

ECONOMIC DEVELOPMENT AGREEMENT

Padgett Commons

This ECONOMIC DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into this _____ day of _____, 2025 (the “**Effective Date**”) by and among the TOWN OF WHITESTOWN, INDIANA, a municipality and a political subdivision organized and existing under the laws of the State of Indiana (the “**Town**”), the WHITESTOWN REDEVELOPMENT COMMISSION (the “**Commission**” and collectively with the Town, the “**Town Parties**”), a redevelopment commission organized and existing under the provisions of Indiana Code 36-7-14 and Indiana Code 36-7-25, each as amended (the “**Act**”), NEW CITY DEVELOPMENT PARTNERS, LLC, an Indiana limited liability company (“**New City**”), and Whitestown 550 Padgett, LLC (“**550 Padgett**” and with New City, the “**Developer**”), to facilitate the development of a mixed use development in the Town.

W I T N E S S E T H:

WHEREAS, the Developer has acquired or, following execution of this Agreement, will acquire the real estate and improvements within the Town generally located at the northeast corner of the intersection of County Road 550 South and Perry Worth Road, identified as parcel number 06-07-36-000-038.000-020, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (collectively, the “**Property**”); and

WHEREAS, the Developer has proposed a mixed-use development for the Property that will initially include approximately (a) a four-story mixed use multi-family housing facility with 42 residential units and 15,000 square feet of retail space, (b) a three-story multi-family housing complex with 78 residential units, a three-story 80 unit senior living facility, and (c) an 82,000 square foot entertainment facility and (e) associated site work and infrastructure, as more particularly described in Exhibit B attached hereto and incorporated herein by reference (collectively, the “**Project**”), which Project shall be developed on a portion of the Property as depicted in Exhibit B (the “**Project Site**”); and

WHEREAS, the Developer will provide a private capital investment of over Sixty-Three Million Dollars (\$63,000,000) in the Project, and the Developer estimates that the real property assessed value of the Project upon completion is expected to equal or exceed Thirty-One Million Two Hundred Sixteen Thousand Six Hundred and Twenty Dollars (\$31,216,620) (the “**Project Investment**”); and

WHEREAS, in addition to the Project Investment, the Developer will use all reasonable efforts to cause an additional Forty-Six Million Dollars (\$46,000,000) of private capital investment in additional development on the Property, including approximately 125,000 square feet of additional retail space (the “**Additional Project Scope**”); and

WHEREAS, the Developer has requested certain economic development assistance from the Town for the Project, without which the Developer would not proceed with the Project; and

WHEREAS, in the construction and development of the Project, Developer will further construct and provide to the Town Parties, subject to applicable procedures and laws, various on-site public infrastructure including road and utility extensions, roundabouts, public trails and a public park, as more particularly described in Exhibit C attached hereto and incorporated herein by reference (the “**On-Site Public Infrastructure**”), as well as construct various off-site public improvements including road improvements and a roundabout as more particularly described in Exhibit D attached hereto and incorporated herein by reference (the “**Off-Site Public Infrastructure**,” and collectively with the On-Site Public Infrastructure, the “**Public Infrastructure**”), at a collective cost for the Public Infrastructure that is expected to equal or exceed Twenty-Five Million Seven Hundred Thousand Dollars (\$25,700,000); and

WHEREAS, the Town Parties have a public interest in encouraging development and redevelopment of the Property, and desire that the Developer proceed with the Project and Public Infrastructure in order to stimulate, promote, and further the general and economic welfare of the Town; and

WHEREAS, the Project will (i) benefit the public health, safety, morals, and welfare for the Town; (ii) increase the economic well-being of the Town and the State of Indiana by creating jobs and employment opportunities; (iii) serve to protect and increase property values in the Town and the State of Indiana; and (iv) attract a major new business enterprise to the Town; and

WHEREAS, as an inducement to the Developer to construct the Project and Public Infrastructure, and make the Project Investment, the Town Parties find that the economic development incentives set forth herein should be provided in order to provide for the development, redevelopment, and rehabilitation of the Property and the Project.

NOW, THEREFORE, in consideration of the promises and mutual obligations and covenants of the parties hereto contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the Town Parties agree as follows:

ARTICLE I. RECITALS

1.01 Recitals Part of Agreement. 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 1.01.

ARTICLE II. MUTUAL ASSISTANCE

2.01 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including, but not limited to, the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Town Parties, the adoption of such ordinances and resolutions), 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. In addition, the parties to this Agreement agree to use their best efforts to cooperate with each other and act in good faith to effectuate the intent of this Agreement.

ARTICLE III. ECONOMIC DEVELOPMENT INCENTIVES

3.01. **Project Economic Development Area.** The Town Parties shall, subject to further proceedings required by law, establish an economic development area and allocation area for the Property in accordance with Indiana Code 36-7-14, as amended in order to collect tax increment revenue generated from the Project (the “**TIF Revenues**”). The term of the allocation area shall extend for the maximum term permitted by Indiana Code 36-7-14-39. The Developer agrees to attend and participate in meetings and hearings of the Town Parties, and provide such documentation as may be necessary, for the establishment of the new economic development area and allocation area for the Property. The parties acknowledge that the Town has an existing obligation to the Indiana Department of Transportation (“**INDOT**”) to provide fifty percent (50%) of the TIF Revenues from the Property to INDOT (the “**INDOT Obligation**”) so long as the INDOT Obligation remains in effect.

3.02. **Public Infrastructure Bonds.**

(a) The Town Parties shall each, subject to further proceedings required by law, issue, or cause to be issued one or more series of tax-exempt bonds pursuant to the Act (the “**Infrastructure Bonds**”), provided that the Town Parties may determine to instead issue Infrastructure Bonds as taxable based on a determination of the Town Parties at the time of issuance of the Infrastructure Bonds upon the advice of the Town Parties’ bond counsel. The Infrastructure Bonds may, at the election of the Town Parties, be issued in one or more series and shall be issued in a principal amount sufficient to provide for the deposit to a project fund for Public Infrastructure the total sum of not less than Twenty-Five Million Seven Hundred Thousand Dollars (\$25,700,000) (the “**Infrastructure Fund Deposit**”) (the closing on any series of Bonds (as hereinafter defined) shall be referred to as the “**Closing**”). The actual par amount of the Infrastructure Bonds will be sized to ensure sufficient proceeds to provide, in addition to the Infrastructure Fund Deposit, the cost of issuance including (a) funding a debt service reserve for the Infrastructure Bonds, if necessary, (b) funding capitalized interest on the Infrastructure Bonds, if necessary, and (c) the legal, municipal advisor, rating, underwriting, trustee and planning consultant expenses incurred by the Town Parties in connection with the issuance of the Infrastructure Bonds. The parties acknowledge and approve the following Town Parties’ consultants for the Bonds: Bose McKinney & Evans LLP as bond counsel, Krohn & Associates LLP as municipal advisor, and Stifel, Nicolaus & Company, Incorporated, as underwriter. The final sizing of the Infrastructure Bonds will be determined by the Town Parties with the advice of the Town’s consultants.

(b) The Town Parties shall commence with all preliminary actions and approvals that may be necessary to proceed with the bond sale process as to the Infrastructure Bonds. In connection with the issuance of the Infrastructure Bonds, the Town Parties may pledge some or all of the TIF Revenues, subordinate to the INDOT Obligation, as well as other available sources of revenue as determined by the Town Parties.

(c) The Town Parties shall commence with all preliminary actions and approvals that may be necessary to procure the construction of the Public Infrastructure on behalf of the Town Parties through a Public Private Agreement pursuant to Indiana Code 5-23 (the “**BOT Statute**”).

(d) As soon as reasonably possible after the Closing, and subject to the execution of a Public Private Agreement (subject to Section 4.01 hereof) pursuant to the BOT Statute for the construction of the Public Infrastructure on behalf of the Town Parties, the Town Parties will make proceeds in the amount of \$25,700,000.00 in the Infrastructure Fund Deposit available for Infrastructure Project Costs (as defined below) subject to the hereinafter described disbursement conditions. The Infrastructure Fund Deposit will be made available to pay for any and all hard and soft costs of the Public Infrastructure that are eligible for payment under Indiana law (including the Act) and such that the Infrastructure Bonds remain eligible for tax-exempt status, including but not limited to hard and soft costs and expenses to: (i) develop and design the Public Infrastructure, including but not limited to developer’s fees and overhead related to the Public Infrastructure; (ii) prepare the Project Site for construction of the Public Infrastructure (including demolition work, earthwork, environmental remediation work, and the extension of utilities); and (iii) acquire the materials to construct, and construct, the Public Infrastructure (the “**Infrastructure Project Costs**”); provided, however, that disbursements shall only be made from the Infrastructure Fund Deposit for that portion of the On-Site Public Infrastructure on the Property that includes (i) the extension of County Road 550 South and all associated utilities and adjacent public trail, (ii) the extension of County Road 575 East and all associated utilities, adjacent public trail, and fencing, (iii) the new roundabout along County Road 550 South, (iv) the new roundabout along County Road 575 East, and (v) any other permitted costs associated with the same (collectively, with the Off-Site Public Infrastructure, the “**Exterior Public Improvements**”), plus a developer’s fee of up to five percent (5%) on each disbursement for the Exterior Public Improvements, until such time as the Exterior Public Improvements are substantially completed. The draw of Infrastructure Bond proceeds shall further be subject to the prior written consent of the Town Parties, or their designee, in accordance with commercially reasonable disbursement conditions to ensure that the proceeds of the Infrastructure Bonds are used for Infrastructure Project Costs and otherwise in accordance with this Agreement, as supported by documentation submitted with each disbursement request that would be required for a disbursement of loan proceeds from a construction lender, except for that documentation required to address title company releases.

(e) Developer and Town Parties agree to execute such agreements as may be necessary to effectuate the sale and security of the Infrastructure Bonds.

(f) Any Exterior Public Improvements and applicable Public Infrastructure constructed by Developer shall comply with all applicable federal, state, and local standards and shall be conveyed to the Town Parties subject to Town inspection and acceptance thereof in its sole, reasonable discretion as hereinafter provided and so long as the Infrastructure Bonds are outstanding be made available to the general public to serve the essential governmental purpose of transportation within the Town.

3.03. Economic Development Revenue Bonds.

(a) The Town Parties shall each, subject to further proceedings required by law, issue, or cause to be issued one or more series of economic development revenue bonds pursuant to Indiana Code 36-7-12 (the “**EDC Bonds**”, and collectively with the Infrastructure Bonds, the “**Bonds**”), which EDC Bonds may or may not be issued as tax-exempt based on a determination of the Town Parties at the time of issuance of the Bonds upon the advice of the Town Parties’ bond counsel. The EDC Bonds may, at the election of the Town, be issued in one or more series and shall be issued in a principal amount sufficient to provide for the deposit to a project fund at the Closing in the total sum of not less than One Million Five Hundred Thousand Dollars \$1,500,000 (the “**EDC Project Fund Deposit**”). The actual par amount of the EDC Bonds will be sized to ensure sufficient proceeds to provide, in addition to the EDC Project Fund Deposit, the cost of issuance including (a) funding a debt service reserve for the EDC Bonds, if necessary, (b) funding capitalized interest on the EDC Bonds, if necessary, and (c) the legal, municipal advisor, and planning consultant expenses incurred by the Town Parties in connection with the issuance of the EDC Bonds.

(b) The Town Parties shall commence with all preliminary actions and approvals that may be necessary to proceed with the bond sale process as to the EDC Bonds. In connection with the issuance of the EDC Bonds, the Town Parties may pledge some or all of the TIF Revenues, subordinate to the INDOT Obligation, as well as other available sources of revenue as determined by the Town Parties.

(c) Developer and Town Parties agree that the EDC Bonds shall be used for hard and soft construction work associated with the development of the Project, including but not limited to the cost associated with documenting the various Project Agreements, to design and develop the Project in accordance with the terms of this Agreement, site work, mass grading, drainage, utilities, detention, landscaping, the cost of obtaining material to construct the Project at the Property, and associated developer overhead as set forth in this Agreement (the “**Project Costs**”).

(d) At the Closing on the EDC Bonds, the Town Parties will make proceeds in the amount of the EDC Project Fund Deposit available to Developer for a period of five (5) years after Closing subject to the hereinafter described disbursement conditions. The funds held in the EDC Project Fund will be made available to the Developer to pay for any and all Infrastructure Project Costs and of the Project Costs upon the closing associated with the PPA (as hereinafter defined);. The ability of Developer to access the proceeds of the EDC Bonds shall further be in accordance with commercially reasonable disbursement conditions to ensure that the proceeds of the EDC Bonds are used for Project Costs and otherwise in accordance with this Agreement, which conditions shall require the Developer to submit supporting documentation with each disbursement request that would be required for the Developer to receive a disbursement of loan proceeds from a construction lender, except for that documentation required to address title company releases.

(e) Developer and Town Parties agree to execute such agreements as may be necessary to effectuate the sale and security of the EDC Bonds.

(f) The Town Parties may, in their discretion, elect to use other sources of available funds to fund the EDC Project Fund Deposit in lieu of issuing the EDC Bonds.

3.04. Developer Covenants.

(a) As an inducement for the Town to issue the Bonds and provide the EDC Project Fund Deposit and Infrastructure Fund Deposit, the Developer commits to make payments sufficient to generate real property tax increment revenue to the Town Parties from the Project Site in the minimum annual amounts as set forth in Exhibit E attached hereto and incorporated herein by reference (the “**Annual Tax Payment**”). Upon the later to occur of: (i) Closing; or (ii) the selection of a preferred bidder for the BOT Project, the Developer or any entity that owns the Project Site (if not the Developer), and Commission will execute a taxpayer agreement in a form reasonably satisfactory to the Parties that: (i) requires the owner(s) of the Project Site, to pay a minimum amount of the real estate taxes assessed against the respective portion of the Project Site to generate real property tax increment revenues to the Town Parties equal to the Annual Tax Payment; and (ii) creates a first priority lien against the Property 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) against the respective portion of the Project Site (the “**Taxpayer Agreement**”). The Taxpayer Agreement shall be recorded at the later to occur of the: (i) the Closing on the Bonds; and (ii) the selection of Developer as the preferred bidder for the BOT Project; and shall bind the successors in interest to the Project Site for twenty-five years from the date of the issuance of the Bonds. In the event of disparate ownership of portions of the Project Site, the Taxpayer Agreement may be executed with different parties, each responsible for their portion of the Annual Tax Payment as it relates to their respective portion of the Project Site, provided that the sum of guaranteed tax payments for all such respective portions shall equal the Annual Tax Payment.

(b) So long as the Bonds remain outstanding, the Developer and/or owner of the applicable portion of the Project Site covenants and agrees to not seek any real property tax abatements on the Project Site and/or appeals against the assessed value of any applicable portion of Project or the Project Site that would decrease the actual assessed value of the Project Site to an amount that is less than 100% of the Project Investment.

(c) At the Closing, the Developer shall cause the execution of a completion guaranty that guaranties the completion of the construction of the Project by the same parties executing such guaranty for the Project construction lender (the “**Completion Guaranty**”), which Completion Guaranty shall: (i) be in effect until the Project ~~and the Additional Project Scope~~ is are substantially completed; and (ii) provide for an extension or delay in the event that the Public Infrastructure is not completed on schedule or due to Force Majeure events (as such term may be defined in this Agreement or in the PPA (as defined herein). For purposes of this Section, “substantially completed” shall mean the issuance of a certificate from the Project’s architect certifying that the Project is substantially complete.

(d) Developer shall make commercially reasonable efforts to implement the phased construction of the Additional Project Scope in accordance with the phased project schedule and plan (the “Phasing Plan”) providing the estimated tax assessments and values as set forth within Exhibit E. The parties acknowledge that the development of the Additional Project Scope is a real estate transaction and that outcomes related to precise tenants, timing, and scope cannot be guaranteed. In the event that Developer is in breach of this covenant, Town shall have the unilateral

right to cause Developer to prepare and submit to Town, at Developer's sole cost, a reasonable plan to cause the development of the Additional Project Scope (the "Catch Up Plan"). Town shall review and accept or reject the Catch Up Plan in its sole, reasonable discretion. In the event that the Town rejects the Catch Up Plan, Town and Developer shall meet to develop the criteria for a reasonably acceptable Catch Up Plan, which shall be implemented within thirty (30) days thereof. If Developer fails to implement the Catch Up Plan so as to cause the Additional Project Scope to be implemented within three hundred sixty-five (365) days of the substantial completion date specified therein, Town shall have the right, though not the obligation, to acquire the undeveloped portion of the Project Site that is not subject to the Taxpayer Agreement for a price that is mutually agreed upon by the parties.

3.05. Closing. The date of each Closing of the Bonds shall be established mutually by Developer and the Town Parties. The parties shall not be obligated to proceed to Closing until the reasonable satisfaction of the parties that all other customary due diligence items have been addressed. The parties acknowledge and agree that the Closing on the Bonds may occur on a single date or several dates depending on the timing for the issuance of each series of Bonds.

3.06. Alternative Financing. If the Town Parties and Developer agree that a form of financing other than the issuance of the Bonds would better accomplish the purposes of this Agreement, the terms of this Agreement will be amended to provide for such alternative financing.

ARTICLE IV. DEVELOPER PROJECT AND PUBLIC INFRASTRUCTURE

4.01. Build Operate Transfer Procurement.

(a) Pursuant to the terms of the BOT Statute, the Town shall issue a Request for Qualifications and Proposals (the "**RFQP**") for the construction of the Public Infrastructure (the "**BOT Project**"). The Developer shall provide information reasonably requested by the Town for, and assist in, the development of specifications for the Public Infrastructure (the "**BOT Specs**"), and the Town shall: (i) issue the RFQP within fourteen (14) days of completion of the BOT Specs; and (ii) select a preferred bidder (the "**BOT Project Developer**") for the construction of the Public Infrastructure within fifteen (15) days of submission of proposals for the BOT Project (the "**BOT Selection Date**"). If the Town fails to select a BOT Project Developer by the BOT Selection Date, the Town shall develop a plan to cause the selection of a BOT Project Developer and construction of the BOT Project by a date that has been mutually agreed by the parties (the "**BOT Completion Date**"). The parties acknowledge and understand that a party other than Developer could be selected by Town as the BOT Project Developer. If Town selects another party as the BOT Project Developer, Town shall make commercially reasonable efforts to ensure that such party completes the BOT Project by the BOT Completion Date. To compensate Developer for actual costs and losses incurred in the event that the awarding or execution of the BOT Project is delayed, the parties agree that the Developer shall be reimbursed as follows: (i) \$3,000 for each day the BOT Project is delayed past the mutually agreed outside date for completion; or (ii) the amount of \$8,500,000.00 upon termination of this Agreement by Developer (the "**Termination Payment**"). At the Town's election, the Termination Payment may either be applied as: (i) a grant of funding to Developer for the design, development, and construction of public and private infrastructure on the Property; or (ii) as the purchase price for the purchase of the Property by Town. If the Town elects to purchase the Property, such purchase shall be on an "as-is" basis by limited warranty

deed, subject to all encumbrances of record, and without any warranties by Developer as to the condition or suitability of the Property.

(b) If Developer is selected as the BOT Project Developer, the contract for the BOT Project shall be in a form reasonably satisfactory to the parties as evidenced by prior BOT agreements within the central Indiana metropolitan region (the “**PPA**”), which PPA shall provide that the BOT Project will be required to be constructed using a Guaranteed Maximum Price (the “**GMP**”) with provision for shared savings of contingency or costs between Developer and Town. The GMP shall not exceed the amount of the Infrastructure Fund Deposit (unless subject to a change order as set forth in the PPA) and shall cover all costs and expenses of the design, completion, construction, and transfer of the Public Infrastructure pursuant to this Agreement and the PPA; provided, however, that the GMP shall exclude:

- (i) the purchase price of needed right-of-way for the Off-Site Public Infrastructure in excess of \$700,000;
- (ii) the legal fees and costs to acquire needed right-of-way for the Off-Site Public Infrastructure by eminent domain, if necessary;
- (iii) the costs paid to public utilities required to relocate utility facilities for the roundabout of the Off-Site Public Infrastructure;
- (iv) Off-Site Public Infrastructure site conditions on real estate not included within the portion of the Project Site owned by Developer;
- (v) Off-Site Public Infrastructure environmental conditions on real estate not included within the portion of the Project Site owned by Developer;
- (vi) unsuitable soil conditions for the Off-Site Public Infrastructure on real estate not included within the portion of the Project Site owned by Developer; and
- (vii) utility conditions for the Off-Site Public Infrastructure on real estate not included within the portion of the Project Site owned by Developer; and
- (ix) the cost of any inspections performed by the Inspectors.

(c) PPA Terms. In addition to the terms set forth in this Section, the PPA shall include the following terms:

(i) Disbursements. Disbursements shall be paid by the Town within thirty (30) days of its receipt of a request for disbursement from BOT Project Developer, provided BOT Project Developer is not in default under the terms of the PPA.

(ii) Operating Period. The operating period shall commence on the date of substantial completion of the BOT Project and shall terminate within thirty (30) days of the date of substantial completion (the “**Operating Period**”). During the term of the Operating Period, the Town shall be responsible for the direct payment of all costs and

expenses incurred in connection with the operation of the BOT Project during the Operating Period.

(iii) **Utility Availability.** Town, at its cost and expense, shall ensure that the utility services in adjoining public rights-of-way or properly granted utility easements that serve the proposed BOT Project site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the BOT Project in accordance with the final approved plans for the BOT Project (the “**Final Plans**”). Town shall be responsible for the upgrading or increased capacity of any utilities that do not meet the proposed capacity as set forth in the Final Plans.

(iv) **Land Acquisition.** For any property to be acquired by the Town in order to facilitate the BOT Project, the Town shall, upon acquisition thereof, provide an easement agreement for such parcel that provides access and ability to construct the BOT Project. The BOT Project Developer shall receive force majeure relief for the amount of time between identification that a parcel must be acquired by Town and the date of such parcel’s acquisition.

(v) **Plan Refinement Process.** BOT Project Developer shall submit a plan schedule to Town. In accordance with such schedule, BOT Project Developer shall submit to Town staff the schematic design, design development drawings, construction drawings, and proposed construction schedule for the BOT Project. Within ten (10) days of a submission by BOT Project Developer, Town staff shall either: (A) approve such submission via written notice; or (B) provide a written notice of rejection, which notice shall: (1) specify the part or parts that Town staff is rejecting; and (2) include the specific basis for such rejection. Upon approval of any plan, such plan shall be final, subject to modifications by change orders. If at any stage a plan is rejected, then within ten (10) days after Developer receives notice of such rejection, BOT Project Developer shall revise and resubmit such plan to Town staff. Within ten (10) days of such resubmission, Town staff shall deliver a written notice of failure or approval to Developer; provided that, any rejection shall include the requirements set forth in this Section. Upon approval of all plans, such plans shall become the Final Plans, subject to modification by change order (as hereinafter defined).

(vi) **Change Orders.**

(A) **Developer Changes.** If BOT Project Developer desires to make any changes to Final Plans, BOT Project Developer shall submit a change order request to Town for its review and approval, together with an estimate of any increases to the approved BOT Project budget (a “**Change Order**”). Within ten (10) days of such request, Town shall deliver to BOT Project Developer written notice that it approves or rejects such request, provided that: (1) Town shall not withhold its approval unreasonably; and (2) if Town approves a Change Order that increases the BOT Project budget, Town shall be solely responsible for the amount of such increase. For the purposes of this Section, it shall not be unreasonable for Town to withhold its approval if the requested change increases the amount of the BOT Project budget.

(B) Town Changes. If Town desires to make any changes to approved plans, then Town shall submit a Change Order request to BOT Project Developer for its review and approval. Within ten (10) business days after Developer receives the Change Order request, BOT Project Developer shall deliver to Town written notice stating whether the change requested would result in an increase to the BOT Project budget and an estimate of such increase if applicable. If no cost increase is applicable, BOT Project Developer shall provide Town with written notice that it approves or rejects such Change Order; provided that, BOT Project Developer shall not unreasonably withhold its approval. If a Change Order request causes a price increase, then such increase shall be paid solely by Town.

(C) Permitted Changes. BOT Project Developer shall not be required to obtain the approval of Town related to a Change Order, so long as that change: (1) is not inconsistent with the Final Plans; (2) does not result in the Final Plans containing structurally flawed elements; (3) is in conformity with the laws; and (4) does not make it impossible, unlikely, or impossible for Developer to complete the BOT Project in accordance with the approved project schedule.

(vii) Sales Tax. Upon request from the BOT Project Developer, Town shall deliver a sales tax exemption form (Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate)) to BOT Project Developer and its contractors, if so requested. Town shall, upon proper notice from Developer, indemnify and hold harmless any BOT Project Developer and its contractors from and against any and all claims arising from or connected with the charging of sales tax against the purchase of materials to construct the BOT Project, along with any associated interest or penalties. This indemnification requirement shall survive the termination of the PPA.

(viii) Risk of Loss. If the BOT Project site, the BOT Project, or any part thereof is: (A) damaged or destroyed by fire or other casualty; or (B) taken by condemnation; then Town shall: (A) apply the proceeds of any insurance policy or condemnation award to the BOT Project budget; and (B) if required, approve the transfer of any funds necessary to complete the BOT Project above the cost of the BOT Project budget to complete the BOT Project.

(ix) Termination. If Town terminates the PPA for any reason other than a continuing event of default of the PPA, then Town shall reimburse Developer for its reasonable costs and expenses incurred in connection with its performance under the PPA, including but not limited to: (A) actually incurred costs to develop and prepare the Final Plans; (B) actually incurred costs to document the transaction; (C) all costs associated with the procurement of materials or labor to construct the BOT Project; and (D) the proportionate amount of Developer's overhead associated with the BOT Project as it pertains to the percentage completed of the BOT Project.

(x) Bonding. Town and BOT Project Developer acknowledge and agree that the payment and performance bonds shall not be provided for any work performed that occurs prior to the approval of a GMP by Town.

(xi) Tariffs, Impositions, Trade Restrictions. Any tariffs, impositions or trade restrictions on materials or equipment that result in a material price escalation and that are not in place at the time of the GMP being approved by Town shall cause a force majeure event, which force majeure event shall last the duration that such tariff, imposition, or trade restriction clause causes a material price escalation on materials or equipment. Developer's remedy for a force majeure event under the PPA caused by events described in this section shall be relief to the construction schedule and the BOT Project budget approved by Town.

(xii) Wages. Nothing in this Agreement shall require Davis Bacon or prevailing wages.

(xiii) Approval of Design and Construction Professionals. Town shall have the right to approve BOT Project Developer's selected design and/or engineering professionals for the design of the BOT Project and BOT Project Developer's selected general contractor for construction of the BOT Project, which approval shall not be unreasonably withheld, conditioned, or delayed. For the purposes of this Agreement and the PPA, the following design firms shall be deemed acceptable to Town: (A) American Structurepoint; (B) Kimley Horn; and (C) JQOL.

(xiv) Shared Savings. Not earlier than 30 days after the completion of the BOT Project and final payment of all outstanding invoices by Town, BOT Project Developer shall provide Town an accounting of all unused contingency for the BOT Project, which unused contingency shall be split proportionally between BOT Project Developer and Town as follows: (A) 70% of all unused contingency retained by Developer; and (B) 30% of all unused contingency to be remitted to Town.

4.02 Additional Contingencies.

(a) Subject to further proceedings required by law, the Town Parties shall procure the construction of the Public Infrastructure on the Property as set forth in Section 4.01.

(b) The Developer has already satisfied any concerns it may have relative to zoning or land use, drainage, permits, environmental conditions, access, utilities, financing, or any other matters related to the feasibility or desirability of the Project constructed on the Project Site, but expressly excluding the portion of any off-site property that the Public Infrastructure will be constructed upon (collectively, "**Development Contingencies**"), and all such Development Contingencies are hereby waived by the Developer (except as identified in this Subsection).

(c) Upon the Closing, the Developer shall be obligated to complete or cause to be completed the Project and Public Infrastructure under the terms of this Agreement and the PPA. Any party may further terminate this Agreement if the Closing has not occurred within six (6) months after execution of this Agreement, subject to reimbursement for costs incurred: (i) as set forth in the Reimbursement Agreement and Infrastructure Design Reimbursement Agreement previously executed by and between the Town and Developer on or about November 21, 2024 (the "**Reimbursement Agreement**"); and (ii) by Developer in an amount not to exceed \$800,000.00, less any cost recovery provided by the Reimbursement Agreement.

4.03. Construction of the Public Infrastructure.

(a) The Developer shall design the Public Infrastructure as generally described in Exhibit C and Exhibit D in accordance with the Town's applicable standards and specifications and using engineering and design professionals approved by Developer in its sole discretion. All plans, specifications, renderings, drawings and related documentation in respect of the construction of the Public Infrastructure shall be first submitted to the Town for approval, and shall thereafter construct the Public Infrastructure in accordance with the plans approved by the Town (the "**Approved Plans**"), subject to any change orders as may be approved by the parties pursuant to the terms of the PPA.

(b) Following the Closing, the Developer shall complete or cause to be completed the Public Infrastructure in accordance with the Approved Plans and all applicable permits and approvals to be issued by applicable government officials and bodies, and the terms of the PPA. The Developer shall be responsible for all costs of completing the Public Infrastructure, including but not limited to design, land costs for the On-Site Public Infrastructure, the purchase price of needed right-of-way for the Off-Site Public Infrastructure up to \$700,000, construction management, payment bonds, performance bonds, maintenance bonds, and inspections, as otherwise required by the PPA; provided that, the Town expressly acknowledges its responsibility in: (a) sharing the responsibility of the relocation of utilities within the Public Infrastructure construction site, specifically by coordinating with Developer the approvals and interactions with the applicable utility company; and (b) sharing the responsibility of the acquisition of rights-of-way, as necessary, to complete the Public Infrastructure by: (i) using eminent domain where required to acquire land; and (ii) paying the increase in cost over the projected price for land acquired by eminent domain. The Public Infrastructure shall be substantially completed by the Developer within twenty-four (24) months following the Closing, or such later date as may be agreed to by the Commission in writing (the "**Infrastructure Completion Date**"), subject to Force Majeure (as defined within the PPA). Substantial completion of the Public Infrastructure shall be achieved when Developer delivers to Town a copy of an architect's certificate of substantial completion indicating that the Public Infrastructure has been completed in accordance with the Approved Plans and the terms and conditions of the PPA, subject to "punch-list" items to be identified in connection with a final inspection performed by the Town, which "punch-list" items do not materially affect the use of the Project for its intended use.

(c) Developer shall commence and proceed with physical construction of the Public Infrastructure in accordance with the milestone schedule set forth in Exhibit F attached hereto and incorporated herein by reference (the "**Milestone Schedule**"), and shall substantially complete the Public Infrastructure by the Infrastructure Completion Date, subject to Force Majeure events under this Agreement and the PPA. Developer shall be responsible for obtaining all necessary permits, licenses, approvals and consents required by law for the construction of the Public Infrastructure, and the Town Parties will cooperate to assist the Developer in obtaining any such approvals and consents by: (i) waiving all application and other fees assessed for the required permits and/or BOT Project approvals; or (ii) where possible to reduce the potential fee assessed, complete an application as the "Owner" of the BOT Project for any required permits, any necessary Town approvals, and/or any other approval required by the PPA.

(d) The Town will identify a qualified engineering or consulting firm to perform independent inspections and testing of the Public Infrastructure (the “**Inspectors**”), and the Developer shall engage the Inspectors, which shall be an paid by Town from funds other than the Infrastructure Fund Deposit. The Inspectors will report directly to the Town. Following completion and the Town’s final inspection and approval of the same, and in accordance with the terms of the PPA, the Developer shall dedicate and transfer the Public Infrastructure to the Town Parties (the “**Transfer**”). Any Public Infrastructure dedicated to and accepted by the Town shall be dedicated according to a quitclaim deed and bill of sale, and the Developer shall provide, at the Town’s cost and expense and excluding funds from the Infrastructure Fund Deposit, any required standard maintenance bonds as required by the Town for such Public Infrastructure that are expressly required as part of the PPA. In addition, upon the Transfer, the Developer shall transfer and dedicate the full right-of-way to the Town Parties, via quitclaim deed, as depicted in original primary plat set forth in Exhibit G attached hereto and incorporated herein by reference, for the future connection of the Central Road to Perry Worth Road.

(e) The Town Parties, or their Inspectors, will perform inspections of the Public Infrastructure, which shall not be unreasonably withheld, conditioned, or delayed and which shall be conducted in accordance with the site security and other site requirements of the Developer. Inspections performed by Inspectors shall be conducted upon not less than 24-hours notice to Developer, which notice may be provided electronically. Following identifying any Material Defect, the Town or Inspectors may deliver to Developer a notice (the “**Non-Compliance Notice**”) that identifies a Material Defect (for purposes of this provision, a “**Material Defect**” is any item or component of the Public Infrastructure that (i) is not in material compliance with applicable standards, rules, regulations, laws, or ordinance with respect to the Public Infrastructure; or (ii) has not been performed materially in accordance with the Approved Plans or terms and conditions of this Agreement). If the Town or Inspector 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 by the Town in writing. This provision shall be in addition to, and shall not in any respects be deemed to be, a waiver of any power of the Town under applicable laws or this Agreement.

(f) If Developer delivers to the Town a written request for a final inspection of the Public Infrastructure, then, on or before the later of the date that is three (3) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the Town shall: (1) conduct the final inspection; and (2) deliver a Non-Compliance Notice (if applicable) to Developer (a “**Final Inspection Non-Compliance Notice**”). Upon receipt of a Final Inspection Non-Compliance Notice, Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Final Inspection Non-Compliance Notice. Upon correction of all Material Defects identified in the Final Inspection Non-Compliance Notice, the Public Infrastructure shall be deemed for purposes of this Agreement to be materially constructed in accordance with the terms and conditions of this Agreement. Within five (5) business days after receipt of a written request from Developer, the Town shall certify to any lender of the Project or purchaser of the Property the status of the final inspection and whether any Material Defects identified in any Final Inspection Non-Compliance Notice, if any, have been remedied. Notwithstanding the foregoing, no acceptance or deemed acceptance by the Town under

this Agreement shall constitute a waiver or acceptance of the Town for purposes of applicable laws relating the construction or maintenance of property, including but not limited to applicable codes.

4.04. Construction and Operation of the Project.

(a) Following the Closing, Developer shall complete or cause to be completed the Project as generally described in Exhibit B on the Property in accordance with all applicable permits and approvals to be issued by applicable government officials and bodies (e.g., the Town building department). The total cost of the Project shall equal or exceed the Project Investment. The Project shall be substantially completed in accordance with the initial assessments schedule set forth in Exhibit E, or such later date as may be agreed to by the Commission in writing (the “**Project Completion Date**”). Substantial completion of the Project shall be achieved when occupancy permits have been issued for each respective phase of the Project. Except as specifically provided in this Agreement, Developer is responsible for providing or arranging to provide (directly or through third parties) for the funding of all costs to complete the Project. The total additional assessed value of the Project Investment is anticipated to be not less than approximately \$31,216,620 (the “**Estimated Assessed Value**”). The Town Parties acknowledge that the assessed value is an estimate and a value determined by the Boone County Assessor; as such, it shall not be an Event of Default (as defined herein) under this Agreement if the Project’s actual assessed value is less than the Estimated Assessed Value.

(b) Developer shall commence physical construction of the Project by no later than October 1, 2026 and shall substantially complete the Project by the Project Completion Date, subject to Force Majeure.

(c) The parties acknowledge that the Town has completed its approval of the proposed exterior elevations and the final site plan by the Planned Unit Development application approved by Town prior to the effective date of this Agreement. The development, construction, improvement and completion of the Project shall be accomplished by Developer substantially in accordance with the Design. The provisions of this Section are subject in all cases to applicable governmental entity review, including but not limited zoning and building approvals and requirements.

(d) Each owner of a portion of the Project, and its successors and assigns, shall be responsible to maintain, repair, replace and operate such owner’s portion of the Project in good condition and repair in a commercially reasonable and workmanlike manner and consistent with applicable Town ordinances.

(e) Intentionally omitted.

(f) Developer shall obtain or shall have determined that it is able to obtain all necessary permits, licenses, approvals and consents required by law for the construction of the Project (except for the Public Infrastructure) prior to the Closing.

(g) Intentionally omitted.

4.05. Project Records, Reporting. For purposes of demonstrating that the Project Investment has been made, for a period no longer than: (a) seven (7) year(s) following the completion date of Public Improvements, or (b) the date that the Town reviews such documents, Developer shall keep and maintain (to the extent such documents are in Developer's control) in its offices complete and accurate records and supporting documents relating to the receipt and expenditures demonstrating that the Project Investment has been made, and will cooperate with and, on one (1) occasion, permit any duly authorized representative of the Town Parties, upon not more than ten (10) days' prior written notice, to have access to and examine the records and supporting documents, that, in Developer's reasonable discretion, evidence the Project Investment.

4.06. Building Approvals. The Town Parties shall hold such meetings and assist Developer with all necessary permit applications and other submittals to each and any other applicable board, commission or office of the Town to facilitate procurement, by Developer, of all necessary and appropriate authorizations, approvals, permits and other entitlements required or otherwise associated with the Project and Public Improvements to accommodate the timely construction of the Project and Public Improvements.

4.07. Project Entitlements. Developer will submit (or cause to be submitted) all necessary applications for appropriate property planning and zoning designations in order to accommodate the uses proposed by the Project. The Town will consider and review all such applications in a timely manner.

ARTICLE V. AUTHORITY

5.01 Actions. Each of the Town Parties represents and warrants that it has taken or will take (subject to further proceedings required by law and Developer's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable each of the respective Town Parties to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

5.02 Powers. Each of the parties represent and warrant that each has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

ARTICLE VI. DEFAULTS

6.01. Developer Events of Default. Each of the following events is an "event of default" by Developer hereunder:

(a) If Developer fails to perform any obligation under this Agreement within ninety (90) days after Developer' receipt of written notice from the Town Parties of its failure to perform such obligations, and provided that the Town Parties have fulfilled any applicable obligations relating to such Developer obligation or such longer period as may be reasonably required, provided that the Developer commence such cure within that ninety (90) day period and diligently and continuously pursue such cure to completion; or

(b) Subject to Force Majeure, failure by Developer to make or cause to be made the Public Infrastructure by the Infrastructure Completion Date or cause to be completed the Project and Project Investment by the Project Completion Date; or

(c) Failure by the Developer to materially construct the Project in accordance with terms of this Agreement; or

(d) Failure by the Developer to materially construct the Public Infrastructure in accordance with terms of this Agreement; or

(e) Cessation of all construction work of a material nature with respect to the Project or Public Improvements for a period of at least sixty (60) continuous days or for more than ninety (90) days during any three hundred sixty-five (365) day period, subject to Force Majeure; or

(f) The commencement by Developer of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Developer or of any substantial part of its property, or the making by it of any general assignment for the benefit of creditors, or the failure of Developer generally to pay its debts as such debts become due, or the taking of corporate action by Developer in furtherance of any of the foregoing; or

(g) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of Developer or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for thirty (30) days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law.

6.02. Remedies.

(a) The Town Parties shall be entitled to all remedies at law or in equity, including but not limited to specific performance and injunction relief, for any breach of the is Agreement by Developer.

(b) In addition to any other remedies available to the Town Parties at law or equity, if, after the Closing, the Developer falls ninety (90) or more days behind the applicable dates set forth in the Milestone Schedule, then:

(i) the Commission, by delivery of written notice to the Developer, may require Developer to submit, within fifteen (15) days, a catch-up plan for the Commission's approval, which approval may not be unreasonably withheld, conditioned, or delayed. At such time as the Commission has approved a catch-up plan, Developer shall implement, and diligently pursue the application of, such catch-up plan. For purposes of this Section 6.02(b), catch-up plan means a plan pursuant to which the Developer will, subject to Force Majeure and any delays caused by the Town Parties (a) avoid falling further behind the date set forth in the Milestone Schedule for construction of the Public Infrastructure and

(b) complete the Public Infrastructure in accordance with (and in no event more than one hundred twenty (120) days behind) the applicable dates set forth in the Milestone Schedule.

(ii) if the Developer: (A) fails to timely submit a catch-up plan; (B) submits a catch-up plan that is rejected by the Commission; (C) fails to implement an approved catch-up plan; (D) implements an approved catch-up plan, but fails to diligently pursue the application thereof; or (E) implements an approved catch-up plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the catch-up plan, again falls ninety (90) or more days behind the applicable dates set forth in the Milestone Schedule; then the Commission may:

(A) develop a commercially reasonable catch-up plan and require the Developer to implement, and diligently pursue the application of, such catch-up plan; or

(B) after providing written notice and a thirty (30) day opportunity to cure, complete the Public Infrastructure for and on behalf of the Developer, prohibit the Developer from obtaining any further disbursements from the Project Fund Deposit, and use any funds remaining in the Project Fund Deposit to pay the Town Parties' costs and expenses for completing the Public Infrastructure.

provided that, if the Commission elects the option in clause (B), then the Developer shall be obligated to pay to the Commission (or to reimburse the Commission for) all costs of completing the Public Infrastructure that are in excess of the proceeds of the Project Fund Deposit that are disbursed to the Commission for such purposes. Notwithstanding the foregoing, if the Commission rejects a catch-up plan, the Commission shall: (i) specify the part or parts that the Commission is rejecting; and (ii) include the specific basis for such rejection; then the Developer shall revise and resubmit the catch-up plan to the Commission within seven (7) days of such notice, and the parties shall work in good faith to develop a reasonable catch-up plan.

The Developer shall be responsible for all costs and expenses to prepare and implement a catch-up plan. Developer's liability for such costs and expenses shall survive termination of this Agreement.

(c) No delay or failure by the Town Parties to enforce any of the covenants, conditions, reservations and rights contained in this Agreement, or to invoke any available remedy with respect to a breach by Developer shall under any circumstances be deemed or held to be a waiver by the Town Parties of the right to do so thereafter, or an estoppel of the Town Parties to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder. For purposes of this Agreement, commencement of construction shall not be deemed to occur as a result of mere excavation work.

6.03. Default of Town Parties. Upon the occurrence of any default on the part of the Town Parties hereunder, Developer shall give the Town Parties written notice (a "**Town Default Notice**") of the circumstances constituting that default and the Town Parties shall have thirty (30) days following its receipt of such Town Default Notice in which to cure any such default or such

longer period as may be reasonably required, provided that the Town Parties commence such cure within that thirty (30) day period and diligently and continuously pursue such cure to completion. In the event that the Town Parties fail to timely cure any such default hereunder, Developer shall have all remedies available at law or in equity, subject to the dispute resolution procedures as provided in Section 6.04 below.

6.04. Dispute Resolution. Any lawsuit arising out of or relating to this Agreement must be brought in a state court of appropriate jurisdiction situated in the State of Indiana, Boone County. The Town Parties and Developer consent to the jurisdiction of such court and irrevocably waive any objections they may have to such jurisdiction or venue.

ARTICLE VII. MISCELLANEOUS

7.01. Indemnity; Insurance. The Developer covenants and agrees at its expense to pay and to indemnify and save the Town Parties, and their officers and agents (the “**Indemnitees**”) harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from the Developer’s (and/or any affiliate’s thereof) development activities with respect to the Project or Public Improvements unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the Town Parties or other Indemnitees.

The Developer shall further procure and maintain, or cause its contractors for the Public Infrastructure to procure and maintain, insurance in coverages and amounts as required by the PPA, which shall include not less than the following insurance coverages: (a) Workmen’s Compensation and Employer’s Liability Insurance, according to all applicable statutory requirements; (b) Comprehensive General Liability Insurance covering activities related to construction of the Public Infrastructure, with a minimum limit applicable to bodily injury liability and property damage liability of not less than \$2,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate; and (c) Comprehensive Automobile Liability Insurance (including all motor vehicles) covering owned, non-owned and hired motor vehicles against claims for death, bodily injury and property damage, having a combined single limit of not less than \$2,000,000 per occurrence. All such insurance coverages shall be in such form and issued by such company or companies as are reasonably satisfactory to the Town Parties, and, prior to commencement of construction of the Public Infrastructure, the Developer shall secure and deliver to the Town Parties certificates of insurance evidencing such insurance coverage. All such insurance will name the Town Parties as an additional insured by means of an endorsement to the policies. The obligation of the Developer to provide insurance for the benefit of the Town Parties under this paragraph is in addition to and not in limitation or substitution of their obligation to indemnify the Indemnitees. All insurance required in accordance with the provisions of this Agreement must be effective before the Developer commences construction of the Public Infrastructure and shall remain in force until the Public Infrastructure has been completed in accordance with this Agreement.

7.02. Nondiscrimination. Developer and its respective officers, agents, and employees will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions or privileges of employment, because of her or his race, sex, sexual orientation, gender identity,

religion, color, national origin, ancestry, age, disability or United States military service veteran status.

7.03. Information Reporting. Developer shall cooperate in all reasonable ways and provide necessary and reasonable information to the Town Parties or any other applicable governmental authority to enable the Town Parties to review Developer's performance of its obligations under this Agreement, assure its compliance with the terms of this Agreement, prepare any reports required by applicable law, and to comply with any other reporting requirements of the Act and/or this Agreement.

7.04. Cooperation. The Town Parties covenant and agree to take or cause to be taken (and shall cooperate Developer to enable Developer to take or cause to be taken) all actions necessary or desirable under statutes, regulations and rules applicable to the Project, Public Infrastructure, and the development incentives, and to execute and deliver or cause to be executed and delivered (and shall cooperate Developer to enable Developer to execute and deliver or cause to be executed and delivered) such agreements, instruments, documents, indentures, applications and other papers as may be necessary or desirable under such statutes, regulations and rules to assist and permit Developer to undertake and complete the Project and Public Infrastructure and enable the Town Parties to undertake and provide the development incentives.

7.05. Certificates. On Developer's request, the Town Parties shall each execute and deliver a certificate stating: (a) that this Agreement is in full force and effect or will provide a written explanation of why this Agreement is not in full force and effect; (b) that Developer is not in default under the terms of this Agreement or specifying why Developer is in default; or (c) any other matters which Developer reasonably requests, within thirty (30) days of request thereof. When Developer has satisfied all of its obligations under this Agreement then, on Developer's request, the Town Parties shall each execute an instrument in recordable form evidencing the termination of this Agreement and releasing the covenants as to Developer.

7.06. Agreement Binding on the Town Parties. No covenant, obligation or other agreement in this Agreement shall be deemed to be a covenant, obligation or agreement of any past, present or future member, official, officer, agent or employee of the Town Parties, other than in his or her official capacity, and neither the officers of the governing bodies of the respective Town Parties executing this Agreement shall be liable personally by reason of the covenants, obligations or agreements of the Town Parties under this Agreement.

7.07. Assignment. Developer may not assign its interests, rights, and responsibilities under this Agreement without the prior written consent of the Town Parties; provided that, without the Town Parties' consent, Developer may execute its responsibilities under the Agreement through: (a) a project specific entity controlled by Isaac Bamgbose or New City for the purposes of constructing the Project; or (b) a lender in conformance with the Project Loan documents. In connection with any assignment hereunder, the assigning party shall assume all obligations under this Agreement, unless otherwise consented to by the Town Parties.

7.08. Binding Effect. This Agreement shall inure to the benefit of and be binding upon Developer, the Commission, the Town and their respective legal representatives, and permitted successors and assigns.

7.09. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

7.10. Notices. Except as otherwise specifically set forth in the Agreement, all notices, demands, consents or approvals given in connection with this Agreement (the “**Notice**”) shall be in writing and shall be deemed sufficiently given or delivered: (a) on the date the Notice is delivered by personal delivery; (b) on the date the Notice is delivered by any nationally recognized overnight delivery service providing tracking service; (c) on the date the return receipt is signed or refused for any Notice sent by certified mail, postage prepaid, return receipt requested; (d) on the date received by electronic mail, so long as in each case, the Notice is delivered at the addresses set forth below, or to any other address for which notice is given as provided in this Section:

If to Developer:

New City Development Partners, LLC
911 Massachusetts Avenue
Indianapolis, Indiana 46202
Attn: Isaac Bamgbose
Notice email: ibamgbose@ncdpartners.com

With a copy to:

Wallack Somers & Haas, PC
One Indiana Square, Suite 2300
Indianapolis, Indiana 46204
Attn: Adam Collins
Notice email: adam@wshlaw.com

*If to Commission
and/or Town:*

Town of Whitestown
6210 Veterans Drive
Whitestown, Indiana 46075
Attention: Katie Barr, Town Manager
Notice email: kbarr@whitestown.in.gov

7.11. No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Town Parties and Developer or any affiliates thereof.

7.12. Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the performance of their obligations (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation. The Town Parties agree that they will, in good faith, expedite the review and approval of matters relating to this Agreement that are under their respective jurisdiction. Developer agrees that whenever any provision of this Agreement provides for its review and/or approval, they will make a good faith effort to take such action as expeditiously as possible. In calculating any period of time provided for in this Agreement, the number of days allowed shall refer to calendar and not business days. If any day scheduled for performance of any obligation hereunder shall occur on a weekend or legal holiday, the time period allowed and day for performance shall be continued to the next business day.

7.13. Force Majeure. If any party is delayed or hindered in or prevented from the performance of any act required under this Agreement (which does not include the payment of any monetary amounts) by reason of any strike, lock out, labor trouble, inability to procure materials or energy, pandemic, epidemic, shutdown instituted by a governmental entity, failure of power,

riot, insurrection, picketing, sit in, war, acts of foreign or domestic terrorism, civil unrest, or other unavoidable reason of a like nature not attributable to the negligence or fault of the party delayed in performing or doing any act required under the terms of this Agreement, then the performance of the work or action will be excused for the period of the unavoidable delay and the period for performance of any action will be extended for an equivalent period. Any party claiming a force majeure event under this Section must notify the other parties within thirty (30) days of the event causing the delay, the extent of the delay, the time periods under this Agreement for which the force majeure event will cause a delay.

7.14. Wording. Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto. All references to the Act, the Indiana Code, and codified ordinances, rules, or any other statute, regulation or ordinance are intended to refer to the provisions presently in effect and to all future amendments, modifications, replacements or successor provisions.

7.15. Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana. This Agreement shall constitute the entire agreement of Developer, Town and Commission and no oral, verbal or implied agreement or understanding shall cancel, modify or vary the terms of this Agreement. No representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing signed by the parties making such representations and promises. This Agreement may only be amended by a written instrument executed by each of the parties to this Agreement, or their permitted successors or assigns.

7.16. Governing Law. Except to the extent preempted by federal law, the laws of the State of Indiana shall govern all aspects of this Agreement, including execution, interpretation, performance and enforcement.

7.17. No Waiver. Neither failure nor delay on the part of the Town Parties or Developer in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by Developer or the Town Parties therefrom shall be effective unless the same shall be in writing, signed on behalf of the Town Parties or Developer by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the Town Parties or Developer shall entitle the Town Parties or Developer to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the Town Parties' or Developer's right to take other or further action in any circumstances without notice or demand.

7.18. Binding of Successors, Assigns. Subject to the further provisions of this Agreement, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Town Parties and Developer and their respective successors and assigns.

7.19. Further Assurances. Subject to the further provisions of this Agreement, Developer and the Town Parties shall, at such party's expense, upon request of the other such party, duly execute and deliver, or cause to be executed and delivered, such further instruments and perform

or cause to be performed such further acts as may be reasonably necessary or proper in the reasonable opinion of the Town Parties or Developer to carry out the provisions and purposes of this Agreement.

7.20. Severability. The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions.

7.21. Headings. The headings of the articles, sections and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

7.22. Entire Agreement. Except as otherwise provided herein, this Agreement and the document incorporated by reference herein constitutes the entire agreement by and between the Town Parties and Developer and supersedes all prior agreements, written or verbal, between the Town Parties and Developer. No statements, promises or agreements whatsoever, in writing or verbally, in conflict with the terms of this Agreement have been made by the Town Parties or Developer that in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations of this Agreement. Notwithstanding the foregoing, the Reimbursement Agreement and Infrastructure Design Reimbursement Agreement previously executed by and between the Town and Developer on or about November 21, 2024, remain in full force and effect.

7.23. Interpretation. Unless the context requires otherwise, (i) the singular includes the plural and vice versa, (ii) the recitals, all schedules, attachments and exhibits identified herein form a part of this Agreement, (iii) the word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it, and (iv) where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

7.24. 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.

7.25. Limitation on Certain Damages. Except as set forth in this Agreement, a breach or default of this Agreement shall not entitle any party to receive consequential, incidental, indirect, special, or punitive damages, including damages for loss of future revenue, income, profits, diminution in value or opportunity.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Town Parties and Developer have executed this Agreement the day and year first written above.

TOWN OF WHITESTOWN, INDIANA

Town Council President

Attest:

Clerk-Treasurer

WHITESTOWN REDEVELOPMENT
COMMISSION

President

Attest:

Secretary

NEW CITY DEVELOPMENT, LLC

Isaac Bamgbose, CEO

WHITESTOWN 550 PADGET, LLC

Isaac Bamgbose, Manager

EXHIBIT A
Property

EXHIBIT B
Project

- 200,000 square feet of new retail space, 80 units of senior housing, and 120 units of multi-family housing, and associated site work and infrastructure, as generally depicted on the Master Site Plan below:

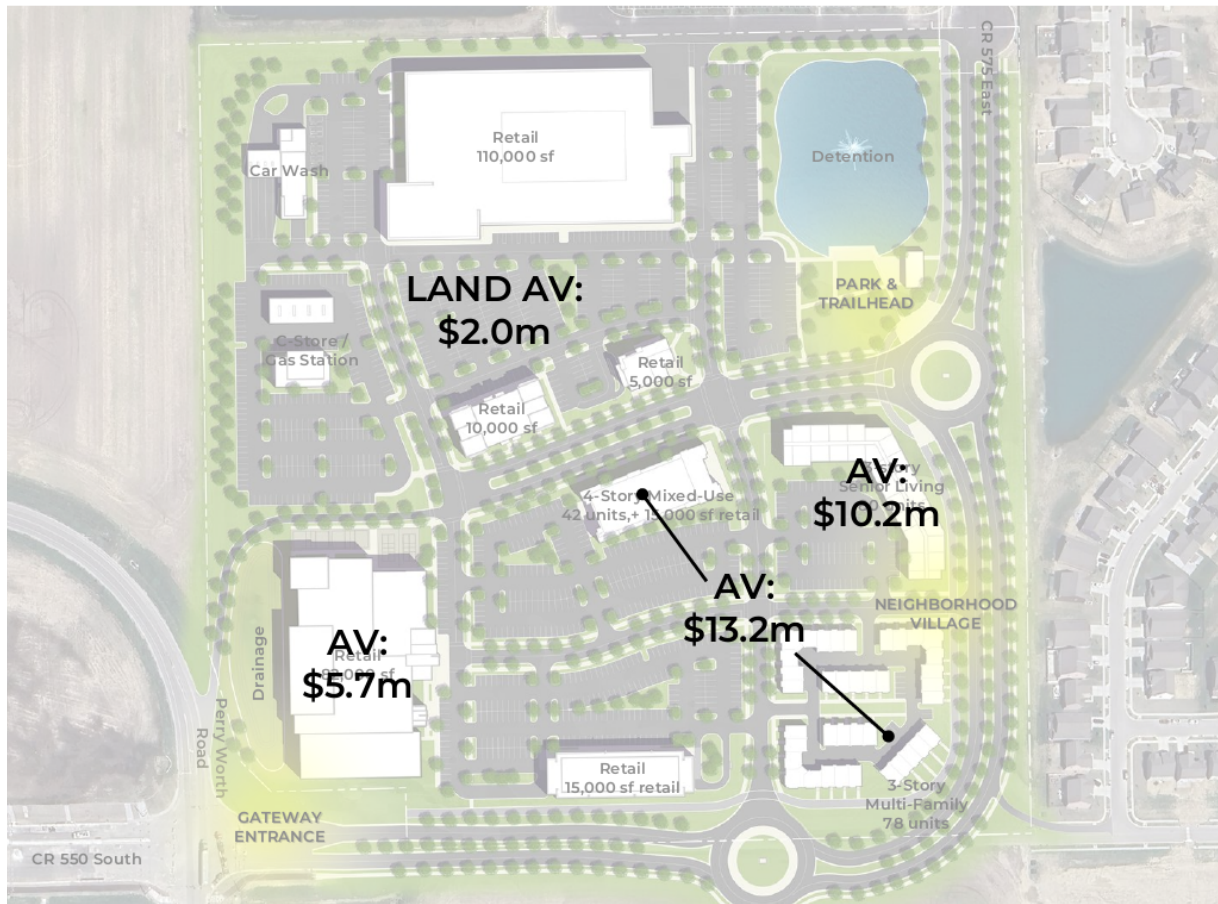


EXHIBIT C
On-Site Public Infrastructure

- The infrastructure generally depicted in the drawings below, and including:
 - Extension of County Road 550 South and all associated utilities;
 - Extension of County Road 575 East and all associated utilities;
 - New Roundabout along County Road 550 South;
 - New Roundabout along County Road 575 East;
 - New Public Trail;
 - Central Road and all associated utilities; and
 - A Public Park.



AND



AND

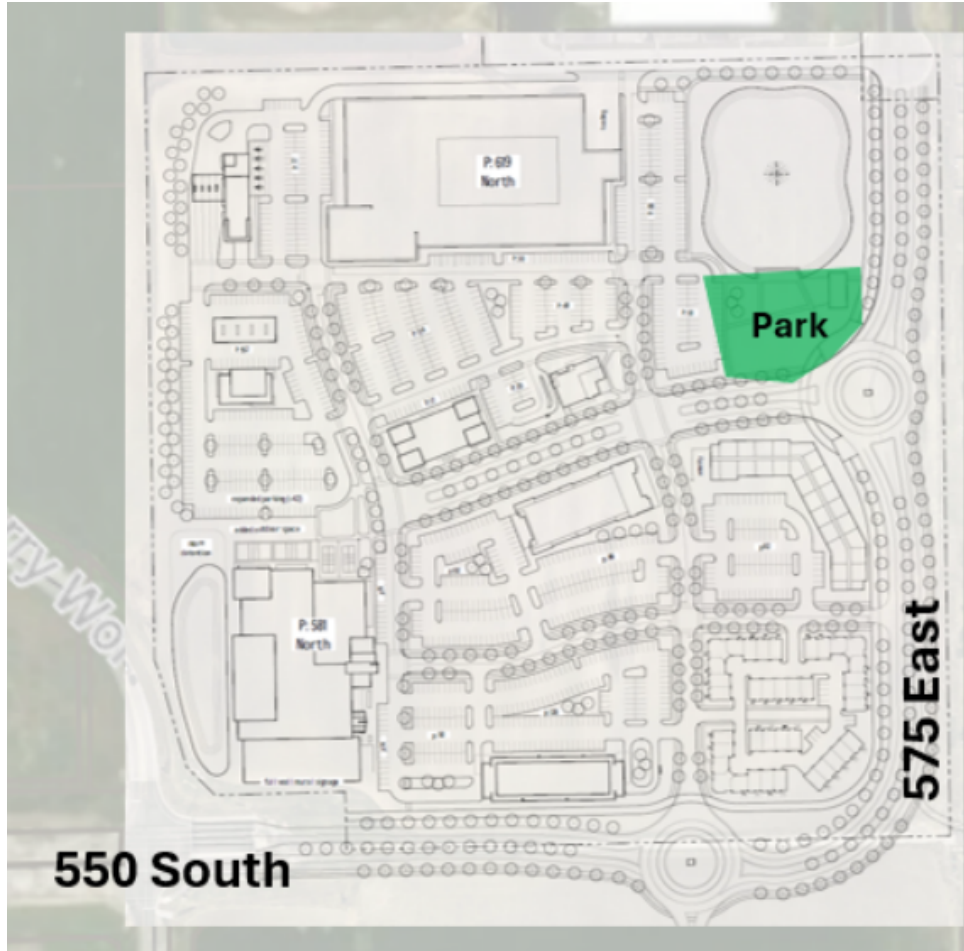


EXHIBIT D
Off-Site Public Improvements



- i. Widening of County Road 575 East for 4-lane right-of-way with median.
- ii. Roundabout at 575 East & 500 South

EXHIBIT E
Annual Tax Payment Guarantee

	Improved Land			Mixed-Use +		Standalone	
	Value	Senior Housing	Entertainment	Apartments	Retail	Totals	
Year Construction Start	2025	2026	2026	2027	2026		
Year of Assessed Value	2027	2028	2028	2029	2028		
Amount (Unit/sf)		80	82,000	120	30,000		
Est. Tax Assessment	\$ 2,076,620	\$ 10,200,000	\$ 5,740,000	\$ 13,200,000	\$ 6,750,000		\$ 37,966,620
24 tax rate**	2.9751%	2.6263%	2.9751%	2.6263%	2.6263%		
Minimum Tax Payment	\$ 61,782	\$ 267,883	\$ 170,771	\$ 346,672	\$ 177,275		\$ 1,024,382

EXHIBIT F
Public Infrastructure Milestone Schedule

April 2025 – Design and civil work begin

August 2025 – Town acquires necessary rights-of-way

October 2025 – Design and civil work substantially completed

October 2025 – Construction bidding occurs

October 2025 – Break ground on Public Infrastructure

November 2026 – Public Infrastructure substantially complete

January 2027 – Design work begins for public park

March 2027 – Design substantially completed for public park

May 2027 – Break ground on public park

October 2027 – Public park substantially complete

*Schedule included herein is subject to Agreement being executed by March 1, 2025.

EXHIBIT G **Central Road Right of Way**

