
LOAN AGREEMENT

between

CITY OF WESTFIELD, INDIANA

and

UNION STREET FLATS, LLC

Dated as of June 1, 2012

\$2,000,000

**CITY OF WESTFIELD, INDIANA
TAXABLE ECONOMIC DEVELOPMENT
TAX INCREMENT REVENUE BONDS OF 2012
(UNION STREET FLATS AT GRAND JUNCTION APARTMENTS)**

**Certain of the rights of the Issuer hereunder have been assigned to Regions Bank,
as Trustee under an Indenture of Trust dated as of the date hereof, from the Issuer.**

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(This Index is not a part of the Agreement
but rather is for convenience of reference only.)

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of June 1, 2012, by and between the CITY OF WESTFIELD, INDIANA, a municipal corporation of the State of Indiana, duly created and existing as such under the constitution and laws of the State of Indiana (the “Issuer”), and UNION STREET FLATS, LLC, an Indiana limited liability company duly organized and validly existing under and by virtue of the laws of the State of Indiana (the “Borrower”), under the circumstances summarized in the following recitals (the capitalized terms not defined above or in the recitals hereto shall have the meanings set forth in Article I hereof unless the context or use clearly indicates another meaning or intent):

WHEREAS, the Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (the “Act”), authorizes and empowers the Issuer to issue revenue bonds and loan the proceeds therefrom to an individual or entity for the purpose of financing or refinancing the acquisition, construction, rehabilitation, installation and equipping of economic development facilities (whether for profit or nonprofit), and vests such Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, the Act declares that the financing of economic development facilities constitutes a public purpose; and

WHEREAS, the Project is of the character and will accomplish the purposes of the Act, will create additional employment opportunities within the City of Westfield, Indiana, and will increase business opportunities within the City of Westfield, Indiana, and will be to the benefit of the health, safety, morals, right to gainful employment and general welfare of the citizens of the City of Westfield, Indiana; and

WHEREAS, no written comments were received by the executive director or the chairman of the plan commission or the superintendent of the school corporation having jurisdiction over the Project within five (5) days after the receipt of the report of the Economic Development Commission of the Issuer; and

WHEREAS, after giving notice in accordance with the Act, the Economic Development Commission of the Issuer held a public hearing with regard to the proposed financing and then adopted certain resolutions finding the proposed financing will be of benefit to the health or general welfare of the area where the Project is to be located, and complies with the purposes and provisions of the Act; and

WHEREAS, in order to assist in the financing of the Project and subject to the requirements set forth herein and in the Indenture of Trust, dated as of June 1, 2012 (the “Indenture”) between the Issuer and Regions Bank, as trustee (the “Trustee”), the Issuer has determined to issue the Bonds, pursuant to the Act, in the aggregate principal amount of \$2,000,000; and

WHEREAS, this Loan Agreement provides for the repayment by the Borrower of the loan of the proceeds of the Bonds and further provides for the Borrower's repayment obligation to be evidenced by the Note (the "Note") in substantially the form attached hereto as Exhibit D;

WHEREAS, pursuant to the Indenture, the Issuer will pledge and assign the Note and assign certain of its rights under this Loan Agreement to the Trustee as security for the Bonds; and

WHEREAS, in order to secure said Bonds, the Issuer has entered into the Indenture, which pledges and assigns its rights in the security to the Trustee for the benefit of the Holders of the Bonds; and

WHEREAS, the Borrower and the Issuer each have full right and lawful authority to enter into this Loan Agreement, and to perform and observe the provisions hereof on their respective parts to be performed and observed;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows, provided that any obligation of the Issuer created by or arising out of this Loan Agreement shall be a special obligation of the Issuer and shall never constitute a debt or a pledge of the faith and credit or the taxing power of the Issuer, the State of Indiana (the "State") or any political subdivision or taxing district thereof, but shall be payable solely out of the Security, anything herein contained to the contrary by implication or otherwise notwithstanding:

ARTICLE I

DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein. Capitalized terms used and not defined in this Agreement shall have the meanings assigned to them in the Indenture.

Section 1.2. Definitions. As used herein:

“Act” means collectively, Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as from time to time supplemented and amended.

“Additional Payments” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.2 hereof.

“Agreement” means this Loan Agreement as amended, restated, supplemented or otherwise modified from time to time.

“Authenticating Agent” means the Authenticating Agent as defined in the Indenture.

“Bank” means, initially, Regions Capital Advantage, Inc., Birmingham, Alabama, and its successors and assigns in its capacity as the original Bondholder.

“Bond Fund” means the Bond Fund created in the Indenture.

“Bond Legislation” means the ordinance providing for the issuance of the Bonds and approving this Agreement, the Indenture and related matters.

“Bondholder” or “Holder of a Bond” means the Person in whose name a Bond is registered on the Register.

“Bond” or “Bonds” means the Issuer’s Taxable Economic Development Tax Increment Revenue Bonds of 2012 (Union Street Flats at Grand Junction Apartments), in the aggregate principal amount of Two Million Dollars (\$2,000,000).

“Bond Service Charges” means, for any period or payable at any time, the principal of, premium, if any, and interest due on the Bonds for that period or payable at that time whether due at maturity or upon acceleration or redemption.

“Bond Year” means Bond Year as defined in the Indenture.

“Borrower” means Union Street Flats, LLC, an Indiana limited liability company, and its lawful successors and assigns to the extent permitted by this Agreement.

“Business Day” means any day of the year other than (i) a Saturday or Sunday, (ii) any day on which banks located in the city in which the principal corporate trust office of the Trustee is located are required or authorized by law to remain closed or (iii) any day on which the New York Stock Exchange is closed.

“Completion Date” means the date of completion of the Project evidenced in accordance with the requirements of Section 3.4 hereof.

“Construction Period” means the period between the beginning of the acquisition, construction, installation, equipment or improvement of the Project or the date on which the Bonds are delivered to the Original Purchaser, whichever is earlier, and the Completion Date.

“Counsel” means Counsel as defined in the Indenture.

“Defeasance Account” means the Defeasance Account created under Section 5.01 of the Indenture.

“Designated Representative” means the person or persons at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer, the Bank, or the Trustee, containing the specimen signature of that person or persons and signed on behalf of the Borrower by a duly authorized officer thereof. That certificate may designate an alternate or alternates. In the event that all persons so designated become unavailable or unable to act and the Borrower fails to designate a replacement within 10 days after such unavailability or inability to act, the Trustee may appoint an interim Designated Representative until such time as the Borrower designates that person.

“Eligible Investments” means Eligible Investments as defined in the Indenture.

“Engineer” means an individual or firm acceptable to the Trustee and qualified to practice the profession of engineering or architecture under the laws of the State.

“Event of Default” means any of the events described as an Event of Default in Section 7.1 hereof.

“Force Majeure” means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1. hereof.

“Indenture” means the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as amended, restated, supplemented or otherwise modified from time to time.

“Issuer” means City of Westfield, Indiana, a municipal corporation of the State of Indiana, duly created and existing as such under the constitution and laws of the State.

“Legislative Authority” means the Common Council of the Issuer.

“Loan” means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

“Loan Payment Date” means, (a) each Interest Payment Date, or (b) any other date on which any principal of or interest or any premium on the Bonds shall be due and payable, whether at maturity, upon acceleration, call for redemption or otherwise.

“Loan Payments” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of Section 4.1 hereof and the Note.

“Notice Address” means:

- (a) As to the Issuer: City of Westfield, Indiana
130 Penn Street
Westfield, Indiana 46074
Attention: Clerk-Treasurer
Telephone: 317-804-3000
Telecopy: 317-804-3024

- (b) As to the Borrower: Union Street Flats, LLC
c/o John C. Hart, Jr.
805 City Center Drive, #120
Carmel, Indiana 46032
Telephone: 317-_____
Telecopy: 317-_____

- (c) As to the Trustee: Regions Bank
Attention: Corporate Trust Division
John D. Alexander
One Indiana Square
Suite 115
Indianapolis, Indiana 46204
Telephone: (317) 221-6275
Telecopy: (317) 221-6010

- (d) As to the Bank: Regions Capital Advantage, Inc.
Attention: Katie Smith
One Indiana Square
Suite 903
Indianapolis, Indiana 46204
Telephone: (317) 221-6111
Telecopy: (317) 221-6120

or such additional or different address, notice of which is given under Section 8.3 hereof.

“Note” means the note of the Borrower evidencing its repayment obligation for the loan of the proceeds of the Bonds, in substantially the form attached hereto as Exhibit D.

“Original Purchaser” means the Bank.

“Paying Agent” means the Paying Agent as defined in the Indenture.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Plans and Specifications” means the Borrower’s plans and specifications describing the Project Facilities relating to the Project.

“Project” means the construction on the Project Site thereof of approximately 237 apartment units and a clubhouse, swimming pool amenity area and other ancillary improvements in or directly serving the East Side Economic Development Allocation Area as further described herein, together constituting a “project” as defined in the Act.

“Project Costs” means the costs of the Project specified in Section 3.4 hereof.

“Project Facilities” means the Project Facilities described in Exhibit A hereto, together with any additions, modifications and substitutions to those facilities.

“Project Fund” means the Project Fund created in the Indenture.

“Project Purposes” means the acquisition, construction, furnishing, equipping and improving of real and personal property comprising an apartment development, for use by the Borrower or its designee and any other use which may be permitted by the Act and this Agreement.

“Project Site” means the real estate described in Exhibit B hereto, and any additions thereto, less any removals therefrom.

“Register” means the books kept and maintained by the Registrar for the registration and transfer of Bonds pursuant to Section 2.04 of the Indenture.

“Registrar” means the Registrar as defined in the Indenture.

“Revenues” means the Revenues as defined in the Indenture.

“State” means the State of Indiana.

“Trustee” means Regions Bank, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Trustee” shall mean the successor Trustee.

“Unassigned Issuer’s Rights” means all of the rights of the Issuer to receive Additional Payments under Section 4.2 hereof, to be held harmless and indemnified under Section 5.3 hereof, to be reimbursed for attorneys’ fees and expenses under Section 7.4 hereof, and to

give or withhold consent to amendments, changes, modifications, alterations and termination of this Agreement under Section 8.6 hereof.

Section 1.3. Interpretation. Any reference herein to the Issuer, to the Legislative Authority or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Indiana Code or to any statute of the United States of America, includes that section, provision or chapter or statute as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter or statute shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee, the Bank, or the Borrower under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof”, “hereby”, “herein”, “hereto”, “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations of the Issuer; No Warranty By Issuer .

(a) Representations of the Issuer. The Issuer represents that (a) it is duly organized and validly existing under the laws of the State; (b) it has duly accomplished all conditions necessary to be accomplished by it prior to the issuance and delivery of the Bonds and the execution and delivery of this Agreement and the Indenture; (c) it is not in violation of or in conflict with any provisions of the laws of the State which would impair its ability to carry out its obligations contained in this Agreement or the Indenture; (d) it is empowered to enter into the transactions contemplated by this Agreement and the Indenture; and (e) it has duly authorized the execution, delivery and performance of this Agreement and the Indenture.

(b) No Warranty By Issuer. THE BORROWER RECOGNIZES THAT THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE BORROWER'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OF INDIANA OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

Section 2.2. Representations and Covenants of the Borrower. The Borrower represents and covenants that:

(a) The Borrower is a limited liability company duly organized and validly existing under the laws of the State and duly qualified to carry on its operations under the laws of the State.

(b) The Borrower has full corporate power and authority to execute, deliver and perform its obligations under this Agreement and the Note and to enter into and carry out the transactions contemplated by those documents, and that execution, delivery and performance of

its obligations thereunder do not, and will not, violate any provision of law applicable to the Borrower or its governing documents and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Borrower is a party or by which it is bound. This Agreement and the Note have, by proper corporate action, been duly authorized, executed and delivered by the Borrower and all steps necessary have been taken to constitute this Agreement and the Note as the valid and binding obligations of the Borrower.

(c) The provision of financial assistance to be made available to the Borrower under this Agreement and the commitments therefor made by the Issuer have induced the Borrower to undertake the transactions contemplated by this Agreement and none of the proceeds of the Bonds will be used in any manner that will be inconsistent with the Act.

(d) The Project will be completed in accordance with the Plans and Specifications and will be operated and maintained in such manner as to conform with all applicable zoning, planning, building, environmental and other applicable governmental regulations and as to be consistent with the Act.

(e) The Project Facilities are located entirely within the boundaries of the Issuer.

(f) As of the Closing Date, except as disclosed in writing to the Issuer, the Trustee and the Bank, the Borrower does not have any liabilities, contingent or otherwise, whether due or to become due, including, without limitation, liabilities as guarantor under any guaranty, liabilities for taxes, liabilities for long-term leases, liabilities for unusual forward or long-term commitments or judgments.

(g) All property to be purchased from moneys on deposit in the Project Fund will be owned by the Borrower.

(h) The Borrower is not in default in the payment of principal of, or interest on, any of the Borrower's indebtedness for borrowed money, or in default under any instrument under which, or subject to which, any indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any agreement involving the Borrower that, with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

(i) No litigation nor any proceeding before any governmental agency or other tribunal involving the Borrower is pending or, to the knowledge of the Borrower, threatened, in which any liability of the Borrower is not adequately covered by insurance or in which any judgment or order would have a material and adverse effect upon the business or assets of the Borrower or would materially and adversely affect the operation of the Project, the validity of the bond documents to which it is a party or the performance of the Borrower's obligations thereunder or the transactions contemplated hereby.

(j) All moneys lent to the Borrower hereunder will be used solely for Project Costs relating to the Project.

All representations and covenants of the Borrower contained in this Section 2.2 shall remain in effect and be binding on the Borrower until all of the Bonds have been paid and retired,

notwithstanding any early termination of this Agreement or any provision for payment of principal of and premium, if any, and interest on the outstanding Bonds.

Section 2.3. [Reserved].

Section 2.4. [Reserved].

Section 2.5. [Reserved].

Section 2.6. [Reserved].

Section 2.7 Control. The Borrower represents that the Bank does not control, either directly or indirectly through one or more intermediaries, the Borrower. The Borrower further represents, likewise, the Borrower does not control, either directly or indirectly, through one or more intermediaries, the Bank. “Control” for this purpose has the meaning given to such term in Section 2(a)(9) of the Investment Company Act of 1940, as amended and as interpreted by the Securities and Exchange Commission. (Under Section 2(a)(9), “control” means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any Person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of any company shall be presumed not to control such company.) The Borrower will provide written notice to the Trustee 30 days prior to consummation of any transaction that would result in the Borrower controlling or being controlled by the Bank.

(End of Article II)

ARTICLE III

COMPLETION OF THE PROJECT;

ISSUANCE OF THE BONDS

Section 3.1. Acquisition, Construction, Installation, Equipment and Improvement. The Borrower (a) will acquire, construct, furnish, equip and improve the Project Facilities on the Project Site relating to the Project in accordance with the Plans and Specifications, (b) will pay all fees, costs and expenses incurred in connection with that construction, installation, equipment and improvement from funds made available therefor in accordance with this Agreement or otherwise, and (c) will ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in connection with the construction, furnishing, equipping and improvement of the Project, and shall enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is that of the Borrower and any contracts made by the Borrower with respect thereto, whether construction contracts or otherwise, or any work to be done by the Borrower on the Project are made or done by the Borrower on its own behalf and not as agent or contractor for the Issuer.

Section 3.2. Plans and Specifications. The Plans and Specifications have been filed with the Issuer. The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made which would change the Project Purposes, without the approval of the Issuer, and no revision shall be made which would change the Project Purposes to other than purposes permitted by the Act.

Section 3.3. Issuance of the Bonds; Application of Proceeds. To provide funds to make the Loan for the purposes of paying the Project Costs relating to the Project, the Issuer has issued, sold and delivered the Bonds. The Bonds have been issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption as set forth therein. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and of the terms and conditions under which the Bonds will be issued, sold and delivered.

Neither the Issuer nor the Borrower have or shall have any interest in the Defeasance Account created under Section 5.01 of the Indenture or the proceeds of the remarketing of the Bonds from whatever source and wherever deposited.

Section 3.4. Disbursements from the Project Fund . Disbursements from the Project Fund shall be made only to reimburse or pay the Borrower, or any person designated by the Borrower, for the following Project Costs (the “Project Costs”) relating to the Project or any future project:

- (a) Costs incurred directly or indirectly for or in connection with the construction, furnishing, equipment or improvement of the Project, including costs

incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work.

(b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the Construction Period with respect to the Project Site and the Project Facilities relating to the Project.

(c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the Construction Period.

(d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project Facilities relating to the Project.

(e) Financial, legal, accounting, printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee and any paying agent properly incurred under the Indenture that may become due and payable during the Construction Period.

(f) Any other costs, expenses, fees and charges properly chargeable to the cost of construction, furnishing, equipment or improvement of the Project.

(g) Payment of interest on the Bonds or fees for credit enhancement devices applicable to the Bonds, to the extent such fees constitute a reasonable charge for the transfer of credit risk, during the Construction Period.

Any disbursements from the Project Fund for the payment of the Project Costs relating to the Project shall be made by the Trustee only upon the written order of the Designated Representative with written approval of the Issuer, except as otherwise provided herein. Each such written order shall be in substantially the form of the disbursement request attached hereto as Exhibit C and shall be consecutively numbered and accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. The Issuer agrees to take action to approve or deny any disbursement request submitted to it not later than 10 days following receipt. The Issuer and the Borrower agree that if the Issuer does not take action on a disbursement request within 10 days of submission to the Issuer by the Borrower, then such disbursement shall be deemed approved by the Issuer, and the Borrower may submit such disbursement request to the Trustee for disbursement, along with a certificate certifying to the Trustee that such disbursement request has been deemed approved by the Issuer in accordance herewith (a "Deemed Approved Certificate"). Notwithstanding anything contained in this Agreement, in the event that a disbursement is deemed approved in accordance with this Section, it shall not contain an Issuer signature, but shall instead be accompanied by a Deemed Approved Certificate. At or prior to submitting a request for disbursement in the form attached as Exhibit C to this Agreement, the Designated Representative shall provide the Trustee with either appropriate mechanics' lien affidavits or waivers from each payee under each such prior disbursement request

or with evidence or documentation satisfactory to the Trustee that provision against the filing of any mechanics' or similar liens with respect to the payment being made has been taken by the Borrower by deposit or bonding. In case any contract provides for the retention by the Borrower of a portion of the contract price, there shall be paid from the Project Fund only the net amount remaining after deduction of any such portion, and only when that retained amount is due and payable, may it be paid from the Project Fund.

The Completion Date shall be evidenced to the Trustee and Issuer by a certificate signed by the Designated Representative stating that, except for amounts retained by the Trustee at Borrower's direction for any Project Costs not then due and payable or being contested in good faith, (i) the construction of the Project has been completed and any and all labor, services, materials and supplies used in such construction have been paid for and (ii) all other items necessary in connection with the Project have been constructed and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. Upon receipt of such certificate, the Trustee shall in accordance with Section 4.02 of the Indenture apply any moneys then in the Project Fund in accordance with the written direction of the Designated Representative as provided in this Section 3.4.

Any moneys in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Project Costs relating to the Project, at the direction of the Designated Representative, promptly shall be

- (i) used to construct, install, equip and improve such additional real or personal property in connection with the Project as is designated by the Designated Representative and the construction, installation, equipment and improvement of which will be permitted under the Act;
- (ii) used for the purchase of Bonds in the open market for the purpose of cancellation at prices not exceeding the full market value thereof plus accrued interest thereon to the date of payment therefor;
- (iii) paid into the Bond Fund to be applied to the redemption of the Bonds; or
- (iv) used for a combination of the foregoing as is provided in that direction.

Notwithstanding the foregoing, upon the occurrence and continuance of an "Event of Default" as defined in Section 10.01 of the Indenture because of which acceleration of the principal amount of the Bonds has been declared pursuant to Section 10.02 of the Indenture, any moneys remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

Section 3.5. Borrower Required to Cause the Costs To Be Paid In Event Project Fund Insufficient. To the extent the Project has not been fully completed, if moneys in the Project Fund are not sufficient to pay all Project Costs in full, the Borrower nonetheless has an obligation

to cause the Project to be completed in accordance with the Plans and Specifications and shall cause to be paid all such additional Project Costs relating to the Project. The Borrower shall not be entitled to any reimbursement for any such additional Project Costs from the Issuer, the Trustee, the Bank, or any Holder; nor shall they be entitled to any abatement, diminution or postponement of the Loan Payments. THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT THE MONEYS WHICH WILL BE DEPOSITED INTO THE PROJECT FUND, AND WHICH UNDER THE PROVISIONS OF THIS AGREEMENT WILL BE AVAILABLE FOR PAYMENT OF THE COST OF THE PROJECT, WILL BE SUFFICIENT TO PAY ALL OF THE COSTS WHICH WILL BE INCURRED IN CONNECTION THEREWITH. The Borrower agrees that if, after exhaustion of the moneys in the Project Fund, the Borrower should cause to be paid and have moneys deposited in the Project Fund for the payment of any portion of the said Cost of the Project pursuant to the provisions of this Section 3.5, no party shall not be entitled to any reimbursement therefor from the Issuer, the Trustee, the Bank, or the Holders and owners of the Bonds, nor shall it be entitled to any diminution of the amounts payable herein.

Section 3.6. [Reserved].

Section 3.7. Investment of Fund Moneys. At the oral (promptly confirmed in writing) or written request of the Designated Representative, any moneys held as part of the Bond Fund (except moneys in the Defeasance Account created under Section 5.01 of the Indenture), the Project Fund, the Reserve Fund or the Rebate Fund shall be invested or reinvested by the Trustee in Eligible Investments.

Section 3.8. [Reserved].

(End of Article III)

ARTICLE IV

LOAN BY ISSUER; REPAYMENT OF THE LOAN; LOAN PAYMENTS AND ADDITIONAL PAYMENTS

Section 4.1. Loan Repayment

Upon the terms and conditions of this Agreement, the Issuer has made the Loan to the Borrower. In consideration of and in repayment of the Loan, the Borrower shall make, as Loan Payments pursuant to the Note, payments to the Trustee sufficient in amount to pay when due the Bond Service Charges payable on the Bonds.

The Borrower shall be entitled to a credit against the Loan Payments next required to be made to the extent that the balance of the Bond Fund (other than any balance in the Defeasance Account) is then in excess of amounts required (a) for payment of Bonds theretofore matured or theretofore called for redemption, (b) for payment of interest for which checks or drafts have been drawn and mailed by the Trustee, and (c) for deposit in the Bond Fund for use other than for the payment of Bond Service Charges on the Interest Payment Date next following the applicable Loan Payment Date. In any event, however, if on any Interest Payment Date, the balance in the Bond Fund is insufficient to make required payments of Bond Service Charges, the Borrower forthwith will pay to the Trustee, for the account of the Issuer and for deposit into the Bond Fund, any deficiency.

Except for such interest of the Borrower as may hereafter arise pursuant to Section 8.2 hereof or Section 5.07 of the Indenture, the Borrower and the Issuer each acknowledge that neither the Borrower nor the Issuer have any interest in the the Defeasance Account of the Bond Fund and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the holders.

Section 4.2. Additional Payments. The Borrower shall pay directly, as Additional Payments hereunder, any and all costs and expenses incurred by the Issuer in connection with the issuance and delivery of the Bonds or otherwise related to actions taken by the Issuer under this Agreement or the Indenture.

The Borrower shall pay to the Trustee, the Registrar and any Paying Agent or Authenticating Agent, their reasonable fees, charges and expenses for acting as such under the Indenture.

The Borrower shall pay to the Trustee in federal or other immediately available funds not later than Noon, New York, New York time, an amount equal to the amount the Trustee requires in order to purchase on behalf of the Borrower the Bonds pursuant to Article III of the Indenture on the date payment is to be made.

Section 4.3. [Reserved].

Section 4.4. Obligations Unconditional. The obligations of the Borrower to make Loan Payments, Additional Payments and any payments required of the Borrower under Section 5.05 of the Indenture shall be absolute and unconditional, and the Borrower shall make

such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other Person.

Section 4.5. Assignment of Agreement and Revenues. To secure the payment of Bond Service Charges on, and the purchase of, the Bonds, the Issuer shall assign to the Trustee, by the Indenture, any of its rights, title and interest in this Agreement (except for the Unassigned Issuer's Rights), Defeasance Account of the Bond Fund and all moneys and investments therein and shall grant to the Trustee, by the Indenture, a security interest in its rights under and interest in (i) the Project Fund and all moneys and investments therein, (ii) the Reserve Fund, and (iii) the Revenues (other than such accounts of the Bond Fund and all investments therein). The Borrower hereby agrees and consents to that assignment and grant.

Section 4.6. [Reserved].

(End of Article IV)

ARTICLE V

ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1. Right of Inspection. Subject to reasonable security and safety regulations and upon reasonable notice, the Issuer and the Trustee, and their respective agents, shall have the right during normal business hours to inspect the Project.

Section 5.2. Lease, Sale or Grant of Use by Borrower. Subject to the prior written consent of the Bank and the Trustee, the Borrower may lease, sell or grant the right to occupy and use the Project, in whole or in part, to others, provided that no such grant, sale or lease shall relieve the Borrower from its obligations under this Agreement.

Section 5.3. Indemnification. The Borrower releases and agrees to hold harmless, defend and indemnify the Issuer from and against all liabilities, claims, costs and expenses, including attorneys fees and expenses, imposed upon, incurred or asserted against the Issuer, on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project; (b) any breach, default or failure to comply on the part of the Borrower in the performance of any covenant, obligation or agreement of the Borrower under this Agreement or any related document, or arising from any act or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees; (c) the authorization, issuance, sale, trading, redemption or servicing of the Bonds and the provision of any information or certification furnished in connection therewith concerning the Bonds, the Project, or the Borrower; (d) the Borrower's failure to comply with any requirement of this Agreement; (e) any failure of compliance with the provisions of all other applicable federal, state and local laws, rules and regulations; and (f) any claim, action or proceeding brought with respect to the matters set forth in (a), (b), (c), (d) and (e) above.

The Borrower shall also release, hold harmless, defend and indemnify the Issuer for all reasonable costs and expenses including reasonable attorneys' fees incurred in (i) enforcing any obligation of the Borrower under this Agreement, the Indenture or any related agreement (ii) taking any action requested by the Borrower, (iii) taking any action required by this Agreement, the Indenture or any related agreement or (iv) taking any action reasonably considered necessary by the Issuer and which is authorized by this Agreement, Indenture or any related agreement.

The Borrower agrees to indemnify the Trustee for, and to hold them harmless against, all liabilities, claims, costs and expenses incurred without negligence or bad faith on the part of the Trustee on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of this Agreement, the Bonds, or the Indenture or any action taken at the request of or with the consent of the Borrower, including the reasonable and documented costs and expenses of the Trustee in defending themselves against any such claim, action or proceeding brought in connection with the exercise or performance of any of their powers or duties under this Agreement, the Bonds or the Indenture.

In case any action or proceeding is brought against the Issuer or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Borrower, and the Borrower upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Borrower from any of their obligations under this Section. At its own expense, an indemnified party may employ separate counsel and participate in the defense. The Borrower shall not be liable for any settlement made without its consent.

If the Issuer is to take any action under this Agreement or any other instrument executed in connection herewith for the benefit of the Borrower, it will do so if and only if (i) the Issuer is a necessary party to any such action or proceeding, (ii) the Issuer has received specific written direction from the Borrower as required hereunder or under any other instrument executed in connection herewith, as to the action to be taken by the Issuer and (iii) payment of the Issuer's costs, liabilities and expenses has been made or a written agreement of indemnification and payment of costs, liabilities and expenses satisfactory to the Issuer has been executed by the Borrower prior to the taking of any such action by the Issuer.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers and employees of the Issuer and the Trustee, respectively. The indemnification provide herein is intended to and shall be enforceable by the Issuer and the Trustee, respectively, to the full extent permitted by law. The indemnification provided herein shall survive the termination of this Agreement.

Section 5.4. [Reserved].

Section 5.5. Borrower's Performance Under Indenture. The Borrower has examined the Indenture and approves the form and substance of, and agrees to be bound by, its terms. The Borrower, for the benefit of the Issuer and each Bondholder, shall do and perform all acts and things required or contemplated in the Indenture to be done or performed by the Borrower. The Borrower is a third party beneficiary of certain provisions of the Indenture, and Section 8.05 of the Indenture is hereby incorporated herein by reference.

Section 5.6 Maintenance of Project. The Borrower shall keep and maintain or make arrangements with others to maintain the Project in accordance with the purposes and requirements of the Act and the Code.

Section 5.7 Nature of Business. The Borrower will not change the general character of its business as conducted at the date hereof, or engage in any type of business not reasonably related to its purpose.

(End of Article V)

ARTICLE VI

REDEMPTION AND PURCHASE OF BONDS

Section 6.1. Optional Redemption. Provided no Event of Default shall have occurred and be subsisting, at any time and from time to time, the Borrower may deliver moneys to the Trustee in addition to Loan Payments or Additional Payments required to be made and direct the Trustee to use the moneys so delivered for the purpose of purchasing Bonds or of calling Bonds for optional redemption in accordance with the applicable provisions of the Bond Legislation and Indenture providing for optional redemption at the redemption price stated in the Indenture; provided, however, that any moneys so used for optional redemption shall be from the sources set forth in paragraphs (i) and (ii) of Section 5.01(c) of the Indenture. Pending application for those purposes, any moneys so delivered shall be held by the Trustee in a special account in the Bond Fund and delivery of those moneys shall not operate to abate or postpone Loan Payments or Additional Payments otherwise becoming due or to alter or suspend any other obligations of the Borrower under this Agreement, but the Borrower shall received a credit for any moneys deposited by the Trustee in the Bond Fund for payment on the Bonds against the obligation of the Borrower to pay the principal, premium, if any, and interest on the Note as the same become due.

Section 6.2. Extraordinary Optional Redemption. The Borrower shall have, subject to the conditions hereinafter imposed, the option to direct the redemption of the entire unpaid principal balance of the Bonds in accordance with the applicable provisions of the Indenture upon the occurrence of any of the following events:

(a) The Project shall have been damaged or destroyed to such an extent that (1) it cannot reasonably be expected to be restored, within a period of 6 months, to the condition thereof immediately preceding such damage or destruction or (2) its normal use and operation is reasonably expected to be prevented for a period of 6 consecutive months.

(b) Title to, or the temporary use of, all or a significant part of the Project shall have been taken under the exercise of the power of eminent domain (1) to such extent that the Project cannot reasonably be expected to be restored within a period of 6 months to a condition of usefulness comparable to that existing prior to the taking or (2) as a result of the taking, normal use and operation of the Project is reasonably expected to be prevented for a period of 6 consecutive months.

(c) As a result of any changes in the Constitution of the State, the Constitution of the United States of America, or state or federal laws or as a result of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Issuer or the Borrower in good faith, this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed in this

Agreement, or if unreasonable burdens or excessive liabilities shall have been imposed with respect to the Project or the operation thereof, including, without limitation, federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Agreement other than ad valorem taxes presently levied upon privately owned property used for the same general purpose as the Project.

(d) Changes in the economic availability of raw materials, operating supplies, energy sources or supplies, or facilities (including, but not limited to, facilities in connection with the disposal of industrial wastes) necessary for the operation of the Project for the Project Purposes shall have occurred or technological or other changes shall have occurred which the Borrower cannot reasonably overcome or control and which in the Borrower's reasonable judgment render the Project uneconomic for the Project Purposes.

To exercise that option, the Borrower shall, within 90 days following the event authorizing the exercise of that option, or at any time during the continuation of the condition referred to in clause (d) above, give notice to the Issuer and to the Trustee specifying the date on which the Borrower will deliver the funds required for that redemption, which date shall be not more than 90 days from the date that notice is mailed and shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption.

The amount payable by the Borrower in the event of their exercise of the option granted in this Section shall be the sum of the following:

(i) An amount of money which, when added to the moneys and investments held to the credit of the Bond Fund, will be sufficient pursuant to the provisions of the Indenture to pay, at par, and discharge all then outstanding Bonds on the earliest applicable redemption date, that amount to be paid to the Trustee, plus

(ii) An amount of money equal to the Additional Payments relating to the Bonds accrued and to accrue until actual final payment and redemption of the Bonds, that amount or applicable portions thereof to be paid to the Trustee or to the Persons to whom those Additional Payments are or will be due.

The requirement of (ii) above with respect to Additional Payments to accrue may be met if provisions satisfactory to the Trustee and the Issuer are made for paying those amounts as they accrue.

The Borrower also shall have the option, in the event that title to or the temporary use of a portion of the Project shall be taken under the exercise of the power of eminent domain, even if the taking is not of such nature as to permit the exercise of the redemption option upon an event specified in (b) above, to direct the redemption, at a redemption price of 100% of the principal amount thereof prepaid, plus accrued interest to the redemption date, of that part of the outstanding principal balance of the Bonds as may be payable from the proceeds received by the Borrower (after the payment of costs and expenses incurred in the collection thereof) received in

the eminent domain proceeding, provided, that, the Borrower shall furnish to the Issuer and the Trustee a certificate of an Engineer stating that (1) the property comprising the part of the Project taken is not essential to continued operations of the Project in the manner existing prior to that taking, (2) the Project has been restored to a condition substantially equivalent to that existing prior to the taking, or (3) other improvements have been acquired or made which are suitable for the continued operation of the Project.

The rights and options granted to the Borrower in this Section may be exercised whether or not the Borrower is in default hereunder; provided, that such default will not relieve the Borrower from performing those actions which are necessary to exercise any such right or option granted hereunder.

Section 6.3. [Reserved].

Section 6.4. Mandatory Redemption. The Borrower shall deliver to the Trustee the moneys needed to redeem the Bonds in accordance with any mandatory redemption provisions relating thereto as may be set forth in the Indenture.

Section 6.5. Actions by Issuer. At the request of the Borrower or the Trustee, the Issuer shall take all steps required of it under the applicable provisions of the Indenture or the Bonds to effect the redemption of all or a portion of the Bonds pursuant to this Article VI.

(End of Article VI)

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. Each of the following shall be an Event of Default:

(a) The Borrower shall fail to pay any Loan Payment on or prior to the Loan Payment Date on which that Loan Payment is due and payable;

(b) The Borrower shall fail to deliver to the Trustee, or cause to be delivered on their behalf, the moneys needed (i) to redeem any outstanding Bonds in the manner and upon the date requested in writing by the Trustee as provided in Section 6.1, 6.2 or 6.4 of this Agreement or (ii) to purchase any Bonds in the manner and upon the date as provided in Section 4.2 of this Agreement;

(c) The Borrower shall fail to observe and perform any other agreement, term or condition contained in this Agreement, and the continuation of such failure for a period of 30 days after notice thereof shall have been given to the Borrower by the Issuer or the Trustee, or for such longer period as the Issuer and the Trustee may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion;

(d) The Borrower shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against them under the federal bankruptcy laws, as now or hereafter in effect; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for them or for the whole or any substantial part of their property;

(e) There shall occur an "Event of Default" as defined in Section 10.01 of the Indenture.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (c) hereof, the Borrower shall not be deemed in default during the continuance of such inability. However, the Borrower shall promptly give notice to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term Force Majeure shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the Borrower.

The declaration of an Event of Default under subsection (d) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Section 7.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 10.02 of the Indenture, the Trustee shall declare all Loan Payments to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) The Issuer, the Bank or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower pertaining to the Project; or

(c) The Issuer or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of the Borrower under those instruments.

Notwithstanding the foregoing, the Issuer shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to the Issuer at no cost or expense to the Issuer. Any amounts collected as Loan Payments or applicable to Loan Payments and any other amounts which would be applicable to the payment of Bond Service Charges collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the outstanding Bonds have been paid and discharged in accordance with the provisions of the Indenture, shall be paid as provided in Section 5.06 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

Section 7.3. No Remedy Exclusive. No remedy conferred upon or reserved to the Issuer or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default should occur and the Issuer or the Trustee should incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement or the collection of sums due thereunder, the Borrower shall reimburse the Issuer and the Trustee, as applicable, for the reasonable expenses so incurred upon demand.

Section 7.5. No Waiver. No failure by the Issuer or the Trustee to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

The Issuer and the Trustee may waive any Event of Default hereunder only with the prior written consent of the Bank.

Section 7.6. Notice of Default. The Borrower and the Issuer shall each notify the Trustee and the Bank immediately when each becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default. The Borrower shall also provide such notice to the Issuer.

Section 7.7. [Reserved].

Section 7.8. Limited Liability of Issuer. Notwithstanding any provision or obligation to the contrary hereinabove set forth, no provision of this Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or to give rise to a charge upon the general credit of the Issuer. The liability of the Issuer hereunder shall be limited to its interest in the Project, this Agreement, the Indenture and all other related documents and collateral and the lien

of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer nor shall the Issuer be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Bonds or for the costs, fees, penalties, taxes, interest, omissions, charges, insurance or any other payments recited herein, and shall have no obligation for such costs. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Borrower if a default shall occur hereunder.

(End of Article VII)

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Term of Agreement. This Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the Bank until such time as all of the Bonds shall have been fully paid (or provision made for such payment) pursuant to the Indenture and all other sums payable by the Borrower under this Agreement shall have been paid, except for obligations of the Borrower under Sections 4.2 and 5.3 hereof, which shall survive any termination of this Agreement.

Section 8.2. Amounts Remaining in Funds. Any amounts in the Bond Fund remaining unclaimed by the holders of Bonds for 2 years after the due date thereof (whether at stated maturity, by redemption or pursuant to any mandatory sinking fund requirements or otherwise), shall be paid to the Borrower; provided that if the Trustee shall have received written notice from the Bank that amounts are still due to the Bank, such amount remaining in the Bond Fund shall belong and be paid first to the Bank to the extent such amounts due by the Borrower have not been paid. With respect to the principal of and interest on the Bonds to be paid from moneys paid to the Borrower or the Bank pursuant to the preceding sentence, the holders of the Bonds entitled to those moneys shall look solely to the Borrower for the payment of those moneys.

Further, any other amounts remaining in the Bond Fund and Reserve Fund (other than in the Defeasance Account) and any amounts remaining in any other special funds or accounts (other than the Project Fund) created under this Agreement or the Indenture after all of the outstanding Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and all other amounts required to be paid under this Agreement and the Indenture have been paid, shall be paid to the Borrower to the extent that those moneys are in excess of the amounts necessary to effect the payment and discharge of the outstanding Bonds; provided that if the Trustee shall have received written notice from the Bank that amounts due by the Borrower have been paid, such amounts shall belong and be paid first to the Bank to the extent it has not been so paid.

Section 8.3. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Borrower, the Bank, or the Trustee shall also be given to the others. The Borrower, the Issuer, the Bank, and the Trustee, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 8.4. Extent of Covenants of the Issuer; No Personal Liability. All covenants, obligations and agreements of the Issuer contained in this Agreement or the Indenture shall be effective to the extent authorized and permitted by applicable law. The obligations of the Issuer under this Agreement are special, limited obligations of the Issuer, payable solely out of the

revenues and income derived under this Agreement and the Indenture (except to the extent paid out of moneys attributable to the proceeds derived from the sale of the Bonds or income from the temporary investment of such funds or other funds held under the Indenture). The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State of Indiana or any political subdivision, nor a charge against the credit or general taxing powers of any of them. Neither the Issuer nor any elected or appointed official, employee or agent of the Issuer nor any person executing the Bonds shall be liable personally for the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. No recourse shall be had for the payment of the principal of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Indenture, this Agreement or the Bond Purchase Agreement against any past, present or future elected or appointed official, agent or employee of the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such elected or appointed official, employee, or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and this Agreement and the issuance of the Bonds.

Section 8.5. Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Borrower and their respective permitted successors and assigns provided that this Agreement may not be assigned by the Borrower (except in connection with a lease, sale or grant of use pursuant to Section 5.2 hereof) and may not be assigned by the Issuer except to the Trustee pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment of Bond Service Charges. This Agreement may be enforced only by the parties, their assignees and others who may, by law, stand in their respective places.

Section 8.6. Amendments and Supplements. Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article XIV of the Indenture, as applicable.

Section 8.7. Execution Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 8.8. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.9. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

(End of Article VIII)

IN WITNESS WHEREOF, the Issuer and the Borrower has caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

[Remainder of page intentionally left blank.]

SIGNATURE PAGE OF ISSUER
TO
LOAN AGREEMENT
FOR UNION STREET FLATS AT GRAND JUNCTION APARTMENTS

CITY OF WESTFIELD, INDIANA

By: _____
J. Andrew Cook, Mayor

ATTEST:

Cindy Gossard, Clerk-Treasurer

SIGNATURE PAGE OF BORROWER
TO
LOAN AGREEMENT
FOR UNION STREET FLATS AT GRAND JUNCTION APARTMENTS

UNION STREET FLATS, LLC

By: _____
John C. Hart, Jr., Managing Member

EXHIBIT A

PROJECT FACILITIES

The construction on the Project Site thereof of approximately 237 apartment units and a clubhouse, swimming pool amenity area and other ancillary improvements in the Grand Junction Consolidated Economic Development Area and directly serving the East Side Economic Development Area as further described in the Loan Agreement.

EXHIBIT B
PROJECT SITE

Parcel I

Beginning at a point in the East line of said Northeast Quarter of said Section 506.00 feet North of the Southeast corner of said Northeast Quarter, thence North on and along the East line of said Northeast Quarter Section 58.00 feet to a point, thence West 268.00 feet to a point, thence South 183.675 feet to a point, thence East 83.00 feet to a point, thence North 126.33 feet to a point, thence East 185.00 feet to the place of beginning, which boundaries are parallel to the South line and the East line respectively of said Northeast Quarter of Section 1, Township 18 North, Range 3 East, in Hamilton County, Indiana.

Parcel II

Begin at a point 441.04 feet North, to the Southeast corner of the Northeast Quarter of Section 1, Township 18 North, Range 3 East, thence North 65 feet to a point, thence West 185 feet to an iron stake, thence South 65 feet to an iron stake, thence East 185 feet to the place of beginning.

Parcel II

Part of the Northeast Quarter of Section 1, Township 18 North, Range 3 East in Hamilton County, Indiana and being a portion of the land of Robert Haskett, Jr. as recorded in Deed Book 225, page 30 in the Recorder's Office of said County and being more particularly described as follows:

Beginning at a point in the South line of said Northeast Quarter of said Section 619.74 feet West of the Southeast corner of the Northeast Quarter of said Section, thence North 179.355 feet to a point, thence East 338.74 feet to a point, thence North 100 feet to a point, thence East 13.00 feet to a point, thence North 356.145 feet to a point, thence West 351.74 feet to a point, thence North 283.39 feet to a point (which point lies 619.74 feet West and 919.71 feet North of the Southeast corner of the Northeast Quarter), thence West 572.22 feet to a point, thence South 947.21 feet to a point in the South line of the Northeast Quarter of said Section, thence on and along the line of the Northeast Quarter, 565.95 feet to the place of beginning, which boundaries are parallel to the South line and the East line of the Northeast Quarter of Section 1, Township 18 North, Range 3 East in Hamilton County, Indiana.

Parcel IV

Part of the Northeast Quarter of Section 1, Township 18 North, Range 3 East, described as follows:

Begin at a point 379.66 feet North of the Southeast corner of the Northeast Quarter of Section 1, Township 18 North, Range 3 East, thence North 61.38 feet to a point, thence West 185.0 feet to an iron stake, thence South 61.38 feet to an iron stake, thence East 185.0 feet to the place of beginning.

Parcel V

Part of the Northeast Quarter of Section 1, Township 18 North, Range 3 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of the Northeast Quarter of Section 1, Township 18 North, Range 3 East; thence North 00 degrees 00 minutes (assumed bearing) on and along the East line of the Northeast Quarter 86.355 feet; thence South 88 degrees 15 minutes West 236.0 feet; thence North 00 degrees 00 minutes parallel with said East line 93.0 feet; thence South 88 degrees 15 minutes West 166.72 feet to the Point of Beginning; thence South 88 degrees 15 minutes West 209.10 feet; thence South 02 degrees 19 minutes East 179.355 feet to the South line of said Northeast Quarter; thence North 88 degrees 14 minutes 30 seconds East on and along said South line 209.10 feet; thence North 02 degrees 19 minutes West 179.3 feet, more or less to the Point of Beginning, containing .86 acres, more or less.

NOTE: The acreage is included above for descriptive purposes only.

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Part of the Northeast Quarter of Section 1, Township 18 North, Range 3 East in Hamilton County, Indiana, and being more particularly described as follows:

Begin on the East line of said Quarter North 00 degrees 00 minutes 00 seconds East (assumed bearing) a distance of 279.36 feet from the Southeast corner of said Quarter, thence leaving said line South 88 degrees 14 minutes 30 seconds West a distance of 281.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 104.00 feet; thence North 89 degrees 03 minutes 26 seconds East a distance of 280.91 feet to the said East line; thence South 00 degrees 00 minutes 00 seconds West on said line a distance of 100.00 feet to the Point of Beginning. Contains 0.66 acres, more or less.

NOTE: The acreage is included above for descriptive purposes only.

EXHIBIT C

FORM OF PROJECT FUND DISBURSEMENT REQUEST

STATEMENT NO. _____ REQUESTING DISBURSEMENT OF FUNDS
FROM PROJECT FUND
PURSUANT TO SECTION 3.4 OF THE
LOAN AGREEMENT DATED AS OF JUNE 1, 2012 BETWEEN
CITY OF WESTFIELD, INDIANA AND
UNION STREET FLATS, LLC

Pursuant to Section 3.4 of the Loan Agreement (the “Loan Agreement”) between City of Westfield, Indiana (the “Issuer”), and Union Street Flats, LLC (the “Borrower”) dated as of June 1, 2012, the undersigned Designated Representative hereby requests and authorizes Regions Bank, as trustee (the “Trustee”), as depository of the Project Fund created by the Indenture and defined in the Loan Agreement, to pay to the Borrower or to the person(s) listed on the Disbursement Schedule hereto out of the moneys deposited in the Union Street Flats at Grand Junction Apartments Improvements Account of the Project Fund the aggregate sum of \$_____ to pay such person(s) or to reimburse the Borrower in full, as indicated in the Disbursement Schedule, for the advances, payments and expenditures made by it in connection with the items listed in the Disbursement Schedule.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

- (a) Each item for which disbursement is requested hereunder is properly payable out of the Union Street Flats at Grand Junction Apartments Improvements Account of the Project Fund in accordance with the terms and conditions of the Loan Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.
- (b) Each such item is or was necessary in connection with the construction, furnishing, equipment or improvement of the Project, as defined in the Loan Agreement.
- (c) The Borrower has received, or will concurrently with payment hereunder receive and deliver to the Trustee, appropriate waivers of any mechanics’ or other liens with respect to each item which has been paid pursuant to a prior disbursement request;
- (d) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto.
- (e) This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

Submitted to the Issuer by the Borrower this _____ day of _____, 201__.

By: _____
Authorized Signor on behalf of
Union Street Flats, LLC

Pursuant to Section 3.4 of the Loan Agreement, the foregoing disbursement request is hereby
[Insert “approved” or “disapproved”] this _____ day of _____, 201__ and
submitted by Issuer to the Trustee this _____ day of _____, 201__.

By: _____
Designated Representative

DISBURSEMENT SCHEDULE

TO STATEMENT NO. _____ REQUESTING AND AUTHORIZING DISBURSEMENT
OF FUNDS FROM UNION STREET FLATS AT GRAND JUNCTION APARTMENTS
IMPROVEMENTS ACCOUNT OF THE PROJECT FUND PURSUANT TO
SECTION 3.4 OF THE LOAN AGREEMENT DATED AS OF JUNE 1, 2012
BETWEEN CITY OF WESTFIELD, INDIANA AND UNION STREET FLATS

PAYEE	AMOUNT	PURPOSE	METHOD OF PAYMENT*
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*Insert method of payment, i.e., either "Check" and include address for mailing or insert "Wire Transfer" and include wire transfer information.

EXHIBIT D

UNION STREET FLATS, LLC

NOTE

FOR VALUE RECEIVED, the undersigned, Union Street Flats, LLC (the “Borrower”), an Indiana limited liability company organized and existing under the laws of the State of Indiana, hereby promises to pay to the order of the City of Westfield, Indiana (“Issuer”), in immediately available funds, the principal sum of \$2,000,000.00, or so much of such principal amount as has been advanced and not repaid on the Bonds (defined below), and interest thereon, during the term of the Loan Agreement (the “Loan Agreement”) dated as of June 1, 2012 between Issuer and Borrower, commencing fifteen (15) days prior to February 1, 2015, and at least fifteen (15) days prior to each February 1 and August 1 thereafter, a sum which will equal the principal and interest which will become due on the next Interest Payment Date on the Bonds (as hereinafter defined), all subject to the credits described in the Loan Agreement and to the presence of other available money for such installment in the Bond Fund under the Indenture of Trust dated as of June 1, 2012 between the Issuer and Regions Bank, as Trustee (the “Trustee”).

Payments of both principal and interest are to be endorsed to the Trustee, and are to be made directly to the Trustee for the account of the Issuer pursuant to such endorsement. Such endorsement is to be made as security for the payment of the bonds designated “Taxable Economic Development Tax Increment Revenue Bonds of Series 2012 (Union Street Flats at Grand Junction Apartments)” (the “Bonds”). All of the terms, conditions and provisions of the Indenture are, by this reference thereto, incorporated herein as a part of this Note.

This Note is issued pursuant to the Loan Agreement, and is entitled to the benefits, and is subject to the conditions thereof. The obligations of Borrower to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim or recoupment by reason of any default by Issuer under the Loan Agreement or under any other agreement between Borrower and Issuer or out of any indebtedness or liability at any time owing to the Borrower by the Issuer or for any other reason.

The principal of this Note is subject to prepayment prior to maturity in the manner stated in the Loan Agreement.

In certain events and in the manner set forth in the Loan Agreement, the entire principal amount of this Note and the interest accrued thereon may be declared to be due and payable. In certain events and in the manner set forth in the Loan Agreement, the Borrower shall be obligated to pay additional amounts.

The Borrower hereby unconditionally waives diligence, presentment, protest, notice of dishonor and notice of default of the payment of any amount at any time payable to the Issuer under or in connection with this Note. All amounts payable hereunder are payable with reasonable attorneys fees and costs of collection and without relief from valuation and appraisal laws.

In any case where the date of payment hereunder shall be a Saturday, Sunday or a legal holiday or a day on which banking institutions are authorized by law to close, then such payment shall be made on the next preceding business day with the same force and effect as if made on the date of payment hereunder.

All terms used in this Note which are defined in the Loan Agreement shall have the meanings assigned to them in the Loan Agreement.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and attested by its duly authorized officer all as of June __, 2012.

Issue Date: June __, 2012

UNION STREET FLATS, LLC

By: _____
John C. Hart, Jr., Managing Member