

**SERVICE AGREEMENT**  
[Project Name/Contract # \_\_\_\_\_]

THIS SERVICE AGREEMENT (the “Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 2009 (the “Effective Date”), by and among [FSA Name], an Indiana \_\_\_\_\_ (the “FSA”), [Company Name], an Indiana \_\_\_\_\_ (the “Company”), and the **Indiana Housing and Community Development Authority**, a public body corporate and politic of the State of Indiana (“IHCDA”).

**Purpose**

A. The Company is under consideration for a loan (the “Loan”) to supplement or supplant an award of Low Income Housing Tax Credits under Section 42 of the Internal Revenue Code pursuant to Section 1602 of the American Recovery and Reinvestment Act of 2009 (the “ARRA”). If approved, the Loan proceeds will be used to fund the eligible costs of [Project Name] (the “Project”) pursuant to a loan agreement which shall be executed by and between IHCDA and the Company (the “Loan Agreement”).

B. The parties desire for the FSA to provide due diligence, underwriting and closing services to IHCDA in connection with the Company’s application for the Loan for the Project, upon the terms and subject to the conditions set forth herein.

**Agreement**

In consideration of the following mutual promises, covenants, and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Defined Terms. Unless otherwise set forth herein, capitalized terms shall have the meaning set forth in the Loan Agreement or the IHCDA’s 2009 Section 1602 – Tax Credit Exchange Program Policies and Procedures (the “Policies and Procedures”).

2. Term. The term of this Agreement shall commence on the Effective Date and shall continue until the closing of the Loan unless otherwise earlier terminated as set forth herein (the “Term”).

3. Services. During the Term, the FSA shall provide the following services to IHCDA with respect to the Loan.

(a) The FSA shall perform the due diligence services (the “Due Diligence Services”) set forth herein and in the Policies and Procedures, and as requested by IHCDA, from time to time. For the purposes of this Agreement, the “Due Diligence Services” shall include, without limitation, the following activities:

(i) The FSA shall collect and review the items set forth on the due diligence checklist set forth on Exhibit A, attached hereto and made a part hereof (the “Due Diligence Checklist”), and shall verify conformity to, or explain variances from, the Policies and Procedures.

(ii) Upon completion of review of the due diligence materials, the FSA shall provide a written report for IHCDA with respect to the Company and the Project, which shall include the FSA’s recommendation as to whether or not IHCDA should proceed with the Loan. A signed and dated Due Diligence Checklist shall accompany the report.

(b) The FSA shall perform the underwriting services (the “Underwriting Services”) set forth herein and in the Policies and Procedures, and as requested by IHCDA, from time to time. For the purposes of this Agreement, the “Underwriting Services” shall include, without limitation, the following activities:

(i) The FSA shall collect and review the items on the underwriting checklist set forth in Exhibit B, attached hereto and made a part hereof (the “Underwriting Checklist”), and shall verify conformity to, or explain variances from, the Policies and Procedures.

(ii) The FSA shall visit the Project site and, to the extent reasonably possible, visit similar project sites operated by the Developer and Management Agent for the Project.

(iii) Upon completion of review of the underwriting materials and the Project site, the FSA shall provide a written report for IHCDA with respect to the Company and the Project, which shall include the FSA’s recommendation as to whether IHCDA should proceed with the Loan and, if requested by IHCDA, the FSA shall present its recommendation to IHCDA’s Board of Directors and/or Allocation Committee at a meeting. A signed and dated Underwriting Checklist shall accompany the report.

(c) The FSA shall perform the closing services (the “Closing Services”) set forth herein and in the Policies and Procedures, and as requested by IHCDA, from time to time. For the purposes of this Agreement, the “Closing Services” shall include, without limitation, the following activities:

(i) The FSA shall collect and review the items on the closing checklist set forth in Exhibit C, attached hereto and made a part hereof as may be amended by IHCDA from time to time, and shall verify conformity to, or explain variances from, the Policies and Procedures.

(ii) The FSA shall engage counsel for limited review of real estate documents, including title and survey.

(iii) The FSA shall finalize the Loan Agreement, which shall be in a form provided by IHCDA. The FSA shall submit any proposed substantive changes to such Loan Agreement to IHCDA for review.

(iv) The FSA shall coordinate and conduct all aspects of closing the Loan, as requested by IHCDA.

The Due Diligence Services, the Underwriting Services and the Closing Services are referred to collectively herein as the “Services.” The FSA may provide the Services itself or by contracting with another financing services agent engaged by the FSA at its sole expense.

#### 4. Fees and Expenses.

(a) Service Fee. In consideration of the Services to be provided by the FSA hereunder, the Company shall pay to the FSA a fee in an amount equal to four percent (4%) of the total IHCDA funding provided to the Company pursuant to the Loan and the Tax Credit Assistance Program (the “Service Fee”); provided, however, that such Service Fee shall not exceed One Hundred Twenty

Five Thousand and No/100 Dollars (\$125,000.00). In addition to the foregoing, the Company shall reimburse the FSA for any reasonable and necessary expenses it incurs in the provision of the Services hereunder. The Service Fee and any expenses payable pursuant to this Section 4(a) shall be due and payable upon execution by the Company of the Loan Agreement. Under no circumstances shall any portion of the Service Fee or expenses related thereto be paid from the proceeds of the Loan or any funds received by the Company pursuant to the Tax Credit Assistance Program administered by IHCDA pursuant to the ARRA.

(b) Fee for Due Diligence Services. Notwithstanding the foregoing, if IHCDA determines at the completion of the due diligence process, upon receipt of a written recommendation from the FSA, not to proceed with making the Loan to the Company, IHCDA shall reimburse the FSA for any reasonable and necessary expenses it incurs in the provision of the Due Diligence Services hereunder.

(c) Fee for Due Diligence and Underwriting Services. Notwithstanding anything to the contrary contained herein, if IHCDA determines at the completion of the underwriting process, upon receipt of written recommendation from the FSA, not to proceed with making the Loan to the Company, IHCDA shall reimburse the FSA for any reasonable and necessary expenses it incurs in the provision of the Due Diligence Services and the Underwriting Services hereunder.

5. Compliance with Laws and Policies and Procedures.

(a) The FSA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including, without limitation, Section 42 of the Internal Revenue Code, and the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), and all provisions required thereby to be included herein are hereby incorporated by reference, and the Policies and Procedures, as the same may be amended from time to time. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the IHCDA to determine whether the provisions of this Agreement require formal modification.

(b) The FSA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 *et seq.*, Ind. Code § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the FSA is not familiar with these ethical requirements, the FSA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the FSA or its agents violate any applicable ethical standards, IHCDA may, in its sole discretion, terminate this Agreement immediately upon notice to the FSA. In addition, the FSA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

(c) The FSA certifies by entering into this Agreement that it is not presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the FSA agrees that any payments in arrears and currently due to the State may be withheld from payments due to the FSA. Additionally, further payments may be withheld, delayed, or denied and/or this Agreement suspended until the FSA is current in its payments and has submitted proof of such payment to IHCDA.

(d) The FSA warrants that it shall obtain and maintain all required permits, licenses, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach and grounds for immediate termination of this Agreement and denial of further work with the State.

(e) The FSA hereby affirms that if it is an entity described in Indiana Code Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

(f) As required by IC 5-22-3-7:

(i) The FSA certifies that (1) the FSA, except for de minimis and nonsystematic violations, has not violated the terms of (A) IC 24-4.7 [Telephone Solicitation Of Consumers], (B) IC 24-5-12 [Telephone Solicitations] , or (C) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (2) the FSA will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal law.

(ii) The FSA certifies that an affiliate of the FSA and any agent acting on behalf of the FSA or on behalf of an affiliate of the FSA (1) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (2) will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal law.

(g) The FSA shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Agreement. It shall make such materials available at its offices at all reasonable times during the Agreement term, and for six (6) years from the date of final payment under this Agreement, for inspection by the IHCDA or its authorized designees. Upon request, copies shall be furnished at no cost to IHCDA.

6. Termination.

(a) By IHCDA.

(i) IHCDA may immediately suspend or terminate this Agreement if the FSA fails to comply with any material term of the Agreement, any applicable law or regulation, or the Policies and Procedures.

(ii) IHCDA may terminate this Agreement, in its sole discretion, following the the provision of the Due Diligence Services or the Underwriting Services, if it decides not to make the Loan to the Company, upon five (5) business days written notice. Written notice of such termination must be sent to the other parties by certified mail, return receipt requested, postage prepaid. After mailing of such notice of termination, no new or additional liabilities shall be incurred without the prior written approval of IHCDA.

(ii) IHCDA may terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice. Written notice of such termination must be sent to the other parties by certified mail, return receipt requested, postage prepaid. After mailing of such notice of termination, no new or additional liabilities shall be incurred without the prior written approval of IHCDA.

(b) By the FSA. The FSA may terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice. Written notice of such termination must be sent to the other parties by certified mail, return receipt requested, postage prepaid.

7. Insurance and Indemnification.

(a) Insurance. During the Term, the FSA shall obtain and maintain, at its expense, with an insurer acceptable to IHCD, comprehensive general liability insurance for full coverage of claims to a limit of at least Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) for each occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate with coverage shown as primary to any other coverage available to IHCD. The FSA shall deliver to IHCD a certificate of insurance as soon as practicable upon execution of this Agreement evidencing coverage or IHCD shall have the right to terminate this Agreement immediately. The certificate shall demonstrate the following: (i) IHCD is a certificate holder with thirty (30) days notice rights and (ii) the policy names IHCD as an additional insured on a primary, non-contributory basis.

(b) Indemnification. The FSA shall indemnify, defend, and hold harmless IHCD, its directors, officers, employees, and agents of and from any and all claims, losses, damages, or expenses (including reasonable attorneys' fees) arising out of or in any way related to (i) any breach or alleged breach by the FSA of any provision of this Agreement or any material inaccuracy of any representation or warranty made by it herein, (ii) any act or omission by the FSA, its employees, agents, representatives or affiliates, directly or indirectly, related to its performance of this Agreement constituting negligence, recklessness or willful misconduct; and (iii) any alleged failure on the part of the FSA, its employees, agents, representatives or affiliates to comply with federal, state and local laws and regulations, including without limitation, the Policies and Procedures. IHCD shall not provide any such indemnification to the Company or the FSA.

8. Independent Contractor. The parties hereto, in the performance of this Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. The employees of one party shall not be deemed or construed to be the employees or agents of the other parties for any purpose whatsoever. Except as provided in Section 7(b), neither party will assume liability for any injury to any persons, or any damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of the other party.

9. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement relating to the subject matter hereof among the parties hereto. Each party acknowledges that no representation, inducement, promise or agreement has been made, orally or otherwise, by any other party, or anyone acting on behalf of any other party, unless such representation, inducement, promise or agreement is embodied in this Agreement expressly or by incorporation.

(b) Governing Law; Choice of 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 any action arising out of this Agreement.

(c) Successors. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns. Neither the FSA, nor the Company shall assign this Agreement without the express prior written consent of IHCD.

(d) Amendments and Waivers. This Agreement may not be amended and compliance with any provision of this Agreement may not be waived except in a writing signed by all of the

parties hereto; provided, however, that IHCDA may amend this Agreement unilaterally in order to comply with a change in an applicable law, rule, regulation or directive.

(e) Severability. If any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions of this Agreement shall nevertheless continue in full force and effect.

(f) Third Party Beneficiaries. The obligations of each party under this Agreement shall inure solely to the benefit of the other parties and IHCDA, and no other person or entity shall be a third party beneficiary of this Agreement.

(g) Notices. Notice shall be deemed to have been given under this Agreement whenever any notice, statement, or other communication shall be delivered in person, or sent via overnight delivery service maintaining records of receipt to the address below, unless otherwise requested in writing:

If to the FSA: [Contract Name]  
[Street Address]  
[City, State Zip]

If to IHCDA: Indiana Housing and Community Development Authority  
30 South Meridian Street, Suite 1000  
Indianapolis, Indiana 46204  
Attention: MultiFamily Manager

With copy to: Indiana Housing and Community Development Authority  
30 South Meridian Street, Suite 1000  
Indianapolis, Indiana 46204  
Attention: General Counsel

A party's address for notice may be changed from time-to-time only by written notice given to each of the other parties in accordance with this Section.

(h) Counterparts. This Agreement may be executed in several counterparts all of which shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatories on the same counterpart.

*(Remainder of page intentionally left blank.)*

**NON-COLLUSION AND ACCEPTANCE**

The undersigned attests, subject to the penalties for perjury that he/she is the properly authorized representative, agent, member or officer of the FSA, or the Company, as the case may be, and that he/she has not, nor has any other member, employee, representative, agent or officer of the FSA or the Company, 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 or pay, and that he/she 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 FSA, the Company and IHEDA have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

**FSA:** \_\_\_\_\_

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

Name: \_\_\_\_\_

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

**Company:** \_\_\_\_\_

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

Name: \_\_\_\_\_

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

**IHCDA:  
Indiana Housing & Community Development Authority**

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

Name: \_\_\_\_\_

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