

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made by and between RFPDI, LLC, an Indiana limited liability company, or its affiliated entities ("**Developer**"), and Zionsville Economic Redevelopment Commission and its affiliated entities (collectively, the "**Commission**"). This Agreement shall be effective upon its mutual execution and delivery by Developer and the Commission as evidenced by the last of the dates on their respective signature pages (the "**Effective Date**").

RECITALS:

A. The Commission is the owner of real property located in the Creekside Corporate Park in the Town of Zionsville, State of Indiana (the "**Town**"), as legally described on **Exhibit A-1** and as more generally depicted on **Exhibit A-2** as Lots 10 and 11 (the "**Property**" including all improvements thereon and appurtenances thereto);

B. Developer is the owner and operator of various specialty automobile, motorcycle, and racing related businesses and is interested in building a new headquarters facility at Creekside which shall include (i) a Ducati motorcycles and e-bike sales and service center; (ii) Rahal Vehicle Performance Center (which includes specialty and high performance vehicle sales and service); (iii) vehicle storage, (iv) additional complementary auto-related retail; (v) high-end auto storage related services and uses, including, without limitation, an event center, high-end automobile club/member meeting and conference facilities and outdoor food service/beer garden; (vi) potential derivative auto-themed restaurant and/or pub uses; (vii) Rahal Racing Museum; and (viii) corporate offices for Graham Rahal Racing, The Graham & Courtney Rahal Foundation, Graham Rahal Performance Centers, and various Graham Rahal affiliated operations (collectively, the "**Project**"). For purposes of clause (v), the term "high end" shall mean facilities or services commensurate with or exceeding the facility and service standards of Silo Auto Club and Conservancy located in Indianapolis, Indiana, as such business is operated as of the Effective Date.

C. The Commission and Developer agree that it is of mutual benefit for the parties to jointly formulate a plan for the Project that includes transfer of the fee title to the Property to the Developer and the mutual satisfaction of the commitments of each party contained herein.

NOW THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

PURCHASE PRICE, ACCESS AND DUE DILIGENCE

1.1 **Purchase Price.** In exchange for Developer's obligations in this Agreement, the purchase price to be paid by Developer to the Commission for the Property shall be Ten Dollars (\$10.00) (the "**Purchase Price**"), payable at Closing, subject to adjustment and other credits and prorrations as set forth in this Agreement.

1.2 Site Inspections. Commencing on the Effective Date and continuing through the date which is ninety (90) days after the Effective Date ("**Site Inspection Period**"), unless this Agreement is earlier terminated or is thereafter extended pursuant to this Agreement, Developer and its agents, contractors, consultants, licensees and representatives (collectively, "**Developer's Representatives**") shall have reasonable access to the Property for the purpose of conducting studies, investigations, inspections and tests of the Property as Developer deems reasonably necessary or desirable, in its sole and absolute discretion, including, but not limited to, surveys and architectural, engineering, geo-technical and environmental inspections and other physical tests (the "**Site Inspections**"), provided that: (i) Developer shall endeavor to give the Commission reasonable written notice (which may be given via e-mail by the Commission's notice party designated in **Section 12.7**) of any such inspection or test and, with respect to any intrusive inspection or test (e.g., boring, drilling or core sampling), Developer must obtain the Commission's notice party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed, and which consent may be given by email by the Commission's notice party designated in **Section 12.7**), (ii) prior to assessing the Property and performing any inspection or physical test at or on the Property, Developer must deliver a certificate of insurance to the Commission evidencing that Developer or Developer's Representatives which will be accessing the Property, as applicable, has in place commercial general liability insurance, (ISO Form CG 00 01 or similar) in the amount of \$2,000,000 in the aggregate and not less than \$1,000,000 for any injury or death of one or more persons in an occurrence, and not less than \$1,000,000 for damage to tangible property (including loss of use) in an occurrence, and workers compensation insurance for its activities on the Property in no less than the statutory amounts and covering any accident arising in connection with the presence of Developer or Developer's Representatives on the Property, such policy shall be endorsed to include the Commission as an additional insured (ISO Form CG 20 11 or equivalent); (iii) Developer shall provide the Commission with an ACORD 25 form to evidence that such insurance is in force and reflecting that the Commission is an additional insured on such policy; (iv) Developer's insurance shall be primary and non-contributory to any insurance of the Commission and shall be endorsed to provide such primary and non-contributory liability (ISO Form CG 20 01 or equivalent), and (v) all Site Inspections (as defined herein) of the Property shall be conducted by Developer or Developer's Representatives (as applicable) in compliance with Developer's responsibilities set forth in **Section 1.2(a)** below. Developer shall bear the cost of all Site Inspections, except as otherwise set forth in this Agreement. Provided that Developer has been using diligent efforts to complete the Site Inspections within the Site Inspection Period but has been unable to do so, Developer shall have the right in its discretion to extend the Site Inspection Period for an additional period of forty-five (45) days, by written notice to the Commission delivered prior to expiration of the initial ninety (90) day period. Developer shall share all results of all testing, title examination and surveys with the Commission and its representatives at the Commission's request.

- (a) Developer's Responsibilities. In conducting any Site Inspections of the Property, Developer shall (and shall cause Developer's Representatives to): (i) conduct all Site Inspections in a manner intended to not damage any part of the Property or any personal property owned or held by any third party; (ii) not injure or otherwise cause bodily harm to the Commission, or its respective agents, guests, invitees, licensees, contractors, employees, or any tenants (if applicable) or their guests or invitees; (iii) comply with all applicable laws; (iv) promptly pay when

due the costs of all Site Inspections done with regard to the Property; (v) not permit any liens to attach to the Property or any portion thereof by reason of the exercise of its rights hereunder; (vi) promptly and diligently repair any damage to the Property and restore any areas disturbed resulting directly or indirectly from any Site Inspections substantially to their condition prior to the performance of such Site Inspections (unless Developer purchases the Property pursuant to the terms of this Agreement); and (vii) not reveal or disclose prior to Closing any information obtained during the Site Inspection Period concerning the Property or the Property Documents (hereinafter defined) to anyone without the prior written consent of the Commission not to be unreasonably withheld, conditioned, or delayed, except (1) disclosures as may be otherwise required by law, or (2) matters of public record. Notwithstanding anything to the contrary contained herein, Developer may disclose any such information without Commission's consent (i) to partners, directors, officers and employees of Developer, Developer's Representatives and/or the Special Purpose Entity (as defined in **Section 12.1**), Developer's lenders, investors and financial advisors and to such parties' outside counsel and accounting firms, who, in Developer's reasonable judgment, need to know such information for the purpose of evaluating the possible purchase of the Property by Developer; and (ii) as necessary for Developer to perform its obligations hereunder, satisfy any Commission or Developer Conditions (as hereafter defined), and/or obtain Project approvals or permits.

- (b) Documents and Items. To the extent that such items are available in the Commission's possession or under its control, the Commission will make available to Developer, and allow Developer to make copies at Developer's expense, for Developer's or Developer's Representatives' review and inspection, those certain documents (including any documents retained electronically) relating to the Property listed in **Exhibit B** attached hereto and made a part hereof including documents that are considered "public records" under Indiana Code 5-14-3 (collectively referred to as the "**Property Documents**"). The Commission shall make available all Property Documents to Developer within three (3) business days of the Effective Date. The Property Documents shall be made available to Developer without representation or warranty by, or recourse against, the Commission, it being agreed that Developer shall only rely on such documents after it has independently verified the truth, accuracy and completeness of the information and/or items contained therein.
- (c) Disclaimers. Developer acknowledges that neither the Commission nor any affiliate, agent, employee, officer or member of the Commission has made, nor does it make any warranty or representation regarding the truth, accuracy or completeness of the Property Documents or the source(s) thereof. Developer further acknowledges that some, if not all, of the Property Documents were prepared by third parties other than the Commission. The Commission expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Property Documents or oral communications transmitted or

made available to Developer. Developer shall rely solely upon Developer's own investigation with respect to the Property, including, without limitation, the Property's physical, environmental and economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto. The Commission has not undertaken any independent investigation as to the truth, accuracy or completeness of the Property Documents and is providing the Property Documents solely as an accommodation to Developer. Notwithstanding the foregoing, the Commission shall inform Developer of any material inaccuracy or omission of any information in the Property Documents of which it has actual knowledge.

- (d) Indemnity Obligations. Developer, for and on behalf of itself, its officers, members, managers, directors, licensees, invitees, agents, and employees and Developer's Representatives, shall and hereby does indemnify, defend, release, discharge and forever hold harmless the Commission and its officers, managers, employees, partners, brokers, advising consultants (including but not limited to Ice Miller LLP, Crowe and Innovative Planning LLC) and agents (collectively, "**Indemnified Parties**") from and against any and all actions, claims, demands, liabilities, liens, losses, costs (including court costs), damages, awards and expenses (including reasonable attorney's fees) (collectively, "**Claims**") arising from any of the following prior to Closing: (i) Developer's or Developer's Representatives' negligence or intentional misconduct while assessing or on access or entry onto the Property; (ii) any event, accident or occurrence causing damage or injury to or death of any person or property to the extent resulting from the use of or access to the Property by Developer or Developer's Representatives in connection with this Agreement; or (iii) any Site Inspections performed by Developer or Developer's Representatives; provided, however, that Developer shall have no obligation to remediate and/or indemnify the Commission or the Indemnified Parties for any pre-existing conditions merely discovered or revealed by Developer's investigations with respect to the Property to extent Developer does not exacerbate the same; further provided, however, that Developer shall have no obligation to remediate and/or indemnify the Commission or the Indemnified Parties from Claims to the extent caused by any negligent or willful acts of the Commission or the Indemnified Parties. The Commission's and Indemnified Parties' right to indemnity from Developer shall in no way be limited to the amount recoverable under any insurance maintained by Developer as required in this Agreement. The provisions of this **Section 1.2(d)** shall survive the termination of this Agreement or the Closing for a period of two (2) years.

1.3 Due Diligence Deadline. For the period from the Effective Date through the expiration of the Site Inspection Period, as the same may be extended pursuant to this Agreement (the "**Due Diligence Deadline**"), Developer and employees, agents and contractors, shall have the right to inspect, test, study and investigate (which includes the Site Inspections) the Property and review the Property Documents in a manner Developer deems necessary to determine whether the Property is suitable for Developer in Developer's sole and absolute discretion. Developer's due diligence shall include the right to examine the feasibility of the Project and determine if financing and all governmental permits or approvals are available upon reasonable

terms to develop and construct the Project. Developer shall be solely responsible for any and all costs associated with its Project due diligence or Site Inspections of the Property, unless this Agreement specifically allocates such responsibility to the Commission. Until the Due Diligence Deadline, Developer shall have the right to terminate this Agreement for any reason whatsoever, or no reason, in its sole and absolute discretion, upon written notice to the Commission, in which event the parties shall have no further right or obligation under this Agreement (except for rights or obligations which expressly survive the termination of this Agreement). If Developer fails to give the Commission such written notice of termination on or before the Due Diligence Deadline, then Developer shall be deemed to have waived any right to terminate this Agreement pursuant to this **Section 1.3** (but not as to any Developer Closing Conditions or any other express termination right provided herein).

ARTICLE 2 TITLE AND SURVEY

2.1 Receipt of Survey and Title Commitment. After the Effective Date, Developer shall obtain, at Developer's sole cost and expense, (i) a title commitment ("**Title Commitment**") for the Property from Fidelity National Title CRE Group/Indiana c/o Mark Plassman ("**Title Company**") and (ii) a survey from Cripe or another surveyor mutually acceptable to the parties (the "**Survey**"). Developer shall provide copies of the Survey and the Title Commitment to the Commission as soon as practical after receipt. The Survey shall be certified to the Commission, the Title Company, Ice Miller LLP, Barnes & Thornburg LLP, and Developer in addition to any other parties that Developer may require.

2.2 Objections. Developer shall have until the Due Diligence Deadline to examine the Survey and the Title Commitment and to provide written objections to the Commission of defects set forth on the Survey and/or the Title Commitment as determined by Developer (collectively, the "**Objections**"). Notwithstanding any other provision of this Agreement, the Commission shall be obligated to remove all monetary liens attached to the Property evidencing the Commission's obligation to pay money to a third party at Closing, irrespective of whether such are stated as Objections. In the event Developer gives timely written notice of its Objections (the "**Objection Notice**"), the Commission shall have the right, but not the obligation, to attempt to remove, satisfy or otherwise cure (to Developer's satisfaction) the Objections within thirty (30) days of its receipt of the Objection Notice. Within ten (10) business days after receipt of the Objection Notice, the Commission shall give written notice to Developer informing Developer of the Commission's election with respect to the Objections (the "**Response**"). If the Commission fails provide its Response within such ten (10) business day period, the Commission shall be deemed to have elected not to attempt to cure the Objections. In the event an updated Title Commitment, updated Survey or disclosure through any other means discloses a defect in the title or Survey with respect to the Property after the Objection deadline, and such defect was not known to the Developer, Developer shall have ten (10) business days to examine the disclosed defect and to provide an additional Objection Notice if Developer deems it necessary to do so. Any such Objection made after the initial Objection deadline, shall be handled as if the Objection were made prior to the initial Objection deadline.

- (a) If the Commission elects or is deemed to have elected not to attempt to cure any Objections or if, after electing to attempt to cure the Objections, the Commission

determines by written notice to Developer that the Commission is unwilling or unable to remove, satisfy or otherwise cure any Objections, Developer's sole remedy under this Agreement shall be to either: (i) elect to terminate this Agreement by written notice to the Commission, in which event the parties shall have no further right or obligation under this Agreement (except for rights or obligations which expressly survive the termination of this Agreement); or (ii) waive the Objections and continue the transaction contemplated by this Agreement. If the Commission does remove, satisfy or otherwise cure the Objections, then this Agreement shall continue in full force and effect.

- (b) To terminate this Agreement pursuant to this **Section 2.2**, Developer must give written notice to the Commission of Developer's election to terminate not later than ten (10) business days (i) after receipt of the Response from the Commission specifying the Commission's election not to attempt to cure any Objection; (ii) after receipt of written notice from the Commission of the Commission's determination, having previously elected to attempt to cure, that it is unable or unwilling to do so; or (iii) after the Commission's failure to timely provide its Response. If Developer fails to give timely notice of its election to terminate for any reason whatsoever, Developer's right to terminate this Agreement under this **Section 2.2** shall expire and any Objections shall be deemed to be a "**Permitted Encumbrance**". Moreover, any matter disclosed on the Survey or the Title Commitment to which Developer does not timely object or which are approved by Developer, and any Objection that is waived or deemed to have been waived by Developer, and any matter that would have been disclosed by an accurate survey of the Property, shall be deemed to be a "**Permitted Encumbrance**".

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Commission. The Commission represents and warrants to Developer that, to the best of its knowledge:

- (a) Title. The Commission owns fee simple title to the Property.
- (b) Authority. The Commission has the power and authority to execute and deliver this Agreement and to incur all obligations of the Commission provided herein. The person executing this Agreement for the Commission has been fully authorized and empowered to bind the Commission. The performance and compliance by the Commission with the terms, provisions and conditions of this Agreement do not and will not conflict with or result in any violation of any of the terms, conditions, or provisions of any agreement, obligation, lease, license, judgment, decree, order, statute, rule or regulation applicable to the Commission or the Property. This Agreement and any other documents or instruments to be executed and delivered by Commission pursuant to this Agreement have been (or will at Closing be) duly authorized by all requisite action on the part of Commission pursuant to all applicable laws and, when executed and delivered, will constitute valid and legally binding obligations of Commission enforceable in

accordance with their respective terms. Neither the execution and delivery of this Agreement by Commission or any other documents or instruments to be executed and delivered by Commission pursuant to this Agreement nor the performance of its obligations hereunder or thereunder will result in the violation of any provisions of its constitutional documents, applicable law, or will conflict with any other agreement to which Commission is a party or is otherwise bound.

- (c) There is no existing or, to the Commission's knowledge, pending or threatened litigation, suit, arbitration, unsatisfied order or judgment, investigation, action, or proceeding before any court or administrative agency affecting the Commission and/or the Property that would, if adversely determined, adversely affect the Property.
- (d) The Commission has not received written notice of any existing and/or uncorrected violation of any fire, zoning, building, environmental, or health law or regulation, or any other federal, state or local law or regulation affecting the Property, or any written notice of taking or condemnation, or intent to take or condemn all or any portion of the Property.
- (e) The Commission has no knowledge of any unpaid claims of contractors, materialmen or laborers, which have been contracted with by the Commission or its affiliates which could give rise to a lien against the Property.
- (f) To the Commission's knowledge, no underground or above-ground storage tanks are currently located on, or have ever been located on, the Property.
- (g) Except as set forth in that Final Phase I Report dated May 21, 2013, and Phase II Subsurface Investigation dated April 18, 2013, both prepared by August Mack Environmental, Inc., the Commission has not ever caused or permitted, nor is the Commission aware of, any Hazardous Material (hereinafter defined) to be discharged, released or disposed of on, under or at the Property or any part thereof, nor has the Commission ever caused or permitted to exist any violation of any Environmental Laws with respect to the Property. For the purposes of this Agreement, "**Hazardous Material**" means and includes asbestos and petroleum products and any other hazardous, toxic or dangerous waste, substance or material defined as such in, or for purposes of, any of the following ("**Environmental Laws**") the Comprehensive Environmental Response, Compensations and Liability Act (42 U.S.C. 9601 et seq.), the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Clean Air Act, the Clean Water Act, or any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material.
- (h) The following utility services are available to the Property in the stated minimum and maximum capacities: sanitary sewer with an eight-inch line that connects to a

lift station on Zionsville Road. The Commission's representations in this **Section 3.1(h)** shall not be construed as making any statement regarding other public or private utility services that are available to the Property.

- (i) The Property is zoned as a planned unit development ("**PUD**") and development of the Project requires the Governance Modifications set forth in **Section 5.3(a)** and the approvals described in the attached **Exhibit C**.

The continued validity in all respects of the representations and warranties made by the Commission in this **Section 3.1**, both at the time each is made and as of the Closing, shall be a condition precedent to Developer's obligations hereunder. All representations and warranties contained in this Agreement from the Commission shall be deemed remade as of the Closing Date and shall survive the Closing for twelve (12) months; provided, however, such representations and warranties shall not terminate with respect to any representation and warranty to which the Developer shall have, before the expiration of the twelve month (12) period, previously made a claim by delivering written notice of such claim (stating in reasonable detail the basis of such claim) to the Commission. In addition, no such claim shall be actionable unless the amount in controversy for a claim for any such breach exceeds Twenty-five Thousand Dollars (\$25,000). The Commission's maximum liability under this Section for any and all damages shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). The limitations set forth in this **Section 3.1** shall survive the termination of this Agreement or the Closing.

3.2 **Representations and Warranties of Developer.** Developer represents and warrants to the Commission that, to the best of its knowledge:

- (a) Developer is a limited liability company, duly organized and validly existing under the laws of the State of Indiana, authorized to conduct business in the State of Indiana, and has all necessary power and authority to execute and deliver this Agreement and any other documents or instruments to be executed and delivered by Developer pursuant to this Agreement and perform all of its obligations hereunder and thereunder. This Agreement and any other documents or instruments to be executed and delivered by Developer pursuant to this Agreement have been (or will at Closing be) duly authorized by all requisite action on the part of Developer and, when executed and delivered, will constitute a valid and legally binding obligation of Developer enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement by Developer or any other documents or instruments to be executed and delivered by Developer pursuant to this Agreement nor the performance of its obligations hereunder or thereunder will result in the violation of any provisions of its constitutional documents or will conflict with any other agreement to which Developer is a party or is otherwise bound.
- (b) There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Developer which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement.

- (c) Developer is in compliance in all material respects with all laws, statutes, rules and regulations of any federal, state or local governmental authority in the United States of America applicable to Developer and all beneficial owners of Developer, including, without limitation, the requirements of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Execution Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**"). Neither Developer nor any beneficial owner of Developer is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders.

ARTICLE 4 PROJECT APPROVAL

4.1 Project Requirements. The parties acknowledge that the Commission is entering into this Agreement based upon Developer's representations that it will develop the Project substantially in accordance with the following criteria (collectively, the "**Project Requirements**"):

- (a) to construct the Project substantially consistent with the site plan submitted to the Town with its ADLS Submission (as hereafter defined) as thereafter approved by the Town (the "**Site Plan**");
- (b) to construct the Project with an anticipated investment of approximately \$15,000,000 to \$20,000,000 with an updated estimate of total investment included in the Project Plans (as defined in **Section 4.2** below) approval process under **Section 4.2**;
- (c) to use good faith efforts to employ approximately 80-100 persons on full time basis at the Project over a five-year period with an updated estimate of total employees included in the Project Plan approval process under **Section 4.2**;
- (d) to submit reasonably detailed information regarding the cost to construct the Project pursuant to the Project Plans on an open book basis (collectively, the "**Project Costs**"); and
- (e) to submit an updated Project and reasonably detailed financing plan (such cost and financing plan, collectively, "**Financial Information**").

4.2 Project Plans. On or before the expiration of the Due Diligence Deadline (the "**Project Submittal Deadline**"), Developer shall submit to Corrie Sharp, economic development consultant for the Town of Zionsville, two (2) complete sets of its (a) final Site Plan, (b) architectural, design, landscape and signage plans that comply with the Town planning commission's standards (collectively, the "**ADLS Submission**"), (c) preliminary utility and

infrastructure plans, (d) schematic exterior elevations of improvements (if not already included in the ADLS Submission), (e) preliminary construction schedule with milestone completion dates, (f) preliminary Financial Information (it being agreed that financing commitment from a Lender (as defined in in **Section 5.2** below) shall comply with this requirement), (g) Developer's preliminary financial proforma and construction budget in reasonable detail; (h) the Project capital stack, (i) updated employment estimates, (j) a written description of the impact special events may have on the traffic flow in Creekside Corporate Park, including anticipated dates and times for special events and number of attendees, and (k) such other plans and drawings reasonably requested by the Commission (collectively, the "**Project Plans**"). The Commission shall direct the Town's planning and development staff to work cooperatively with Developer in formulating "low impact development" features for the Project Plans. For the avoidance of doubt, capturing rainwater from building roofs for water uses in the Rahal Vehicle Performance Center, and/or using used motor oil for heating purposes shall be deemed to satisfy Developer's obligations with respect to "low impact uses." With respect to the stormwater management portions of the Project Plans, Developer shall include plans for on-site capture and storage of rainwater from the building roofs for reuse in the Project operations to ameliorate or offset any open-air stormwater retention areas. Upon submission of the Project Plans, the Commission, or its designated committee, shall schedule a meeting in accordance with all legal requirements to consider approval or denial of the Project Plans which approvals or denials shall be rendered in good faith and in the exercise of reasonable discretion. The parties acknowledge the Commission's approval of the Project Plans is not a substitute for any other required governmental or quasi-governmental approvals for the Project, such as those described in **Exhibit C**, but rather a process to satisfy the Commission's interests in the Project. Notwithstanding the foregoing, the Commission's approval of the Project Plans shall also constitute the Commission's approval (in its capacity as Architectural Review Committee) of the Project and all associated improvements under **Article V** of the Declaration (as defined in **Section 5.3**). The Commission further agrees to execute at Closing a certificate in recordable form evidencing approval of the Project pursuant to **Article V** of the Declaration (the "**ARC Certificate**") and confirms that no separate fee for the Architectural Review Committee approval shall be owed under the Declaration. The Commission shall have the obligation to keep the Financial Information, Project Plans and other information that contains proprietary information of the Developer, Developer's Representatives, Rahal Affiliates, the Special Purpose Entity, or Graham Rahal's personal information confidential under the applicable safe harbor provisions of Indiana's Access to Public Records Act ("**APRA**"); provided that Developer shall submit site plans and building elevations to the Commission that will not be considered to be confidential information under APRA. The Project Plans, the Financial Information and any other information that Developer considers as containing proprietary or Graham Rahal's personal information and which is delivered with a cover statement designating the information as proprietary, personal or confidential, shall be treated as being provided in the course of negotiations as provided under Indiana Code 5-14-3-4(b)(5).

ARTICLE 5

COVENANTS AND REPURCHASE RIGHT

5.1 Developer's Covenants. The parties acknowledge the Commission is entering into this Agreement based (among other things) upon the Developer's substantial compliance with the following conditions after Closing (collectively, "**Developer's Covenants**").

- (a) Developer shall construct the Project in substantial accordance with the Project Requirements and the Project Plans approved by the Commission pursuant to **Section 4.2**.
- (b) With the Project Plans, Developer shall submit the Lender's (as hereafter defined) deadlines regarding the commencement of Project construction and substantial completion of the Project in accordance the Project Plans (the "**Lender's Construction Conditions**") for the Commission's approval, which shall not be unreasonably conditioned, delayed or denied. For purposes of this Agreement in general and the Repurchase Right (as defined in **Section 5.2**) specifically, the "**Construction Condition**" shall mean the Lender's Construction Conditions with the addition of one hundred eighty (180) days, (the "**Construction Condition**"), both subject to Force Majeure, applicable notice and cure rights under this Agreement, and any other applicable provisions of this Agreement. The parties shall memorialize in writing the Construction Condition deadlines in the Commission's final approval of the Project Plans.
- (c) Such other covenants as the Commission may reasonably require in connection with the Commission's review and approval of the Project Plans as set forth in **Section 4.2** and as Developer may reasonably approve, which may include traffic and parking guidelines with respect to permitted Project uses and any special events related to the Project, which may include incorporating guidelines in the Declaration or other agreement that permits the Commission to enforce the parking guidelines.
- (d) Developer shall be responsible for the payment of all customary fees and charges the Town is entitled to levy in connection with the Project, but not limited to, road impact fees, sewer availability fees, and fire review fees.

5.2 Repurchase Right.

- (a) In the event Developer does not substantially comply with the Construction Condition, and such failure to comply continues for sixty (60) days after written notice of such specific failures to comply by the Commission to Developer (subject to extension for Force Majeure or the extended cure rights provided below), the Commission shall have the option to repurchase fee title to the Property upon the Commission's (i) written notice to Developer that the Construction Condition has not been satisfied (after the expiration of the cure period described herein) and that the Commission thereby is executing its repurchase option, and (ii) at the closing of such repurchase, payment to (A) any commercial financial institution providing financing for the Project ("**Lender**") of all amounts then funded to the Project by the Lender; and (B) Developer of all amounts then funded to the Project by Developer, less the amount of \$50,000 (collectively, the "**Repurchase Right**"); provided, the Commission exercises the Repurchase Right within sixty (60) days after the failure of the Construction Condition; further provided, however, that if the nature of Developer's failure to meet the Construction Condition is such that it cannot be cured within the

sixty (60) day cure period, no Repurchase Right shall exist if Developer commences the curing of the default within the sixty (60) day cure period and thereafter diligently pursues the same to completion. The Repurchase Right shall be memorialized in a separate document to be recorded at Closing after the Deed, in form and content acceptable to Developer and the Commission (the "**Memorandum of Repurchase Right**"). By way of clarification, in the event the Commission exercises the Repurchase Right, Developer's Lender shall be entitled to be reimbursed for all funds which it has disbursed at the repurchase date and Developer shall be reimbursed for all costs of the Project incurred by Developer in excess of \$50,000. If the Commission duly exercised its Repurchase Right, the closing of the repurchase shall occur within sixty (60) days after the expiration of the above cure period, and each of Lender and Developer shall have the right up to closing to terminate the Commission's Repurchase Right by payment to the Commission of an amount equal to the fair market value of the Property, as agreed upon by the parties or determined by appraisal in which event this Agreement shall terminate. The Memorandum of Repurchase Right shall be terminated of record by the Commission within thirty (30) days of satisfaction of the Construction Condition. In the event the Commission closes on the Repurchase Right, Developer shall provide copies or originals of all documents associated with the Project in Developer's possession or control, including, but not limited to, the Project Plans, at closing excluding any proprietary, privileged, or other confidential information.

- (b) Third Party Debt. The Commission acknowledges that Developer's funding sources for the construction and completion of the Project may include third party debt from Developer's Lender, and the Commission agrees to make commercially reasonable accommodations to such Lender for Developer to obtain such debt, including, without limitation, granting such third party written notice and a reasonable right to cure any failure of Developer to perform its obligations under this Agreement prior to exercising the Commission's Repurchase Right.

5.3 Commission Covenants.

- (a) Governance Modifications. The Commission covenants to (i) modify any term or provision of the Declaration of Easements, Covenants and Restrictions of Creekside Corporate Park, executed March 30, 2021, and recorded as Instrument No. 2021005768 in the Boone County, Indiana recorder's Office (the "**Declaration**") (ii) make all applications and filings necessary to amend the PUD ordinance for Creekside (the "**PUD Ordinance**"); and (iii) such other recorded instruments and agreements of record that are in the control of the Commission that conflict with or prevent the development of the Project; in each case so as to allow the Project to be constructed and operated as contemplated by this Agreement (individually and collectively, "**Governance Modifications**"). Such Governance Modifications shall permit the uses and the Project as identified in the Project Plans; an on-site detention pond at the location which accommodates the existing natural grades on the Property in a manner approved by the Commission and Developer pursuant to **Section 4.2**; and such other agreements

and provisions included herein. Developer agrees that the proposed PUD Ordinance amendment filed with the Zionsville Town Council incorporating Developer's October 13, 2022 revisions, if approved in form and substance, shall comply with the Commission's obligation as to the PUD Ordinance. Any Governance Modifications affecting the Property must be approved by both the Developer and the Commission prior to submission to the applicable bodies and such approved Governance Modifications shall be a condition precedent to Developer's obligations under this Agreement.

- (b) Environmental Insurance. The Commission shall cause Developer to be added as an additional insured by endorsement to the Commission's existing environmental liability insurance policy applicable to the Property (the "**Environmental Policy**") issued by Navigators (the "**Environmental Insurer**"), subject to the provisions of the Environmental Policy and Developer's satisfaction of the Environmental Insurer's underwriting and endorsement requirements. The Commission shall maintain the Environmental Policy and Developer's additional insured status, at its cost up to the annual renewal premium amount of Twenty-Five Thousand Dollars (\$25,000), in full force and effect (i) for so long as there is no material, uncured default under this Agreement; (ii) through and including 2030 (or such longer time as the Commission may agree); and (iii) so long as the Environmental Policy continues to be available and renewable from the Environmental Insurer. In the event the annual renewal premium amount exceeds Twenty-Five Thousand Dollars (\$25,000), then Developer shall have the option, but not the obligation, to pay such additional amount as is necessary to keep the Environmental Policy in effect for Developer. The Commission shall give Developer reasonable advance notice of any additional payment (over and above \$25,000) necessary to maintain the Environmental Policy in effect. This provision shall survive the Closing.

ARTICLE 6 CONDITIONS TO CLOSING OBLIGATIONS

6.1 Conditions to Commission's Closing Obligation. The Commission's obligation to proceed with the Closing is contingent upon satisfaction or the Commission's waiver of the following (collectively, the "**Commission Closing Conditions**"):

- (a) All representations and warranties of Developer made in this Agreement shall be true, correct and complete in all material respects on and as of the Closing Date, as if such representations and warranties were first made on the Closing Date, and Developer shall have delivered to the Commission a certificate providing that all representations and warranties of Developer made in this Agreement are true, correct and complete in all material respects on and as of the Closing Date.
- (b) Developer shall have delivered to the Commission all of the Developer Closing Documents (as defined in **Section 9.1 (b)**) in accordance with the requirements of this Agreement.

- (c) Developer shall have performed in all material respects all covenants and obligations required to be performed by Developer on or before the Closing Date.
- (d) The Commission shall have approved the Project Plans and the Lender's Construction Conditions.
- (e) Developer shall have provided the Commission with a general breakdown reasonably satisfactory to the Commission of Developer's Project funding sources (both from contributed equity and third-party debt) for the construction and completion of the Project in an amount equal to or exceeding projected Project Costs.
- (f) Developer shall have obtained, at Developer's expense, all necessary governmental and private approvals and permits, except for any Governance Modifications required for the development and construction of the Project improvements and provided reasonable evidence thereof to the Commission.
- (g) Any other conditions reasonably required by the Commission and approved by Developer; provided, however, such other conditions shall have been delivered in writing to Developer and approved by Developer on or before the expiration of the Due Diligence Deadline.

6.2 Failure of a Commission Closing Condition. If any of the Commission Closing Conditions have not been satisfied on or before the Closing Date, then the Commission may, in its sole discretion, elect to either (i) extend the Closing Date for such reasonable period as is required to satisfy such conditions (not to exceed ninety (90) days in order to permit Developer additional time in order to attempt to satisfy the Commission Closing Conditions, or (ii) terminate this Agreement by written notice to Developer, in which event the parties shall have no further right or obligation under this Agreement (except for rights or obligations which expressly survive the termination of this Agreement). The Commission shall have the right to unilaterally waive any Commission Closing Condition by written notice to Developer or by proceeding to the Closing.

6.3 Conditions to Developer's Closing Obligation. Developer's obligation to proceed with the Closing is contingent upon satisfaction or Developer's waiver of the following (collectively, the "**Developer Closing Conditions**"):

- (a) All representations and warranties of the Commission made in this Agreement shall be true, correct and complete in all material respects on and as of the Closing Date, as if such representations and warranties were first made on the Closing Date, and the Commission shall have delivered to Developer a certificate providing that all representations and warranties of the Commission made in this Agreement are true, correct and complete in all material respects on and as of the Closing Date.
- (b) The Commission shall have delivered to Developer all of the Commission Closing Documents (as defined in **Section 9.1(a)**) in accordance with the requirements of this Agreement.

- (c) The Commission shall have approved the Project Plans.
- (d) The Commission shall have performed in all material respects all covenants and obligations required to be performed by the Commission on or before the Closing Date.
- (e) The Commission shall have added Developer as an additional insured under the Environmental Policy.
- (f) Developer shall have obtained and satisfied all conditions for the financing of its acquisition, development and construction of the Project in an amount and on terms acceptable to Developer in its sole discretion.
- (g) Developer shall have obtained all of the approvals necessary for its construction of the Project.
- (h) All Governance Modifications (as defined in **Section 5.3(a)**) shall have been obtained by the Commission.
- (i) The Title Company is prepared to issue to Developer and the Project Lender owner's and lender's policies of title insurance on the Property subject only to the Permitted Encumbrances and with such endorsements as shall be reasonably required and the Commission shall have satisfied all requirements applicable to it for the issuance of such policies.

6.4 Failure of a Developer Closing Condition. If any of the Developer Closing Conditions has not been satisfied on or before the Closing Date, then Developer may, in its sole discretion, elect to either (i) extend the Closing Date for such reasonable period as is required to satisfy such conditions (not to exceed ninety (90) days) in order to permit the Commission additional time in order to attempt to satisfy the Developer Closing Conditions, or (ii) terminate this Agreement by written notice to the Commission, in which event the parties shall have no further right or obligation under this Agreement (except for rights or obligations which expressly survive the termination of this Agreement). Developer shall have the right to unilaterally waive any Developer Closing Condition by written notice to the Commission or by proceeding to the Closing.

ARTICLE 7 CLOSING

7.1 Closing. The closing of the transaction contemplated by this Agreement (the "**Closing**") is to occur at the office of the Title Company on a date agreed to by both Developer and the Commission; provided, that such date shall be on or before sixty (60) days after the Plan Submittal Deadline (the "**Closing Date**").

ARTICLE 8 PROPERTY TAX

8.1 Property Tax. Subject to the pro-rations in **Section 9.2(b)(i)**, Developer shall assume and be obligated to pay any and all real estate taxes and assessments which become due and payable from and after Closing.

ARTICLE 9 CLOSING COSTS

9.1 Closing Deliveries.

- (a) The Property Documents. At the Closing, the Commission shall, upon Developer's payment of the Purchase Price, deliver the following to Developer (collectively, "**Commission Closing Documents**"):
- (i) a special warranty deed (the "**Deed**"), conveying fee simple title to the Property from the Commission to Developer, free and clear of all liens and encumbrances, easements, conditions and restrictions except the Permitted Encumbrances; and containing the Transfer Restriction (as defined in **Section 12.1**) and the Property Tax Restriction (as defined in **Section 12.18**);
 - (ii) the Memorandum of Repurchase Right and the automatic expiration of the Repurchase Right upon substantial completion of the Project;
 - (iii) a non-foreign person affidavit;
 - (iv) a vendor's affidavit to the Title Company with commercially reasonable terms sufficient to delete the standard exceptions from the final title policy that do not require a survey;
 - (v) delivery of any Governance Modifications or evidence that such Governance Modifications have occurred;
 - (vi) an executed Project Payment Obligation Agreement (as defined in **Section 12.17**);
 - (vii) such disclosures and reports as are required by applicable state law in connection with the conveyance of real property, including, without limitation, a counterpart of a Sales Information Disclosure Form as required by Ind. Code §6-1.1-5.5 (the "**SDF**"); and
 - (viii) such other documents as may be required by the terms of this Agreement, or as may reasonably be necessary in order to consummate the transaction contemplated by this Agreement, including, without limitation, any proof of authority required by the Title Company.

- (b) Developer's Deliveries. At the Closing, Developer shall deliver the following to the Commission (collectively, "**Developer Closing Documents**"):
- (i) the Purchase Price, subject to any credits or pro-rations provided for in this Agreement;
 - (ii) such disclosures and reports as are required by applicable state law in connection with the conveyance of real property, including, without limitation, a counterpart of the SDF and Memorandum of Repurchase Right; and
 - (iii) an executed Project Payment Obligation Agreement (as defined in **Section 12.17**);
 - (iv) delivery of any Governance Modifications that require the Developer's signature;
 - (v) the ARC Certificate; and
 - (vi) such other documents as may be required by the terms of this Agreement, or as may reasonably be necessary in order to consummate the transaction contemplated by this Agreement.
- (c) Closing Statement. At the Closing, the Commission and Developer shall each execute a closing statement drafted by the Title Company or another person, and in form and content, reasonably acceptable to both the Commission and Developer.
- (d) Other Charges. Closing costs shall be paid by the parties as set forth below or as otherwise specifically set forth in this Agreement; provided, however, in the event any charge or fee is not addressed by this Agreement, the charge or fee shall be paid according to local Indiana custom.

9.2 Closing Costs.

- (a) Closing Costs. Developer shall pay its attorneys' fees, all real estate commissions, if any, to Developer's Broker (as defined in **Section 12.2**), the title insurance premium for the title policy, the cost of procuring the Survey, all recording costs and all escrow fees and closing costs charged by the Title Company. The Commission shall pay its attorneys' fees, any costs of adding the Developer as an additional insured to the environmental insurance, and its own costs related to the conveyance of Property.
- (b) Pro-Rations and Credits. The following are to be apportioned and credited as set forth below:
- (i) Taxes and Assessments. On or before the date of Closing, the Commission shall pay any and all past due taxes, assessments, special assessments or levies with respect to the Property and any and all interest or

penalties thereon (collectively, "**Governmental Charges**"). All Governmental Charges assessed with respect to the Property for years prior to the year that Closing occurs but due and payable in the year that Closing occurs shall be the responsibility of the Commission to satisfy on or before Closing. By way of example, if the Closing Date occurs in 2022, the Commission would be responsible, through direct payment or other satisfaction, for all Governmental Charges that accrued in 2021, but are due and payable in 2022 (the "**2021 Tax Year**").

All Governmental Charges assessed with respect to the year that Closing occurs but due and payable the year after Closing occurs shall be prorated as of the date of Closing with the Developer allocated the date of Closing. By way of example as to Governmental Charges assessed in the year of Closing, if the Closing Date occurs on December 1, 2022, the Commission shall be responsible for 334/365 of the Governmental Charges that accrued during 2022 but are due and payable in 2023 (the "**2022 Tax Year**"). Developer shall be responsible for 31/365 of the Governmental Charges that accrued in 2022 but are due and payable in 2023. Prorations for subsequent tax years shall be based upon the assessed value of and the applicable tax rate for the portion of the Property at issue, to the extent that the applicable tax rate for the Property has not yet been determined. Notwithstanding the foregoing, the parties believe that the Property is currently exempt from property taxes and, as such, no prorations shall be necessary at Closing.

(ii) Other. All other items customarily apportioned in Indiana in connection with the sale of similar properties, similarly located which are not otherwise specifically addressed shall be prorated as of the Closing Date.

(iii) General Principle. All apportionments described above shall be made in a manner consistent with the principle that the expenses of the Property for all periods up to the Closing Date shall be attributable to the Commission, and all expenses of the Property for all periods commencing on and after the Closing Date shall be attributable to Developer.

ARTICLE 10 DEFAULT.

10.1 The Commission's Default. In the event that the Commission fails to perform any of its obligations under this Agreement for any reason other than Developer's default or the permitted termination of this Agreement by the Commission or Developer as expressly provided in this Agreement, Developer shall be entitled, as its sole remedies, either to (i) elect to terminate this Agreement by written notice to the Commission, in which case Developer shall be entitled to reimbursement in an amount equal to its reasonable costs (including attorney's fees) incurred in connection with negotiating this Agreement and for its planning and site preparation and Site Inspections of the Property, including, without limitation, all architectural, design, and engineering work incurred for the Project and in obtaining permits and approvals, in an amount not to exceed \$100,000.00, and the parties shall have no further right or obligation under this

Agreement (except for rights or obligations which expressly survive the termination of this Agreement), or (ii) enforce specific performance of the Commission's obligations. Developer shall be deemed to have elected to terminate this Agreement if Developer fails to file suit for specific performance against the Commission in a court having jurisdiction in the county and state in a Boone County, Indiana court, on or before one hundred twenty (120) days following the date upon which the Closing was to have occurred.

10.2 Developer's Default. In the event that Developer fails to perform any of its obligations under this Agreement for any reason other than the Commission's default or the permitted termination of this Agreement by either the Commission or Developer as expressly provided in this Agreement, the Commission shall be entitled, as its sole remedy, to terminate this Agreement (except for rights or obligations which expressly survive the termination of this Agreement) and to recover all third party costs incurred with respect to the Agreement and the Project, including, but not limited to reasonably incurred attorney and other professional fees, in an amount not to exceed \$100,000.00.

10.3 Attorneys' Fees. In the event legal action is instituted by any party to enforce the terms of this Agreement or which arises out of the execution of this Agreement, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party's reasonable attorneys' fees and court costs, including the costs of appeal, as may be determined and awarded by the court in which the action is brought. The right to attorneys' fees shall survive the termination of this Agreement or the Closing.

ARTICLE 11 DISCLAIMERS

11.1 SUBJECT TO THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE COMMISSION SET FORTH IN **SECTION 3.1** OR ANY OTHER PROVISION OF THIS AGREEMENT OR ANY CLOSING DOCUMENT, IT IS UNDERSTOOD AND AGREED THAT THE COMMISSION IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN THE COMMISSION'S LIMITED WARRANTY OF TITLE TO BE SET FORTH IN THE DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF THE COMMISSION TO DEVELOPER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. SUBJECT TO THE EXPRESS REPRESENTATIONS AND WARRANTIES OR OTHER OBLIGATIONS OF THE COMMISSION AS SET FORTH IN **SECTION 3.1** OR ANY OTHER PROVISION OF THIS AGREEMENT OR ANY CLOSING DOCUMENT, DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, THE COMMISSION SHALL SELL AND CONVEY TO DEVELOPER AND DEVELOPER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS,

WITH ALL FAULTS". DEVELOPER REPRESENTS TO THE COMMISSION THAT DEVELOPER HAS CONDUCTED, HAS HAD THE OPPORTUNITY TO CONDUCT, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS DEVELOPER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY. NOTHING IN THIS **ARTICLE 11** SHALL BE DEEMED TO LIMIT THE COMMISSION'S LIMITED WARRANTY OF TITLE TO BE SET FORTH IN THE DEED.

11.2 THE COMMISSION AND DEVELOPER ACKNOWLEDGE THAT THE COMPENSATION TO BE PAID TO THE COMMISSION FOR THE PROPERTY REFLECTS THAT THE PROPERTY IS BEING SOLD SUBJECT TO THE PROVISIONS OF THIS **ARTICLE 11**, AND THE COMMISSION AND DEVELOPER AGREE THAT THE PROVISIONS OF THIS **ARTICLE 11** SHALL SURVIVE CLOSING.

ARTICLE 12 MISCELLANEOUS

12.1 Assignment. Developer shall have the right to assign its rights and obligations under this Agreement to an entity that Graham Rahal controls, or in which Graham Rahal owns a majority interest, or to a trust or other entity intended or designated for estate planning purposes for the benefit of Graham Rahal or his immediate family members (a "**Rahal Affiliate**") on or before the date the Property is conveyed pursuant to the terms of this Agreement. Following transfer of the Property to Developer (or its permitted assignee) and for a period of five (5) years from the date of substantial completion of the Project (the "**Expiration Date**"), Developer shall have no right to assign its rights and obligations under this Agreement or its interest in the Property to any other party without the written consent of the Commission which consent shall not be unreasonably withheld, conditioned or delayed; provided that no Commission consent shall be required for (a) any transfer or assignment to (i) a Rahal Affiliate; (ii) an assignment to any Lender; or (iii) to a trust, spouse or immediate family member in the event of the death of Graham Rahal; or (b) any lease of, or operating agreement for, any portion of the Property to affiliated or unaffiliated third parties so long as Rahal or a Rahal Affiliate continues to own the Property and such leases are limited to the Project uses listed in the Recitals (the "**Transfer Restriction**"). Following the Expiration Date, the Transfer Restriction shall automatically lapse and shall be null and void and of no further force or effect. The post conveyance Transfer Restriction shall be memorialized in the Deed. If required by a Lender, the Commission will subordinate the Transfer Restriction to the Lender's interest in the Project, and in such case, the Commission shall permit any transfers contemplated in the enforcement of the applicable customary loan documents. Notwithstanding anything to the contrary in this Section or elsewhere in this Agreement, the parties acknowledge Developer intends to assign its rights and obligations in this Agreement to a limited liability company that is a Rahal Affiliate (a "**Special Purpose Entity**"). Commission consent is not required for an assignment of this obligation to a Special Purpose Entity.

12.2 Brokers. Each of Developer and the Commission represent and warrant that they, respectively, have not dealt with any broker, agent, finder or similar party in connection with the transaction contemplated by this Agreement except Tom Osborne with Bradley Company ("**Developer's Broker**"), and each of Developer and the Commission hereby indemnifies and holds harmless the other from any liability, cost or expense (including, without limitation, reasonable attorneys' fees and costs of enforcement of the foregoing indemnity, whether arising in any underlying action or in the enforcement of this right of indemnification) arising out of the falsity of the foregoing representation by such party. Developer shall be responsible for any commission payable to Developer's Broker. The provisions of this **Section 12.2** shall survive the Closing or any earlier termination of this Agreement.

12.3 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Indiana.

12.4 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, oral or written, are superseded hereby.

12.5 Time of Essence. Developer and the Commission hereby agree that time is of the essence with regard to the terms and conditions of this Agreement.

12.6 Binding Effect. All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

12.7 Notices. All notices which are required or permitted under this Agreement shall be in writing and shall be deemed to have been given, delivered, received and made, as the case may be (notwithstanding lack of actual receipt by the addressee), (a) when delivered by personal delivery against a written receipt, (b) one (1) business day after having been deposited with an expedited, overnight courier service marked for next day delivery, or (c) when delivered by e-mail, addressed to the party to whom notice is intended to be given at the address set forth below:

If to the Commission: Town of Zionsville Redevelopment Commission
c/o Zionsville Planning & Economic Development Dept.
Corrie Sharp, Innovative Planning LLC
1110 N. Oak Street
Zionsville, Indiana 46077
(317) 660-1762 – telephone
Email: csharp@zionsville-in.gov

With a copy to: Ice Miller LLP
Attn: Brian Crist
One American Square, Suite 2900
Indianapolis, IN 46282-0200
(317) 236-5997 – telephone
Email: Brian.Crist@icemiller.com

If to the Developer: RFPDI, LLC
Attn: Graham Rahal and Piers Phillips
485 Southpointe Circle, Suite 800
Brownsburg, IN 46112
Email: pphillips@rahal.com

With a copy to: Barnes & Thornburg LLP
Attn: Don Williams, Esq.
11 South Meridian Street
Indianapolis, IN 46204
Email: don.williams@btlaw.com

or to such other address as any party may from time to time designate by notice in writing to the other. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this **Section 12.7** or an electronic malfunction attributable to the receiving party shall constitute delivery.

12.8 Waiver. The failure of either party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

12.9 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

12.10 Amendment. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived, or discharged either orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

12.11 Counterparts, Separate Signature Pages and Emailed Signatures. This Agreement may be executed in several counterparts, by separate signature pages, and/or by PDF copy of signatures, each of which may be deemed an original, and all such counterparts, separate signature pages, and PDF signatures together shall constitute one and the same Agreement.

12.12 Calculation of Days. In the event that any date described in this Agreement for the performance of an action required hereunder by the Commission, Developer and/or the Title Company falls on a Saturday, Sunday or federal legal holiday, such date shall be deemed postponed until the next business day thereafter.

12.13 Interpretation. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto and that both parties hereto have contributed substantially and materially to the final preparation of this Agreement and all related instruments.

12.14 Term. The term of this Agreement shall continue until the earlier of (i) the date the Project is substantially completed as evidenced by a certificate of occupancy or the equivalent issued for the Project; (ii) the termination of this Agreement as provided in **Article 10**; or (iii) the Commission's exercise of the Repurchase Right. Termination of this Agreement shall not, however, terminate any agreement executed by the parties which by its terms survives termination of this Agreement.

12.15 No Recordation. Neither this Agreement nor any memorandum of the terms hereof shall be recorded or otherwise placed of public record. Upon expiration of the Term, upon either party's request, the other party agrees to provide written confirmation of the expiration or sooner termination of the Agreement.

12.16 Force Majeure. The term "**Force Majeure**" shall mean strikes, lockouts, unusual weather, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty, any widespread health emergency or pandemic (including without limitation the ongoing COVID-19 pandemic), or a governmental entity failing to grant or rejecting an approval that is required to construct the Project in substantial compliance with Project Plans. The parties agree that notwithstanding any principle of law to the contrary, any event, such as the COVID-19 pandemic, supply chain disruptions, or the existence or expansion of Eastern European military actions which are in existence on the date hereof may be deemed an event of Force Majeure. In order to claim relief from a Force Majeure, a party must promptly (within thirty (30) days) provide written notice to the other party that describes the Force Majeure at issue and the date the Force Majeure first occurred. If a party is unable to perform an obligation due to Force Majeure, then that party shall be excused from performance for the period of the Force Majeure event, but not to exceed one hundred eighty (180) days from the date the Force Majeure condition first occurred. Any obligation which can be satisfied by the payment of money, and other sums due herein, shall not be subject to or excused by Force Majeure.

12.17 Project Payment Obligations. In recognition of the Commission's economic contributions to the Project, Rahal shall pay the Commission the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) in equal annual installments of Fifty Thousand Dollars (\$50,000.00) beginning on July 1 of each calendar year subsequent to the year in which substantial completion of the Project occurs (the "**Project Payment Obligation**"). By way of example, if the Project is substantially completed on October 31, 2024, the first payment of the Project Payment Obligation shall occur on July 1, 2025. The Project Payment Obligation shall be memorialized in a mutually agreeable document to be executed by the Commission and Developer at Closing (the "**Project Payment Obligation Agreement**").

12.18 Property Tax Restriction. Developer, Special Purpose Entity, a Rahal Affiliate or any subsequent owner of the Project shall be prohibited from (i) challenging or appealing the assessed value of the Project for ad valorem real property taxes below the threshold of the actual cost of initial construction incurred by Developer plus the fair market value of the land comprising the Property, or (ii) pursuing an exemption from the obligation to pay ad valorem real property taxes on the Project (the "**Property Tax Restriction**"). These restrictions shall run with the title to the Property, shall be memorialized in the Deed, and shall expire only upon the

earlier of (a) full satisfaction of the lease revenue bonds issued by the Zionsville Redevelopment Authority in November of 2015 for the construction of infrastructure improvements in the Creekside Allocation Area; or (b) December 31, 2032.

12.19 Compliance With Laws. All of the Commission's obligations under this Agreement shall comply with all legal and statutory requirements.

12.20 Not an Offer. This Agreement or any draft thereof shall not be considered an offer to contract and shall not be binding against either party until it is fully executed by both the Commission and Developer.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Development Agreement as of the date first written above.

COMMISSION:

THE ZIONSVILLE ECONOMIC
REDEVELOPMENT COMMISSION

By: Sanjay B Patel
Sanjay Patel, President

Dated: 11 / 18 / 2022

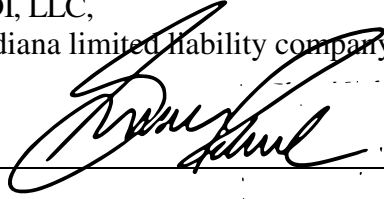
By: Kent Ezra
Kent Ezra, Vice President

Dated: 11 / 18 / 2022

DEVELOPER:

RFPDI, LLC,
an Indiana limited liability company

By: _____



Name: Graham Rahal

Title: Member

Dated: 1/17/23

23465593.7

EXHIBIT A-1

THE PROPERTY

LOTS 10 AND 11 OF THE CREEKSIDE CORPORATE PARK SUBDIVISION, PLAT BOOK 26, PAGES 5-8, AS INSTRUMENT NO. 2017012261, IN THE OFFICE OF THE RECORDER OF BOONE COUNTY, INDIANA.

GENERAL DEPICTION OF PROPERTY

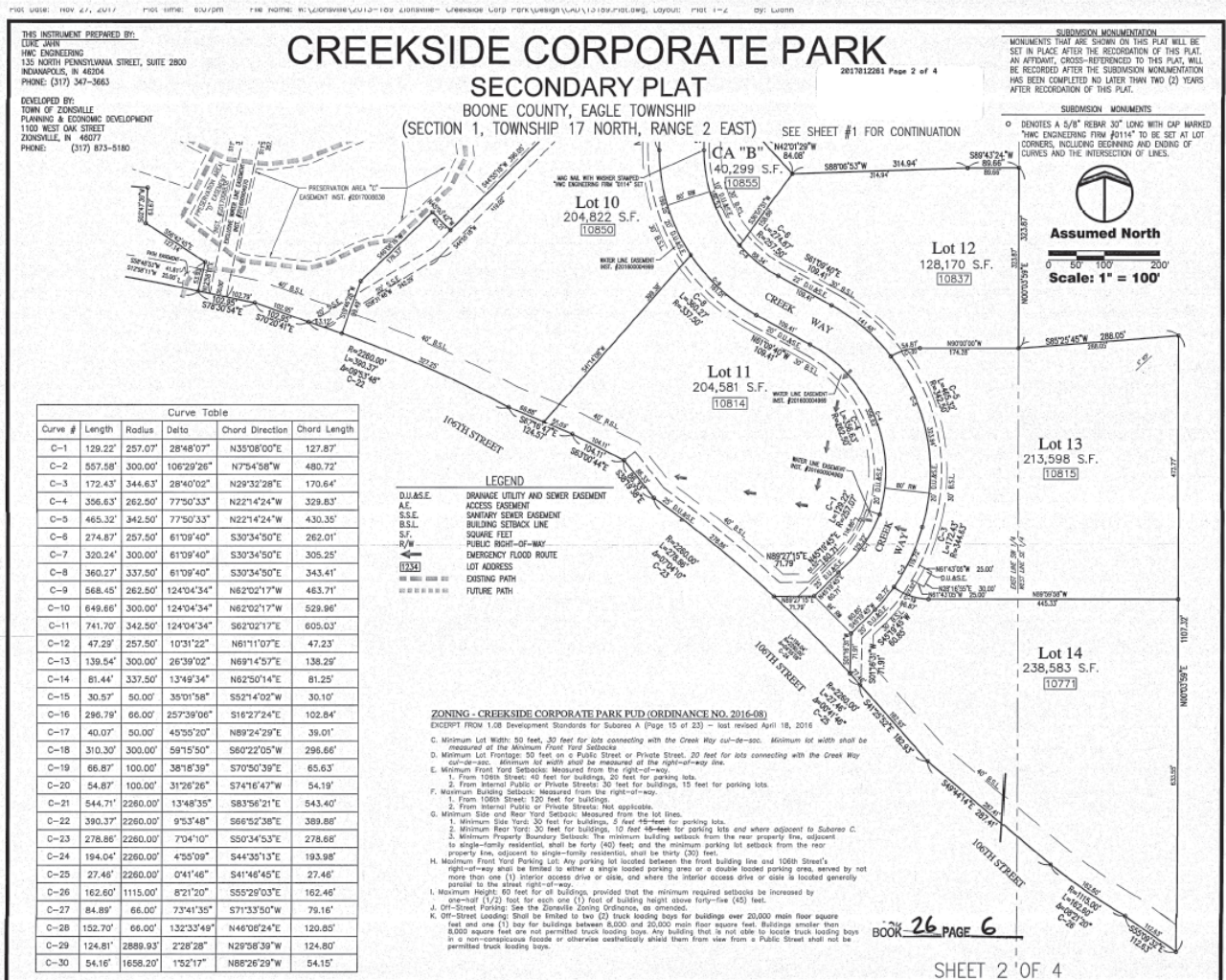


EXHIBIT B

THE PROPERTY DOCUMENTS

DOW Phase I-dated 4-18-2013

DOW Phase II-dated 4-29-2013

DOW Phase I Update-dated 5-21-2013

Creekside Corporate Park Construction plans –dated 12-23-2015

Creekside Corporate Park Bidding specifications-dated 12-23-2015

Creekside ALTA-dated 10-3-2017

Creekside Secondary Plat-signed 12-21-2017

Creekside Planned Unit Development Ordinance - Ordinance 2020-05 (June 1, 2020)

Town of Zionsville General Code

EXHIBIT C

LAND USE APPROVALS

Action Item	Initial Step	Second Step	Timeline
Letter of Intent	Submit LOI to the Town of Zionsville	Approval by RDC	N/A
Term Sheet Lead Applicant: Buyer	Submit Request to RDC	Approval by RDC	30 Days
Development Agreement (DA) Lead Applicant: Buyer	Submit Request to RDC per terms of the Term Sheet	Approval by RDC	30 Days
Purchase Agreement (PA) Lead Applicant: Buyer	Submit to RDC per terms of the DA	Approval by RDC (Can be concurrent with DA)	10 Days
Zone Map Change: Plan Commission Lead Applicant: RDC	Submit PUD Rezoning Application and supporting documents to the Plan Commission per procedures.	Plan Commission hears the petition at their public meeting. Result. PC recommends approval of Rezoning.	45 Days
Zone Map Change Town Council Lead Applicant: RDC	The Plan Commission recommends a decision to Town Council to be heard at their next meeting. The Plan Commission Packet should be forwarded to Town Council.	Town Council hears the petition and considers the recommendation of Plan Commission. Results. TC approval of Rezoning.	14 Days
Re-Plat: Plan Commission Lead Applicant: Buyer	Submit the proposed re-plat of Creekside Lots 10 & 11 with supporting documentation to the Plan Commission per procedures.	Plan Commission hears the petition at their public meeting. Result. PC approves the submitted re-plat.	45 Days
Civil Site Design Approval Lead Applicant: Buyer	File site plan and concept elevations with Redevelopment Commission. Result: RDC approval of concept	File for Development Plan approval with the Plan Commission per procedures. Result: PC approval of Plans	45 Days
----- the below steps can run concurrent with one another -----			
Storm Water Permit Lead Applicant: Buyer	File permitting information with the Town Stormwater Dept.	Result: Stormwater Permit	30 Days
State Design Release Lead Applicant: Buyer	File construction plans with the State of Indiana DHS	Approval by the State of Indiana Result: Issuance of CDR	45 Days
Local Building Permit (ILP) Lead Applicant: Buyer	File construction plans with the Community & Economic Development Department	Issuance of an Improvement Location Permit (Building Permit)	30 Days
Local Fire Protection Permit Lead Applicant: Buyer	File construction plans with the Town Fire Department	Approval by the ZFD	30 Days