all purposes hereof to the same effect as if such original executed counterpart was delivered to MBI or its attorneys.

Section 19.27 Captions. The captions or headings herein have been inserted solely for the convenience of reference and in no way define or limit the scope, intent or substance of any provision of this Agreement.

Section 19.28 MBI Determinations. Issuer, pursuant to the terms and provisions of this Agreement, assigned its rights and title to the Loan to MBI who will administer such loan for the benefit of the bondholders. Notwithstanding anything contained in any Loan Document to the contrary, Borrower and Issuer hereby acknowledge and agree that any determinations, discretionary actions, approvals, consents, discretionary decisions or waivers to be made by Issuer pursuant to the Loan Documents shall not be made without written direction from MBI. Notwithstanding anything contained in any Loan Document to the contrary, Borrower hereby acknowledges and agrees that any determinations, discretionary actions, approvals, consents, discretionary decisions or waivers made by Issuer that are not accompanied by a written direction from MBI shall be void and have no force and effect unless and until accompanied by a written direction from MBI.

Section 19.29 Issuer Deliverables. Notwithstanding anything contained in any Loan Document to the contrary, Borrower and Issuer hereby acknowledge and agree that any items to be provided to Issuer pursuant to the Loan Documents shall be provided to MBI instead. Notwithstanding anything contained in any Loan Document to the contrary, Borrower and Issuer hereby acknowledge and agree that any reserve, deposit, escrow or account established or to be established by Borrower with Issuer, as applicable, pursuant to the terms and conditions of any Loan Document shall be established by Issuer and Borrower at a bank or banks selected by MBI, in its sole but reasonable discretion. Furthermore, MBI shall have the right of setoff with respect to any such reserves, deposits, escrows or accounts.

Section 19.30 MBI Indemnification. Borrower hereby acknowledges and agrees that any indemnification provisions set forth in any Loan Document indemnifying Issuer shall also indemnify MBI to the same extent as such provisions indemnify Issuer.

Section 19.31 HUD Mortgage Documents Control.

(a) In the event of any conflict and to the extent that there is any inconsistency or ambiguity between the provisions of this Agreement and the provisions of the HUD Mortgage Documents (as defined in the Agreement), the HUD Mortgage Documents will be deemed to be controlling, and any such ambiguity or inconsistency will be resolved in favor of, and pursuant to the terms of the HUD Mortgage Documents, as applicable. The Bondholder shall conclusively rely upon an Opinion of Counsel regarding any such conflict, and absent receipt of such Opinion of Counsel, the Bondholder shall conclusively presume no conflict exists.

(b) The Bondholder and the Issuer agree that enforcement of the covenants in this Agreement will not result in, and neither the Issuer nor the Bondholder has or shall be entitled to assert, any claim against the Borrower, the Project, any reserves or deposits required by HUD in connection with the HUD Mortgage transaction, or the rents or deposits or other income of the Project other than available "Surplus Cash" as defined in the HUD Regulatory Agreement.

(c) Failure of the Issuer or the Borrower to comply with any of the covenants set forth in this Agreement will not serve as a basis for default on the HUD Loan, the underlying HUD Mortgage, or any of the other HUD Mortgage Documents.

(d) The Issuer shall have no responsibility or liability for non-compliance with any provision of any documents resulting from the controlling status of the HUD Mortgage Documents.

ARTICLE XX.

CASUALTY AND CONDEMNATION

Section 20.1 Assignment of Insurance Policies, Application of Proceeds and Additional Requirements. All insurance policies are to be held by and, to the extent of its interests, for the benefit of and, subject to the HUD Mortgage, payable in case of loss to MBI, and Borrower shall deliver to MBI a new policy as replacement for any expiring policy at least fifteen (15) days before the date of such expiration. Subject to the HUD Mortgage, MBI shall have the right to settle and compromise any and all claims under any of the insurance policies required to be maintained by Borrower under this Agreement; to demand, receive and receipt for all monies payable thereunder; and to execute in the name of Borrower or MBI or both any proof of loss, notice or other instruments in connection with such policies or any loss thereunder. Subject the HUD Mortgage, all amounts recoverable under any policy are hereby assigned to MBI and, in the event of a loss, each insurance company concerned is hereby authorized and directed to make payment for such loss directly to MBI rather than jointly to MBI and Borrower, and, subject to the HUD Mortgage the amount collected shall be used in any one or more of the following ways, at the option of MBI: (a) applied upon the indebtedness secured by the Loan Documents, whether or not such indebtedness is then due and payable, (b) used to fulfill any of the covenants contained herein, or (c) used to replace or restore the Project or Personal Property to a condition satisfactory to MBI. All insurance proceeds applied toward the indebtedness secured hereby shall be applied without the imposition of a prepayment penalty or premium. Subject to the HUD Mortgage, Borrower transfers and grants a security interest, within the meaning of the Uniform Commercial Code as adopted in Indiana, to MBI in and to all monies at any time held by MBI pursuant to this paragraph and such monies and all of Borrower's right, title and interest therein are hereby assigned to MBI, all as additional security for the indebtedness secured by the Loan Documents. Borrower warrants and represents to MBI that Borrower has not received any notice from any insurance company of any defects or inadequacies in the Project which would adversely affect the insurability of the Project or materially increase the cost of insuring the Project beyond that which is customarily charged for similar property in the vicinity of the Project used for a similar purpose. Borrower covenants and agrees to provide to MBI, promptly after receipt by Borrower, copies of any notices received from any insurance company regarding any defects or inadequacies in the Project.

Notwithstanding anything contained herein to the contrary, if Borrower provides a written request to MBI within thirty (30) days after the occurrence of any casualty in which improvements located on the Real Estate are damaged, to use the insurance proceeds to restore or rebuild the Project, then MBI shall disburse the net proceeds of any such insurance proceeds received by MBI to or for the benefit of Borrower for the purpose of restoring the Project provided that the following conditions are satisfied in a manner reasonably acceptable to MBI:

(a) No material adverse change in the financial condition of Borrower has occurred prior to the loss or casualty;

(b) There is no default or event which with the giving of notice or lapse of time would constitute an Event of Default under this Agreement;

(c) The Project is to be restored to its original condition prior to the occurrence of the casualty with such modifications as MBI may approve in its reasonable discretion;

(d) MBI determines, in its reasonable discretion, that such restoration can be completed to MBI's satisfaction prior to the maturity date of the Note;

(e) MBI determines, in its reasonable discretion, that Borrower has sufficient funds available to Borrower, including without limitation anticipated payments from business interruption insurance, to pay when due all costs and expenses relating to the operation of the Project during such restoration;

(f) MBI determines, in its reasonable discretion, that such net insurance proceeds together with any additional funds made available for such purpose by Borrower and deposited with MBI shall be sufficient to restore the Project in accordance with plans and specifications approved by MBI and Borrower, free and clear of all liens except any Permitted Encumbrances;

(g) MBI shall not be deemed a fiduciary, and shall have no obligation to restore or repair the Project;

(h) The disbursement of all proceeds shall be done in accordance with terms, conditions, plans and procedures set forth in this Agreement for the disbursement of Loan proceeds.

(i) MBI is reimbursed from each such advance for (i) all costs incurred by MBI in connection with the collection or handling of such funds (including but not limited to reasonable attorney's fees incurred by MBI in collecting or handling such funds or obtaining a settlement of an insurance claim) and (ii) all costs and expenses incurred by MBI in connection with advancing such insurance proceeds for the restoration or rebuilding of the Project, including without limitation any inspection fees, engineer review fees, title insurance update fees and survey fees;

(j) The insurance companies providing coverage for the Project do not deny any liability for the payment of the claims and all insurance proceeds payable in connection with such claims have been paid to MBI.

(k) Notwithstanding the forgoing, subject to the HUD Mortgage, if the total net casualty insurance proceeds payable with respect to a particular casualty are Twenty-Five Thousand Dollars (\$25,000.00) or less, then Borrower shall be entitled to retain such proceeds provided (at the time of the casualty and/or the payment of proceeds) there is no default or event which with the giving of notice or lapse of time would constitute an Event of Default under this Agreement and Borrower applies such proceeds to restoring the Project. MBI at its option may waive any requirement set forth herein for the advancement of insurance proceeds.

Section 20.2 Eminent Domain. Subject to the HUD Mortgage, all awards made by any public or quasi-public authority for damages to the Project by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Project, are hereby assigned to MBI and MBI, at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such award to the extent of the indebtedness secured by the Loan Documents from the appropriate governmental authority. Subject to the HUD Mortgage, such award shall be used in any one or more of the following ways, at the option of MBI: (i) applied upon the indebtedness secured hereby or payable hereunder, whether or not such indebtedness is then due and payable, or (ii) applied to replace or restore the Project to a condition satisfactory to MBI. Upon the occurrence of an Event of Default hereunder and subject to the HUD Mortgage, MBI is authorized, at its option, to appear in and prosecute in its own name any action or proceeding or, with consent and joinder of Borrower, to make any compromise or settlement in connection with such taking or damage. Subject to the HUD Mortgage, Borrower will, upon request by MBI, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning, upon the occurrence of an Event of Default hereunder, all proceeds from such awards to MBI free and clear and discharged of any and all encumbrances or claims of any kind or nature whatsoever. Subject to the HUD Mortgage, Borrower transfers and grants a security interest, within the meaning of the Uniform Commercial

Code as adopted in Indiana, to MBI in and to all monies at any time held by MBI pursuant to this paragraph and such monies and all of Borrower's right, title and interest therein are hereby assigned to MBI, all as additional security for the indebtedness secured hereby. All condemnation proceeds applied toward the indebtedness secured hereby shall be applied without the imposition of a prepayment penalty or premium.

Notwithstanding anything contained herein to the contrary and subject to the HUD Mortgage, if Borrower provides a written request to MBI within thirty (30) days after the occurrence of any condemnation in which less than twenty-five percent (25%) of the market value of the improvements located on the Real Estate are condemned, to use the condemnation proceeds to restore or rebuild the Project, then MBI shall disburse the net proceeds of any such condemnation award received by MBI, after deducting from such proceeds any expenses incurred by MBI in the collection or handling of such funds (including but not limited to reasonable attorney's fees incurred by MBI in collecting or handling such funds or obtaining a settlement of a condemnation claim), to or for the benefit of Borrower for the purpose of restoring the Project in accordance with terms, conditions, plans and procedures acceptable to MBI provided that the following conditions are satisfied in a manner reasonably acceptable to MBI:

(a) No material adverse change in the financial condition of Borrower has occurred prior to the loss or casualty;

(b) There is no default or event which with the giving of notice or lapse of time would constitute an Event of Default under this Agreement;

(c) MBI determines, in its reasonable discretion, that such restoration can be completed to MBI's satisfaction prior to the maturity date of the Note;

(d) MBI determines, in its reasonable discretion, that such net condemnation proceeds together with any additional funds made available for such purpose by Borrower and deposited with MBI shall be sufficient to restore the Project in accordance with plans and specifications approved by MBI and Borrower, free and clear of all liens except the Permitted Encumbrances;

(e) MBI shall not be deemed a fiduciary, and shall have no obligation to restore or repair the Project;

(f) The disbursement of all proceeds shall be done in accordance with terms, conditions, plans and procedures set forth in this Agreement for the disbursement of Loan;

(g) MBI is reimbursed from each such advance for (i) all costs incurred by MBI in connection with the collection or handling of such funds (including but not limited to reasonable attorney's fees incurred by MBI in collecting or handling such funds or obtaining a settlement of a condemnation claim) and (ii) all costs and expenses incurred by MBI in connection with advancing such condemnation proceeds for the restoration or rebuilding of the Project, including without limitation any inspection fees, engineer review fees, title insurance update fees and survey fees; and

(h) The Project can be restored to a size and economic condition satisfactory to MBI in its sole but reasonable discretion.

Notwithstanding the forgoing and subject to the HUD Mortgage, if the total net condemnation proceeds payable with respect to a particular condemnation are Twenty-Five Thousand Dollars (\$25,000.00) or less, then Borrower shall be entitled to retain such proceeds provided (at the time of the condemnation and/or the payment of proceeds) there is no default or event which with the giving of notice or lapse of time would constitute an Event of Default under this Agreement and Borrower applies such

proceeds to restoring the Project and to the expenses incurred by Borrower to settle the condemnation claim. MBI at its option may waive any requirement set forth herein for the advancement of any condemnation proceeds.

[the remainder of this page is intentionally left blank,
see following Signature Pages for signatures of parties]

SIGNATURE PAGE FOR MBI
TO BOND PURCHASE AND LOAN AGREEMENT

IN WITNESS WHEREOF, MBI has caused this Agreement to be executed effective as of the day and the year first above written.

MBI:

MERCHANTS BANK OF INDIANA

By: _____

Name: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the _____ of Merchants Bank of Indiana, who, after having been duly sworn, acknowledged the execution of the foregoing Bond Purchase and Loan Agreement for and on behalf of such bank.

Witness my hand and Notarial Seal this _____ day of _____, 2020.

My commission expires:

(_____) Notary Public

My County of residence:

SIGNATURE PAGE FOR ISSUER
TO BOND PURCHASE AND LOAN AGREEMENT

IN WITNESS WHEREOF, Issuer has caused this Agreement to be executed effective as of the day and the year first above written.

ISSUER:

CITY OF FORT WAYNE, INDIANA

By: _____
Thomas C. Henry, Mayor

ATTEST:

By: _____
Lana R. Keesling, City Clerk

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, personally appeared Thomas C. Henry and Lana R. Keesling, the Mayor and City Clerk, respectively of the City of Fort Wayne, Indiana, who, after having been duly sworn, acknowledged the execution of the foregoing Bond Purchase and Loan Agreement for and on behalf of the City of Fort Wayne.

Witness my hand and Notarial Seal this _____ day of _____, 2020.

My commission expires: _____

(_____) Notary Public
My County of residence: _____

This instrument was prepared by James T. Crawford, Jr., Attorney-at-Law, Krieg DeVault LLP, One Indiana Square, Suite 2800, Indianapolis, Indiana 46204.

EXHIBITS:

Exhibit "A"	Description of Real Estate
Exhibit "B"	Development Budget
Exhibit "C"	Litigation
Exhibit "D"	Form of Bond
Exhibit "E"	Disbursement Request

EXHIBIT A

Legal Description

**LAND DESCRIPTION
McCORMICK PLACE**

The land situated in the County of Allen, State of Indiana, described as follows:

LOTS 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 AND 66 IN HOMESTEADPARK AMENDED ADDITION TO THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA; EXCEPT THAT PART OF LOT 54 CONVEYED TO THE CITY OF FORT WAYNE FOR STREET PURPOSES BY A DEED RECORDED IN DEED RECORD 300, PAGE 171, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; EXCEPT LAND CONVEYED TO THE CITY OF FORT WAYNE FOR ALLEY PURPOSES ON THE 17TH DAY OF AUGUST, 1946, BY WORKERS' HOUSING CORP., AS SHOWN BY DEED RECORD 390, PAGE 581, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA;

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 AND 48 IN TOOLE'S EAST WAYNE ADDITION TO THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA, ACCORDING TO THE RECORDED PLAT THEREOF, RECORDED IN DEED RECORD 109, PAGE 256, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA; ALSO THAT PORTION OF PITT STREET LYING BETWEEN LOTS 11 AND 12, 32 AND 33 IN SAID TOOLE'S ADDITION, VACATED UNDER DECLARATORY RESOLUTION 465-1923; EXCEPT FROM THE ABOVE LOTS, THE NORTH 12 FEET OF LOTS 23 AND 24 TOOLE'S ADDITION TO THE CITY OF FORT WAYNE, APPROPRIATED FOR THE WIDENING OF SCHELE AVENUE UNDER DECLARATORY RESOLUTION 295-1914; ALSO, EXCEPT A STRIP 25 FEET WIDE OFF THE EAST SIDE OF LOTS 38, 39 AND 40 IN TOOLE'S ADDITION TO THE CITY OF FORT WAYNE, APPROPRIATED FOR THE OPENING OF FENKER AVENUE UNDER DECLARATORY RESOLUTION 465-1923; EXCEPT LAND CONVEYED TO THE CITY OF FORT WAYNE FOR ALLEY PURPOSES ON THE 17TH DAY OF AUGUST, 1946, BY WORKERS' HOUSING CORP., AS SHOWN BY DEED RECORD 390, PAGES 581, IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY, INDIANA;

COMMENCING AT THE NORTHEAST CORNER OF TWO ACRES OF LAND CONVEYED BY SIMON EDSALL TO ANNA M. MCMAKEN AND SYLVENIS S. COLEMAN ON NOVEMBER 22, 1893; THENCE WEST ALONG THE NORTH LINE OF SAID MCMAKEN'S AND COLEMAN'S LAND, 581.57 FEET TO THE EAST LINE OF FENKER AVENUE FOR A POINT OF BEGINNING; THENCE NORTH 72-10/12 FEET; THENCE EAST PARALLEL WITH MCMAKEN'S AND COLEMAN'S NORTH LINE, 132.84 FEET; THENCE SOUTH 72-10/12 FEET; THENCE WEST 132.07 FEET TO THE PLACE OF BEGINNING; COMMENCING 20-2/12 FEET NORTH OF THE NORTHEAST CORNER OF A PARCEL OF LAND CONVEYED BY SIMON-EDSALL TO GEORGE MICHAEL ON MAY 25, 1889, CONTAINING TWO ACRES SITUATED IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 30 NORTH, RANGE 13 EAST; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID MICHAEL'S LINE, 449.5 FEET TO THE NORTHWEST CORNER OF THE INTERSECTION OF EDSALL AVENUE AND MCCORMICK STREET, IN THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA, FOR A POINT OF BEGINNING; THENCE WEST 130.76 FEET TO THE EAST LINE OF FENKER AVENUE; THENCE NORTH 125.5 FEET; THENCE EAST 132.07 FEET; THENCE SOUTH 125.5 FEET TO THE PLACE OF BEGINNING.

EXHIBIT C

Litigation

None

EXHIBIT D

Form of Bond

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF ALLEN

CITY OF FORT WAYNE, INDIANA
MULTIFAMILY HOUSING BOND OF 2020
(McCORMICK PLACE APARTMENTS)

No. R-__

<u>INTEREST RATE</u>	<u>ORIGINAL MATURITY DATE</u>	<u>ORIGINAL DATE</u>	<u>AUTHENTICATION DATE</u>
As Described Herein	See Bond Purchase and Loan Agreement and Note	_____, 2020	_____, 2020
PRINCIPAL AMOUNT:	THREE MILLION EIGHT HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED EIGHTY-TWO DOLLARS (\$3,814,782)		
REGISTERED OWNER:	MERCHANTS BANK OF INDIANA		

The City of Fort Wayne, Indiana (the "Issuer"), a political subdivision duly organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above, but solely from the payments on the Note (as defined in the Bond Purchase and Loan Agreement) pledged and assigned for the payment hereof, the Principal Amount set forth above, or of so much of the Principal Amount as shall have been advanced, unless this Bond shall have previously been called for redemption and payment of the redemption price made or provided for or unless payments shall be accelerated as provided in the Bond Purchase and Loan Agreement, and to pay interest on the unpaid principal amount hereof in like money, at the Tax-Exempt Interest Rate, commencing on the first day of the first calendar month following the first Principal Advance (as defined in the Bond Purchase and Loan Agreement) and continuing on the first day of each calendar month thereafter, through and including the Maturity Date (as set forth in the Note) or until the total sum of all Principal Advances is paid in full and the Borrower has made its final draw request under the Bond Purchase and Loan Agreement by and among the Issuer, MBI and the Borrower dated as of _____, 2020 (the "Bond Purchase and Loan Agreement"), and has filed the Certificate of Substantial Completion for the Project as described in Section 15.3 of the Bond Purchase and Loan Agreement. Interest on each Principal Advance will accrue from the date of the Principal Advance and be calculated on the basis of a 360-day year applied to the actual number of days in each interest payment period. Upon receipt of each Principal Advance, Merchants Bank of Indiana ("MBI") shall make a notation on its books and records of such Principal Advance. The books and records of MBI shall be determinative of the amounts so advanced.

"Tax-Exempt Interest Rate" means the Applicable Rate, as defined in the Note.

The principal and premium, if any, of this Bond are payable at the office of MBI, in the City of Carmel, Indiana, or at the principal office of any successor paying agent or, if payment is made to a depository, by wire transfer of immediately available funds on the payment date.

The Bonds are issued under and entitled to the security of the Bond Purchase and Loan Agreement dated as of _____, 2020, duly executed and delivered by the Issuer, the Borrower and MBI, pursuant to which Bond Purchase and Loan Agreement, the Note and all rights of the Issuer under the Loan Documents, except certain rights to payment for expenses, indemnity rights and rights to perform certain discretionary acts as set forth in the Loan Documents, are pledged and assigned by the Issuer to MBI as security for the Bonds.

This Bond is one of the Issuer's Multifamily Housing Revenue Bonds of 2020 (McCormick Place) (the "Bonds"), which are being issued pursuant to Special Ordinance No. ____-20, adopted by the Common Council of the Issuer on February 11, 2020 (the "Bond Ordinance"), and under the hereinafter described Bond Purchase and Loan Agreement, in the aggregate principal amount of \$3,814,782. The Bonds are being issued for the purposes of financing all or any portion of the cost of the Project (as defined in the Bond Purchase and Loan Agreement), by lending the proceeds of the Bonds to McCormick Rehabilitation, LLC (the "Borrower"), pursuant to the Bond Purchase and Loan Agreement, which prescribes the terms and conditions under which the Borrower shall repay such loan and pursuant to which the Borrower will execute and deliver to the Issuer the Note in a principal amount equal to the principal amount of the Bonds, in order to evidence such loan.

The Bond Purchase and Loan Agreement provides for the payment of the purchase price of the Bonds in one or more Principal Advances (as defined in the Bond Purchase and Loan Agreement). If ownership of the Bonds is transferred prior to MBI having made all Principal Advances contemplated under the Bond Purchase and Loan Agreement, the transferee of the Bonds shall take ownership subject to the obligation to make additional Principal Advances until the maximum \$3,814,782 of purchase price has been advanced or until the Borrower makes its final draw request under the Bond Purchase and Loan Agreement and files the completion certificate for Project, as described in Section 4.3(b) of the Bond Purchase and Loan Agreement.

THE OWNER OF THIS BOND, BY ACCEPTANCE OF THIS BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE BOND PURCHASE AND LOAN AGREEMENT AND THIS BOND AND ACKNOWLEDGES THAT:

1. It is an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (5), (6) or (7) under the Securities Act of 1933, as amended (the "1933 Act")), purchasing Bonds for its own account or for the account of another such institutional "accredited investor", and, with the exception of the purchaser's intent to sell a participation interest in the Bonds to another accredited investor, it is acquiring the Bonds for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the 1933 Act. It has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risk of its investment in the Bonds and invest in or purchase securities similar to the Bonds in the normal course of its business, and it and any investor accounts for which it is acting are able to bear the economic risk of its or their investment for an indefinite period of time. It confirms that neither the Issuer nor any person acting on its behalf has offered to sell the Bonds by, and that it has not been made aware of the offering of the Bonds by, any form of general solicitation or general advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or a broadcast over television or radio.

2. It is familiar with the Issuer and the Borrower; it has received such information concerning the Issuer and the Borrower, the Bonds as it deems to be necessary in connection with investment in the Bonds. It has received, read and commented upon copies of the Bond Purchase and Loan Agreement and the Loan Documents. Prior to the purchase of the Bonds, it has been provided with the opportunity to ask questions of and receive answers from the representatives of the Issuer and the Borrower concerning the terms and conditions of the Bonds, the tax status of the Bonds, legal opinions and enforceability of remedies and the security therefor, and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the Issuer and the Borrower possess such information or can acquire it without unreasonable effort or expense. It is not relying on Krieg DeVault, LLP for information concerning the financial status of the Issuer or the Borrower or the ability of the Issuer or the Borrower to honor its financial obligations or other covenants under the Bonds, the Bond Purchase and Loan Agreement or the Loan Documents.

3. It is acquiring the Bonds for its own account or for the account of another such institutional "accredited investor" with no present intent to resell with the exception of the purchaser's intent to sell a participation interest in the Bonds to another accredited investor; and will not sell, convey, pledge or otherwise transfer the Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities laws.

4. It understands that the Bonds have not been registered under the 1933 Act and, unless so registered, may not be sold without registration under the 1933 Act or an exemption therefrom. It is aware that it may transfer or sell the Bonds only if the Issuer shall first have received (i) a satisfactory opinion of counsel that the sale or transfer will not violate the 1933 Act, the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, or regulations issued pursuant to such Acts, or (ii) a no-action letter of the staff of the Securities and Exchange Commission that the staff will recommend that no action be taken with respect to such sale or transfer, or (iii) a certificate stating that it reasonably believes that the transferee is a "Qualified Institutional Buyer" within the meaning of Section (a) of Rule 144A ("Rule 144A") promulgated by the Securities and Exchange Commission pursuant to the 1933 Act and has informed the transferee of the transfer restrictions applicable to the Bonds and that the transferor may be relying upon Rule 144A with respect to the transfer of the Bonds.

5. It understands that the sale or transfer of the Bonds in principal amounts less than \$100,000 is prohibited other than through a primary offering.

6. It has investigated the security for the Bonds to its satisfaction, and it understands that the Bonds are payable from loan repayments from the Borrower under the Loan Documents. It further understands that the Issuer does not have the power or the authority to levy a tax to pay the principal or interest on the Bonds.

7. It recognizes that the opinions it has received express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein. It also recognizes that, by rendering such opinions, the attorneys do not become insurers or guarantors of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to such transaction, nor does the rendering of the opinions guarantee the outcome of any legal dispute that may arise out of the transaction.

The Bonds are issuable in registered form without coupons in the denominations of \$100,000 and any \$1 integral in excess thereof. The sale or transfer of this Bond in principal amounts of less than \$100,000 is prohibited other than through a primary offering. This Bond is transferable by the registered holder hereof in person or by its attorney duly authorized in writing at the office of the Controller of the Issuer, but only in the manner, subject to the limitations and upon payment of the charges provided in the Bond Purchase

and Loan Agreement and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond will be issued to the transferee in exchange therefor.

The Issuer and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

If sufficient funds are on deposit in the Bond Fund, pursuant to the Bond Purchase and Loan Agreement, the Bonds shall be subject to redemption prior to maturity at the option of the Issuer and at the direction of the Borrower, on any date, upon 30 days' notice, in whole or in part in such order of maturity as the Issuer shall direct and by lot within maturities on any date, from any moneys made available for that purpose, at face value without premium, plus accrued interest to the date fixed for redemption.

The Bonds shall be redeemed upon the occurrence of certain events described in the Bond Purchase and Loan Agreement, if sufficient funds for such redemption are on deposit with MBI. When called for redemption as a result of any such event, the Bonds shall be subject to redemption by the Issuer in whole on any date at a redemption price of 100% of the principal amount of the Bonds being redeemed plus accrued interest to the redemption date and without premium.

If any of the Bonds are called for redemption as aforesaid, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of the redemption notice by first class mail not less than 30 days nor more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bonds to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein with respect to any registered Bond, shall not affect the validity of any proceedings for the redemption of other Bonds.

All Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time, and shall no longer be protected by the Bond Purchase and Loan Agreement and shall not be deemed to be outstanding under the provisions of the Bond Purchase and Loan Agreement.

This Bond is transferable by the Registered Owner hereof at the office of the Controller of the Issuer upon surrender and cancellation of this Bond and on presentation of a duly executed written instrument of transfer, and thereupon a new Bond or Bonds of the same aggregate principal amount and maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor.

The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special and limited obligation of the Issuer payable solely and only from the funds and accounts held under the Bond Purchase and Loan Agreement and payments to be made on the Note issued under the Bond Purchase and Loan Agreement pledged and assigned for their payment in accordance with the Bond Purchase and Loan Agreement ("Collateral"). Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or premium, if any, or interest on the Bonds. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of or premium,

if any, or interest on the Bonds. No covenant or agreement contained in the Bonds or the Bond Purchase and Loan Agreement shall be deemed to be a covenant or agreement of the Fort Wayne Economic Development Commission (the "Economic Development Commission"), the Issuer or of any member, director, officer, agent, attorney or employee of the Economic Development Commission or the Issuer in his or her individual capacity, and neither the Economic Development Commission, the Issuer nor any member, director, officer, agent, attorney or employee of the Economic Development Commission or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

The holder of this Bond shall have no right to enforce the provisions of the Bond Purchase and Loan Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Bond Purchase and Loan Agreement, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Bond Purchase and Loan Agreement. In certain events, on the conditions, in the manner and with the effect set forth in the Bond Purchase and Loan Agreement, the principal of all the Bonds issued under the Bond Purchase and Loan Agreement and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of the Bond Purchase and Loan Agreement, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the Bond Purchase and Loan Agreement.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the State of Indiana and under the Bond Purchase and Loan Agreement precedent to and in the issuance of this Bond exist, have happened and have been performed, and that the issuance, authentication and delivery of this Bond have been duly authorized by the Issuer.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Purchase and Loan Agreement until the certificate of authentication hereon shall have been duly authenticated by the execution by the City Clerk of the Issuer.

IN WITNESS WHEREOF, the City of Fort Wayne, Indiana, has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its Mayor and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual or facsimile signature of its City Clerk, all as of the Original Date set forth above.

THE CITY OF FORT WAYNE, INDIANA

By: _____
Thomas C. Henry, Mayor

(SEAL)

ATTEST:

Lana R. Keesling, City Clerk

(FORM OF CITY CLERK'S CERTIFICATE OF AUTHENTICATION)

This Bond is one of the Bonds described in the within-mentioned Bond Purchase and Loan Agreement.

CITY OF FORT WAYNE, INDIANA

By: _____
City Clerk of Issuer

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ (Please Print or Typewrite Name and Address) the within Bond and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Dated: _____

SIGNATURE GUARANTEED:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF TRAN MIN ACT – _____ Custodian _____
(Cust) (Minor)

under Uniform Transfers to Minors Act

(State)

TEN COM – as tenants in common
JT TEN – as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

EXHIBIT E

Disbursement Request

DISBURSEMENT REQUEST

STATEMENT NO. ___ REQUESTING DISBURSEMENT OF FUNDS
FROM THE CONSTRUCTION ACCOUNT
OF THE CONSTRUCTION FUND PURSUANT TO THE
BOND PURCHASE AND LOAN AGREEMENT
DATED AS OF _____, 2020 BY AND AMONG
THE CITY OF FORT WAYNE, INDIANA,
McCORMICK REHABILITATION, LLC
AND MERCHANTS BANK OF INDIANA

Pursuant to Section 4.3 of the Bond Purchase and Loan Agreement (the "*Agreement*") by and among the City of Fort Wayne, Indiana (the "*Issuer*"), McCormick Rehabilitation, LLC (the "*Borrower*") and Merchants Bank of Indiana (the "*Bond Purchaser*"), the undersigned Authorized Borrower Representative hereby requests and authorizes the Bond Purchaser, as depository of the Construction Fund created by the Bond Purchase and Loan Agreement, to advance the monies deposited in the Construction Account and the Costs of Issuance Account of the Construction Fund that are indicated below to the Borrower to fund the Project:

SEE ATTACHED ITEMIZED STATEMENT OF COSTS

This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This ____ day of _____, 20__.

Authorized Borrower Representative

BILL NO. S-20-01-38 AA

REPORT OF COMMITTEE ON FINANCE

February 11, 2020

Sharon Tucker Chair

Jason Arp Co-Chair

All Council Members

A Special Ordinance authorizing the City of Fort Wayne, Indiana, to issue one or more series of its City of Fort Wayne, Indiana Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) and its note (with such further series or other designation as determined to be necessary, desirable or appropriate) and approving and authorizing other actions in respect thereto

Maximum aggregate principal amount not to exceed \$10,500,000



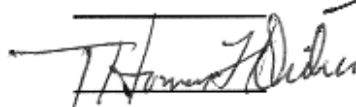

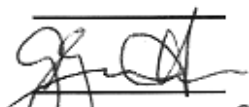
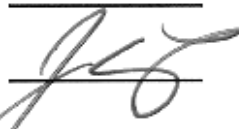
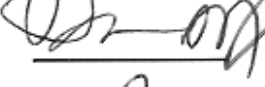
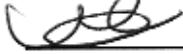
COMMITTEE ON FINANCE HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

DO PASS

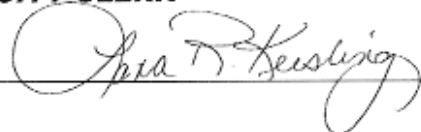
DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
		_____	_____
		_____	_____
	_____	_____	_____
	_____	_____	_____

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Tucker.

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

Read the third time in full and on motion by Councilperson Tucker, 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"/>
CHAMBERS	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: February 11, 2020


LANA R. KEESLING, CITY CLERK

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

Special Ordinance No. S-20-01-38A on the 11th day of February, 2020

ATTEST:

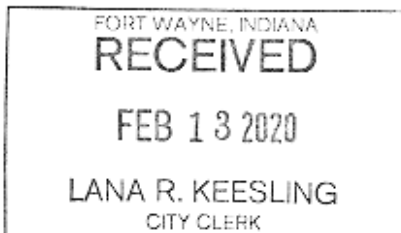

LANA R. KEESLING
CITY CLERK


PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th of February 2020, at the hour of 9:40 o'clock A.M. E.S.T.


LANA R. KEESLING, CITY CLERK

Approved and signed by me this 13TH day of FEBRUARY
2020, at the hour of 1:00 o'clock PM E.S.T.




THOMAS C. HENRY, MAYOR