

City of Elkhart

Redevelopment Commission

**AGENDA FOR AURORA CAPITAL DEVELOPMENT CORPORATION
MUNICIPAL BUILDING (2ND FLOOR), COUNCIL CHAMBERS
Tuesday, April 11, 2023 at 3:30 pm**

CITY HALL ELEVATOR IS TEMPORARILY OUT OF SERVICE

The elevator at City Hall 229 S. Second Street, Elkhart Indiana is temporarily out of service beginning Monday, February 6, 2023 until completed while the elevator is under construction to maintain elevator safety and maintenance. During this temporary interruption in service, the City is recommending individuals with disabilities who require the elevator to appear at City Council or other governmental meetings use the option of Webex from their personal phone or computer. Alternatively, the City will provide a Webex opportunity on the first floor of the municipal building for those who choose to appear in person. We apologize for any inconvenience. If you have questions or concerns, please contact the Office of the Mayor at (574) 293-8968.

THIS MEETING WILL BE HELD IN PERSON AND ELECTRONICALLY VIA WEBEX

To join, go to

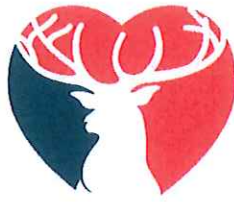
<https://coei.webex.com/coei/j.php?MTID=m767642d70911ed0206b4966598536398>

Enter **2310 936 5812** as the event number and "ACDC4" as the event password.

To join by phone, call **415-655-0001**, enter **2310 936 5812 ##**

*Press * 6 to unmute telephone*

1. Call to Order
2. Approval of March 20, 2023 Minutes
3. Elkhart Chamber Expense Report
4. Aurora Loan Servicing Agreement
5. Adjournment



City of Elkhart
Redevelopment Commission

**Aurora Capital Development Corporation
Meeting Minutes
Tuesday, March 14, 2023**

Present: Dina Harris, Alex Holtz, Gerry Roberts, Wes Steffen, Sandi Schreiber, Gary Boyn, Mike Huber, Drew Wynes, Jerry Kearns and Sherry Weber (Recording Secretary)

Call to Order:

This meeting was held in-person, telephonically and virtually through WEBEX. Mrs. Schreiber called meeting to order at 3:35 pm. Roll call was taken at the beginning of the meeting.

Approval of February 14, 2023 Minutes:

Mrs. Schreiber asked for a motion to approve the February 14, 2023 minutes. The motion was moved by Ms. Harris. Seconded by Mr. Roberts. Voice vote, all in favor, non-opposed. Minutes are approved.

Elkhart Chamber Expense Report

Mrs. Schreiber asked for a motion to approve the February 2023 Elkhart Chamber expense report for \$318.75. The motion was moved by Ms. Harris. Seconded by Mr. Steffen. Voice vote, all in favor, non-opposed. Motion approved.

Aurora Loan Balances

Mr. Jerry Kearns, Administrator of Aurora Capital Loan Funds and Gateway Mile Loan Fund, addressed the committee, discussed the Aurora Capital accounts and presented the Aurora Capital Loan balance sheet.

Adjournment

With no further items, Mrs. Schreiber asked for a motion to adjourn the meeting. Moved by Ms. Harris. Seconded by Mr. Roberts. Voice vote, all in favor, non-opposed. Motion approved. Meeting adjourned at 3:42 pm.

Sandra Schreiber, President

RESOLUTION OF THE BOARD OF DIRECTORS OF
AURORA CAPITAL DEVELOPMENT CORPORATION

Whereas, The Board has established the Aurora Capital Loan Fund to provide funding for start-up businesses and business expansion and desires to contract with Lake City Bank (“LCB”) to provide loan servicing services; and

Whereas, LCB has prepared and submitted the attached Loan Servicing Agreement for Aurora’s review and approval, and Aurora has requested certain revisions thereto which are included in the attached form (the “Agreement”).

NOW THEREFORE, BE IT RESOLVED:

1. The Board approves the form and content of the Agreement.
2. The officers are authorized to negotiate and approve any additional provisions they deem appropriate, execute and deliver the Agreement in substantially the form attached hereto, and do all other acts they deem necessary and appropriate to carry out the terms of this Resolution.

Adopted by majority vote this 11th day of April, 2023.

Sandra Schreiber, President

Attest:

Alex Holtz, Secretary

LOAN SERVICING AGREEMENT

THIS LOAN SERVICING AGREEMENT (this "Agreement") is made as of April [___], 2023, and is entered into by and between THE AURORA CAPITAL DEVELOPMENT CORPORATION ("ACDC") and LAKE CITY BANK ("Servicer"), as servicer for ACDC (collectively, the "Parties" and each a "Party").

Recitals

A. Servicer is an Indiana state-chartered financial institution, experienced in the administration and servicing of commercial loans.

B. ACDC is a non-profit corporation, validly existing under the laws of the State of Indiana, engaged in originating commercial loans in the City of Elkhart, Indiana, for eligible businesses under the Aurora Capital Loan Fund ("ACLF").

C. ACDC desires to engage Servicer to provide certain loan administration and servicing functions in relation to the ACLF Loans and ACLF Loan Documents, and Servicer agrees to provide such services in accordance with the terms of this Agreement.

Agreement

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

1. DEFINITIONS.

1.1. Defined Terms. In addition to the terms defined in the Recitals set forth above, as used in this Agreement:

"ACLF Loan" means each loan evidenced by a ACLF Note and ACLF Loan Documents, which has been originated by, or assigned to, ACDC.

"ACLF Loan Documents" means all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with a ACLF Loan.

"ACLF Loan Payment" means with respect to a ACLF Loan, the amount of each monthly installment on such ACLF Loan, whether principal and interest or interest alone or escrow or other payments, required or permitted to be paid by the Borrower in accordance with the terms of the ACLF Note and ACLF Loan Documents.

"ACLF Note" means a certain promissory note executed by a Borrower in favor of, or assigned to, ACDC, evidencing a ACLF Loan.

“Affiliate” means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Persons, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Agreement” means this Agreement and all Exhibits hereto as the same may be amended, restated, supplemented, or modified from time to time in accordance with the terms hereof.

“Ancillary Fees” means all ancillary servicing type fees or compensation derived from the ACLF Loans, including, but not limited to, insufficient fund charges, name change fees and other similar servicing related fees, including reasonable costs and expenses (including all reasonable attorney’s and paraprofessional legal fees and expenses) incurred, directly or indirectly, by Servicer, with respect to the ACLF Loans to the extent not otherwise prohibited by this Agreement, the related ACLF Loan Documents or Applicable Law. Servicer shall be entitled to all Ancillary Fees collected on the ACLF Loans. Notwithstanding the foregoing, Ancillary Fees do not include Servicing Fees and all payments with respect to principal, interest, default interest, origination or similar fees and late fees attributable to the ACLF Loan.

“Applicable Law” means all federal, state and local laws, statutes, rules, regulations and orders applicable to any ACLF Loan or any Party or relating to or affecting the servicing, collection or administration of any ACLF Loan, and all requirements of any Regulatory Authority having jurisdiction over a Party with respect to its activities hereunder, as any such laws, statutes, regulations, orders and requirements may be amended and in effect from time to time during the term of this Agreement.

“Borrower” means that person or persons executing and delivering the ACLF Note and any related ACLF Loan Documents.

“Business Day” means a day (other than a Saturday, Sunday, or legal holiday) on which Servicer generally is open for the conduct of substantially all of its lending activities.

“Collateral” means all property and assets granted as collateral security for a ACLF Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor’s lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

“Condemnation Proceeds” means all awards or settlements in respect of Collateral, whether permanent or temporary, partial or entire, by exercise of the power of eminent domain or condemnation, to the extent not required to be released to a Borrower in accordance with the terms of the related ACLF Loan Documents.

“Determination Date” means the last calendar day of the month immediately preceding the related Remittance Date.

“Governmental Authority” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Insurance Proceeds” means with respect to each ACLF Loan, proceeds of insurance policies insuring the ACLF Loan or the related Collateral.

“Liquidation Proceeds” means proceeds received in connection with the liquidation of a defaulted ACLF Loan, whether through the sale or assignment of such ACLF Loan, or the sale or other disposition of the related Collateral.

“Loan Administrator” means Jerry Kearns, an individual over the age of eighteen (18) years and a resident of Elkhart County, Indiana, together with any replacement or successor thereof appointed by ACDC.

“Material Adverse Change” means, with respect to any Person, any material adverse change in the business, financial condition, operations, or properties of such Person that would substantially prevent or impair the Person’s ability to perform any of its obligations under this Agreement.

“Material Adverse Effect” means (a) a Material Adverse Change with respect to the Party or any of its Affiliates taken as a whole; (b) a material impairment of the ability of the Party to perform under this Agreement (which impairment cannot be timely cured, to the extent a cure period is applicable); or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of this Agreement against the Party.

“Person” means an individual, firm, corporation, limited liability company, trust, association, company, Governmental Authority, partnership, joint venture, tribunal or other entity.

“Regulatory Authority” means any United States federal, state, county, municipal or local governmental or regulatory authority, agency, board, body, commission, instrumentality, court, tribunal or quasi-governmental authority having jurisdiction over a Party.

“Remittance Date” means the fifth (5th) Business Day of each month.

“Servicing Fee” means, as determined for each calendar month (as of the Determination Date), a fee equal to one percent (1%) per annum of the outstanding principal balance of each ACLF Loan.

“Servicing File” means, with respect to each ACLF Loan, the items, documents, files and records pertaining to the servicing of such ACLF Loan, including, but not limited to, the computer files, data tapes, books, records, notes, the original ACLF Note, copies of other ACLF Loan Documents, and all additional documents generated as a result of or utilized in originating and/or servicing such ACLF Loan, which are delivered to or generated by Servicer.

1.2. Rules of Construction. For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Further, unless the context otherwise requires, references in this Agreement to an agreement, instrument, or other document, including any ACLF Loan Document, means such agreement, instrument, document, and ACLF Loan Document, as amended, restated, supplemented and otherwise modified from time to time in accordance with the provisions thereof. References to “Sections”, “Subsections”, and “Paragraphs” shall be to sections, subsections, and paragraphs, respectively, of this Agreement unless otherwise specifically provided.

2. **SERVICER.**

2.1. Appointment and Authorization of the Servicer.

2.1.1. Appointment. ACDC hereby appoints, designates and authorizes the Servicer to take such action on ACDC’s behalf, and to exercise such powers and perform such duties on behalf of ACDC, with respect to ACLF Loans and ACLF Loan Documents as are expressly delegated to it by the terms of this Agreement, together with such powers as are reasonably incidental thereto. The Servicer, as an independent contract servicer, shall service and administer the ACLF Loans on behalf of ACDC in accordance with Applicable Law and requirements, and shall further service and administer the ACLF Loans in the best interests of and for the sole benefit of ACDC (as determined by the Servicer in its good-faith business judgment) in accordance with the terms of this Agreement and the ACLF Loan Documents, and in furtherance of and to the extent consistent with such terms, in accordance with the same care, skill, prudence and diligence with which it services and administers similar commercial loans for its own account, giving due consideration to customary and usual standards of practice of prudent institutional commercial loan servicers, and acting in accordance with Applicable Law, the terms of this Agreement, the terms of the ACLF Loan Documents, and the best interests of ACDC.

2.1.2. Authorization. Before the Servicer is required to take any action requiring approval or direction from ACDC, the Servicer shall notify the Loan Administrator of the proposed action and reasons therefor, be entitled to receive satisfactory evidence that such approval or direction has been authorized under the terms of ACDC’s Board of Directors, and in any instance in which ACDC is unable to give such approval or direction, or ACDC’s Board of Directors are unable to agree on such approval or direction, the Servicer is authorized to act in accordance with the instructions of the Loan Administrator, and as it determines to be appropriate in its discretion in accordance with and subject to the servicing standards described in Section 2.1.1. above (the “Accepted Servicing Practices”), the terms of this Agreement, and the ACLF Loan Documents. Subject to the Accepted Servicing Practices, the Servicer shall have full power and authority to do or cause to be done any and all things in connection with such servicing and administration which it may deem necessary or desirable and in the best interests of ACDC.

2.1.3. Possession of Servicing File. Servicer shall establish and maintain a Servicing File with respect to each ACLF Loan in order to service such ACLF Loan pursuant to this Agreement, and such Servicing File is and shall be held in trust by Servicer on behalf of and for the benefit of ACDC. Each Loan Document and the contents of the Servicing File shall be vested in ACDC, and the ownership of all records and documents with respect to the related ACLF Loan prepared by or which come into the possession or control of Servicer shall immediately vest in ACDC and shall be retained and maintained, in trust, by Servicer at the will of ACDC in such custodial capacity only. Each Servicing File shall be appropriately identified or recorded to reflect the ownership of the related ACLF Loan by ACDC.

2.2. Duties of the Servicer.

2.2.1. Loan Servicing Duties. Without limitation of the foregoing, the Servicer is hereby expressly authorized by ACDC to perform the following loan servicing duties, and the Servicer agrees to perform the following duties:

- (i) Loan Servicing. The Servicer will (i) receive, and the Borrower shall pay or cause to be paid to the Servicer, for and on behalf of ACDC, all payments of principal and interest on or in connection with the ACLF Note, together with any Insurance Proceeds, Condemnation Proceeds, prepayments, late payment fees or other amounts due or collected with respect to or in connection with the ACLF Note, apply all payments accurately in accordance with the applicable ACLF Loan Documents, maintain accurate records with respect to each ACLF Loan, and disburse such amounts in accordance with the terms of this Agreement, the ACLF Loan Documents, and Servicer's usual and customary disbursement procedures; and (ii) unless within five (5) business days of receiving notice from the Servicer as to any event of default by the Borrower, ACDC directs in writing to the contrary, give notice on behalf of ACDC to the Borrower of any event of default of which the Servicer has actual knowledge acquired in connection with its agency hereunder, and to otherwise demand payment or performance by the Borrower with respect to its obligations under the ACLF Loan Documents.
- (ii) Collection. Continuously from the date of this Agreement until the principal and interest on the applicable ACLF Loan is paid in full, the Servicer shall proceed diligently to collect all payments called for under the terms and provisions of the ACLF Loan Documents, and shall follow such collection procedures as are consistent with this Agreement, including Accepted Servicing Practices.
- (iii) Other Acts. Servicer will perform such other acts that are necessary or appropriate in connection with the day-to-day administration of the ACLF Loan evidenced by the ACLF Loan Documents or as otherwise agreed to in writing by the parties to this Agreement.

2.3. Delegation of Duties. The Servicer may execute any of its duties under this Agreement or any other ACLF Loan Document by or through agents, employees or attorneys-in-fact and

shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Servicer shall not be responsible for the negligence or misconduct of the agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

2.4. Liability of the Servicer. None of the Servicer, any Affiliate of the Servicer, or any officer, director, employee, or agent of the Servicer or any such Affiliate shall (a) be liable for any action taken or omitted to be taken by it under or in connection with this Agreement or any other ACLF Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to ACDC or the Borrower for any recital, statement, representation or warranty made by ACDC contained herein or in any ACLF Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Servicer under or in connection with, this Agreement or any other ACLF Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any ACLF Loan Document, or for any failure of ACDC to perform its obligations hereunder or thereunder. Any loss or damage incurred by the Servicer by reason of any act or omission performed or omitted by it in good faith on behalf of ACDC and in a manner reasonably believed to be within the scope of the authority granted to it by this Agreement and in the best interests of ACDC (but not, in any event, any loss or damage incurred by the Servicer by reason of bad faith, willful misconduct or fraud with respect to such acts or omissions) shall be paid from ACDC's assets to the extent available. Other than with respect to any loss or damage incurred by reason of gross negligence, willful misconduct or fraud, the Servicer shall not have any personal liability to ACDC.

2.5. Reliance by the Servicer. The Servicer shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, facsimile or telephone message, electronic mail message, statement or other document or conversation believed by it in its reasonable discretion to be genuine and correct and to have been signed, sent or made by the proper responsible officer, and upon advice and statements of legal counsel (including counsel for ACDC), independent accountants and other experts selected by the Servicer. If the approval or consent of ACDC is required under any provision of this Agreement, the Servicer shall submit such request in writing to the Loan Administrator (a "Servicer Request"), and ACDC shall have five (5) business days upon receipt of such Servicer Request to approve or disapprove the same. If ACDC does not object in writing to a Servicer Request within such five (5) business day period, the Servicer shall have the exclusive authority to act in accordance with such request. If ACDC fails to notify the Servicer in writing whether it approves or disapproves a particular request within such five (5) day period, ACDC shall be deemed to have approved such request. If ACDC timely objects to a Servicer Request, ACDC and Servicer agree to cooperate in good faith to promptly resolve any dispute. If the Servicer and ACDC fail to resolve such dispute by the fifteenth (15th) day following the receipt of a written objection, the position of the Servicer will be dispositive. The Servicer shall be fully justified in failing or refusing to take any action under any ACLF Loan Document unless it shall first receive such advice or concurrence of ACDC as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by ACDC against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Servicer shall in all cases be fully protected in acting, or

in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent from ACDC.

2.6. Credit Decision; Disclosure of Information by the Servicer. ACDC acknowledges that the Servicer has not made any representation or warranty to it, and that no act by the Servicer hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of ACDC or Affiliate thereof, shall be deemed to constitute any representation or warranty by the Servicer to ACDC as to any matter, including whether the Servicer has disclosed material information in their possession. ACDC represents to the Servicer that it has, independently and without reliance upon the Servicer and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the property, financial and other condition and creditworthiness of the Borrower and any other parties liable for payment or performance of the indebtedness and obligations under the ACLF Loan Documents (collectively with the Borrower, the "Borrower Parties"), and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower Parties. ACDC also represents that it will, independently and without reliance upon the Servicer and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other ACLF Loan Documents, and to make such investigations as it deems necessary to inform itself as to the property, financial and other condition and creditworthiness of the Borrower. Except for notices, reports and other documents expressly required to be furnished to ACDC by the Servicer herein, the Servicer shall not have any duty or responsibility to provide ACDC with any credit or other information concerning the property, financial and other condition or creditworthiness of the Borrower Parties which may come into the possession of the Servicer. Upon reasonable prior notice to the Servicer, ACDC or its accountants or other representatives shall have access to the documents, correspondence and records of the Servicer as they relate to the ACLF Loans, and the collateral for the ACLF Loans under the ACLF Loan Documents during regular business hours at the offices of the Servicer.

2.7. Servicer in Its Individual Capacity. The Servicer and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with ACDC and the Borrower and their respective Affiliates as though Lake City Bank were not the Servicer hereunder and without notice to or consent of ACDC. ACDC acknowledges that, pursuant to such activities, Lake City Bank and/or its Affiliates may receive information regarding the Borrower, ACDC, or their Affiliates (including information that may be subject to confidentiality obligations in favor of ACDC or its Affiliates) and acknowledges that the Servicer shall be under no obligation to provide such information to it.

2.8. Term; Successor Servicer. The term of this Agreement shall commence on the date hereof and shall terminate upon the earlier of: (i) subject to a determination by a court of competent jurisdiction in a final and non-appealable order, removal for Cause (as defined below), provided that ACDC shall, if practical, appoint a Qualified Successor Servicer (as defined below), prior to such termination, or if impractical, shall appoint a Qualified Successor Servicer, as soon as practicable following such termination, (ii) at ACDC's option without Cause and upon sixty (60) calendar days prior written notice to Servicer, provided that (a) ACDC has

paid and/or performed its obligations due hereunder and (b) either (x) ACDC has determined that it shall be responsible for servicing the ACLF Loans, or (y) ACDC shall, if practical, appoint a Qualified Successor Servicer prior to such termination, or if impractical, shall appoint a Qualified Successor Servicer as soon as practicable following such termination, and (iii) resignation of the Servicer upon sixty (60) calendar days prior written notice to ACDC. For the purposes of this section, "Cause" shall mean any of the following by the Servicer in connection with this Agreement: (i) fraud; (ii) gross negligence; (iii) willful misconduct; or (iv) material violation of the provisions of this Agreement that is unremedied by the Servicer within sixty (60) days following receipt by the Servicer of written notice of such violation from ACDC, provided, however, that if at the end of such sixty (60) day period, the Servicer has taken reasonable steps to cure, the Servicer shall have an additional sixty (60) day period (or such longer period as is reasonable under the circumstances as reasonably determined by ACDC) provided the Servicer proceeds in good faith to cure diligently thereafter. For the purposes of this paragraph, the term "Qualified Successor Servicer" shall mean an established financial institution, bank or servicing institution, organized and doing business and in good standing under the laws of any state of the United States.

Notwithstanding the foregoing, the Servicer may resign as Servicer upon not less than sixty (60) days' prior written notice to ACDC, provided that such resignation shall not become effective unless and until a Qualified Successor Servicer has been engaged by ACDC. Upon the acceptance of its appointment as a Qualified Successor Servicer hereunder, the Person acting as such successor Servicer shall succeed to all the rights, powers and duties of the retiring Servicer and the term "Servicer" shall mean such successor Servicer in all such capacities and the outgoing Servicer's appointment, powers and duties as Servicer shall be terminated, without any other or further act or deed on the part of such retiring Servicer or ACDC. The outgoing Servicer shall cooperate with the Qualified Successor Servicer in the orderly transitioning of its responsibilities to the successor Servicer (including, without limitation, providing the Servicing Files). After any outgoing Servicer's resignation hereunder as Servicer, the provisions of this Section shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Servicer under this Agreement.

2.9. Bankruptcy. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Borrower or ACLF Loan, the Servicer (irrespective of whether the principal of the ACLF Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Servicer shall have made any demand on the Borrower) shall follow the Accepted Servicing Practices and represent ACDC's interest in any bankruptcy proceedings relating to such Borrower or ACLF Loan. Without limiting the foregoing, Servicer shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the ACLF Loan and all other obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of ACDC and the Servicer (including any claim for the reasonable compensation, expenses, disbursements and advances of ACDC and the Servicer and their respective agents and counsel and all other amounts due ACDC and the Servicer) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by ACDC to make such payments to the Servicer and, in the event that the Servicer shall consent to the making of such payments directly to ACDC, to pay to the Servicer any amount due for the reasonable compensation, expenses, disbursements and advances of the Servicer and its agents and counsel.

2.10. Authority of Servicer.

2.10.1. Consent of ACDC. Subject to the provisions contained in this Section, ACDC hereby agrees, and each holder of any ACLF Note by the acceptance thereof will be deemed to agree, that any action taken by the Servicer, in accordance with the provisions of this Agreement and the ACLF Loan Documents, and the exercise by the Servicer of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon ACDC. Without limiting the foregoing, subject to the rights of ACDC under Section 2.2.1, the Servicer shall be authorized and empowered, on behalf of ACDC, without notice to, or consent from, ACDC (a) to declare an event of default under the ACLF Loan Documents that has not been waived or cured prior to the expiration of any applicable notice and/or cure period; and (b) from time to time to take any action with respect to the Collateral or ACLF Loan Documents which may be necessary to perfect and maintain perfected the liens upon the Collateral granted pursuant to the ACLF Loan Documents.

Unless it has obtained the prior, written consent of ACDC, the Servicer shall not:

- i. adjust the interest rate under any ACLF Loan;
- ii. agree to the forgiveness of any indebtedness under any ACLF Loan;
- iii. extend or shorten the maturity date of any ACLF Loan, or extend or modify the dates on which installments of principal and/or interest are payable under any ACLF Loan;
- iv. consent to the transfer or encumbrance (directly or indirectly) of the collateral securing any ACLF Loan, or any interest in the Borrower;
- v. determine whether to apply Insurance Proceeds or Condemnation Proceeds received with respect to any ACLF Loan to the restoration or repair of the Project or the repayment of the indebtedness under any ACLF Loan;
- vi. sell or encumber any ACLF Loan, or execute any agreement for any such sale or encumbrance, or subordinate any Collateral or other security for any ACLF Loan to any other indebtedness, interest, or obligation;
- vii. accelerate the maturity of any ACLF Loan, commence exercising remedies for the collection of any ACLF Loan, including foreclosure or replevin proceedings, or agree to the settlement of any such proceedings, except in accordance with an

enforcement action plan prepared by the Servicer and approved in writing by ACDC;

- viii. sell or encumber any Collateral or the execution of any agreement for any such sale or encumbrance except in accordance with an approved enforcement action plan.
- ix. release, or agree to the substitution or exchange of any collateral for, any ACLF Loan;
- x. release from liability any Borrower or other Person liable for the repayment of any ACLF Loan (other than upon full payment and satisfaction of any ACLF Loan, as applicable, as hereinafter provided);
- xi. waive any restriction on prepayment of any ACLF Loan;
- xii. waive, amend or modify any other material term of any ACLF Loan (other than terms providing for the payment of default interest or late payment charges); and
- xiii. take possession of or acquire title to any Collateral, whether through foreclosure, sheriff sale, deed in lieu of foreclosure, or other exercise of remedies under any ACLF Loan.

2.10.2. Release of Collateral. Subject to the foregoing, ACDC hereby irrevocably authorizes the Servicer to release any lien on or security interest in any property granted to or held by the Servicer under any ACLF Loan Document, and to execute such documents as may be necessary to evidence such release, (i) upon payment in full of all obligations (other than contingent indemnification obligations) thereunder, or (ii) in connection with any foreclosure sale or other disposition of any Collateral after the occurrence of an event of default as may be required under applicable proceedings. Upon request by the Servicer at any time, ACDC will confirm in writing the Servicer's authority to release any collateral for any ACLF Loan, as applicable.

2.10.3. Property. Subject to the Accepted Servicing Practices, the Servicer shall have no obligation whatsoever to ACDC or any other Person to assure that the Collateral exists or is owned by any Borrower or is cared for, protected or insured or that the liens or security interests granted under any of the ACLF Loan Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or, except as expressly provided in this Agreement, to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Servicer under this Agreement or in any of the ACLF Loan Documents.

2.10.4. ACLF Loan Payments. (a) The Servicer will provide ACLF Loan Payment statements to the Borrower. The ACLF Loan Payment statements will be sent on a date (the "Bill Lead Date") that is no later than the 22nd day of each calendar month. Any necessary adjustments in the applicable interest rate and/or principal payments due or made between a Bill Lead Date and the due date will be reflected as an additional charge (or credit) in the billing for

the next following month. The failure of the Servicer to submit a ACLF Loan Payment statement by the Bill Lead Date or any error in any such invoice will not excuse Borrower's obligation to make full payment of all amounts due under the ACLF Loan Documents. The Servicer shall also submit to Borrower annual analysis of its escrow arrangement, if applicable under the ACLF Loan Documents. In its sole discretion, the Servicer may cancel or modify the terms on which it delivers statements on the Bill Lead Date, which cancellation or modification will be effective upon written notification to the Borrower. The Servicer shall provide ACDC monthly accounting statements of amounts received, and/or distributed by Servicer, with respect to each ACLF Loan.

2.10.5. Servicing Fees. As consideration to Servicer for servicing the ACLF Loans subject to this Agreement, ACDC shall be responsible for paying Servicer the Servicing Fees.

2.10.6. Reimbursement of Ancillary Fees. ACDC shall within ten (10) days of receiving written request therefor reimburse Servicer for any and all Ancillary Fees that may be incurred or made by Servicer in connection with a ACLF Loan, and any action that may be taken by Servicer to collect the ACLF Loan, or to enforce the rights of ACDC under the ACLF Loan Documents and/or any obligation of Borrower or any Borrower Party in respect of the ACLF Loan, except to the extent that such Ancillary Fees have been reimbursed to Servicer by Borrower, any other Borrower Party, or out of the Collateral. Any Ancillary Fees later reimbursed to Servicer from any source, shall be deemed to be payments and shall be payable to ACDC pursuant to Section 2.10.4 hereof. Upon request, Servicer shall furnish to ACDC copies of all invoices and statements evidencing Ancillary Fees.

2.10.7. Remittances. The Servicer shall segregate and hold all funds collected and received pursuant to ACLF Loans separate and apart from any of its own funds and general assets. On each Remittance Date, the Servicer shall remit by deposit into ACDC's account with Servicer the following collections received by the Servicer as of the close of business on the Determination Date (net of all Ancillary Fees and Servicing Fees pursuant to this Section 2.10.7):

2.10.7.1. all payments on account of principal on the ACLF Loans;

2.10.7.2. all payments on account of interest on the ACLF Loans;

2.10.7.3. all Liquidation Proceeds;

2.10.7.4. all Insurance Proceeds (other than proceeds to be held in escrow in accordance with the related ACLF Loan Documents and Applicable Law and applied to the restoration or repair of the Collateral or released to the Borrower in accordance with the related ACLF Loan Documents); and

2.10.7.5. all Condemnation Proceeds which are not applied to the restoration or repair of the Collateral or released to the Borrower in accordance with the related ACLF Loan Documents and Applicable Law.

Notwithstanding (and without limiting) the foregoing or Section 2.10.6, ACDC authorizes the Servicer to net Ancillary Fees and Servicing Fees from funds collected and received on ACLF

Loans before any collections are remitted to ACDC. The right to net funds for Ancillary Fees and Servicing Fees is not restricted to or limited by funds collected or received in respect of the related ACLF Loan.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

3.1. Representations, Warranties and Covenants of Servicer. As a condition to the consummation of the transactions contemplated hereby, and at all times prior to the termination of this Agreement, Servicer hereby makes the following representations, warranties and covenants to ACDC:

3.1.1. Due Organization, Licensing and Qualification. Servicer is a state-chartered financial institution duly organized, validly existing and in good standing under the laws of the State of Indiana and has all licenses necessary to carry on its business as now being conducted and is licensed, qualified and in good standing in each state where the laws of such state require licensing or qualification in order to conduct business of the type conducted by Servicer, except to the extent that the failure to obtain or maintain any such license or qualification could not reasonably be expected to have a Material Adverse Effect with respect to Servicer; and in any event, Servicer is in material compliance with the Applicable Laws of any such state to the extent necessary to ensure the enforceability of the terms of this Agreement and its ability to perform its obligations hereunder.

3.1.2. Authority and Binding Agreement. Servicer has the full corporate power and authority to execute and deliver this Agreement and to perform in accordance herewith; the execution, delivery and performance of this Agreement (including all instruments of transfer to be delivered pursuant to this Agreement) by Servicer, and the consummation of the transactions contemplated hereby have been duly and validly authorized; this Agreement evidences the valid, binding and enforceable obligation of Servicer and all requisite corporate action has been taken by Servicer to make this Agreement valid and binding upon Servicer in accordance with its terms.

3.1.3. Ability to Perform. Assuming full and complete performance by ACDC with its covenants and obligations hereunder, Servicer does not believe, nor does it have any reason or cause to believe, that it cannot perform in all material respects its covenants and obligations contained in this Agreement.

3.1.4. No Consent or Approval Required. No consent, approval, license, registration, authorization or order of any Regulatory Authority is required for the execution, delivery and performance by Servicer of, or compliance by Servicer with this Agreement, including the servicing of each ACLF Loan hereunder, except where the failure to obtain such consent, approval, license, registration, authorization or order would not be expected to have a Material Adverse Effect hereunder.

3.2. Representations, Warranties and Covenants of ACDC. As a condition to the consummation of the transactions contemplated hereby, and at all times prior to the termination of this Agreement, ACDC hereby makes the following representations, warranties and covenants to Servicer:

3.2.1. Due Organization, Licensing and Qualification. ACDC is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Indiana and has all licenses necessary to carry on its business as now being conducted and is licensed, qualified and in good standing in each state where the laws of such state require licensing or qualification in order to conduct business of the type conducted by ACDC, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect on ACDC.

3.2.2. Authority and Binding Agreement. ACDC has the full corporate power and authority to execute and deliver this Agreement and to perform in accordance herewith; the execution, delivery and performance of this Agreement (including all instruments of transfer to be delivered pursuant to this Agreement) by ACDC and the consummation of the transactions contemplated hereby have been duly and validly authorized; this Agreement evidences the valid, binding and enforceable obligation of ACDC and all requisite corporate action has been taken by ACDC to make this Agreement valid and binding upon ACDC in accordance with its terms.

3.2.3. Ability to Perform. Assuming full and complete performance by the Servicer with its covenants and obligations hereunder, ACDC does not believe, nor does it have any reason or cause to believe, that it cannot perform in all material respects its covenants and obligations contained in this Agreement.

3.2.4. No Consent or Approval Required. No consent, approval, license, registration, authorization or order of any Regulatory Authority is required for the execution, delivery and performance by ACDC of, or compliance by ACDC with this Agreement, including the holding of each ACLF Loan hereunder.

4. MISCELLANEOUS

4.1. Agreement Binding. ACDC and the Servicer represent and warrant to each other that this Agreement has been duly authorized, executed and delivered by such representing and warranting party and is the legal, valid, binding and enforceable obligation of such party, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the rights and remedies of creditors and subject to general equitable principles, including without limitation the principle that equitable remedies, such as the remedy of specific performance, are subject to the discretion of the court.

4.2. No Guaranty. Neither ACDC nor the Servicer as a result of the provisions of this Agreement shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of any of the Borrower Parties.

4.3. No Trustee, Partnership, or Fiduciary Relationships. Nothing in this Agreement and no action taken pursuant hereto shall cause either ACDC or Servicer to be treated as a trustee or fiduciary for the benefit of any other Party, or cause ACDC or Servicer to be treated as partners or participants in a partnership, association, joint venture, or other entity. Further, neither the execution of this Agreement nor the transactions contemplated hereby is intended to be or to create, and the foregoing shall be construed not to be or to create, any partnership, joint venture, or other joint enterprise between the parties hereto, and neither the execution of this Agreement, nor the management and administration of the ACLF Loans and the ACLF Loan Documents, nor

any other right, duty, or obligation under or pursuant to this Agreement is intended to be or create any express, implied, or constructive trust or other fiduciary relationship between ACDC and Servicer.

4.4. No Reliance by Others. None of the provisions of this Agreement shall inure to the benefit of Borrower or any person other than the Parties hereto; consequently, Borrower shall not be, and no person other than the Parties shall be, entitled to rely upon or raise as a defense, in any manner whatsoever, the failure of any of the Parties to comply with the provisions of this Agreement. None of the Parties shall incur any liability to Borrower or any other person for any act or omission of the Parties.

4.5. Conflicts Between Documents. If the terms of this Agreement should conflict with the terms of any of the ACLF Loan Documents, the terms of this Agreement shall control.

4.6. Notices and Information. All notices and other communications hereunder shall be in writing and shall be mailed or delivered to the applicable Party at its address as follows: If to ACDC: 201 South 2nd Street, Elkhart, IN 46516, with a copy to Jerry Kearns, Loan Administrator, 418 S. Main Street, P.O. Box 428, Elkhart, IN 46515-0428; if to the Servicer, Lake City Bank: P.O. Box 1387, Warsaw, IN 46581, or to such other address for a party as such party shall specify in writing to the other parties to this Agreement. Each Party may change the address for service of notice upon such party by a notice in writing to the other Parties hereto. All such notices, requests, demands and other communications shall, when mailed, be effective when deposited in the mail, addressed as aforesaid, except that notices or requests to Servicer pursuant to any of the provisions hereunder shall not be effective until received by Servicer.

4.7. Transfer of Obligations; Parties in Interest. In the event of any transfer by ACDC of any ACLF Loan, such transfer shall be made expressly subject to the terms of this Agreement which shall be binding on the transferee to the same extent as its transferor. All of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon and enforceable by the respective successors and permitted assigns of the parties hereto, whether so expressed or not and, in particular, shall inure to the benefit of and be enforceable by any future holder or holders of the ACLF Loan.

4.8. Applicable Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of Indiana, without regard to any conflict of laws principles.

4.9. Consent to Jurisdiction. Each Party irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in any state situated in Elkhart County, Indiana, or any federal court situated in the Northern District of Indiana; (b) consents to the jurisdiction of any such court in any such suit, action or proceeding; and (c) waives any objection which such party may have to the laying of venue of any such suit, action or proceeding in such court.

4.10. LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES. EACH OF THE PARTIES HERETO AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR

AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE ACLF LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE.

4.11. Waiver of Jury Trial. ACDC AND SERVICER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

4.12. Attorneys' Fees and Expenses. If any Party institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing Party shall be entitled to recover from the other party all costs and expenses, including, subject to applicable law, reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether or not suit is brought, and if brought whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding.

4.13. Hold Harmless and Indemnification. ACDC hereby indemnifies and holds Servicer and each director, officer, employee, and Affiliate of Servicer (collectively, the "Indemnified Parties") harmless from all claims, damages, liabilities, including reasonable attorneys' fees and legal expenses, causes of action, actions, suits and other legal proceedings (collectively, "Claims") in any matter relating to or arising out of this Agreement or any ACLF Loan, including any inaccuracy in any of the representations or warranties, or breach of covenants, of ACDC under this Agreement, any transactions contemplated hereby or by the ACLF Loan Documents, or any act, event or transaction related or attendant to any of the foregoing, other than Claims resulting solely and directly from Servicer's gross negligence or willful misconduct, as determined by a final, nonappealable judgment of a court of competent jurisdiction. ACDC shall immediately provide Servicer with written notice of any Claim. In addition, ACDC, upon request of Servicer, shall defend the Indemnified Parties from any and all Claims and pay the reasonable attorneys' fees, legal expenses and other costs incurred in connection therewith. In the alternative, each Indemnified Party shall be entitled to employ its own legal counsel to defend such Claims at ACDC's sole cost and expense. The obligations of ACDC under this Section shall terminate upon termination of this Agreement.

4.14. No Third Parties Benefited. This Agreement, is solely for the benefit of ACDC and the Servicer and their respective successors and permitted assigns, and no Person, including the Borrower, shall have any right, benefit, priority or interest under, or because of the existence of this Agreement.

4.15. Revival and Reinstatement of Obligations. If the incurrence or payment of any of the obligations arising under the ACLF Loan Documents by Borrower or the transfer to the Servicer or ACDC of any property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (collectively, a "Voidable Transfer"), and if either ACDC or the Servicer is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the applicable ACDC or the Servicer is required or elects to repay or restore, the rights and obligations of ACDC and the Servicer automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made, and the Parties shall reallocate among them pursuant to funds previously received from and after the date of receipt of the Voidable Transfer.

4.16. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the matters set forth herein. All prior or contemporaneous discussions, statements, understandings, and agreements with respect to the matters set forth herein are hereby merged into the terms of this Agreement. There are no representations, warranties, promises, or agreements, oral or otherwise, between the Parties with respect to the matters set forth above, except as expressly stated in this Agreement. No provision of this Agreement may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the Party against which enforcement of the change, waiver, discharge, or termination is sought.

4.17. Execution of Documents, Consultation with Counsel. Each Party hereto acknowledges and agrees that it has had an opportunity to review and consider the terms and provisions of this Agreement, to consult with counsel of its choice, if desired, and to suggest changes to the structure and terms of the Agreement. Each Party hereto warrants and agrees that its execution of this Agreement is made voluntarily and with full knowledge of the significance of such agreements.

4.18. Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

4.19. Execution in Counterparts; Electronic Delivery. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of

the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or other electronic transmission (*e.g.*, e-mail of a PDF file) shall be as effective as delivery of a manually executed counterpart hereof.

[Remainder of page intentional left blank. Signatures on following page.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

SERVICER:

LAKE CITY BANK,
an Indiana state-chartered financial institution

By: _____

Name:

Title:

ACDC:

THE AURORA CAPITAL DEVELOPMENT CORPORATION,
an Indiana nonprofit organization

By: _____

Name:

Title: