

**APPENDIX III: STATE OF INDIANA OFFICE OF COMMUNITY AND RURAL AFFAIRS
CDBG LIEN AND RESTRICTIVE COVENANT AGREEMENT
FOR RECIPIENT AND SUBRECIPIENT**

This Lien and Restrictive Covenant Agreement (“Agreement”) is made by the _____ (“Recipient”), a political subdivision of the State of Indiana, and _____ (“Subrecipient”), the owner of certain real estate located at _____ in _____ County, State of Indiana (“Real Estate”), more particularly described in Exhibit A, as recipient(s) of funds from the Indiana Office of Community and Rural Affairs (“OCRA”).

The Recipient enters into this Agreement for the benefit of OCRA. OCRA has the exclusive right to enforce the terms of and protect the interests created by this instrument.

I. PURPOSE

- A. The Recipient applied for and received an award of Community Development Block Grant (“CDBG”) funds on behalf of Subrecipient pursuant to the State Grant Agreement (“Grant Agreement”) with grant agreement number _____ by and between the Recipient and OCRA dated _____, to be used for _____.
- B. OCRA administers the State’s CDBG Program (the “Program”) pursuant to Ind. Code 4-4-9.7-6 and awarded funds to Recipient subject to Title 1 of the Housing and Community Development Act and other certain rules, regulations, guidance, and notices relating the Program, issued by OCRA from time to time.
- C. Recipient received a grant from OCRA in the amount of _____ and 00/100 Dollars (\$_____.00) (“Grant Funds”) for the project described in Recipient’s Grant Agreement with OCRA (the “Project”), which is subject to all of the requirements of the Program.
- D. The Recipient and the Subrecipient have represented to OCRA that the Real Estate shall comply with all applicable compatible use requirements of the Program and that the Recipient shall maintain and cause the Subrecipient to maintain the Real Estate in accordance with the terms contained in the Grant Agreement and Subrecipient Agreement (collectively “the Program Documents”).
- E. The Program standards set forth herein in accordance with 24 CFR 570.503(b)(7) and 24 CFR 570.505 apply to any real property under the Recipient’s control that was acquired or improved, in whole or in part, with CDBG funds awarded by OCRA in excess of \$25,000.

II. AGREEMENT

The Recipient and the Subrecipient hereby impose the following restrictive covenants upon the Real Estate until the Recipient is issued a Certificate of Completion for the Project, which shall be enforceable by OCRA, and the Recipient and the Subrecipient hereby warrant, grant, and convey

to OCRA a lien upon the Real Estate for the period set forth in II.A. (the “Lien”). In consideration of these mutual undertakings and covenants, the parties further agree as follows:

- A. Compatible Uses. The Real Estate shall be dedicated to, and maintained for, the use(s) set forth in the Program Documents and in compliance with 24 CFR 570.505. These standards shall remain in effect from the date CDBG funds are first expended on the property until five (5) years after closeout of the applicable CDBG grant. The five- (5) year period begins from the date the Financial Settlement/Expenditure & Administrative Closeout Report (“Closeout Report”) is issued by OCRA or the Office of the Lieutenant Governor, Division of Grant Services (“Grant Services”) until the issuance of the Certification of Completion.
- B. Insurance. The Recipient and/or Subrecipient shall maintain property damage, comprehensive coverage, and liability insurance in the amount equal to the replacement cost of the property or improvements made with Grant Funds. The Recipient shall be named as the loss payee of all such policies and shall maintain proof of such insurance until the issuance of a Certificate of Completion.
- C. Transfer, Assignment, or Liens. The Recipient and Subrecipient agree that neither party shall convey any interest in the Real Estate without the prior written consent of OCRA. The Real Estate shall not be pledged or mortgaged as collateral for loans without the prior written consent of OCRA. The Recipient and/or Subrecipient shall cure and otherwise perfect all liens placed against the Real Estate.
- D. Inspection. OCRA and its representatives and assigns shall have the right to enter upon the Real Estate, at reasonable times and with reasonable notice, for the purpose of inspecting the Real Estate to ensure compliance with the terms of the Program Documents.
- E. Enforcement. If the Real Estate is not maintained according to the terms of the Program Documents, the Recipient and/or Subrecipient shall take measures to bring the Real Estate back into compliance.
 - a. OCRA or its representatives or assigns will notify the Recipient and Subrecipient in writing and advise the Recipient and Subrecipient that they have 60 days to correct the violation(s).
 - b. If the Recipient or Subrecipient fails to demonstrate a good faith effort to come into compliance with the terms of the Program Documents within the 60-day period, OCRA or its representatives or assigns shall enforce the terms of the Program Documents by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
- F. Restrictions on Change of Use. Per 24 CFR 570.489(j)(2), the Recipient shall not alter, modify, or otherwise change the use or planned use of the property from that for which the acquisition or improvement was made, as set forth in the Program Documents, unless the Recipient submits a formal written request to OCRA seeking approval of the proposed change of use. The Recipient shall follow Section G below regarding reimbursement for non-qualifying use.
- G. Non-Qualifying Use and Reimbursement. In the event OCRA determines that the requested change of use of the property does not qualify under 24 CFR §§ 570.208 or 570.483, the

Recipient may retain or dispose of the property for such changed use only upon reimbursement to the CDBG program in an amount equal to the current fair market value of the property, less any portion of such value attributable to expenditures of non-CDBG funds for acquisition or improvements.

If the change of use occurs after closeout, the use of reimbursed funds shall be governed by the provisions applicable to income from the disposition of real property under 24 CFR § 570.504(b)(4) or (5), as applicable.

- H. Consideration. The Recipient and Subrecipient state that the financial assistance received through the Program represents good and valuable consideration for this Agreement and that restrictions on the use of the Real Estate are consistent with the statutes, regulations, terms, conditions, and requirements for the Program.
- I. Binding Effect. This Agreement shall be binding upon the Real Estate and shall constitute a restrictive covenant. The Recipient agrees that any and all requirements of the laws of the State of Indiana which must be satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and covenants on the Real Estate shall be satisfied in full. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.
- J. Governing Law; Venue. This Agreement shall be construed and governed in accordance with the laws of the State of Indiana. The parties agree to submit to the exclusive jurisdiction and venue of the courts of Marion County, Indiana for an action arising out of this Agreement.

NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury, that s/he is the Recipient or that s/he is the properly authorized representative, agent, member, or officer of the Recipient, and that s/he has not, nor has any other member, employee, representative, agency or officer of the Recipient, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusions or agreement to receive or pay, and that s/he 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 this Agreement.

IN WITNESS WHEREOF, the Recipient has, through its duly authorized representative, entered into this Agreement. The Recipient, having read and understood the foregoing terms of this Agreement, does by its respective signature date below hereby agree to the terms thereof.

RECIPIENT: _____

By: _____
Signature of Chief Elected Official or President of Legislative Body

Signature of Chief Elected Official or President of Legislative Body

Printed Name: _____

Title: _____ Date: _____

STATE OF INDIANA)

) SS:

COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared _____,
 Recipient Signatory Name

Recipient Signatory Name

_____, of the _____, who acknowledged
 Recipient Signatory Title Recipient Entity Name

Recipient Signatory Title

Recipient Entity Name

the foregoing Lien and Restrictive Covenant Agreement was executed as his or her voluntary act and deed and that the foregoing representations are true and correct.

WITNESS my hand and seal this _____ day of _____, 20____.

SEAL

Printed Name: _____

My Commission Expires:

A Resident of _____ County, Indiana

NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury, that s/he is the Recipient or that s/he is the properly authorized representative, agent, member, or officer of the Recipient, and that s/he has not, nor has any other member, employee, representative, agency or officer of the Recipient, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusions or agreement to receive or pay, and that s/he 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 this Agreement.

IN WITNESS WHEREOF, the Recipient has, through its duly authorized representative, entered into this Agreement. The Recipient, having read and understood the foregoing terms of this Agreement, does by its respective signature date below hereby agree to the terms thereof.

SUBRECIPIENT: _____

By: _____
Signature of Chief Executive Officer or Board of Directors Chair

Printed Name: _____

Title: _____ Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared _____,
Subrecipient Signatory Name
_____ of the _____, who acknowledged
Subrecipient Signatory Title Subrecipient Entity Name
the foregoing Lien and Restrictive Covenant Agreement was executed as his or her voluntary act and deed and that the foregoing representations are true and correct.

WITNESS my hand and seal this ____ day of _____, 20 ____.

SEAL

Printed Name: _____

My Commission Expires: _____

A Resident of _____ County, Indiana

EXHIBIT A: REAL ESTATE

Common Address:

State Parcel #:

Legal Description:

Instrument type:

Recording Number: