

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____ 2024, by and among the **Town of Whitestown**, Boone County, Indiana, an Indiana municipal corporation (“Town”), the **Town of Whitestown Redevelopment Commission**, a commission of the Town of Whitestown existing and authorized pursuant to Ind. Code § 36-7-14 *et. seq.* (the “RDC”), **New City Development Partners, LLC**, an Indiana limited liability company (the “Developer”), as follows:

WHEREAS, Developer has proposed a development of certain real property located in the Town known as Padgett Commons, which will be a significant mixed-use development that will include an estimated 200,000 square feet of new retail space, 80 units of senior housing, and 120 units of multi-family housing at an estimated private investment of \$110 million which will add approximately \$48 million in new commercial development assessment to the Town;

WHEREAS, the Project will sit on approximately 39 acres and will create an exciting and attractive mixed-use district offering walkable/bikeable/pedestrian-friendly streetscapes and road improvements, unique and varied housing options and commercial space which will enhance the Town’s economic development efforts and aid local employers in attracting new talent to Whitestown;

WHEREAS, the Project will be an architecturally significant mixed-use development, proposed to be constructed in two phases, the first phase of which will include (i) extension of County Road 550 South and all associated utilities, (ii) extension of County Road 575 East and all associated utilities, (iii) new roundabout along County Road 550 South, (iv) new roundabout along County Road 575 East, (v) fence screening along County Road 575 East, (vi) a public trail, and (vii) compensation for corresponding land acquisition for right-of-way acquisition (if applicable);

WHEREAS, a second phase of infrastructure improvements to support the Project will include (i) widening of County Road 575 East for 4-lane right-of-way with median, (ii) roundabout at 575 East & 500 South, and (iii) compensation for corresponding land acquisition for right-of-way acquisition (if applicable);

WHEREAS, the Project will incorporate new public greenspace amenities, extend the Town’s existing street grid, and upgrade area infrastructure;

WHEREAS, the Town and the RDC have determined that it is in the best interest of the Town to support and incentivize Developer to construct the Project through: (i) issuance of economic development revenue bonds to be amortized over a period of twenty-five (25) years subject to a Minimum Taxpayer Agreement whereby Developer shall commit to the payment of real estate taxes and/or taxpayer direct payments, as needed, in an aggregate amount sufficient to pay the debt service on the Bonds (estimated net proceeds of \$27,200,000); (ii) funding of the costs of Phase 1 Infrastructure and Phase 2 Infrastructure, including design, construction and construction inspection of Town-planned-thoroughfares and other site work necessary to support the Project; (iii) design and construction of interior infrastructure necessary to serve the Project; and (iv) design and construction of park infrastructure necessary to serve the Project; and

WHEREAS, the Town, RDC, and Developer now desire to enter into this Agreement setting forth the rights and obligations of the Town, Developer, and RDC concerning development of the Project.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows.

SECTION 1. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.

SECTION 2. MUTUAL ASSISTANCE

The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent of this Agreement.

SECTION 3. DEFINITIONS

Ancillary Agreements means all instruments and agreements referenced or contemplated herein, including but not limited to the: (a) Minimum Taxpayer Agreement; (b) Infrastructure Agreement; (c) Funding Agreement; and, without limitation, any other documents needed to effectuate the intent of this Agreement.

Bond Proceeds means the net proceeds of certain Bonds in an amount of not less than \$27,200,000, a portion of which will be made available to Developer for the Developer Costs, all as shall be more specifically set forth in the Infrastructure Agreement and/or Funding Agreement.

Bonds means one or more series of bonds, or bond anticipation notes, to be issued under Ind. Code § 36-7-12 for the Project (and, if the Town elects in its sole discretion, other projects). Developer shall not be obligated to purchase the Bonds, but shall be obligated to execute a Minimum Taxpayer Agreement as defined herein, which shall constitute a property tax lien on the Project. The Bonds shall be marketed and sold by the Town under the terms set forth in Exhibit E.

Claims means claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.

Closing means: (i) with respect to Developer: (A) availability of the Project Equity; and (B) execution of all Ancillary Agreements; and (ii) with respect to the Town Bodies: (A) execution of

all Ancillary Agreements; and (B) availability of the funding for the Phase I Infrastructure, Interior Infrastructure, and Park Infrastructure.

Closing Date means the date of Closing, which date shall be mutually determined and mutually agreeable to Town, RDC, and Developer following all necessary approvals.

Construction Drawings means construction drawings with respect to the construction of the Project, which drawings shall be consistent with the Design Development Documents and Schematic Design Drawings.

Construction Schedule means a schedule for construction of the Project in accordance with the Final Documents and Drawings.

Cure Period means a period of: (i) ten (10) days after written notice of default in the case of any monetary default; and (ii) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (A) commences to cure the default within the thirty (30) day period; and (B) diligently pursues such cure to completion.

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

Developer means [New City Development Partners, LLC], an Indiana limited liability company.

Developer Costs means certain fees, costs, and expenses incurred (or to be incurred) by Developer to: design and construct the the Phase I Infrastructure, Interior Infrastructure, and Park Infrastructure.

Execution Date means the date in the first paragraph of this Agreement.

Final Documents and Drawings means the final Schematic Design Drawings, the final Design Development Documents and the final Construction Drawings, as each is reviewed by Town in accordance with the review process described in Section 11.

Final Inspection means an inspection of the Project after Substantial Completion thereof.

Force Majeure means any delay occasioned by causes beyond a party's control, including, but not limited to, work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; health pandemics or epidemics; or acts or omissions of governmental or political bodies but not including normal inclement weather in Central Indiana, such as cold, ice, sleet, snow or hail. The party asserting Force Majeure shall deliver written notice to the other party and any performance required shall be excused for the period of days that such

performance is delayed and the deadline for such performance shall be extended by the same period.

Funding Agreement means an agreement pursuant to which the Bond Proceeds shall be disbursed to Developer in a commercially reasonable manner to facilitate design and construction of the Infrastructure to support the Project.

Infrastructure shall mean, collectively, the Interior Infrastructure, Phase 1 Infrastructure, the Phase 2 Infrastructure, and the Park Infrastructure.

Infrastructure Agreement means an agreement pursuant to which the Developer and Town Bodies shall coordinate the timing and funding of the Phase 1 Infrastructure, Interior Infrastructure, Park Infrastructure, and Phase 2 Infrastructure following completion of the Plan Refinement Process.

Interior Infrastructure shall mean the construction of the following: (i) improvements to Central Road and all associated utilities; (ii) design and construction work for the interior infrastructure including but not limited to site work, mass grading, drainage, utilities, detention, and landscaping; and (iii) any correlating soft costs relating thereof on the infrastructure work including but not limited to survey, civil, design, and management fees, as set forth in Exhibit C, which shall be the responsibility of the Developer.

Latent Defect means a Material Defect that: (i) is not discovered, and reasonably is not discoverable, by Town during a Permitted Inspection and/or the Final Inspection; and (ii) has a material and adverse effect on the use, operation, structure, or longevity of the Project.

Laws means all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees.

Material Defect means any item or component of the Project that: (i) contains a material defect in workmanship or materials; (ii) deviates materially from the Final Documents and Drawings; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement.

Non-Compliance Notice means a written notice from Town to Developer that identifies Material Defects with respect to the Infrastructure discovered by Town during a Permitted Inspection and/or the Final Inspection.

Park Infrastructure means the construction of the following improvements: (i) park space; (ii) correlating design and construction work for the Park Infrastructure including but not limited to site work, mass grading, drainage, utilities, detention, and landscaping; (iii) any correlating soft costs relating thereof on the infrastructure work including but not limited to survey, civil, design, and management fees, as set forth in Exhibit C, which shall be the responsibility of the Developer.

Permitted Change means any change to that portion of the Final Documents and Drawings consisting of the final Construction Drawings, so long as such change: (i) is not inconsistent with

the Schematic Design Drawings approved by Town; (ii) is not inconsistent with the Design Development Documents approved by Town; (iii) is in conformity with each of the [Site Plan], the Required Permits, and the Laws; (iv) does not result in the Final Documents and Drawings containing structurally flawed elements; and (v) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by or before twenty (24) months following the Closing Date.

Permitted Inspection means an inspection by Town Bodies and/or their designees of the Project.

Phase 1 Infrastructure means: (a) extension of County Road 550 South and all associated utilities; (b) extension of County Road 575 East and all associated utilities; (c) new Roundabout along County Road 550 South; (d) new Roundabout along County Road 575 East; (e) fence screening along County Road 575 East; (f) public trail; and (g) compensation for corresponding land acquisition for right-of-way acquisition (if applicable), which shall be the responsibility of the Developer.

Phase 2 Infrastructure means: (a) widening of County Road 575 East for 4-lane right-of-way with median; (b) roundabout at 575 East & 500 South; and (c) compensation for corresponding land acquisition for right-of-way acquisition (if applicable), which shall be the responsibility of the Town Bodies.

Phasing Plan shall mean a plan for the development and construction of the various components of the Project, which shall be prepared by Developer and presented to the Town Bodies for review and approval in their reasonable discretion.

Plan Refinement Process means the process set forth in Section 11 for the completion of the Final Plans and Drawings.

Project means the development of certain real property located in the Town known as Padgett Commons, which will be a significant mixed-use development that will include an estimated 200,000 square feet of new retail space, 80 units of senior housing, and 120 units of multi-family housing, at an estimated \$110 million in new private investment which will add approximately \$48 million in new commercial development assessed value, including the Infrastructure.

Project Site means approximately 39 acres of real property within the Town.

Projected Project Increment means the Project Increment for the Project, as set forth in Exhibit F.

Project Increment means the incremental property tax proceeds received by the RDC and derived from the assessed valuation of real and personal property in the applicable allocation area in excess of the base assessed valuation.

Real Estate Taxes means all real estate taxes levied on, against, or with respect to the Project Site.

Required Permits means all permits, licenses, approvals, and consents required by the Laws for construction and use of the Project, which shall be issued by the Town in the ordinary course of business and shall not be unlawfully withheld, conditioned, or delayed.

Schematic Design Drawings means detailed schematic design drawings for the Project which final schematic drawings that are consistent with the Site Plan and shall be approved by the Town at or before Closing.

Site Plan means the site plan attached hereto as Exhibit B.

Substantial Completion means the date that (i) Developer receives the final certificate of occupancy for the Project, subject only to tenant improvements, certificates of occupancy for individual tenant spaces, and minor punch list items that do not interfere with the use or operation thereof.

Minimum Taxpayer Agreement means an agreement between the Town and Developer whereby Developer will commit to the payment of real property taxes and/or taxpayer direct payments, as needed, in an amount sufficient to pay the applicable portion of the principal and interest on the Infrastructure Bonds. The agreement shall constitute a property tax lien on the Project.

Target Completion Date shall mean such date as shall be specified in the Infrastructure Agreement for completion of the Phase I Infrastructure.

Town Body or Town Bodies means Town and/or RDC, as applicable.

Town Fees means eligible, applicable local fees assessed by the Town and associated with the Project, including but not limited to impact fees, improvement location fees, building permit fees, sanitary sewer fees, sign permit fees, variance or re-zoning request fees and inspection fees.

SECTION 4. TOWN'S OBLIGATIONS

A. Subject to Section 9, Town Bodies shall:

- i. Participate in the Project through utilization of tax increment financing, including creation of or amendment to an allocation area or allocation areas and the issuance of the Bonds to be serviced by incremental property tax revenue to be generated by the Project;
- ii. Make available the Bond Proceeds for the Infrastructure, less issuance and related costs;
- iii. Obtain adjacent land needed for new right-of-way for Public Infrastructure;
- iv. Design and construct all components of Phase 2 Infrastructure;

SECTION 5. DEVELOPER'S OBLIGATIONS

A. Subject to Section 8, Developer shall:

- i. Acquire the Project Site;
- ii. Develop and construct the Project, including preparation of the Final Plans and Construction Schedule in accordance with the Plan Refinement Process;
- iii. For each component of the Project: (i) own and/or oversee; and (ii) participate in daily management of; each component through substantial completion thereof;
- iv. Design and construct all components of the Phase 1 Infrastructure, Interior Infrastructure, and Park Infrastructure in collaboration with the Town, in accordance with the Plan Refinement Process, and subject to construction inspection performed by the Town or its designee;
- v. Construct the Project free from Material Defects and in substantial accordance with the Construction Drawings and the Laws, in each case, as the same relates to the Project, and shall commence work in furtherance of the construction of the Project within thirty (30) days after the Closing (the “**Project Construction Commencement Deadline**”) and shall Substantially Complete such construction on or before the Target Completion Date;
- vi. adhere to and follow all application and approval processes required by the Town and/or any other applicable agency for necessary land use and obtain permit approvals necessary for the construction of the Project;
- vii. at its expense and in compliance with applicable rules and regulations of relevant utility companies and government agencies, Developer shall be responsible for (i) arranging for provision to the Project Site during the construction phase of such water, electrical, waste disposal and other utility services as are reasonably required for completion of such construction in the time and manner contemplated, and (ii) payment for all such services;
- viii. pay any and all fees and assessments of general applicability to projects constructed within the Town (e.g. application fees, building permits, inspection fees, impact fees, tap-in fees, etc.), whether now existing or enacted in the future, for the Project;
- ix. Execute the Minimum Taxpayer Agreement in a form acceptable to the Town;
- x. Provide a completion guaranty for the applicable portion of the Project in a form and from a guarantor acceptable to the Town;
- xi. Perform its other obligations set forth herein.

SECTION 6. CLOSING

Section 6.01. **Closing.** Subject to the terms and conditions of this Agreement, Closing shall occur on such date and at such location as shall be mutually established by Developer and RDC. In the event of the termination of this Agreement, Developer shall bear its own costs in connection with negotiation and performance of this Agreement, apart from the reimbursement by Town of certain design costs for the Phase I Infrastructure pursuant to that certain Design Cost Reimbursement Agreement between Developer and the Town, and shall pay or reimburse the Town and RDC for its costs in connection with negotiation and performance of this Agreement in accordance with that certain Reimbursement Agreement between Developer and the Town Bodies.

Section 6.02. **Closing Deliveries.** At or before Closing:

- A. Town Bodies shall deliver: (i) executed copies of this Agreement; and (ii) all other

documents as may be required to proceed to Closing.

B. The Developer shall deliver: (i) executed versions of this Agreement; and (ii) all other documents as may be required to proceed to Closing.

C. Developer, Town and/or RDC, as applicable, shall execute and deliver the following:

- (i) a certification by each Developer that all the representations and warranties set forth in Section 10.02 remain true and accurate in all respects as of the Closing Date;
- (ii) an original of this Project Agreement to be recorded in the chain of title for the Project Site;
- (iii) copies of such resolutions, consents of members, partners, Projects, and/or shareholders and other evidence as RDC, Town, and Developer reasonably may request, establishing that: (A) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (B) the execution and delivery of such documents, have, in each case, been properly authorized by the signatories thereto;
- (iv) such other customary documents or instruments as Town, RDC, or Developer may request in connection with the Closing; and
- (v) such other customary documents or instruments as required to be delivered in connection with the issuance of the Bonds, if the Bonds are issued at Closing.

SECTION 7. [INTENTIONALLY OMMITTED]

SECTION 8. CONDITIONS TO DEVELOPER OBLIGATIONS

The obligations of Developer with respect to the Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section:

A. Zoning. As of the Closing Date, Developer shall have determined that: (i) the zoning of the Project Site is proper and appropriate for the construction of the Project and use of the Project in accordance with the terms and conditions of this Agreement; and (ii) the Project Site is subject only to commitments and restrictions that are acceptable to Developer in its reasonable discretion.

B. Bond Proceeds. As of the Closing Date, Town Bodies, using commercially reasonable efforts, shall make Bond Proceeds available to fund the Developer Costs for the Phase I Infrastructure, Interior Infrastructure, and Park Infrastructure.

C. Required Permits. As of the Closing Date, the Developer shall have (i) obtained; or (ii) determined that it shall be able to obtain all Required Permits.

D. Final Developer Plans. As of the Closing Date, the applicable phase of the Final Documents and Drawings shall have been reviewed and approved pursuant to Section 11.

E. Financial Ability. As of the Closing Date, Developer, shall have determined, in its sole and absolute discretion, that it has, or can obtain, needed project equity and construction financing.

F. Plat. As part of Closing, the Plat shall have received final approval from the Auditor of

Boone County, Indiana and be recorded. The Plat shall establish the precise legal description of the Project Site for purposes of title insurance and closing documents.

G. No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by Town or RDC that Town or RDC, as applicable, has failed to cure within the Cure Period; and (ii) all of the representations in Section 10.01 shall be true and accurate in all other 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 the Closing; or (ii) terminate this Agreement by a written notice to Town; provided that, with respect to any unsatisfied condition resulting from another party's breach of this Agreement, Developer shall have the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, (A) Developer shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (B) if Developer fails to terminate this Agreement for any unsatisfied condition on the Closing Date; Developer shall be deemed to have waived such condition.

SECTION 9. CONDITIONS TO TOWN AND RDC OBLIGATIONS

The obligations of Town and RDC with respect to the Closing are subject to the satisfaction or waiver, in writing, of the following prior to the applicable period specified in this Section:

A. Required Permits. As of the Closing Date, Town and RDC shall: (i) have determined that Developer shall have: (A) obtained; or (B) determined that Developer shall be able to obtain all Required Permits; (ii) the survey is acceptable to the Town; and (iii) there are no exceptions or matters of record reflected in the Commitment or survey which would have a materially adverse effect on the Project or the Town's, or RDC's, or CDC's ability to perform hereunder

B. Financial Ability. As of the Closing Date, Developer shall have established to the reasonable satisfaction of the Town and RDC that Developer has adequate funds (proceeds of a project loan, the Bond Proceeds, equity investments, and/or cash on hand) to complete the Project

C. Procedures. As of the Closing Date, the Town and RDC, as applicable, shall have completed all procedures required by Laws to undertake the obligations contemplated hereunder; and all requisite public bodies shall have approved the transaction.

D. No 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 the representations and warranties set forth herein shall be true and accurate in all respects.

E. Phase 1 Infrastructure. As of the Closing Date, Developer shall have provided Town with plans for the Phase 1 Infrastructure and permit such construction to begin by the Closing Date, unless otherwise specified in the Infrastructure Agreement.

F. Park Infrastructure. As of the Closing Date, Developer shall have provided Town with plans for the Park Infrastructure and permit such construction to begin by the Closing Date, unless otherwise specified in the Infrastructure Agreement.

G. Interior Infrastructure. As of the Closing Date, Developer shall have provided Town with plans for the Interior Infrastructure and permit such construction to begin by the Closing Date, unless otherwise specified in the Infrastructure Agreement.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, Town and RDC each may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement by a written notice to Developer; provided that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Developer, Town or RDC shall have all of the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, (A) Town shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (B) if Town fails to terminate this Agreement for any unsatisfied condition; on or before the Closing Date, Town shall be deemed to have waived such condition.

SECTION 10. REPRESENTATIONS AND WARRANTIES

Section 10.01. Town Parties. Each of Town and RDC represents and warrants to Developer that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) Town is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) RDC is the governing body of the Whitestown Department of Redevelopment and Redevelopment District, organized and existing under the laws of the State of Indiana; (iv) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (v) it has been duly authorized by proper action: (C) to execute and deliver this Agreement, and (D) to perform its obligations hereunder; (vi) this Agreement is the legal, valid, and binding obligation of it; and (vii) it has not engaged or dealt with any real estate broker or agent in connection with the Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of Town or RDC.

Section 10.02. Developer. Developer represents and warrants to each Town Body that: (i) Developer is an Indiana limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) Developer shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) Developer has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) Developer duly has been authorized by proper action: (y) to execute and deliver this Agreement; and (z) to perform its obligations hereunder; (v) this Agreement is the legal, valid, and binding obligation of Developer.

Section 10.03. E-Verify. All terms defined in IND. CODE § 22-5-1.7 *et seq.* are adopted and incorporated into this Section. Pursuant to IND. CODE § 22-5-1.7 *et seq.*, Developer covenants to enroll in and verify the work eligibility status of all its employees using the E-Verify program, if it has not already done so as of the Execution Date. Within ten (10) days after the Execution

Date, Developer shall execute an affidavit affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Developer shall provide Town with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Developer and delivered to Town's authorized representative.

SECTION 11. DEVELOPER DESIGN AND CONSTRUCTION

Section 11.01. Plan Refinement Process. In addition to submissions made to Town as part of its regulatory and permitting process, Developer shall submit to the Town and/or its designee for its review and input the Schematic Design Drawings and/or the Design Development Documents, and shall meet with representatives of the Town on a bi-weekly basis throughout the design process. As soon as reasonably practicable, Developer shall submit to the Town for review and input the Construction Drawings and the Construction Schedule.

The Town shall, after consultation with Developer, provide notice of approval or disapproval within fourteen (14) days after receipt of the proposed Construction Drawings and the Construction Schedule from Developer. If the Town disapproves of the proposed Construction Drawings and/or Construction Schedule, then the Town shall explain in a written notice specific reasons for the disapproval, and Developer shall be entitled to submit revised proposed Construction Drawings and/or Construction Schedule. Developer shall re-submit revised proposed Construction Drawings and/or Construction Schedule within thirty (30) days after the Town's disapproval; and the Town shall, after consultation with Developer, provide written notice of approval or disapproval within ten (10) days after receipt of the revised proposed Construction Drawings and/or Construction Schedule from Developer; provided, however, that the Town may not then disapprove of any feature that was included in prior proposed Construction Drawings and/or Construction Schedule that the Town did not previously disapprove unless in the Town's reasonable good faith judgment the revisions materially adversely affect such feature. This process shall continue until the Construction Drawings and/or Construction Schedule are fully approved and deemed the "**Final Plans.**"

The Town's failure to timely approve or disapprove of the Construction Drawings and/or Construction Schedule as provided in this subsection shall be deemed an approval. The Town intends that it shall review the proposed Construction Drawings and Construction Schedule in a fair, timely and reasonable manner consistent with the Plan Refinement Process and that the Town may exercise reasonable discretion in approving or disapproving the proposed Construction Drawings and Construction Schedule.

The proposed Construction Drawings, Construction Schedule and Change Order Requests submitted by Developer to the Town shall be reviewed by a panel comprised of individuals selected by the Town in its sole discretion. The Town may, at its sole cost and expense, utilize the services of architects, engineers and other persons possessing design expertise and experience in evaluating the proposed Construction Drawings, Construction Schedule and Change Order Request. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated with the Town.

Neither the Town, nor any Town board, commission, employee, contractor or agent thereof, shall be: (a) responsible in any way for any defects in the Final Plans, or for any defects in any work done according thereto; or (b) deemed to make any representation, warranty or

covenant with regard to the Final Plans by virtue of any action of approval or disapproval taken by it to have made, including, without limitation, the suitability or advisability of the Final Plans or their compliance with any Laws.

If Developer desires to make any material changes to the Construction Drawings, then Developer shall submit a Change Order Request to the Town for review and approval. Within five (5) days after the Town receives the Change Order Request, the Town shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (a) the Town shall not withhold its approval unreasonably; and (b) if the Town rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that the Town is rejecting; and (ii) include the specific basis for such rejection. If the Town approves a Change Order Request, then the Town and Developer shall execute a Change Order. The Town's failure to timely approve or disapprove of any Change Order Request shall be deemed an approval. Notwithstanding anything to the contrary set forth herein: (A) Developer shall not be required to obtain the approval of the Town with respect to a Permitted Change; and (B) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer. Material changes to the Construction Drawings which are not identified in a Change Order approved by the Town, other than Permitted Changes and customary field changes and non-material changes, shall not be deemed a Permitted Change and shall constitute a default hereunder.

Section 11.02. Permits. Developer acknowledges that any plan review by the Town is in addition to, and not in lieu of, any plan review or Required Permits required under applicable Laws, and it shall not be deemed a warranty or representation of any kind by any Town Bodies that the Schematic Design Drawings, the Design Development Documents, or the Construction Drawings comply with, or are approved under, applicable Laws. Prior to commencing construction of the Project, Developer shall obtain Required Permits with respect to the Project that are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. Town shall use reasonable efforts to assist Developer in its efforts to obtain the Required Permits. Developer acknowledges that Town Bodies cannot (and do not) guarantee that Developer will be able to obtain the Required Permits. Promptly after completion of the Project by Developer in accordance with the Final Documents and Drawings, the Town shall issue a certificate of occupancy.

Section 11.03. Construction. Prior to commencing construction of the Project, Developer shall provide Town notice of its selected General Contractor. Developer shall provide Town Bodies notice, if applicable, of any change in the General Contractor. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Documents and Drawings; and (iii) in compliance with the Laws.

Section 11.04. No Fee Waiver. Unless otherwise identified in this Agreement, Developer shall be responsible for all fees and costs associated with any and all necessary permits, licenses, utility connections, and the like, with any such costs or fees to be identified in the Funding Agreement as eligible expenses for use of Bond Proceeds or other public funds.

Section 11.05. Permitted Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, Town may

perform a Permitted Inspection. Within seven (7) business days after a Permitted Inspection, Town may deliver to Developer a Non-Compliance Notice. If Town 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 Town. 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 Town, subject to Latent Defects.

Section 11.06. Final Inspection. If Developer delivers to Town a written request for a Final Inspection, then, on or before the later of the date that is ten (10) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; Town shall: (A) conduct the Final Inspection; and (B) deliver a Non-Compliance Notice (if applicable) to Developer; provided that: (y) 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 (z) all then-completed items or components of the Project with respect to which no Material Defects or punch list items are identified in a timely Non-Compliance Notice shall be deemed to be accepted by Town, subject to Latent Defects. All Material Defects and punch list items shall be promptly completed; and, upon correction of all Material Defects and punch list identified in the Non-Compliance Notice, the applicable work shall be deemed completed. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this Subsection; Town shall have no further inspection rights except to ensure compliance by Developer with the Required Permits and as permitted by the Laws.

Section 11.07. Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by Town pursuant to this Section shall be applicable with respect to any Latent Defects. An acceptance, or deemed acceptance, by Town pursuant to this Section shall not mean that Town has accepted, or the other party 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 any portion of the Project is inconsistent with the Final Documents and Drawings.

Section 11.08. General; Testing. In the case of a Permitted Inspection or the Final Inspection, the parties shall: (i) comply with all health and safety rules of which such party 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. Town and Developer each shall have the right to accompany, and/or have its construction manager accompany, the inspecting party during any Permitted Inspection and/or the Final Inspection.

Section 11.09. No Waiver of Police Power. The foregoing rights in favor of Town shall be addition to, and not in lieu of, any rights and remedies Town may have under this Agreement or applicable Laws; and nothing set forth herein shall be deemed to waive any authority, right, remedy, or power vested in any Town and RDC under applicable Laws.

Section 11.10. Developer Design and Delivery of Infrastructure. Upon completion of the Plan Refinement Process, Developer shall initiate construction of the Phase 1 Infrastructure, the Interior Infrastructure, and the Park Infrastructure, subject to the rights of the Town Bodies to perform Permitted Inspections as specified herein, and in accordance with the Infrastructure Agreement between Developer and Town Bodies. Developer shall continuously construct the Infrastructure in accordance with the Phasing Plan, subject to Force Majeure.

Section 11.11. Cost and Performance Risk. If the construction costs or financial performance of the Project does not meet the Developer's expectations, Developer shall: (i) bear the sole cost and responsibility of construction cost overruns and financial non-performance; and (ii) shall not request financial assistance from the Town Bodies.

SECTION 12. INSURANCE

During the construction of the Project, Developer shall maintain the policies of insurance described on **Exhibit D**. Each such policy shall: (i) be written by a company reasonably acceptable to Town; and (ii) provide that it shall not be modified or canceled without written notice to Town at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name Town and RDC as additional insureds. Developer shall deliver to Town certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. Other required coverages may be specified in the Ancillary Agreements.

SECTION 13. [INTENTIONALLY OMMITTED]

SECTION 14. PUBLIC IMPROVEMENTS.

Section 14.01 Design and Construction. Town Bodies and Developer shall work jointly and cooperatively to: (A) determine the exact nature and scope of the Infrastructure; (ii) develop, refine, and finalize the drawings, documents, plans, and specifications for the Infrastructure; (iii) finalize the schedule for the construction of the Infrastructure; and (iv) determine the procurement method for the Phase I Infrastructure, Interior Infrastructure, and Park Infrastructure that provides Developer with the ability to complete the Infrastructure at the lowest possible cost.

SECTION 15. 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, if such default or failure is not cured within the applicable Cure Period.

Section 15.01. 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 10% per annum.

Section 15.02. **No Remedy Exclusive; Limitation.** 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 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 Agreement or by the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages because of an Event of Default by such party. In the event either party hereto employs an attorney in connection with Claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such Claims. The term "prevailing party" as used in this Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

SECTION 16. [INTENTIONALLY OMITTED]

SECTION 17. SPECIAL REMEDIES

Section 17.01. **Injunctive Remedies.** If an Event of Default occurs, Town shall be entitled to seek specific performance or injunctive relief, and, in each case, Developer hereby waives any claim or defense that Town or RDC have an adequate remedy at law.

Section 17.02. **No Limitation.** Notwithstanding anything to the contrary set forth herein, the rights and remedies set forth in this Section 17 are not exclusive and 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.

SECTION 18. MUTUAL INDEMNIFICATION

Section 18.01. **Town.** To the extent permitted by applicable Laws, Town shall indemnify and hold harmless Developer from and against all Claims arising from or connected with: (i) the breach by Town of any term or condition of this Agreement; and (ii) its negligence or willful misconduct, or the negligence or willful misconduct of any party acting by, under, through, or on behalf of it.

Section 18.02. **Developer.** Developer shall indemnify and hold harmless Town and RDC from and against any and all Claims arising from or connected with: (i) material breaches by that 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 by Developer or any party acting by, under, through, or on behalf of Developer; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project by Developer or any party acting by, under, through, or on behalf of Developer; (iii) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (iv) Developer suffering or causing the filing of any mechanic's or materialmen's lien against the Project Site, Project, or any adjacent property owned by Town or RDC. Notwithstanding anything to the contrary set forth herein, Developer's obligations under this Section shall survive the termination of this Agreement. This shall not apply to Claims arising from or connected with the Town's gross negligence or willful misconduct.

SECTION 19. ASSIGNMENT

Section 19.01. **Covenant.** Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion of the Project, no party hereto shall assign this Agreement without the prior written approval of the other parties; provided that: (i) without the prior written approval of Developer, Town and RDC may assign this Agreement to another agency or instrumentality of Town that legally is able to perform the respective obligations hereunder; and (ii) without the prior written approval of Town, Developer may: (A) assign this Agreement to any entity in which Developer maintains a controlling interest; and (B) assign this Agreement to any entity responsible for developing a particular phase of the Project.

SECTION 20. ADDITIONAL PROVISIONS

Section 20.01. **Notice.** Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (i) delivered in person to the other party; (ii) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (iii) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Town at 6210 Veterans Drive, Whitestown, Indiana 46075, Attn: Town Manager, with copies to: Cameron Starnes, Taft Stettinius & Hollister, One Indiana Square, Suite 3500, Indianapolis, IN 46204 and to Developer at 911 Massachusetts Avenue, Indianapolis, IN 46202 Attn: Isaac Bamgbose; with a copy to: Wallack Somers & Haas, P.C., One Indiana Square, Suite 2300, Indianapolis, IN 46204, Attn: Adam Collins. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 20.02. **Authority.** Each undersigned person executing this Agreement on behalf of Town, RDC and Developer represents and certifies that: (i) he or she has been empowered and authorized by all necessary action of Town, RDC and Developer, respectively, to execute and deliver this Agreement; (ii) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (iii) the execution, delivery, and performance of this Agreement duly have

been authorized by Town, RDC and Developer, respectively; provided, however, Town's, and RDC's ability to perform under this Agreement is subject to completion of certain procedures required by the Laws which procedures Town and RDC agree to undertake with diligence and in good faith.

Section 20.03. **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: (i) the party asserting Force Majeure shall deliver written notice to the other party; (ii) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (iii) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

Section 20.04. **Merger.** All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

Section 20.05. **Indiana Tort Claims/Indemnification.** Notwithstanding anything to the contrary contained herein, Developer hereby acknowledges and agrees that Town's financial exposure for certain claims is limited by the Indiana Tort Claims Act, and Town's obligation to indemnify and save Developer, its agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

Section 20.06. **Miscellaneous.** Subject to Section 19, this Agreement shall inure to the benefit of, and be binding upon, Town, RDC and Developer, and their respective successors and assigns and shall survive the Closing. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. 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: (i) the right to a trial by jury; and (ii) any right Developer may have to: (A) assert the doctrine of "forum non conveniens"; or (B) object to venue. This Agreement may be modified only by a written agreement signed by Town, RDC 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. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of

the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between or among Developer, Town or RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Project Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

Section 20.07 **Non-Discrimination.** Developer agrees that it, and its contractors and subcontractors, will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to the employee’s hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of the employee’s race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

[signatures on following pages]

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

“TOWN”

TOWN OF WHITESTOWN, INDIANA

By: _____
Dan Patterson, Town Council President

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared **Dan Patterson**, personally known to me to be the **Town Council President** of the **Town of Whitestown, Indiana**, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said Town.

WITNESS my hand and notarial seal this ____ day of _____, 2024.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

[Project Agreement – Town Signature Page]

“RDC”

**WHITESTOWN REDEVELOPMENT
COMMISSION**

By: _____
Adam Hess, President

STATE OF INDIANA)
) SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared **Adam Hess**, President of **Whitestown Redevelopment Commission**, who having been duly sworn acknowledged the execution of the foregoing Project Agreement for and on behalf of said commission.

Witness my hand and Notarial Seal this ____ day of _____, 2024.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

[Project Agreement – RDC Signature Page]

“DEVELOPER”

New City Development Partners, LLC

By: _____

Print: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ personally known to me to be the _____, of **New City Development Partners, LLC**, an Indiana limited liability company, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said limited liability company.

WITNESS my hand and notarial seal this ____ day of _____, 2024.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

[Project Agreement – Developer Signature Page

EXHIBITS

- Exhibit A: Project Site
- Exhibit B: Site Plan
- Exhibit C: Infrastructure
- Exhibit D: Insurance
- Exhibit E: Bond Terms
- Exhibit F: Projected Project Increment