

**ECONOMIC DEVELOPMENT AGREEMENT**

**THIS ECONOMIC DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of June, 2018, by and among **THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT** (the “City”), and **BROADWAY REDEVELOPMENT PARTNERS, LLC**, a Delaware limited liability company (“Broadway”), and **RTM VENTURES LLC**, a Delaware limited liability company (“RTM”) (Broadway and RTM are collectively referred to herein as the “Developer”).

**WITNESSETH:**

**WHEREAS**, the City desires to foster the redevelopment of the former General Electric manufacturing plant, an idled, abandoned and unoccupied industrial campus consisting of over 1.2 million square feet of decaying historic buildings on approximately 31 acres of urban land just to the south and west of downtown Fort Wayne on Broadway Avenue (“GE Campus”); and

**WHEREAS**, the GE Campus may contain environmental contamination and the structures located upon the GE Campus are deteriorated and deteriorating in varying degrees, constituting a potential hazard to health and safety; and

**WHEREAS**, without redevelopment, the GE Campus will continue to pose a hazard to health and safety, will continue to degrade physically and will continue to lose assessed value; and

**WHEREAS**, the City has determined that stabilizing the GE Campus and preventing further decay of the GE Campus is in the best interests of the citizens and taxpayers of the City in terms of both safety and economic development; and

**WHEREAS**, Developer has approached the City with a master plan for redevelopment of a portion of the GE Campus which would achieve the goals of the City for stabilizing and redeveloping a portion of the GE Campus as set forth in a proposal entitled “Electric Works, Broadway District” and dated November 21, 2017 (“Electric Works West Campus Proposal”), and supplemented by a document entitled “An Economic Impact Analysis of Electric Works – West Campus” dated November 20, 2017, prepared by Novogradac & Company LLP (“Impact Study”); and

**WHEREAS**, Developer has further provided certain projections regarding the sources and uses of funds for the development of the Electric Works West Campus Proposal which are attached hereto as **Exhibit A** (“Financial Projections”); and

**WHEREAS**, Developer has requested certain economic development incentives to induce Developer to pursue the Electric Works West Campus Proposal and create the economic impact described in the Impact Study; and

**WHEREAS**, City has determined that inducing Developer to redevelop the GE Campus, as described in the Electric Works West Campus Proposal and creating the economic impact

described in the Impact Study are in the best interests of the citizens and taxpayers of the City and justify the provision of the economic development incentives described in this Agreement;

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

**ARTICLE I**  
**RECITALS AND DEFINITIONS**

Section 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.

Section 1.02 Definitions. Certain terms used herein are defined in this Section 1.02; other terms are defined within the text of this Agreement.

- (a) “Agreement” shall mean this Economic Development Agreement.
- (b) “Allocation Area” shall mean the area within the EDA, as described on **Exhibit B-1** attached hereto.
- (c) “BDDC” shall mean the Broadway District Development Corporation, a neighborhood development corporation to be organized by City and described in Section 4.04.
- (d) “City” shall mean the City of Fort Wayne, Indiana, Department of Redevelopment.
- (e) “Construction Plans” shall have the meaning ascribed to it in Section 3.01.
- (f) “Declaration” shall have the meaning ascribed to it in Section 5.07.
- (g) “Developer” shall mean collectively Broadway Redevelopment Partners, LLC, a Delaware limited liability company, and RTM Ventures LLC, a Delaware limited liability company.
- (h) “EDA” shall mean the newly created Economic Development Area within the City of Fort Wayne to be known as the “Broadway District EDA,” as described on **Exhibit B-1** attached hereto.
- (i) “Effective Date” shall mean June \_\_\_\_\_, 2018.
- (j) “Financial Assistance Agreement” shall have the meaning ascribed to it in Section 4.04 and shall be in the form attached hereto as **Exhibit I**.

(k) “Financial Projections” means those certain projections provided by Developer showing the sources and uses of funds necessary for the development of the Electric Works West Campus Proposal attached hereto as **Exhibit A**.

(l) “Fund Closing” shall have the meaning ascribed to it in Section 5.02.

(m) “Future Public Improvements” shall have the meaning ascribed to it in Section 3.04 and shall be as set forth on **Exhibit F** hereto.

(n) “Grant Agreement” shall have the meaning ascribed to it in Section 4.04 and shall be in the form attached hereto as **Exhibit H**.

(o) “Initial Approval Date” shall have the meaning ascribed to it in Section 5.01(b).

(p) “Permitted Delay” shall have the meaning ascribed to it in Section 5.06.

(q) “Preliminary Plans” shall have the meaning ascribed to it in Section 3.01.

(r) “Project” shall mean the west campus phase of the redevelopment of the GE Campus as described in the Electric Works West Campus Proposal, to be developed on the Project Real Estate by Developer, as further described on **Exhibit C** hereto.

(s) “Project Real Estate” shall mean the real property upon which the Project shall be located within the EDA, as legally described on **Exhibit B** hereto.

(t) “Infrastructure Improvements” shall have the meaning ascribed to it in Section 4.05.

## **ARTICLE II** **MUTUAL ASSISTANCE**

Section 2.01 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the City, the adoption of such ordinances and resolutions by the City), 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.

## **ARTICLE III** **PROJECT DEVELOPMENT AND CONSTRUCTION AGREEMENTS**

Section 3.01 Project. Subject to the satisfaction of all terms and conditions contained herein, Developer shall develop, finance, construct, own and operate the Project upon the Project Real Estate as provided in this Agreement. Developer has prepared preliminary plans and specifications for the Project, which have been reviewed and approved by the City as attached hereto as **Exhibit D** (“Preliminary Plans”). Developer shall cause to be prepared

construction plans and specifications for the Project and submit the same to the City for its review and approval, which approval the City agrees shall not be withheld, conditioned or delayed, provided the same are substantially consistent with the Preliminary Plans (“Construction Plans”). All material changes to the Construction Plans shall be subject to review and approval by the City. The City agrees that such approval shall not be unreasonably withheld, conditioned or delayed, provided said changes are substantially consistent with the Preliminary Plans. City and Developer acknowledge and agree that the Project may be constructed in phases and that the Construction Plans for each phase shall be prepared by Developer and approved by City in accordance with this Section 3.01.

Section 3.02 Approvals. Developer shall, at Developer’s cost, obtain all zoning and development plan approvals and variances necessary for the development of the Project, including, but not limited to, the approval of any necessary encroachments upon public rights of way. Developer shall, at Developer’s cost, obtain all building permits necessary to construct the Project in accordance with the Construction Plans. The City agrees to provide assistance and guidance in the preparation of such petitions and applications as are necessary for the approvals and permits to construct the Project and the City agrees to support the Project before public bodies reviewing such petitions and applications based upon the approved Preliminary Plans and Construction Plans.

Section 3.03 Public Art Fund Contribution. Pursuant to the City of Fort Wayne Ordinance R-26-18, the Developer shall contribute to the City’s Public Art Fund if tax increment financing is provided to the Developer for the Project. The Developer’s contribution shall equal one percent (1%) of the total value of tax increment funds provided by the City for the benefit of the Developer, not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) (the “Contribution”). The Contribution schedule is detailed in Exhibit E attached hereto (“Public Art Fund Contribution Schedule”).

Section 3.04 Future Projects. The Electric Works West Campus Proposal contains Developer’s preliminary proposals for development of the balance of the GE campus known as the East campus (“Electric Works East Campus Proposal”) with a redevelopment and construction budget of Two Hundred Twenty-Six Million Dollars (\$226,000,000.00), which contemplates an additional Thirty-Five Million Dollars (\$35,000,000) in local public funds. In addition, Developer anticipates the need for additional public infrastructure improvements to support the Project and the Electric Works East Campus Proposal, as shown on Exhibit F attached hereto, at a cost estimated to range between Fifty-Nine Million Dollars (\$59,000,000.00) and Seventy-Six Million Dollars (\$76,000,000.00) (“Future Public Improvements”). Developer agrees to supplement and update the Electric Works East Campus Proposal and needs for public infrastructure, including updated information regarding the Developer’s primary development plans, budgets and requests for local public funds at least quarterly, on January 15, April 15, July 15 and September 15 until such time as the Project and the Electric Works East Campus Proposal have been completed. Notwithstanding the above, nothing in this Agreement shall be construed in any way to obligate City or any other public agency to provide any public funding beyond the conditional commitments set forth in Article IV of this Agreement.

Section 3.05 Other Obligations of the Developer. The Developer agrees to use its good faith efforts to employ qualified price competitive contracts from businesses located within northeast Indiana, and to use its good faith efforts to utilize qualified and competitive contractors and trade organizations located within northeast Indiana in the construction of the Project including minority owned and women owned business enterprises. Developer shall, at Developer's sole cost and expense, cause the Project to be constructed in compliance with applicable laws, regulations, codes and ordinances and in compliance with the Financial Assistance Agreement described in Section 4.04.

#### **ARTICLE IV**

#### **ECONOMIC DEVELOPMENT INCENTIVES**

Section 4.01 Economic Development Area. City shall take such actions as are necessary to establish an economic development area under applicable Indiana law, to be known as the Broadway District Economic Development Area ("EDA"), as shown and outlined on **Exhibit B-1** attached hereto, which shall include the Project Real Estate. City shall take such actions as are necessary to establish an allocation area within the EDA under applicable Indiana law, as also shown and outlined on **Exhibit B-1** attached hereto ("Allocation Area")

Section 4.02 Tax Abatement. Subject to further proceedings required by law, the City shall use good faith efforts to support the approval of a one hundred percent (100%), ten (10) year abatement of real and personal property taxes for the Project consistent with the schedule set forth on **Exhibit G** (the "Abatement Schedule"), to the extent the same is available pursuant to state law and local ordinances. In order to facilitate the incentive described in this Section 4.02, Developer shall file such necessary documents and applications, including, without limitation, a statement of benefits, as required under Indiana law, in order to qualify for the deductions referenced in this Section 4.02. Developer hereby pledges and agrees to make, or to cause to be made, all property tax payments when due with respect to the existing land and improvements on the Project Real Estate during the Abatement Schedule and thereafter. During the Abatement Schedule, Developer agrees to pay any annual fees required to be paid by Developer as a result of the abatement as required by state law and local ordinance, as set forth on the Abatement Schedule.

Section 4.03 Public Funding. City shall seek the public and governmental approvals necessary to generate Sixty-Two Million and No/100 Dollars (\$62,000,000.00) of public funding for use in the Project ("Public Funding"), including, but not limited to, the authorization of the issuance of City of Fort Wayne Redevelopment Authority Lease Revenue Bonds (Electric Works West Campus Project) ("Bonds"). City shall seek the approvals necessary to secure the pledge of funds required to generate the Public Funding, including, but not limited to, the funding necessary to pay the principal and interest pursuant to the Bonds.

Section 4.04 Neighborhood Development Corporation. City shall organize a neighborhood development corporation to be known as the "Broadway District Development Corporation" for the purpose of constructing, rehabilitating and repairing commercial properties within the EDA, as provided in Indiana Code 36-7-14-12.2(25)(B) ("BDDC"). Subject to the terms and conditions set forth in this Agreement, City shall make a grant of all Public Funding, including, but not limited to, the proceeds of the sale of the Bonds to the BDDC, as provided in

Indiana Code 36-7-14-12.2(25)(B), pursuant to a Grant Agreement with the BDDC in the form attached hereto as **Exhibit H**. The BDDC shall provide financial assistance to the Project for construction, rehabilitation and repair of commercial property within the Project Real Estate located within the EDA, as provided in Indiana Code 36-7-14-12.2(25)(B), pursuant to a Financial Assistance Agreement with the Developer in the form attached hereto as **Exhibit I**.

Section 4.05 **Infrastructure Improvements**. City agrees to develop and construct or install certain infrastructure improvements within the EDA to support the Project and additional development in the EDA, as generally described on **Exhibit J** attached hereto (the “Infrastructure Improvements”). The timing of construction of the Infrastructure Improvements will be coordinated with construction of the Project by the Developer with the parties attempting, if and to the extent financially feasible or physically possible, simultaneous completion.

Section 4.06 **Other Federal and State Incentives**. City shall provide all reasonable and appropriate support to Developer to the extent Developer applies for additional federal and state development incentives, including but not limited to New Market Tax Credits, Historic Preservation Tax Credits or other similar federal and state development incentive programs. As of the Effective Date, Developer has applied for and received an allocation of federal New Market Tax Credits from the Fort Wayne New Markets Revitalization Fund in the amount of Twelve Million and No/100 Dollars (\$12,000,000.00) and an allocation of Historic Tax Credits in the amount of Thirty Million and No/100 Dollars (\$30,000,000.00).

## **ARTICLE V** **DEVELOPMENT TERMS**

### Section 5.01 **Timing of Development**.

(a) **Approval of Preliminary Plans**. Developer has provided to City Preliminary Plans for the Project as described on **Exhibit D**, and City has approved said Preliminary Plans.

(b) **Initial Approval Date**. From and after the Effective Date, City shall seek the necessary governmental approvals required to provide the economic incentives to support the Project set forth in **Article IV** of this Agreement on or before August 31, 2018 (“Initial Approval Date”). In the event that City is not able to obtain the necessary governmental approvals on or before the Initial Approval Date, either City or Developer shall have the right to terminate this Agreement and neither party shall have any further liability pursuant hereto. Developer agrees to diligently pursue the balance of the financing necessary for the Project as shown on the Financial Projections and shall submit to City commitments to finance development of the Project from a qualified private financial institution in the amounts shown on the Financial Projections on or before the Initial Approval Date. In the event Developer fails to provide such evidence of a commitment to finance construction prior to the Initial Approval Date, either City or Developer shall have the right to terminate this Agreement and neither party shall have any further liability to the other pursuant hereto.

(c) Approval of Construction Plans. From and after the Initial Approval Date, Developer shall complete the Construction Plans as soon as possible under the circumstances, but in no event later than ninety (90) days after the Initial Approval Date. Upon completion of the Construction Plans, Developer shall request the approval of the Construction Plans by City no later than ninety (90) days after the Initial Approval Date. City agrees that its approval of the Construction Plans shall not be unreasonably withheld, conditioned or delayed, provided the Construction Plans are substantially consistent with the Preliminary Plans approved by City for the Project.

Section 5.02 Fund Closing. Upon completion of the conditions set forth in Section 5.03 below, City shall collect the Public Funding and cause the Bonds to be marketed, sold and closed in compliance with applicable state and federal laws. It is the express intent of the parties that the Fund Closing shall occur simultaneously with the closing of all of the Developer's equity, financing and all other funding as shown on the Financial Projections. Upon receipt of the Public Funding, including, but not limited to, the proceeds of the Bonds, the City shall cause the transfer of the Public Funding to the BDDC pursuant to the terms and conditions of the Grant Agreement described in Section 4.04 and shall cause the BDDC to make the proceeds available to the Developer pursuant to the terms and conditions of the Financial Assistance Agreement described in Section 4.04 ("Fund Closing").

Section 5.03 Conditions to Fund Closing. Developer and City agree that the Fund Closing is subject to the satisfaction (or waiver by both parties) of the following contingencies and conditions prior to December 31, 2018, and if not so satisfied then either City or Developer may terminate this Agreement without liability to the other.

(a) Developer shall have provided to City commercially reasonable evidence that the Developer has conducted an environmental inspection of the Project Real Estate along with copies of all reports relating to said inspections and any environmental conditions or contamination found on the Project Real Estate.

(b) Developer shall have provided to City commercially reasonable evidence that it has a plan to remediate environmental conditions and contaminants found pursuant to the environmental inspection that is acceptable to City and (i) will be in compliance with the terms and conditions of all applicable federal, state and local laws regarding the remediation of such contaminants, including, but not limited to, compliance with the programs for remediation of such contaminants established by the Indiana Department of Environmental Management; and (ii) will permit the development of the Project consistent with the Electric Works West Campus Proposal without reducing the impact forecasted by the Impact Study and within the Financial Projections provided by Developer.

(c) Developer shall have provided to City commercially reasonable evidence that the Project can be redeveloped and constructed at a cost which is consistent with Developer's Financial Projections, including, but not limited to, firm bids for construction of the Project consistent with Developer's Financial Projections.

(d) Developer shall have provided to City commercially reasonable evidence that two hundred fifty thousand (250,000) square feet of the space available for lease within the Project is subject to a written lease or letter of intent executed by the Developer and a prospective tenant. The written leases and letters of intent shall be (i) with prospective tenants that are credit worthy in the reasonable opinion of City; (ii) provide a lease term reasonably acceptable to City; (iii) contain commercially reasonable terms and conditions; and (iv) permit only uses which are consistent with the Electric Works West Campus Proposal and designed to achieve the Financial Projections.

(e) Developer shall have provided to City a strategic market analysis, to be prepared by RCLCO, Inc., which is acceptable to City.

(f) City shall have received a supplemental report from the Allen County-Fort Wayne Capital Improvement Board of Managers prepared by RCLCO, Inc., which shall provide an analysis of the potential tenants of the Project and an analysis of the Impact Study.

(g) Developer shall have demonstrated to the satisfaction of City that the results projected in the Impact Study (including, but not limited to, the creation of jobs, the increase in wage rates and the generation of local tax revenues) are likely to occur with the completed Project within a time frame acceptable to City.

(h) Developer shall have provided to City a strategic parking strategy and implementation plan for the Project along with commercially reasonable evidence that said plan can be completed and is adequate to support the Project.

(i) City shall have obtained from all necessary governmental bodies or third parties all necessary final approvals and authorizations for the issuance of the Bonds and City shall be prepared to close upon the Bonds.

(j) Developer shall have provided to City commercially reasonable evidence that Developer has obtained all necessary approvals, permits, licenses and other supporting agreements for the construction of the Project upon the Project Real Estate pursuant to this Agreement.

(k) Developer shall have obtained the approval of the Construction Plans by City as provided by this Agreement.

(l) Developer shall be prepared to consummate the closing on all state and federal development incentives utilized by Developer to finance the Project in a manner consistent with the Financial Projections, including, but not limited to, Indiana DINO credits, New Market Tax Credits and Historic Preservation Tax Credits. It is the express agreement of the parties that the Fund Closing shall occur simultaneously with the closing of the state and federal incentives.

(m) Developer shall be prepared to consummate the closing on all necessary private construction financing utilized by Developer to finance the Project in a manner consistent with the Financial Projections. It is the express agreement of the parties that

the Fund Closing shall occur simultaneously with the closing of Developer's private construction financing.

(n) Developer shall be prepared to consummate the closing on all contributions to the Developer's equity in a manner consistent with the Financial Projections. It is the express agreement of the parties that the Fund Closing shall occur simultaneously with the contributions to Developer's equity.

(o) City and BDDC shall have executed the Grant Agreement.

(p) Developer and BDDC shall have executed the Financial Assistance Agreement.

(q) Developer shall have prepared, executed and recorded the Declaration described in Section 5.07.

Section 5.04 Project Construction. Developer shall diligently pursue all applicable legal and/or regulatory permits, licenses or approvals as are legally required to commence construction of the Project from any federal, state or local commission or authority having jurisdiction over the Project from and after the Effective Date. Developer agrees to commence construction of the Project as soon as possible after the Fund Closing Date. In the event Developer has not commenced and diligently pursued construction of the Project within sixty (60) days of the Fund Closing Date, through no fault of City, in addition to any other rights that may accrue to the City pursuant to this Agreement, City shall have the right to terminate this Agreement.

Section 5.05 Legal Compliance and Completion. Developer acknowledges and agrees that compliance with all applicable laws, regulations, codes and ordinances with respect to the development, construction and operation of the Project shall be the sole responsibility of Developer. Developer agrees to commence and subsequently complete, in all material respects, construction of the Project as soon as reasonably possible after the Development Closing, but in no event later than thirty-six (36) months from the Fund Closing, subject to permitted delays provided for in Section 5.06 hereof.

Section 5.06 Permitted Delays. Whenever performance is required of any Party, such Party shall act in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar cause beyond the reasonable control of a Party (other than financial reasons), including actions or approvals required from public or other governmental bodies, then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances ("Permitted Delays", and in the singular form, each a "Permitted Delay"). If (i) there should arise any Permitted Delay for which Developer or City are entitled to delay its performance under this Agreement, and (ii) Developer or City anticipates that the Permitted Delay will cause a delay in its performance under this Agreement, then Developer or City, as the case may be, agree to provide written notice to the other Party of the nature and the anticipated length of such delay.

Section 5.07 Declaration. Prior to the Fund Closing, Developer shall prepare a form of Declaration containing private restrictions governing the development of the Project Real Estate in a form subject to City approval, which approval City agrees shall not be withheld, conditioned or delayed (“Declaration”). The Declaration shall be executed and recorded at the Development Closing. The Declaration shall include restrictions prohibiting the use of any part of the Project for the following:

- (a) Adult book stores;
- (b) Drug paraphernalia stores or “head shops”;
- (c) Tattoo parlors;
- (d) “Adult Entertainment” establishments;
- (e) Amusement activities creating noise or other happenings disruptive to business activities during business hours;
- (f) “Fast-food”- type restaurants, such as McDonald’s, Subway, and the like (but “quick serve”-type restaurants such as Panera Bread and Chipotle Grill, or coffee shops, such as Starbucks, would be permitted);
- (g) Casinos; or
- (h) Any other uses which are prohibited by any of the financing vehicles utilized by Developer to finance the development and construction of the Project, including, but not limited to, New Markets Tax Credits and Historic Preservation Tax Credits.

Section 5.08 Development Fees. Developer covenants and agrees that the Developer shall not collect, earn or be entitled to the payment of a development fee or any other form of success fee, management fee, earned equity or the like, including, but not limited to, the development fee set forth in the Financial Projections (“Development Fees”), until the Project has stabilized as described on **Exhibit K**. Once the Project has stabilized as set forth on **Exhibit K** and for so long as the Project remains stabilized as set forth on **Exhibit K**, Developer shall be deemed to earn and shall be entitled to withdraw from the Project Twenty-Five Percent (25% ) of the Development Fees annually until the Development Fees are paid in full. In any year in which the Developer intends to withdraw a portion of the Development Fees from the Project, Developer shall provide thirty (30) days’ prior written notice to City, with commercially reasonable evidence that the Project has stabilized as set forth on **Exhibit K**. In the event that the Project is no longer stabilized, then the Developer’s ability to earn and withdraw Development Fees from the Project shall be suspended until the date the Project is again stabilized as set forth on **Exhibit K** and remains so for a period of at least one hundred eighty (180) days.

## **ARTICLE VI** **AUTHORITY**

Section 6.01 Actions. Each of the parties hereto represents and warrants that it has taken or will use good faith efforts to take (subject to the Developer's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable each to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part as provided by the terms and provisions hereof.

Section 6.02 Powers. Subject to the conditions described herein and subject to such procedures as may be required by law, each party represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its obligations under this Agreement, including, but not limited to, the right, power and authority, subject to such procedures as may be required by law, to carry out the terms and conditions of this Agreement.

## **ARTICLE VII** **GENERAL PROVISIONS**

Section 7.01 Indemnity; No Joint Venture or Partnership. The Developer covenants and agrees at its expense to pay and to indemnify and save the City and its 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 affiliates thereof) development activities with respect to the Project unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the City or other Indemnitees. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the City and the Developer or any affiliate thereof. The City covenants and agrees at its expense to pay and to indemnify and save the Developer and its officers and agents (the "Developer 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 City's (and/or any affiliates thereof) activities with respect to the Project unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the Developer or other Developer Indemnitees.

Section 7.02 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 7.03 Breach. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the non-breaching party shall notify the breaching party in writing, specifying the alleged breach and demanding a cure. No breach of this Agreement may be found to have occurred if the breaching party has commenced a cure of the alleged breach within thirty (30) days of the receipt of such notice and diligently proceeds to cure said alleged breach. If after said notice, the breaching party fails to cure the alleged breach within a reasonable time, the same shall constitute a breach of this

Agreement. In the event of a breach by either party, the non-breaching party may terminate this Agreement and recover from the breaching party the direct out-of-pocket expenses incurred by the non-breaching party as a result of such breach, including attorney fees and court costs, which shall be the non-breaching party's sole remedy at law or in equity.

Section 7.04 Performance Commitment. As further assurance of Developer's commitment to complete the Project pursuant to the terms of this Agreement, recovery of damages through the exercise by the City of its remedies set forth above shall be secured by an Irrevocable Letter of Credit in substantially the form attached hereto as **Exhibit L** and obtained from a financial institution reasonably acceptable to the City in the amount of Five Million and No/100 Dollars (\$5,000,000.00) (the "Letter of Credit"), which shall be issued as of the date of the Fund Closing. Developer shall keep the Letter of Credit in place until the new construction portions of the Project are under roof and watertight and the rehabilitated portions of the Project have been rehabilitated and improved to a state in which they are ready for tenants to occupy and commence construction of tenant improvements as certified by Developer's general contractor and, upon City's receipt of such certification, Developer shall no longer be required to maintain the Letter of Credit.

Section 7.05 Right of First Refusal. Developer hereby grants and conveys to City a right of first refusal to acquire the Project Real Estate which shall commence on the Effective Date and expire on the Fund Closing. In the event Developer elects to sell the Project Real Estate at any time prior to the Fund Closing, Developer shall first notify City in writing of its intent to sell and provide City with a copy of the fully-executed agreement of sale ("Offer Notice"). City shall have a period of thirty (30) days within which to elect to purchase the Project Real Estate upon the terms and conditions set forth on the Offer Notice. In the event that City does not elect to purchase the Project Real Estate pursuant to the Offer Notice, then the provisions of this Section 7.05 shall expire and be of no further force or effect upon the consummation of the purchase set forth in the Offer Notice, provided, however, that Section 7.12 shall remain applicable with regard to the rights and obligations of this Agreement. In the event the City does elect to purchase the Project Real Estate pursuant to the Offer Notice, City shall proceed to purchase the Project Real Estate in accordance with the terms and conditions contained in the Offer Notice. Developer and City shall prepare, execute and record in the Office of the Recorder for Allen County, Indiana, a memorandum of the provisions contained in this Section 7.05.

Section 7.06 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties and by the execution of said amendment by the parties or their successors in interest.

Section 7.07 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions between the parties hereto relative to the subject matter hereof and is a full integration of the agreement of the parties. In the event either party elects to terminate this Agreement as permitted herein, City and Developer acknowledge and agree that they shall in all events be responsible for their own costs, expenses and fees incurred in fulfilling their obligations pursuant to this Agreement and, upon such termination, they shall have no further rights or obligations pursuant to this Agreement.

Section 7.08 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 7.09 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

Section 7.10 Notices. Any notice, consent or waiver required or permitted to be given or served by either party to this Agreement shall be in writing and either (1) delivered personally to the other party, (2) mailed by certified or registered mail, return receipt requested, or (3) sent via nationally recognized overnight courier addressed as follows, and shall be deemed given when personally delivered (or upon refusal to accept delivery), or the third (3<sup>rd</sup>) day after deposit in the mail, or the first (1<sup>st</sup>) day after sending by overnight courier.

To the Developer:      Broadway Redevelopment Partners LLC  
   c/o Joshua Parker  
   2400 Boston Street, Suite 404  
   Baltimore, Maryland 21224  
   Telephone: 919-688-9054  
   Email: [jparker@crossstpartners.com](mailto:jparker@crossstpartners.com)

With a copy to:              Peter G. Mallers  
   Beers Mallers Backs & Salin, LLP  
   110 West Berry Street, Suite 1100  
   Fort Wayne, IN 46802  
   Telephone: 260.426.9706  
   Facsimile: 260.420.1314  
   Email: [pgmallers@beersmallers.com](mailto:pgmallers@beersmallers.com)

To the City:                      The City of Fort Wayne, Indiana  
   Department of Redevelopment  
   Attention: Executive Director  
   Citizen's Square  
   200 East Berry Street, Suite 320  
   Fort Wayne, IN 46802  
   Telephone: 260-427-2323  
   Facsimile: 260-427-1375

With a copy to: Jon A. Bomberger  
Faegre Baker Daniels LLP  
110 W. Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Telephone: 260-424-8000  
Facsimile: 260-460-1700  
Email: jon.bomberger@faegrebd.com

Either party may, from time to time, change its notice address by notice to the other in accordance with the provisions of this section.

Section 7.11 Counterparts. Facsimile or emailed signatures appearing hereon shall be deemed an original and this Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

Section 7.12 Assignment. The rights and obligations contained in this Agreement may not be assigned by the Developer or any affiliate thereof without the express prior written consent of the City.

Section 7.13 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the City has approved or ratified this Agreement at the appropriate public meeting(s).

*[Remainder of page intentionally blank. Signature page follows.]*

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

BROADWAY REDEVELOPMENT PARTNERS  
LLC, a Delaware limited liability company

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

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

Its: \_\_\_\_\_

RTM VENTURES LLC,  
a Delaware limited liability company

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

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

Its: \_\_\_\_\_

**“Developer”**

THE FORT WAYNE REDEVELOPMENT  
COMMISSION

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

Christopher Guerin, President

**“City”**

**EXHIBIT A**  
**FINANCIAL PROJECTIONS**

**EXHIBIT B**

**LEGAL DESCRIPTION OF PROJECT REAL ESTATE**

**EXHIBIT B-1**

**ECONOMIC DEVELOPMENT AREA**  
**AND ALLOCATION AREA**

**EXHIBIT C**  
**PROJECT DESCRIPTION**

**EXHIBIT D**  
**PRELIMINARY PLANS**

**EXHIBIT E**

**PUBLIC ART FUND CONTRIBUTION SCHEDULE**

# EXHIBIT F

## FUTURE PUBLIC IMPROVEMENTS

ELECTRIC WORKS  
Potential Cost Ranges for TIF-eligible Projects  
DRAFT August 9, 2017 - CONFIDENTIAL

GRAV CELLS = Calculation

Total All Projects		Low	Average	High
Total All Projects		\$5,818,500	\$6,689,250	\$7,617,000

  

Connectivity	Project #	Project Name	Size (in sf)	Unit Cost/ft (low)	Unit Cost/ft (Average)	Unit Cost/ft (High)	Unit Cost/ft (High)	Area Cost (low)	Area Cost (Average)	Area Cost (High)	
Streets	1	Jefferson Deceleration Area	51,000	\$15	\$20	\$25	\$25	\$765,000	\$1,020,000	\$1,275,000	
	2	New Road & Trail adjacent to 4th St.	76,000	\$20	\$23	\$25	\$25	\$1,520,000	\$1,770,000	\$1,900,000	
	3	S. River Greenway Connector - Taylor St.									
	3a	Electric Ave. to Broadway Bike lanes	2,700	\$100	\$175	\$250	\$250	\$270,000	\$472,500	\$675,000	
	3b	Broadway to Fairfield Bike lanes	1,900	\$100	\$175	\$250	\$250	\$190,000	\$332,500	\$475,000	
	4	N. River Greenway Connector - College St.									
	4a	Washington St. Bike Lane	1,100	\$100	\$175	\$250	\$250	\$110,000	\$192,500	\$275,000	
	4b	College St. Bike Lane	2,000	\$100	\$175	\$250	\$250	\$200,000	\$350,000	\$500,000	
	Total "Connectivity"								\$3,095,000	\$4,077,500	\$5,100,000
	Total "Streets"								\$800,000	\$960,000	\$1,000,000
	Phase I - in budget										
	Total "Streets"								\$14,236,000	\$16,599,500	\$18,963,000
Total "Streets"								\$7,569,000	\$8,410,000	\$9,251,000	
Phase I - in budget											
Total "Streets"								\$3,556,000	\$4,937,000	\$4,316,000	
Phase I - in budget											
Total "Streets"								\$660,000	\$783,750	\$907,500	
Phase I - in budget											
Total "Streets"								\$1,967,500	\$2,175,000	\$2,392,500	
Phase I - in budget											
Total "Streets"								\$840,000	\$930,000	\$1,020,000	
Phase I - in budget											
Total "Streets"								\$837,000	\$930,000	\$1,020,000	
Phase I - in budget											
Total "Streets"								\$15,419,500	\$17,165,790	\$18,912,000	
Phase I - in budget											
Total "Streets"								\$15,419,500	\$17,165,790	\$18,912,000	
Phase I - in budget											

Project #	Project Name	Size (in sf)	Unit Cost/sf (low)	Unit Cost/sf (average)	Unit Cost/sf (high)	Area Cost (low)	Area Cost (average)	Area Cost (high)	%
<b>Rail, Rail Bridges, &amp; Underpasses</b>									
16	Union St. Ped. Underpass/Tunnel	3,600	\$55	\$63	\$70	\$198,000	\$225,000	\$252,000	%
17	Broadway/CSX Underpass	0	\$0	\$0	\$0	\$0	\$0	\$0	%
18	College St. Underpass	0	\$0	\$0	\$0	\$0	\$0	\$0	%
19	Fairfield Underpass/Street Lowering	0	\$0	\$0	\$0	\$0	\$0	\$0	%
<b>Total "Rail, Rail Bridges, &amp; Underpasses":</b>						<b>\$198,000</b>	<b>\$225,000</b>	<b>\$252,000</b>	
<b>Buildings</b>						<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
20	GE CLUB	0	\$0	\$0	\$0	\$0	\$0	\$0	*TB
21	Food Hall	0	\$0	\$0	\$0	\$0	\$0	\$0	*TB
<b>Total "Buildings":</b>						<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
<b>Utilities</b>						<b>\$1,580,000</b>	<b>\$1,975,000</b>	<b>\$2,370,000</b>	
22	Mitigate Air Impacts - Parking	158,000	\$10	\$13	\$15	\$1,580,000	\$1,975,000	\$2,370,000	
<b>Total "Utilities":</b>						<b>\$1,580,000</b>	<b>\$1,975,000</b>	<b>\$2,370,000</b>	
<b>Parking</b>						<b>\$24,380,000</b>	<b>\$28,646,500</b>	<b>\$30,475,000</b>	
23	Parking Deck 'A'	1,219	\$20,000	\$23,500	\$25,000	\$24,380,000	\$28,646,500	\$30,475,000	
<b>Total "Parking":</b>						<b>\$24,380,000</b>	<b>\$28,646,500</b>	<b>\$30,475,000</b>	
<b>Total All Projects</b>						<b>\$58,668,500</b>	<b>\$66,689,250</b>	<b>\$76,072,000</b>	

\*% - Lump Sum - Budget to be informed by recent comparable underpass improvement projects.  
 \*TB - To be determined

**EXHIBIT G**  
**ABATEMENT SCHEDULE**

**EXHIBIT H**  
**GRANT AGREEMENT**

**EXHIBIT I**  
**FINANCIAL ASSISTANCE AGREEMENT**

**EXHIBIT J**  
**INFRASTRUCTURE IMPROVEMENTS**

**EXHIBIT K**

**DEFINITION OF PROJECT STABILIZATION**

[To be determined.]

**EXHIBIT L**

**FORM OF IRREVOCABLE LETTER OF CREDIT**

**PRO FORMA LETTER OF CREDIT**

City of Fort Wayne  
Citizen's Square  
200 East Berry Street  
Fort Wayne, IN 46802  
Attn: Office of the Mayor

The Redevelopment Commission of the  
City of Fort Wayne, Indiana  
Citizen's Square  
200 East Berry Street, Room 320  
Fort Wayne, IN 46802  
Attn: Executive Director

Re: Letter of Credit No.

Gentlemen:

We hereby establish our Irrevocable Letter of Credit and authorize you to draw on us at sight for the account of \_\_\_\_\_ (the "Applicant"), the aggregate amount of Five Million and No/100 Dollars (\$5,000,000.00).

Funds under this Letter of Credit are available to the beneficiary hereof as follows:

Any and all of the sums hereunder may be drawn down at any time and from time to time from and after the date hereof by the City of Fort Wayne ("Beneficiary") when accompanied by this Letter of Credit and a written statement signed by an authorized signatory of Beneficiary, certifying that Beneficiary is entitled to make such drawing pursuant to the terms and conditions of the Economic Development Agreement by and between Applicant and Beneficiary dated \_\_\_\_\_, 2018 (the "Development Agreement"), together with a notarized certification by any such individual representing that such individual is authorized by Beneficiary to take such action on behalf of Beneficiary, and a sight draft drawn on \_\_\_\_\_ Bank (INSERT BANK ADDRESS) executed and endorsed by such individual.

The amount of each draft must be endorsed on the reverse hereof by the negotiating bank. We hereby agree that this Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above. All drafts must be marked: "Drawn under \_\_\_\_\_ Bank Letter of Credit No. (LOC #) \_\_\_\_\_, issued on \_\_\_\_\_, 2018."

This Letter of Credit is effective immediately and shall expire at 5:00 P.M., Eastern Standard Time, on \_\_\_\_\_.

Our obligation under this Letter of Credit shall not be affected by any circumstances, claims or defense, real or personal, of any party as to the enforceability of the Development Agreement between Beneficiary and Applicant, or the validity of Beneficiary's claim, it being understood that our obligation shall be that of a primary obligor and not that of a surety, guarantor, or accommodation maker.

Applicant shall pay all costs of, or in connection with, this Letter of Credit, including without limitation, any fees associated with the transfer or assignment of this Letter of Credit by Beneficiary.

Unless otherwise stated herein, this Standby Letter of Credit is issued subject to the International Standby Practices ("ISP98") (1998 Revision) International Chamber of Commerce, Publication No. 590. This Letter of Credit sets forth in full the terms of our undertaking, and such terms shall not in any way be modified, amended, limited, discharged, or terminated except by written approval, signed by authorized representatives of Beneficiary and the undersigned on or before the Expiration Date.

Very truly yours