



## **Agenda for the Goshen Common Council**

**6:00 p.m., September 23, 2024 Regular Meeting**

***Council Chamber, Police & Court Building, 111 East Jefferson Street, Goshen, IN***

**Call to Order by Mayor Gina Leichty**

**Pledge of Allegiance led by Hudson Martin** (1st grader at Waterford Elementary)

### **Roll Call:**

**Linda Gerber** (At-Large)    **Phil Lederach** (District 5)    **Doug Nisley** (District 2)

**Megan Peel** (District 4)    **Donald Riegsecker** (District 1)    **Matt Schrock** (District 3)

**Council President Brett Weddell** (At-Large)

**Youth Adviser Tageeya Galeb** (Non-voting)

**Approval of Minutes:** August 26 and September 9 Regular Meetings

**Approval of Meeting Agenda**

**1) City Financial Report, Year to Date**

**2) 2025 Budget Overview**

**3) Ordinance 5195**, Ordinance authorizing the City of Goshen, Indiana to issue its ["Taxable] Economic Development Revenue Bonds, Series 202 (Cherry Creek project)" and approving other actions in respect thereto (Second Reading)

**Elected Official Reports**

***Adjournment***



## GOSHEN COMMON COUNCIL

### Minutes of the AUGUST 26, 2024 Regular Meeting

*Convened in the Council Chamber, Police & Court Building, 111 East Jefferson Street, Goshen, Indiana*

At 6:00 p.m., Mayor Gina Leichty called the meeting to order and led the Pledge of Allegiance.

Mayor Leichty asked Clerk-Treasurer Aguirre to conduct the roll call.

**Present:** Linda Gerber (At-Large) Phil Lederach (District 5) Doug Nisley (District 2)  
Donald Riegsecker (District 1) Matt Schrock (District 3) Youth Adviser Tageeya Galeb  
**Absent:** Megan Peel (District 4), Council President Brett Weddell (At-Large)

#### Approval of Minutes:

Mayor Leichty asked the Council's wishes regarding the minutes of the August 9 Work Session and the August 12 Regular Meeting as prepared by Clerk-Treasurer Aguirre. Councilor Nisley moved to accept the minutes of the August 9 Work Session and the August 12 Regular Meeting. Councilor Riegsecker seconded the motion.

**Motion passed 5-0 on a voice vote.**

#### Approval of Meeting Agenda:

Mayor Leichty presented the agenda with the addition, after Privilege of the Floor, of the announcement of Goshen's new Fire Chief to replace Chief Dan Sink, who is retiring in November. Councilor Lederach moved to approve the agenda as amended. Councilor Riegsecker seconded the motion. **Motion passed 5-0 on a voice vote.**

#### Privilege of the Floor:

At 6:04 p.m., Mayor Leichty invited public comments for matters not on the agenda.

Neil Detweiler of Goshen said he wanted to discuss pedestrian safety, traffic and related issues in the City of Goshen. A Wilden Avenue resident, Detweiler said he recently completed a project in which he ran or biked nearly every street and road in Goshen. He said this inspired him to make some comments to the Council about safety for pedestrians, cyclists, and motorists.

Detweiler said he was thankful to the City for the many improvements in access for pedestrian and cyclists as well as projects to improve traffic flow. However, he said he was still concerned about safety for pedestrians, motorists, and cyclists, and has considered what could be done to improve conditions because of the heavy flow of traffic in Goshen as well as distracted drivers and inadequate lighting in some areas.

Nationally, Detweiler said there's been an increase in traffic fatalities, and that's even after adjusting for population increases. And, so he said the City should be proactive in making sure that Goshen doesn't follow the same trend by ensuring safer intersections, better sidewalks, and lighting, and more traffic enforcement to reduce speeding, running red lights, and device usage while driving.

Detweiler also said a Wilden Avenue intersection is less safe than it was before renovations, because it's farther to cross for pedestrians, there are more turn lanes and wider turn radiuses than compared to before. As a result, traffic moves faster around the corners, pedestrians have farther to cross and the past street lights were not replaced.



**Detweiler** said he has mentioned this intersection to the City Traffic Commission and he hopes street lights will be installed. However, that hasn't yet happened and he worries because he walks his children to school in the morning. **Detweiler** also recommended the City install more roundabouts, which he said were "massively safer for motorists, massively safer for pedestrians, better for the environment and cheaper to maintain, which I think goes along with the theme of today's meeting. He thanked Councilors the opportunity to make these comments.

**Mayor Leichty** and **Councilor Nisley** thanked **Detweiler** for his comments. **Mayor Leichty** also said that given his interest and knowledge, **Detweiler** might consider volunteering for the City Traffic Commission.

**Mayor Leichty closed the public comment period at 6:07 p.m.**

### 1) **Special announcement by Mayor Leichty: Goshen's new Fire Chief**

In what she described as "a significant transition for our Fire Department and our City – one filled with excitement for the future and deep respect for the past" – **Mayor Leichty** announced that on Nov. 8, Goshen Fire Assistant Chief of Operations **Anthony Powell will succeed Chief Danny Sink**, who is retiring after 43 years of service.

**In her announcement, Mayor Leichty said:**

"As many of you know, the heart of our fire department has been shaped over the last 43 years by **Chief Danny Sink**. His leadership has been defined by humor, kindness, and an unwavering commitment to the well-being of our community. He is the epitome of a servant leader.

"**Chief Sink** has transformed our firehouses into more than just places of work—they've become second homes, where every member of the Goshen Fire Department family feels valued and supported. His strength, compassion, and dedication have inspired countless individuals, setting a standard of excellence that will resonate for years to come. On July 2, **Chief Sink** announced his retirement on Nov. 8, 2024, completing 44 years of service. His contributions have left an indelible mark, and we eagerly anticipate celebrating his remarkable career and wishing him well as he embarks on the next chapter of his life."

**Mayor Leichty continued:**

"As I considered the future of our fire department, it was clear that we needed a leader who could build upon the strong foundation that **Chief Sink** has established – someone who embodies the same dedication, integrity, and community spirit that have been the hallmarks of our department, while bringing their vision for growth and advancement. Tonight, I am proud to announce that **on Nov. 8, Anthony Powell will officially take the helm as Goshen's next Fire Chief.**"

**Of Chief Powell, Mayor Leichty said:**

"As a young teenager, **Chief Powell** often accompanied his grandfather to the fire station, where he served as a volunteer firefighter. Anthony became such a regular fixture that one day, a firefighter jokingly asked whether he was going to keep hanging out or get to work. And in that moment, destiny struck – Anthony signed up to volunteer.

"Within a couple of years, **Anthony** secured a full-time position with the Goshen Fire Department. Over the past 20 years, he has risen through the ranks, from a volunteer firefighter to paramedic, shift instructor, fire investigator, sergeant, lieutenant, training chief, and most recently, Assistant Fire Chief. In all these roles, he has earned the respect of both the administration and his team.



“**Chief Powell** is well known for his quiet diligence, calm leadership, unwavering commitment to his team, positive outlook, and ability to see tasks through to completion, no matter the challenges.

“In the short time I’ve worked with Anthony, his leadership made an immediate impression on me. Last summer, he eagerly jumped in to develop the new ‘Pathways’ program, enabling area high school cadets to graduate from high school with full Fire and EMT credentials. Through numerous discussions with me, he has emphasized the value of mentorship, team building, and fostering the individual accomplishments of his team.

“Anthony’s openness and eagerness to collaborate with the Police Department to develop and expand the City’s health resources to those in greatest need – those with addiction, housing, mental health, or other chronic conditions, further demonstrate his compassion and forward-thinking approach. Just this summer, he also empowered his team to self-direct by engaging them in a strategic planning process, helping them uncover and put their values and intentions into practice.

“Anthony’s character and integrity are also evident in his devotion to his wife, Tara, and their daughters, Teagan and Riley. Whether assisting in the design of a cat costume, coaching swimming, or lighting a golf cart so it shines like a beacon in the night to transport the family safely through the neighborhood, Anthony is all in when it comes to family.

“As a swim coach, he has mentored hundreds of young people, helping them push beyond their perceived limits. Reflecting on his coaching experience, Anthony once wrote, ‘Coaching is one of the greatest opportunities I have been given in life. These athletes are so special, and when they finally realize their ability and potential – watch out! I’ve often told parents and even other coaches, ‘You could know nothing about the sport, but if you care and show them love, you will be amazed at what can happen.’ We’re so fortunate that he brings those coaching qualities and devotion to his team into his role at GFD.

**Mayor Leichty concluded:** “On Nov. 8, **Chief Powell** will officially take the Oath of Office at 5:30 p.m. I am confident that under his leadership, our fire department will continue to thrive and serve the people of Goshen with excellence. Congratulations, Anthony, on this well-deserved appointment. We look forward to the future with you at the helm. Thank you, everyone, for your support as we move forward into this new chapter for our fire department.”

**Audience members and other attendees responded with sustained applause for Chief Powell.**

## **2) Presentation: Annual Report of the Redevelopment Commission for 2023**

**City Redevelopment Director Becky Hutsell** presented a report of the City Redevelopment Commission for the calendar year 2023. She said the submission of this report is a requirement by the State which mandates that the report be provided annually to the Council and that the Council minutes note that the report was received.

The 37-page report provided the detailed expenditures of the Redevelopment Commission and of the following Tax-Increment Finance Districts: Southeast TIF, Lippert/Dierdorff TIF, College Avenue TIF, Consolidated River Race/US 33 TIF and East College Avenue TIF.

**The report listed the following amounts of funds on hand at the close of the calendar year 2023:** Non-Reverting Operating Fund, \$447,431.55; Southeast TIF, \$14,978,107.64; Lippert/Dierdorff TIF, \$612,444.93; College Avenue TIF, \$3,935.39; and Consolidated River Race/US 33 TIF, \$10,646,772.01. The report also listed action taken during 2023 by governing board, via resolutions.

**Hutsell** said that within the Council packet was a copy of the annual report. She said she would be happy to answer questions from Councilors. There were none.



3) Resolution 2024-15, A Resolution of the Common Council of the City of Goshen Rejecting the Establishment of a Statutory Merit System for the Goshen Fire Department (retaining current system) Mayor Leichty called for the introduction of Resolution 2024-15, *A Resolution of the Common Council of the City of Goshen Rejecting the Establishment of a Statutory Merit System for the Goshen Fire Department*. Councilor Nisley asked the Clerk-Treasurer to read Resolution 2024-15 by title only, which was done. **Nisley/Schrock made a motion to approve Resolution 2024-15.**

**BACKGROUND:**

Resolution 2024-15 would reject the establishment of a state-authorized statutory merit system for the Goshen Fire Department, retaining the current system for hiring, promoting and disciplining firefighters.

Resolution 2024-15 stated that:

- Indiana Code § 36-8-3.5-5.5 provides for the automatic establishment of a merit system for fire departments unless rejected pursuant to Indiana Code § 36-8-3.5-5.5(e); and
- The establishment of the merit system under statute involves an appointed merit board to oversee the hiring, promotion, and discipline of firefighters; and
- City staff has conducted a thorough review of the current policies and procedures governing the fire department, developed with assistance from Lexipol, and its collective bargaining agreement with department membership; and
- The Common Council has determined that the current system of hiring, promotion, and discipline adequately ensures fairness, accountability, and professionalism within the Goshen Fire Department and otherwise meets the needs and expectations of the Goshen Fire Department; and
- The establishment of a merit board merit system would result in significant administrative and financial costs that are not justifiable, given the current system functions well and given current priorities and budgetary constraints; and
- The Common Council is committed to continually assessing and improving the effectiveness of the Goshen Fire Department through ongoing evaluations and reforms as necessary.

**If approved, Resolution 2024-15 would resolve that:**

1. The City Common Council hereby rejects the establishment of a merit system for the Goshen Fire Department, in accordance with Indiana Code § 36-8-3.5-5.5.
2. The City Common Council reaffirms its commitment to maintaining high standards of fairness, accountability, and professionalism within the Goshen Fire Department through the existing system of hiring, promotion, and discipline.
3. The issue addressed in this Resolution shall be submitted for a vote by the active, full-time, paid members of the Goshen Fire Department in accordance with Indiana Code § 36-8-3.5-5.5(e).

**SUMMARY OF AUGUST 26, 2024 COUNCIL CONSIDERATION & APPROVAL OF RESOLUTION 2024-15:**

**Mayor Leichty invited a presentation about Resolution 2024-15 from City Attorney Bodie Stegelmann.**

**City Attorney Stegelmann** said a new state law requires fire and police departments to establish merit board unless they are rejected by local governing bodies.



**City Attorney Stegelmann** said the City already has an equivalent system to merit boards to oversee the hiring, promotion, and discipline of firefighters and police officers which has some oversight by the City Board of Public Works and Safety.

**Stegelmann** said passing Resolution 2024-15 would be a first step in rejecting a merit board. The fire and police unions would also need to reject merit boards.

**City Assistant Chief of Operations Anthony Powell** said Fire Department supervisors discussed the issue with each shift of firefighters and that the majority said they would reject a merit board because an adequate system is already in place. Still, he said firefighters at any time could change their minds and ask for a merit board system.

**City Police Chief José Miller** said the police union also discussed this issue and determined that a merit board was not necessary because of the current policies, procedures, testing procedures, review by the City Legal Department and approval by the Board of Public Works and Safety. He said that position was affirmed through an informal vote of members of the police union.

**Mayor Leichty** said the Board of Works considers requests from fire and police administrators on promotions and demotions, but does not hear every detail of disciplinary action. She said creating a merit board “would create a scenario where our public service personnel would become subject to having every disciplinary action heard in a public setting rather than handled by their immediate supervisor.”

The **Mayor** added, “I feel like Goshen’s doing an adequate job of adhering to our merit system and making sure that our personnel are treated with fairness without exposing them to the kind of public scrutiny that would come with having a merit board like the State is has proposed.”

**Councilor Nisley** asked whether Goshen citizens ever served on a merit board. **City Attorney Stegelmann** and **Chief Miller** said they weren’t aware of that.

**Councilor Lederach** asked how often the fire and police chiefs would revisit this issue with their employees.

**City Attorney Stegelmann** said the issue could not be revisited for a year after being rejected. At that point, he said either police officers or firefighters could file a petition to establish a merit board.

**There were no further questions from the Council.**

**At 6:22 p.m., Mayor Leichty asked if there were any public questions or comments about Resolution 2024-15.**

**Matt Whitford, president of the Goshen firefighters union,** said he has been employed by the City Fire Department for 21 years and the union president for the last eight or nine years. He said the union has a “very good relationship” with the administration, including with Chief Sink, the Mayor's Office and the City Council.

**Whitford** said “that’s not the case throughout the State, which is why the statutory merit board was put into place.” He said the new law is unique because both the City and union employees have to vote to either reject or keep the new merit board system.

**Whitford** added, “We’ll be in a good position no matter which way this (Council) votes. I can say that Chief Powell and Chief Sink and I usually see eye to eye on everything. I would say (that) we’re not completely eye to eye on this, but I think we’re close enough that we’re willing to work together to make anything work that happens here.”



Mayor Leichty closed the public comment period at 6:24 p.m.  
Councilor Nisley said Councilors were ready to vote.

**On a voice vote, the five Councilors present unanimously voted to pass Resolution 2024-15, A Resolution of the Common Council of the City of Goshen Rejecting the Establishment of a Statutory Merit System for the Goshen Fire Department, at 6:24 p.m.**

4) Resolution 2024-16, A Resolution of the Common Council of the City of Goshen Rejecting the Establishment of a Statutory Merit System for the Goshen Police Department (retaining current system)  
Mayor Leichty called for the introduction of Resolution 2024-16, *A Resolution of the Common Council of the City of Goshen Rejecting the Establishment of a Statutory Merit System for the Goshen Police Department.*  
Councilor Nisley asked the Clerk-Treasurer to read Resolution 2024-16 by title only, which was done.  
**Nisley/Riegsecker made a motion to approve Resolution 2024-16.**

**BACKGROUND:**

Resolution 2024-16 would reject the establishment of a state-authorized statutory merit system for the Goshen Police Department, retaining the current system for hiring, promoting and disciplining officers.  
Resolution 2024-16 stated that:

- Indiana Code § 36-8-3.5-5.5 provides for the automatic establishment of a merit system for police departments unless rejected pursuant to Indiana Code § 36-8-3.5-5.5(e); and
- The establishment of the merit system under statute involves an appointed merit board to oversee the hiring, promotion, and discipline of police officers; and
- City staff has conducted a thorough review of the current policies and procedures governing the police department, developed with assistance from Lexipol, and its collective bargaining agreement with department membership; and
- The Common Council has determined that the current system of hiring, promotion, and discipline adequately ensures fairness, accountability, and professionalism within the Goshen Police Department and otherwise meets the needs and expectations of the Goshen Police Department; and
- The establishment of a merit board merit system would result in significant administrative and financial costs that are not justifiable, given the current system functions well and given current priorities and budgetary constraints; and
- The Common Council is committed to continually assessing and improving the effectiveness of the Goshen Police Department through ongoing evaluations and reforms as necessary.

**If approved, Resolution 2024-15 would resolve that:**

1. The City Common Council hereby rejects the establishment of a merit system for the Goshen Police Department, in accordance with Indiana Code § 36-8-3.5-5.5.
2. The City Common Council reaffirms its commitment to maintaining high standards of fairness, accountability, and professionalism within the Goshen Police Department through the existing system of hiring, promotion, and discipline.



3. The issue addressed in this Resolution shall be submitted for a vote by the active, full-time, paid members of the Goshen Police Department in accordance with Indiana Code § 36-8-3.5-5.5(e).

**SUMMARY OF AUGUST 26, 2024 COUNCIL CONSIDERATION & APPROVAL OF RESOLUTION 2024-16:**

Mayor Leichty asked if there were any questions or comments from Councilors about Resolution 2024-16, which was essentially the same as Resolution 2024-15 except it would apply to the Police Department instead of the Fire Department. There were no Councilor questions or comments.

At 6:25 p.m., Mayor Leichty asked if there were any questions or comments about Resolution 2024-16 from the audience. There were none.

Councilor Nisley said Councilors were ready to vote.

**On a voice vote, all five Councilors present unanimously voted to pass Resolution 2024-16, A Resolution of the Common Council of the City of Goshen Rejecting the Establishment of a Statutory Merit System for the Goshen Police Department, at 6:25 p.m.**

**5) Resolution 2024-17, A Resolution of the Common Council of the City of Goshen, Indiana, Receiving Taxpayer Petitions**

Mayor Leichty called for the introduction of Resolution 2024-17, *A Resolution of the Common Council of the City of Goshen, Indiana, Receiving Taxpayer Petitions*. Councilor Nisley asked the Clerk-Treasurer to read Resolution 2024-17 by title only, which was done.

**Nisley/Schrock made a motion to approve Resolution 2024-17.**

**BACKGROUND:**

Resolution 2024-17 would acknowledge the receipt of taxpayer petition signatures requesting the construction and securing of a lease from the Goshen Municipal Building Corporation ("Corporation") of a new municipal pool, together with all necessary appurtenances, related improvements and equipment.

**Resolution 2024-17 stated:**

- A petition in eight (8) counterparts, signed by fifty-four (54) taxpayers of the City of Goshen, Indiana ("City"), as certified by the Clerk-Treasurer, has been filed with the Common Council ("Council") of the City requesting the construction and securing of, a lease from the Goshen Municipal Building Corporation ("Corporation") of a new municipal pool, together with all necessary appurtenances, related improvements and equipment ("Project"), located in the City; and
- Such petition has been carefully considered and investigations have been conducted by the Council, both before and after the filing of said petition;

**If approve, Resolution 2024-17 would resolve that :**

**Section 1.** The petition of taxpayers heretofore filed with the Council is hereby approved.

**Section 2.** This resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.





**SUMMARY OF AUGUST 26, 2024 COUNCIL CONSIDERATION & APPROVAL OF RESOLUTION 2024-17: Mayor Leichty invited a presentation about Resolution 2024-17 from City Superintendent of Parks & Recreation Tanya Heyde.**

**Superintendent Heyde** said Resolution 2024-17 was a counterpart to the resolutions (Resolution 2024-11 and Resolution 2024-12) that were passed by Council at its July 8th meeting which declared an intent to reimburse expenditures to finance and build a new pool facility and to authorize the circulation of a petition of taxpayers in support of the project.

**Heyde** said Resolution 2024-17 acknowledges receipt of the petitions signed by taxpayers that have been authorized.

**City Attorney Bodie Stegelmann** said that **Clerk-Treasurer Aguirre** suggested an amendment to the petition – correcting the first paragraph, which mistakenly stated that the petition was “certified by the Clerk-Treasurer.” Actually, he said the petition was certified by the “County Auditor.” He recommend the resolution be amended.

**Councilor Nisley/Councilor Gerber made a motion to amend Resolution 2024-17 by substituting the words “County Auditor” for “Clerk-Treasurer) in the first paragraph of the resolution.**

Mayor Leichty asked if Councilors had any discussion on the motion. Councilors did not.

Councilors indicated they were ready to vote.

**On a voice vote, all five Councilors present unanimously voted to amend Resolution 2024-17 by substituting the words “County Auditor” for “Clerk-Treasurer) in the first paragraph of the resolution.**

At 6:28 p.m., Mayor Leichty invited questions or comments about Resolution 2024-17 from Council members or the audience. There were none.

**On a voice vote, all five Councilors present voted unanimously to pass Resolution 2024-17, *A Resolution of the Common Council of the City of Goshen, Indiana, Receiving Taxpayer Petitions*, at 6:28 p.m.**

**6) Ordinance 5196, An Ordinance of the City of Goshen, Indiana Designating an Area within the City as an Economic Development Target Area**

Mayor Leichty called for the introduction of Ordinance 5196, *An Ordinance of the City of Goshen, Indiana Designating an Area within the City as an Economic Development Target Area*. Councilor Nisley asked the Clerk-Treasurer to read Ordinance 5196 by title only, which was done.

**Nisley/Lederach made a motion to approve Ordinance 5196 on First Reading.**

**BACKGROUND:**

Ordinance 5196 would designate an area within the City of Goshen as an economic development target area.



**According to the four-page ordinance:**

- The Goshen Economic Development Commission has recommended that the Common Council designate the Southeast Economic Development Target Area set forth on the map attached hereto to the ordinance as Exhibit A ("Area") as an "economic development target area" pursuant to IC 6-1.1-12.1-7, as amended; and
- The Common Council has reviewed such recommendation and determined that such designation will further the economic development and redevelopment purposes of the City of Goshen, Indiana ("City");

**If approved, Ordinance 5196 would ordain by the Common Council as follows:**

**Section 1. Findings.** The Common Council hereby finds that the Area has become undesirable or impossible for normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors that have impaired values or prevent a normal development of property or use of property in the Area. The Common Council further finds that the designation of the Area as an economic development target area will not cause the City to exceed the fifteen percent (15%) limit on the geographic territory in the City that may be so designated.

**Section 2. Designation.** The Common Council hereby designates the Area as an "economic development target area" for purposes of IC 6-1.1-12.1-7 and IC 36-7-14-0.5 as currently in effect.

**Section 3. Effective Date.** This ordinance shall be in full force and effect from and after its adoption by the Common Council of the City and execution by the Mayor.

**SUMMARY OF AUGUST 26, 2024 COUNCIL CONSIDERATION & APPROVAL OF ORDINANCE 5196:**

**Mayor Leichty invited a presentation about Ordinance 5196 from City Redevelopment Director Becky Hutsell.**

**Hutsell** said Ordinance 5196 would designate as "an economic development target area" the 70-acre property in South Goshen being developed as the Cherry Creek project.

**Hutsell** said that in the fall of 2022 she presented to the Council a request to carve these 70 acres out of the City's Southeast Tax Increment Financing (TIF) district and to instead establish the 70 acres as City's first housing TIF district. She said that process was completed in early 2023. A few months later, the City entered into an economic development agreement with Cherry Creek for the development of this urban housing area. The City has also agreed to move forward with issuing bonds for the project.

**Hutsell** said the Ordinance 5196 would now designate this area as an economic development target area.

**Mayor Leichty invited questions or comments about Ordinance 5196 from the Council. There were none.**

**At 6:31p.m.. Mayor Leichty invited questions or comments from the audience. There were none.**

**Councilor Nisley said Councilors were ready to vote.**

**On a voice vote, all five Councilors present voted unanimously to pass Ordinance 5196, *An Ordinance of the City of Goshen, Indiana Designating an Area within the City as an Economic Development Target Area*, on First Reading at 6:31 p.m.**

**Councilors gave unanimous consent to proceed with the Second Reading and vote on Ordinance 5196.**



Mayor Leichty called for the introduction on Second Reading of Ordinance 5196, *An Ordinance of the City of Goshen, Indiana Designating an Area within the City as an Economic Development Target Area*. Councilor Nisley asked the Clerk-Treasurer to read Ordinance 5196 by title only, which was done.

**Nisley/Lederach made a motion to approve Ordinance 5196 on Second Reading.**

The Mayor invited further comments or questions from the Council or the audience. There were none.

Councilors indicated they were ready to vote.

**On a voice vote, all five Councilors present voted unanimously to pass Ordinance 5196, *An Ordinance of the City of Goshen, Indiana Designating an Area within the City as an Economic Development Target Area*, on Second Reading at 6:32 p.m.**

7) Ordinance 5195, Ordinance authorizing the City of Goshen, Indiana to issue its ["Taxable] Economic Development Revenue Bonds, Series 202 (Cherry Creek project)" and approving other actions in respect thereto

Mayor Leichty called for the introduction of Ordinance 5195, *Ordinance authorizing the City of Goshen, Indiana to issue its ["Taxable] Economic Development Revenue Bonds, Series 202 (Cherry Creek project)" and approving other actions in respect thereto*. Councilor Nisley asked the Clerk-Treasurer to read Ordinance 5195 by title only, which was done.

**Nisley/Schrock made a motion to approve Ordinance 5195 on First Reading.**

#### **BACKGROUND:**

**Ordinance 5195 would authorize the City of Goshen, Indiana to issue its ["Taxable] Economic Development Revenue Bonds, Series 202 for the Cherry Creek housing project.**

In an Aug. 26, 2024 memorandum to the Common Council, **City Redevelopment Director Becky Hutsell** wrote that Ordinance 5195 was being presented to the City Council for First Reading. A copy of the ordinance, along with all of the draft financing documents as exhibits, was included with the memorandum in the Council meeting packet.

**Hutsell** wrote that the ordinance would authorize the City's issuance of a (taxable) Economic Development Revenue bond specifically for the Cherry Creek Project and the issued bonds would be purchased by the Indiana Finance Authority and repaid solely by the Developer from the Tax Increment Finance (TIF) revenue generated from the project. As an added security, she said the developer will be entering into a Minimum Taxpayer Agreement to ensure that the bond will be repaid in the event that the TIF revenues fall short.

**Hutsell** wrote that an Economic Development Commission (EDC) meeting will be held prior to bringing this back for Second Reading. Between now and then, City staff will be working with the City's bond counsel, Ice Miller, the City's financial advisors, Baker Tilly, the Indiana Finance Authority and the Developer to finalize the financing documents.

**Hutsell** wrote that the issuance of this bond and all the terms associated with it are in line with the Development Agreement that was approved by the Goshen Redevelopment Commission, City Council and Board of Works & Safety, including the agreement to provide 100% TIF reimbursement for 20 years. The first series for the bond will be issued for \$11,000,000 and will include the areas shown on the plan attached to the memorandum..



**SUMMARY OF AUGUST 26, 2024 COUNCIL CONSIDERATION & APPROVAL OF ORDINANCE 5195:**

**Mayor Leichthy invited a presentation about Ordinance 5196 from City Redevelopment Director Becky Hutsell.**

**Hutsell** said she was requesting Council passage on First Reading of this ordinance. She said as part of the City's economic development agreement, the City Redevelopment Commission and the City Council agreed to issue economic development revenue bonds for the Cherry Creek project as it relates to the public infrastructure associated with the development.

**Hutsell** said Ordinance 5195 would authorize the issuance bonds of \$24 million, which is the projected estimate as defined in the economic development agreement. She said the repayment source for the bonds would be the revenue generated from the development.

In the event that the development does not move forward, **Hutsell** said the City would not be at risk of having to repay the bonds. So, she said there's no risk to the City because since the development agreement was issued, the City has received funding from the Indiana Finance Authority.

**Hutsell** said in a typical situation, the developer would work with a bank to purchase these bonds and repayment would be owed to the bank. In this instance, she said the Indiana Finance Authority is going to purchase the bonds as part of Indiana's residential infrastructure program. Under this program, the state is working to make infrastructure more affordable and feasible for municipalities to be able to increase residential housing growth.

In this instance, **Hutsell** said this approach "changes the ball game just a bit. But Cherry Creek will be entering into a minimum taxpayer agreement, where they're agreeing to fund any shortfalls and the projected revenue to be generated, and so City feels confident that this is still a good project. And we are still not taking on any risk that would be unnecessary. And so, we're asking for passage on the First Reading."

**Hutsell** added that a City Economic Development Commission meeting is scheduled for Sept.9 to approve the bond, Afterward, she said she will be asking the Council to approve Ordinance 5195 on Second Reading.

**Mayor Leichthy invited questions or comments from Councilors.**

**Councilor Riegsecker** said he had a question about Section 5, which he noted mentioned a 25 year bond term.

**Hutsell** said that the listed term was incorrect. She said in May 2023, state law was changed and residential TIFs are now only valid for a term of 20 years. So, Hutsell said the term would be corrected in the final version of the ordinance to be brought back to the Council for Second Reading on Sept. 9.

**There were no further questions from the Council about Ordinance 5196.**

**At 6:38 p.m. Mayor Leichthy invited questions or comments from the audience. There were none.**

**Councilor Nisley said Councilors were ready to vote.**

**On a voice vote, all five Councilors presented voted unanimously to pass Ordinance 5195, Ordinance authorizing the City of Goshen, Indiana to issue its ["Taxable] Economic Development Revenue Bonds, Series 202 (Cherry Creek project) and approving other actions in respect thereto, on First Reading at 6:36 p.m.**



**Mayor Leichty said Ordinance 5195 would be returned to the Council for Second Reading after the City Economic Development Commission approves it, on Sept. 9, 2024.**

**Elected Official Reports:**

**Mayor Leichty asked Councilors if they had any reports from the Boards and Commissions they serve on.**

**Councilor Gerber** said that last Wednesday the Goshen Fire Department graduated its first class of locally trained firefighters. She said, "They had a 14-week training session, and there were five graduates. So, it was the first class, and I hope there will be many more."

**Councilor Lederach** said the City Board of Aviation Commissioners approved a new operator for the Goshen Municipal Airport under a contract with the Goshen Air Center. He said Surack Enterprises and Sweet Aviation are the new operators.

**Councilor Riegsecker** thanked City staff for holding another successful Touch-a-Truck event in Shanklin Park. He said, "It's always a great event, and my grandkids love to go."

**Councilor Riegsecker** also said that he "couldn't get away from Shankin Park without then going to Tommy's Kid Castle (playground) also, for the next 45 minutes to an hour. So that is still strong over there, too, and it was very busy Saturday at Tommy's Kid's Castle."

**Clerk-Treasurer Aguirre** said **Deputy Clerk-Treasurer Jeffery Weaver** had completed a 2024 City Monthly Expenditure Report as of June 30, 2024 and that he was prepared to provide a summary for the Council. **Weaver** distributed copies of the 11-page report to Council members (**EXHIBIT #1**).

**Mayor Leichty** recommended that Councilors be given an opportunity to read and review the report and that it be presented at the next Council meeting with an opportunity for Councilors to ask questions of the Deputy Clerk-Treasurer and the Clerk-Treasurer.

**Councilor Nisley then made a motion to adjourn the meeting. Councilor Schrock seconded the motion. By a 5-0 voice vote, Councilors unanimously approved the motion to adjourn the meeting.**

**Mayor Leichty adjourned the meeting at 6:39 p.m.**



**EXHIBIT 1: An 11-page “2024 Monthly Expenditure Report as of June 30, 2024” that was prepared by Deputy Clerk-Treasurer Jeffery Weaver and distributed to Council members at the meeting.**

**APPROVED:**

\_\_\_\_\_  
**Gina Leichty, Mayor of Goshen**

**ATTEST:**

\_\_\_\_\_  
**Richard R. Aguirre, City Clerk-Treasurer**



## GOSHEN COMMON COUNCIL

### Minutes of the SEPTEMBER 9, 2024 Regular Meeting

Convened in the Council Chamber, Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

At 6:00 p.m., assisted by Mayor Gina Leichty, Paisley Newton (a 3rd-grader at Model Intermediate School) called the meeting to order and led the Pledge of Allegiance. Because she has a birthday this weekend, the audience sang “Happy Birthday” to Paisley. She also shook hands with all Councilors as she left.

Mayor Leichty asked Clerk-Treasurer Aguirre to conduct the roll call.

<b>Present:</b>	Linda Gerber (At-Large)	Phil Lederach (District 5)	Doug Nisley (District 2)
	Megan Peel (District 4)	Donald Riegsecker (District 1)	Matt Schrock (District 3)
	Council President Brett Weddell (At-Large)		Youth Adviser Tageeya Galeb
<b>Absent:</b>	None		

#### Approval of Minutes:

Mayor Leichty noted that the minutes of the Aug. 26, 2024 meeting were not yet ready.

#### Approval of Meeting Agenda:

In presenting the agenda, **Mayor Leichty** requested the delay of the Second Reading of Ordinance 5195, *Ordinance authorizing the City of Goshen, Indiana to issue its [“Taxable”] Economic Development Revenue Bonds, Series 202 (Cherry Creek project)” and approving other actions in respect thereto*, until the Sept. 23 meeting and the addition of a City Financial Report, which was distributed at the Aug. 26, 2024 meeting. **Councilor Nisley moved to approve the agenda as amended. Councilor Peel seconded the motion. Motion passed 7-0 on a voice vote.**

#### Privilege of the Floor:

At 6:04 p.m., Mayor Leichty invited public comments for matters not on the agenda.

**Adam Knott, who lives on south 8<sup>th</sup> Street in Goshen**, said about 10 days ago the Goshen Police Department posted on its Facebook page a reminder about obeying parking laws to keep streets safe and accessible. Knott said he appreciated this because this issue is important to him and he has even communicated about it to Councilors. **Knott** said he lives near an intersection and people park illegally next to the corner and there is no enforcement of this violation. He said he wanted to bring attention to this because it’s a preventable problem. He said vehicles park illegally next to intersections, causing visibility problems. Knott said he was almost hit by a vehicle as he attempted to cross an intersection because he couldn’t see the vehicle and its driver couldn’t see him.

**Knott** said he wanted to raise this issue to the Council.

**Councilors thanked Knott for his comments.**

**Mayor Leichty** said City staff recently discussed this issue. In the absence of paint on curbs to mark no-parking areas, she said it’s up to drivers to know that they aren’t allowed to park within 50 feet of stop sign intersections.

**Council President Weddell** said the Traffic Commission also has discussed this issue. He said when there are specific issues in some areas, commissioners have recommended that the City Street Department paint the curbs on those streets or that “no parking” signs be installed.



**Knott** said that he was aware of that but painted curbs and signs won't necessarily stop illegal parking.

**City Director of Public Works & Utilities Dustin Sailor** said he wanted to point out that parking is prohibited within 30 feet of intersections, not 50 feet. The **Mayor** thanked **Sailor** for that correction.

**Councilor Peel** said her biggest concern is when she drives up to an intersection and can't see if vehicles are approaching because untrimmed trees or shrubs are blocking the view. She added, "I have noticed a few areas, because I do live in the downtown, where it is harder to see. I get nervous when I go through intersections a lot of times. I can't see around the cars."

**Mayor Leichty** closed the public comment period at 6:10 p.m.

**1) Resolution 2024-18, A Resolution Providing for the Transfer Of Appropriations (proposed \$500 transfer for past Police employee court pay)**

**Mayor Leichty** called for the introduction of *Resolution 2024-18, A Resolution Providing for the Transfer Of Appropriations (proposed \$500 transfer for past Police employee court pay)*. **Council President Weddell** asked the Clerk-Treasurer to read *Resolution 2024-14* by title only, which was done.

**Weddell/Schrock made a motion to approve Resolution 2024-18.**

**BACKGROUND:**

**Resolution 2024-18 would authorize the transfer of \$500 of Police funds from one category to another.**

In a Sept. 9, 2024 memorandum to the Common Council, **Deputy Clerk-Treasurer Jeffery Weaver** wrote that **Resolution 2024-18** would authorize moving available resources between major categories within the City's funds. He said the Mayor and Clerk-Treasurer requested this resolution because the Common Council is the City's fiscal body which authorizes the City's budget and any budget adjustments.

**Weaver** explained an appropriation is "permission to spend available money" and is tied to a specific fund. Within a fund there are four spending categories and multiple accounts. The Department of Local Government Finance requires Council approval to move appropriations from one category to another. The Council can approve this when a department needs additional room to spend in one category and has available appropriations in another category. By moving an appropriation from one category to another, **Weaver** wrote that the Council will only change the category from which the City pays an expenditure. The Council is not approving any additional spending with this resolution, so the fund's total appropriation remains the same.

**Weaver** wrote that this particular category transfer for the Police Department would adjust the Past Employee Court Pay line which unexpectedly went over budget this year. He said transferring these funds will decrease the Residency Bonus line by the same amount, \$500.

**Weaver** also wrote that if the Council approves the proposed category transfer, the Clerk-Treasurer will then register the adjustments in the City's books and communicate the transfer to the department. This category transfer is an adjustment that only requires Council approval to be final and does not require notification to the State.

**SUMMARY OF SEPTEMBER 9, 2024 COUNCIL CONSIDERATION & APPROVAL OF RESOLUTION 2024-18:**

**Mayor Leichty** asked if Councilors had questions or comments about *Resolution 2024-18*. They did not.





At 6:10 p.m., Mayor Leichty asked if there were any questions or comments about Resolution 2024-18 from the audience. There were not.

**On a voice vote, Councilors unanimously passed Resolution 2024-18, A Resolution Providing for the Transfer Of Appropriations (proposed \$500 transfer for past Police employee court pay), by a 7-0 margin, with all Councilors voting yes, at 6:10 p.m.**

## **2) City Financial Report**

**Mayor Liechty invited Deputy Clerk-Treasurer Jeffery Weaver to give a report about the City's finances.**

**Weaver** told Councilors that he would provide a summary of his 11-page "2024 Monthly Expenditure Report as of June 30, 2024," which was distributed to Councilors at the Aug. 26, 2024 Council meeting (**EXHIBIT #1**)

**Weaver** said the report shows City's expenditures and revenues through June 30, which is halfway through the fiscal year and the basis used in the annual budgeting process.

**Weaver** said the initial pages of the report included cash balances for Council-budgeted funds from the start of the year through June 30. He said the first column on page 2 showed the starting cash balance on Jan. 1, 2024 and the other columns showed receipts, expenditures and cash balances in the funds as of June 30, 2024.

On page 3, **Weaver** said the totals showed that the City's cash balance increased about \$13 million. He said the general fund has increased about \$3.4 million and all of the funds as a whole have increased over this time. He said the City has had slightly higher revenues than anticipated and expenditures have been about as expected.

**Weaver** said general fund revenues increased by nearly \$8.9 million in June because the City received a big levy payment, which arrives yearly in June and December. He said the June revenue is usually higher than in December because more people pay their full property taxes in the early part of the year.

**Weaver** said general fund revenue has reached about 70% of the yearly total expected. He said he was confident revenue will be higher than budgeted. He said the City "always tends to budget fairly conservatively with our revenues. I don't know that that's necessarily intentional. It's just kind of the way we have been."

**Weaver** said other pages in the report showed the financial condition of other funds, including for the Motor Vehicle Highway, Parks and Recreation, the Aviation Department and the Downtown Economic Improvement District. He said some funds that receive levies have larger cash balances because they also received the June levy.

**Weaver** said the report also showed that some of the funds had already expended most of their allocated budget because they make just one big payment every year and this has already occurred. Other funds have spent less than half of budgeted expenditures, but will be paying many of their expenses in July and August. He said one example of this was the Parks fund, which is now paying for the department's summer help.

**Weaver** said a comparison of 2023 and 2024 showed that the City's spending is fairly consistent year over year, so everything is within a few percentage points of each other and there are "no big surprises." He said probably the biggest thing of note, again, is that 2024 revenues are higher than 2023.

**Weaver** invited questions from Councilors.

**Councilor Gerber** said she appreciated the year-to-year comparisons and percentages, which she called "helpful."

**Weaver** said he was exploring how to provide more detailed information about spending to Councilors.

**Mayor Leichty thanked Weaver for his report.**



**Elected Official Reports:**

**Mayor Leichty** asked **Councilors** if they had any reports from the **Boards and Commissions** they serve on.

**Councilor Peel** said that at its last meeting the **Community Relations Commission** talked a lot about the **Indigenous People's Day celebration**, which is scheduled for Oct. 14 and should be as good as prior celebrations. She said more information about it will soon be available.

**Councilor Peel** said she also attended the board meeting of the **Downtown Economic Improvement District**. She said there was a lot of discussion about **Art Alley** and how to improve it by keep it consistent and up to date with different artists. She said the board discussed various ideas, including inviting other people to collaborate.

**Mayor Leichty** said just to add to what **Councilor Peel** shared, she invited others to attend the **Indigenous People's Day celebration**, which she described as "a wonderful experience celebrating the folks who lived here from the late 1600s through the early 1900s as original inhabitants, the Potawatomi and Miami tribes." She said there would be short lectures, musical performances, poetry, and art to share during the program.

**Council President Weddell** said the **City Redevelopment Commission** would meet tomorrow and there was a short agenda.

**Council President Weddell** said a few days ago he sent an email to Council members concerning the **economic development agreement for housing by Kosene & Kosene for the undeveloped 13 acres at the northwest corner of Plymouth Avenue and Greene Road** that was approved the Redevelopment Commission in May. He had requested that the matter be brought before the Council for a decision.

**Council President Weddell** said he spoke today to **City Redevelopment Director Becky Hutsell** and she indicated that it appears that the developers are considering significant changes to the agreement, "which may or may not require them to kind of start from scratch anyway. And so, I think there might be a little miscommunication going on, and so in that correspondence that she had with them, they were sounding as though they were okay with potentially bringing things forward in the first (Council) meeting of October."

**Council President Weddell** tentatively requested that the existing development agreement be placed on the agenda of the Oct. 7 Council meeting.

**Councilor Schrock** said he attended the **Parks and Recreation Board** meeting via Zoom and learned that the **water slide** turnout was not good this year, so City staff members are going to create yard signs and try "old school advertising" next year to increase the turnout. He said the "**Touch a Truck**" event on Aug. 24 had a huge turnout at Shanklin Park. He also said the **repaving of the Pumpkinvine Trail** has been completed. And he added that the state Department of Natural Resources will not allow the **skate park at Rogers Park** to be rebuilt at that site, so another location is being sought.

**Councilor Schrock** also said the **Indiana Avenue Bridge** will be closed all day **Wednesday** for inspections, so he wanted to make the public aware of that.



**Council President Weddell** said he used the repaved **Pumpkinvine Trail** on Sunday and it was very nice, adding, "Right now is the perfect time. It's smooth."

**Councilor Riegsecker** said **First Friday** on Sept. 6 went very well. He said side-by-side vehicles were on display and could be purchased "for a mere \$30,000." He said he also enjoyed **Arts on the Millrace** the following day, which was "very well attended" and downtown Goshen was booming. On Sunday, he said the "**Ride to Remember**" attracted hundreds of motorcycles to the City. He added that he has enjoyed biking on the **Pumpkinvine Trail**.

**Councilor Riegsecker** said that along with **Councilor Gerber** he attended the Board of Public Works and Safety meeting on Sept. 5, adding, "I'm not going to say it's fun. It's interesting to watch what's happening in Goshen right now." He said the **Mayor and City staff** are focusing on addressing **housing blight** and are making progress. He said three homes previously determined to be unsafe are being renovated and progress has been made on two but not the third, which may need to be demolished or resold.

**Councilor Riegsecker** added it was good "to see how everybody's working together, and everybody has the same mentality, so to speak. I guess it's like, 'Let's take care of this. Let's get it done.' The Board of Works, the Mayor, everybody can be helpful with the contractors ... they offer grace when grace needs to be offered, and they drop the hammer when the hammer needs to be dropped, too, so they're not prolonging it. They're serious."

**Mayor Leichty** thanked **Councilor Riegsecker** for his comments and credited the **City Legal Department, the Deputy Mayor and the Building Department** for their roles in reducing blighted properties.

The **Mayor** said, "What Goshen is doing is a little bit different than what (Elkhart) County is doing when it comes to issuing a demolition order. We are evaluating houses that are blighted and that are in terrible enough condition that they could be demolished. The Board of Works, with the recommendation from the legal team and the Building Commissioner, will make a determination on whether or not that property is indeed worthy of demolition.

**Mayor Leichty** continued, "If it is, the only way that the City will consider issuing a building permit to repair that house is if it changes ownership. So, if someone buys that house and it has a demolition order attached to it already, they can present a case to the Building Commissioner to say what they will do and how they will follow through, but they have six months to get that done. So, there is a clock that's ticking. So, that is why they there's more activity at the Board of Works because they have to come and give progress reports to the Board. They have to be evaluated along the way by the Building Commissioner and by the Legal Department to ensure that once they've purchased this new property that they are indeed following through on their pledge to actually restore that property."

**Mayor Leichty** said the City designated 20 properties to be addressed in this manner. She asked **Deputy Mayor Mark Brinson** how many of the properties have been repaired. Brinson said at least half have been repaired.

**Mayor Leichty** added that a couple of buildings have been demolished, which "creates an opportunity for somebody to start building something on that site. So, it's been really neat to see these properties take on new life, and that I mean they are selling immediately upon being rehabilitated." She noted that some of those homes are in **Councilor Schrock's district**, adding, "So hopefully, we're working at making a difference in that neighborhood, among others, throughout the City."

**Clerk-Treasurer Aguirre** mentioned that two more "unsafe properties" were expected to be considered by the Board of Public Works and Safety this coming Thursday. **Mayor Leichty** thank Aguirre for that reminder.



**Councilor Nisley** said he attended the **Cemetery Board** meeting last week and one of the topics discussed was the proposed expansion of the **Violett Cemetery**. He said Board members were unhappy because it may not proceed as planned because of the City regulations that would need to be followed. He said Board members also discussed finding a way to increase interest earned on some cemetery bank funds.

**Mayor Leichty** said “the costs for expanding the cemetery came in higher than anticipated, which made it cost prohibitive to expand at this time. So, we’re all disappointed with the ever-increasing expenses.”

**Councilor Nisley** responded, “But we’re going to have to do it sometime. I mean, if somebody wants to be buried there, you can’t tell them they can’t be buried out there because we don’t want to expand it ... So, you can’t just tell them go someplace else. So, I believe there’s got to be a way that it can be looked at and redone and that that cost can come down.” He suggested more work could be done internally by the City to reduce the expansion costs.

**Mayor Leichty** said, “I hear somebody volunteering to lead a task force. I’m only half-joking. Would you be interested to lead a task force?”

**Councilor Nisley** said he would be willing to examine the budget.

**Mayor Leichty** asked if there were other Councilors interested in participating in the project.

**Council President Weddell** said he would, but that might pose a conflict of interest because his father serves on the Cemetery Board, “so, I think I’ll avoid it.”

**Mayor Leichty** invited Councilors to contact her in the next few weeks if they were interested in being part of a task force.

**Councilor Schrock** said, “I do agree with what **Councilor Nisley** said about family members that are already buried there. People want to be buried with their families, and you just can’t tell them no ... I’m sure they wouldn’t have buried their family there if they knew they couldn’t be buried there. It’s important.”

**Mayor Leichty** asked **Youth Adviser Tageeya Galeb** if there was anything she wanted to share from the Goshen Community Schools.

**Youth Adviser Galeb** said student advisers, members of the youth caucus, are planning their first meeting Thursday. She said, “We’re going to meet with underclassmen who want to talk to us about anything they want to change. So far we want to do a clothing drive as our first thing for this month, and then from there we’ll collect ideas and then create new things that we want to do for the rest of the year.” She confirmed she leads the youth caucus.

**Mayor Leichty** said, “So she is coordinating all of the students who are on various boards and commissions and they’ll be meeting periodically and figuring out ways that they can contribute to the betterment of the City. So, thank you for taking the leadership role there. I appreciate that.”

As the final discussion topic, **Mayor Leichty reviewed with Councilors upcoming meeting dates for consideration of the 2025 City Budget.**

**Mayor Leichty** said the Council would hold its first hearing on the budget on Monday, Sept. 23. The Council would normally conduct its second budget hearing on Monday, Oct. 14, but cannot this year because that is Indigenous People’s Day, which is a City holiday. So, the second hearing was scheduled for Thursday, Oct. 10. She said that meeting schedule was previously approved by the Council.

**The Mayor said she wanted to make sure all Councilors could be present on those dates.**



**Council President Weddell** said he had already made arrangements to be elsewhere on Oct. 10 and could not attend a Council meeting on that date.

**Mayor Leichty** asked if all Councilors could be present on Monday, Oct. 7, which would be two weeks after the First Reading of the budget.

**Councilor Gerber** said she would be present unless she is summoned for jury duty.

**Councilors gave unanimous consent to hold the second budget meeting on Monday, Oct. 7 and the Mayor concurred. City staff members agreed that would work.**

**Mayor Leichty said the revised budget schedule was as follows: Sept. 23, Oct. 7 and Oct. 28 (if needed).**

The **Mayor** said the Council may want to discuss the November meeting dates later.

There were no further Councilor comments.

**Councilor Nisley made a motion to adjourn the meeting. Councilor Schrock seconded the motion. By a 7-0 voice vote, Councilors unanimously approved the motion to adjourn the meeting.**

**Mayor Leichty adjourned the meeting at 6:40 p.m.**

**EXHIBIT #1:** *"2024 Monthly Expenditure Report as of June 30, 2024," an 11-page report on the City of Goshen's finances, which was distributed to Councilors at the Aug. 26, 2024 Council meeting and presented at the Sept. 9, 2024 Council meeting by Deputy Clerk-Treasurer Jeffery Weaver.*

**APPROVED:**

\_\_\_\_\_  
**Gina Leichty, Mayor of Goshen**

**ATTEST:**

\_\_\_\_\_  
**Richard R. Aguirre, City Clerk-Treasurer**



**Department of Community Development  
CITY OF GOSHEN**

204 East Jefferson Street, Suite 2 • Goshen, IN 46528-3405

Phone (574) 537-3824 • Fax (574) 533-8626 • TDD (574) 534-3185  
communitydevelopment@goshencity.com • www.goshenindiana.org

# Memorandum

---

TO: City Council

FROM: Becky Hutsell, Redevelopment Director

RE: Ord. 5195 – ORDINANCE AUTHORIZING THE CITY OF GOSHEN, INDIANA TO ISSUE ITS "[TAXABLE] ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 202\_ (CHERRY CREEK PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO

DATE: September 23, 2024

---

Ordinance 5195 is being presented to the City Council for second and final reading. A copy of the ordinance, along with all of the financing documents as exhibits, is included. A red-lined version of the previously provided ordinance has been included to show the changes made since the first reading. This ordinance authorizes the City's issuance of a (taxable) Economic Development Revenue bond specifically for the Cherry Creek Project and the issued bonds will be purchased by the Indiana Finance Authority and repaid solely by the Developer from the TIF revenue generated from the project. As an added security, the developer will be entering into a Minimum Taxpayer Agreement, a copy of which is attached, to ensure that the bond will be repaid in the event that the TIF revenues fall short.

An Economic Development Commission (EDC) meeting will be held at 9:00am on September 23<sup>rd</sup> with a recommendation being brought forward to the Council at the evening meeting.

The issuance of this bond and all the terms associated with it are in line with the Development Agreement that was approved by the Goshen Redevelopment Commission, City Council and Board of Works & Safety, including the agreement to provide 100% TIF reimbursement for 20 years.

The first series for the bond will be issued for just under \$11,000,000 for the initial phase of development.

GOSHEN COMMON COUNCIL

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AUTHORIZING THE CITY OF GOSHEN, INDIANA TO ISSUE ITS "TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS OF 202\_ (CHERRY CREEK PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Goshen Economic Development Commission ("Commission") conducted a public hearing and adopted a resolution, which resolution has been transmitted hereto, finding that the financing of certain economic development facilities of Cherry Creek, LLC ("Company") complies with the purposes and provisions of IC 36-7-11.9 and -12 and that such financing will be of benefit to the health and welfare of the City of Goshen, Indiana ("City" or "Issuer") and its citizens;

WHEREAS, the Goshen Redevelopment Commission ("Redevelopment Commission") adopted a declaratory resolution on July 14, 2012, as supplemented and amended to date (collectively, as amended, "Declaratory Resolution"), as confirmed by a confirmatory resolution adopted on November 13, 2012, as supplemented and amended to date, establishing the boundaries of the Southeast Economic Development Area ("Area") and the Southeast Housing TIF Allocation Area ("Allocation Area");

WHEREAS, the Redevelopment Commission has determined to pledge TIF Revenues, Taxpayer Payments and, if required, payments made pursuant to a Letter of Credit (each as defined in the hereinafter defined Financing Documents) to be used to pay debt service on the Bonds pursuant to a Financing and Covenant Agreement between the Company and the City, dated as of the first day of the month the Bonds are sold or issued ("Financing Agreement"). The City shall issue its [Taxable] Economic Development Revenue Bonds, Series 202\_ (Cherry

Creek Project) (to be completed with the year in which issued) ("Bonds"), in one or more series, pursuant to this ordinance to finance the construction of the cost of all or a portion of the construction of infrastructure improvement to serve a mixed-use residential subdivision including, but not limited to, new roadways, sidewalks, water mains, sewer mains, storm sewer, including drainage basins, and a lift station, together with all necessary appurtenances, related improvements and equipment ("Infrastructure Project"), to support the development of a multi-family project including approximately 1,400 units (consisting of single family houses, 1,200 units, single family attached homes, condos and apartments) and approximately 100,000 sq ft of commercial space ("Development" and, together with the Infrastructure Project, collectively, the "Project") to be constructed by the Company, in or physically connected to the Allocation Area located in the Area, and costs of issuance, including capitalized interest, funding a debt service reserve and/or a premium for a debt service reserve surety and a premium for municipal bond insurance premium, if necessary, and related expenses;

WHEREAS, the Commission has heretofore 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 Financing Agreement and the Trust Indenture (including form of Bonds) between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee, or any other financial institution acceptable to the Authority (as hereinafter defined) dated as of the first day of the month the Bonds are sold or issued ("Indenture") (collectively, "Financing Documents");

WHEREAS, the City may enter into a Residential Housing Infrastructure Financial Assistance Agreement; (substantially in the form attached as Exhibit B hereto and made a part hereof), together with any subsequent amendments thereto ("Financial Assistance Agreement")



with the Indiana Finance Authority ("Authority"), as part of its residential housing infrastructure assistance program ("IFA Program") established and existing pursuant to IC 5-1.2-15.5, pertaining to the [Infrastructure](#) Project and the financing of the [Infrastructure](#) Project if the Bonds are sold to the Authority through its IFA Program;

WHEREAS, the City may accept other forms of financial assistance, as and if available from the IFA Program;

WHEREAS, there are no other bonds, [pledges](#) or obligations payable from the TIF Revenues; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and or a debt service reserve surety for the bonds authorized herein;

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

Section 1. It is hereby found that: (i) the financing of the economic development facilities, including the Project, in or physically connected to the Allocation Area located in the Area and referred to in the Financing Documents approved by the Commission and presented to this Common Council; (ii) the issuance and sale of the City's [Taxable] Economic Development Revenue Bonds of 202\_\_\_ (Cherry Creek Project) (to be completed with the year in which issued) ("Bonds"), in one or more series; (iii) utilizing the proceeds of the Bonds for the construction of the [Infrastructure](#) Project; (iv) the payment of the Bonds from TIF Revenues collected in the Allocation Area and from Taxpayer Payments and, if required, payments made pursuant to a Letter of Credit; and (v) the securing of the Bonds under the Trust Indenture, complies with the purposes and provisions of IC 36-7-11.9 and -12 and will be of benefit to the

health and welfare of the City and its citizens. The proceeds of the Bonds will be used for the financing of the construction of the Project, and costs of issuance of the Bonds, including capitalized interest, funding a debt service reserve and/or a premium for a debt service reserve surety and a premium for municipal bond insurance premium, if necessary, and related expenses. The Common Council further finds, determines, ratifies and confirms that the promotion of economic development, creation of new job opportunities and housing to assist in alleviating the housing shortage in the City and increased investment in the City, is desirable to preserve the health, safety and general welfare of the citizens of the City; and that it is in the public interest that the Commission and the Issuer to take such action as they lawfully may to encourage economic development, creation of job opportunities, creation of housing and increased investment in the City.

Section 2. At the public hearing held before the Commission, the Commission considered whether the funding and construction of the Project would have an adverse competitive effect on any similar facilities located in or near the City, and subsequently found, based on findings of fact set forth in its resolution transmitted hereto ("Resolution") and the absence of evidence from the public or a competitor of substantive probative value, that the funding and construction of the Project would not have an adverse competitive effect. This Common Council hereby confirms the findings on adverse competitive effect set forth in the Commission's Resolution, and hereby finds that the construction of the Project will be of benefit to the health and welfare of the citizens of the City.

Section 3. The substantially final forms of the Financing Agreement and the Indenture approved by the Commission are hereby approved (herein collectively referred to as the "Financing Documents" referred to in IC 36-7-11.9 and -12), and the Financing Documents

are attached hereto as Exhibit A. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk-Treasurer for public inspection.

Section 4. The Clerk-Treasurer may negotiate the sale of the Bonds to the Authority as part of its IFA Program. The Mayor and the Clerk-Treasurer are hereby authorized to: (i) execute a Financial Assistance Agreement (including any amendment thereof) with the Authority with terms conforming to this ordinance; and (ii) sell such Bonds upon such terms as are acceptable to the Mayor and the Clerk-Treasurer consistent with the terms of this ordinance and the Indenture. In the event the Bonds are sold to the Authority through the IFA Program, the Financial Assistance Agreement for the Bonds and the Infrastructure Project shall be executed by the City. The substantially final form of Financial Assistance Agreement attached hereto as Exhibit B and incorporated herein by reference is hereby approved by the Common Council, and the Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement, such approval to be conclusively evidenced by its execution.

Section 5. The City may issue its Bonds, maturing no later than twenty-five (25) years from their date of issuance, in the aggregate principal amount not to exceed \$24,000,000. The Bonds are to be issued for the purpose of procuring funds to pay the costs of construction of the Infrastructure Project, all as more particularly set out in the Indenture and the Financing Agreement, which Bonds will be payable as to principal and interest from TIF Revenues collected in the Allocation Area, Taxpayer Payments and, if necessary, payments made pursuant to a Letter of Credit, pursuant to the Financing Documents or as otherwise provided in the above-described Indenture. The Bonds shall be issued in fully registered form in denominations

of \$1 and integral multiples thereof if sold to the Authority as a part of its IFA Program, or as provided in the above-described Indenture, payable semiannually on ~~January~~February 1 and ~~July~~August 1 and if the Bonds are sold to the Authority as part of its IFA Program, allow the City to meet the coverage and/or amortization requirements of the IFA Program. If the Bonds are sold to the Authority as part of its IFA Program, such debt service schedule shall be finalized and set forth in the Financial Assistance Agreement. The Bonds shall be subject to optional redemption prior to maturity at the option of the City, no later than ten (10) years after their date of delivery, on any date, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City (or in the case of any Bonds sold to the Authority, in inverse order of maturity), and by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption; provided, however, for bonds sold to the IFA Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority, and as further provided in the Indenture. The Bonds may be issued as term bonds subject to mandatory sinking fund redemption. Payments on the Bonds are payable in lawful money of the United States of America by check mailed or delivered to the registered owners or by wire transfer as provided in the Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City as described in the Indenture nor are the Bonds payable in any manner from revenues raised by taxation except for TIF Revenues collected in the Allocation Area and Taxpayer Payments.

Notwithstanding anything contained herein, the City may accept any other forms of financial assistance, as and if available, from the IFA Program (including without limitation any forgivable loans, grants or other assistance) whether available as an alternative to any Bond

related provision otherwise provided for herein or as a supplement or addition thereto. If required by the IFA Program to be eligible for such financial assistance, one or more of the series of the Bonds issued hereunder may be issued on a basis such that the payment of the principal of or interest on (or both) such series of Bonds is junior and subordinate to the payment of the principal of and interest on other series of Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of TIF Revenues, whether now outstanding or hereafter issued), all as provided by the terms of such series of Bonds as modified pursuant to this authorization. Such financial assistance, if any, shall be provided in the Financial Assistance Agreement and the Bonds of each series of Bonds issued hereunder (including any modification made pursuant to the authorization in this paragraph to the form of Bonds otherwise contained herein).

Notwithstanding anything in this ordinance to the contrary, any series of Bonds issued hereunder may bear interest that is taxable and included in the gross income of the owners thereof. If any such Bonds are issued on a taxable basis, the designated name shall include the term "Taxable" as the first word in the designated name.

Section 6. The Mayor and the Clerk-Treasurer are authorized and directed to sell the Bonds to the Authority, or its designee, at a price of not less than 100% of the par value thereof and shall bear accrue interest at a rate not to exceed ten percent (10%) per annum (the exact rate or rates to be determined by negotiation with the Authority as part of its IFA Program). Interest on the Bonds is payable semiannually on ~~January~~February 1 and ~~July~~August 1 in each year, commencing on the first ~~January~~February 1 or the first ~~July~~August 1 after the date of issuance of the Bonds, as designated by the Clerk-Treasurer, with the advice of its municipal advisor. Interest on the Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months. Interest on the Bonds sold to the Authority as part of its IFA Program shall be

payable from the date or dates of payment made by the Authority as part of its purchase of the Bonds pursuant to the Financial Assistance Agreement.

Section 7. In the event the municipal advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy the City hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and the Clerk-Treasurer are hereby authorized to execute and delivery all agreements with the provider of the insurance policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated hereby by reference.

Section 8. The Bonds may be both purchased by the Authority in installments and drawn down by the Company in installments (subject to the Internal Revenue Code).

Section 9. The Mayor and the Clerk-Treasurer are authorized and directed to execute and attest, manually, electronically or by facsimile, and to affix or imprint by any means the City seal to, the documents constituting the Financing Documents approved herein on behalf of the City and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Mayor and the Clerk-Treasurer are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Documents which take place after the date

of this ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that the Financing Documents are in substantially final form as of the date of this ordinance. The approval of these modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the terms and conditions set forth in IC 36-7-12-27(a)1-10, including the maximum principal amount of, interest rate on or term of the Bonds as approved by the Common Council by this ordinance without further consideration by the Common Council. The signatures of the Mayor and the Clerk-Treasurer on the Bonds may be either manual, facsimile or electronic signatures. The use of electronic signatures by the Mayor and the Clerk-Treasurer are authorized and affirmed with full valid legal effect and enforceability. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to The Bank of New York Mellon Trust Company, N.A. ("Trustee"), and payment for the Bonds will be made to the Trustee and after such payment, the Bonds will be delivered by the Trustee to the purchaser thereof. The Bonds shall be originally dated the date of issuance and delivery thereof.

Section 10. The provisions of this ordinance and the Indenture securing the Bonds shall constitute a contract binding between the City and the holders of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid; provided, however, that in any case so long as the Bonds are outstanding and held by the Authority, the Common Council shall not amend or supplement this ordinance without the prior written consent of the Authority.

Section 11. This ordinance shall constitute "official action" for purposes of compliance with state laws requiring governmental action as authorization for future reimbursement from the proceeds of bonds.

Section 12. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.



Passed and adopted by the Common Council of the City of Goshen, Indiana this 9th day of September, 2024.

**COMMON COUNCIL OF THE CITY OF  
GOSHEN, INDIANA**

\_\_\_\_\_  
*Presiding Officer*

*Attest:*

\_\_\_\_\_  
*Clerk-Treasurer*

*Presented by me to the Mayor of the City of Goshen, Indiana, on the \_\_\_\_ day of \_\_\_\_\_, 2024, at the hour of \_\_: \_\_.m.*

\_\_\_\_\_  
*Clerk-Treasurer*

*This ordinance approved and signed by me, the Mayor of the City of Goshen, Indiana, on the \_\_\_\_ day of \_\_\_\_\_, 2024, at the hour of \_\_: \_\_.m.*

\_\_\_\_\_  
*Mayor*

GOSHEN COMMON COUNCIL

ORDINANCE NO. 5195

ORDINANCE AUTHORIZING THE CITY OF GOSHEN, INDIANA TO ISSUE ITS "TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS OF 202\_ (CHERRY CREEK PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Goshen Economic Development Commission ("Commission") conducted a public hearing and adopted a resolution, which resolution has been transmitted hereto, finding that the financing of certain economic development facilities of Cherry Creek, LLC ("Company") complies with the purposes and provisions of IC 36-7-11.9 and -12 and that such financing will be of benefit to the health and welfare of the City of Goshen, Indiana ("City" or "Issuer") and its citizens;

WHEREAS, the Goshen Redevelopment Commission ("Redevelopment Commission") adopted a declaratory resolution on July 14, 2012, as supplemented and amended to date (collectively, as amended, "Declaratory Resolution"), as confirmed by a confirmatory resolution adopted on November 13, 2012, as supplemented and amended to date, establishing the boundaries of the Southeast Economic Development Area ("Area") and the Southeast Housing TIF Allocation Area ("Allocation Area");

WHEREAS, the Redevelopment Commission has determined to pledge TIF Revenues, Taxpayer Payments and, if required, payments made pursuant to a Letter of Credit (each as defined in the hereinafter defined Financing Documents) to be used to pay debt service on the Bonds pursuant to a Financing and Covenant Agreement between the Company and the City, dated as of the first day of the month the Bonds are sold or issued ("Financing Agreement"). The City shall issue its [Taxable] Economic Development Revenue Bonds, Series 202\_ (Cherry

Creek Project) (to be completed with the year in which issued) ("Bonds"), in one or more series, pursuant to this ordinance to finance the construction of the cost of all or a portion of the construction of infrastructure improvement to serve a mixed-use residential subdivision including, but not limited to, new roadways, sidewalks, water mains, sewer mains, storm sewer, including drainage basins, and a lift station, together with all necessary appurtenances, related improvements and equipment ("Infrastructure Project"), to support the development of a multi-family project including approximately 1,200 units (consisting of single family houses, single family attached homes, condos and apartments) and approximately 100,000 square feet of commercial space ("Development" and, together with the Infrastructure Project, collectively, the "Project") to be constructed by the Company, in or physically connected to the Allocation Area located in the Area, and costs of issuance, including capitalized interest, funding a debt service reserve and/or a premium for a debt service reserve surety and a premium for municipal bond insurance premium, if necessary, and related expenses;

WHEREAS, the Commission has heretofore 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 Financing Agreement and the Trust Indenture (including form of Bonds) between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee, or any other financial institution acceptable to the Authority (as hereinafter defined) dated as of the first day of the month the Bonds are sold or issued ("Indenture") (collectively, "Financing Documents");

WHEREAS, the City may enter into a Residential Housing Infrastructure Financial Assistance Agreement (substantially in the form attached as Exhibit B hereto and made a part hereof), together with any subsequent amendments thereto ("Financial Assistance Agreement")

with the Indiana Finance Authority ("Authority"), as part of its residential housing infrastructure assistance program ("IFA Program") established and existing pursuant to IC 5-1.2-15.5, pertaining to the Infrastructure Project and the financing of the Infrastructure Project if the Bonds are sold to the Authority through its IFA Program;

WHEREAS, the City may accept other forms of financial assistance, as and if available from the IFA Program;

WHEREAS, there are no other bonds, pledges or obligations payable from the TIF Revenues; and

WHEREAS, the Common Council has been advised that it may be cost efficient to purchase municipal bond insurance and or a debt service reserve surety for the bonds authorized herein;

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

Section 1. It is hereby found that: (i) the financing of the economic development facilities, including the Project, in or physically connected to the Allocation Area located in the Area and referred to in the Financing Documents approved by the Commission and presented to this Common Council; (ii) the issuance and sale of the City's [Taxable] Economic Development Revenue Bonds of 2024 (Cherry Creek Project) (to be completed with the year in which issued) ("Bonds"), in one or more series; (iii) utilizing the proceeds of the Bonds for the construction of the Infrastructure Project; (iv) the payment of the Bonds from TIF Revenues collected in the Allocation Area and from Taxpayer Payments and, if required, payments made pursuant to a Letter of Credit; and (v) the securing of the Bonds under the Trust Indenture, complies with the purposes and provisions of IC 36-7-11.9 and -12 and will be of benefit to the health and welfare

of the City and its citizens. The proceeds of the Bonds will be used for the financing of the construction of the Project, and costs of issuance of the Bonds, including capitalized interest, funding a debt service reserve and/or a premium for a debt service reserve surety and a premium for municipal bond insurance premium, if necessary, and related expenses. The Common Council further finds, determines, ratifies and confirms that the promotion of economic development, creation of new job opportunities and housing to assist in alleviating the housing shortage in the City and increased investment in the City, is desirable to preserve the health, safety and general welfare of the citizens of the City; and that it is in the public interest that the Commission and the Issuer to take such action as they lawfully may to encourage economic development, creation of job opportunities, creation of housing and increased investment in the City.

Section 2. At the public hearing held before the Commission, the Commission considered whether the funding and construction of the Project would have an adverse competitive effect on any similar facilities located in or near the City, and subsequently found, based on findings of fact set forth in its resolution transmitted hereto ("Resolution") and the absence of evidence from the public or a competitor of substantive probative value, that the funding and construction of the Project would not have an adverse competitive effect. This Common Council hereby confirms the findings on adverse competitive effect set forth in the Commission's Resolution, and hereby finds that the construction of the Project will be of benefit to the health and welfare of the citizens of the City.

Section 3. The substantially final forms of the Financing Agreement and the Indenture approved by the Commission are hereby approved (herein collectively referred to as the "Financing Documents" referred to in IC 36-7-11.9 and -12), and the Financing Documents

are attached hereto as Exhibit A. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk-Treasurer for public inspection.

Section 4. The Clerk-Treasurer may negotiate the sale of the Bonds to the Authority as part of its IFA Program. The Mayor and the Clerk-Treasurer are hereby authorized to: (i) execute a Financial Assistance Agreement (including any amendment thereof) with the Authority with terms conforming to this ordinance; and (ii) sell such Bonds upon such terms as are acceptable to the Mayor and the Clerk-Treasurer consistent with the terms of this ordinance and the Indenture. In the event the Bonds are sold to the Authority through the IFA Program, the Financial Assistance Agreement for the Bonds and the Infrastructure Project shall be executed by the City. The substantially final form of Financial Assistance Agreement attached hereto as Exhibit B and incorporated herein by reference is hereby approved by the Common Council, and the Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver the same, and to approve any changes in form or substance to the Financial Assistance Agreement, such approval to be conclusively evidenced by its execution.

Section 5. The City may issue its Bonds, maturing no later than twenty-five (25) years from their date of issuance, in the aggregate principal amount not to exceed \$24,000,000. The Bonds are to be issued for the purpose of procuring funds to pay the costs of construction of the Infrastructure Project, all as more particularly set out in the Indenture and the Financing Agreement, which Bonds will be payable as to principal and interest from TIF Revenues collected in the Allocation Area, Taxpayer Payments and, if necessary, payments made pursuant to a Letter of Credit, pursuant to the Financing Documents or as otherwise provided in the above-described Indenture. The Bonds shall be issued in fully registered form in denominations

of \$1 and integral multiples thereof if sold to the Authority as a part of its IFA Program, or as provided in the above-described Indenture, payable semiannually on February 1 and August 1 and if the Bonds are sold to the Authority as part of its IFA Program, allow the City to meet the coverage and/or amortization requirements of the IFA Program. If the Bonds are sold to the Authority as part of its IFA Program, such debt service schedule shall be finalized and set forth in the Financial Assistance Agreement. The Bonds shall be subject to optional redemption prior to maturity at the option of the City, no later than ten (10) years after their date of delivery, on any date, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City (or in the case of any Bonds sold to the Authority, in inverse order of maturity), and by lot within a maturity, at face value together with a premium no greater than 2%, plus accrued interest to the date fixed for redemption; provided, however, for bonds sold to the IFA Program and registered in the name of the Authority, the Bonds shall not be redeemable at the option of the City unless and until consented to by the Authority, and as further provided in the Indenture. The Bonds may be issued as term bonds subject to mandatory sinking fund redemption. Payments on the Bonds are payable in lawful money of the United States of America by check mailed or delivered to the registered owners or by wire transfer as provided in the Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City as described in the Indenture nor are the Bonds payable in any manner from revenues raised by taxation except for TIF Revenues collected in the Allocation Area and Taxpayer Payments.

Notwithstanding anything contained herein, the City may accept any other forms of financial assistance, as and if available, from the IFA Program (including without limitation any forgivable loans, grants or other assistance) whether available as an alternative to any Bond

related provision otherwise provided for herein or as a supplement or addition thereto. If required by the IFA Program to be eligible for such financial assistance, one or more of the series of the Bonds issued hereunder may be issued on a basis such that the payment of the principal of or interest on (or both) such series of Bonds is junior and subordinate to the payment of the principal of and interest on other series of Bonds issued hereunder (and/or any other revenue bonds secured by a pledge of TIF Revenues, whether now outstanding or hereafter issued), all as provided by the terms of such series of Bonds as modified pursuant to this authorization. Such financial assistance, if any, shall be provided in the Financial Assistance Agreement and the Bonds of each series of Bonds issued hereunder (including any modification made pursuant to the authorization in this paragraph to the form of Bonds otherwise contained herein).

Notwithstanding anything in this ordinance to the contrary, any series of Bonds issued hereunder may bear interest that is taxable and included in the gross income of the owners thereof. If any such Bonds are issued on a taxable basis, the designated name shall include the term "Taxable" as the first word in the designated name.

Section 6. The Mayor and the Clerk-Treasurer are authorized and directed to sell the Bonds to the Authority, or its designee, at a price of not less than 100% of the par value thereof and shall bear accrue interest at a rate not to exceed ten percent (10%) per annum (the exact rate or rates to be determined by negotiation with the Authority as part of its IFA Program). Interest on the Bonds is payable semiannually on February 1 and August 1 in each year, commencing on the first February 1 or the first August 1 after the date of issuance of the Bonds, as designated by the Clerk-Treasurer, with the advice of its municipal advisor. Interest on the Bonds shall be calculated according to a 360-day calendar year containing twelve 30-day months. Interest on the Bonds sold to the Authority as part of its IFA Program shall be payable from the date or dates



of payment made by the Authority as part of its purchase of the Bonds pursuant to the Financial Assistance Agreement.

Section 7. In the event the municipal advisor to the City certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy the City hereby authorizes the purchase of such an insurance policy. The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy. If such an insurance policy is purchased, the Mayor and the Clerk-Treasurer are hereby authorized to execute and delivery all agreements with the provider of the insurance policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of this ordinance for all purposes and is hereby incorporated hereby by reference.

Section 8. The Bonds may be both purchased by the Authority in installments and drawn down by the Company in installments (subject to the Internal Revenue Code).

Section 9. The Mayor and the Clerk-Treasurer are authorized and directed to execute and attest, manually, electronically or by facsimile, and to affix or imprint by any means the City seal to, the documents constituting the Financing Documents approved herein on behalf of the City and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Mayor and the Clerk-Treasurer are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Documents which take place after the date

of this ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that the Financing Documents are in substantially final form as of the date of this ordinance. The approval of these modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the terms and conditions set forth in IC 36-7-12-27(a)1-10, including the maximum principal amount of, interest rate on or term of the Bonds as approved by the Common Council by this ordinance without further consideration by the Common Council. The signatures of the Mayor and the Clerk-Treasurer on the Bonds may be either manual, facsimile or electronic signatures. The use of electronic signatures by the Mayor and the Clerk-Treasurer are authorized and affirmed with full valid legal effect and enforceability. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to The Bank of New York Mellon Trust Company, N.A. ("Trustee"), and payment for the Bonds will be made to the Trustee and after such payment, the Bonds will be delivered by the Trustee to the purchaser thereof. The Bonds shall be originally dated the date of issuance and delivery thereof.

Section 10. The provisions of this ordinance and the Indenture securing the Bonds shall constitute a contract binding between the City and the holders of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid; provided, however, that in any case so long as the Bonds are outstanding and held by the Authority, the Common Council shall not amend or supplement this ordinance without the prior written consent of the Authority.

Section 11. This ordinance shall constitute "official action" for purposes of compliance with state laws requiring governmental action as authorization for future reimbursement from the proceeds of bonds.

Section 12. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Passed and adopted by the Common Council of the City of Goshen, Indiana this 9th day of September, 2024.

COMMON COUNCIL OF THE CITY OF  
GOSHEN, INDIANA

\_\_\_\_\_  
Presiding Officer

Attest:

\_\_\_\_\_  
Clerk-Treasurer

Presented by me to the Mayor of the City of Goshen, Indiana, on the \_\_\_\_ day of \_\_\_\_\_, 2024, at the hour of \_\_: \_\_.m.

\_\_\_\_\_  
Clerk-Treasurer

This ordinance approved and signed by me, the Mayor of the City of Goshen, Indiana, on the \_\_\_\_ day of \_\_\_\_\_, 2024, at the hour of \_\_: \_\_.m.

\_\_\_\_\_  
Mayor

EXHIBIT A  
Financing Documents  
(Attached)

TRUST INDENTURE

BETWEEN

CITY OF GOSHEN, INDIANA

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.  
Indianapolis, Indiana

As Trustee

\$10,718,000

CITY OF GOSHEN, INDIANA  
TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS OF 2024  
(CHERRY CREEK PROJECT)

Dated as of October 1, 2024

TABLE OF CONTENTS

	Page
ARTICLE I.	
DEFINITIONS .....	9
Section 1.1. Terms Defined .....	9
Section 1.2. Rules of Interpretation .....	13
Section 1.3. Exhibits .....	13
ARTICLE II.	
THE BONDS .....	14
Section 2.1. Authorized Amount of Series 2024 Bonds .....	14
Section 2.2. Issuance of Series 2024 Bonds .....	14
Section 2.3. Payment on Bonds .....	15
Section 2.4. Execution; Limited Obligation .....	15
Section 2.5. Authentication. ....	16
Section 2.6. Form of Bonds .....	16
Section 2.7. Delivery of Series 2024 Bonds .....	16
Section 2.8. Issuance of Additional Bonds .....	17
Section 2.9. Mutilated, Lost, Stolen, or Destroyed Bonds.....	18
Section 2.10. Registration and Exchange of Series 2024 Bonds; Persons Treated as Owners .....	18
Section 2.11. Book-Entry System.....	19
ARTICLE III.	
APPLICATION OF SERIES 2024 BOND PROCEEDS .....	22
Section 3.1. Deposit of Funds .....	22
ARTICLE IV.	
REVENUE AND FUNDS .....	23
Section 4.1. Source of Payment of Bonds .....	23
Section 4.2. Bond Fund.....	23
Section 4.3. Reserved.....	24
Section 4.4. Construction Fund.....	24
Section 4.5. Debt Service Reserve Fund.....	26
Section 4.6. TIF Revenues .....	26
Section 4.7. Trust Funds .....	27
Section 4.8. Investment.....	27

ARTICLE V.

REDEMPTION OF SERIES 2024 BONDS BEFORE MATURITY .....28

    Section 5.1. Redemption Dates and Prices .....28

    Section 5.3. Notice of Redemption .....28

    Section 5.4. Cancellation. ....29

    Section 5.5. Redemption Payments .....29

    Section 5.6. Partial Redemption of Bonds .....29

ARTICLE VI.

GENERAL COVENANTS.....30

    Section 6.1. Payment of Principal and Interest .....30

    Section 6.2. Performance of Covenants .....31

    Section 6.3. Filing of Indenture, Financing Agreement and Security Instruments .....31

    Section 6.4. Inspection of Books. ....31

    Section 6.5. List of Bondholders .....31

    Section 6.6. Rights Under Financing Agreement .....31

    Section 6.7. Investment of Funds.....31

    Section 6.8. Non-presentment of Bonds .....32

    Section 6.9. Direction of Bondholders.....32

    Section 6.10. Reserved.....32

ARTICLE VII.

DEFAULTS AND REMEDIES .....33

    Section 7.1. Events of Default .....33

    Section 7.2. Reserved.....33

    Section 7.3. Remedies; Rights of Bondholders. ....33

    Section 7.4. Right of Bondholders to Direct Proceedings .....34

    Section 7.5. Application of Moneys .....34

    Section 7.6. Remedies Vested In Trustee .....35

    Section 7.7. Rights and Remedies of Bondholders.....35

    Section 7.8. Termination of Proceedings .....36

    Section 7.9. Waivers of Events of Default.....36

ARTICLE VIII.

THE TRUSTEE AND PAYING AGENT .....37

    Section 8.1. Acceptance of the Trusts.....37

    Section 8.2. Fees, Charges and Expenses of Trustee and Paying Agent .....40

    Section 8.3. Notice to Bondholders if Default Occurs.....40

    Section 8.4. Intervention by Trustee .....40

    Section 8.5. Successor Trustee.

Section 8.6. Resignation by the Trustee .....	40
Section 8.7. Removal of the Trustee. ....	40
Section 8.8. Appointment of Successor Trustee by the Bondholders; Temporary Trustee. ....	41
Section 8.9. Concerning Any Successor Trustees. ....	41
Section 8.10. Trustee Protected in Relying Upon Resolutions, etc. ....	41
Section 8.11. Appointment of Paying Agent and Registrar; Resignation or Removal of Paying Agent. ....	42
ARTICLE IX.	
SUPPLEMENTAL INDENTURES .....	43
Section 9.1. Supplemental Indentures Not Requiring Consent of Bondholders.....	43
Section 9.2. Supplemental Indentures Requiring Consent of Bondholders.....	43
Section 9.3. Legal Opinion .....	44
Section 9.4. Supplemental Indenture Effectiveness Upon Trustee.....	44
ARTICLE X.	
AMENDMENTS TO THE FINANCING AGREEMENT.....	45
Section 10.1. Amendments, etc., to Financing Agreement Not Requiring Consent of Bondholders.....	45
Section 10.2. Amendments, etc., to Financing Agreement Requiring Consent of Bondholders.....	45
Section 10.3. Legal Opinion .....	45
Section 10.4. Amendments, etc.; Consent of Trustee .....	45
ARTICLE XI.	
MISCELLANEOUS .....	46
Section 11.1. Satisfaction and Discharge.....	46
Section 11.2. Defeasance of Bonds .....	46
Section 11.3. Cancellation of Series 2024 Bonds .....	47
Section 11.4. Application of Trust Money .....	48
Section 11.5. Consents, etc., of Bondholders .....	48
Section 11.6. Limitation of Rights.....	48
Section 11.7. Severability .....	49
Section 11.8. Notices .....	49
Section 11.9. Counterparts.....	50
Section 11.10. Applicable Law .....	50
Section 11.11. Immunity of Officers and Directors.....	50
Section 11.12. Holidays.....	50
Section 11.13. <b>[Shortfall of TIF Revenues][Reimbursement]Error! Bookmark not defined.</b>	



## TRUST INDENTURE

THIS TRUST INDENTURE dated as of the first day of October, 2024, by and between the CITY OF GOSHEN, INDIANA ("Issuer" and "City"), a municipal corporation duly organized and existing under the laws of the State of Indiana and The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America, with a corporate trust office in the City of Indianapolis, Indiana, as Trustee ("Trustee");

### WITNESSETH:

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9, 12, 14 and 25 (collectively, "Act"), authorize and empower the Issuer to issue revenue bonds and to provide 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 Cherry Creek, LLC ("Company"), to proceed with all or a portion of the construction of economic development facilities, including but not limited to, the construction of all or a portion of new roadways, sidewalks, water mains, sewer mains, storm sewer, including drainage basins, and a lift station, together with all necessary appurtenances, related improvements and equipment ("Project"), to support the development of a multi-family housing project including approximately 1,400 units (consisting of single family houses, single family attached homes, condos and apartments) and approximately 80,000 square feet of commercial space ("Development"), and costs of issuance, capitalized interest and funding a debt service reserve in or physically connected to the Southeast Housing TIF Allocation Area ("Allocation Area"), by offering to issue its Taxable Economic Development Revenue Bonds of 2024 (Cherry Creek Project) in the aggregate principal amount of Ten Million Seven Hundred Eighteen Thousand Dollars (\$10,718,000) ("Series 2024 Bonds") pursuant to this Trust Indenture and to provide the proceeds thereof to the Company pursuant to the Financing and Covenant Agreement, dated as of October 1, 2024 ("Financing Agreement"); and

WHEREAS, the execution and delivery of this Trust 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 Issuer caused a public hearing to be held, and upon finding that the Project and the proposed financing thereof to support the Development will assist the City with the existing housing shortage by providing additional housing options in the City and create additional employment opportunities; 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 Act provides that such bonds may be secured by a trust indenture between the Issuer and a corporate trustee; and

WHEREAS, the execution and delivery of this Trust Indenture ("Indenture"), and the issuance of the Series 2024 Bonds hereunder have been in all respects duly and validly authorized by an ordinance duly passed and approved by the Issuer; and

WHEREAS, Indiana Code, Title 36, Article 7, Chapter 14 provides that a redevelopment commission of a City may pledge certain incremental property taxes to pay, in whole or in part, amounts due on the Series 2024 Bonds; and

WHEREAS, the Goshen Redevelopment Commission ("Redevelopment Commission") adopted a declaratory resolution on July 14, 2012, as supplemented and amended to date (collectively, as amended, "Declaratory Resolution"), as confirmed by a confirmatory resolution adopted on November 13, 2012, as supplemented and amended to date, establishing the boundaries of the Southeast Economic Development Area and Allocation Area; and

WHEREAS, the Redevelopment Commission has, by resolution, irrevocably dedicated and pledged to the Issuer, TIF Revenues and Taxpayer Payments (each as hereinafter defined); and

WHEREAS, pursuant to the Financing Agreement and this Indenture, the Series 2024 Bonds shall be payable solely from TIF Revenues and Bond proceeds; provided, however, that the Redevelopment Commission will enter into a taxpayer agreement executed by and among the Redevelopment Commission, the Issuer and the Company ("Taxpayer Agreement"), providing that the hereinafter defined Taxpayer Payments will be made under certain circumstances if the property taxes paid for the Development are not sufficient to pay the debt service on the Series 2024 Bonds; and

WHEREAS, the Series 2024 Bonds and the Trustee's certificate of authentication to be endorsed thereon are all to be in substantially the following forms, and any Additional Bonds and Trustee's certificate of authentication are also to be in substantially the following forms (except as to redemption, sinking fund and other provisions peculiar to such Additional Bonds), with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture, to-wit:

(Form of Series 2024 Bond)

UNITED STATES OF AMERICA

NO. R-\_\_

STATE OF INDIANA

COUNTY OF ELKHART

CITY OF GOSHEN, INDIANA

TAXABLE ECONOMIC DEVELOPMENT REVENUE BOND OF 202\_\_

<u>INTEREST</u> <u>RATE</u>	<u>MATURITY</u> <u>DATE</u>	<u>ORIGINAL</u> <u>DATE</u>	<u>AUTHENTICATION</u> <u>DATE</u>
--------------------------------	--------------------------------	--------------------------------	--------------------------------------

2.62%, subject

to adjustment at  
quarterly re-set  
on October 1

REGISTERED OWNER: INDIANA FINANCE AUTHORITY

PRINCIPAL AMOUNT: ELEVEN MILLION DOLLARS (\$10,718,000)

The City of Goshen, Indiana ("Issuer" or "City"), a municipal corporation duly organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above, but solely from TIF Revenues and Taxpayer Payments (each as defined in the hereinafter defined Indenture) hereinafter referred to, pledged and assigned for the payment hereof, the Principal Amount set forth above, on [the Maturity Date set forth above] **OR** [February 1 and August 1 on the dates and in the amounts set forth on Exhibit A attached hereto], unless this Series 2024 Bond (as hereinafter defined) shall have previously been called for redemption and payment of the redemption price made or provided for, and to pay interest hereon, but solely from those payments, at the Interest Rate specified above per annum, subject to adjustment at quarterly re-set on October 1, payable on \_\_\_\_\_ 1, 20\_\_\_\_, and on each February 1 and August 1 thereafter ("Interest Payment Dates") until the principal is paid. Interest on this Series 2024 Bond shall be payable from the Interest Payment Date next preceding the date of authentication thereof ("Interest Date"), except that: (i) if this Series 2024 Bond is authenticated on or prior to \_\_\_\_\_ 15, 20\_\_\_\_, the Interest Date shall be the Original Date specified above; (ii) if this Series 2024 Bond is authenticated on or after the fifteenth day of the month preceding an Interest Payment Date ("Record Date"), the Interest Date shall be such Interest Payment Date; and (iii) if interest on this Series 2024 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 according to a 360-day calendar year containing twelve 30-day months.

All payments of principal of and interest on this Bond shall be paid by wire transfer for deposit to a financial institution as directed by the Indiana Finance Authority ("Authority") on the due date or, if such due date is a day when financial institutions are not open for business, on the business day immediately after such due date to the Registered Owner hereof as of the fifteenth day of the month preceding an interest payment date at the address as it appears on the registration books kept by The Bank of New York Mellon Trust Company, N.A. ("Registrar" or "Paying Agent") in the designated corporate trust office or at such other address as is provided to the Paying Agent in writing by the registered owner. All payments on this Bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

This Bond is the only one of an authorized issue of the Issuer's Taxable Economic Development Revenue Bonds of 2024 (Cherry Creek Project) (hereinbefore and hereinafter the, "Series 2024 Bonds") which are being issued under the hereinafter described Indenture in the aggregate principal amount of Ten Million Seven Hundred Eighteen Thousand Dollars (\$10,718,000). The Series 2024 Bonds are being issued for the purpose of providing funds to finance all or a portion of the construction of economic development facilities, including, but not limited to, the construction of all or a portion of new roadways, sidewalks, water mains, sewer

mains, storm sewer, including drainage basins, and a lift station, together with all necessary appurtenances, related improvements and equipment ("Project"), to support the development of a multi-family housing project including approximately 1,400 units (consisting of single family houses, single family attached homes, condos and apartments) and approximately 80,000 square feet of commercial space ("Development"), and costs of issuance, capitalized interest and funding a debt service reserve, to be constructed by Cherry Creek, LLC, or its affiliates ("Company"), by providing such funds to the Company pursuant to the Financing and Covenant Agreement dated as of October 1, 2024 ("Financing Agreement") between the Company and the Issuer.

The Series 2024 Bonds are issued under and entitled to the security of a Trust Indenture dated as of October 1, 2024 ("Indenture") duly executed and delivered by the Issuer to The Bank of New York Mellon Trust Company, N.A., as Trustee (the term "Trustee" where used herein referring to the Trustee or its successors), pursuant to which Indenture the TIF Revenues, the Taxpayer Payments and all rights of the Issuer under the Financing Agreement, except certain rights to payment for expenses, indemnity rights and rights to perform certain discretionary acts as set forth in the Financing Agreement, are pledged and assigned by the Issuer to the Trustee as security for the Series 2024 Bonds. THE OWNER OF THIS SERIES 2024 BOND, BY ACCEPTANCE OF THIS SERIES 2024 BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE INDENTURE AND THIS SERIES 2024 BOND AS TO THE PLEDGE OF TIF REVENUES AND TAXPAYER PAYMENTS, AND ACKNOWLEDGES THAT:

(1) It is the Indiana Finance Authority, a separate body corporate and politic created pursuant to IC 5-1.2-1 through IC 5-1.2-4 constituting an independent instrumentality of the State of Indiana for the public purpose of promoting the provision of financial assistance to eligible participants to finance infrastructure projects that support residential housing development in communities demonstrating need for additional housing inventory by carrying out the purposes of IC 5-1.2-15.5, but not as a state agency. We are a sophisticated investor with extensive experience in purchasing and evaluating obligations similar to the Series 2024 Bonds and have received the application filed by the Issuer with regard to the Bonds.

(2) It is familiar with the Issuer, the Goshen Redevelopment Commission ("Commission") and the Goshen Redevelopment District ("District"); it has received such information concerning the Issuer, the Series 2024 Bonds, the Indenture, the TIF Revenues and the Taxpayer Payments (each as defined in the Indenture), as it deems to be necessary in connection with investment in the Series 2024 Bonds. It has received, read and had an opportunity to comment upon and has consented to the provisions of the Indenture, the Series 2024 Bonds and the Financing Agreement. Prior to the purchase of the Series 2024 Bonds, it has been provided with the opportunity to ask questions of and receive answers from the representatives of the Issuer concerning the terms and conditions of the Series 2024 Bonds, the tax status of the Series 2024 Bonds, legal opinions and enforceability of remedies, the security therefor, and property tax reform (including the hereinafter defined Circuit Breaker), and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the Issuer possesses such information or can acquire it without unreasonable

effort or expense. It is not relying on Ice Miller LLP for information concerning the financial status of the Issuer, the Commission or the District, or the ability of the Issuer or the Commission to honor their financial obligations or other covenants under the Series 2024 Bonds, the Indenture or the Financing Agreement. It understands that the projection of TIF Revenues prepared by Baker Tilly Municipal Advisors, LLC in connection with the issuance of the Series 2024 Bonds has been based on estimates of the investment in real property provided by the Company.

(3) It understands that the Issuer's collection of the TIF Revenues may be limited by operation of IC 6-1.1-20.6, which provides taxpayers with tax credits for property taxes attributable to different classes of property in an amount that exceeds certain percentages of the gross assessed value of that property ("Circuit Breaker"). The Issuer may not increase its property tax levy or borrow money to make up any shortfalls due to the application of this tax credit. It further understands that neither the Issuer nor the Commission has the authority to levy a tax to pay principal of or interest on the Series 2024 Bonds.

(4) It is acquiring the Series 2024 Bonds for its investment for its own account and not with the present view of reselling or otherwise disposing of all or any part thereof; and it will not sell, convey, pledge or otherwise transfer the Series 2024 Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities laws.

(5) It has investigated the security for the Series 2024 Bonds, including the availability of TIF Revenues and Taxpayer Payments, to its satisfaction, and it understands that the Series 2024 Bonds are payable solely from TIF Revenues and Taxpayer Payments, subject to any rescission provisions of the Financing Agreement.

(6) It recognizes that: (a) the opinions it has received express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein; (b) by rendering such opinions, the attorneys do not become insurers or guarantors of (i) that expression of professional judgment; (ii) the transaction opined upon; or (iii) the future performance of parties to such transaction; and (c) the rendering of the opinions does not guarantee the outcome of any legal dispute that may arise out of the transaction.

It is provided in the Indenture that the Issuer may hereafter issue Additional Bonds (as defined in the Indenture) from time to time under certain terms and conditions contained therein. (Such Additional Bonds and the Series 2024 Bonds are hereinafter collectively referred to as the "Bonds.") Reference is made to the Indenture and to all indentures supplemental thereto and to the Financing Agreement for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the rights of the holders of the Bonds, the issuance of Additional Bonds and the terms on which the Bonds are or may be issued and secured, and to all the provisions of which the holder hereof by the acceptance of this Series 2024 Bond assents.

Reference is hereby made to the Financial Assistance Agreement ("Financial Assistance Agreement") between the Issuer and the Authority concerning certain terms and covenants pertaining to the project and the purchase of this bond as part of the residential housing infrastructure assistance loan program established and existing pursuant to IC 5-1.2-15.5.

The Series 2024 Bonds are issuable in registered form in denominations of \$1 and integral multiples thereof. This Series 2024 Bond is transferable by the registered holder hereof in person or by its attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture and upon surrender and cancellation of this Series 2024 Bond. Upon such transfer a new registered bond will be issued to the transferee in exchange therefor.

The Issuer, the Trustee and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and for all other purposes and neither the Issuer nor the Trustee nor the Paying Agent shall be affected by any notice to the contrary.

The Series 2024 Bonds of this issue maturing on \_\_\_\_\_ 1, 20\_\_\_\_, and thereafter, are redeemable at the option of the Issuer on \_\_\_\_\_ 1, 20\_\_\_\_, or any date thereafter, on sixty (60) days' notice, in whole or in part, in inverse order of maturity, and by lot within a maturity, at face value together with the following premiums:

\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_\_\_  
 or thereafter on or before \_\_\_\_\_, 20\_\_\_\_;  
 \_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_\_\_  
 or thereafter on or before \_\_\_\_\_, 20\_\_\_\_;  
 0% if redeemed on \_\_\_\_\_ 1, 20\_\_\_\_  
 or thereafter prior to maturity;

plus in each case accrued interest to the date fixed for redemption; provided, however, if the Series 2024 Bonds are sold to the Residential Housing Infrastructure Assistance Program ("IFA Program") and registered in the name of the Authority, the Bond shall not be redeemable at the option of the Issuer unless and until consented to by the Authority.

[The Series 2024 Bonds maturing on \_\_\_\_\_ 1, 20\_\_\_\_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof on February 1 and August 1 on the dates and in the amounts set forth below:

<u>Date</u>	<u>20____ Term Bond</u>	<u>Amount</u>
		\$

\*

\*Final Maturity]

Each One Dollar (\$1) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If 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 any of the Series 2024 Bonds are called for redemption as aforesaid, notice thereof identifying the Series 2024 Bonds to be redeemed will be given by mailing a copy of the redemption notice by first class mail not less than sixty (60) days and not more than sixty-five (65) days prior to the date fixed for redemption to the Registered Owner of the Series 2024 Bonds to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, any defect therein with respect to any registered Series 2024 Bond, shall not affect the validity of any proceedings for the redemption of other Series 2024 Bonds.

All Series 2024 Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time, and shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

This Series 2024 Bond is transferable by the Registered Owner hereof at the designated trust operations office of the Trustee upon surrender and cancellation of this Series 2024 Bond and on presentation of a duly executed written instrument of transfer and thereupon a new Series 2024 Bond in authorized denominations will be issued to the transferee or transferees in exchange therefor, subject to all of the terms herein.

The Series 2024 Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Series 2024 Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and payable solely and only from the trust estate consisting of funds and accounts held under the Indenture, the TIF Revenues and Taxpayer Payments pledged and assigned for their payment in accordance with the Indenture (collectively, "Trust Estate"). 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, premium, if any, or the interest on this Series 2024 Bond, if any. The Series 2024 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, premium, if any, or interest on the Series 2024 Bonds, if any. No covenant or agreement contained in the Series 2024 Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Goshen Redevelopment Commission ("Redevelopment Commission"), Goshen Economic Development Commission ("Commission") or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer executing the Series 2024 Bonds shall be liable

personally on the Series 2024 Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 2024 Bonds.

The holder of this Series 2024 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. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of the Indenture, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the Indenture; provided, however, the Issuer shall first obtain the prior written consent of the Authority. The Issuer's obligation to pay TIF Revenues shall not be subject to acceleration.

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 Series 2024 Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Series 2024 Bond have been duly authorized by the Issuer.

This Series 2024 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 Goshen, Indiana, in Elkhart County, has caused this Bond to be executed in its name and on its behalf by the electronic, manual or facsimile signature of its Mayor, in the name of the City for and on behalf of the District of the City, and attested by the electronic, manual or facsimile signature of the Clerk-Treasurer of the City, who has caused the seal of City to be impressed or a facsimile thereof to be printed hereon, all as of the Original Date set forth above.

CITY OF GOSHEN, INDIANA

By: \_\_\_\_\_  
Mayor

(SEAL)

Attest:

\_\_\_\_\_  
Clerk-Treasurer

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)



This Series 2024 Bond is one of the Series 2024 Bonds described in the within mentioned Indenture.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., 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 2024 Bond and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Series 2024 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 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 Series 2024 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:

TEN COM. as tenants in common  
JT TEN. as joint tenants with right of survivorship  
and not as tenants in common

UNIF TRANS MIN ACT. \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
under Uniform Transfers to Minors Act

\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in list above.

[EXHIBIT A]

(End of Bond Form)

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal of and interest and premium, if any, 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 the 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 hereinafter described ("Trust Estate"):

GRANTING CLAUSE

All right, title and interest of the Issuer in and to the TIF Revenues and Taxpayer Payments (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), the Financing Agreement (except the rights reserved to the Issuer) and all moneys and the Qualified Investments held by the Trustee from time to time in the funds and accounts created hereunder;

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 premium, if any, payable upon redemption or prepayment thereof, and the interest payable thereon, if any, and to secure also the observance and performance of all the terms, provisions, covenants and conditions of this Indenture, and for the benefit and security of all and singular the holders of all Bonds issued hereunder, 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, and the trusts and conditions upon which the pledged moneys and revenues are to be held and disbursed, 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:

"Additional Bonds" shall have the meaning assigned in Section 2.8 of this Indenture.

"Allocation Area" means the Southeast Housing TIF Allocation Area as established in the Declaratory Resolution.

"Annual Fees" means annual Trustee Fees and annual fees related to monitoring Tax Increment in an amount not to exceed \$5,000.

"Area" means the Southeast Economic Development Area.

"Authorized Representative" means, as to the Company, any officer of the Company or any other person certified in writing to the Trustee by an officer of the Company to be such; and as to the Issuer, any person so designated by resolution of the Common Council provided to the Trustee. The Trustee shall be provided with incumbency certificates for each Authorized Representative.

"Bond Counsel" means nationally recognized bond counsel.

"Bond Issuance Costs," namely the costs, fees and expenses incurred or to be incurred by the Issuer and the Company in connection with the issuance and sale of the Series 2024 Bonds, the fees and disbursements of Bond Counsel, fees of the Issuer's municipal advisor, the acceptance fee and first annual payment of the Trustee, 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 fees and disbursements of counsel to the Company, the fees and disbursements of the Company's accountants, the fees and disbursements of counsel to the Issuer, the fees and disbursements of counsel to the purchasers of the Bonds, the costs of preparing or printing the Series 2024 Bonds and the documentation supporting the issuance of the Series 2024 Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred;

"Bond Purchaser" means the Indiana Finance Authority.

"Bondholders" means registered owners of the Bonds issued pursuant to this Indenture, including the Series 2024 Bonds.

"Bonds" means any Bonds issued pursuant to this Indenture, including the Series 2024 Bonds.

"City Parties" means, collectively, the City of Goshen, Indiana and the Goshen Redevelopment Commission.

"Company" means Cherry Creek, LLC.

"Costs of Construction" means the following categorical costs of providing for an "economic development project" as defined and set forth in the Act:

(i) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Project and such insurance shall be acceptable to the Authority;

(ii) all costs and expenses of construction, renovation, acquisition of equipment, acquisition of land and right-of-way interests, site preparation, utilities, environmental remediation and abatement, engineering services, including the costs of Issuer or Company for test borings, surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction and equipping of the Project;

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

(iv) any sums required to reimburse Issuer or Company 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.

"Debt Service Reserve Fund" or "Reserve Fund" means the Debt Service Reserve Fund established in Section 4.5 of this Indenture.

"Development" means a multi-family housing project including approximately 1,400 units (consisting of single family houses, single family attached homes, condos and apartments) and approximately 80,000 square feet of commercial space.

"Electronic Means" shall mean the following communications methods: e-mail, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

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

"Financing Agreement" means the Financing and Covenant Agreement, dated as of October 1, 2024, from the Company to the Issuer and all amendments and supplements thereto.

"Government Obligations" means 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.

"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 Goshen, Indiana, a municipal corporation organized and validly existing under the laws of the State of Indiana or any successor to its rights and obligations under the Financing Agreement and the Indenture.

"Outstanding" or "Bonds outstanding" means all Bonds which have been duly authenticated, and delivered by the Trustee under this Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at maturity or upon redemption prior to maturity;

(b) Bonds for the redemption of which cash 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) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee, shall have been filed with the Trustee; and

(c) Bonds in lieu of which others have been authenticated under Section 2.9.

"Paying Agent" means The Bank of New York Mellon Trust Company, N.A. and any successor paying agent or co-paying agent.

"Project" means all or a portion of the construction of infrastructure improvements including, but not limited to, new roadways, sidewalks, water mains, sewer mains, storm sewer, including drainage basins, and a lift station, together with all necessary appurtenances, related improvements and equipment, to support the Development and costs of issuance, capitalized interest and funding a debt service reserve, which improvements are located in the City and in or physically connected to the Area and will be financed with proceeds of the Series 2024 Bonds.

"Qualified Investments" means to the extent permitted by the laws of the State of Indiana (i) Government Obligations; (ii) bonds, debentures, participation certificates or notes issued by any of the following: Federal Farm Credit Banks, Federal Financing Bank, Federal Home Loan Banks, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (iii) certificates of deposit, time deposits and other interest-bearing deposit accounts with any banking institution, including the Trustee, which are insured by the Federal Deposit Insurance Corporation; (iv) any money market mutual fund, sweep account, mutual fund or trust, which may be funds or trusts of the Trustee or Paying Agent, as shall invest solely in a portfolio of obligations described in (i) or (ii) above or money market mutual funds rated, at the time of purchase, in the highest category by Moody's Investors Service or Standard & Poor's Ratings Group; (v) repurchase agreements with the Trustee or any of its affiliated banks or any other bank having a net worth of at least \$100,000,000 secured by a pledge and physical delivery (except in the case of securities issued in book-entry form, which shall be registered in the name of the Trustee) to the Trustee or third-party bank, as custodian of obligations described in (i) or (ii) hereof; (vi) municipal obligations the interest on which would be excluded from the gross

income of the owners thereof for federal tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, if (a) rated, at the time of purchase, in one of the three highest rating categories of either Moody's Investors Service or Standard & Poor's Ratings Group, or, (b) if fully secured by securities guaranteed as to principal and interest by the United States of America; and (vii) stock of a Qualified Regulated Investment Company which invests solely in obligations described in (vi) above.

"Record Date" means the fifteenth day of the month preceding an interest payment date.

"Redevelopment Commission" means the Goshen Redevelopment Commission.

"Registered Owner" means the registered owner of the Bonds issued pursuant to this Indenture.

"Registrar" means The Bank of New York Mellon Trust Company, N.A. and any successor paying agent or co-paying agent.

"Requisite Bondholders" means the holders of 66 2/3% in aggregate principal amount of Bonds.

"Reserve Requirement" with respect to the original Bonds, means \$ \_\_\_\_\_, the maximum annual principal and interest] payable on all original Bonds.

"Series 2024 Bonds" means the City of Goshen, Indiana Taxable Economic Development Revenue Bonds of 2024 (Cherry Creek Project) in the aggregate principal amount of \$10,718,000.

"Tax Increment" means 100% of real property tax proceeds attributable to the assessed valuation within the Allocation Area, as of each assessment date in excess of the base assessed value as described in IC 36-7-14-39(b)(1). The incremental assessed value is multiplied by the then current property tax rate (per \$100 assessed value).

"Taxpayer Payments" means the payments due from the Company pursuant to that certain Taxpayer Agreement executed by and among the Redevelopment Commission, the Issuer and the Company, dated as of October 1, 2024.

"TIF Revenues" means all of the Tax Increment collected in the Allocation Area received by the Redevelopment Commission and pledged to the Issuer pursuant to a resolution adopted on September 10, 2024, generated in the Allocation Area, minus Annual Fees, for a term not to exceed the date on which the Bonds are fully paid and no longer outstanding.

"Trust Estate" means the funds and accounts, TIF Revenues, Taxpayer Payments and other assets described in the Granting Clauses of this Indenture.

"Trustee" means The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana, the party of the second part hereto, and any successor trustee or co-trustee.

"Trustee Fees" means the acceptance fee, annual fees and expenses of the Trustee as set forth in Exhibit D.

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

(a) "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.

(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 Indenture 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 Financing Agreement shall have the same meaning herein.

(f) 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: Bond Issuance Costs

Exhibit B: Disbursement Request Form

(End of Article I)

ARTICLE II.

THE BONDS

Section 2.1. Authorized Amount of Series 2024 Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The principal amount of the Series 2024 Bonds (other than Bonds issued in substitution therefor pursuant to Section 2.9 hereof) that may be issued is hereby expressly limited to \$10,718,000. Additional Bonds may be issued as provided in Section 2.8 hereof.

Section 2.2. Issuance of Series 2024 Bonds. The Series 2024 Bonds shall be designated "City of Goshen, Indiana Taxable Economic Development Revenue Bonds of 2024 (Cherry Creek Project)." The Series 2024 Bonds shall be originally issuable as fully registered Bonds in denominations of \$1 and integral multiples thereof and shall be lettered and numbered R-1 and upward. The Series 2024 Bonds shall bear interest from the date of issuance 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 notwithstanding the cancellation of any such Series 2024 Bonds upon any exchange or transfer thereof subsequent to the Record Date and prior to such Interest Payment Date, except that, if and to the extent that there shall be a default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the owners in whose name any such Series 2024 Bonds (or any Bond issued upon transfer or exchange thereof) are registered at the close of business of the Record Date next preceding the date of payment of such defaulted interest. Payment of interest to all Bondholders shall be by check drawn on the designated office of the Paying Agent and mailed to such Bondholder one business day prior to each Interest Payment Date, or, if the Series 2024 bonds are held by the Authority as part of the IFA Program, by wire transfer. The Series 2024 Bonds shall be dated as of the date of their delivery and shall accrue interest from their date of issuance. The Series 2024 Bonds shall bear interest at the annual rate of 2.62%, subject to adjustment at quarterly re-set on October 1, and shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The Series 2024 Bonds shall mature on February 1 and August 1 on the dates and in the amounts set forth below:

<u>Date</u>	<u>Amount</u>
	\$

The Series 2024 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, provided, however that if, as shown by the records of the Trustee, interest on the Series 2024 Bonds shall be in default, Series 2024 Bonds issued in exchange for Series 2024 Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the Series 2024 Bonds or, if no interest has been paid on the Series 2024 Bonds, from the date of issuance and delivery of the Series 2024 Bonds. Series 2024 Bonds



authenticated on or prior to \_\_\_\_\_ 15, 202\_\_ shall bear interest from the date of delivery of the Series 2024 Bonds.

Section 2.3. Payment on Bonds. The principal of and interest, if any, 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 at the designated office of the Trustee without presentation of the Bonds, provided however, presentation of the Bonds is required for payment of the final maturity or redemption in full. All payments on the Series 2024 Bonds shall be made to the person appearing on the Bond registration books of the Trustee as the Registered Owner of the Series 2024 Bonds by wire transfer, upon the written request of the Bondholder to the Trustee on or prior to the Record Date, which direction shall remain in effect until revoked in writing by the Bondholder, of immediately available funds on the interest payment date. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The 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). Notwithstanding anything contained herein, the Series 2024 Bonds shall not need to be presented for payment except upon final maturity or redemption in full.

Section 2.4. Execution; Limited Obligation. The Series 2024 Bonds shall be executed on behalf of the Issuer with the manual, electronic or facsimile signature of its Mayor and attested with the manual, electronic or the facsimile signature of its Clerk-Treasurer and shall have impressed or printed thereon the corporate seal of the Issuer. Such facsimiles shall have the same force and effect as if such officer had manually signed each of the Series 2024 Bonds. If any officer whose signature or facsimile signature shall appear on the Series 2024 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 Series 2024 Bonds, and the interest, if any, 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 Series 2024 Bonds, as to both principal and interest, if any, are not an obligation or liability of 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 funds and accounts held under the Indenture, the TIF Revenues and Taxpayer Payments pledged and assigned for their payment in accordance with the Indenture (collectively, "Trust Estate"). 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, premium, if any, or the interest, if any, on the Series 2024 Bonds. The Series 2024 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, premium, if any, or interest, if any, on the Series 2024 Bonds. No covenant or agreement contained in the Series 2024 Bonds or the Indenture shall be deemed to be a covenant or agreement of the Redevelopment Commission, the Goshen Economic

Development Commission ("Commission"), or of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, Commission or the Issuer in his or her individual capacity, and neither the Redevelopment Commission, Commission, the Issuer nor any member, director, officer, agent, attorney or employee of the Redevelopment Commission, Commission or the Issuer executing the Series 2024 Bonds shall be liable personally on the Series 2024 Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 2024 Bonds.

Section 2.5. Authentication. No Series 2024 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 Series 2024 Bond substantially in the form hereinabove 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 Series 2024 Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Series 2024 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 Series 2024 Bonds issued hereunder.

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

Section 2.7. Delivery of Series 2024 Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee the Series 2024 Bonds in the aggregate principal amount of \$10,718,000. The Trustee shall authenticate such Bonds and deliver them to the Bond Purchaser thereof upon receipt of:

- (i) A copy, duly certified by the Clerk-Treasurer of the Issuer, of the ordinance adopted and approved by the Issuer authorizing the execution and delivery of the Financing Agreement and this Indenture and the issuance of the Series 2024 Bonds.
- (ii) A copy, duly certified by the Secretary of the Redevelopment Commission, of the resolution adopted and approved by the Redevelopment Commission pledging the TIF Revenues and Taxpayer Payments to the payment of the Series 2024 Bonds.
- (iii) Executed counterparts of the Financing Agreement, the Taxpayer Agreement and Indenture.
- (iv) A written request of the Issuer to the Trustee requesting the Trustee to authenticate, or cause to be authenticated, and deliver the Series 2024 Bonds to the Bond Purchaser in the maximum principal amount of \$10,718,000.
- (v) Such other documents as shall be required by the Bond Purchaser.

The proceeds of the Series 2024 Bonds shall be paid over to the Trustee and deposited to the credit of various Funds as hereinafter provided under Section 3.1 hereof.

The Series 2024 Bonds initially issued and authenticated hereunder shall be registered in the name of the Bond Purchaser.

Section 2.8. Issuance of Additional Bonds. One or more series of Bonds in addition to the Series 2024 Bonds ("Additional Bonds") may be authenticated and delivered from time to time for one or more of the purposes of (i) refunding entirely one or more series of Bonds outstanding hereunder, if such Bonds may otherwise be refunded, (ii) advance refunding entirely one or more series of Bonds outstanding hereunder, regardless of whether such Bonds may otherwise be refunded, if the same is then permitted by law by depositing with the Trustee, in trust for the sole benefit of such series of Bonds, cash 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) in a principal amount which will, together with the income or increment to accrue thereon, be sufficient to pay and redeem (when redeemable) and discharge such series of Bonds at or before their respective maturity dates, and (iii) financing the Cost of Construction or of acquiring and/or constructing additional improvements to the Project, and, in each case, obtaining additional funds to pay the costs to be incurred in connection with the issuance of such Additional Bonds, to establish reserves with respect thereto and to pay interest during the estimated construction period of completing the additional improvements, if any. Except as hereinafter provided in subsection (v), each series of Additional Bonds issued hereunder shall be issued on a parity with the Series 2024 Bonds.

Prior to the delivery by the Issuer of any such Additional Bonds there shall be filed with the Trustee:

- (i) A supplement to this Indenture executed by the Issuer and the Trustee authorizing the issuance of such Additional Bonds, specifying the terms thereof and providing for the disposition of the proceeds of the sale thereof.
- (ii) The supplement or amendment to the Financing Agreement and the other instruments, documents, certificates, and opinions referred to in Article IX of this Indenture.
- (iii) A copy, duly certified by the Clerk-Treasurer of the Issuer, of the Bond Ordinance theretofore adopted and approved by the Issuer authorizing the execution and delivery of such supplemental indenture and such supplement to the Financing Agreement and the issuance of such Additional Bonds.
- (iv) A written request of the Issuer to the Trustee to authenticate and deliver such Additional Bonds.
- (v) In the case of Additional Bonds, a certificate showing the requirements for such Additional Bonds contained in the resolution pledging TIF Revenues shall have been met; provided, however, any additional bonds, lease

rentals or other obligations or pledge of the TIF Revenues shall be issued on a junior and subordinate basis, unless: (a) the bond purchaser is the Authority; or (b) the Authority consents to the issuance of additional bonds, lease rentals or other obligations of the Commission payable from TIF Revenues, in whole or in part, and entitled to the pledge of TIF Revenues, on a parity with the pledge of TIF Revenues to the Bonds ("Future Parity Obligations"), in accordance with the requirements set forth in the TIF Pledge Resolution, for the purpose of raising money for future local public improvements or redevelopment projects in, serving or benefiting the Area. The authorization and issuance of such Future Parity Obligations shall be subject to the conditions set forth in the TIF Pledge Resolution.

Any Additional Bonds issued in accordance with the terms of this Section 2.8 shall be secured by this Indenture, but such Additional Bonds may bear such date or dates, such interest rate or rates, if any, and with such maturities, redemption dates and premiums as may be agreed upon by the Issuer, at the direction of the Company, with the consent of the Authority, and the purchaser of such Additional Bonds.

Section 2.9. Mutilated, Lost, Stolen, or Destroyed Bonds. If any Series 2024 Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate, upon the written direction of the Issuer, a new Series 2024 Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Series 2024 Bond, such mutilated Series 2024 Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Series 2024 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.

If any such Series 2024 Bond shall have matured, instead of issuing a duplicate Series 2024 Bond the Issuer may pay the same without surrender thereof; provided, however, that in the case of a lost, stolen or destroyed Series 2024 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 Series 2024 Bond with their fees and expenses in this connection. Any Series 2024 Bond issued pursuant to this Section 2.9 shall be deemed part of the original series of Series 2024 Bonds in respect of which it was issued and an original additional contractual obligation of the Issuer.

Section 2.10. Registration and Exchange of Series 2024 Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration and for the transfer of the Series 2024 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 Series 2024 Bond at the designated corporate trust 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 Series 2024 Bond or Series 2024 Bonds of the same series and the same maturity for a like aggregate principal amount. The execution by the Issuer of any fully registered Series 2024 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 Series 2024 Bond. The Trustee shall not be required to transfer or exchange any fully registered Series 2024 Bond during the period between the Record Date and any interest payment date, if any, of such Series 2024 Bond, nor to transfer or exchange any Series 2024 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 Series 2024 Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal or interest thereon, shall be made only to or upon the order of the registered owner thereof or its legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 2.11. Book-Entry System. The Issuer has determined that the Bonds may in the future be held by a central depository system pursuant to an agreement between the Issuer and The Depository Trust Company and have transfers of the Bonds effected by book-entry on the books of the central depository system. Such book-entry Bonds shall be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds.

With respect to the Bonds registered in the register kept by the Paying Agent in the name of CEDE & CO., as nominee of The Depository Trust Company, the Issuer and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")), of the Bonds with respect to (i) the accuracy of the records of The Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than The Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any Bondholder (including any Beneficial Owner) or any other person, other than The Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

At any time that the Bonds are issued in the name of The Depository Trust Company or CEDE & CO., the Issuer and the Registrar and Paying Agent may treat as and deem The Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to Bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by Bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of The Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the Issuer's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by The Depository Trust Company to the Issuer of written notice to the effect that The Depository Trust Company

has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this Indenture shall refer to such new nominee of The Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO. as nominee of The Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to The Depository Trust Company as provided in a representation letter from the Issuer to The Depository Trust Company.

Upon receipt by the Issuer of written notice from The Depository Trust Company to the effect that The Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of The Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the Issuer kept by the Registrar in the name of CEDE & CO., as nominee of The Depository Trust Company, but may be registered in whatever name or names the Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of the Indenture.

If the Issuer determines that it is in the best interest of the Bondholders that they be able to obtain certificates for the fully registered Bonds, the Issuer may notify The Depository Trust Company and the Registrar, whereupon The Depository Trust Company will notify the Beneficial Owners of the availability through The Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by The Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever The Depository Trust Company requests the Issuer and the Registrar to do so, the Registrar and the Issuer will cooperate with The Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

Prior to any transfer of the Bonds outside the book-entry only system (including, but not limited to, the initial transfer outside the book-entry only system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

If the Bonds shall no longer be restricted to being registered in the name of a depository trust company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the Issuer indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to Bondholders by the Issuer or the Registrar with respect to any consent or other action to be taken by Bondholders, the Issuer or the Registrar, as the case may be, shall establish a record date for such consent or other action and give The Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of The Depository Trust Company or CEDE & CO. or any substitute nominee, the Issuer, the Trustee and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from The Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and The Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the Bondholders for purposes of this Indenture and the Issuer, the Trustee and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the Bondholders. Along with any such certificate or representation, the Registrar may request The Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

If the Book Entry System is no longer in effect, registered owners of Bonds may, upon surrender thereof at the designated corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee, exchange a Bond or Bonds for a Bond or Bonds of equal aggregate principal amount of the same maturity and interest rate of any authorized denominations. For every exchange or transfer of Bonds, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Trustee incurred in connection therewith (except any applicable tax, fee or other governmental charge) shall be paid by the Issuer. The Trustee shall not be obliged to make any transfer or exchange of any Bond called for redemption within thirty days of the redemption date.

(End of Article II)

ARTICLE III.

APPLICATION OF SERIES 2024 BOND PROCEEDS

Section 3.1. Deposit of Funds. (a) The Issuer shall deposit with the Trustee in the: (i) Reserve Fund \$282,000 of proceeds from the sale of the Series 2024 Bonds to fund a portion of the Reserve Requirement; (ii) Capitalized Interest Account of the Construction Fund \$\_\_\_\_\_ of the proceeds from the sale of the Series 2024 Bonds to pay capitalized interest through \_\_\_\_\_ 1, 202\_\_ ; and (iii) Bond Issuance Expense Account of the Construction Fund \$\_\_\_\_\_ of the proceeds from the sale of the Series 2024 Bonds to be used to pay Bond Issuance Costs. The Issuer shall deposit with Trustee in the Construction Fund the remaining proceeds of the Series 2024 Bonds (\$\_\_\_\_\_).

(b) The proceeds of the Series 2024 Bonds shall be paid out from time to time upon submission to the Trustee of a disbursement request form for funds by the Authorized Representative of the Company and approved by the Authority. Such requisition shall be substantially in the form attached as Exhibit C.

(End of Article III)



## ARTICLE IV.

### REVENUE AND FUNDS

Section 4.1. Source of Payment of Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder are not general obligations of the Issuer but are limited obligations payable solely from the Trust Estate as authorized by the Act and as provided herein. 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.

Section 4.2. Bond Fund. The Trustee shall establish and maintain, so long as any of the Bonds are outstanding, a separate fund to be known as the "Bond Fund." Money in the Bond Fund shall be applied as provided in this Section 4.2.

There shall be deposited in the Bond Fund, as and when received by the Trustee: (a) TIF Revenues as provided in Section 4.6; (b) Taxpayer Payments; (c) any amount remaining in the Construction Fund to be transferred to the Bond Fund pursuant to the Indenture upon completion of the Project; (d) all interest and other income derived from investments of Bond Fund moneys as provided herein; and (e) all other moneys received by the Trustee under and pursuant to any of the provisions of the Financing Agreement which are required or which are accompanied by directions that such moneys are to be paid into the Bond Fund. The Issuer hereby covenants and agrees that so long as any of the Bonds issued hereunder are outstanding it will deposit, or cause to be paid to Trustee for deposit in the Bond Fund for its account, sufficient sums of TIF Revenues and Taxpayer Payments promptly to meet and pay the principal of and interest, if any, on the Bonds as the same become due and payable. Nothing herein should be construed as requiring 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 TIF Revenues and Taxpayer Payments.

Moneys in the Bond Fund shall be used by the Trustee to pay interest, if any, and principal on the Bonds as they become due upon each Interest Payment Date, if any, at maturity, upon redemption or upon acceleration and to pay Annual Fees. The Trustee shall transmit such funds to the Paying Agent for the Series 2024 Bonds in sufficient time to insure that such interest, if any, will be paid as it becomes due. If TIF Revenues and Taxpayer Payments on deposit in the Bond Fund are not sufficient to pay the principal and interest, if any, then due, TIF Revenues and Taxpayer Payments shall be applied first to pay unpaid interest, if any, and then to unpaid and due principal; provided, however, that no interest, if any, shall be due or paid on any unpaid interest.

If the real estate taxes actually assessed and paid for each installment on the Real Estate on the Payment Date (each as defined in the Taxpayer Agreement), do not generate sufficient TIF Revenues to pay the Scheduled Payment (as defined in the Taxpayer Agreement), then the City Parties (or the Trustee on behalf of the City Parties) will notify the Company of the amount necessary to remedy the deficiency in the manner set forth in Section 2 of the Taxpayer Agreement.

To the extent TIF Revenues and Taxpayer Payments are not sufficient to pay debt service on the Series 2024 Bonds, funds held in the Reserve Fund may be transferred from the Reserve Fund to the Bond Fund to pay debt service on the Series 2024 Bonds.

Section 4.3. RESERVED

Section 4.4. Construction Fund. The Issuer shall establish with the Trustee a separate fund to be known as the Construction Fund, to the credit of which the deposits are to be made as required by Section 3.1 hereof.

(a) The Construction Fund shall consist of three separate accounts including the Bond Issuance Expense Account, the Capitalized Interest Account and the Construction Account. The Issuer shall deposit: (a) in the Construction Account a total sum of \$\_\_\_\_\_ from the proceeds of the Series 2024 Bonds; (b) in the Bond Issuance Expense Account a total sum of \$\_\_\_\_\_ from proceeds of the Series 2024 Bonds; and (c) in the Capitalized Interest Account a total sum of \$\_\_\_\_\_ from proceeds of the Series 2024 Bonds.

(b) The Issuer shall deposit \$\_\_\_\_\_ from the proceeds of the Series 2024 Bonds into the Bond Issuance Expense Account of the Construction Fund, to pay Bond Issuance Costs. The Bond Issuance Costs set forth in Exhibit A shall be wire transferred at closing to the entities listed as authorized by the Mayor and the Clerk-Treasurer, the authorization evidenced by the execution of this Indenture. Other costs of issuance shall be paid by the Trustee upon submission of an affidavit signed by the Mayor and the Clerk-Treasurer. On \_\_\_\_\_ 1, 202\_\_\_\_, any amounts remaining in the Bond Issuance Expense Account of the Construction Fund shall be transferred to the Construction Account of the Construction Fund and the Bond Issuance Expense Account shall be closed.

(c) The Trustee shall deposit in the Capitalized Interest Account all moneys required to be deposited therein pursuant to the provisions of this Article IV. The Trustee shall invest such funds in accordance with Article IV and shall apply such funds to the payment of interest on the Series 2024 Bonds as it becomes due through and including \_\_\_\_\_ 1, 202\_\_\_\_. Any funds remaining in the Capitalized Interest Account after \_\_\_\_\_ 1, 202\_\_\_\_, shall be transferred to the Construction Account.

(d) The Trustee shall deposit in the Reserve Fund proceeds of the Series 2024 Bonds in the amount of \$282,000 to partially fund the Reserve Requirement at the time of delivery of the bonds as set forth in Section 3.1 and 4.5.

(e) Except as set forth in subparagraph (a), (b), (c) and (d) of this Section 4.4, moneys on deposit in the Construction Account shall be paid out from time to time by the Trustee upon the order of the Issuer to pay, or as reimbursement to the Company for payment made, for the Costs of Construction of the Project upon receipt by the Trustee of an invoice showing the amount paid, or to be paid, and to whom payment is owed and a disbursement request form signed by an Authorized Representative of the Company, and approved by the Authority, in substantially the form of Exhibit C and approved by the Redevelopment Commission, as evidenced by the signature of the President of the Redevelopment Commission (which may not be unreasonably withheld, conditioned or delayed):

- (i) stating that the costs of an aggregate amount set forth in such disbursements request has been or will be made or incurred and were necessary for the construction or equipping of the Project and were or will be made or incurred in accordance with the construction contracts, plans and specifications, purchase contracts or other instruments therefor then in effect or that the amounts set forth in such disbursement request are for allowable Costs of Construction;
- (ii) stating that the amount paid or to be paid, as set forth in such disbursements request, is reasonable and represents a part of the amount payable for the Costs of Construction during construction of the Project or the costs of equipping the Project all in accordance with the cost budget; and that such payment was not paid in advance of the time, if any, fixed for payment and was made in accordance with the terms of any contracts or instruments applicable thereto and in accordance with usual and customary practice under existing conditions;
- (iii) stating that no part of the such costs was included in any disbursement request previously filed with the Trustee under the provisions hereof;
- (iv) stating that such costs are appropriate for the expenditure of proceeds of the Bonds under the Act; and
- (v) stating a recap of vendors and the amount paid and/or to be paid to each and copies of invoices paid and/or to be paid with copies of checks used for any previously made payment and, if a vendor is an unincorporated entity, the taxpayer identification number for such vendor;

(f) Completion Certificate. The Company shall deliver to the Trustee, the Authority and the Issuer within thirty (30) days after the completion of the Project, a written completion certificate:

- (i) stating that the Project has been constructed and/or acquired, delivered and installed on the Project site and the date of completion; and
- (ii) stating that the Company is of the opinion that the Project has been fully paid for and that no claim or claims exist against the Issuer or the Company or against the property of the Issuer or the Company out of which a lien based on furnishing labor or material for the Project exists or might ripen and that the Company will not be submitting any further request for a disbursement from the Construction Account.

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, **the Authority** and the Trustee a certificate of the Company or Issuer when and as such claim or claims shall have been fully paid.

(g) Disposition of Construction Fund Moneys After Completion. If, after payment by the Trustee of all orders theretofore tendered to the Trustee under the provisions of subparagraph (c) of this Section 4.4 and after receipt by the Trustee and the Authority of the completion

certificate mentioned in subparagraph (d) of this Section 4.4, there shall remain any balance of moneys in the Construction Fund, the Trustee shall, transfer all moneys then in the corresponding account (except moneys reserved to pay any disputed claims described in the completion certificate required in Section 4.4(e) hereof) to the Bond Fund and the Construction Fund shall be closed. The Trustee, as directed in writing by the Company, shall use any amount transferred to the Bond Fund from the Construction Fund, to redeem the Series 2024 Bonds pursuant to Section 5.1(a) **[and (b)]** hereof at the earliest redemption date.

Section 4.5. Debt Service Reserve Fund. On the date of delivery of the Series 2024 Bonds proceeds of the Series 2024 Bonds in the amount of \$282,000 shall be deposited into the herein created Debt Service Reserve Fund ("Reserve Fund") on deposit with the Trustee. The Issuer shall be responsible for monitoring and maintaining the Reserve Requirement as set forth below. The initial deposit or the balance accumulated in the Reserve Fund shall equal the maximum annual principal and interest due on the Series 2024 Bonds (\$\_\_\_\_\_) ("Reserve Requirement"). If no initial deposit is made or if the balance in the Reserve Fund does not equal the Reserve Requirement, such deficiency shall be funded from excess TIF Revenues, if any, as determined by the Redevelopment Commission with the advice of the Issuer's municipal advisor, collected in the Allocation Area on \_\_\_\_\_ and \_\_\_\_\_ of each year, beginning with \_\_\_\_\_, 20\_\_\_\_.

If the initial deposit into the Reserve Fund does not equal the Reserve Requirement or if no deposit is made, an amount of TIF Revenues shall be credited to the Reserve Fund on each December 15 and June 15 (after providing for the requirements set forth in Section 4.2 hereof) until the balance therein equals the Reserve Requirement. The semiannual deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds. If, at any time, the balance is less than the Reserve Requirement, the shortfall will be made up from TIF Revenues after making the deposits to the Bond Fund. Moneys deposited and maintained in the Reserve Fund shall be applied to the payment of the principal of and interest on the Bonds to the extent that amounts in the Bond Fund are insufficient to pay debt service when due and payable. If moneys in the Reserve Fund are transferred to the Bond Fund to pay debt service on the Bonds, the depletion of the balance on the Reserve Fund shall be made up from the next available TIF Revenues, after the required deposits to the Bond Fund are made. Any moneys in the Reserve Requirement shall be deposited in the Bond Fund and applied as set forth in Section 4.2 hereof.

The Issuer, upon the advice of its municipal advisor, hereby finds that funding the Reserve Fund is reasonably required and that the Reserve Requirement is no larger than necessary to market the Bonds. The Issuer further finds that the Reserve Requirement is directly related to the Project because the Bonds could not be issued to fund the Project without the Reserve Fund.

The debt service reserve requirement, if any, for any Future Parity Obligations shall be set forth in the resolution authorizing the party obligations.

Section 4.6. TIF Revenues. The Clerk-Treasurer of the Issuer shall set aside immediately upon receipt the TIF Revenues and Taxpayer Payments into the Issuer's Allocation Fund for the Allocation Area as created by IC 36-7-14. On or before each December 15 and

June 15 commencing \_\_\_\_\_ 15, 202\_, the Issuer shall transfer from the Issuer's allocation fund referenced in this Section to the Trustee, all TIF Revenues received. The Trustee is hereby directed to deposit to the Bond Fund on each December 15 and June 15 all TIF Revenues and Taxpayer Payments received and shall use such amounts deposited to the Bond Fund in accordance with Section 4.2 hereof. Any amount of TIF Revenues remaining after the deposits to the Bond Fund shall be used upon the written direction of the Issuer to optionally redeem, on such December 15 and June 15, the outstanding Bonds in accordance with Section 5.1 hereof, or by the Issuer for such other lawful purposes for which the Issuer receives the prior written consent of the Company.

Section 4.7. 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 Company. Such moneys shall be held in trust and applied in accordance with the provisions of this Indenture.

Section 4.8. Investment. Moneys on deposit in the Funds established in this Article IV hereof shall be invested as provided in Section 6.8 hereof.

(End of Article IV)

ARTICLE V.

REDEMPTION OF SERIES 2024 BONDS BEFORE MATURITY

Section 5.1. Redemption Dates and Prices. (a) The Series 2024 Bonds are subject to optional redemption at the option of the Issuer, prior to maturity on \_\_\_\_\_ 1, 20\_\_, or any date thereafter, upon sixty (60) days' notice to the Trustee, in whole or in part, in inverse order of maturity, and by lot within maturities, at face value, with the following premiums:

\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_  
or thereafter on or before \_\_\_\_\_ 30, 20\_\_;  
\_\_\_% if redeemed on \_\_\_\_\_ 1, 20\_\_  
or thereafter on or before \_\_\_\_\_ 30, 20\_\_;  
0% if redeemed on \_\_\_\_\_ 1, 20\_\_  
or thereafter prior to maturity;

plus in each case accrued interest to the date fixed for redemption; provided, however, if the Series 2024 Bonds are sold to the Residential Housing Infrastructure Assistance Program ("IFA Program") and registered in the name of the Authority, the Bond shall not be redeemable at the option of the Issuer unless and until consented to by the Authority.

(b) [Mandatory Sinking Fund Redemption.

The Series 2024 Bonds maturing on \_\_\_\_\_ 1, 20\_\_ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the purchase amount thereof to the date of redemption in accordance with the following schedule:

<u>Date</u>	<u>20__ Term Bond</u>	<u>Amount</u>
		\$

\*

\*Final Maturity]

Section 5.3. Notice of Redemption. In the case of redemption of Series 2024 Bonds pursuant to Section 5.1 hereof, notice of the call for any such redemption identifying the Series 2024 Bonds, or portions of fully registered Series 2024 Bonds, to be redeemed shall be given by mailing a copy of the redemption notice by first class mail not less than sixty (60) days nor more than sixty-five (65) days prior to the date fixed for redemption to the registered owner of each Series 2024 Bond to be redeemed at the address shown on the registration books. Such notice of redemption shall specify the CUSIP number, if applicable, and, in the event of a partial redemption the Series 2024 Bond numbers and called amounts of each Series 2024 Bond, the redemption date, redemption price, interest rate, if any, maturity date and the name and address of the Trustee and the Paying Agent; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any such registered Series 2024 Bond shall not affect the validity of any proceedings for the redemption of other Series 2024 Bonds.

On and after the redemption date specified in the aforesaid notice, such Series 2024 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 5.4. Cancellation. All Series 2024 Bonds which have been redeemed in whole shall be canceled and destroyed by the Trustee in accordance with its destruction policy in effect and shall not be reissued and a certificate of destruction shall be furnished, upon written request, by the Trustee to the Issuer and the Authority.

Section 5.5. Redemption Payments. Prior to the date fixed for redemption, funds shall be deposited with Trustee to pay, and Trustee is hereby authorized and directed to apply such funds to the payment of the Series 2024 Bonds or portions thereof called, together with accrued interest thereon, if any, to the redemption date. Upon the giving of notice and the deposit of funds for redemption, interest, if any, on the Series 2024 Bonds thus called shall no longer accrue from and after the date fixed for redemption. No payment shall be made by the Paying Agent upon any Series 2024 Bond until such Series 2024 Bond shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.9 hereof with respect to any mutilated, lost, stolen or destroyed Series 2024 Bond. So long as the Bond Purchaser is the Bondholder, the Series 2024 Bond is only required to be presented upon redemption in full.

Section 5.6. Partial Redemption of Bonds. If fewer than all of the Series 2024 Bonds at the time outstanding are to be called for redemption, the maturities of Series 2024 Bonds or portions thereof to be redeemed shall be selected by the Trustee at the direction of the Authority. If fewer than all of the Series 2024 Bonds within a maturity are to be redeemed, the Trustee shall select by lot (meaning also random selection by computer) in such manner as the Trustee, in its discretion, may determine, the Series 2024 Bonds or portions of Series 2024 Bonds within such maturity that shall be redeemed. Particular Series 2024 Bonds or portions thereof shall be redeemed in part in \$1 denominations and integral multiples thereof until the Series 2024 Bonds are paid in full.

(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, premium, if any, and interest, if any, on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal, interest (if any) and premium, if any, on the Bonds are payable solely and only from TIF Revenues and Taxpayer Payments which payments are hereby specifically pledged and assigned to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture should be considered as pledging any other funds or assets of the Issuer. The Bonds, and the interest payable thereon, if any, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Bonds, as to both principal and interest, if any, are not an obligation or liability of 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 TIF Revenues and Taxpayer Payments. 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, premium, if any, or the interest, if any, 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, premium, if any, or interest, if any, on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of the Redevelopment Commission, the Commission, the Issuer or of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, Commission or the Issuer in his or her individual capacity, and neither the Redevelopment Commission, Commission, the Issuer nor any member, director, officer, agent, attorney or employee of the Redevelopment Commission, 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.

If the real estate taxes actually assessed and paid for each installment on the Real Estate on the Payment Date, do not generate sufficient TIF Revenues to pay the Scheduled Payment, then the City Parties (or the Trustee on behalf of the City Parties) will notify the Company of the amount necessary to remedy the deficiency in the manner set forth in Section 2 of the Taxpayer Agreement and Section 4.2 hereof.

As set forth in Section 4.2 hereof, to the extent TIF Revenues and Taxpayer Payments are not sufficient to pay debt service on the Series 2024 Bonds, funds held in the Reserve Fund may be transferred from the Reserve Fund to the Bond Fund to pay debt service on the Series 2024 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, and to pledge TIF Revenues and Taxpayer Payments 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, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights generally and subject to the valid exercise of the constitutional powers of the Issuer, the State of Indiana and the United States of America.

Section 6.3. Filing of Indenture, Financing Agreement and Security Instruments. The Issuer, upon the written direction and at the sole expense of the Company, shall cause this Indenture, the Financing Agreement, the Taxpayer Agreement 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. This Section 6.4 shall impose no duty to record or file the instruments noted above where filing or recordation is not required by law in order to perfect a security interest. Continuation of financing statements may be filed without consent of the debtor parties thereto.

Section 6.4. Inspection of Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the revenues derived from the Project shall at all times be open to inspection by such accountants or other agents as the Trustee may from time to time designate.

Section 6.5. List of Bondholders. The Trustee will keep on file at the designated corporate trust 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 Company or by holders and/or owners (or a designated representative thereof) of 25% or more in principal amount of Bonds then outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

Section 6.6. 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 Company under and pursuant to the Financing Agreement and the Taxpayer Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

Section 6.7. Investment of Funds. Moneys in the Funds established hereunder may be invested in Qualified Investments at the written direction of the Issuer, as set forth in **[the attached Exhibit E, incorporated herein by reference,]** to the extent and in the manner provided for in Section 3.7 of the Financing Agreement. In the absence of direction the Trustee

shall hold such funds uninvested. The Trustee shall not be liable or responsible for any loss resulting from any such investment. The interest accruing thereon and any profit realized from such investments shall be credited, and any loss resulting from such investments shall be charged to the fund in which the money was deposited.

The Trustee may conclusively rely upon the Issuer's written instructions as to both the suitability and legality of the directed investments. Ratings of permitted investments shall be determined at the time of purchase of such permitted investments and without regard to ratings subcategories. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries and may charge its ordinary and customary fees for such trades, including investment maintenance fees.

Although the Issuer and the Company each recognize that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Company hereby agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 6.8. Non-presentment of Bonds. If any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay any such Bond shall have been made available to Paying Agent 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 Paying Agent to hold such funds for five (5) 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 Paying Agent not so applied to the payment of Bonds within five (5) years after the date on which the same shall become due shall escheat to the State of Indiana, in accordance with applicable Indiana law.

Section 6.9. Direction of Bondholders. Whenever any action, direction or consent is required of the Trustee that is not authorized or permitted under the Indenture, the Trustee shall consult with the holders of the Bonds and shall take such action, give such direction or give such consent as the Trustee shall be directed in writing by the Requisite Bondholders.

Section 6.10. Reserved.

(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) Default in the due and punctual payment of the interest on any bonds hereby secured and outstanding;

(b) Default in the due and punctual payment of the principal of any bond hereby secured, whether at the stated maturity thereof, or upon proceedings for the redemption thereof, or upon the maturity thereof by declaration as hereinafter provided;

(c) any uncured event of default as defined in Sections 5.1(a)(i), (a)(ii), (a)(iii), (a)(iv) or (a)(v) of the Financing Agreement shall occur and be continuing; or

(d) 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 Company 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.

Section 7.2. Reserved.

Section 7.3. 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, premium, if any, and interest, if any, on the Bonds then outstanding, to enforce any obligations of the Issuer hereunder, and of the Company under the Financing Agreement and the Taxpayer Agreement.

(b) Upon the occurrence of an event of default, and if directed in writing so to do by the Requisite Bondholders and indemnified as provided in Section 8.1 hereof, the Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this Article as the Trustee shall be directed in writing to exercise by the Requisite 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 7.4. Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the holders of all Bonds then outstanding 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, and provided that the Trustee is obligated to pursue its remedies under the provisions of Section 7.3 hereof before any other remedies are sought.

Section 7.5. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees, 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:

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

First: To the payment to the persons entitled thereto of all installments of interest, if any, 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 thereto, without any discriminations or privilege; and

Second: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest, if any, 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, if any, 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 Company or its successors or assigns, upon the disbursement request of the Company, except for any remaining TIF Revenues and Taxpayer Payments which shall be paid to the Issuer, or to whomsoever may be lawfully entitled to receive the same upon its disbursement request, or as any court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over any other installment of interest, according to the amounts due respectively for principal and interest, if any, to the persons entitled thereto without any discrimination or privilege.

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

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, if any, 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 7.6. 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 7.5** hereof, be for the equal benefit of the holders of the outstanding Bonds.

Section 7.7. 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 holders of all Bonds then outstanding 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 7.8. 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 Company, **the Authority** and the Trustee shall be restored to their former positions and rights hereunder, respectively, with respect to the Trust Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 7.9. 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 and/or premium, if any, and/or interest (if any) exists, or (2) all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived (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, if any, 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, if any, or all arrears of payments of principal and premium, if any, when due, as the case may be, and all expenses of the Trustee in connection with such default 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 AND PAYING AGENT

#### Section 8.1. Acceptance of the Trusts.

(a) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee may not be relieved from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct. If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.

(b) 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 Company). 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.

(c) 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 Company under the Financing Agreement; but the Trustee may require of the Issuer or the Company 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.

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

(e) 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 Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) 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 Company 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 Company 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 Company as conclusive evidence that such ordinance or resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct in connection with the performance of its duties hereunder.

(h) 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 designated 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.

(i) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the Trust Estate.

(j) 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 Trust Estate, and to take such memoranda from and in regard thereto as may be desired.

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



(l) 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.

(m) Before taking any action under this Section 8.1 and under Article VII hereunder the Trustee may require that a satisfactory indemnity bond or other indemnity be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, including liability incurred in connection with the enforcement of the terms and provisions of this Indenture, 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.

(n) All moneys received by the Trustee or the Paying Agent 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. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(o) 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 as it shall be directed to in writing by the Requisite Bondholders.

(p) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(q) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, except for any information provided by the Trustee, and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds. Under no circumstances does the Trustee assume any responsibility or liability for the issuance of the Bonds as obligations the interest on which is excludable from gross income for purposes of federal income taxation or for the maintenance of such tax-exempt status subsequent to the date of issuance of the Bonds.

(r) The Trustee shall not be accountable for the use or application by the Company of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or drawn down by the Company in accordance with the provisions of this Indenture and the Financing Agreement or for the use and application of money received by any paying agent.

Section 8.2. Fees, Charges and Expenses of Trustee and Paying Agent. The Trustee and Paying Agent shall be entitled to payment and/or reimbursement for fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee or Paying Agent in connection with such services. 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 or principal of, or premium, if any, on any Bond for the foregoing advances, fees, costs and expenses incurred. In the event of a bankruptcy, the fees and expenses of the Trustee shall constitute administrative expenses.

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 or by recognized overnight delivery service 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, the Trustee shall intervene on behalf of Bondholders subject to the provisions of Section 8.1(l), upon being directed in writing by the owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding to intervene in such proceeding. 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 by first-class 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 Issuer with the written consent of the Authority. Such notice to the Issuer and the Company may be served personally, sent by first-class mail. The Trustee agrees to deliver the Bond Register and any other pertinent material to the Issuer or successor Trustee on or before the effective date of resignation. Absent the appointment of a successor Trustee at the end of the 30-day notice period, all funds held in trust by the Trustee within the Trust Funds shall also be remitted to the Issuer.

Section 8.7. Removal of the Trustee. The Trustee may be removed at any time by the Issuer with the prior written consent of the Authority by an instrument or concurrent instruments

in writing delivered to the Trustee and to the Issuer and signed by all the Bondholders. The fees and expenses of the Trustee shall be paid prior to the effectiveness of any removal. The Issuer shall notify each registered owner of Bonds then outstanding by first-class mail of the removal of the Trustee. Upon such removal, the Trustee agrees to deliver the Bond Register and all other pertinent material to the Issuer or successor Trustee upon request of the Issuer. All funds held in trust by the Trustee shall also be remitted to the Issuer or another financial institution as directed by the Authority.

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 company or bank, having a reported capital and surplus of not less than One Hundred Million Dollars (\$100,000,000) 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, the Authority and the Company 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.

Section 8.11. Appointment of Paying Agent and Registrar; Resignation or Removal of Paying Agent. The Trustee is hereby appointed as "Registrar" and "Paying Agent" under this Indenture. If any Bonds are sold to the Authority as part of its IFA Program, the Clerk-Treasurer may serve as Registrar and Paying Agent and in that case is hereby charged with the duties of a Registrar and Paying Agent. Any Registrar and Paying Agent may at any time resign and be discharged of the duties and obligations created by this instrument and any supplemental indenture by giving at least 60 days' written notice to the Issuer, the Authority and the Trustee. Any Registrar and Paying Agent may be removed at any time by an instrument, filed with such Registrar, Paying Agent and the Trustee and signed by the Issuer and the Company, with the written consent of the Authority. Any successor Registrar and Paying Agent shall be appointed by the Issuer at the direction of the Authority and shall be a bank or trust company duly organized under the laws of any state of the United States or a national banking association, in each case having a capital stock and surplus aggregating at least \$100,000,000, willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys or securities held by it as Paying Agent to its successors, or if there is no successor, to the Trustee.

Section 8.12. Indemnification of Trustee. To the extent permitted by law, the Issuer hereby agrees to indemnify and save harmless the Trustee from all losses, liabilities, costs and expenses, including attorney's fees and expenses, which may be incurred by it as a result of its acceptance of or arising from the performance of its duties hereunder, unless such losses, liabilities, costs and expenses shall have been finally adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee, and such indemnification shall survive its resignation or removal of the Trustee or the defeasance of this Indenture.

Section 8.13. Concerning Trustee as Repository for Benefit of Bondholders. The Trustee shall have no duty to review or analyze information such as financial statements provided by the Issuer and shall hold such financial statements and reports solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or default or event of default which may be disclosed therein in any manner.

(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 and such does not adversely affect the Bondholders; or

(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; or

(c) To subject to this Indenture additional security, revenues, properties or collateral;  
or

(d) 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

(e) To issue Additional Bonds in accordance with the provisions of Section 2.8 hereof; or

(f) For a reduction in the Reserve Requirement.

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, or reduction of any premium payable on the redemption of, 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) the creation of any lien prior to or on a parity with the lien of this Indenture without the consent of the holders of all the Bonds at the time outstanding, or (d) 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 (e) a modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (f) a privilege or priority of any Bond over any other Bonds, or (g) the deprivation of the Owners of any Series 2024 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 Company shall not become effective unless and until the Company 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 or recognized overnight delivery service to the Company at least fifteen (15) days prior to the proposed date of execution and delivery of any such supplemental indenture.

Notwithstanding anything in this Indenture to the contrary, for so long as the Bonds are held by the Authority, as part of the IFA Program, the Indenture shall not be amended without the prior written consent of the Authority.

Section 9.3. Legal Opinion. In connection with a supplemental indenture being entered into pursuant to the provisions of this Article IX, the Trustee shall receive an opinion of Bond Counsel to the effect that said supplemental indenture is authorized and permitted by the terms of this Indenture in compliance with all conditions precedent, that it is proper for the Trustee to join in the execution of such supplemental indenture and that the Trustee may conclusively rely on such opinion. The Trustee may conclusively rely on the written determination of the Issuer with respect to a supplemental indenture entered into pursuant to Section 9.1(d).

Section 9.4. Supplemental Indenture Effectiveness Upon Trustee. The Trustee need not enter into or consent to any supplemental indenture which it determines to be materially prejudiced to it.

(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 Company 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, or (iii) in connection with any other change therein which, in the judgment of the Issuer, in its sole discretion, is not to the prejudice of the Bondholders; provided, however, for so long as the Bonds are held by the Authority, as part of its IFA Program, the Financing Agreement shall not be amended without the prior written consent of the Authority.

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 Authority given and procured as in Section 9.2 provided.

Section 10.3. Legal Opinion. In connection with an amendment, change or modification to the Financing Agreement being consented to pursuant to the provisions of this Article X, the Trustee shall receive an opinion of Bond Counsel to the effect that said consent to the amendment, change or modification in question is authorized and permitted by the terms of this Indenture in compliance with all conditions precedent, and that it is proper for the Trustee to join in such amendment, change or modification and that the Trustee may conclusively rely on such opinion.

Section 10.4. Amendments, etc.; Consent of Trustee. The Trustee need not consent to any amendment, change or modification of the Financing Agreement which it determines to be materially prejudiced to it. The Issuer and the Trustee shall not permit any modification of the Taxpayer Agreement without the prior written consent of the Bond Purchaser.

(End of Article X)

## ARTICLE XI.

### MISCELLANEOUS

Section 11.1. Satisfaction and Discharge. All rights and obligations of the Issuer and the Company under the Financing Agreement and this Indenture shall terminate, and such instruments shall cease to be of further effect, upon direction of the Issuer, the Trustee shall execute and deliver all appropriate instruments evidencing and acknowledging the satisfaction of this Indenture, and shall assign and deliver to the Company any moneys and investments in all Funds established hereunder (except moneys or investments held by the Trustee for the payment of principal of and interest, if any, on the Bonds and except for any TIF Revenues and Taxpayer Payments which shall be delivered to the Issuer) when:

(a) all fees and expenses of the Trustee and the Paying Agent shall have been paid;

(b) the Issuer and the Company shall have performed all of their covenants and promises in the Financing Agreement, the Taxpayer Agreement and 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 Company, 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 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; provided, however, none of the Bonds may be advance refunded if such advance refunding is not permitted by the laws of Indiana.

Section 11.2. Defeasance of Bonds. Any Bond shall be deemed to be paid and no longer Outstanding within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal and interest of such Bond either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America, the principal of and the interest on which when due will provide sufficient moneys, and (b) all necessary and proper fees, compensation, indemnities and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for. At such time, and prior to the effectiveness of such defeasance, the Trustee shall be provided with a defeasance opinion by nationally recognized bond counsel. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Governmental Obligations.



Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with Section 5.2 of this Indenture, or if the Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until the Company shall have given the Trustee in form satisfactory to the Trustee irrevocable instructions to notify, as soon as practicable, the Owners of the Bonds, that the deposit required by the preceding paragraph has been made with the Trustee and that the Bonds are deemed to have been paid in accordance with this *Section 11.2* and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption premium, if any, on said Bonds, plus interest, if any, thereon to the due date thereof; or (b) the maturity of the Bonds.

All moneys so deposited with the Trustee as provided in this Section 11.2 may also be invested and reinvested, at the written direction of the Company, in Governmental Obligations, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Governmental Obligations in the hands of the Trustee pursuant to this Section 11.2 which is not required for the payment of principal of the Bonds and interest and premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Section 11.2, all moneys or Governmental Obligations set aside and held in trust pursuant to the provisions of this Section 11.2 for the payment of Bonds (including premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including the premium thereon, if any) with respect to which such moneys or Governmental Obligations have been so set aside in trust.

Anything in Article IX hereof to the contrary notwithstanding, if moneys or Governmental obligations have been deposited or set aside with the Trustee pursuant to this Section 11.2 for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section 11.2 shall be made without the consent of the Owner of each Bond affected thereby.

In determining the sufficiency of the moneys and/or Government Obligations deposited pursuant to this Section 11.2, the Trustee shall receive, at the expense of the Company, and may rely on a verification report of a firm of nationally recognized independent certified public accountants.

The right to register the transfer of or to exchange Bonds shall survive the discharge of this Indenture.

**Section 11.3. Cancellation of Series 2024 Bonds.** If the Bondholders of any Series 2024 Bonds presents that Bond to the Trustee with an instrument satisfactory to the Trustee waiving all claims for payment of that Bond, the Trustee shall cancel that Series 2024 Bond and the Bondholder shall have no further claim against the Trust Estate, the Issuer or the Company with respect to that Series 2024 Bond.

Section 11.4. 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 Paying Agent, to the persons entitled thereto, of the principal (and premium, if any) and interest, if any, 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 11.5. 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 or the Financing Agreement 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 following persons shall not be deemed to be outstanding hereunder for the purpose of determining whether such requirement has been met: the Issuer, any of its members, the Company, or the directors, trustees, officers or members of the Company. For all other purposes, Bonds held by or for the account of such person shall be deemed to be outstanding hereunder. 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 company, bank or bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company 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 Bond until the Trustee shall have received notice in writing to the contrary.

Section 11.6. 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 Company, 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 Company and the holders of the Bonds as herein provided.

Section 11.7. 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 11.8. 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 or by recognized overnight delivery service. The Issuer, the Company, 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 provided in Section 9.4 of the Financing Agreement.

Notwithstanding the foregoing, the Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and the Financing Agreement and delivered using Electronic Means; provided, however, that the Issuer and the Company, as the case may be, shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Issuer and the Company, as the case may be, whenever a person is to be added or deleted from the listing. If the Issuer and the Company, as the case may be, elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Issuer and the Company each understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Issuer and the Company, as the case may be, shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Issuer and the Company, as the case may be, and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer and the Company, as the case may be. The Trustee shall not be liable for any losses, costs or expenses arising directly or

indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Issuer and the Company each agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer and the Company, as the case may be; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

Section 11.9. 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 11.10. Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State of Indiana.

Section 11.11. Immunity of Officers and Directors. No recourse shall be had for the payment of the principal of or premium 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 11.12. 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 with the same force and effect as if made on such date.

Section 11.13. Reimbursement. The Company shall be reimbursed for any debt service payments made on the Series 2024 Bonds from Taxpayer Payments, on each February 1 and August 1 following payment in full of amounts due on the Series 2024 Bonds and any amount due to the Reserve Fund, from excess TIF Revenues, if any, not needed to make payment then due on the Series 2024 Bonds or to replenish the Reserve Fund, so long as the payments due on the Series 2024 Bonds have been paid and are up to date and so long as no Event of Default exists hereunder or under the Series 2024 Bonds.

(End of Article XI)

IN WITNESS WHEREOF, the City of Goshen, Indiana, has caused these presents to be signed in its name and behalf by its Mayor, countersigned by its Clerk-Treasurer and its corporate seal to be hereunto affixed and attested by its Clerk-Treasurer, and to evidence its acceptance of the trusts hereby created, The Bank of New York Mellon Trust Company, N.A., located in Indianapolis, Indiana, has caused these presents to be signed in its name and behalf by, its official seal to be hereunto affixed, and the same to be attested by, its duly authorized officers, all as of the day and year first above written.

CITY OF GOSHEN, INDIANA

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk-Treasurer

SEAL

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

This instrument prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900,  
Indianapolis, Indiana 46282-0200.

EXHIBIT A

Bond Issuance Costs

Ice Miller LLP

\$

Baker Tilley Municipal Advisors, LLC  
Municipal Advisor Fees

---

---

The Bank of New York Mellon Trust Company, N.A., as Trustee  
Acceptance Fee  
Annual Fee (1st annual payment)

EXHIBIT B

Disbursement Request Form



FINANCING AND COVENANT AGREEMENT

BETWEEN

CHERRY CREEK, LLC

AND

CITY OF GOSHEN, INDIANA

\$10,718,000

TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS OF 2024  
(CHERRY CREEK PROJECT)

Dated as of October 1, 2024

The rights of the Issuer hereunder have been assigned to The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana, as Trustee under a Trust Indenture dated as of the date hereof, from the Issuer.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS AND EXHIBITS.....	3
Section 1.1. Terms Defined .....	3
Section 1.2. Rules of Interpretation .....	6
ARTICLE II. REPRESENTATIONS; USE OF BOND PROCEEDS.....	8
Section 2.1. Representations by Issuer .....	8
Section 2.2. Representations by Company .....	8
ARTICLE III. PARTICULAR COVENANTS OF THE COMPANY .....	11
Section 3.1. Consent to Assignments to Trustee .....	11
Section 3.2. Payment of Principal, Premium and Interest; Payments Pledged.....	11
Section 3.3. Maintenance of Corporate Existence .....	12
Section 3.4. Reserved .....	12
Section 3.5. Indemnity.....	13
Section 3.6. Funding of Indenture Funds; Investments .....	13
Section 3.7. Reserved .....	14
Section 3.8. Completion of Project.....	14
Section 3.9. Sale or Substitution, of Project .....	14
Section 3.10. Reserved .....	14
ARTICLE IV. APPLICATION OF BOND PROCEEDS .....	15
Section 4.1. Use of 2024 Bond Proceeds by Issuer .....	15
Section 4.2. Use of TIF Revenues .....	15
Section 4.3. Estoppel Certificate .....	15
ARTICLE V. EVENTS OF DEFAULT AND REMEDIES THEREFOR .....	16
Section 5.1. Events of Default .....	16
Section 5.2. Remedies Cumulative.....	17
Section 5.3. Delay or Omission Not a Waiver.....	17
Section 5.4. Waiver of Extension, Appraisalment or Stay Laws.....	17
Section 5.5. Remedies Subject to Provisions of Law .....	17
ARTICLE VI. IMMUNITY .....	18
Section 6.1. Immunity.....	18
ARTICLE VII. SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT.....	19

Section 7.1.	Supplements and Amendments to this Financing Agreement.....	19
ARTICLE VIII.	DEFEASANCE .....	20
Section 8.1.	Defeasance.....	20
ARTICLE IX.	MISCELLANEOUS PROVISIONS .....	21
Section 9.1.	Financing Agreement for Benefit of Parties Hereto .....	21
Section 9.2.	Severability .....	21
Section 9.3.	Limitation on Interest .....	21
Section 9.4.	Addresses for Notice and Demands.....	21
Section 9.5.	Successors and Assigns .....	22
Section 9.6.	Counterparts.....	22
Section 9.7.	Governing Law .....	22

## FINANCING AND COVENANT AGREEMENT

This is a FINANCING AND COVENANT AGREEMENT, dated as of October 1, 2024 ("Financing Agreement") between CHERRY CREEK, LLC, or its affiliates, a limited liability company duly organized and validly existing under the laws of the State of Indiana ("Company") and the CITY OF GOSHEN, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana ("Issuer" and "City").

Indiana Code, Title 36, Article 7, Chapters 11.9, 12, 14 and 25 as supplemented and amended (collectively, "Act"), authorizes and empowers the Issuer to issue revenue bonds and to provide the proceeds therefrom for the purpose of financing costs of economic development facilities and infrastructure for diversification of economic development and the promotion of job opportunities in or near such City and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes;

WHEREAS, the Goshen Redevelopment Commission ("Redevelopment Commission") adopted a declaratory resolution on July 14, 2012, as supplemented and amended to date (collectively, as amended, "Declaratory Resolution"), as confirmed by a confirmatory resolution adopted on November 13, 2012, as supplemented and amended to date, establishing the boundaries of the Area;

The Declaratory Resolution approved the economic development plan, as amended to date (collectively, as amended, "Plan") for the Area which Plan contained specific recommendations for economic development in the Area, and the Declaratory Resolution established certain allocation areas, including the Southeast Housing TIF Allocation Area ("Allocation Area"), as an allocation area in accordance with IC 36-7-14-39 for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Area;

The Issuer, upon finding that the Development and the proposed financing of the construction of the Project will lead to the creation of employment opportunities in the City and the furtherance of private investment; assist the City with the existing housing shortage by providing additional housing options; 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;

The Issuer intends to issue its Taxable Economic Development Revenue Bonds of 2024 (Cherry Creek Project) in the aggregate principal amount of \$10,718,000 ("Series 2024 Bonds"), pursuant to the Trust Indenture dated as of October 1, 2024 ("Indenture") between the Issuer and The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana, as Trustee ("Trustee"), and to provide the proceeds of the Series 2024 Bonds pursuant to the provisions of this Financing Agreement to the Company to finance the Project and Costs of Construction (each as hereinafter defined);

This Financing Agreement provides for the payment by the Issuer of the Series 2024 Bonds from the TIF Revenues and Taxpayer Payments (each as defined herein);

The Series 2024 Bonds issued under the Indenture will be payable solely out of TIF Revenues, Taxpayer Payments or Bond proceeds.

#### PRELIMINARY STATEMENT

In consideration of the premises, the use of the proceeds of the Series 2024 Bonds and of other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the City have executed and delivered this Financing Agreement.

This Financing Agreement is executed upon the express condition that if the Company shall keep, perform and observe all and singular the covenants and promises expressed in this Financing Agreement to be kept, performed and observed by the Company, then this Financing Agreement and the rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

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

## ARTICLE I.

### DEFINITIONS AND EXHIBITS

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

"Act" means, collectively, Indiana Code 36-7-11.9, -12, -14 and -25.

"Additional Bonds" means the additional parity bonds authorized to be issued by the Issuer pursuant to Section 2.8 of the Indenture including any bonds issued in substitution or replacement therefor.

"Allocation Area" means the Southeast Housing TIF Allocation Area.

"Annual Fees" means annual Trustee Fees and annual fees related to monitoring Tax Increment in an amount not to exceed \$5,000.

"Area" means the Southeast Economic Development Area.

"Authority" means the Indiana Finance Authority, as purchaser of the Bonds.

"Bond Counsel" means a nationally recognized firm of municipal bond attorneys acceptable to the Trustee.

"Bond Fund" means the Bond Fund established by Section 4.2 of the Indenture.

"Bond Issuance Costs," namely the costs, fees and expenses incurred or to be incurred by the Issuer and the Company in connection with the issuance and sale of the Series 2024 Bonds, the fees and disbursements of Bond Counsel, fees of the Issuer's municipal advisor, the acceptance fee and first annual payment of the Trustee, 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 fees and disbursements of counsel to the Company, the fees and disbursements of the Company's accountants, the fees and disbursements of counsel to the Issuer, the fees and disbursements of counsel to the purchasers of the Bonds, the costs of preparing or printing the Series 2024 Bonds and the documentation supporting the issuance of the Series 2024 Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred;

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

"Bonds" mean the Series 2024 Bonds, the Additional Bonds and any other bonds issued under the Indenture.

"City" means the City of Goshen, Indiana.

"Company" means Cherry Creek, LLC, a limited liability company, and/or its assigns, duly organized and validly existing under the laws of the State of Indiana and qualified to do business in the State of Indiana, or any successors thereto permitted under Section 3.3 hereof.

"Construction Fund" means the Construction Fund established in Section 4.4 of the Indenture.

"Costs of Construction" means the following categorical costs of providing for an "economic development project" as defined and set forth in the Act:

(i) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Project and such insurance shall be acceptable to the Authority;

(ii) all costs and expenses of construction, renovation, acquisition of equipment, acquisition of land and right-of-way interests, site preparation, utilities, environmental remediation and abatement, engineering services, including the costs of Issuer or Company for test borings, surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction and equipping of the Project;

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

(iv) any sums required to reimburse Issuer or Company 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.

"Counsel" means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either the Issuer or the Company.

"Development" means a multi-family project including approximately 1,400 units (consisting of single family houses, single family attached homes, condos and apartments) and approximately 80,000 square feet of commercial space.

"Government Obligations" means 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.

"Indenture" means the Trust Indenture dated as of October 1, 2024, between the Issuer and the Trustee and all amendments and supplements thereto.

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

"Outstanding," with reference to Bonds, means all Bonds theretofore issued and not yet paid and discharged under the terms of the Indenture.

"Paying Agent" means The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana, and any successor paying agent or co-paying agent.

"Project" means all or a portion of the construction of infrastructure improvements including, but not limited to, new roadways, sidewalks, water mains, sewer mains, storm sewer, including drainage basins, and a lift station, together with all necessary appurtenances, related improvements and equipment, to support the Development and costs of issuance, including capitalized interest, funding a debt service reserve, which improvements are located in the City and in or physically connected to the Area and will be financed with proceeds of the Series 2024 Bonds.

"Qualified Investments" means to the extent permitted by the laws of the State of Indiana (i) Government Obligations; (ii) bonds, debentures, participation certificates or notes issued by any of the following: Federal Farm Credit Banks, Federal Financing Bank, Federal Home Loan Banks, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (iii) certificates of deposit, time deposits and other interest-bearing deposit accounts with any banking institution, including the Trustee, which are insured by the Federal Deposit Insurance Corporation; (iv) any money market fund, sweep account, mutual fund or trust, which may be funds or trusts of the Trustee or Paying Agent, as shall invest solely in a portfolio of obligations described in (i) or (ii) above or money market funds rated, at the time of purchase, in the highest category by Moody's Investors Service or Standard & Poor's Ratings Group; (v) repurchase agreements with the Trustee or any of its affiliated banks or any other bank having a net worth of at least \$100,000,000 secured by a pledge and physical delivery (except in the case of securities issued in book-entry form, which shall be registered in the name of the Trustee) to the Trustee or third-party bank, as custodian of obligations described in (i) or (ii) hereof; (vi) municipal obligations the interest on which would be excluded from the gross income of the owners thereof for federal tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, if (a) rated, at the time of purchase, in one of the three highest rating categories of either Moody's Investors Service or Standard & Poor's Ratings Group, or, (b) if fully secured by securities guaranteed as to principal and interest by the United States of America; and (vii) stock of a Qualified Regulated Investment Company which invests solely in obligations described in (vi) above.

"Redevelopment Commission" means the Goshen Redevelopment Commission.

"Registrar" means the registrar and/or co-registrar at the time serving as such under the Indenture and shall initially mean The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana.

"Requisite Bondholders" means the holders of 66 2/3% in aggregate principal amount of Series 2024 Bonds.



"Series 2024 Bonds" means the City of Goshen, Indiana Taxable Economic Development Revenue Bonds of 2024 (Cherry Creek Project).

"Tax Increment" means 100% of real property tax proceeds attributable to the assessed valuation within the Allocation Area, as of each assessment date in excess of the base assessed value as described in IC 36-7-14-39(b)(1). The incremental assessed value is multiplied by the then current property tax rate (per \$100 assessed value).

"Taxpayer Payments" means the Taxpayer Payments as defined in the Taxpayer Agreement attached hereto as Exhibit A.

"TIF Revenues" means all of the Tax Increment collected in the Allocation Area received by the Redevelopment Commission and pledged to the Issuer pursuant to a resolution adopted on September 10, 2024, generated in the Allocation Area, minus Annual Fees, for a term not to exceed the date on which the Bonds are fully paid and no longer outstanding.

"Trustee" means the trustee and/or co-trustee at the time serving as such under the Indenture and shall initially mean The Bank of New York Mellon Trust Company, N.A., Indianapolis, Indiana.

"Trustee Fees" means the acceptance fee and the annual fees and expenses of the Trustee as set forth in Exhibit D of the Indenture.

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

(a) "This Financing Agreement" means this instrument as originally executed and as it may from time to time be supplemented 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

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 of Indiana. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder.

(b) Issuer agrees to provide funds from the issuance of the Series 2024 Bonds for financing a portion of the construction of the Project for the benefit of the holders of the Bonds, to assist the City with the existing housing shortage by providing additional housing options in the City and create employment opportunities in the City and to benefit the health, safety, morals 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 and the Taxpayer Payments under the Taxpayer Agreement.

(c) This Financing Agreement has been duly executed and delivered by the Issuer and, assuming due execution by the Company, constitutes the legal, valid and binding agreement of the Issuer, enforceable against the Issuer 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.

(d) This Financing Agreement does not and will not conflict with or create a breach or default under any existing law, regulation, order, document, or agreement to which the Issuer is subject or by which it is bound.

(e) There are no actions, suits or proceedings pending, 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 Issuer or the Commission or might impair the ability of the Issuer perform its obligations under this Financing Agreement.

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

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

(b) The Development and the Project are of the type authorized and permitted by the Act.

(c) All of the proceeds from the Series 2024 Bonds (including any income earned on the investment of such proceeds) will be used for Costs of Construction.

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

(e) 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, will contravene the Company's formation or governing documents or any law or any governmental rule, regulation or order presently binding on the Company or conflicts with or results in a breach of the terms, conditions or provisions of any agreement or instrument to which the Company is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any liens, charges, or encumbrances whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement.

(f) The execution, delivery and performance by the Company of this Financing Agreement does 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, unless reasonably expected to be obtained or performed in the future.

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

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

(i) 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.

(j) The Company reasonably anticipates that the estimated investment in the Development is approximately \$125,000,000, a portion of which will be paid using proceeds of the Series 2024 Bonds and the estimated new full-time jobs that may be created is approximately \_\_\_\_\_ direct temporary construction jobs, \_\_\_\_\_ indirect temporary construction jobs and \_\_\_\_\_ permanent full-time jobs with an estimated annual payroll of \$ \_\_\_\_\_.

(k) The Company acknowledges that draws shall all be for Costs of Construction, other than costs of issuance which all such costs of issuance shall be paid by the Issuer.

(l) The Company, as property taxpayer, hereby covenants and agrees not to appeal the assessed value of the Development below the level of assessed value for real property set forth on Exhibit A.

(m) The Company agrees to perform all matters provided by the Taxpayer Agreement to be performed by the Company and to comply with all provisions of the Taxpayer Agreement to be complied with by the Company including, but not limited to, payment of any Deficiency Amounts (as defined in the Taxpayer Agreement).

Section 2.3. Use of Series 2024 Bond Proceeds by Issuer. Concurrently with the execution and delivery hereof, the Issuer is issuing the Series 2024 Bonds and is providing the proceeds from the sale thereof to the Company by making the deposits and payments specified in Section 3.1 of the Indenture.

(End of Article II)

## ARTICLE III.

### PARTICULAR COVENANTS OF THE COMPANY

Section 3.1. Consent to Assignments to Trustee. The Company 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, and to execute and deliver supplements and amendments to this Financing Agreement pursuant to Section 7.1 hereof.

Section 3.2. Payment of Annual Fees. (a) To the extent that the TIF Revenues and Taxpayer Payments received by the Issuer are insufficient to pay such amounts, the Company agrees to pay the Annual Fees; provided, however, that the Company may, without creating a default under the Financing Agreement, contest in good faith the necessity for any extraordinary services and expenses and the reasonableness of any such fees, charges or expenses. Should the Company be required to make payments or cover any costs under this Financing Agreement, then the Issuer agrees to reimburse the Company from any future excess TIF Revenues.

(b) The Company covenants and agrees with and for the express benefit of the Issuer, the Trustee and the owners of the Bonds, that the Company shall perform all of its other obligations, covenants and agreements hereunder, without notice or demand (except as provided herein), and without abatement, deduction, reduction, diminution, waiver, abrogation, set-off, counterclaim, recoupment, defense or other modification or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and regardless of any act of God, contingency, event or cause whatsoever, and irrespective (without limitation) of whether the Development or any part thereof is defective or nonexistent, or whether the Company's revenues are sufficient to make such payments, and notwithstanding any damage to, or loss, theft or destruction of, the Development or any part thereof, expiration of this Financing Agreement, any failure of consideration or frustration of purpose, the taking by eminent domain or otherwise of title to or of the right of temporary use of, all or any part of the Development, legal curtailment of the Company's use thereof, or whether with or without the approval of the Issuer, any change in the tax or other laws of the United States of America, the State of Indiana, or any political subdivision of either thereof, any change in the Issuer's legal organization or status, or any default of the Issuer hereunder, and regardless of the invalidity of any portion of this Financing Agreement; and the Company hereby waives the provisions of any statute or other law now or hereafter in effect impairing or conflicting with any of its obligations, covenants or agreements under this Financing Agreement or which releases or purports to release the Company therefrom. Nothing in this Financing Agreement shall be construed as a waiver by the Company of any rights or claims the Company may have against the Issuer under this Financing Agreement or otherwise, but any recovery upon such rights and claims shall be had from the Issuer separately, it being the intent of this Financing Agreement that the Company shall be unconditionally and absolutely obligated without right of set-off or abatement, to perform fully all of its obligations, agreements and covenants under this Financing Agreement for the benefit of the holders of the Bonds; provided, however, this Section 3.2 shall not be interpreted to create a greater Company obligation or expose Company to liability in excess of such obligations and liability included in the Taxpayer Agreement.

(c) As long as the Bonds are outstanding, the Company covenants to pay all property tax bills for the Development before the tax bills are delinquent; provided however, nothing contained herein shall prevent Company from exercising any right to appeal any tax assessments in accordance with Indiana law and as provided in this Financing Agreement and the provisions of the Taxpayer Agreement.

(d) The obligations of the Company to perform and observe the other agreements on its part shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Issuer, and the Company shall pay absolutely during the term of this Financing Agreement all payments required thereunder free of any deductions and without abatement, diminution or set-off; and until such time as the principal of and interest on the Series 2024 Bonds shall have been fully paid, or provision for the payment thereof shall have been made in accordance with the Indenture, the Company: (i) will perform and observe all of its agreements contained in this Financing Agreement and the Taxpayer Agreement; and (ii) will not terminate this Financing Agreement or the Taxpayer Agreement for any cause, including, without limiting the generality of the foregoing, failure of the Company to complete the Project, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project or the Development, commercial frustration of purpose, any change in the tax laws of the United States of America or of the State of Indiana or any political subdivision of either thereof, or any failure of the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Financing Agreement, the Taxpayer Agreement or the Indenture.

Section 3.3. Maintenance of Corporate Existence. The Company covenants that so long as any Bonds are outstanding, it will maintain in good standing its corporate existence and qualification to do business in the State of Indiana, 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 with or merge into it; provided that the Company may, without violating its agreement contained in this Section, consolidate with or merge into another limited partnership or other entity, or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another limited liability company or entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity (such limited liability company being hereinafter called the "Surviving Entity") (if other than the Company) expressly accepts, agrees and assumes in writing to pay and perform all of the obligations of the Company herein and be bound by all of the agreements of the Company contained in this Financing Agreement to the same extent as if the Surviving Entity had originally executed this Financing Agreement, and the Surviving Entity is an Indiana corporation or limited liability corporation or is a foreign corporation or partnership, trust or other person or entity organized under the laws of one of the states of the United States and is qualified to do business in the State of Indiana as a foreign corporation or partnership, trust or other person or entity.

Any sale or other disposition of the Development or any portion thereof is subject to the conditions of Section 3.10 hereof.

Section 3.4. Reserved.

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

(a) The acceptance or administration of the Indenture and Financing Agreement by the Trustee thereunder or the performance of the Issuer's duties thereunder, except that if liability arises from such Trustee's gross negligence or willful misconduct in connection with such action taken such indemnification shall not extend to the Trustee;

(b) Violation of any agreement in or condition of this Financing Agreement, the Taxpayer Agreement or the Indenture, except by the Issuer, Paying Agent, the Bondholders, or the Trustee;

(c) Violation of any material contract, agreement or restriction by the Company relating to the Project, or a part thereof;

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

(e) Undertaking construction of the Project, or the failure to undertake the construction of the Project;

(f) Any act, failure to act, or material misrepresentation by the Company, or any of the Company's agents, contractors, servants, employees or licensees;

(g) The sale, trading, or redemption of the Series 2024 Bonds and the provision of any information or certification furnished by the Company in connection therewith, concerning the Series 2024 Bonds and the Project;

(h) Provided, however, that the Company shall not be responsible for indemnification of the Indemnified Parties for negligent or intentional acts

The indemnity provided by this Section 3.5 shall survive the resignation or removal of the Trustee and the termination of the Indenture and this Financing Agreement.

Section 3.6. Funding of Indenture Funds; Investments. The Issuer shall deposit with the Trustee all proceeds from the sale of the Series 2024 Bonds in the manner specified in Article 3.1 of the Indenture, and the Trustee shall deposit such proceeds in the manner specified in Article 3.1 of the Indenture.

The Company and the Issuer agree that all moneys in any fund established by the Indenture may, at the written direction of the Issuer, be invested in Qualified Investments.

The Trustee is hereby authorized to trade with itself in the purchase and sale of securities for such investments. The Trustee shall not be liable or responsible for any loss resulting from



any such investment. All such investments shall be held by or under the control of the Trustee and any income resulting therefrom shall be applied in the manner specified in the Indenture.

Section 3.7. Reserved.

Section 3.8. Completion of Project. (a) The Company agrees to substantially complete the construction of the Development on or before \_\_\_\_\_, 202\_\_\_\_.

The Issuer does not make any warranty, either express or implied, that the moneys, which will be paid into the Construction Fund and which under the provisions of this Financing Agreement will be available for payment of the costs of the construction of the Project will be sufficient to pay all the costs which will be incurred in that connection. The Company agrees that if after exhaustion of the moneys in the Construction Fund, including the proceeds of the Series 2024 Bonds, the Company should elect, in its sole discretion, to pay pursuant hereto any portion of the Costs of Construction of the Project, it shall not be entitled to any reimbursement therefor from the Issuer, the Trustee, or the holders of any of the Bonds other than to the extent the bond payments are considered reimbursements to the Company, or its affiliate, as the holder of the Series 2024 Bonds.

(b) The Issuer has, in the Indenture, authorized and directed Trustee to make payments from the Construction Fund to pay the Costs of Construction, or to reimburse Company for any Costs of Construction paid by it. The Company agrees to direct such requisitions to Trustee as may be necessary to effect payments out of the Construction Fund in accordance with this Section 3.9.

Section 3.9. Sale or Substitution of Development. The sale, transfer or other disposition of the Development shall not relieve the Company from liability from all payments (if any) due under this Financing Agreement and the performance of all of the other obligations of this Financing Agreement without the express written consent of the Bondholders, except as permitted by Section 3.3 hereof; provided, however, notwithstanding the foregoing paragraph or anything herein to the contrary, the Taxpayer Agreement will remain in full force and effect so long as the Series 2024 Bonds remain outstanding.

Section 3.10. Reserved.

(End of Article III)

## ARTICLE IV.

### APPLICATION OF BOND PROCEEDS

Section 4.1. Use of 2024 Bond Proceeds by Issuer. Concurrently with the execution and delivery hereof, the Issuer is issuing the Series 2024 Bonds and is depositing the proceeds from the sale thereof with the Trustee for the use of the Company by making the deposits and payments specified in Sections 3.1 and 4.4 of the Indenture; provided such proceeds shall be used solely in connection with the development of the Project and advanced and used solely in accordance with the terms of this Financing Agreement and the Indenture. The purchaser of the Series 2024 Bonds shall deposit subsequent advances with the Trustee from time to time as needed and the advances shall be recorded in the records of the Trustee.

Section 4.2. Use of TIF Revenues. The Issuer covenants as follows:

(a) Upon payment of the Bond Issuance Costs pursuant to Section 3.1 and Section 4.4(a) of the Indenture and upon receipt of the Disbursement Request Form of the Company pursuant to Section 3.1 and Section 4.4(b) of the Indenture, the Trustee shall distribute sums for Costs of Construction of the Project as those costs are incurred until the Trustee has distributed in the aggregate total amount of Ten Million Seven Hundred Eighteen Thousand Dollars (\$10,718,000), which sum includes \$\_\_\_\_\_ to be paid for costs of issuance, with respect to the Series 2024 Bonds. All of the foregoing is for the benefit of the holders of the Series 2024 Bonds, to the end that industry and the economy may be diversified, housing opportunities provided and job opportunities promoted and retained, and to secure the Series 2024 Bonds by pledging the TIF Revenues and Taxpayer Payments to the Trustee.

(b) The Issuer covenants that, to the extent collected, it will pay the TIF Revenues and the Taxpayer Payments to the Trustee as provided in Section 4.6 of the Indenture, provided that the Issuer shall have no other obligation to make payments of principal of or interest on the Series 2024 Bonds. Under no circumstances shall the Company be liable to make payments of principal or interest on the Series 2024 Bonds.

Section 4.3. Estoppel Certificate. Other than any Taxpayer Payments due pursuant to the Taxpayer Agreement, the Issuer shall, upon reasonable request of the Company, provide the Company (or such person as the Company requests) with a certificate stating that an event of default by Company has not occurred hereunder as of the date of such certificate, provided that such state of facts are true.

## ARTICLE V.

### EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 5.1. Events of Default. (a) The occurrence and continuance of any of the following events shall constitute an "event of default" hereunder:

(i) failure of the Company to observe and perform any covenant, condition or provision hereof and to remedy such default within 30 days after written notice thereof from the Trustee to the Company, unless the Requisite Bondholders shall have consented thereto;

(ii) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Company or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for thirty days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law; or

(iii) the commencement by the Company of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, whether consent by it to an entry to an order for relief in an involuntary case and under any such law or to the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making of it by any general assignment for the benefit of creditors, or the failure of the Company generally to pay its debts as such debts become due, or the taking of corporate action by the Company in furtherance of any of the foregoing; or

(iv) Any event of default under Section 7.1 of the Indenture; or

(v) Any "Event of Default" under Section 6(a) of the Taxpayer Agreement.

(b) During the occurrence and continuance of any event of default hereunder, the Trustee, as assignee of the Issuer pursuant to the Indenture, shall have the rights and remedies hereinafter set forth, in addition to any other remedies herein or provided by law.

(c) Upon the occurrence of an event of default described in this Section 5.1 (except an event of default under Section 5.1(a)(iv) which results from an event of default under Section 7.1(b) of the Indenture):

(i) Right to Bring Suit, Etc. The Trustee shall, upon written direction by the Requisite Bondholders and upon receipt of indemnity in accordance with the Indenture, with or without entry, personally or by attorney, proceed to protect and enforce its rights by a suit or suits in equity or at law as directed in writing by the Requisite Bondholders, whether for damages or for the specific performance of any covenant or agreement contained in this Financing Agreement or the Taxpayer Agreement or in aid of the

execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, and enforce any of its rights or duties hereunder; provided, however that all costs incurred by the Trustee and the Issuer under this Article shall be paid to the Issuer and the Trustee by the Company on demand.

(ii) Waiver of Events of Default. If after any event of default occurs and prior to the Trustee exercising any of the remedies provided in this Financing Agreement, the Company will have completely cured such default, then in every case such default will be waived, rescinded and annulled by the Trustee by written notice given to the Company.

Section 5.2. Remedies Cumulative. No remedy here in conferred upon or reserved to the Trustee 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 5.3. Delay or Omission Not a Waiver. No delay or omission of the Trustee 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 may be exercised from time to time and as often as may be deemed expedient by the Trustee.

Section 5.4. Waiver of Extension, Appraisalment or Stay Laws. To the extent permitted by law, the Company will not during the continuance of any event of default hereunder insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Financing Agreement; and the Company hereby expressly waives all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Trustee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 5.5. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Financing Agreement invalid or unenforceable under the provisions of any applicable law.

(End of Article V)

## ARTICLE VI.

### IMMUNITY

Section 6.1. Immunity. No covenant or agreement contained in the Bonds, this Financing Agreement or the Indenture shall be deemed to be a covenant or agreement of any member of the Goshen Economic Development Commission ("Economic Development Commission"), the Issuer or the Redevelopment Commission or of any officer or employee of the Economic Development Commission, the Issuer, the Redevelopment Commission in his or her individual capacity, and neither the members of the Economic Development Commission, the Issuer, the Redevelopment Commission, nor any officer 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.

(End of Article VI)

ARTICLE VII.

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 7.1. Supplements and Amendments to this Financing Agreement. Subject to the provisions of Article X of the Indenture, the Company and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VII)

ARTICLE VIII.

DEFEASANCE

Section 8.1. Defeasance. If provision shall have been made for the satisfaction and discharge of the Indenture as provided therein, then and in that case, this Financing Agreement, and the covenants of the Company contained herein, shall be discharged and the Issuer and the Trustee in such case on demand of the Company and at its cost and expense, shall execute and deliver to the Company a proper instrument or proper instruments acknowledging the satisfaction and termination of this Financing Agreement.

(End of Article VIII)





To the Company: Cherry Creek, LLC  
1630 Timberline Drive  
Goshen, IN 46526  
Attention: Tonya Detweiler

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

To the Trustee: The Bank of New York Mellon Trust Company, N.A.  
55 Monument Circle, Suite 1200C  
Indianapolis, IN 46204  
Attention: Corporate Trust Department

To the Authority: Indiana Finance Authority  
One North Capitol, Suite 900  
Indianapolis, IN 46204  
Attention: \_\_\_\_\_

Section 9.5. Successors and Assigns. Whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Company, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not. Provided, however, the Company may not assign its rights or obligations under this Financing Agreement without the consent of the Bondholders, which may not be unreasonably withheld, unless Section 3.3 of this Financing Agreement has been complied with.

Section 9.6. 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 9.7. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State of Indiana.

(End of Article IX)

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

CHERRY CREEK, LLC

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF GOSHEN, INDIANA

By: \_\_\_\_\_  
Mayor

(SEAL)

Attest:

\_\_\_\_\_  
Clerk-Treasurer

This instrument prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana 46282-0200.

EXHIBIT A

Form of Taxpayer Agreement

(Attached)

TAXPAYER AGREEMENT  
AND CONSENT TO REAL PROPERTY TAX LIEN

THIS TAXPAYER AGREEMENT is entered into as of October 1, 2024, among CHERRY CREEK, LLC, an Indiana limited liability company, duly organized and validly existing under the laws of the State of Indiana (the "Owner"), THE CITY OF GOSHEN, INDIANA (the "City") and the GOSHEN REDEVELOPMENT COMMISSION (the "Commission" and, together with the City, the "City Parties").

WHEREAS, the City has determined to issue taxable economic development revenue bonds in the amount of Ten Million Seven Hundred Eighteen Thousand Dollars (\$10,718,000) (the "Bonds"), pursuant to a Trust Indenture (the "Indenture"), dated as of October 1, 2024, between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (or any successor trustee, the "Trustee"), to finance the cost of the construction of all or a portion of infrastructure improvements to serve a mixed-use residential subdivision including, but not limited to, new roadways, sidewalks, water mains, sewer mains, storm sewer, including drainage basins, and a lift station, together with all necessary appurtenances, related improvements and equipment, to support the development of a multi-family housing project including approximately 1,400 units (consisting of single family houses, single family attached homes, condos and apartments) and approximately 80,000 square feet of commercial space and related costs, including capitalized interest, funding a debt service reserve and a premium for a debt service reserve surety and/or municipal bond insurance, if necessary, and costs of issuance of the Bonds; and

WHEREAS, the Owner owns the real estate, as described in Exhibit A attached hereto ("Real Estate"), and will, directly and/or indirectly, benefit from the Bonds; and

WHEREAS, the Commission has created the Southeast Economic Development Area (the "Area") and designated a portion of such Area as the Southeast Housing TIF Allocation Area (the "Allocation Area") in accordance with Indiana Code 36-7-14-39 for the purpose of capturing incremental ad valorem property taxes levied and collected on all taxable real property in the Allocation Area (the "TIF Revenues"); and

WHEREAS, the Real Estate is located within the Allocation Area; and

WHEREAS, it is the intent of the parties to secure the payment of the Taxpayer Payments (as hereinafter defined) by imposing a lien against any and all portions of the Real Estate owned by the Owner at any point in time ("Owner's Property"), equal in priority to the property tax lien granted to the State of Indiana under Indiana Code 6-1.1-22-13 as permitted by Indiana Code 36-7-25-6.

IT IS THEREFORE AGREED by and among the parties as follows:

1. Payments under this Taxpayer Agreement shall be secured by a tax lien against the Owner's Property equal in priority to the property tax lien under Indiana Code 6-1.1-22-13 as permitted by Indiana Code 36-7-25-6.

2. In order to enhance the City Parties' ability to fund the debt service due on the Bonds, the Owner agrees to make the payments described in this Section 2 (the "Taxpayer Payments", and each, a "Taxpayer Payment"). The projected TIF Revenues to provide one-hundred twenty-five

percent (125%) coverage are incorporated into this Taxpayer Agreement as Exhibit B (the "Schedule of Projected TIF Revenues"). If the real estate taxes actually assessed and paid for each installment on the Real Estate on the dates on which property tax payments are due and payable, which under current law are May 10 and November 10 (each a "Payment Date"), do not generate sufficient tax increment revenues to pay the amount shown on the Schedule of Projected TIF Revenues for the applicable Payment Date (the "Scheduled Payment"), then, the City Parties (or the Trustee on behalf of the City Parties, pursuant to Section 4.2 of the Indenture) will notify the Owner of the amount necessary to remedy the deficiency (each, a "Deficiency Notice") and the Owner shall pay to the City Parties or to the Trustee on behalf of the City Parties within five (5) business days of receipt of the corresponding Deficiency Notice, in addition to such real property tax payments for such installment, an amount equal to: (a) the Scheduled Payment, *minus* (b) the amount of the TIF Revenues actually assessed and paid for such installment on the Real Estate on such Payment Date.

3. When the TIF Revenues actually assessed and paid have met or exceeded the Schedule of Project TIF Revenues for five (5) consecutive years, this Taxpayer Agreement can be terminated upon the consent of the Authority, which consent shall not be unreasonably withheld. For purposes of this section, the analysis and all showings shall be prepared by a certified public accountant or municipal advisor retained by the Owner for that purpose.

4. Upon the payment of the final Taxpayer Payment, this Taxpayer Agreement shall terminate and shall be deemed fully performed, all liability hereunder for such Taxpayer Payments shall cease, and the lien created by this Taxpayer Agreement shall cease. Upon the request of the Owner, the Commission agrees to record an instrument evidencing the release of the lien created by this Taxpayer Agreement.

5. The Owner agrees that its obligation and the obligation of its successors in title to the Real Estate, to make the Taxpayer Payments set out herein shall constitute a lien upon the Owner's Property. The lien securing the duty to make Taxpayer Payments for a year shall attach to the Owner's Property on the date real property tax liens are assessed for such year; shall be binding upon the Owner and its successor in title to the Owner's Property; shall have priority with respect to other liens in the same manner that real property tax liens have priority pursuant to Indiana Code 6-1.1-22-13, and shall in all ways be considered in the same manner as such real property tax liens.

6. The Owner expressly agrees that its obligation to pay each Taxpayer Payment under this Taxpayer Agreement includes the obligation to pay amounts equivalent to amounts of statutory penalty or interest or other charges customarily payable with respect to delinquent real property tax payments and costs of collection, including all expenses which may be paid or incurred by or on behalf of the Commission in connection with the foreclosure of the lien for unpaid property taxes and Taxpayer Payments including attorneys' fees, stenographers' charges, publication costs and costs of procuring all title searches, policies and examinations and similar data and assurances with respect to title as the Commission reasonably may deem necessary to prosecute such suit.

7. As permitted by Indiana Code 36-7-25-6, all Taxpayer Payments shall be treated in the same manner as property taxes for purposes of Indiana Code 6-1.1-22-13 and the lien created by this document shall be binding on the Owner and its successors in title to the Owner's Property, as well as any mortgagee, lessee, assignee, licensee, or any other person or entity claiming an interest in the Owner's Property.

8. Nothing in this Taxpayer Agreement shall be deemed to release the Owner from any obligation to pay any property taxes or assessments on the Real Estate regardless of when payable or assessed, and the Owner and its successors in title to the Real Estate shall pay all property tax bills for the Real Estate before the tax bills are delinquent. [NOTE: this covenant could be put in each deed when a home is sold so that each homeowner covenants to pay their property taxes when due.]

9. The Owner expressly acknowledges that the obligation to make the Taxpayer Payments defined in this Taxpayer Agreement is an *in rem* obligation running with the Owner's Property and shall be binding upon and enforceable against the Owner to the extent that the underlying obligations remain in effect.

10. The Owner covenants and warrants that it is lawfully seized of the Real Estate in fee simple, has valid and indefeasible title to the Real Estate, and has a good and valid right to grant to the Commission the lien on the Owner's Property as provided herein.

11. The Owner acknowledges that the Trustee may enforce this Taxpayer Agreement on behalf of the City Parties or at the direction of the holders of the Bonds, including upon the occurrence of an "event of default" (as set forth in Article VII of the Indenture). The Owner hereby consents to the Trustee's enforcement of this Taxpayer Agreement.

12. Each of the parties to this Taxpayer Agreement hereby represents and warrants that this Taxpayer Agreement has been duly authorized, executed and delivered by such party, and is valid, binding and enforceable against such party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally, and general principles of equity.

13. This Taxpayer Agreement shall be recorded as an *in rem* obligation in the Elkhart County Recorder's office immediately following execution by the parties hereto.

14. In the case of any section or provision of this Taxpayer Agreement or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Taxpayer Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality or invalidity or inoperability shall not affect the remainder hereof or any other section or provision of this Taxpayer Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Taxpayer Agreement, which shall be construed and enforced as if that illegal or invalid or inoperable portion were not contained herein.

15. This Taxpayer Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Taxpayer Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Taxpayer Agreement shall be tried and litigated only in the state courts in [Elkhart][Marion] County, Indiana, or the federal courts with venue that includes Elkhart County, Indiana.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.

CITY OF GOSHEN, INDIANA

By: \_\_\_\_\_  
Gina Leichty, Mayor

GOSHEN REDEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Brian Garber, President

*[City Parties' signature page to Taxpayer Agreement and Consent to Real Property Lien]*



STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF ELKHART                )

Before me, a Notary Public, in and for said City and State, personally appeared Gina Leichty, the Mayor and of the City of Goshen, Indiana, and acknowledged the execution of the foregoing instrument, this \_\_\_\_ day of \_\_\_\_\_, 2024.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2024.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My County of residence is:

\_\_\_\_\_

\_\_\_\_\_

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF ELKHART                )

Before me, a Notary Public, in and for said City and State, personally appeared Brian Garber, the President of the Goshen Redevelopment Commission, and acknowledged the execution of the foregoing instrument, this \_\_\_\_ day of \_\_\_\_\_, 2024.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2024.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My County of residence is:

\_\_\_\_\_

\_\_\_\_\_

CHERRY CREEK, LLC

By: \_\_\_\_\_  
Tonya Detweiler

*[Owner's signature page to Taxpayer Agreement and Consent to Real Property Lien]*

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF ELKHART    )

Before me, a Notary Public, in and for said City and State, personally appeared Tonya Detweiler, and acknowledged the execution of the foregoing instrument, this \_\_\_\_ day of \_\_\_\_\_, 2024.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2024.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My County of residence is:

\_\_\_\_\_

\_\_\_\_\_

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. /s/ Lisa A. Lee

This instrument was prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, Indiana 46204.

EXHIBIT A

Description of the Real Estate

EXHIBIT B

Schedule of Projected TIF Revenues

EXHIBIT B

Form of Financial Assistance Agreement

(Attached)

**RESIDENTIAL HOUSING INFRASTRUCTURE  
FINANCIAL ASSISTANCE AGREEMENT**

**RESIDENTIAL HOUSING INFRASTRUCTURE FINANCIAL ASSISTANCE AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Indiana Finance Authority (the “**Finance Authority**”), a body politic and corporate, not a state agency but an independent instrumentality of the State of Indiana (the “**State**”) and the City of Goshen, Indiana, a “Participant” as defined in I.C. 5-1.2-2-54, duly organized and validly existing under State law (the “**Participant**”).

**RECITALS**

1. The attached Appendix A sets forth terms applicable to this Agreement including the Residential Housing Infrastructure Assistance Program from which the hereafter referenced Financial Assistance is to be made available to the Participant by the Finance Authority.

2. Such Residential Housing Infrastructure Assistance Program is subject to a certain First Amended and Restated Residential Housing Infrastructure Assistance Fund Trust Indenture, dated August 1, 2024 (the “**Indenture**”), entered into by the Finance Authority pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-15.5 (together with other applicable State law, the “**Authorizing Law**”), and the parties desire capitalized terms herein contained and not otherwise defined herein to have the same meanings ascribed to them under the Indenture.

3. The Finance Authority has established under the Indenture a Residential Housing Infrastructure Assistance Fund into which certain monies are deposited, held, and applied as allowed by such Indenture and Authorizing Law (such fund, herein, the “**Fund**”).

4. The Indenture and Authorizing Law authorize the Finance Authority to make loans (the “**Financial Assistance**”) from the Fund to or for the benefit of participants public infrastructure for the support of residential housing and purposes as more fully provided in the Indenture and Authorizing Law.

5. The Participant's project (the “**Project**”) and Financial Assistance are more fully described on Appendix A to this Agreement.

6. The Finance Authority has reviewed the Project and the Financial Assistance therefor and approved the Project and Financial Assistance therefor.

7. The Finance Authority desires to provide the Financial Assistance to the Participant for the Project (and for no other purpose), and the Participant desires to receive the Financial Assistance from the Finance Authority for the Project (and for no other purpose).

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement, the Finance Authority and the Participant agree that:



## ARTICLE I

A. The Finance Authority covenants and agrees with the Participant, subject to this Agreement and State law, including the Authorizing Law, to provide the Financial Assistance, which is comprised of a loan (the “**Loan**”), as more fully described on Appendix A to this Agreement, to the Participant for the Project, in accordance with the Authorizing Law and this Agreement. The Loan must be repaid in accordance with its terms.

B. The terms of any Loan shall be those set forth in the form of the bonds or other obligations of the Participant issued or delivered to the Finance Authority in accordance with applicable laws of the State pursuant to this Agreement (the “**Obligating Instrument**”). The form and substance of the Obligating Instrument, the ordinance or resolution, as applicable, authorizing the issuance of the Obligating Instrument (the “**Authorizing Instrument**”), and the other related certifications and opinions, shall be acceptable to the Finance Authority, in its sole discretion.

C. The Financial Assistance will be disbursed as set forth in this paragraph. First, the Loan will be disbursed for any disbursement made on the date hereof. Second, the Loan will be disbursed on an as-needed basis upon presentation of accurate and complete claims to the Finance Authority. Loan disbursements made to or for the benefit of the Participant shall be deemed to be a purchase of the Obligating Instrument in such amounts and with such maturities as achieves annual debt service as level as practical, and with no maturity longer than the original maturity schedule. Unless the Finance Authority consents in writing, no Loan disbursements shall be made more than one year after substantial completion of construction of the Project.

D. Notwithstanding any provision herein to the contrary, the Finance Authority may require the Participant to borrow all available funds from loans or other financial assistance, if any, made available to the Participant for the Project from the Finance Authority's amounts held in the wastewater revolving loan fund established or the drinking water revolving loan fund established pursuant to IC 5-1.2-1 through IC 5-1.2-4 and IC 5-1.2-10, before all or some portion of the Financial Assistance hereunder from the Fund is loaned or paid to the Participant.

## ARTICLE II

The Participant covenants and agrees with the Finance Authority that:

A. The Participant will use the Financial Assistance to acquire, construct and equip the Project and for no other purpose without the prior written consent of the Finance Authority. The Participant agrees to undertake and complete the Project in a timely manner and to receive and expend the Loan proceeds in accordance with this Agreement.

B. The sum of the Financial Assistance and other moneys on hand or available lawfully to the Participant are sufficient to complete the Project, and the Participant understands that the Finance Authority is not in any manner obligated to provide additional Financial Assistance for the Project.

C. The Project is expected to be completed not later than three (3) years after the date to this Agreement. In the event (1) physical construction of the Project has not commenced pursuant to a duly bid and awarded construction contract within six (6) months after the date to this Agreement or (2) the Finance Authority, in its discretion, shall determine that construction of the Project has been abandoned by the Participant, upon notice given to the Participant by the Finance Authority, any further disbursement of Financial Assistance may be terminated.

D. The Participant will use the Financial Assistance and acquire, construct, and equip the Project, in accordance with all applicable laws. The Participant will maintain and operate the Project in accordance with the applicable laws.

E. The Participant will report to the Finance Authority on the Participant's expenditure of the Financial Assistance and the status of the Project on the first day of January following the date of this Agreement, and on the first day of every January thereafter until the Participant expends all the Financial Assistance and completes the Project, whichever is later. At the time the Participant completes the Project, the Participant will provide promptly to the Finance Authority a final report (the "**Final Report**"). All reports to the Finance Authority will be in form and substance satisfactory to the Finance Authority.

F. The Finance Authority and its agents, officers and employees will have ready access at the Participant's offices to the Participant's agents, officers and employees, and its books and records, at all reasonable times from the date of this Agreement to and including the third anniversary of the day the Participant submits to the Finance Authority its Final Report. Upon the Finance Authority's written request therefor, the Participant will promptly provide to the Finance Authority, at no cost to the Finance Authority, certified copies of the Participant's books and records or any portion thereof.

G. The Participant will own, operate, and maintain (in good condition) the Project for its useful life (or cause it to be so operated and maintained).

H. The Participant will establish, adjust, and maintain rates and charges at levels adequate to maintain sufficient revenues to operate and maintain (in good condition) the Project and to repay all the Participant's indebtedness, including the Loan as evidenced by the Obligating Instrument and the Authorizing Instrument.

I. Except as permitted by the Authorizing Instrument, the Participant will not incur additional indebtedness on parity with the Obligating Instrument in connection with or related to the Project, including any utility or other works to which the Project is a part, without the prior written consent of the Finance Authority.

J. To the extent permitted by law, the Participant agrees to indemnify, defend and hold harmless the Finance Authority and its agents, officers and employees from any and all claims and actions of any nature arising out of this Agreement (or any action taken hereunder), the Financial Assistance or the Project (or the planning, design, acquisition, construction or equipping or operating of the Project), from all judgments or recoveries resulting therefrom and for all costs

in defending or appealing such claims or actions or judgments or recoveries, including court costs and attorneys' fees.

K. The Participant shall provide to the Finance Authority audited financial statements of the Participant inclusive of the activities of the Participant's utility system to be improved by the Financial Assistance, commencing with financial statements for a calendar year period that ends not more than two (2) years after the date of this Agreement (and for each calendar year period that ends every two (2) years thereafter until the Financial Assistance has been repaid), which audit (i) shall have been performed by the Indiana State Board of Accounts or by an independent public accountant and (ii) shall be submitted to the Finance Authority no later than nine (9) months following the end of the calendar year period to which such audit pertains.

### **ARTICLE III**

A. The Finance Authority's obligation to make a disbursement of the Financial Assistance to the Participant under this Agreement may be terminated at the option of the Finance Authority, without giving any prior notice to the Participant, in the event: (1) the Participant fails to undertake or perform in a timely manner any of its agreements, covenants, terms or conditions set forth herein or in any paper entered into or delivered in connection herewith; or (2) any representation or warranty made by the Participant as set forth herein or in any paper entered into or delivered in connection herewith is materially false or misleading. Any such event shall constitute an event of default. If an event of default occurs, the Finance Authority without giving any prior notice, may declare the entire outstanding principal amount of the Loan, together with accrued interest thereon, immediately due and payable.

B. Failure on the part of the Finance Authority in any instance or under any circumstance to observe or perform fully any obligation assumed by or imposed upon the Finance Authority by this Agreement or by law shall not make the Finance Authority liable in damages to the Participant or relieve the Participant from paying any Obligating Instrument or fully performing any other obligation required of it under this Agreement or the Authorizing Instrument; provided, however, that the Participant may have and pursue any and all other remedies provided by law for compelling performance by the Finance Authority of such obligation assumed by or imposed upon the Finance Authority. Neither the Finance Authority nor any agent, attorney, member, or employee of the Finance Authority shall in any event be liable for damages, if any, for the nonperformance of any obligation or agreement of any kind whatsoever set forth in this Agreement.

C. This Agreement does not create a debt or a liability of the Finance Authority under the constitution of the Finance Authority or a pledge of the faith or credit of the Finance Authority and does not directly, indirectly or contingently obligate the Finance Authority to levy any form of taxation, or to make any appropriation, for the payment or fulfillment of any terms of this Agreement. The Financial Assistance shall be funded solely from uncommitted, appropriated, and available funds held in the Fund or from other sources the Finance Authority, in its sole discretion, may designate. It shall be a condition precedent to the disbursement of the Financial Assistance or any portion thereof, that there shall be available to the Finance Authority uncommitted funds in an amount sufficient to satisfy the Finance Authority's obligations hereunder in the Fund.

D. When the Finance Authority makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. Any determination by the Finance Authority that funds are not appropriated or otherwise available shall be final and conclusive.

E. Pursuant to Indiana Code 22-9-1-10, the Participant and its contractors, subgrantees or contractors and subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

F. The Participant hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement, a drug-free workplace and that it will give written notice to the Finance Authority and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the Participant has been convicted of a criminal drug violation occurring in the Participant's workplace. Failure of the Participant to, in good faith, comply with this Paragraph shall constitute a material breach of this Agreement and shall entitle the Finance Authority to impose sanctions against the Participant including suspension of payments and termination of this Agreement.

#### **ARTICLE IV**

A. All appendices to this Agreement are incorporated into this Agreement and made a part of this Agreement. Capitalized terms herein contained and not otherwise defined herein to have the same meanings ascribed to them under the Indenture.

B. This Agreement may be executed in any number of counterparts, each of which shall be executed by the Finance Authority and the Participant, and all of which shall be regarded for all purposes as one original and shall constitute one and the same instrument.

C. The Participant will give any notice or other writing to the Finance Authority in writing by certified United States mail, postage prepaid or hand delivery to the Indiana Finance Authority, Residential Housing Infrastructure Assistance Fund, 100 North Senate, Room 1275, Indianapolis, Indiana 46204, Attention: Director of Indiana Housing Infrastructure Assistance Program, or such other persons or address as shall be given properly to the Finance Authority. The Finance Authority may give any notice or other writing to the Participant by first-class United States mail, postage prepaid or hand delivery to the person and address set forth in Appendix A or such other person or address as shall be given properly to the Participant.

D. This Agreement will be construed in accordance with State law. Any claim or action must be brought in the courts of the State.

E. No amendment of this Agreement will be valid unless duly authorized, executed and delivered by the Participant and the Finance Authority.

F. Neither this Agreement, nor the Financial Assistance may be assigned by the Participant without the prior written consent of the Finance Authority and any attempt at such an assignment without such consent shall be void.

G. This Agreement contains the entire agreement between the parties hereto and there are no promises, agreements, conditions, undertakings, warranties, and representations, either written or oral, expressed or implied between the parties hereto other than as herein set forth or as may be made in the Authorizing Instrument and the other papers delivered in connection herewith. In the event there is a conflict between the terms of this Agreement and the Authorizing Instrument, the terms of this Agreement shall control. It is expressly understood and agreed that except as otherwise provided herein this Agreement represents an integration of any and all prior and contemporaneous promises, agreements, conditions, undertakings, warranties, and representations between the parties hereto.

H. Neither the failure nor the delay of the Finance Authority to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof or shall any single or partial exercise of any right, power or privilege preclude any further exercise of any other right, power or privilege.

I. The Participant agrees to pay (a) the fees, costs and expenses in connection with making the Loan, including issuing the Obligating Instrument (including attorneys' fees incurred by the Finance Authority which may be paid from the Loan) and (b) any and all costs and expenses, including attorneys' fees, incurred by the Finance Authority in connection with the enforcement of this Agreement, the Authorizing Instrument and the Obligating Instrument in the event of the breach by the Participant of or a default under this Agreement, the Authorizing Instrument or the Obligating Instrument.

J. The undersigned attests, subject to the penalties of perjury, that he/she is an authorized officer or representative of the Participant, that he/she has not, nor has any other officer or representative of the Participant, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive pay, and that the undersigned has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement or is a payment to lawyers, accountants and engineers by the Participant related to customary services rendered in connection with the Financial Assistance.

[Remainder of Page Left Blank]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers or officials, all as of the date first above written.

**CITY OF GOSHEN, INDIANA**

“Participant”

By: \_\_\_\_\_

Attest: \_\_\_\_\_

**INDIANA FINANCE AUTHORITY**

By: \_\_\_\_\_  
James P. McGoff  
Director of Environmental Programs

APPENDIX A: Project, Financial Assistance

**APPENDIX A**  
**Project, Financial Assistance**

1. The Project. The proceeds of the Obligating Instrument (described below) will be applied to construct and acquire the Project which consists of the following:

- Infrastructure improvement including, but not limited to, new roadways, sidewalks, water mains, sewer mains, storm sewer, including drainage basins, and a lift station, together with all necessary appurtenances, related improvements and equipment, to support the development of a multi-family project including approximately 1,400 units (consisting of single family houses, single family attached homes, condos and apartments) and approximately 80,000 square feet of commercial space to be constructed by Cherry Creek, LLC

2. Financial Assistance

A. Loan: \$[\_\_\_\_\_]

B. Obligating Instrument: The Loan shall be evidenced by the Participant's [INSERT BOND TITLE], (the "Bonds"), which will bear interest at the per annum rate of [\_\_\_\_\_ percent (\_\_\_%)]. The Bonds will be in the aggregate principal amount of the Loan.

3. Participant's Notice Address:

City of Goshen, Indiana  
202 South Fifth Street  
Goshen, Indiana 46528  
Attention: Clerk-Treasurer

4. Additional Terms:

- A. The Participant and the Finance Authority agree that any event of default occurring under the Financial Assistance Agreement, dated March 26, 2020, between the Finance Authority and the Participant (collectively, the "Financial Assistance Agreement") or the Prior Agreements (as defined in the Financial Assistance Agreement), shall constitute an event of default under this Agreement. Similarly, the Participant and the Finance Authority agree that any event of default under this Agreement, or under any subsequent financial assistance or aid agreement entered into between the Participant and the Finance Authority, shall constitute an event of default under the Financial Assistance Agreement, the Prior Agreements and the subsequent financial assistance or aid agreement, if any, as the case may be.

[End of Appendix A]

**STATE OF INDIANA  
DRUG-FREE WORKPLACE CERTIFICATION**

Pursuant to Executive Order No. 90-5, April 12, 1990, issued by Governor Evan Bayh, the Indiana Department of Administration requires the inclusion of this certificate in all contracts with and grants from the State of Indiana in excess of \$25,000. No award of a contract or grant shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000, shall be valid unless and until this certification has been fully executed by the Contractor or Grantee and attached to the contract or agreement as part of the contract documents. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

The Contractor/Grantee certifies and agrees that it will provide a drug-free workplace by:

(a) Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibitions; and

(b) Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

(c) Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(d) Notifying in writing the contracting State Agency and the Indiana Department of Administration within ten (10) days after receiving notice from an employee under subdivision (c) (2) above, or otherwise receiving actual notice of such conviction;

(e) Within thirty (30) days after receiving notice under subdivision (c) (2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

(f) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (c) above.

THE UNDERSIGNED AFFIRMS, UNDER PENALTIES OF PERJURY, THAT HE OR SHE IS AUTHORIZED TO EXECUTE THIS CERTIFICATION ON BEHALF OF THE DESIGNATED ORGANIZATION.

\_\_\_\_\_  
Printed Name of Organization

\_\_\_\_\_  
Contract/Grant ID Number

X  
\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title