

## PROJECT AGREEMENT

This Project Agreement (the "Agreement") is executed this \_\_\_ day of August, 2020, by and between \_\_\_\_\_ (the "Developer"), Lebanon Community Development Corporation ("LCDC"), the City of Lebanon, Indiana ("City"), and the Lebanon Redevelopment Commission ("Commission").

### 1. Defined Terms.

**Ancillary Documents** shall mean the: (a) the Declaration; (b) the Guaranteed Payment Agreement; (c) the Operating Agreement; (d) the Disbursement Agreement; and (e) the Option.

**Assessments** shall mean all general and special governmental and utility assessments levied on, against, or with respect to the Project Site.

**Assessor** shall mean the County Assessor of Boone County, Indiana.

**Availability Fees** shall mean the fees charged by the City-owned water and sewer utility for new developments accessing water and sewer services.

**Catch-Up Plan** shall mean a plan pursuant to which Developer will: (a) avoid falling further behind the dates set forth in the Construction Schedule; and (b) complete the Project in accordance with (and in no event more than 60 days behind) the applicable dates set forth in the Construction Schedule.

**Change Order** shall mean a change order executed by City and Developer finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request that is approved by City; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

**Change Order Request** shall mean a written request for a change to the Final Plans.

**City** shall mean the City of Lebanon, Indiana.

**City Bodies** shall mean any of City, LCDC and/or the Commission, as applicable.

**Claims** shall mean claims, damages, losses, costs, and expenses (including, without limitation, attorneys' fees).

**Closing** shall mean the closing with respect to the conveyance of the West Building Site to Developer.

**Closing Date** shall mean the date of the Closing.

**Commercial Space** shall mean approximately 4,600 square feet of commercial space located in the Project available for lease to commercial tenants.

**Commission** shall mean the Lebanon Redevelopment Commission, acting as the redevelopment commission of the City.

**Commission Resolutions** shall mean, collectively: (a) Resolution 2019 – 03, pertaining to a grant agreement between Commission and LCDC; and (b) Resolution 2019 – 04, pertaining to the grant of real estate from Commission to CDC.

**Construction Contracts** shall mean the separate construction contracts with the General Contractor for construction of: (a) the Project in the amount of the Project Costs; (b) the Streetscape Work in the amount of the Streetscape Work Costs; (c) the Parking Spaces in the amount of the Parking Spaces Costs; and (d) the Pedestrian Crosswalk in the amount of the Pedestrian Crosswalk Costs; pursuant to which the Project, the Streetscape Work, the Parking Spaces, and the Pedestrian Crosswalk shall be constructed.

**Construction Drawings** shall mean construction drawings with respect to the construction of the Project in accordance with the Design Development Documents, which drawings shall be consistent with the Design Development Documents and the Construction Schedule approved by City.

**Construction Schedule** shall mean a detailed schedule for construction of the Project in accordance with the Final Plans.

**Conveyance Documents** shall mean: (a) the Deed; (b) a vendor's affidavit in form and substance such that the Title Insurer agrees to delete the standard exceptions for non-survey matters from the title insurance policy issued to Developer for the West Building Site; and (c) such other documents or affidavits from LCDC as reasonably required by the Title Insurer or Developer.

**Cure Period** shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite reasonably diligent efforts, then the 30 day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30 day period; and (b) diligently pursues such remedy to completion.

**Declaration** shall mean a declaration of covenants and easements for the benefit of the Project Site that incorporates: (a) non-exclusive easements for: (i) access, ingress, and egress on, over, and across the Parcels; (ii) parking in the surface lot from time to time existing on the Parcels; and (iii) installation and use of utility facilities, if necessary; (b) such other easements as LCDC and Developer determine to be necessary or appropriate; (c) maintenance and repair obligations of the owners of the Parcels; and (d) Developer's right to use the Parking Spaces in perpetuity.

**Deed** shall mean a limited warranty deed by which LCDC shall convey the West Building Site to Developer, which deed shall be subject only to the Permitted Exceptions.

**Design Development Documents** shall mean detailed design development documents for the Project, which documents shall be consistent with the Schematic Design Drawings and the Laws.

**Disbursement Agent** shall mean the "Disbursement Agent" under the Disbursement Agreement.

**Disbursement Agreement** shall mean a "Disbursement Agreement" to be executed at Closing by Developer and LCDC or its designee, as Disbursement Agent for the purpose of paying approved Disbursement Requests to Developer.

**Disbursement Request** shall mean a written request by Developer for a distribution of the LCDC Investment, which request shall: (a) specify the total amount of LCDC Investment being requested; (b) certify that the costs to be paid, or reimbursed, with the disbursement of LCDC Investment constitute Eligible Costs; and (c) include such supporting documentation as would be required for Developer to obtain a disbursement of proceeds of the Project Loan (excluding any supporting documentation otherwise required pursuant to the Project Loan Documents with respect to obtaining an endorsement to the Project Lender's policy of title insurance updating such policy to the date of the disbursement of the LCDC Investment pursuant to the Disbursement Request).

**East Building Site** shall mean that certain downtown real estate in the City that is located, generally, on a portion of the real estate bounded by: (a) East Superior Street on the south; (b) South Meridian Street on the east; (c) East South Street on the north; and (d) South Lebanon Street on the west. The East Building Site is depicted on the Site Plan. The East Building Site shall have had any existing structures demolished prior to conveyance to Developer, provided that the cost for such demolition shall not exceed \$97,0000.00.

**East Project** shall mean a mixed-use project constructed on the East Building Site with a total investment of: (a) the East Project Increment, if City Bodies, in their sole discretion, should determine to make an investment of the East Project Increment; plus (b) Developer's contribution (to include without limitation, construction debt and equity investments), which contribution shall be commensurate with Developer's contribution required in connection with the Project relative to the LCDC Investment.

**East Project Increment** shall mean the allocated property tax proceeds (i.e., the "increment") that, pursuant to IC §36-7-14-9, are generated from ad valorem real property taxes levied or imposed on or against the East Project as a result of the construction of the East Project.

**East Project Increment Estimate** shall mean the estimated annual East Project Increment, which estimate: (a) has been prepared by Developer; and (b) includes the projected: (i) assessed value of the East Project; and (ii) tax rate, exclusive of any referendum rate, that would be applied with respect to such projected assessed value.

**Eligible Costs** shall mean the costs incurred by Developer for: (a) acquisition of the West Building Site; (b) earthwork, grading, or other work necessary to prepare the West Building Site for construction; (d) connection to and installation of underground utilities on the West Building Site; (e) design and construction of the Parking Spaces; (f) design, construction, and installation of sidewalks and landscaping within the public rights of way; (g) design and construction of the Pedestrian Crosswalk; and (h) any other costs eligible for the expenditure of funds pursuant to IC §36-7-14 *et seq.* for the Project.

**Event of Default** shall have the meaning set forth in Subsection 14(a).

**Execution Date** shall mean the date set forth in the introductory paragraph of this Agreement.

**Final Documents and Drawings** shall mean each of the final Schematic Design Drawings, final Design Development Documents, the final Construction Schedule, and the final Construction Drawings, as finalized and approved or reviewed by City pursuant to Section 9.

**Final Inspection** shall mean an inspection of the Project by City or the Inspecting Architect after substantial completion (excluding the interior build-out) thereof.

**Final Plans** shall mean the aggregated Final Documents and Drawings.

**Force Majeure** shall mean, with respect to any party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party, respectively (including, without limitation, unusually inclement weather, the unusual unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of public utility providers).

**General Contractor** shall mean the general contractor selected by Developer to construct the Project, the Parking Spaces, the Streetscape Work, and the Pedestrian Crosswalk, which general contractor shall be subject to the reasonable approval of City. City affirms that it has approved FCM Builders, LLC as an approved General Contractor.

**Grant Agreement** shall mean an agreement between LCDC and Commission pursuant to which Commission commits: (a) to annually grant LCDC the Legally Available Funds in an amount equal to the schedule of payments for the LCDC Investment Loan; and (b) grant to LCDC the West Building Site

Purchase Price; provided that, the Grant Agreement shall be in accordance with the Commission Resolutions.

**Guaranteed Payment Agreement** shall mean an agreement pursuant to which Developer is obligated to make payments of Real Estate Taxes with respect to the West Building Site in an amount not less than the amount set forth on a payment schedule attached thereto, which payment shall begin in the next calendar year following the first March 1 after Developer receives the initial certificate of occupancy for the Project and continuing through the maturity date of the LCDC Investment Loan. It is anticipated that the amount of the annual payment to be made by Developer will be not less than \$143,156.00. The Guaranteed Payment Agreement shall be secured by a lien against the West Building Site that is similar in type to a lien for real estate taxes (including that such lien shall have the same priority as a lien for real estate taxes).

**Inspecting Architect** shall mean an architect designated by City and LCDC and authorized to conduct Permitted Inspections, Sample Work Inspections, and/or the Final Inspection on behalf of LCDC and City.

**Latent Defect** shall mean those material defects in the construction of the Project, that: (a) are not discovered; and (b) reasonably are not discoverable; by City and LCDC acting jointly, or by the Inspecting Architect during a Sample Work Inspection, a Permitted Inspection, or the Final Inspection.

**Laws** shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental rules, regulations, guidelines, orders, and/or decrees.

**LCDC East Project Investment** shall mean an investment of some portion, if any, of the East Project Increment Estimate, which investment shall be subject to the sole discretion of the City Bodies and funded with the proceeds of the LCDC East Project Investment Loan. The LCDC East Project Investment is being made for the purpose of financing the eligible project costs for the East Project. The decision to provide the LCDC East Project Investment shall be made in the sole discretion of City Bodies.

**LCDC East Project Investment Loan** shall mean a loan in the principal amount of the East Project Increment Estimate obtained by LCDC, the proceeds of which shall: (a) constitute the LCDC East Project Investment; and (b) be used to pay the eligible project costs for the East Project. Repayment of the LCDC East Project Investment Loan will be secured by a payment agreement for the East Project similar in form and substance of the Guaranteed Payment Agreement. The decision to provide the LCDC East Project Investment Loan shall be made in the sole discretion of City Bodies.

**LCDC Investment** shall mean an investment of \$2,420,000.00, which investment shall be funded with: (a) the proceeds of the LCDC Investment Loan; and (b) the West Building Site Purchase Price. The LCDC Investment is being made for the purpose of financing the Eligible Costs.

**LCDC Investment Lender** shall mean the institution, corporation, or entity making the LCDC Investment Loan.

**LCDC Investment Loan** shall mean a loan in the principal amount of not less than \$2,100,000.00 obtained by LCDC, the proceeds of which shall: (a) constitute the LCDC Investment; and (b) be used to pay the Eligible Costs. The LCDC Investment Loan shall include any refinancing of the original loan. Repayment of the LCDC Investment Loan will be secured by the Guaranteed Payment Agreement.

**LCDC Investment Loan Account** shall mean a designated account maintained with the LCDC Investment Lender.

**LCDC Investment Loan Documents** shall mean the documents evidencing the LCDC Investment Loan.

**LCDC Investment Loan Proceeds** shall mean the proceeds of the LCDC Investment Loan, which proceeds shall be an amount not less than \$2,100,000.00.

**Legally Available Funds** shall mean all funds legally available for use by Commission to grant to LCDC pursuant to the Grant Agreement, including without limitation, ad valorem real estate taxes levied and collected on taxable property pursuant to the Commission Resolutions.

**Lender Protections** shall mean the lender protection provisions set forth in Exhibit D.

**Material Defect** shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been performed materially in accordance with the terms and conditions of this Agreement.

**Minimum Rent** shall mean a square foot base rent of at least \$20.00 per square foot for office space for the Commercial Space, which rent shall include a tenant improvement allowance consistent with other similarly situated commercial developments in the City.

**Non-Compliance Notice** shall mean a written notice from City that identifies Material Defects with respect to the Project discovered by LCDC, City, or the Inspecting Architect during a Sample Work Inspection, a Permitted Inspection, or the Final Inspection.

**Operating Agreement** shall mean an agreement between Developer and LCDC governing the: (a) use of Parking Spaces; (b) ongoing operation of the Parking Spaces and the associated parking lot; and (c) maintenance of the East Building Site by Developer.

**Option** shall mean, if applicable, the exclusive option of Developer to acquire the East Building Site for a period of 36 months after receipt of a certificate of occupancy on the Project; which Option shall convert to the Right of First Offer upon the expiration of the Option term.

**Parcels** shall mean, collectively, the East Building Site and the West Building Site.

**Parking Spaces** shall mean approximately 75 parking spaces to be constructed by Developer on the East Building Site; provided that the number of parking spaces shall be at least enough to satisfy the Laws.

**Parking Spaces Costs** shall mean the reasonable, actual fees, costs, and expenses incurred in connection with the construction of the Parking Spaces.

**Parking Spaces Plans** shall mean final construction documents and drawings for the Parking Spaces prepared by Developer and approved by City in the same manner as the Final Plans are approved pursuant to the Plan Refinement Process.

**Pedestrian Crosswalk** shall mean the crosswalk allowing for pedestrian access to and from the East Building Site across South Lebanon Street from and to the West Building Site, as generally shown on the Site Plan.

**Pedestrian Crosswalk Costs** shall mean the reasonable, actual fees, costs, and expenses incurred in connection with the construction of the Pedestrian Crosswalk.

**Pedestrian Crosswalk Plans** shall mean final construction documents and drawings for the Pedestrian Crosswalk prepared and approved by City.

**Permitted Change** shall mean any change to that portion of the Final Plans consisting of the final Construction Drawings, so long as such change: (a) is not inconsistent with the Schematic Design Drawings or the Design Development Documents approved by City; (b) is in conformity with each of the Site Plan and the Laws; (c) does not result in the Final Plans containing structurally flawed elements; and (d) does not

make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule.

**Permitted Exceptions** shall mean: (a) the lien of current Real Estate Taxes and Assessments not delinquent; and (b) any exceptions to title reflected in the Title Commitment: (i) that are not Title Defects; or (ii) that Developer agrees in writing to accept or is deemed to have waived pursuant to the terms and conditions of this Agreement.

**Permitted Inspection** shall mean an inspection: (a) jointly by LCDC and City; or (b) the Inspecting Architect; of any item or component of the Project.

**Plan Refinement Process** shall mean the process set forth in Section 9 for completion of the Final Plans.

**Plan Schedule** shall mean the schedule in accordance with which Developer shall prepare and provide to City the Schematic Design Drawings, the Design Development Documents, the Construction Drawings, and the Construction Schedule, which schedule is attached hereto as Exhibit B.

**Pre-Closing Costs** shall mean the actual, out-of-pocket Eligible Costs incurred by Developer prior to the Closing Date; provided that the Pre-Closing Costs shall not include any costs and expenses incurred in connection with preparing, negotiating, completing, and/or executing this Agreement.

**Pre-Closing Costs Certification** shall mean: (a) a certified statement setting for the amount of the Pre-Closing Costs on a line-item basis consistent with the line items in the approved Project budget; together with (b) reasonable evidence supporting the amount of the Pre-Closing Costs set forth in the certified statement.

**Project** shall mean a four story, mixed-use multi-family building constructed on the West Building Site with a total investment of at least \$8,300,000, with Developer's contribution (to include without limitation, construction debt and equity investments) to be at least \$6,900,000 and to include: (a) approximately 44 apartment units; (b) the Commercial Space; and (c) the Parking Spaces.

**Project Costs** shall mean fees, costs, and expenses incurred (or to be incurred) by Developer in connection with the Project, including costs and expenses to: (a) develop and design the Project; (b) prepare the Project Site for construction (including demolition work, earthwork, environmental remediation work, and the extension of utilities); (c) design, relocate, and/or construct infrastructure to support the Project; (d) design, relocate and/or install hardscape and landscape; and (e) acquire the materials to construct, and construct, the Project.

**Project Lender** shall mean the institution, corporation, or entity making the Project Loan.

**Project Loan** shall mean a construction loan, the proceeds of which shall be used by Developer to: (a) acquire the materials to construct the Project; and (b) construct the Project.

**Project Loan Documents** shall mean the documents evidencing and/or securing the Project Loan (including, without limitation, the Tri-Party Agreement).

**Project Site** shall mean, collectively, the West Building Site and the East Building Site. The Project Site is depicted on the Site Plan.

**Real Estate Taxes** shall mean all real estate taxes levied on, against, or with respect to the West Building Site and/or the Project.

**Required Permits** shall mean all permits, licenses, approvals, and consents required by the Laws for construction and use of the Project, the Streetscape Work, the Parking Spaces, and/or the Pedestrian Crosswalk.

**Right of First Offer** shall mean the right of Developer to negotiate the purchase of the East Building Site upon City Bodies' written notice to Developer of their intent to offer the East Building Site for sale, pursuant to Section 11(c).

**Sample Work Inspection** shall mean an inspection: (a) jointly by City and LCDC; or (b) the Inspecting Architect; of a Sample Work Installation

**Sample Work Installation** shall mean a representative sample or typical example of a certain specified portion of the Project.

**Schematic Design Drawings** shall mean detailed schematic design drawings for the Project that are consistent with the Site Plan and the Laws.

**Site Plan** shall mean the site plan attached hereto as Exhibit A.

**Special Remedies Costs** shall mean the costs and expenses incurred by Commission and/or City in connection with exercising its rights under Section 15.

**Streetscape Work** shall mean improvements to be made to the rights-of-way adjacent to the East Building Site and the West Building Site; which improvements shall be approved by the City during the Plan Refinement Process set forth in Section 9.

**Streetscape Work Costs** shall mean the reasonable, actual fees, costs, and expenses incurred in connection with the completion of the Streetscape Work.

**Streetscape Work Plans** shall mean shall mean final construction documents and drawings for the Streetscape Work prepared for the Developer by the City's engineers.

**Survey** shall mean an ALTA/ACSM land title survey of the Project Site.

**Title Commitment** shall mean a title insurance commitment for an owner's policy of title insurance with respect to the West Building Site that: (a) is issued by the Title Insurer; and (b) commits to insure marketable, indefeasible fee simple title to the West Building Site in the name of Developer.

**Title Defects** shall mean conditions or defects disclosed in the Title Commitment, or by the Survey that, in the reasonable determination of Developer, materially and adversely interfere with the construction and/or use of the Project in accordance with the terms and conditions of this Agreement; provided that, the lien of any mortgage or other security instruments to be released at or before the Closing shall not be a Title Defect.

**Title Insurer** shall mean First American Title Insurance Company.

**Tri-Party Agreement** shall mean an agreement by and among Developer, LCDC, City, and the Project Lender pursuant to which the Project Lender agrees to give to City: (a) notices of defaults by Developer under the Project Loan Documents; (b) the right (but not obligation) to cure defaults by Developer under the Project Loan Documents; (c) the right to purchase the Project Loan if there is: (i) an Event of Default by Developer under this Agreement; and/or (ii) a default by Developer under the Project Loan Documents, which default continues beyond applicable cure periods; and (d) the right to assume the position of Developer under the Project Loan as contemplated pursuant to Subsection 15(c)(iii) and make draws in an amount equal to the then remaining undrawn maximum principal amount of the Project Loan; provided that,

the right of City to assume the position of Developer under the Project Loan shall be limited to circumstances in which, at the time that City seeks to assume such position: (i) the then remaining undrawn maximum principal amount of the Project Loan does not exceed half of the original principal amount of the Project Loan (or such other amount as may be agreed upon between City and Project Lender); and (ii) the Project Loan is in balance or, if the Project Loan is out of balance, City agrees that, prior to making any draws on the Project Loan, City shall invest funds in an amount sufficient to bring the Project Loan into balance.

**West Building Site** shall mean that certain downtown real estate in the City that is located, generally, in the portion of the real estate bounded by: (a) West Elm Street on the south; (b) South Lebanon Street on the east; (c) West South Street on the north; and (d) South West Street on the west. The West Building Site is depicted on the Site Plan.

**West Building Site Purchase Price** shall mean the purchase price paid to LCDC by Developer for the West Building Site in the amount of \$320,000.00.

**2. General Obligations.** Subject to the terms and conditions of this Agreement:

(a) City. City shall assist LCDC in obtaining the LCDC Investment Loan pursuant to the terms and conditions of this Agreement and the Ancillary Documents.

(b) Commission. Commission shall: (i) convey to LCDC in fee simple title to the Project Site; (ii) enter in to the Grant Agreement with LCDC; and (iii) assist LCDC in obtaining the LCDC Investment Loan; provided that all actions shall be taken in accordance with the Commission Resolutions.

(c) LCDC. LCDC shall: (i) convey to Developer fee simple title to the West Building Site in exchange for the West Building Site Purchase Price; (ii) grant the Developer an easement for the use of the Parking Spaces by executing and causing to be recorded the Declaration; (iii) enter into the Operating Agreement; (iv) obtain the LCDC Investment Loan; (v) enter into the Grant Agreement with Commission; (vi) enter into the Disbursement Agreement with Developer; (vii) grant Developer the Option; and (viii) disburse the LCDC Investment Loan Proceeds pursuant to this Agreement.

(d) Developer. Developer shall: (i) accept fee simple title to the West Building Site upon paying LCDC the West Building Site Purchase Price; (ii) enter into the, or cause the applicable party to enter into, the: (A) Ancillary Documents; and (B) Tri-Party Agreement; (iii) obtain the Project Loan; (iv) design and construct: (A) the Project; (B) the Parking Spaces; (C) the Streetscape Work; and (v) the Pedestrian Crosswalk.

(e) Commercial Space. With respect to the initial occupants of the Commercial Space, and for a period of fifteen (15) years after the date on which the Commercial Space is first open for business to members of the general public, Developer and City shall work cooperatively and in good faith to locate commercial or retail tenants that are interested in operating in the Commercial Space. Notwithstanding the foregoing, Developer shall not be obligated to accept as an occupant any tenant that is unable to pay Minimum Rent for its use of the Commercial Space; provided that, if there is a tenant with respect to which the City agrees to provide financial aid to facilitate such organization paying Minimum Rent for premises within the Commercial Space, then, barring any reasonable objection of Developer with respect to the identity or nature of the tenant, and so long as there is unoccupied space in the Commercial Space that is suitable for such tenant, Developer shall make such space available to such tenant.



(f) Total Investment. The parties anticipate that the total Project Costs will be \$8,300,000.00. At such time as Developer has completed the bidding process for the Project, Developer shall deliver to LCDC and City Bodies written notice of the amount of the then estimated total Project Costs, together with reasonable evidence (including the amounts of the accepted bids) supporting such estimate. If the reasonably supported estimate of the Project Costs is less than \$8,400,000.00, then the amount of the LCDC Investment shall be reduced in a proportion equal to the difference between: (i) \$8,400,000.00; and (ii) the estimated Project Costs.

**3. Closing.**

(a) Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur on or before October 1, 2020, with: (i) the Closing Date; and (ii) the location of the Closing; to be established mutually by Developer and City. At the Closing, LCDC shall deliver the LCDC Investment to Developer.

**4. Closing Documents.** At the Closing, Developer, LCDC, Commission and/or City, as the case may be, shall execute and deliver (or cause to be executed and delivered) the following:

(a) a confirmation by each of Developer, LCDC, Commission and City of the representations and warranties set forth in Section 8;

(b) the Project Loan Documents;

(c) the Ancillary Documents;

(d) the Conveyance Documents;

(e) copies of such resolutions, consents, authorizations, and other evidence as either party or the Title Insurer reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer, LCDC, Commission, or City as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer, LCDC, Commission, or City of its obligations hereunder and under the foregoing documents have been authorized by Developer, LCDC, Commission, or City as the case may be; and

(f) such other customary documents and instruments as either party or the Title Insurer reasonably may request in connection with the Closing.

At the Closing, Developer shall be responsible, at its expense, to obtain any: (a) owner's policy of title insurance; (b) lender's policy of title insurance; and (c) endorsements to the owner's policy and/or lender's policy; that it deems to be necessary or appropriate.

**5. Real Estate Taxes.** Developer assumes and agrees to pay all Real Estate Taxes and Assessments levied on, against, or with respect to the West Building Site. LCDC shall pay all Real Estate Taxes and Assessments levied on, against, or subject to the East Building Site. In the event that Real Estate Taxes and Assessments levied on or against the Project Site are less than the amount to be paid by Developer in the Guaranteed Payment Agreement, Developer shall make a payment to Commission in the amount of the difference pursuant to the terms of the Guaranteed Payment Agreement.

**6. Developer Conditions.** The obligations of Developer with respect to proceeding with the Closing shall be subject to the satisfaction or waiver in writing of the following on or before the Closing Date, or within such other period as is specified in this Section:

- (a) Property Information. Within ten days after the Execution Date, City shall have provided to Developer copies of all reports and results of surveys, borings, soil, water and engineering tests, and other tests, inspections, examinations, studies, and investigations, with respect to the Project Site conducted by or for, or in the possession of, City.
- (b) Title/Survey. Developer, at its expense, shall have: (i) obtained the Title Commitment and the Survey; and (ii) determined that neither the Title Commitment nor the Survey reflects any Title Defects, other than those Title Defects that will be cured or removed at or before the Closing. Developer shall be responsible, at its cost, for obtaining the policy of title insurance contemplated pursuant to the Title Commitment, together with any endorsements that it deems to be necessary or appropriate.
- (c) Environmental Condition. Developer, at its expense, shall have determined that: (i) there is no contamination or pollution of the Project Site, or any groundwater thereunder, by any hazardous waste, material, or substance in violation of any Laws, including but not limited to any no action letters and restrictive covenants in place or to be in place against the Project Site; and (ii) there are no underground storage tanks located on the Project Site.
- (d) Physical Condition. Developer, at its expense, shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that materially interfere with the construction and use of the Project in accordance with the terms and conditions of this Agreement.
- (e) Utility Availability. Developer, at its expense, shall have determined that gas, electricity, telephone, water, storm and sanitary sewer, and other utility services in adjoining public rights-of-way or properly granted and recorded utility easements are serving or will serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement; provided that the City shall upgrade the utility systems if the existing facilities are insufficient to provide 150 EDUs.
- (f) Zoning. Developer, at its expense, shall have determined that the zoning of the Project Site is proper for the construction and use of the Project in accordance with the terms and conditions of this Agreement.
- (g) Final Plans. The Final Plans shall have been completed pursuant to the Plan Refinement Process.
- (h) Required Permits. Developer shall have obtained (or determined that it will be able to obtain) all Required Permits.
- (i) Project Loan. Developer, Commission, and the Project Lender shall have agreed on the form and substance of the Tri-Party Agreement, and Developer shall be closing on the Project Loan contemporaneously with the Closing.
- (j) Ancillary Documents. Developer, LCDC, and Commission shall have agreed on the form and substance of the Ancillary Documents and shall be executing the Ancillary Documents contemporaneously with the Closing.
- (k) LCDC Investment.
- (i) City, Commission, LCDC and the LCDC Investment Lender shall have agreed on the form and substance of the LCDC Investment Loan Documents;

provided that, if the LCDC Investment Loan Documents are executed prior to Closing, then the condition to the obligation of Developer to proceed to Closing shall be that the LCDC Investment Loan Documents remain in full force and effect;

(ii) City, Commission, LCDC, and the LCDC Investment Lender shall have agreed on the form and substance of the Grant Agreement, and City shall have obtained all approvals necessary in connection with executing the Grant Agreement for the purposes of providing the LCDC Investment; provided that, if the Grant Agreement is executed prior to the Closing, then the condition to the obligation of City, LCDC, and Commission to proceed to the Closing shall be that the Grant Agreement remains in force;

(iii) If LCDC has not closed on the LCDC Investment Loan as of the Closing Date, then LCDC shall be closing on the LCDC Investment Loan contemporaneously with the Closing.

(l) Availability Fees. Developer shall, at its expense have received a waiver of (or determined that it will be able to obtain a waiver of) Availability Fees.

(m) No City Breach. There shall be no breach of this Agreement by City, Commission, or LCDC that City, Commission, or LCDC has failed to cure within the Cure Period, and all of the representations and warranties set forth in Subsection 8(a) shall be true and accurate in all respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer either may elect to: (i) waive in writing satisfaction of the conditions and to proceed to Closing; or (ii) terminate this Agreement by a written notice to City; provided that, with respect to breaches of this Agreement by City, Developer shall have the rights and remedies set forth in Section 14. If: (i) one of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied; and (ii) Developer fails to terminate this Agreement as permitted in this Section; then such unsatisfied condition automatically shall be deemed to be waived by Developer. Notwithstanding anything to the contrary set forth herein, Developer shall work diligently and in good faith to satisfy the conditions set forth in this Section.

**7. Conditions to City, Commission, and LCDC Obligations.** The obligations of City, Commission, and LCDC with respect to Closing shall be subject to the satisfaction or waiver in writing of the following on or before the Closing Date:

(a) Ancillary Documents. Developer, LCDC, and Commission shall have agreed on the form and substance of the Ancillary Agreements, and each of LCDC and Commission, in the exercise of its reasonable judgment, shall have determined that Developer is prepared to execute the Ancillary Documents at Closing.

(b) Financial Ability. Developer shall: (i) be closing on the Project Loan contemporaneously with the Closing; and (ii) have established, to the reasonable satisfaction of Commission, that Developer has adequate funds to construct and complete the Project.

(c) Final Plans. The Final Plans shall have been completed pursuant to the Plan Refinement Process.

(d) Required Permits. Developer shall have obtained (or City shall have determined that Developer will be able to obtain) all Required Permits.

(e) No Developer Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by Developer that Developer has failed to cure within the Cure Period; and (ii) all of the representations and warranties set forth in Subsection 8(b) shall be true and accurate in all respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, City either may elect to: (i) waive in writing satisfaction of the conditions and to proceed to Closing; or (ii) terminate this Agreement by a written notice to Developer; provided that, with respect to breaches of this Agreement by Developer, City shall have all of the rights and remedies set forth in Section 14. If: (i) one of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied; and (ii) City fails to terminate this Agreement as permitted in this Section; then such unsatisfied condition automatically shall be deemed to be waived by City. Notwithstanding anything to the contrary set forth herein, City shall work diligently and in good faith to satisfy the conditions set forth in this Section.

## **8. Representations and Warranties.**

(a) General. Each of Developer, LCDC, and Commission represents and warrants that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) it has the power to enter into this Agreement and to perform its obligations hereunder; (iii) it has been authorized by proper action to: (A) execute and deliver this Agreement; and (B) perform its obligations hereunder; and (iv) this Agreement is the legal, valid, and binding obligation of Developer, LCDC, and Commission, respectively.

(b) Entity. Developer represents and warrants that it is a limited liability company organized and existing under the laws of the State of Indiana. LCDC represents and warrants that it is a non-profit corporation organized and existing under the laws of the State of Indiana. Commission and City each represents that it is a public body organized and existing under the State of Indiana.

## **9. Construction.**

(a) Schematic Design Drawings. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit the Schematic Design Drawings to City for its review and approval. Within ten days after City receives the Schematic Design Drawings, City shall deliver to Developer written notice that it approves or rejects the Schematic Design Drawings; provided that, if City rejects all or any part of the Schematic Design Drawings, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the Schematic Design Drawings, the Schematic Design Drawings shall be the final schematic design drawings with respect to construction of the Project, subject to modifications by Change Orders.

(b) Design Development Documents. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit the Design Development Documents and the Construction Schedule to City for its review and approval. Within ten days after City receives the Design Development Documents and the Construction Schedule, City shall deliver to Developer written notice that it approves or rejects the Design Development Documents and/or the Construction Schedule; provided that, if City rejects all or any part of the Design Development Documents and/or the Construction Schedule, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of all of the Design Development Documents with respect to any Construction Trade, the Design Development Documents shall be final as to such Construction Trade, subject to modifications by Change Orders. Upon approval of the

Construction Schedule, the Construction Schedule shall be the final construction schedule with respect to construction of the Project, subject to modifications by Change Orders.

(c) Construction Drawings. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to City for its review the Construction Drawings with respect to each Construction Trade. Thereafter, such Construction Drawings shall be final construction drawings with respect to the applicable Construction Trade, subject to modifications by Change Orders.

(d) Resubmitted Documents. If, at any stage of the Plan Refinement Process, City, rather than approving any drawings, documents, or schedules, instead rejects any drawings, documents, or schedules, then, within ten days after Developer receives notice from City that it has rejected any drawings, documents, or schedules, Developer shall: (i) revise the drawings, documents, or schedules; and (ii) resubmit the drawings, documents, or schedules to City. Within ten days after City receives the resubmitted drawings, documents, or schedules, City shall deliver to Developer written notice that it approves or rejects the resubmitted drawings, documents, or schedules; provided that, if City rejects all or any part of the resubmitted drawings, documents, or schedules, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the resubmitted drawings, documents, or schedules, the resubmitted drawings, documents, or schedules shall become part of the Final Plans, subject to modifications by Change Orders. Notwithstanding the involvement of City in the Plan Refinement Process, Developer shall be responsible for insuring that revisions submitted by Developer to City in writing are implemented in the Final Plans.

(e) Final Plans. Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified by Change Orders.

(f) Changes to Final Plans. If Developer desires to make any changes to the Final Plans, then Developer shall submit a Change Order Request to City for review and approval. Within ten days after City receives the Change Order Request, City shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) City shall not withhold its approval unreasonably; and (ii) if City rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that City is rejecting; and (B) include the specific basis for such rejection. If City approves a Change Order Request, then City and Developer shall execute a Change Order. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of City with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer; provided that, with respect to a Permitted Change, Developer shall submit a Change Order Request to City for its review.

(g) Permits. Prior to commencing construction of the Project, Developer, at its cost and expense, shall obtain and submit to City for its review the Required Permits. City shall use reasonable efforts to assist Developer in its efforts to obtain the Required Permits for the Project.

(h) Construction. Prior to commencing construction of the Project, the Parking Spaces, the Pedestrian Crosswalk, and the Streetscape Work, Developer shall provide the Construction Contracts to City for its review and approval, which approval shall not be withheld unreasonably. Developer shall design and construct the Project, the Parking Spaces, the Pedestrian Crosswalk, and the Streetscape Work: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders), the Parking Spaces Plans, the Pedestrian Crosswalk Plans, and the Streetscape Work Plans; and (iii) in compliance with the Laws.

**10. City/LCDC Investment.**

(a) Use. The LCDC Investment shall be used by Developer only to pay (or reimburse Developer) for Eligible Costs, which obligation shall serve to ensure that the amount of the LCDC Investment is less than or equal to the Eligible Costs.

(b) Disbursement. The LCDC Investment shall be disbursed to Developer as follows:

(i) Initial Disbursement. At any time after Closing, Developer may receive a disbursement of the LCDC Investment in an amount equal to the Pre-Closing Costs. To obtain the disbursement, Developer shall submit to City for its approval the Pre-Closing Costs Certification. Upon approval by City of the amount of the Pre-Closing Costs, City shall direct the Disbursement Agent to disburse LCDC Investment Loan Proceeds in the amount set forth in the Pre-Closing Costs Certification, and pursuant to the LCDC Investment Loan Documents, the Disbursement Agent shall be obligated to disburse such amount of LCDC Investment to Developer.

(ii) Subsequent Disbursements. Developer may obtain disbursements of LCDC Investment subsequent to the disbursement of Pre-Closing Costs by submitting a Disbursement Request to City. Upon receipt of a Disbursement Request, City shall direct the Disbursement Agent to disburse the LCDC Investment in the amount set forth in the Disbursement Request, and, pursuant to the Disbursement Agreement, Disbursement Agent shall be obligated to disburse such amount of LCDC Investment to Developer. Notwithstanding the foregoing, as a condition to the first disbursement of LCDC Investment subsequent to the disbursement for Pre-Closing Costs, it shall be the case that the City has: (A) approved the Construction Contracts; and (B) determined that Developer has obtained (or will be able to obtain) all Required Permits. Accordingly, with the Disbursement Request for the first disbursement following the disbursement for Pre-Closing Costs, Developer shall include evidence that the foregoing conditions have been satisfied.

**11. Option for East Building Site.**

(a) Option Grant. It is intended by the parties that Developer will design and construct the East Building Site Project; provided that, the obligation of Developer to design and construct the East Building Site Project is dependent on, and triggered by, Developer exercising the Option in accordance with the terms and conditions of this Section. In furtherance of the intention that Developer will design and construct the East Building Site Project, LCDC hereby grants to Developer the Option, which Developer hereby accepts.

(b) Option Exercise. If Developer is permitted to exercise the Option in accordance with the following terms and conditions of this Section, then the Option may be exercised by delivery to LCDC of written notice. Developer may exercise the Option provided that:

(i) there is no continuing Event of Default; and (ii) this Agreement has not been terminated. If Developer has not exercised its rights under the Option within 36 months after the certificate of occupancy is issued for the Project, Developer's Option shall terminate and the parties shall execute a right of first refusal in favor of the Developer for the East Building Site.

(c) Right of First Offer. Upon the termination of the Option, Developer shall have the Right of First Offer for the East Building Site for a term of 36 months. If City Bodies shall desire to offer the East Building Site during the term of Developer's Right of First Offer, City Bodies shall provide Developer written notice of their intent to offer the East Building Site. Developer shall have 30 days from the date of the written notice to submit an offer for purchase of the East Building Site, which offer shall identify any potential investment in the East Project required by City Bodies. City Bodies shall have 30 days to determine whether to accept Developer's offer or counter-offer, which determination shall be in City Bodies' sole discretion. If the Developer's offer is not accepted by City Bodies, or Developer does not accept City Bodies' counter-offer within 10 days, City Bodies shall be free to market the East Building Site to other parties on terms acceptable to City Bodies in its sole discretion.

(d) Option / Right of First Offer Closing. If Developer exercises its Option or its Right of First Offer pursuant to this Section, the closing with respect to the conveyance of the East Building Site shall occur contemporaneously with the closing of the East Building Site Project Loan, if such East Building Site Project Loan shall be provided by City Bodies.

(e) East Project. If Developer exercises the Option or the City Bodies accept Developer's Right of First Offer, then the City Bodies and Developer shall enter into a project agreement for construction of the East Project substantially similar to this Agreement pursuant to which: (i) Developer shall agree to design and construct the East Project; and (ii) City Bodies may, in City Bodies' sole discretion, contribute a portion of the Real Estate Taxes generated by the East Project toward the eligible project costs for the East Project.

(f) Parking Spaces. In the event that: (i) the East Building Site is not acquired by Developer; and (ii) a project is developed on the East Building Site; LCDC shall provide the Parking Spaces: (i) within any subsequent development on the East Building Site; or (ii) an adjacent parcel that is: (A) under the control of LCDC, Commission, or City; and (B) is approved by Developer; whose approval shall not be unreasonably withheld.

## **12. Inspection.**

(a) Sample Work Inspection. If Developer delivers to City a written request for a Sample Work Inspection with respect to an identified Sample Work Installation, then, on or before the later of the date that is five business days after: (i) receipt of such request; or (ii) the date specified in such request; City shall: (i) conduct a Sample Work Inspection of the Sample Work Installation identified in the written request; and (ii) deliver to Developer a Non-Compliance Notice (if applicable); provided that: (i) upon receipt of a Non-Compliance Notice, Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice; and (ii) all items or components of the Sample Work Installation with respect to which no Material Defects are identified in a Non-Compliance Notice shall be deemed to be accepted by City. Any portion of the Project subsequently constructed or installed in accordance with: (i) a Sample Work Installation that has been accepted, or deemed to be accepted, by City; and (ii) the Laws; shall be deemed to be accepted by City.

(b) Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, City may perform a Permitted Inspection. Within ten days after a Permitted Inspection, City shall deliver a Non-Compliance Notice (if applicable) to Developer. If City timely delivers a Non-Compliance Notice, then Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or deemed to have been accepted, by City. Notwithstanding anything to the contrary set forth herein, all items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by City.

(c) Final Inspection. Within five business days after: (i) receipt of a written request from Developer for a Final Inspection; or (ii) the date specified in such request as the substantial completion date; City shall: (i) conduct (or waive its right to conduct) the Final Inspection; and (ii) deliver a Non-Compliance Notice (if applicable) to Developer; provided that: (i) upon receipt of a Non-Compliance Notice, Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice; and (ii) all items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by City. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this Subsection; City shall have no further inspection rights with respect to the Project pursuant to this Section.

(d) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by City pursuant to this Section shall be applicable with respect to any Latent Defects. An acceptance, or deemed acceptance, by City pursuant to this Section shall not mean that City has accepted, or Developer has been relieved of, responsibility for: (i) compliance with the Laws; (ii) the proper application of construction means or methods; or (iii) correcting any portion of the Project, if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project.

(e) General. In the case of each inspection required or permitted pursuant to this Section, City shall: (i) comply with all health and safety rules of which City has been informed that have been established for personnel present on the construction site; and (ii) coordinate the inspections so that the inspections do not interfere with the performance of construction by Developer. Developer shall have the right to accompany, and/or have its construction manager accompany, City during any inspection required or permitted pursuant to this Section. Any inspection required or permitted pursuant to this Section to be conducted by City may be conducted by the Inspecting Architect.

**13. Insurance.** During construction of the Project, Developer shall maintain the policies of insurance described on Exhibit C. Each such policy shall: (a) be written by a company reasonably acceptable to City; and (b) provide that it shall not be modified or canceled without written notice to City at least 30 days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name Commission as an additional insured. Developer shall deliver to City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

**14. Default.**

(a) Events of Default. It shall be an "Event of Default" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it: (i) with



respect to the obligation to pay money, if such failure is not cured within ten days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured within the Cure Period.

(c) **General Remedies.** Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 15% per annum. Notwithstanding anything to the contrary set forth herein, City shall exercise its rights under this Subsection subject to the Lender Protections and/or the Tri-Party Agreement, as applicable.

(d) **No Remedy Exclusive.** Except as provided to the contrary in Section 14, no right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

(e) **Termination by City.** City, Commission, and/or LCDC reserve the right to cancel its commitments and terminate its obligations under this Agreement upon the failure by Developer to comply with written notice regarding any of Developer's obligations contained herein. In its written notice, City, Commission, or LCDC shall provide: (a) the specific reasons for Developer's non-compliance; and (b) identify the actions that must be taken by Developer to satisfy its obligations under this Agreement. If Developer fails to: (a) satisfy its obligations under this Agreement; or (b) have begun diligently working to satisfy such obligations; within 30 days of receiving written notice from City, Commission, or LCDC, then City shall have the option to terminate this Agreement.

## **15. Special Remedies.**

(a) **No Commencement.** Subject to Section 20, if Developer has not commenced construction of the Project within 45 days after the applicable date set forth in the Construction Schedule, then, at any time until Developer commences construction of the Project, LCDC may terminate this Agreement, the Operating Agreement, and the Declaration, in which event Developer shall have no further rights with respect to the Project or the East Building Site.

(b) **Work Stop.** Subject to Section 20, if all construction work of a material nature ceases with respect to the Project for a period of 45 days, then, at any time until construction work of a material nature resumes, LCDC may elect to terminate this

Agreement, the Operating Agreement, and the Declaration. If City elects to terminate pursuant to this Subsection, then, in connection with such reconveyance, City shall pay an amount equal to: (i) the cost to Developer of the improvements in place on the Project Site; minus (ii) the Special Remedies Costs; and minus (iii) the reasonable cost to City to: (A) re-mobilize contractors and subcontractors; and (B) adapt (but not demolish) the improvements in place on the Project Site for completion of a project. All amounts paid by City pursuant to this Subsection shall be applied first to amounts overdue and owing to the Project Lender pursuant to the Project Loan Documents.

(c) Delay. Subject to Section 20, if, after Developer has commenced construction of the Project, Developer falls 60 or more days behind the applicable dates set forth in the Construction Schedule, then:

(i) City, by delivery of written notice to Developer, may require Developer to submit to City, within 15 days, a Catch-Up Plan for approval, which approval shall not be withheld unreasonably. At such time as City has approved a Catch-Up Plan, Developer shall implement, and diligently pursue the application of, such Catch-Up Plan.

(ii) If Developer submits a Catch-Up Plan that is rejected by City, then City may develop a reasonable Catch-Up Plan and require Developer to implement, and diligently pursue the application of, such Catch-Up Plan.

(iii) If Developer:

(A) fails to timely submit a Catch-Up Plan;

(B) fails to implement either an approved Catch-Up Plan or a Catch-Up Plan developed by City pursuant to Subsection 15(c)(ii) or this Subsection;

(C) implements an approved Catch-Up Plan or a Catch-Up Plan developed by City pursuant to Subsection 15(c)(ii) or this Subsection, but fails to diligently pursue the application thereof; or

(D) implements an approved Catch-Up Plan or a Catch-Up Plan developed by City pursuant to Subsection 15(c)(ii) or this Subsection and diligently pursues the application thereof, but, after completing all of the terms and conditions of the Catch-Up Plan, again falls 60 or more days behind the applicable dates set forth in the Construction Schedule;

then City may:

(A) develop a reasonable Catch-Up Plan and require Developer to implement, and diligently pursue the application of, such Catch-Up Plan;

(B) assume the position of Developer under the Project Loan to the extent permitted by, and pursuant to the terms and conditions of, the Tri-Party Agreement;

(C) complete the Developer Project for and on behalf of Developer consistent with the right of City to cure an Event of Default by Developer pursuant to Subsection 14(b); or

(D) purchase the Project Loan pursuant to the terms and conditions of the Tri-Party Agreement;

provided that, if City elects the option in the immediately foregoing clause (C) or the immediately foregoing clause (D), then Developer shall be obligated to pay to City (or to reimburse City for) all costs of completing the Project.

(iv) Developer shall be responsible for all costs and expenses to prepare and implement a Catch-Up Plan (including costs and expenses incurred by City pursuant to this Subsection).

(d) Sole Remedy. Notwithstanding anything to the contrary set forth herein: (i) the rights and remedies set forth in this Section shall be the sole remedy available to City for the failures specified in this Section; provided that City shall have the remedy of specific performance to enforce the obligations of Developer pursuant to with the terms and conditions of this Section; and (ii) City shall exercise its rights under this Section subject to the Lender Protections and/or the Tri-Party Agreement, as applicable.

**16. Mutual Indemnification.**

(a) Mutual. Each party shall indemnify and hold harmless the other parties from and against any and all Claims arising from or connected with: (i) its negligence or willful misconduct, or the negligence or willful misconduct of any party acting by, under, through, or on behalf of it; or (ii) the breach by it of any term or condition of this Agreement.

(b) Developer. Developer shall indemnify and hold harmless City, Commission, and LCDC from and against any and all Claims arising from or connected with: (i) the performance of any tests, inspections, examinations, studies, or investigations on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (ii) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (iii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (v) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (vi) the breach by Developer of any term or condition of this Agreement.

(c) Survival. Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the termination of this Agreement.

**17. Assignment.** Until the Project is completed: (a) Forza Development, LLC (or an entity controlled by John Fleming and Adam D'Angelo) shall maintain a controlling interest in Developer; and (b) Developer shall not sell, transfer, assign, mortgage or lease the Project Site without the prior written approval of City, except that Developer may execute and deliver: (i) the Project Loan Documents; and (ii) leases for the residential and retail portions of the Project. Until the Project is completed, neither City nor Developer shall

assign this Agreement without the prior written approval of the other party; provided that: (a) without the prior written approval of Developer, City may assign this Agreement to another agency, board, commission, department and/or instrumentality of the City; and (b) without the prior written approval of City, Developer may assign this Agreement to an entity in which John Fleming and Adam D'Angelo maintains a controlling interest. Notwithstanding any assignment permitted under this Section, City or Developer, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release City or Developer, as the case may be, from such performance; provided that, if City assigns this Agreement to another agency, board, commission, department, and/or instrumentality of the City, that: (a) has full power and authority to accept an assignment of this Agreement and carry out the obligations of City hereunder; and (b) expressly assumes all such obligations in writing; then City shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

**18. Notice.** Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at 500 East 96<sup>th</sup> Street, Suite 100, Indianapolis, Indiana 46240, Attn: John F. W. Fleming, with a copy to Alexa L. Woods, Densborn Blachly LLP, 500 East 96<sup>th</sup> Street, Suite 100, Indianapolis, Indiana 46240; and to City at 401 South Meridian Street, Lebanon, Indiana 46052, Attn: Planning Director, with a copy to Adam W. Collins, Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204. Either party may change its address for notice by written notice delivered to the other party as provided above.

**19. Authority.** Each undersigned person executing this Agreement on behalf of City, Commission, LCDC, and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of City, Commission, LCDC, and Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by City, Commission, LCDC, and Developer, respectively.

**20. Force Majeure.** Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

**21. Costs and Attorneys' Fees.** In addition to any other relief to which a party to this Agreement shall be entitled, in the event it is determined by a court of competent jurisdiction that either party has not substantially complied with the terms of this Agreement without sufficient cause, the prevailing party shall be entitled to recover from the other party the costs and reasonable attorneys' fees incurred by the prevailing party in seeking: (a) compliance with this Agreement; (b) enforcement of this Agreement; or (c) relief from the other party's failure to substantially comply with any provision of this Agreement.

**22. Litigation.** There are no actions, suits, or proceedings pending, or to the knowledge of each party threatened, against or affecting the party before any court or governmental instrumentality or agency, the result of which might have a material adverse effect on the party or its operations or financial condition, or on the construction or operation of the projects set forth in this Agreement.

**23. Miscellaneous.** Subject to Section 17, this Agreement shall inure to the benefit of, and be binding upon, City, Commission, LCDC and Developer, and their respective successors and assigns. This Agreement constitutes the entire agreement between City, Commission, LCDC, and Developer with respect to the subject matter hereof, and may be modified only by a written agreement signed by City, Commission,

LCDC, and Developer. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Boone County, Indiana, or the federal courts with venue that includes Boone County, Indiana. Developer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, City, Commission, LCDC, and Developer have executed this Project Agreement as of the day and year first written above.

**CITY:**

CITY OF LEBANON, INDIANA

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

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

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

**COMMISSION:**

CITY OF LEBANON REDEVELOPMENT  
COMMISSION

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

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

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

**LCDC:**

LEBANON COMMUNITY DEVELOPMENT  
CORPORATION

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

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

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

**DEVELOPER:**

\_\_\_\_\_

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

John F. W. Fleming, Manager

## INDEX TO EXHIBITS

Exhibit A	Site Plan (delineation of Project Site)
Exhibit B	Plan Schedule
Exhibit C	Required Insurance Policies (Developer)
Exhibit D	Lender Protection Provisions

**EXHIBIT A**  
**Site Plan**

EXHIBIT A





**EXHIBIT B**  
**Plan Schedule**

1. Schematic Design Drawings: Received prior to Effective Date
2. Design Development Documents: Received prior to Effective Date
3. Construction Drawings: September 15<sup>th</sup>, 2020
4. Construction Schedule: November 15<sup>th</sup>, 2020

**EXHIBIT C**  
**Required Insurance Policies**

Upon execution of this Agreement, and prior to the Developer's commencement of any work or services with regard to the Project, the Developer shall require the General Contractor and any Subcontractors to obtain and maintain at their expense, and shall furnish the City with certificates evidencing such insurance meeting the following specifications:

The Developer shall provide to the City and Commission evidence of insurance meeting the following specifications for Workers' Compensation, Employers liability, Commercial General Liability, Automobile Liability, Umbrella Liability and Professional Liability, if applicable.

1. Workers Compensation Insurance coverage in accordance with statutory requirements.

2. Employers Liability Insurance with limits of not less than \$1,000,000 Each Accident, \$1,000,000 Disease Each Employee, \$1,000,000 Disease Policy Limit.

3. Commercial General liability Insurance on ISO form GC0001 10 01 (or a substitute form providing coverage) and General Contractor (or a substitute form providing equivalent coverage) and General Contractor and Subcontractors shall provide the Developer with a Certificate of Insurance and Additional Insured Endorsement on ISO form \_\_\_\_\_ or a substitute form providing equivalent coverage) and CG2037 10 01 (or substitute forms providing equivalent coverage) naming the City of Lebanon as an Additional Insured. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City of Lebanon per the following:

- \$1,000,000 Each Occurrence (BI & PD Combined Single Limit);
- \$2,000,000 General Occurrence (subject to per project general aggregate provision);
- \$1,000,000 Personal Injury Liability to include coverage for employee-related claims;
- \$2,000,000 Products and Completed Operations Aggregate

Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured liability including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.

**EXHIBIT D**  
**Lender Protection Provisions**

**Agreement** shall mean the Project Agreement by and between City and Developer to which this Exhibit is attached and incorporated by reference. All capitalized terms used but not defined in this Exhibit shall have the meanings ascribed to such terms in the Agreement.

**Collateral** shall mean all or any part of the Project Site, the improvements on the Project Site, and/or fixtures or other items of personal property on the Project Site that are subject to a Mortgage.

**Incurable Defaults** shall mean Events of Default that cannot be cured by the payment of money or through the exercise of reasonable diligence.

**Mortgage** shall mean: (a) a mortgage, pledge, or grant of security interest granted by Developer in all or any part of the Collateral; and/or (b) a collateral assignment of the Agreement and/or the interests of Developer in the Agreement; for the purpose of securing a Loan.

**Mortgagee** shall mean a holder of a Mortgage, and all successors and assigns of such holder.

**Mortgagee Cure Period** shall mean the period that commences upon the Event of Default and expires on the date that is 90 days after the later of: (a) the expiration of the Cure Period, or the applicable notice and/or cure period under Section 13 or 14 of the Agreement, as applicable, or this Exhibit; or (b) receipt of the Mortgagee Notice.

**Mortgagee Notice** shall mean a copy of any notice or demand required or permitted to be made or delivered by City to Developer.

**Mortgagee Remedies** shall mean: (a) obtaining possession of all or any part of the Collateral; (b) obtaining a receiver for all or any part of the Collateral; (c) foreclosing a Mortgage and effecting a foreclosure sale of the interests of Developer in the Agreement; (d) enforcing a Mortgage and effecting an assignment of the Agreement; or (e) otherwise acquiring all or any part of the Collateral and/or the interests of Developer in the Agreement.

**Permitted Termination** shall mean a termination of the Agreement in accordance that: (a) is permitted pursuant to the terms and conditions of the Agreement; and (b) occurs after the rights of all Mortgagees under Section 1 of this Exhibit have expired.

**Replacement Developer** shall mean the party that acquires the Collateral and the interests of Developer in the Agreement after a Mortgagee exercises a Mortgagee Remedy.

**1. Mortgagee Rights.** During all such times as there is a Mortgage outstanding, and until City has received written notices from each Mortgagee that its Mortgage has been satisfied or otherwise released, the following terms and conditions shall apply:

(a) Developer or each Mortgagee shall deliver written notice to City when a Mortgage becomes effective, which notice shall: (i) identify the Mortgagee with respect to such Mortgage; and (ii) set forth the notice address for the Mortgagee with respect to such Mortgage.

(b) City shall deliver to each Mortgagee, at its notice address and in accordance with the terms and conditions of Section 18 of the Agreement, a Mortgagee Notice. No notice or demand delivered by City to Developer shall be effective, unless and until a Mortgagee Notice is served upon all Mortgagees in accordance with the terms and conditions of this Section.

(c) If there is an Event of Default with respect to the failure to pay money, then: (i) each Mortgagee shall have the right to remedy the Event of Default or cause the Event of Default to be remedied, until the date that is 45 days after the later of: (A) the expiration of the Cure Period, or the applicable notice and/or cure period under Section 13 or 14 of the Agreement; or (B) receipt of the Mortgagee Notice; and (ii) City shall accept performance by any Mortgagee as performance by Developer.

(d) If there is an Event of Default with respect to any obligation other than the failure to pay money, then: (i) each Mortgagee shall have the right to remedy the Event of Default or cause the Event of Default to be remedied until the expiration of the Mortgagee Cure Period; and (ii) City shall accept performance by any Mortgagee as performance by Developer. Notwithstanding any other term or condition of the Agreement or this Exhibit, City shall not exercise any of its rights and remedies under Section 13 or 14 of the Agreement with respect to such Event of Default, if: (i) within the first 60 days after receipt of the Mortgagee Notice, a Mortgagee notifies City of its intention to cure the Event of Default; and (ii) within the first 75 days after receipt of the Mortgagee Notice, the Mortgagee: (A) commences a cure of the Event of Default and diligently pursues such cure to completion; or (B) commences the exercise or pursuit of one or more of the Mortgagee Remedies, and: (1) after commencement of the exercise or pursuit of the selected Mortgagee Remedies, diligently exercises or pursues such Mortgagee Remedies; provided that, if the Mortgagee has commenced the exercise or pursuit of the selected Mortgagee Remedies within 75 days after receipt of the Mortgagee Notice, and continues such exercise or pursuit, then, for a period of six months after the date on which the Mortgagee commenced the exercise or pursuit of the selected Mortgagee Remedies, which period shall be extended as reasonably required by the Mortgagee, such exercise or pursuit by the Mortgagee shall be deemed to be diligent; and (2) after obtaining or effecting the selected Mortgagee Remedies, commences a cure of the Event of Default and diligently pursues such cure to completion. The Mortgagee Cure Period shall be extended for the duration of any period when City is prohibited under this Subsection from exercising its rights and remedies with respect to an Event of Default.

**2. Amendments.** During all such times as there is a Mortgage outstanding, no amendment, modification, supplement, surrender, cancellation, or termination of the Agreement shall be effective, unless all Mortgagees consent in writing to the amendment, modification, supplement, surrender, cancellation, or termination of the Agreement; provided that a Permitted Termination shall be effective. Any attempted amendment, modification, supplement, surrender, cancellation, or termination of the Agreement without the consent of all Mortgagees, other than a Permitted Termination, shall be void and unenforceable, and shall have no force or effect. If, in connection with any attempts by Developer to obtain mortgage financing from a prospective mortgagee, such prospective mortgagee requires reasonable amendments, modifications, or supplements of or to the Agreement as a condition to closing such financing, then Developer and City shall execute an agreement amending, modifying, or supplementing the Agreement as required by the mortgagee; provided that such amendments, modifications, or supplements shall not: (a) adversely affect City, or the rights of City under the Agreement, in any material respect; or (b) reduce any obligations of Developer under the Agreement in any material respect.

**3. Default Cures.** No term or condition of the Agreement or this Exhibit shall be deemed: (a) to require any Mortgagee to: (i) satisfy any obligation of Developer under the Agreement; or (ii) cure any breach by Developer of its obligations under the Agreement; or (b) otherwise to make any Mortgagee liable for any such breach; provided that, if a Mortgagee exercises a Mortgagee Remedy, then the Replacement Developer promptly shall: (a) pay or cause to be paid to City all amounts owing from Developer to City under the Agreement, if any; and (b) commence a cure of any other uncured Events of Default that can be cured: (i) by the payment of money; or (ii) by the Replacement Developer through the exercise of reasonable

diligence; and diligently pursue such cure to completion. Notwithstanding the foregoing, the Replacement Developer shall not be: (a) required to cure any Incurable Defaults; (b) liable for, or with respect to, any Incurable Defaults; or (c) liable for any damages, losses, or expenses (including, without limitation, attorneys' fees), incurred by City in connection with any uncured Events of Default that existed before, or at the time of, the date on which the Replacement Developer acquired the Collateral and the interests of Developer in the Agreement.