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MEMORANDUM

To: Mayor Diane Wolfe Marlin, City Council Members
From: David Wesner, City Attorney
Date: February 22, 2022
Subject: Amendments to Bonds issued for the benefit of Clark-Lindsey Village, Inc.

Introduction: Clark-Lindsey Village Inc. is a not-for-profit corporation which owns and operates senior living facilities within the City of Urbana. They are currently working on a corporate re-structuring which will create a change in the corporate entity which owns and operates Clark-Lindsey Village.

Background: Not-for-profit organizations may take advantage of tax-exempt bond financing to assist with developments and capital projects. The bond financing must be coordinated through a governmental entity. The governmental entity will be the issuer of the bonds for the benefit of the not-for-profit. Upon issuance, the bond proceeds will be loaned to the not-for-profit under loan agreements securing the repayment of the bonds from the not-for-profit. The governmental entity, although the issuer of the bonds, is not otherwise liable for the bonds. The bonds are secured through the loan agreements and mortgages and are repaid through the revenue generated by the not-for-profit. It is within this landscape that the City of Urbana was the issuer for bonds for the benefit of Clark-Lindsey Village Inc. In 2004, the City of Urbana was the issuer for Capital Improvement Revenue Bonds (Clark-Lindsey Village Inc. Project) Series 2004. In 2015, the City of Urbana was the issuer for Revenue Bonds (Clark-Lindsey Village Inc. Project) Series 2015. The bonds were issued in accordance with respective loan agreements and promissory notes, as well as mortgages and security agreements. All of the respective documents are currently in the name of Clark-Lindsey Village Inc.

Discussion: Clark-Lindsey Village Inc. is going through a corporate re-structuring and re-organization. The corporate re-structuring will result in a new corporate entity that is the intended owner of the property on which the senior living facilities are operated. The new entity is Clark-Lindsey Holdings, Inc. and is an Illinois not-for-profit corporation. Clark-Lindsey Village Inc., as part of the re-structuring and re-organization, will transfer the property to Clark-Lindsey Holdings, Inc. No additional bonds will be issued as part of this re-structuring and re-organization. The re-structuring and re-organization will require modifications to the current bond documents to reflect the new corporate entity. The modifications will result in adding Clark-Lindsey Holdings Inc., as well as the parent organization Lindsey Communities, Inc., an Illinois not-for-profit corporation, as obligated parties on the bonds on a joint and several basis with Clark-Lindsey Village Inc., the original borrower.

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Recommendation: I recommend that the City Council approved the attached Resolution, which will authorize the City of Urbana to execute the Modification to Transaction Documents regarding the Capital Improvement Revenue Bonds (Clark-Lindsey Village Inc. Project) Series 2004 and the Revenue Bonds (Clark-Lindsey Village Inc. Project) Series 2015.

RESOLUTION NO. _____

**RESOLUTION APPROVING CERTAIN AMENDMENTS TO
REVENUE BONDS ISSUED BY THE CITY OF URBANA,
CHAMPAIGN COUNTY, ILLINOIS FOR THE BENEFIT OF
CLARK-LINDSEY VILLAGE, INC.**

WHEREAS, the City of Urbana, Champaign County, Illinois (the “City”) is a home rule unit pursuant to the provisions of Section 6 (Powers of Home Rule Units) of Article VII (Local Government) of the Constitution of the State of Illinois and may accordingly exercise any power and perform any function pertaining to its government and affairs, including as supplemented and amended by the provisions of The Industrial Project Revenue Bond Act, 65 ILCS 5/11-74-1 *et seq.*, as amended, and the Local Government Debt Reform Act, 30 ILCS 350/1 *et seq.*, as amended (collectively, the “Acts”), to issue its revenue bonds for the purpose of loaning the proceeds of such bonds to others to provide funds to finance the costs of certain projects as provided for in the Acts and to pledge the payments, revenues and receipts derived from such projects as security for the payment of the principal of, redemption premium, if any, and interest on such bonds; and

WHEREAS, the City has previously issued its Capital Improvement Revenue Bonds (Clark-Lindsey Village, Inc. Project), Series 2004 (the “Series 2004 Bonds”) and Revenue Bonds (Clark-Lindsey Village Project), Series 2015 (the “Series 2015 Bonds” and, together with the Series 2004 Bonds, the “Bonds”) for the purpose of making loans to Clark-Lindsey Village, Inc., an Illinois not-for-profit corporation (the “Borrower”), to finance certain capital improvements benefitting the Borrower; and

WHEREAS, the Bonds are limited obligations of the City payable solely out of the payments, revenues and receipts derived by the City from the Borrower and the Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction; and

WHEREAS, Busey Bank (the “Lender”) purchased the Bonds and is the current owner of all the Bonds outstanding; and

WHEREAS, the Series 2004 Bonds were issued by the City in accordance with a Loan Agreement dated as of April 1, 2004, as supplemented and amended (the “2004 Loan Agreement”), between the City and the Borrower and are secured by a Promissory Note, Series 2004 dated May 20, 2004, as supplemented and amended (the “2004 Promissory Note”) issued by the Borrower and a Mortgage and Security Agreement dated as of April 1, 2004, as supplemented and amended (the “2004 Mortgage”) executed by the Borrower in favor of the Lender as assignee of the City; and

WHEREAS, the Series 2015 Bonds were issued by the City in accordance with a Loan Agreement dated as of December 30, 2015, as supplemented and amended (the “2015 Loan Agreement”) among the Lender, the City and the Borrower and are secured by a Promissory Note dated December 30, 2015, as supplemented and amended (the “2015 Promissory Note”) issued by the Borrower and a Mortgage, Assignment of Rents and Profits and Security Agreement dated as of December 30, 2015, as supplemented and amended (the “2015 Mortgage”) executed by the Borrower in favor of the Lender; and

WHEREAS, the Borrower intends to transfer to Clark-Lindsey Holdings, Inc., an Illinois not-for-profit corporation and affiliated organization of the Borrower (“CLH”) certain property of the Borrower, including all or a portion of the real and personal property subject to the 2004 Mortgage and the 2015 Mortgage (collectively referred to as the “Borrower-CLH Property Transfer”); and

WHEREAS, the Borrower has requested the City and the Lender consent to (a) the Borrower-CLH Property Transfer and certain documents and actions necessary to effect the Borrower-CLH Property Transfer, and (b) amendments to the 2004 Loan Agreement, the 2004 Promissory Note, the 2015 Loan Agreement, the 2015 Promissory Note and other related documents (collectively, the “Transaction Documents”) to add CLH and Lindsey Communities, Inc., an Illinois not-for-profit corporation and parent organization of the Borrower and CLH (“Lindsey Communities”), as obligated parties on a joint and several basis with the Borrower.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, AS FOLLOWS:

Section 1. Consent to Amendments. The City hereby consents to (a) the Borrower-CLH Property Transfer and any documents and actions necessary to effect the Borrower-CLH Property Transfer, and (b) amendments to the Transaction Documents to add CLH and Lindsey Communities as obligated parties on a joint and several basis with the Borrower.

Section 2. Authorization of Document. The City is hereby authorized to enter into the Modification to Transaction Documents in substantially the form attached hereto as **Exhibit A** (the “Modification”) with such changes therein as shall be approved by the officers of the City executing such document, such officers’ signatures thereon being conclusive evidence of their approval thereof.

Section 3. Execution Modification. The Mayor is hereby authorized and directed to execute and deliver the Modification for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized and directed to attest to the Modification and to such other documents and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 4 Further Authority. The City shall, and the officers and agents of the City are hereby authorized and directed to take such action and execute such other documents and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution and to carry out, comply with and perform the duties of the City with respect to the Modification.

Section 5. Governing Law. This Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State of Illinois.

Section 6. Recitals. The facts and statements contained in the preamble to this Resolution are found to be true and correct and are hereby adopted as part of this Resolution.

Section 7. Adoption. This Resolution shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed by the City Council of the City of Urbana, Champaign County, Illinois on this 28th day of February, 2022 on the following vote:

YEAS: _____.

NAYS: _____.

ABSENT: _____.

Approved: February 28, 2022

Mayor, City of Urbana,
Champaign County, Illinois

[SEAL]

ATTEST:

City Clerk, City of Urbana,
Champaign County, Illinois

EXHIBIT A

MODIFICATION TO TRANSACTION DOCUMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of Urbana, Champaign County, Illinois, and as such officer I am the keeper of the records and files of the City Council of said City.

I do further certify that the foregoing constitutes a full, true and complete copy of a resolution adopted by the City Council of the City on the 28th day of February, 2022, entitled:

RESOLUTION APPROVING CERTAIN AMENDMENTS TO REVENUE BONDS ISSUED BY THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS FOR THE BENEFIT OF CLARK-LINDSEY VILLAGE, INC.

I do further certify that the deliberations of the City Council of said City on the adoption of said resolution were taken openly; that the vote on the passage of said resolution was taken openly; that said meeting was held at a specified time and place convenient to the public; that notice of said meeting was duly given to all news media requesting such notice; that an agenda for said meeting was duly posted on the City's website and at the principal office of the City Council of said City at least 48 hours in advance of the holding of said meeting on a day other than a Saturday, a Sunday or a legal holiday for municipalities in the State of Illinois; that said agenda contained a specific reference to said resolution; and that said meeting was called and held in strict accordance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Illinois Municipal Code, as amended, and that said City Council has complied with all of the applicable provisions of said Act, said Code and its procedural rules in the adoption of said resolution.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and the seal of said City, this ___ day of February, 2022.

(SEAL)

City Clerk, City of Urbana, Illinois

MODIFICATION TO TRANSACTION DOCUMENTS

Dated and Effective as of [__ **Effective Date __]**

Relating to:

\$5,000,000

**City of Urbana, Champaign County, Illinois
Capital Improvement Revenue Bonds
(Clark-Lindsey Village, Inc. Project)
Series 2004**

and

\$10,000,000

**City of Urbana, Champaign County, Illinois
Revenue Bonds
(Clark-Lindsey Village Project)
Series 2015**

This MODIFICATION TO TRANSACTION DOCUMENTS (the "Agreement") is dated and effective as of [__ **Effective Date** __], by and among the City of Urbana, Champaign County, Illinois (the "Issuer"), Clark-Lindsey Village, Inc. ("CLV"), Clark-Lindsey Holdings, Inc. ("CLH"), Lindsey Communities, Inc. ("Lindsey Communities") and Busey Bank (the "Lender").

RECITALS

A. This Agreement is executed in connection with the Capital Improvement Revenue Bonds (Clark-Lindsey Village, Inc. Project), Series 2004 (the "2004 Bonds") and the Revenue Bonds (Clark-Lindsey Village Project), Series 2015 (the "2015 Bonds" and, together with the Series 2004 Bonds, the "Bonds"). The Lender is the sole owner of the Bonds.

B. The Series 2004 Bonds were issued by the Issuer in accordance with a Loan Agreement dated as of April 1, 2004, as supplemented and amended (the "2004 Loan Agreement"), between the Issuer and CLV. To evidence and secure the obligations of CLV under the 2004 Loan Agreement, CLV executed and delivered a Promissory Note, Series 2004 dated May 20, 2004, as supplemented and amended (the "2004 Promissory Note") and a Mortgage and Security Agreement dated as of April 1, 2004, as supplemented and amended (the "2004 Mortgage") to the Lender as assignee of the Issuer. The rights of the Issuer under the 2004 Loan Agreement, the 2004 Promissory Note, and the 2004 Mortgage were assigned by the Issuer to the Lender pursuant to an Assignment Agreement dated as of April 1, 2004, as supplemented and amended (the "2004 Assignment Agreement"). In connection with the issuance of the 2004 Bonds, CLV, the Issuer and the Lender entered into an Arbitrage Regulation Agreement dated as of April 1, 2004, as supplemented and amended (the "2004 Tax Agreement"), setting forth certain federal tax agreements and requirements with respect to the 2004 Bonds. The 2004 Bonds, the 2004 Loan Agreement, the 2004 Promissory Note, the 2004

Mortgage, the 2004 Assignment Agreement, the 2004 Tax Agreement, and the other agreements and instruments previously entered in connection with the 2004 Bonds are referred to herein as the “2004 Transaction Documents.”

C. The Series 2015 Bonds were issued by the Issuer in accordance with a Loan Agreement dated as of December 30, 2015, as supplemented and amended (the “2015 Loan Agreement”) among the Lender, the Issuer and CLV. To evidence and secure the obligations of CLV under the 2015 Loan Agreement, CLV executed and delivered a Promissory Note dated December 30, 2015, as supplemented and amended (the “2015 Promissory Note”) and a Mortgage, Assignment of Rents and Profits and Security Agreement dated as of December 30, 2015, as supplemented and amended (the “2015 Mortgage”) to the Lender. The 2015 Promissory Note was endorsed by the Issuer to the Lender. In connection with the issuance of the 2015 Bonds, the Issuer and CLV entered into a Tax Compliance Agreement dated as of December 30, 2015, as supplemented and amended (the “2015 Tax Agreement”), setting forth certain federal tax agreements and requirements with respect to the 2015 Bonds. The 2015 Bonds, the 2015 Loan Agreement, the 2015 Promissory Note, the 2015 Mortgage, the 2015 Tax Agreement, and the other agreements and instruments previously entered in connection with the 2015 Bonds are referred to herein as the “2015 Transaction Documents.” The 2004 Transaction Documents and the 2015 Transaction Documents are referred to herein collectively as the “Transaction Documents.”

D. CLV and its affiliates have commenced certain corporate organizational changes, including the creation of CLH and Lindsey Communities as Illinois not-for-profit corporations and organizations described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended. In connection with such organizational changes, CLV intends to transfer to CLH (collectively referred to as the “CLV-CLH Property Transfer”) certain property of CLV described on Exhibit A hereto, including all or a portion of the real and personal property subject to the 2004 Mortgage and the 2015 Mortgage. CLV has requested the Lender consent to the CLV-CLH Property Transfer and certain documents and actions necessary to effect the CLV-CLH Property Transfer, and to evidence such consent and effect necessary modifications to the Transaction Documents, without diluting the credit or collateral for the 2004 Bonds and 2015 Bonds, the parties are entering this Agreement, and causing CLH and Lindsey Communities to be added together with CLV collectively as the Borrower and/or the Company under the Transaction Documents on a joint and several basis.

E. The parties enter into this Agreement to modify, amend and supplement the Transaction Documents relating to the Bonds as set forth herein.

AGREEMENT

NOW THEREFORE, the parties hereto, for good, sufficient and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Company and Borrower. The defined terms “Company” and “Borrower” and all references thereto in the Transaction Documents are hereby amended to mean and refer to CLV, CLH and Lindsey Communities collectively on a joint and several basis. The rights, interests, duties, responsibilities, obligations (including all payment obligations) and liabilities of the Company and the Borrower under the Transaction Documents are held and undertaken by CLV, CLH and Lindsey Communities on a joint and several basis. Any action to be taken by the Company or the Borrower may be taken by either CLV, CLH or Lindsey Communities on behalf of any or all of the corporations and any

notice, consent or other instrument to be given by or to the Company or the Borrower may be given by or to either CLV, CLH or Lindsey Communities on behalf of any or all of the corporations.

2. CLV-CLH Property Transfer. The Lender hereby consents to the CLV-CLH Property Transfer. In connection with the CLV-CLH Property Transfer, the parties hereby consent to and shall execute such instruments and take such actions as are necessary and appropriate to effect the CLV-CLH Property Transfer, including, without limiting the foregoing, amendments to the 2004 Mortgage and the 2015 Mortgage, title insurance endorsements, uniform commercial code financing statement filings and amendments.
3. No Other Modifications. Except as specifically set forth herein, or necessary to incorporate the modifications and amendments herein as described in paragraph 2 above, all the terms and conditions of the Transaction Documents shall remain unmodified and in full force and effect, and the parties hereto confirm and ratify all such documents and agree to perform and comply with the terms and conditions of the Transaction Documents, as modified herein.
4. Representations and Warranties. CLV, CLH and Lindsey Communities represent and warrant that (i) they have the authority to enter into this Agreement and the Transaction Documents and, upon execution by CLV, CLH and Lindsey Communities, this Agreement and the Transaction Documents shall be enforceable obligations of CLV, CLH and Lindsey Communities on a joint and several basis, (ii) all representations and warranties made by CLV, CLH and Lindsey Communities in the Transaction Documents are true and correct as of the date of this Agreement, and (iii) to the knowledge of CLV, CLH and Lindsey Communities, no default or Event of Default currently exists under the Transaction Documents.
5. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
6. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
7. Counterparts. This Agreement may be executed in separate counterparts and all such counterparts when combined shall constitute one agreement.
8. Electronic Transactions. The transaction described herein may be conducted and related documents may be signed, sent, received and stored electronically. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.
9. Capitalized Terms. Terms which are capitalized in this Agreement, but not defined herein, shall have the meaning given to such terms in the respective Transaction Documents.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LENDER:

Busey Bank

By: _____
Title: _____

ISSUER:

City of Urbana, Champaign County, Illinois

By: _____
Title: Mayor

CLV:

Clark-Lindsey Village, Inc.

By: _____
Title: _____

CLH:

Clark-Lindsey Holdings, Inc.

By: _____
Title: _____

LINDSEY COMMUNITIES:

Lindsey Communities, Inc.

By: _____
Title: _____

EXHIBIT A

PROPERTY SUBJECT TO CLV-CLH PROPERTY TRANSFER

[**INSERT PROPERTY DESCRIPTIONS – INCLUDING REAL ESTATE LEGAL DESCRIPTION**]

[**OTHER INFORMATION – this page to be deleted**]

- Expecting CLV legal counsel will need to prepare a warranty deed transferring property to CLH when reorg transfer is to occur on same date as effective date of this Agreement.
- UCC changes (amendments and new filings) will need to be made
- G&B can prepare mortgage amendments
- Title insurance company will need to be engaged to prepare endorsements to title insurance policies for mortgage(s)
- G&B can prepare CLV, CLH and Lindsey Communities closing certificates related to these modifications
- G&B can provide no adverse effect federal tax opinions relating to these modifications