



Common Council Agenda Item Cover Sheet

MEETING DATE: June 9, 2020

- ☒ Previously Discussed Ordinance
- ☐ Proposed Development Presentation
- ☐ New Ordinance for Discussion
- ☐ Miscellaneous
- ☐ Transfer

ITEM or ORDINANCE #: 12-05-20

PRESENTED BY: Andrew Murray

- ☒ Information Attached
- ☐ Bring Paperwork from Previous Meeting
- ☐ Verbal
- ☐ No Paperwork at Time of Packets



NOBLESVILLE ECONOMIC DEVELOPMENT DEPARTMENT

TO: COMMON COUNCIL
FROM: ANDREW MURRAY - ECONOMIC DEVELOPMENT ASSISTANT
DIRECTOR
SUBJECT: ORDINANCE 12-05-20
DATE: MAY 21, 2020

I. ORDINANCE 12-05-20

The Common Council will be presented with an ordinance that would approve and authorize certain actions and proceedings with respect to issuing bonds related to the Lofts on Tenth project. Attached for reference are the forms of the Trust Indenture and Financing Agreement. This ordinance comes to you with a favorable recommendation from the Council's Finance Committee.

II. PROCEDURAL/STAFF COMMENTS

- a. **Requested Action:** Hold first reading on the ordinance during the May 26, 2020 Common Council meeting; OR, if it pleases the Common Council, suspend the rules of procedure and approve the ordinance, as presented.
- b. If you have questions, please contact Andrew Murray at 317-379-9080 (mobile) or amurray@noblesville.in.us.

Attachments:

1. Bond Ordinance 12-05-20
2. Financing Agreement (Form)
3. Trust Indenture (Form)

ORDINANCE NO. #12-05-20

AN ORDINANCE AUTHORIZING THE CITY OF NOBLESVILLE, INDIANA TO ISSUE ITS TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS (LOFTS ON TENTH PROJECT) AND APPROVING AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Noblesville, Indiana ("City") Economic Development Commission ("Commission") has rendered its Project Report regarding the financing of proposed economic development facilities by Xanderco, LLC or an affiliate or designee thereof (collectively, "Developer")

WHEREAS, the Noblesville Economic Development Commission ("Commission") conducted a public hearing on May 18, 2020 and adopted a resolution and Project Report, which resolution and Project Report have been transmitted hereto, finding that the financing of a portion of the costs of certain economic development facilities, including acquisition of land in the City, demolition of existing structures and improvements and the construction of an approximate 31,700 square foot mixed-use, multi-story development consisting of apartment living units and commercial retail space, together with all necessary appurtenances, related improvements and equipment, capitalized interest, if any, and costs of issuance of the proposed financing (collectively, "Project"), complies with the purposes and provisions of Indiana Code 36-7-11.9 and -12 ("Act") and that such financing will be of benefit to the health and welfare of the City;

WHEREAS, the Project will be located in the Lofts on Tenth Allocation Area ("Lofts on Tenth Allocation Area") within the Tenth Street Economic Development Area, as established by the Noblesville Redevelopment Commission ("Redevelopment Commission");

WHEREAS, the Commission has approved and recommended the adoption of this form of ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council, the forms of Financing Agreement and Trust Indenture (collectively, "Financing Documents");

WHEREAS, no member of this Common Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act related to the bonds or loans described herein, which pecuniary interest has not been fully disclosed to this Common Council and no such member has voted on any such matter, all in accordance with the provisions of the Act;

WHEREAS, to foster economic development in the City, the Developer, the Redevelopment Commission and the City have entered into an Economic Development Agreement ("Economic Development Agreement") with respect to the Project; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance all or a portion of the Project in an aggregate principal amount not to exceed Three Million Three Hundred Thousand Dollars (\$3,300,000), as further described herein;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF NOBLESVILLE, INDIANA, THAT:

Section 1. The Council hereby finds, determines and ratifies and confirms that the financing and reimbursement of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds (as hereinafter defined), the Loan (as hereinafter defined) and the use of the proceeds of the Bonds and the Loan by the Developer to finance a portion of the costs of the Project will (i) result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) comply with the purposes and provisions of the Act and it is in the public interest that the City take such lawful actions 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 within the jurisdiction of the City, and (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

Section 2. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk of the City ("City Clerk"). Two copies of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the City Clerk and are available for public inspection in accordance with Indiana Code § 36-1-5-4.

Section 3. (a) The City is authorized to issue, in one or more series, its Taxable Economic Development Tax Increment Revenue Bonds, Series 2020 (Lofts on Tenth Project) (with such further or different designation determined to be necessary or appropriate, including such designation to indicate the year in which the bonds are issued), in the aggregate principal amount not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) ("Lofts on Tenth Project Bonds") under the Act, pursuant to the Trust Indenture, to be dated as of the first day of the month in which the Lofts on Tenth Project Bonds are sold. The Lofts on Tenth Project Bonds shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor, the Controller and the City Clerk; (ii) be dated as of the date of issuance; (iii) mature on a date not later than twenty-five (25) years after the date of issuance; (iv) bear interest at a rate not to exceed five percent (5.0%), with such interest to be payable as provided in the Financing Documents; (v) be issuable in such denominations as set forth in the Financing Documents; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Trust Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable as to principal and interest on February 1 and August 1; (x) be payable at an office of the Trustee as provided in the Indenture; (xi) be subject to optional redemption prior to maturity, (xi) may be issued as term bonds subject to mandatory sinking fund redemption; and (xii) contain such other terms and provisions as may be provided in the Financing Documents. The Lofts on Tenth Project Bonds shall be payable from the incremental real property tax revenues from the Project within the Lofts on Tenth Allocation Area ("Lofts on Tenth TIF Revenues). The Lofts on Tenth Project Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but shall be special and limited obligations of the City, payable solely from the Lofts on Tenth TIF Revenues, and as otherwise provided in the Financing Documents. The Lofts on Tenth Project Bonds shall be purchased by the Developer.

(b) The City is hereby authorized to issue its "Taxable Economic Development Revenue Bonds of 20____ (Lofts on Tenth Project)" (with such further or different designation determined to be necessary or appropriate, including such designation to indicate the year in which the bonds are issued) ("Lofts on Tenth Project Site Bonds" and together with the Lofts on Tenth Project Bonds, "Bonds"), under the Act, pursuant to the Trust Indenture, to be dated as of the first day of the month in which the Project Site Bonds are sold, in the aggregate principal amount not to exceed One Million Dollars (\$1,000,000), for the purposes of loaning the proceeds therefrom to the Developer ("Loan") to pay for a portion of the costs of the Project. The repayment of the Loan by the Developer may be forgiven upon the Developer's fulfillment of the terms and conditions described in the Financing Agreement. The Lofts on Tenth Project Site Bonds shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor, the Controller and the City Clerk; (ii) be dated as of the date of issuance; (iii) mature on a date not later than twenty (20) years after the date of issuance; (iv) bear interest at a rate not to exceed five percent (5.0%), with such interest to be payable as provided in the Financing Documents; (v) be issuable in such denominations as set forth in the Financing Documents; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Trust Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable as to principal and interest on February 1 and August 1; (x) be payable at an office of the Trustee as provided in the Indenture; (xi) be subject to optional redemption prior to maturity, (xii) at the option of the City, be issued as term bonds subject to mandatory sinking fund redemption; and (xii) contain such other terms and provisions as may be provided in the Financing Documents. The Lofts on Tenth Project Site Bonds shall be primarily payable from payments of the Developer, unless forgiven, and then such payments shall be payable from (i) tax increment revenues of the Noblesville Redevelopment Area ("Downtown TIF Revenues"), junior and subordinate to outstanding senior obligations payable from Downtown TIF Revenues, (ii) other legally available funds of the City, or (iii) a combination thereof, as determined by the Mayor and the Controller to be in the best interest of the City upon the advice of the City's financial advisor. The Lofts on

Tenth Project Site Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but shall be special and limited obligations of the City, payable solely from the foregoing revenues, and as otherwise provided in the Financing Documents.

The Mayor and the Controller of the City are hereby authorized and directed, in the name and on behalf of the City, to sell the Lofts on Tenth Project Site Bonds to a purchaser or purchasers selected by such officers (the “Purchaser”) at such prices and on such terms as may be determined at the time of sale and approved by the Mayor and the Controller of the City. The Mayor and the Controller of the City are hereby authorized to approve and execute a bond purchase agreement for the Lofts on Tenth Project Site Bonds with the Purchaser, in a form approved by such officers, such approval to be conclusively evidenced by the execution thereof. The Lofts on Tenth Project Site Bonds may be sold through either a competitive, negotiated or private placement sale.

In lieu of issuing the Lofts on Tenth Project Site Bonds, the City is hereby authorized to fund the Loan from legally available funds of the City, which funds shall be subject to appropriation by the Common Council upon request by the City.

Section 4. The Mayor, the Controller and the City Clerk are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver the Financing Documents, submitted to the Common Council, which are hereby approved in all respects. The Mayor and the Controller of the City are hereby authorized and directed to select a financial institution to serve as the Trustee.

Section 5. The Mayor, the Controller and the City Clerk are hereby authorized, in the name and on behalf of the City, without further approval of the Council or the Commission, to approve such changes in the Financing Documents as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof.

Section 6. The Mayor, the Controller and the City Clerk, and each of them, are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Documents and the Loan, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 8. The provisions of this ordinance and the Financing Documents shall constitute a binding contract between the City and the holders of the Bonds, and after issuance of the Bonds this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 9. All ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 10. This Bond Ordinance shall be in full force and effect immediately upon adoption.

ALL OF WHICH IS ORDAINED by the Common Council of the City of Noblesville, Indiana this ____ day of _____, 2020.

AYE		NAY	ABSTAIN
	Brian Ayer		
	Mark Boice		
	Michael J. Davis		
	Wil Hampton		
	Gregory P. O'Connor		
	Darren Peterson		
	Pete Schwartz		
	Aaron Smith		
	Megan G. Wiles		

ATTEST:

Evelyn Lees, City Clerk

Presented by me to the Mayor of the City of Noblesville, Indiana this ____ day of _____, 2020, at ____:____ __m.

Evelyn Lees, City Clerk

MAYOR’S APPROVAL

Christopher Jensen, Mayor

Date

MAYOR’S VETO

Christopher Jensen, Mayor

Date

ATTEST:

Evelyn Lees, City Clerk

**FORM OF
FINANCING AGREEMENT**

BETWEEN

XANDERCO, LLC

AND

CITY OF NOBLESVILLE, INDIANA

Dated as of _____, 2020

The rights of the Issuer hereunder have been assigned to [_____], as trustee under a Trust Indenture dated as of the date hereof, from the Issuer.

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FINANCING AGREEMENT

THIS FINANCING AGREEMENT, dated as [_____] 1, 2020 (“Financing Agreement”) between XANDERCO, LLC., an Indiana limited liability company (“Developer”), and the CITY OF NOBLESVILLE, INDIANA (“Issuer” or “City”), a municipal corporation duly organized and validly existing under the laws of the State of Indiana.

RECITALS

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

WHEREAS, on April 23, 2020, the Noblesville Redevelopment Commission (“Redevelopment Commission”) adopted a declaratory resolution establishing the Tenth Street Economic Development Area (“Area”), approving an economic development plan, for the Area and designating part of the Area an allocation Area to be known as the “Lofts on Tenth Allocation Area” (“Allocation Area”), located in the City, which was effective as of that date and was confirmed by a confirmatory resolution adopted on [_____] 2020; and

WHEREAS, the Issuer, upon finding that the Project (as hereinafter defined) and the proposed financing of the construction thereof will create additional employment opportunities in the City; will benefit the health, safety, morals, and general welfare of the citizens of the City and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, the Issuer intends to issue its Taxable Economic Development [Tax Increment] Revenue Bonds, [Series 20[____]] [of 20__] (Lofts on Tenth Project)] (with such further or different designation in the aggregate principal amount not to exceed [Two Million Three Hundred Thousand Dollars (\$2,300,000)] [One Million Dollars (\$1,000,000)] (“Bonds”), pursuant to the Trust Indenture dated as of the first day of the month in which the bonds are issued (or such other date as may be determined by the Issuer) (“Indenture”), between the Issuer and [_____] as Trustee (“Trustee”), and to provide the proceeds of the Bonds to the Developer pursuant to the provisions of this Financing Agreement to finance the Project (as hereinafter defined); and

[WHEREAS, the Developer has requested a certain economic development incentive from the City in the form of a forgivable loan to the Company in the amount of One Million Dollars (\$1,000,000) (the “Forgivable Loan”), to finance a portion of the costs of the Project, and the Issuer desires to make such Forgivable Loan available to the Developer to complete the Project];

WHEREAS, this Financing Agreement provides for the payment of the Bonds from [TIF Revenues] (as hereinafter defined); and

WHEREAS, the Bonds issued under the Indenture will be payable solely from [TIF Revenues]; and

WHEREAS, pursuant to the Indenture, the Issuer will assign certain of its rights under this Financing Agreement to the Trustee as security for the Bonds.

NOW, THEREFORE, in consideration of the premises, the use of the proceeds of the Bonds and of other good and valuable consideration, the receipt of which is hereby acknowledged, the Developer has executed and delivered this Financing Agreement.

The Developer and the Issuer hereby further covenant and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. Capitalized terms used in this Financing Agreement that are not otherwise defined herein, shall have the meanings provided for such terms in the Indenture. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“Act” means, collectively, Indiana Code 36-7-11.9 and 36-7-12.

“Allocation Area” means the [Lofts on Tenth Allocation Area][Noblesville Redevelopment Allocation Area].

“Annual Fees” means “annual Trustee Fees and annual fees related to monitoring TIF Revenues.

“Bond Fund” means the Bond Fund established by Section 4.2 of the Indenture.

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

“Bonds” means the Issuer’s Taxable Economic Development [Tax Increment] Revenue Bonds [, Series 20___] [of 20___] (Lofts on Tenth Project)] .

“City” means the City of Noblesville, Indiana.

“Developer” means Xanderco, LLC, or any successors thereto permitted under Section 7.4 hereof.

“Economic Development Agreement” means the Economic Development Agreement, dated ____, 2020, between the City, Developer and Redevelopment Commission.

“Forgivable Loan Agreement” means the Forgivable Loan Agreement, dated as of ____, 2020, between the City and Developer.

“Loan” means the loan of [proceeds of the Bonds][funds of the City] to the Developer, pursuant to the terms of the Loan Agreement, in an amount not to exceed \$1,000,000.]

“Indenture” means the Trust Indenture dated as of [_____] 1, 2020, between the Issuer and [_____] , as trustee, related to the Bonds.

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

“Project” means the acquisition of land, demolition of existing structures and improvements and the construction of an approximate 31,700 square foot mixed-use, multi-story development consisting of apartment living units and commercial retail space, together with all

necessary appurtenances, related improvements and equipment, capitalized interest, if any, and costs of issuance of the Bonds (collectively, “Project”).

“Project Fund” means the Project Fund for the Bonds established in Section 4.3 of the Indenture.

“Redevelopment Commission” means the Noblesville Redevelopment Commission.

“State” means the State of Indiana.

“Tax Increment” means, collectively, the property tax proceeds from the assessed valuation of real property in the Allocation Area in excess of the assessed valuation described in Indiana Code 36-7-14-39(b)(1), allocated and deposited in the Allocation Fund established under Indiana Code 36-7-14-39(b)(3), as such statutory provisions exist on the date of the issuance of the Bonds.

[“TIF Revenues” means all of Tax Increment, minus Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the principal and interest on the Bonds pursuant to Resolution No [] adopted by the Redevelopment Commission on [], 20].

“Trustee” means the trustee at the time serving as such under the Indenture.

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

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

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

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

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

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

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

(End of Article I)

ARTICLE II

REPRESENTATIONS; USE OF BOND PROCEEDS[; FORGIVABLE LOAN]

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

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

(b) The Issuer shall issue its Bonds an amount not to exceed [\$2,300,000] [\$1,000,000] to make proceeds of the Bonds available to the Developer for the costs associated with the Project, subject to the consideration of the execution and delivery of this Financing Agreement, all for the benefit of the holders of the Bonds, to retain employment opportunities in the City and to benefit the health and general welfare of the citizens of the City and the State of Indiana, and to secure the Bonds by pledging certain of its rights and interest in this Financing Agreement to the Trustee.

[(c) The City agrees to provide the Loan to the Developer under the form of Loan Agreement attached hereto as Exhibit A, in a principal amount not to exceed \$1,000,000, to pay a portion of the costs of the Project. The Loan shall fund (1) acquisition of the Real Estate (as defined in the Economic Development Agreement); (2) demolition of the existing structures and improvements on the Project Site (as defined in the Economic Development Agreement); and (3) road impact, park impact, and sewer fees. The Loan shall be repaid by the Developer unless forgiven as provided in the Loan Agreement.]

Section 2.2. Representations by Developer. Developer represents and warrants that:

(a) It is an Indiana limited liability corporation validly existing under the laws of the State of Indiana, is not in violation of any provision of its Articles of Organization or Operating Agreement, or any laws in any manner material to its ability to perform its obligations under this Financing Agreement, has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) The provision of financial assistance to be made available to it under this Financing Agreement from the proceeds of the Bonds and the Loan and the commitments therefor made by the Issuer have induced the Developer to undertake the Project and such Project will preserve jobs and employment opportunities within the boundaries of the City.

(c) The Developer intends to operate or cause the Project to be operated as an economic development facility under the Act until the expiration or earlier termination of this Financing Agreement as provided herein.

(d) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of the Developer's Articles of Organization, Operating Agreement or other organizational document, as the case may be, or any restriction or any agreement or instrument to which the Developer is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Developer to perform its obligations hereunder) of any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Developer or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Developer under the terms of any instrument or agreement, except as set forth in this Financing Agreement and the Indenture.

(e) This Financing Agreement has been duly executed and delivered by Developer and constitutes the legal, valid and binding agreement of Developer, enforceable against Developer in accordance with its terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general. The enforceability of this Financing Agreement is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(f) There are no actions, suits or proceedings pending, or, to the knowledge of the Developer, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might result in any material adverse change in the financial condition of the Developer or might impair the ability of the Developer to perform its obligations under this Financing Agreement.

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

(h) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Financing Agreement.

(i) The Developer expects to complete the Project by [_____, 20__].

(End of Article II)

ARTICLE III

PARTICULAR COVENANTS OF THE ISSUER AND DEVELOPER

Section 3.1. Consent to Assignments to Trustee. The Developer acknowledges and consents to the pledge and assignment of the Issuer's rights hereunder to the Trustee pursuant to the Indenture and agrees that the Trustee may enforce the rights, remedies and privileges granted to the Issuer hereunder other than the rights of the Issuer to execute and deliver supplements and amendments to this Financing Agreement pursuant to Section 6.1 hereof and in addition to the rights retained by the Issuer pursuant to Section 4.1(c) hereof as well as those rights granted to the Issuer under Section 3.5 hereof and Section 6.5 of the Indenture.

Section 3.2. Payment of Principal and Interest. (a) In accordance with the Indenture, the Bonds are payable solely out of the TIF Revenues, and only to the extent there are any TIF Revenues.

(b) The Issuer covenants to collect and apply the TIF Revenues in the manner required by Article IV of the Indenture.

Section 3.3. Maintenance of Existence. Developer agrees that it will maintain its existence as an Indiana limited liability company, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit one or more other entities to consolidate or merge with it; provided, that the Developer may, without violating the agreement contained in this Section, consolidate or merge with another entity, permit one or more other entities to consolidate or merge into it, or transfer to another entity organized under the laws of one of the states of the United States all or substantially all of its assets and thereafter dissolve, provided (a) the surviving, resulting or transferee entity, as the case may be, is organized under the laws of one of the states of the United States, and (b) such entity assumes in writing all of the obligations of the Developer herein, including the obligations of the Developer under this Financing Agreement.

Section 3.4. Developer Duties Under Indenture. The Developer agrees to perform all matters provided by the Indenture to be performed by the Developer and to comply with all provisions of the Indenture applicable to the Developer.

Developer hereby acknowledges receipt of a copy of the Indenture.

Section 3.5. Indemnity The Developer will pay, and protect, indemnify and save the Issuer (including members, directors, officials, officers, agents, attorneys and employees thereof), the Bondholders and the Trustee harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the Issuer and the Trustee), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to:

(a) Violation by the Developer of any agreement or condition of this Financing Agreement;

(b) Violation of any contract, agreement or restriction by the Developer relating to the Project, or a part thereof;

(c) Violation of any law, ordinance or regulation by the Developer arising out of the ownership, occupancy or use of the Project, or a part thereof;

(d) Any act, failure to act, or misrepresentation by the Developer, or any of the Developer's agents, contractors, servants, employees or licensees; and

(e) The provision of any information or certification furnished by the Developer to the Bondholders in connection with the issuance and sale of the Bonds or the Project.

The Developer hereby further agrees to indemnify and hold harmless the Trustee from and against any and all costs, claims, liabilities, losses or damages whatsoever (including reasonable costs and fees of counsel, auditors or other experts), asserted or arising out of or in connection with the acceptance or administration of the trusts established pursuant to the Indenture, except costs, claims, liabilities, losses or damages resulting from the gross negligence or willful misconduct of the Trustee, including the reasonable costs and expenses (including the reasonable fees and expenses of its counsel) of defending itself against any such claim or liability in connection with its exercise or performance of any of its duties hereunder and of enforcing this indemnification provision. The indemnifications set forth herein shall survive the termination of the Indenture and/or the resignation or removal of the Trustee for so long as the Bonds are outstanding.

The foregoing shall not be construed to prohibit the Developer from pursuing its remedies against either the Issuer or the Trustee for damages to the Developer resulting from personal injury or property damage caused by the intentional misrepresentation or misconduct of either the Issuer or the Trustee.

Section 3.6. Payment of Expenses of Issuance of Bonds. The Issuer shall pay or reimburse from the proceeds of the Bonds the costs of issuance of the Bonds.

Section 3.7. Completion and Use of Project.

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

(b) The Issuer shall deposit all proceeds from the sale of the Bonds in the manner specified in Article III of the Indenture, and the Issuer shall maintain such proceeds in the manner specified in Article IV of the Indenture. Under the Indenture, the Trustee, on behalf of the Issuer, is authorized and directed to make payments from the Project Fund to pay for Project,

or to reimburse Developer for any costs of the Project, including capitalized interest, if any, and to pay or reimburse the costs of issuance for the Bonds. The Developer agrees to direct such requisitions to the Trustee as may be necessary to effect payments out of the Project Fund, as the case may be, for costs of the Project in accordance with Section 4.3 of the Indenture and this Section 3.7.

(c) The Developer shall provide a completion certificate with respect to the Project in the manner provided in Section 4.3(c) of the Indenture and any moneys remaining in the Project Fund after completion of the Project shall be transferred and applied in the manner therein provided.

Section 3.8. Other Amounts Payable by the Developer. The Developer covenants and agrees to pay the following:

(a) All reasonable fees, charges and expenses, including agent and counsel fees and expenses, of the Trustee incurred under the Indenture, as and when the same become due to the extent TIF Revenues of the Redevelopment Commission are not available.

(b) An amount sufficient to reimburse the Issuer for all expenses reasonably incurred by the Issuer under this Financing Agreement and in connection with the performance of its obligations under this Financing Agreement or the Indenture, to the extent that such expenses are not included in the Bonds, including the Annual Fees.

(c) All reasonable expenses incurred in connection with the enforcement of any rights under this Financing Agreement or the Indenture by the Issuer, the Trustee or the Bondholders.

(d) All other payments of whatever nature which the Developer has agreed to pay or assume under the provisions of the Financing Agreement.

Section 3.9. Property Taxes. As long as the Bonds are outstanding, the Developer covenants to pay all property tax bills for the economic development facilities before the tax bills are delinquent. The Developer agrees not to contest or appeal any determinations of assessed value on the property where the Project is located or request any deductions from assessed valuation with respect to any redevelopment or rehabilitation on the property where the Project is located as permitted by Indiana Code 6-1.1-12.1 while the Bonds are outstanding.

(End of Article III)

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 4.1. Events of Default.

(a) It shall be an “Event of Default” upon the failure of the Developer to perform any covenant, condition or provision hereof and to remedy such default within thirty (30) days after notice thereof from the Trustee to the Developer, unless the Bondholders shall have consented thereto; provided that the Bondholders shall not be able to waive an Event of Default if such Event of Default relates to the failure of payment of Trustee fees.

(b) During the occurrence and continuance of any Event of Default hereunder, the Trustee, as assignee of the Issuer pursuant to the Indenture, and in addition to the rights retained by the Issuer as provided in Section 6.1(c) hereof, on behalf of any unpaid Bondholders shall have the rights and remedies hereinafter set forth, in addition to any other remedies herein or by law provided. It is agreed that the holders of all of the Bonds outstanding at any time may direct the Trustee, and upon being satisfactorily indemnified, the Trustee shall abide by such direction, with regard to the remedy or remedies to be pursued hereunder or under the Indenture. The Trustee, personally or by attorney, may in its discretion, proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in this Financing Agreement or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee shall deem most effectual to protect and enforce any of its rights or duties hereunder. If after any Event of Default occurs and prior to the Trustee exercising any of the remedies provided in this Financing Agreement, the Developer will have completely cured such default, and shall have provided the Trustee with evidence thereof to the reasonable satisfaction of the Trustee, then in every case such default will be waived, rescinded and annulled by the Trustee by written notice given to the Developer. No such waiver, annulment or rescission will affect any subsequent default or impair any right or remedy consequent thereon.

(c) Notwithstanding anything herein to the contrary, during the occurrence and continuance of an Event of Default by the Developer arising from a breach of representations as set forth in Section 2.2 hereof, or a breach of the covenants of the Developer set forth in Section 3.7 or 3.8 hereof, the Issuer may in its discretion, proceed to protect and enforce its rights under this Agreement by a suit or suits in equity or at law, whether for damages or for the specific performance, including the recovery of reasonable attorney’s fees.

Section 4.2. Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee or Issuer is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 4.3. Delay or Omission Not a Waiver. No delay or omission of the Trustee or Issuer to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an

acquiescence therein; and every power and remedy given by this Financing Agreement to the Trustee and Issuer may be exercised from time to time and as often as may be deemed expedient by the Trustee or Issuer, as the case may be.

(End of Article VI)

ARTICLE V

IMMUNITY

Section 5.1. Extent of Covenants of the Issuer; No Personal Liability. No recourse shall be had for the payment of the principal of or interest on any of the Bonds or Loan or for any claim based thereon or upon any obligation, covenant or agreement contained in the Bonds, the Indenture or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, as such, either directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture and this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the Bonds and the Loan.

Section 5.2. Liability of Issuer. Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the TIF Revenues and as otherwise provided 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 or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

(End of Article VII)

ARTICLE VI

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 6.1. Supplements and Amendments to this Financing Agreement. Subject to the provisions of Article X of the Indenture, the Developer and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VIII)

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.1. Financing Agreement for Benefit of Parties Hereto. Nothing in this Financing Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns, any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Financing Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, and the Trustee.

Section 7.2. Severability. In case any one or more of the provisions contained in this Financing Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 7.3. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given when received or your first refusal thereof and mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier with proper address as indicated below. The Issuer, the Developer and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of Noblesville, Indiana
16 South 10th Street
Noblesville, Indiana 46060
Attention: Christopher Jensen, Mayor

With a Copy To: City of Noblesville, Indiana
16 South 10th Street
Noblesville, Indiana 46060
Attention: Lindsey Bennett, Esq.

To the Developer: XANDERCO, LLC
2078 Greenfield Pike
Noblesville, Indiana 46060
Attention: Darren Peck

With a copy to: Church Church Hittle + Antrim
2 North 9th Street
Noblesville, Indiana 46060
Attn: Eric M. Douthit Esq

To the Trustee: [_____]

Section 7.4. Successors and Assigns. Whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Developer, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not. Provided, however, the Developer may not assign its rights or obligations under this Financing Agreement to any party other than an affiliate of the Developer without the consent of the Issuer.

Section 7.5. Counterparts. This Financing Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Financing Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 7.6. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with, the laws of Indiana.

(End of Article IX)

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

DEVELOPER:

XANDERCO, LLC,
an Indiana limited liability company

By: _____
Darren Peck, Member

ISSUER:

CITY OF NOBLESVILLE, INDIANA

By: _____
Christopher Jensen, Mayor

Attest:

Evelyn Lees, City Clerk

SEAL:

(Signature Page to Financing Agreement)

EXHIBIT A

FORM OF

FORGIVABLE LOAN AGREEMENT

This Forgivable Loan Agreement (the “Agreement”) is entered into as of _____, 2020, between the City of Noblesville, Indiana (“City”), a municipal corporation existing under the laws of the State of Indiana, and Xanderco, LLC (“Developer”), an Indiana liability company.

WHEREAS, the Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, the “Act”), authorizes and empowers the City to make loans to developers for the purpose of financing economic development facilities under the Act, for diversification of economic development and promotion of job opportunities in or near such Issuer and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes;

WHEREAS, the City upon finding that the Project (as hereinafter defined) and the proposed financing thereof will create additional employment opportunities in the City of Noblesville; will benefit the health, safety, morals, and general welfare of the citizens of the City of Noblesville and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing;

WHEREAS, Developer has requested a forgivable loan in the amount of One Million Dollars (\$1,000,000.00) to fund a portion of the costs of the Project, as further described herein (“Loan”);

WHEREAS, the City desires to facilitate the development of the Project by making the Loan to the Company to finance a portion of the Project.

WHEREAS, the City shall forgive the loan upon the fulfillment by the Developer of certain obligations as described herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1. RECITALS

The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set forth in this section.

SECTION 2. MUTUAL ASSISTANCE

The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent of this Agreement.

SECTION 3. DEFINITIONS

“Developer” shall mean Xanderco, LLC, an Indiana limited liability company, or any subsidiary or affiliate thereof.

“Disbursement Request” shall mean the submission of a completed request form (Exhibit A) by Developer to City requesting a disbursement of Loan Proceeds for eligible Project Costs.

“Economic Development Agreement” means the Economic Development Agreement, dated ____, 2020, between the City, the Noblesville Redevelopment Commission and the Developer.

“Execution Date” means the date in the first paragraph of this Agreement.

“Force Majeure” shall have the meaning assigned in the Economic Development Agreement.”

“City” shall mean the City of Noblesville, Indiana.

“Laws” means all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees.

“Loan Principal” or “Loan Proceeds” shall mean One Million Dollars (\$1,000,000.00).

“Project” shall have the meaning assigned in the Economic Development Agreement.

“Project Costs” shall mean the costs described in Section 5.1.(a)(i)-(iv).

“Project Site” shall have the meaning assigned in the Economic Development Agreement.

“Real Estate” shall mean have meaning assigned in the Economic Development Agreement.

SECTION 4. CITY’S OBLIGATIONS

Upon approval and execution of this Agreement, the City shall take all necessary steps to make the Loan Principal available to Developer subject to the terms of Section 6 below, such proceeds to be used by the Developer to carry out its obligations as further described in this

Agreement. The City shall be authorized to execute necessary documents and take any and all other necessary steps in effectuating the transfer and disbursement of the Loan Principal.

SECTION 5. DEVELOPER'S OBLIGATIONS

1. Responsibilities of Developer and/or Owner. Developer shall perform the following commitments (the "Commitments") in connection with the development of the Project, in accordance with the Economic Development Agreement:

(a) Developer shall utilize the Loan Principal as follows:

- i. To acquire the Project Site (as defined in the Economic Development Agreement) by the Developer;
- ii. Demolish the existing structures on the Project Site;
- iii. Clean up any and all environmental conditions at the Project Site to the satisfaction of the City;
- iv. Construct the Project in substantial compliance with the Final Documents and Drawings (subject to any approved Change Orders or Permitted Changes) (each as defined in the Economic Development Agreement); and
- v. Receive a final certificate to occupy the Project from the City.

2. Developer agrees to complete the Project to the satisfaction of the City by _____, 20____ (the "Completion Date"), pending a start date of _____, 20____ and subject to unavoidable delays.

SECTION 6. LOAN TERMS

1. Disbursement. City shall disburse Loan Proceeds to, or on behalf of, Developer to pay (or reimburse Developer for) Project Costs upon receipt by City of a Disbursement Request from Developer; provided that the City shall not be obligated to disburse Loan Proceeds more frequently than once per month. City: (i) may accept and rely on the truth and accuracy of the statements set forth in each Disbursement Request that it receives from Developer; and (ii) shall [not incur any liability] in connection with its disbursement of Loan Proceeds in reliance on the truth and accuracy of the statements set forth in a Disbursement Request. At least five days in advance of the delivery of a Disbursement Request to City, Developer shall deliver to City, for review by it and/or its representative or other contractor, an advance copy of the Disbursement Request (including all information required pursuant to the definition thereof) that it intends to deliver to the City. Upon approval of each Disbursement Request by City, City shall disburse Loan Proceeds to Developer within thirty (30) business days, unless otherwise agreed by the parties.

2. Loan. Developer shall be obligated to repay the Loan Principal in full _____ (_____) [years] of the Execution Date [on the dates, in the principal amount and at the rate per

annum on Exhibit B attached hereto], unless the Loan Principal has otherwise been forgiven in accordance with the terms of this Agreement. [The Loan shall be secured by a first mortgage on the Project Site, including all improvements constructed thereon, and shall be personally guaranteed by Darren and Monica Peck and Blake Anderson.]

3. Forgiveness. The repayment of the Loan will be forgiven on [_____, 20__] and there shall be no obligation of the Developer to repay the Loan, the consideration for the Loan being the fulfillment of the Developer's obligations under Section 5 of this Agreement and the resulting economic benefits to the City.

4. Project Completion. Upon completion of the Project and the placement of the same into service, Developer shall submit a request for certification from City that the Project is complete. City shall be entitled to conduct a reasonable inspection of the Project, both in terms of documentation and physical structure, upon receipt of Developer's request for certification.

5. Default.

(a) Events of Default. It shall be an "Event of Default" if Owner or Developer fails to complete the Project by the Completion Date or if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it within thirty (30) days after a party failing to perform or observe any term or condition of this Agreement receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day period shall be extended as reasonably as may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the thirty (30) day period; and (b) completes such remedy within a period of no more than ninety (90) days, unless otherwise explicitly agreed to in writing by all parties.

(b) General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) protect the rights granted to the non-defaulting party under this Agreement; (ii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iii) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 8% per annum, excluding attorney's fees.

(c) No Remedy Exclusive. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any

such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

SECTION 7. OTHER TERMS

1. Assignment. Until the Project is completed, Developer shall not assign this Agreement without the prior written approval of the other party. Notwithstanding any assignment permitted under this Section, City or Developer, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release City or Developer, as the case may be, from such performance.

2. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to City, _____, with a copy to _____; and to Developer _____, Attn: _____. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

3. Authority. Each undersigned person executing this Agreement on behalf of City and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of City and Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by City and Developer, respectively.

4. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

5. Miscellaneous. This Agreement shall inure to the benefit of, and be binding upon, City and Developer, and their respective successors and assigns. This Agreement constitutes the entire agreement between City and Developer with respect to the subject matter hereof, and may be modified only by a written agreement signed by City and Developer. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of the Indiana. All Exhibits to this

Agreement are attached hereto and incorporated herein by reference. Any ambiguity shall not be construed against either party, as both parties participated in the drafting of this Agreement and had separate advice of counsel in so drafting. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture, between the parties hereto. City and Developer agree that all disputes arising, directly or indirectly, out of or relating to this Agreement, and all actions to enforce this Agreement, shall be dealt with and adjudicated in the state courts of the State of Indiana, County of Hamilton and for that purpose each party hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Except as otherwise specifically provided herein, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, firm or corporation, City and Developer, any rights or remedies under or by reason of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, City and Developer have executed this Project Agreement as of the day and year first written above.

“CITY”

By: _____

“DEVELOPER”

Xanderco, LLC,
an Indiana limited liability company

By: _____

EXHIBIT A

Form of Disbursement Request

The undersigned hereby states and certifies that:

(a) he or she is: (i) familiar with the facts herein certified; and (ii) authorized to make the certifications set forth herein;

(b) pursuant to Subsection 6(1) of the Forgivable Loan Agreement executed by and among Developer and the City of Noblesville, Indiana ("City") dated _____, 20____ (the "Loan Agreement"), the undersigned hereby requests that the City disburse Loan Proceeds to the payees set forth on the attached Schedule 1 in the amounts set forth on Schedule 1 for the purposes set forth on Schedule 1;

(c) all amounts being paid pursuant to Schedule 1 are Project Costs;

(d) the Project Costs being paid pursuant to Schedule 1 have not been paid previously with a disbursement of Loan Proceeds;

(e) no Event of Default by the Developer has occurred and is continuing under the Loan Agreement.

(f) This statement constitutes the approval of the Developer of each disbursement hereby requested and authorized.

(g) As provided in Subsection 6(1) of the Loan Agreement, the City (i) may accept and rely on the truth and accuracy of the statements set forth herein; and (ii) shall not incur any liability in connection with its disbursement of Loan Proceeds in reliance on the truth and accuracy of such statements.

All capitalized terms used but not defined in this request shall have the meanings assigned to such terms in the Loan Agreement.

Submitted by Xanderco, LLC

By: _____
Its: _____

Approved by City

By: _____
Its: _____

EXHIBIT B

Loan Repayment Schedule

FORM OF
TRUST INDENTURE
BETWEEN
CITY OF NOBLESVILLE, INDIANA

AND

[____],
as Trustee

[\$____]
CITY OF NOBLESVILLE, INDIANA
TAXABLE ECONOMIC DEVELOPMENT [TAX INCREMENT] REVENUE BONDS [OF
20[__], SERIES 20__]
(LOFTS ON TENTH PROJECT)

Dated as of [____] 1, 20[__]

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TRUST INDENTURE

THIS TRUST INDENTURE dated as of the 1st day of [____], 2020, by and between the CITY OF NOBLESVILLE, INDIANA (the “Issuer”), a municipal corporation organized and existing under the laws of the State of Indiana and [____], a national bank association duly organized under the laws of the United States and authorized to accept and execute trusts of the character herein, having a corporate trust office in the city of [____], Indiana, as trustee (“Trustee”);

WITNESSETH:

WHEREAS, IC 36-7-11.9 and 12, as supplemented and amended, authorizes and empowers the Issuer to issue revenue bonds and [make loans] to make available the proceeds therefrom for the purpose of financing economic development facilities and vests such Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, in accordance with the provisions of the Act, the Issuer has induced Xanderco, LLC (the “Developer”), to proceed with the Project, the Developer has asked the Issuer to provide financial assistance, by issuing its Taxable Economic Development [Tax Increment] Revenue Bonds [,Series 20__ (Lofts on Tenth Project)][of 2020 (Lofts on Tenth Project)] in the aggregate principal amount not to exceed [\$2,300,000][\$1,000,000] (the “Bonds”), pursuant to and in accordance with this Trust Indenture and the Act, and to provide the proceeds thereof to the Developer pursuant to the Financing Agreement of even date herewith (the “Financing Agreement”) for the purpose of providing funds for paying a portion of the costs of the Project (as defined herein); and

WHEREAS, the execution and delivery of this Indenture and the issuance of revenue bonds under the Act as herein provided have been in all respects duly and validly authorized by proceedings duly passed on and approved by the Issuer; and

WHEREAS, after giving notice in accordance with the Act and IC 5-3-1-4, the Noblesville Economic Development Commission held a public hearing on behalf of the Issuer, and upon finding that the Project and the proposed financing thereof (i) will create or retain employment opportunities in and near the City of Noblesville, Indiana; (ii) will benefit the health and general welfare of the citizens of the City of Noblesville, Indiana; and (iii) will comply with the purposes and provisions of the Act, adopted a resolution approving the proposed financing; and

WHEREAS, the Act provides that such Bonds may be secured by a trust indenture between the Issuer and a corporate trustee; and

WHEREAS, the Financing Agreement provides for the use of the proceeds of the Bonds by the Developer to complete the Project, and, pursuant to this Indenture, the Issuer will assign certain of its rights under the Financing Agreement to the Trustee; and

WHEREAS, the execution and delivery of this Trust Indenture, and the issuance of the Bonds hereunder, have been in all respects duly and validly authorized by an ordinance duly passed and approved by the Issuer; and

WHEREAS, IC 36-7-14 provides that a redevelopment commission of an issuer may pledge certain incremental property taxes to pay, in whole or in part, amounts due on the Bonds; and

WHEREAS, the Noblesville Redevelopment Commission (“Redevelopment Commission”) has, by resolution, dedicated and pledged to the Issuer to the repayment of the Bonds, the TIF Revenues (as hereinafter defined) to be applied to the repayment of the Bonds; and

WHEREAS, pursuant to the Financing Agreement and this Indenture, the Bonds are payable solely and only out of: (i) [TIF Revenues] [other legally available funds of the City]; and (ii) Bond proceeds; and

WHEREAS, the Bonds and the Trustee’s certificate of authentication to be endorsed thereon are all to be substantially in the form provided in this Indenture; and

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal of and interest on the Bonds to be issued under this Indenture according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants and conditions herein and in said Bonds contained, and in order to declare the terms and conditions upon which the Bonds are issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and for and in consideration of the mutual covenants herein contained, of the acceptance by the Trustee of the trust hereby created, and of the purchase and acceptance of the Bonds by the holders or obligees thereof, the Issuer has executed and delivered this Indenture, and by these presents does hereby convey, grant; assign, pledge and grant a security interest in, unto the Trustee, its successor or successors and its or their assigns forever, with power of sale, all and singular, the property, real and personal hereinafter described (“Trust Estate”):

GRANTING CLAUSES

DIVISION I

All right, title and interest of the Issuer in and to the Financing Agreement (except the rights reserved to the Issuer therein);

DIVISION II

All right, title and interest of the Issuer in and to the [Developer payments][legally available funds of City] [TIF Revenues (such pledge to be effective as set forth in IC 5-1-14-4 and IC 36-7-14-39 without filing or recording of this Indenture or any other instrument)] and, deposited with the Trustee hereunder;

DIVISION III

All moneys and securities from time to time held by the Trustee under the terms of this Indenture (except moneys or Qualified Investments deposited with the Trustee pursuant to Section 11.1 hereof) and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned, or

transferred as and for additional security hereunder by the Issuer or by anyone in its behalf, or with their written consent to the Trustee which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

TO HAVE AND TO HOLD the same unto the Trustee, and its successor or successors and its or their assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, to secure the payment of the Bonds to be issued hereunder and the interest payable thereon, and to secure also the observance and performance of all the terms, provisions, covenants and conditions of this Indenture, and for the equal and ratable benefit and security of all and singular the holders of all Bonds issued hereunder, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one Bond or as between principal and interest, and it is hereby mutually covenanted and agreed that the terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become the holders thereof, are as follows:

ARTICLE I.

DEFINITIONS

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

“Act” means, collectively, Indiana Code 36-7-11.9 and 36-7-12.

“Allocation Area” means the [Lofts on Tenth Allocation Area] [Noblesville Redevelopment Allocation Area].

“Allocation Fund” means the Lofts on Tenth Allocation Fund established under IC 36-7-14 for the TIF Revenues collected in the Allocation Area.

“Annual Fees” means “annual Trustee Fees and annual fees related to monitoring TIF Revenues.

“Authorized Representative” means any officer of the Developer.

“Bondholders” means registered owners of the Bonds.

“Bond Fund” means the Bond Fund established by Section 4.2 of this Indenture.

“Bond Ordinance” means Ordinance No. [____], adopted by the Issuer on [____], 2020, authorizing and approving the issuance and sale of the Bonds, and approving the Financing Agreement, this Indenture and related matters.

“Bonds” means the City of Noblesville, Indiana, Taxable Economic Development [Tax Increment] Revenue Bonds [, Series 20__ (Lofts on Tenth Project) [of 20__ (Lofts on Tenth Project)] in the aggregate principal amount not to exceed [\$2,300,000][\$1,000,000].

“City” means the City of Noblesville, Indiana.

“Developer” means Xanderco, LLC, or any successor thereto under the Financing Agreement.

“Economic Development Commission” means the Noblesville Economic Development Commission.

“Event of Default” means those events of default specified in and defined by Section 7.1 hereof.

“Financing Agreement” means the Financing Agreement, dated as of [____] 1, 20____, from the Developer to the Issuer and all amendments and supplements thereto.

“Government Obligations” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the timely payment of the principal of and the interest on which are fully and unconditionally guaranteed by, the United States of America or any agency or instrumentally thereof when such obligations are backed by the full faith and credit of the United States of America.

“Indenture” means this instrument as originally executed or as it may from time to time be amended or supplemented pursuant to Article IX.

“Issuer” means the City of Noblesville, Indiana, a municipal corporation organized and validly existing under the laws of the State or any successor to its rights and obligations under the Financing Agreement and the Indenture.

“Interest Payment Date” on the Bonds means each February 1 and August 1, commencing [_____] 1, 20__].

“Project” means all or any portion of the construction of an approximate 31,700 square foot mixed-use, multi-story development consisting of apartment living units and commercial retail space, and other related improvements and expenses, if any, in connection with such development of the parcels located at 298 North 10th Street and 1037 Wayne Street, in or physically connected to the Economic Development Area, to be financed from proceeds of the Bonds.

“Project Costs” means the following categorical costs of providing for “economic development facilities” as defined and set forth in the Act:

(i) the “Bond Issuance Costs”, namely the costs, fees and expenses incurred or to be incurred by the Issuer and the Developer 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 municipal advisor, the acceptance fee of the Trustee and the first year of the Trustee’s fees hereunder, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under the Indenture or to perfect the lien thereof, the out-of-pocket costs of the Issuer, 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;

(ii) the “Capitalized Interest Costs”, namely a portion of the interest on the Bonds from the date of their original delivery through and including _____, 20____;

(iii) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Project;

(iv) all costs and expenses which Issuer or Company shall be required to pay, or advance under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto), for the construction of the Project; and

(v) any sums required to reimburse the Issuer or Developer for advances made by either of them subsequent to the date of inducement 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.

“Project Fund” means the Project Fund for the Bonds established in Section 4.3 of this Indenture.

“Qualified Investments” shall mean any of the following to the extent permitted by law: (i) Government Obligations; (ii) money market funds, which may be funds of the Trustee, the assets of which are obligations of or guaranteed by the United States of America and which funds are rated at the time of purchase “AAAm-G or higher by Standards & Poor’s Ratings Service, Inc. and/or “Aaa” by Moody’s Investors Service, Inc.; (iii) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies: Export-Import Bank, Farmers Home Administration, Federal Financing Bank, Federal Housing Administration, Government National Mortgage Association, Maritime Administration and Farm Credit Banks; (iv) certificates of deposit, savings accounts, deposit accounts or depository receipts of a bank, savings and loan associations and mutual savings banks, including the Trustee, each fully insured by the Federal Deposit Insurance Corporation; (v) bankers’ acceptances or certificates of deposit of commercial banks or savings and loan associations, including the Trustee, which mature not more than one year after the date of purchase; provided the banks or savings and loan associations (as opposed to their holding companies) are rated for unsecured debt at the time of purchase of the investments in the single highest full classification established by Moody’s Investors Service, Inc. and Standard & Poor’s Ratings Service, Inc.; (vi) commercial paper rated at the time of purchase in the single highest full classification by Moody’s Investors Service, Inc. and Standard & Poor’s Ratings Service, Inc. and which matures not more than 270 days after the date of purchase (including the Trustee and its affiliates); (vii) any guaranteed investment contract or investment agreement of a financial institution which is rated in one of the two highest rating categories by Standard & Poor’s Ratings Services; (viii) or U.S. dollar denominated deposit’s constituting and obligation of a bank, as defined by the Indiana Banking Act (including the Trustee and its affiliates), whose outstanding unsecured long-term issuer rating is rated at the time of such deposit in any of the three highest rating categories by any Rating Agency (Ratings on holding companies are considered as the rating of the bank). and (ix) repurchase agreements with any bank or trust Developer organized under the laws of any state of the United States of America or any national banking association (including the Trustee) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in clauses (i), (iii) or (iv) above; provided, underlying securities are required by the repurchase agreement to be continuously maintained at a market value not less than the amount so invested.

“Record Date” means the fifteenth day immediately preceding any Interest Payment Date.

“Redevelopment Commission” means the Noblesville Redevelopment Commission.

“Requisite Bondholders” means the holders of [66-2/3%][51%] in aggregate principal amount of Bonds.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“State” means the State of Indiana.

“Tax Increment” means, collectively, the property tax proceeds from the assessed valuation of real property in the Allocation Area in excess of the assessed valuation described in Indiana Code 36-7-14-39(b)(1), allocated and deposited in the Allocation Fund established under Indiana Code 36-7-14-39(b)(3), as such statutory provisions exist on the date of the issuance of the Bonds.

“TIF Pledge Resolution” means Resolution No. [_____] adopted by the Redevelopment Commission on [_____, 20__], pledging TIF Revenues to the repayment of principal of and interest on the Bonds.

“TIF Revenues” means all of Tax Increment, minus Annual Fees, received by the Redevelopment Commission and pledged to the Issuer for payment of the principal and interest on the Bonds pursuant to Resolution No. 2020-[__] adopted by the Redevelopment Commission on [_____, 20__].

“Trustee” means _____, as trustee, and any successor trustee or co-trustee.

“Trust Estate” shall have the meaning ascribed to such term in the Granting Clauses of this Indenture.

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

(1) “This Indenture” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

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

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

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

(5) Any terms not defined herein but defined in the Financing Agreement shall have the same meaning herein.

(6) The terms defined elsewhere in this Indenture shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Indenture:

Exhibit A: Costs of Issuance to be Wire Transferred

Exhibit B: Disbursement Request Form

(End of Article I)

ARTICLE II.

THE BONDS

Section 2.1. Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The principal amount of the Bonds (other than Bonds issued in substitution therefor pursuant to Section 2.9 hereof) that may be issued is hereby expressly limited to \$2,300,000.

Section 2.2. Issuance of the Bonds. a) The Bonds shall be designated “City of Noblesville, Indiana, Taxable Economic Development Revenue Bonds [, Series 20__ (Lofts on Tenth Project)][of 20__ (Lofts on Tenth Project)],” and lettered and numbered R-1 and upward. The Bonds shall be originally issuable as fully registered Bonds without coupons in denominations of [\$1,000 and any integral multiple thereof][\$100,000 and any \$1,000 integral multiples thereof][\$5,000 and any integral multiple thereof].

(b) [The Bonds shall mature on February 1 and August 1, in the amounts with interest at the rates per annum as follows:

<u>Date</u>	<u>Amount</u>	<u>Interest Rate]</u>
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(c) [The Bonds maturing on _____, 20_____ shall be subject to mandatory sinking fund redemption as set forth in Section _____.]

(d) The interest on the Bonds shall be payable on each February 1 and August 1 commencing _____ 1, 20____. The Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless such date of authentication shall be subsequent to a Record Date in which case they shall bear interest from the Interest Payment Date with respect to such Record Date. Interest shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months.

(e) Interest on 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 Trustee, as registrar for the Bonds, 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. Payment of interest to the holders of all Bonds shall be by check mailed to such holder of the Bonds on each Interest Payment Date. The Bonds shall be dated as of the date of their delivery.

Section 2.3. Payment on the 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 principal of the Bonds shall be payable upon surrender thereof at the principal corporate trust office of the Trustee. Principal payments in connection with mandatory sinking fund redemption hereunder shall not require presentation for payment. All payments of interest on the Bonds shall be made to the

person appearing on the Bond registration books of the Trustee as the registered owner of the Bonds by check mailed to the Registered Owner thereof as shown on the registration books of the Trustee, as registrar for the Bonds. Each registered owner of [\$500,000][\$1,000,000] or more in principal amount of Bonds shall be entitled to receive interest payments by wire transfer [by providing written wire instructions to the Trustee at least thirty (30) days before the Record Date for such payment.] [The Trustee shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so that such payments are received at the depository by 2:30 p.m. (New York City time).] 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 2.4. 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 the facsimile signature of its City 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 said Bonds. In case 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 Issuer, the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the Trust Estate consisting of the funds and accounts held under the Indenture, the TIF Revenues and [Developer payments], pledged and assigned for their payment in accordance with the Indenture. 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 the 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 interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment 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 2.5. Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until the certificate of authentication on such Bond substantially in the form hereinafter set forth shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture.

The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 2.6. Form of the Bonds. The Bonds issued under this Indenture shall be substantially in the form set forth below with such appropriate variations, omissions and insertions as are permitted or required by this Indenture or deemed necessary by the Trustee:

(Form of Bond)

UNITED STATES OF AMERICA

No. 20__R-1

CITY OF NOBLESVILLE, INDIANA

TAXABLE ECONOMIC DEVELOPMENT REVENUE BOND [OF 20__][, SERIES 20__]
(LOFTS ON TENTH PROJECT)

INTEREST
RATE

MATURITY
DATE

ORIGINAL
DATE

AUTHENTICATION
DATE

PRINCIPAL AMOUNT:

REGISTERED OWNER:

The City of Noblesville, Indiana (the "Issuer"), a municipal corporation 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 of TIF Revenues hereinafter referred to pledged and assigned for the payment hereof, the Principal Amount set forth above on the Maturity Date, unless this Bond shall have previously been called for redemption and payment of the redemption price made or provided for, and to pay interest on the unpaid principal amount hereof in like money, but solely from said payments, at the Interest Rate specified above per annum payable on [_____]1, 20____], and on each February 1 and August 1 thereafter (each an "Interest Payment Date") until the Principal Amount is paid in full. Interest on this Bond shall be payable from the Interest Payment Date next preceding the date of authentication thereof (the "Interest Date"), except that: (i) if this Bond is authenticated on or prior to [_____]1, 20____], the Interest Date shall be [_____]1, 20____]; (ii) if this Bond is authenticated on or after the fifteenth day immediately preceding an Interest Payment Date (the "Record Date"), the Interest Date shall be such Interest Payment Date; and (iii) if interest on this Bond is in default, the Interest Date shall be the day after the date to which interest hereon has been paid in full. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

[Pursuant to its Resolution No. 2020-[__], the Noblesville Redevelopment Commission ("Redevelopment Commission"), has irrevocably pledged to the payment of the Bonds the TIF Revenues (as defined in the hereinafter defined Indenture) collected within the Lofts on Tenth

Allocation Area, as established by the Redevelopment Commission and more particularly described in the Indenture.]

This Bond is [one of] [the only one] of the Issuer's Taxable Economic Development [Tax Increment] Revenue Bonds [, Series 20__ (Lofts on Tenth Project)] [of 20__ (Lofts on Tenth Project)] (hereinbefore and hereinafter the "Bonds") which are being issued under the hereinafter described Indenture in the aggregate principal amount of \$_____. The Bonds are being issued for the purpose of providing funds to (i) finance a portion of the costs of construction of a mixed-use, multi-story development consisting of apartment living units and commercial retail space, and other related improvements and expenses, if any, in connection with such development of the parcels located at 298 North 10th Street and 1037 Wayne Street, in or physically connected to the Lofts on Tenth Allocation Area, to be constructed by Xanderco, LLC (the "Developer"), (ii) pay capitalized interest, if any, and (iii) costs of issuance of the Bonds (collectively, the "Project"), by making proceeds of the Bonds available to the to the Developer pursuant to the Financing Agreement, dated as of [_____ 1, 20__] (the "Financing Agreement") between the Company and the Issuer, which prescribes the terms and conditions under which the Company shall use such proceeds for the Project.

The Bonds are issued under and entitled to the security of a Trust Indenture dated as of [_____ 1, 20__] (hereinafter referred to as the "Indenture") duly executed and delivered by the Issuer to [_____], as trustee (the term "Trustee" where used herein referring to said Trustee or its successors), pursuant to which Indenture the (i) TIF Revenues (as defined in the Indenture)[, and (ii) other legally available funds of the City], and all rights of the Issuer under the Financing Agreement, except certain rights to payment for expenses and indemnity rights and rights to perform certain discretionary acts set forth in the Financing Agreement, are pledged and assigned by the Issuer to the Trustee as security for the Bonds. The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Indiana, particularly Indiana Code, Title 36, Article 7, Chapters 11.9 and 12 (the "Act"), and by appropriate action duly taken by the Issuer which authorizes the execution and delivery of the Indenture. The Bonds have been issued in conformity with the provisions, restrictions and limitations of the Act. **REFERENCE IS HEREBY MADE TO THE INDENTURE FOR A DESCRIPTION OF THE REVENUES SECURITY THE BONDS, THE RIGHTS UNDER THE INDENTURE OF THE ISSUER, THE OWNERS OF THE BONDS AND THE TRUSTEE, TO ALL OF WHICH THE OWNERS OF THIS BOND, BY THE ACCEPTANCE OF THIS BOND, AGREE.**

The principal of this Bond is payable upon surrender thereof at the corporate trust office of [_____], as trustee (the "Trustee"), in [_____], or at the principal corporate trust office of any successor trustee. Principal payments in connection with mandatory sinking fund redemption hereunder shall not require presentation for payment. All payments of interest hereon will be made by the Trustee by check mailed on each Interest Payment Date to the Registered Owner hereof at the address shown on the registration books of the Trustee as maintained by the Trustee, as registrar, determined on the Record Date next preceding such Interest Payment Date. Each registered owner of \$1,000,000 or more in principal amount of Bonds shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Trustee before the Record Date for such payment.

The Issuer and the Trustee 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 interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

[The Bonds of this issue maturing on or after _____, 20____ may be redeemed prior to maturity at the option of the Issuer, in whole or in part, in such order of maturity as the Issuer shall direct and by lot within maturities, on _____, 20____, or any date thereafter from any moneys made available for that purpose, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium.]

[The Bonds maturing on _____ are subject to mandatory sinking fund redemption prior to maturity at a redemption price equal to the principal amount thereof plus accrued interest, on the dates and in the amounts set forth below:

<u>Date</u>	<u>Amount</u>
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*Final Maturity]

[The Trustee shall credit against the mandatory sinking fund requirement for the Term Bonds, and corresponding mandatory redemption obligation, in the order determined by the Issuer, any Term Bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Trustee for cancellation or purchased for cancellation by the Trustee and not theretofore applied as a credit against any redemption obligation. Each Term Bond so delivered or canceled shall be credited by the Trustee at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory redemption date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Trustee shall only credit such Term Bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date and stated above.]

Each [_____] Thousand Dollars [(\$____,000)] principal amount shall be considered a separate bond for purposes of optional and mandatory redemption. If not less than an entire maturity is called for redemption, the bonds to be redeemed shall be selected by lot by the Registrar. If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption.

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 Trustee at the direction of the Issuer. If fewer than all of the Bonds within a maturity are to be redeemed, the Trustee shall apply moneys available for redemption on a pro rata basis, based on the respective portion of the principal amount of Bonds held by the respective owners of the Bonds within such maturity that shall be redeemed.

In the event 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 fifteen (15) days nor more than thirty (30) 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 shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

The Bonds 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 principal, are not an obligation or liability of the Issuer, the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the [TIF Revenues][other legally available funds of the City] (as defined in the Indenture) pledged and assigned for their payment in accordance with the Indenture. 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 this Bond. 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 interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Noblesville Economic Development Commission ("Economic Development Commission"), the Noblesville Redevelopment Commission ("Redevelopment Commission") or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment 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 Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. Modifications or alterations of the Indenture, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the Indenture.

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 Indenture 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 Indenture until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, the City of Noblesville, Indiana, has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Mayor and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual or facsimile signature of its Clerk and countersigned by its Controller.

CITY OF NOBLESVILLE, INDIANA

By: _____
Mayor

(Seal)

Attest:

Countersigned:

By: _____
City Clerk

By: _____
Controller

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Bond is one of the Bonds described in the within mentioned Trust Indenture.

_____,
as Trustee

By: _____
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____
_____ (Please Print or Typewrite Name and Address) the within Series ____ 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.

Dated:

SIGNATURE GUARANTEED:

NOTICE: Signature(s) must be guaranteed by an
eligible guarantor institution participating in a
Securities Transfer Association of a recognized
signature guarantee program.

NOTICE: The signature to this assignment must
correspond with the name of the registered
owner as it appears upon the face of the within
the Bond in every particular, without alteration
or enlargement or any change whatever.

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.

(End of Bond Form)

Section 2.7. Delivery of Bonds. The Trustee shall authenticate the Bonds and deliver
them to the purchasers thereof upon receipt of a copy, duly certified by the City Clerk, of the Bond
Ordinance authorizing the execution and delivery of the Financing Agreement and this Indenture
and the issuance of the Bonds, and delivery of the following.

(1) An executed counterpart of the Financing Agreement and this Indenture.

(2) A written request of the Issuer to the Trustee requesting the Trustee to
authenticate, or cause to be authenticated, and deliver the Bonds in the Authorized Amount
to the purchasers thereof.

- (3) Such other documents as shall be required by bond counsel or the Issuer.

The proceeds of the Bonds shall be paid over to the Trustee and deposited to the Project Fund as hereinafter provided under Section 3.1 hereof.

Section 2.8. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, then, in the absence of notice to the Trustee that such Certificate has been acquired by a bona fide purchaser, the Issuer, through the Trustee, may execute and the Trustee 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 Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it.

In the event 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 Trustee evidence of such loss, theft or destruction satisfactory to the Trustee; together with indemnity satisfactory to it. The Trustee may charge the holder or owner of such Bond with their reasonable fees and expenses in this connection. Any Bond issued pursuant to this Section 2.8 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 2.9. 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 Indenture to be kept by the Trustee which is hereby constituted and appointed the registrar of the Issuer. Upon surrender for transfer of any fully registered Bond at the principal office of the Trustee, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee and duly executed by the registered owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same series and the same 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 Trustee shall thereby be authorized to authenticate and deliver such registered Bond. The costs of such transfer or exchange shall be borne by the Issuer. The Trustee 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 fifteen (15) days next preceding mailing of a notice of redemption of any Bonds.

As to any fully registered Bond without coupons, 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 his 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.

(End of Article II)

ARTICLE III.

APPLICATION OF THE BOND PROCEEDS

Section 3.1. Deposit of Bond Funds. The Issuer shall deposit with the Trustee proceeds from the sale of the Bonds as follows: (i) funds in the amount of \$_____ shall be deposited in the Bond Issuance Expense Account of the Project Fund; (ii) funds in the amount of \$_____ shall be deposited in the Capitalized Interest Account of the Project Fund; and (iii) and remaining funds of \$_____ shall be deposited in the Construction Account of the Project Fund.] Disbursements from the Project Fund will be used to pay for costs of the Project, and are to be made in accordance with the provisions of Article IV of this Indenture.

(End of Article III)

ARTICLE IV.

REVENUE AND FUNDS

Section 4.1. Source of Payment of the Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder are not general obligations of the Issuer but are limited obligations payable solely from TIF Revenues, and only to the extent there are TIF Revenues, pledged and assigned for their payment in accordance with the Indenture and the Financing Agreement. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Issuer in his or her individual capacity, and no 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.

The Redevelopment Commission has pledged the TIF Revenues to the payment of the Bonds pursuant to Resolution 2019-01 adopted on _____, 20____.

Section 4.2. Bond Fund.

(a) The Trustee shall establish and maintain, so long as any of the Bonds are outstanding, a separate fund to be known as the “City of Noblesville, Indiana Lofts on Tenth Project Bond Fund” (“Bond Fund”). Money in the Bond Fund shall be applied as provided in this Section 4.2.

(b) There shall be deposited in the Bond Fund, as and when received by the Trustee, all of the TIF Revenues available, to pay as much principal as possible due on the Bonds on the next February 1 or August 1, plus Trustee fees coming due within the next six (6) months with respect to the Bonds. 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 Trustee for deposit in the Bond Fund for its account, all of the revenues and receipts derived from the TIF Revenues, promptly to meet and pay the principal of the Bonds as the same become due and payable together with such Trustee fees. Nothing herein should be construed as requiring the Issuer to deposit or cause to be paid to Trustee for deposit in the Bond Fund, funds from any source other than receipts derived from the TIF Revenues.

(c) The Controller of the Issuer shall set aside immediately upon receipt, the TIF Revenues into the Allocation Fund and transfer such TIF Revenues to the Trustee for application in accordance with this Indenture. The Trustee is hereby directed to deposit the TIF Revenues into the Bond Fund in the manner prescribed in this Section 4.2 and in Section 4.4. Moneys in the Bond Fund shall be used by the Trustee to pay the principal of the Bonds as the same becomes due together with the Trustee fees described in subsection (b). Any amounts of principal of the Bonds not paid due to insufficient TIF Revenues shall not be deemed an Event of Default.

Section 4.3. Project Fund. The Issuer shall maintain the Project Fund in the custody of the Trustee, to the credit of which deposits are to be made as required by the provisions of Section 3.1 hereof.

(a) Moneys held in the Project Fund representing proceeds of the sale of the Bonds shall be disbursed by the Trustee in accordance with the provisions of this Section 4.3 to pay the costs of the Project, including capitalized interest, if any, and issuance costs of the Bonds. Subject to the provisions below and to any applicable representations, warranties and covenants contained in the Indenture or the Financing Agreement, disbursements from the Project Fund shall be made only to pay (or to reimburse the Developer for payment of) costs of the Project, as the case may be, as follows:

(1) Costs incurred directly or indirectly for or in connection with the acquisition, construction, expansion, equipping, installation or improvement of the Project, as the case may be, including: costs incurred with respect to preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;

(2) 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, as the case may be;

(3) Capitalized interest on the Bonds, through and including ____, 20__;

(4) Financial, legal, accounting, charges and expenses, and all other 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 Issuer, Issuer's Counsel, Bond Counsel, Developer's Counsel, Municipal Advisor to the Issuer, and the Trustee ("Costs of Issuance"); and

(5) Any other incidental and necessary costs, expenses, fees and charges relating to the acquisition, construction, expansion, equipping, installation or improvement of the Project, as the case may be.

The Costs of Issuance set forth described on Exhibit A attached hereto shall be wired transferred at closing from the Project Fund to the entities listed as authorized by the Mayor and the Controller. Execution of this Indenture shall be authorization for these payments.

Any further disbursements from the Project Fund described above to pay such fees, costs or expenses or to reimburse the Developer for the payment of such fees, costs or expenses, other than Costs of Issuance, shall be made by the Trustee only upon the written order of the Developer. Each such written order shall be in the form of the disbursement request attached hereto as Exhibit B and shall be consecutively numbered and accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested.

(b) The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Developer or the Issuer, the Trustee shall file copies of the records pertaining to the Project Fund and all disbursements from such fund with the Issuer and the Developer.

(c) The Issuer shall deliver to the Trustee within fifteen (15) days of completion of the Project, in addition to the items required by (a) above, a certificate of its Authorized Representative:

(1) stating the date that the Project was completed; and

(2) stating that it has made such investigation of such sources of information as are deemed by him/her to be necessary, including pertinent records of the Issuer, and is of the opinion that the Project have been fully paid for, and that no claim or claims exist against 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, there may be excepted from the foregoing statement any claim or claims out of which a lien exists or might ripen if the Company 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 Project Fund 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 Trustee a certificate of the Developer when and as such claim or claims shall have been fully paid.

If after payment of all costs of the Project requested by the Developer, there shall remain any balance of moneys in the Project Fund, the Issuer shall transfer all moneys then in such Project Fund to the Bond Fund.

Section 4.4. TIF Revenues. On or before each January 31 and July 30, commencing _____, 20____, the Trustee shall deposit to the Bond Fund all of the TIF Revenues, for the payment of the principal of the Bonds on the immediately succeeding August 1 or February 1 (taking into consideration any amounts currently deposited therein) together with Trustee fees coming due within the next six (6) months. Any remaining TIF Revenues shall be applied by the Trustee as follows: (a) first, to pay any overdue principal on outstanding Bonds and (b) second, to redeem outstanding Bonds in accordance with Section 5.1 hereof or to be held as additional reserves for payment of debt service on the Bonds, as directed by the Developer.

Section 4.5. [Reserved].

Section 4.6. Trust Funds. All moneys and securities received by the Trustee under the provisions of this Indenture, shall be trust funds under the terms hereof and shall not be subject to lien or attachment of any creditor of the Issuer or of the Developer. Such moneys shall be held in trust and applied in accordance with the provisions of this Indenture.

Section 4.7. Investment. Moneys on deposit in the Funds established in this Article IV hereof shall be invested as provided in Section 6.6 hereof.

(End of Article IV)

ARTICLE V.

REDEMPTION OF BONDS BEFORE MATURITY

Section 5.1. Redemption Dates and Prices. The Bonds are redeemable at the option of the Issuer at the direction of the Developer on any date, upon fifteen (15) days' notice, in whole or in part, in order of maturity determined by Issuer and by lot within maturities, at face value, plus accrued interest to the date fixed for redemption.

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 Trustee at the direction of the Issuer. If fewer than all of the Bonds within a maturity are to be redeemed, the Trustee shall apply moneys available for redemption on a pro rata basis, based on the respective portion of the principal amount of Bonds held by the respective owners of the Bonds within such maturity that shall be redeemed.

[The Bonds maturing on _____, 20____ are subject to mandatory sinking fund redemption prior to maturity as set forth in Section 2.2 hereof.]

Section 5.2. Notice of Redemption. In the case of redemption of Bonds pursuant to Section 5.1 hereof, notice of the call for any such redemption identifying the Bonds, or portions of fully registered Bonds, to be redeemed shall be given by mailing a copy of the redemption notice by first class mail not less than fifteen (15) days nor more than thirty (30) 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, 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 Trustee; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any such registered Bond shall not affect the validity of any proceedings for the redemption of other Bonds.

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 Indenture and shall not be deemed to be outstanding under the provisions of this Indenture, 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 or otherwise destroyed by the Trustee in accordance with the customary practices of the Trustee and applicable record retention requirements and shall not be reissued.

Section 5.4. Redemption Payments. Prior to the date fixed for redemption in whole, funds shall be deposited with Trustee to pay, and Trustee 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 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 Trustee upon any Bond until such Bond shall have been delivered

for payment or cancellation or the Trustee 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 Trustee at the direction of the Issuer. If fewer than all of the Bonds within a maturity are to be redeemed, the Trustee shall apply moneys available for redemption on a pro rata basis, based on the respective portion of the principal amount of Bonds held by the respective owners of the Bonds within such maturity that shall be redeemed. The Trustee 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.

If less than the entire principal amount of any registered Bond then outstanding is called for redemption, 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 Trustee in exchange for (a) payment of the redemption price of, plus 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.

(End of Article V)

ARTICLE VI.

GENERAL COVENANTS

Section 6.1. Payment of Principal and Interest. The Issuer covenants that it will promptly pay the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bonds according to the true intent and meaning thereof. The principal of and interest on the Bonds are payable solely and only from the TIF Revenues, which payments are 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 Indenture 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, 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 Issuer, the State of Indiana, or of any political subdivision or taxing authority thereof, but are special limited obligations of the Issuer and are payable solely and only from the TIF Revenues pledged and assigned for their payment in accordance with the Indenture. 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 the 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 interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds, Developer Notes or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment Commission or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Economic Development Commission, the Redevelopment 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 Indenture, 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 Indenture, pledge the TIF Revenues 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 Indenture 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.

Section 6.3. Filing of Indenture and Security Instruments. The Issuer shall cause this Indenture 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 the Trustee hereunder.

Section 6.4. List of Bondholders. The Trustee will keep on file at the principal office of the Trustee a list of names and addresses of the holders of all Bonds. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the 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 the Trustee.

Section 6.5. Rights Under Financing Agreement. The Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Developer under and pursuant to the Financing Agreement (except the rights reserved to the Issuer therein) for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

Section 6.6. Investment of Funds. With respect to any moneys held by the Trustee under any Fund established hereunder, the Developer and the Issuer agree that all moneys in the Project Fund established by this Indenture may, at the written direction of the Developer, be invested in Qualified Investments, and all moneys in any other Fund established by this Indenture may, at the written direction of the Issuer, be invested in Qualified Investments to the extent permitted by law. In the absence of such direction from the Developer or Issuer, as the case may be, the Trustee is hereby directed by the Issuer to invest such amounts in investments meeting the requirements of clause (ii) of the definition of Qualified Investments. With respect to any moneys held by the Issuer under any Fund established by this Indenture, the Issuer may invest such moneys in Qualified Investments as it deems appropriate. Investments of moneys in the Bond Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys to pay the principal of and interest on the Bonds by redemption or otherwise. All income derived from the investment of moneys on deposit in such Fund shall be deposited in or credited to and any loss resulting from such investment will be charged to the corresponding Fund from which such investment was made.

The Trustee is hereby authorized to trade with itself in the purchase and sale of securities for investments. Neither the Trustee nor the Issuer shall be liable or responsible for any loss resulting from any investment. All such investments shall be held by or under the control of the Trustee or the Issuer, as applicable, and any income resulting therefrom shall be applied in the manner specified in this Indenture.

Section 6.7. Non-presentment of Bonds. In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay any such Bond shall have been made available to Trustee for the benefit of the holder or holders thereof, all liability of 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 Trustee to hold such funds for four (4) 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 Indenture or on, or with respect to, such Bond.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Bonds within four (4) years after the date on which the same shall become due shall be repaid by Trustee to the Issuer and thereafter Bondholders shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid.

(End of Article VI)

ARTICLE VII.

DEFAULTS AND REMEDIES

Section 7.1. Events of Default. Each of the following events is hereby declared an “event of default,” that is to say, if

(a) payment of any amount payable on the Bonds from TIF Revenues available shall not be made when the same is due and payable, provided that the Bonds are only payable from the TIF Revenues specified in Section 4.1 hereof; provided, however, in the event such TIF Revenues are insufficient to make any or all of the payments due on the Bonds, it shall not be an event of default; or

(b) any event of default as defined in Section 6.1 of the Financing Agreement shall occur and be continuing; or

(c) the Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture or any agreement supplemental hereof on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer and the Developer by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the holders of all of the Bonds then outstanding hereunder; or

(d) the Issuer shall fail to apply collected TIF Revenues as required by Article 4 of this Indenture.

Section 7.2. Remedies: Rights of Bondholders.

(a) If an event of default occurs, the Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal of and interest on the Bonds then outstanding, and to enforce any obligations of the Issuer hereunder.

(b) Upon the occurrence of an event of default, and if directed so to do by the Requisite Bondholders and indemnified as provided in Section 8.1 hereof, the Trustee shall be obliged to exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

(c) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

(d) No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time as may be deemed expedient.

(e) No waiver of any event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

Section 7.3. Right of Bondholders to Direct Proceedings. The Requisite Bondholders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 7.4. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article and any other moneys held as part of the Trust Estate shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee or the Issuer, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest, and if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereof, without any discriminations or privilege; and

Second: To the payment to the persons entitled thereto of the unpaid principal of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

Third: To the payment of the balance, if any, to the Issuer or to whomsoever may be lawfully entitled to receive the same upon its written request, or as any court of competent jurisdiction may direct.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 7.5. Remedies Vested In Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall, subject to the provisions of Section 7.4 hereof, be for the equal benefit of the holders of the outstanding Bonds.

Section 7.6. Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 8.1, or of which by said subsection it is deemed to have notice, nor unless also such default shall have become an event of default and the Requisite Bondholders shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in Section 8.1 hereof, nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his, or their own name or names. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the holders of all Bonds then outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder to enforce the covenants of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective holders thereof at the time, place, from the source and in the manner in said Bonds expressed.

Section 7.7. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Developer and the Trustee shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 7.8. Waivers of Events of Default. The Trustee may in its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds, and shall do so upon the written request of the holders of (1) all the Bonds then outstanding in respect of which default in the payment of principal or interest exists, or (2) all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived without the consent of all Bondholders (a) any event of default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein, or (b) any default in the payment when due of the interest on any such Bonds unless prior to such waiver

or rescission, arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee in connection with such default (including extraordinary services) shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

(End of Article VII)

ARTICLE VIII.

THE TRUSTEE

Section 8.1. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but no implied covenants or obligations shall be read into this Indenture against the Trustee.

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or if appointed through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Developer). The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Developer under the Financing Agreement; but the Trustee may require of the Issuer or the Developer full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the property herein conveyed. The Trustee shall have no obligation to perform any of the duties of the Issuer under the Financing Agreement, and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the provisions of this Indenture.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated by it or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bonds, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer or the Developer by its duly authorized officers as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section, or of which said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Issuer or the Developer under its seal to the effect that an ordinance or resolution in the form therein set forth has been adopted by the Issuer or the Developer as conclusive evidence that such ordinance or resolution has been duly adopted, and is in full force and effect.

(f) The duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any event of default hereunder (other than payment of the principal and interest on the Bonds) unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(h) At any and all reasonable times and upon reasonable prior written notice, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect the Project, and to take such memoranda from and in regard thereto as may be desired.

(i) The Trustee shall not be required to give any Bonds or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(j) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(k) Before taking any action under this Section 8.1 the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from

its gross negligence or willful misconduct in connection with any action so taken. Such indemnity shall survive the termination of this Indenture.

(l) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(m) If any event of default under this Indenture shall have occurred and be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care as a prudent man would exercise or use in the circumstances in the conduct of his own affairs.

Section 8.2. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment and/or reimbursement for reasonable fees for its services rendered hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services and, in the event that it should become necessary for the Trustee to perform extraordinary services, the Trustee shall be entitled to reasonable additional compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith (including without limitation attorney's fees and expenses); provided that if such extraordinary services or extraordinary expenses are occasioned by the gross negligence or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. Upon an event of default, but only upon an event of default, the Trustee shall have a right of payment prior to payment on account of interest on or principal of any Bond for the foregoing advances, fees, costs and expenses incurred.

Section 8.3. Notice to Bondholders if Default Occurs. If an event of default occurs of which the Trustee is by subsection (g) of Section 8.1 hereof required to take notice or if notice of an event of default be given as in said subsection (g) provided, then the Trustee shall give written notice thereof by registered or certified mail to the last known holders of all Bonds then outstanding shown by the list of Bondholders required by the terms of this Indenture to be kept at the office of the Trustee.

Section 8.4. Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the reasonable judgment of the Trustee and its counsel has a substantial bearing on the interests of holders of the Bonds, the Trustee may intervene on behalf of Bondholders and, subject to the provisions of Section 8.1(k), shall do so if requested in writing by the Requisite Bondholders. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 8.5. Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions,

immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.6. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty days' written notice to the Issuer and the Developer and by registered or certified mail to each registered owner of Bonds then outstanding and to each holder of Bonds as shown by the list of Bondholders required by this Indenture to be kept at the office of the Trustee, and such resignation shall take effect at the end of such thirty (30) days, or upon the earlier appointment of a successor Trustee by the Bondholders or by the Issuer. Such notice to the Issuer and the Developer may be served personally or sent by registered or certified mail.

Section 8.7. Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by all the Bondholders.

Section 8.8. Appointment of Successor Trustee by the Bondholders; Temporary Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys-in-fact, duly authorized; provided, nevertheless, that in case of such vacancy, the Issuer, by an instrument executed by one of its duly authorized officers, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust Developer or Bank, having a reported capital and surplus of not less than Fifty Million Dollars (\$50,000,000) if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 8.9. Concerning Any Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Developer an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other

instruments provided for in this Article shall be filed by the successor Trustee in each office, if any, where the Indenture shall have been filed.

Section 8.10. Trustee Protected in Relying Upon Resolutions, etc. Subject to the conditions contained herein, the resolutions, ordinances, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

(End of Article VIII)

ARTICLE IX.

SUPPLEMENTAL INDENTURES

Section 9.1. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may without the consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture; as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (c) To subject to this Indenture additional revenues, properties or collateral;
- (d) To make any other change in this Indenture which, in the judgment of the Trustee, is not to the prejudice of the Trustee, the Issuer or the holders of the Bonds;
- (e) To modify, amend or supplement the Indenture in such manner as required to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, and, if they so determine, to add to the Indenture such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939, as amended, or similar federal statute; or
- (f) To achieve compliance with this Indenture with any applicable federal securities or tax law.

Section 9.2. Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures covered by Section 9.1 hereof, and subject to the terms and provisions contained in this Section, and not otherwise, the Requisite Bondholders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided however, that nothing in this section contained shall permit or be construed as permitting (except as otherwise permitted in this Indenture) (a) an extension of the stated maturity or reduction in the principal amount of, or reduction in the rate or extension of the time of paying of interest on, any Bonds, without the consent of the holder of such Bond, or (b) a reduction in the amount or extension of the time of any payment required by any sinking fund applicable to any Bonds without the consent of the holders of all the Bonds which would be affected by the action to be taken, or (c) a reduction in the aforesaid aggregate principal amount of Bonds the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all the Bonds at the time outstanding which would be affected by the action to be taken, or (d) a modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (e) a privilege

or priority of any Bond over any other Bonds, or (f) deprive the owners of any Bonds then outstanding of the lien thereby created.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article which affects any rights of the Developer shall not become effective unless and until the Developer shall have consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Developer at least fifteen (15) days prior to the proposed date of execution and delivery of any such supplemental indenture.

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it who may be counsel for the Developer, as conclusive evidence that any such proposed supplemental indenture complies with the provisions of this Indenture, and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of such supplemental indenture.

(End of Article IX)

ARTICLE X.

AMENDMENTS TO THE FINANCING AGREEMENT

Section 10.1. Amendments etc., to Financing Agreement Not Requiring Consent of Bondholders. The Issuer and the Trustee with the consent of the Developer, and in accordance with Section 8.1 of the Financing Agreement, shall, without the consent of or notice to the Bondholders; consent to any amendment, change or modification of the Financing Agreement as may be required (i) by the provisions of the Financing Agreement and this Indenture, or (ii) for the purpose of curing any ambiguity or formal defect or omission therein, or (iii) in connection with any other change therein which is not to the prejudice of the Issuer or the holders of the Bonds; or, in the judgment of the Trustee, is not to the prejudice of the Trustee.

Section 10.2. Amendments etc., to Financing Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 10.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Financing Agreement without the written approval or consent of the Requisite Bondholders given and procured as provided in Section 9.2 hereof.

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it who may be counsel for the Developer, as conclusive evidence that any such proposed amendment complies with the provisions of this Indenture and Financing Agreement, and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of such amendment.

(End of Article X)

ARTICLE XI.

MISCELLANEOUS

Section 11.1. Satisfaction and Discharge. All rights and obligations of the Issuer and the Developer under this Indenture shall terminate, and such instruments shall cease to be of further effect, and the Trustee shall execute and deliver all appropriate instruments evidencing and acknowledging the satisfaction of this Indenture, and shall assign and deliver to the Developer any moneys and investments in the Project Fund and shall assign and deliver to the Issuer any moneys and investments held in any other Fund under this Indenture when:

- (a) all fees and expenses of the Trustee shall have been paid;
- (b) the Issuer shall have performed all of its covenants and promises in this Indenture;
and
- (c) all Bonds theretofore authenticated and delivered (i) have become due and payable, or (ii) are to be retired or called for redemption under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee at the expense of the Issuer, or (iii) have been delivered to the Trustee canceled or for cancellation; and, in the case of (i) and (ii) above, there shall have been deposited with the Trustee either cash in an amount which shall be sufficient, or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee, shall be sufficient, to pay when due the principal or redemption price, if applicable, and interest due and to become due on the Bonds and prior to the redemption date or maturity date thereof, as the case may be.

Section 11.2. Application of Trust Money. All money or investments deposited with or held by the Trustee pursuant to Section 11.1 shall be held in trust for the holders of the Bonds, and applied by it, in accordance with the provisions of the Bonds and this Indenture, to the payment, either directly or through the Trustee, to the persons entitled thereto, of the principal and interest for whose payment such money has been deposited with the Trustee; but such money or obligations need not be segregated from other funds except to the extent required by law.

Section 11.3. Consents, etc., of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be executed by such Bondholders in person or by agent appointed in writing. Provided, however, that wherever this Indenture requires that any such consent or other action be taken by the holders of a specified percentage, fraction or majority of the Bonds outstanding, any such Bonds held by or for the account of the Issuer shall not be deemed to be outstanding hereunder for the purpose of determining whether such requirement has been met. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds; if made in the following manner, shall be sufficient for any of the purposes

of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of the holding by any person of Bonds transferable by delivery and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved by a certificate executed by any trust Developer, Bank or Bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust Developer or Bank or to such Banker, as the property of such party, the Bonds therein mentioned if such certificate shall be deemed by the Trustee to be satisfactory. The Trustee may, in its discretion, require evidence that such Bonds have been deposited with a Bank, Bankers or trust company, before taking any action based on such ownership. In lieu of the foregoing, the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

For all purposes of this Indenture and of the proceedings for the enforcement hereof, such person shall be deemed to continue to be the holder of such Bonds until the Trustee shall have received notice in writing to the contrary.

Section 11.4. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds is intended or shall be construed to give to any person other than the parties hereto, and the Developer, and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Developer and the holders of the Bonds as herein provided.

Section 11.5. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained, shall not affect: the remaining portions of this Indenture, or any part thereof.

Section 11.6. Notices. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The Issuer, the Developer, and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent

when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Developer:	XANDERCO, LLC 2078 Greenfield Pike Noblesville, Indiana 46060 Attention: Darren Peck
With a copy to:	Church Church Hittle + Antrim 2 North 9 th Street Noblesville, Indiana 46060 Attn: Eric M. Douthit Esq
To the Issuer:	City of Noblesville, Indiana 16 South 10th Street Noblesville, Indiana 46060 Attention: Christopher Jensen, Mayor
With a Copy To:	City of Noblesville, Indiana 16 South 10th Street Noblesville, Indiana 46060 Attention: Lindsey Bennett, Esq.
To the Trustee:	_____ _____ _____

Section 11.7 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.8. Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State of Indiana.

Section 11.9. Immunity of Officers and Directors. No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future members, officer, directors, agents, attorneys or employees of the Issuer, or any incorporator, member, officer, director, agents, attorneys, employees or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, members, officers, directors, agents, attorneys; employees or trustees as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and issuance of such Bonds.

Section 11.10. Holidays. If any date for the payment of principal or interest on the Bonds is not a business day then such payment shall be due on the first business day thereafter.

(End of Article XI)

IN WITNESS WHEREOF, the City of Noblesville, Indiana, has caused these presents to be signed in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and to evidence its acceptance of the trusts hereby created, [_____] has caused these presents to be signed in its name and behalf by, and the same to be attested by, its duly authorized officers, all as of the day and year first above written.

CITY OF NOBLESVILLE, INDIANA

By: _____
Mayor

Attest:

City Clerk

SEAL:

[_____] ,
as Trustee

By: _____

Printed: _____

Title: _____

Attest:

By: _____

Printed: _____

Title: _____

EXHIBIT A

Costs of Issuance Paid at Closing

EXHIBIT B

Disbursement Request