

ECONOMIC DEVELOPMENT AGREEMENT

Between and Among

City of Franklin Redevelopment Commission

City of Franklin Board of Public Works and Safety

and

Maurice Fred Linville and Helen Ann Linville

The Brookhaven Drive Project

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into effective this ____ day of _____, 2019 by and among the City of Franklin, Indiana, by and through its Board of Public Works and Safety (the “City”), the City of Franklin, Indiana Redevelopment Commission (the “RDC”), as the governing body of the City of Franklin, Indiana Redevelopment District, and Maurice Fred Linville and Helen Ann Linville (the “Linvilles”), and each of them.

WITNESSETH:

WHEREAS, the Linvilles and the City have proposed to exchange certain real property owned by each of them in order to further development within the City; specifically, the Linvilles own a certain parcel of real property described in the attached Exhibit “A”, and more generally described as “Brookhaven Drive”, and the City owns a certain parcel of real property described in the attached Exhibit “B”, and more generally described as the “Drainage Area”;

WHEREAS, the City intends to construct, maintain, and operate a new public right-of-way on the real property known as Brookhaven Drive, and the Linvilles intend to own and farm the Drainage Area, which is adjacent to other real property they currently own and farm, both of which are the “Project”.

WHEREAS, the RDC intends to assist in the funding of Brookhaven Drive, including, as necessary, (1) paying for the transaction costs and incidental expenses associated with the real estate exchange, including the fees and expenses related to the preparation and execution of easements and deeds and related documentation, and (2) the design, construction, and inspection of Brookhaven Drive.

WHEREAS, the RDC and City have determined that the completion of Brookhaven Drive will promote the redevelopment and economic development of the unit, is of utility and benefit, and is in the best interests of the unit's residents, and, therefore, the RDC and the City, subject to compliance with all applicable statutory requirements, desire to contract with the Linvilles to complete the Project; and

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 acknowledged, the parties agree as follows:

Article I. RECITALS

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.

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 RDC and the City, the adoption of resolutions), copies of which will be provided to all parties, 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

Section 3.01 Real Property Exchange. Subject to compliance with all applicable statutory requirements, (1) the Linvilles will transfer Brookhaven Drive (through the RDC) to the City; and (2) the City will transfer the Drainage Area (through the RDC) to the Linvilles.

Section 3.02 Parties' Rights and Duties. The parties' rights and duties will be as follows, all subject to compliance with applicable statutory requirements:

- (a) The Linvilles will grant immediately upon their execution of this Agreement a temporary construction easement to the RDC and City to permit either to enter onto the property for purposes of constructing Brookhaven Drive, the substantially complete form of which is attached as Exhibit "C" – Temporary Construction Easement.
- (b) The RDC will obtain two (2) independent appraisals of Brookhaven Drive and two (2) independent appraisals of the Drainage Area.
- (c) The RDC will pass a resolution authorizing the acquisition of Brookhaven Drive from the Linvilles and then the transfer of same to the City, subject to compliance with statutory procedures governing the disposal of RDC real property.

- (d) The RDC will pass a resolution authorizing the acquisition of the Drainage Area from the City and then the transfer of same to the Linvilles, subject to compliance with statutory procedures governing the disposal of RDC real property.
- (e) The RDC will then acquire the Drainage Area from the City and Brookhaven Drive from the Linvilles (free and clear of all claims and liens, as evidenced by an owner's policy of title insurance, at the RDC's expense), and will then transfer Brookhaven Drive to the City and the Drainage Area to the Linvilles.
- (f) The City, working in conjunction with and with funding from the RDC, will design, construct, inspect, maintain, and operate Brookhaven Drive as public right-of-way.

Section 4.03 Taxes. The responsibility for all taxes assessed on Brookhaven Drive will be assumed by the RDC, until transfer of same to the City. The responsibility for all taxes assessed on the Drainage Area will be assumed by the Linvilles, until transfer of same to another entity.

Section 4.04 Closing Costs / Miscellaneous Expenses. The parties agree that the value of crops in the field, transaction costs, closing costs, taxes, and related miscellaneous expenses should be evenly borne between the Linvilles and the City, and the RDC will satisfy any differences accordingly in order to maintain an even exchange between the City and the Linvilles.

Article V. AUTHORITY

Section 5.06 Actions. The parties represent and warrant that they have taken or will take (subject to further proceedings required by law and the other parties' performance of their agreements and obligations hereunder) such action(s) as may be required and necessary to enable them to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on their part to be kept and performed as provided by the terms and provisions hereof.

Section 5.07 Powers. The parties represent and warrant that they have full lawful right, power and authority, under currently applicable law, to execute and deliver and perform their obligations under this Agreement.

Article VI. GENERAL PROVISIONS

Section 6.01 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 6.02 Permitted Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of

acts of God (such as weather), 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 causes beyond the reasonable control of a party (such as unforeseen delays in obtaining licensing or permits, but other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which a party is entitled to delay its performance under this Agreement and (ii) such party anticipates that such permitted delay will cause a delay in its performance under this Agreement, then such party agrees to provide written notice to the other parties of this Agreement of the nature and the anticipated length of such delay. An extension of time for a permitted delay will not be unreasonably contested, denied, or withheld by either party.

Section 6.03 Breach. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach with sixty (60) days of the receipt of such notice, the non-breaching party may seek any remedy available at law or equity, subject however to the compulsory non-binding mediation provided below.

Section 6.04 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of the RDC and City approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

Section 6.05 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

Section 6.06 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 6.07 Construction and Interpretation of Agreement / Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana. The parties agree that they and their attorneys have each reviewed this Agreement, and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party or parties shall not be employed in the interpretation of this Agreement.

Section 6.08 Waiver Ineffective. No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or have any force or effect unless made in writing and signed by the parties.

Section 6.09 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To The Linvilles:	Mr. and Mrs. Fred and Helen Linville 2504 North Graham Road Franklin IN 46131
To the RDC:	Franklin Redevelopment Commission 70 East Monroe Street Franklin, IN 46131
To the City:	City of Franklin, Indiana Attn: Mayor's Office 70 East Monroe Street Franklin IN 46131

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. In the event notice delivered by registered mail is refused or otherwise undeliverable, said notice may be delivered by regular mail. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 6.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 6.11 Assignment / Transfer. The rights and obligations contained in this Agreement may not be assigned by the parties, or any affiliate thereof, without the express prior written consent of the other parties.

Section 6.12 No Third-Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third-party.

Section 6.13 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the RDC and City have approved or ratified this Agreement at a public meeting.

Section 6.14 Submission of Disagreements to Mediation. In the event the parties disagree as to any material matter (such as, but not limited to, whether a default has occurred, whether one party has a duty to act or a duty to refrain from acting, or whether an ambiguity exists as to the scope and terms of the parties' agreements), the dispute will be submitted to non-binding mediation under the Indiana Rules of Alternative Dispute Resolution.

Section 6.15 No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the RDC, the City, and the Linvilles, or any affiliates thereof. Neither RDC, the City, nor the Linvilles are the agent of the other.

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

City of Franklin - Redevelopment Commission

By: _____
Robert D. Heuchan, President

By: _____
Brian J. Deppe, Secretary

Mr. and Mrs. Linville

By: _____
Maurice Fred Linville

By: _____
Helen A. Linville

City of Franklin, Indiana - Board of Public Works and Safety

By: _____
Steve Barnett, Mayor

By: _____
Bob Swinehamer, Member

By: _____
Lisa Jones, Member

Attest: _____
Jayne W. Rhoades, Clerk-Treasurer

Exhibit "A" – Brookhaven Drive

Part of the Northeast quarter of Section 11, Township 12 North, Range 4 East, Franklin Township, Johnson County, Indiana described as follows:

Commencing at the Northeast corner of said quarter; thence South 00 degrees 06 minutes 07 seconds East along the East line of said quarter a distance of 1816.17 feet to the Place of Beginning; thence South 00 degrees 06 minutes 07 seconds East along said East line a distance of 60.00 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 1225.13 feet; thence South 83 degrees 43 minutes 22 seconds West a distance of 74.40 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 90.97 feet to the East line of Commerce Parkway per Instrument Number 2016-001380 as recorded in the Office of the Recorder of Johnson County, Indiana; thence North 00 degrees 00 minutes 10 seconds West along said East line a distance of 68.14 feet; thence South 90 degrees 00 minutes 00 seconds East a distance of 1389.94 feet to the Place of Beginning.

Containing 1.938 Acres, more or less

Exhibit "B" – Drainage Area

Part of the Northwest quarter of Section 11 and part of the Southwest quarter of section 2, all in Township 12 North, Range 4 East, Franklin Township, Johnson County, Indiana described as follows:

Commencing at the Northeast corner of said Northwest Quarter; thence South 88 degrees 36 minutes 19 seconds West, along the North line of said Northwest Quarter, a distance of 1073.47 feet to the Place of Beginning; thence South 01 degree 29 minutes 07 seconds East a distance of 224.37 feet; thence South 89 degrees 15 minutes 19 seconds West a distance of 306.69 feet to the approximate center of the H.O. Canary Open Ditch; thence North 04 degrees 37 minutes 16 seconds West along the approximate center of said Ditch a distance of 1258.67 feet to the South line of a transmission line easement in favor of PSI Energy; thence North 55 degrees 36 minutes 42 seconds East, along said South line, a distance of 283.08 feet; thence North 88 degrees 30 minutes 43 seconds East a distance of 137.85 feet; thence South 01 degree 29 minutes 07 seconds East a distance of 1190.15 feet to the Place of Beginning.

Containing 10.761 acres, more or less.

Parcel Numbers.: 41-08-02-033-015.001-009 and 41-08-11-021-002.000-009

Exhibit "C" – Temporary Construction Easement

The undersigned, as Grantors, convey and grant to the City of Franklin, Indiana (the "City"), by and through its Board of Public Works and Safety, as Grantee, and to its assigns, a temporary, exclusive construction easement over, under, in, along, across, and upon certain real property (the "Property") owned by the Grantors, as more specifically described in the attached Exhibit "A" – Property Description, for use in the initial construction and installation of the improvements and other construction purposes reasonably related to the initial construction of a new public right-of-way, together with the following rights granted to Grantee: (i) the right to stage and store vehicles, construction machinery, equipment, materials and supplies in, on, and over the Property, and (ii) the right of ingress and egress in, upon, over, and across the Property and portions of the Property as necessary. The rights granted to Grantee pursuant to the Temporary Construction Easement shall be exercised by Grantee at all times in a reasonable manner.

RIGHTS RETAINED BY GRANTOR. Grantor and those claiming through Grantor reserve the right of use of the Property for any legal purposes not inconsistent with this Agreement; however, Grantor and those claiming through Grantor shall not create, transfer or grant any indenture, easement, license or other property interest affecting the Property to a third party and shall not place or construct, or cause or allow any placement or construction of, any structure, obstruction, or other improvement on the Property, without written consent of Grantee in Grantee's sole and absolute discretion. Grantee shall have the right, privilege, and authority to remove from the Property, without liability to Grantee or any obligation to restore, any structures, obstructions, or other improvements which existed at the time of execution of this Agreement or which hereafter are placed or constructed, or caused or allowed to be placed or constructed, by Grantor, its successors, or assigns without the written consent of Grantee. The terms "structures" and "obstructions", as used herein, shall include, without limitation, fences, buildings, asphalt and/or concrete pavement, curbing or other similar items, trees, bushes, earthen or other materials, levees, walls, berms, or other structures.

NATURE OF EASEMENT AND RIGHTS. The Temporary Construction Easement and other rights created by this Agreement shall be temporary, terminating upon the delivery of written notice from Grantee to Grantor noting that Grantee no longer requires the Temporary Construction Easement. Upon termination of this Agreement, the parties shall execute a release of this Agreement and place it of record in the Johnson County Recorder's Office.

LAST DEED OF RECORD. In accordance with Ind. Code 32-23-2-5, the most recent deed of record by which Grantor holds title is Instrument No.: _____.

GRANTOR'S REPRESENTATIONS AND COVENANTS. Grantor makes the following representations and warranties for the purpose of inducing Grantee to accept the Temporary Construction Easement: a. Grantor is the owner in fee simple of the Property, is lawfully seized thereof and has a good right to grant and convey the Temporary Construction Easement pursuant to this Agreement, warrants the quiet enjoyment thereof, and will warrant and defend Grantee's title and interest in said Temporary Construction Easement against all claims. b. There are not indentures, easements, or licenses of any kind or character on the Property that would materially

and adversely affect the rights of Grantee pursuant to the Temporary Construction Easement. c. There are no other encumbrances, leases, liens, or options of any kind or character on the Property as granted that would materially and adversely affect the rights of Grantee pursuant to the Temporary Construction Easement.

GRANTEE'S REPRESENTATIONS AND COVENANTS. Grantee covenants that, subject to the rights, privileges, and authority hereunder, in the exercise of such rights, privileges and authority, Grantee shall restore, if applicable, that portion of the Grantors' adjoining property disturbed by Grantee. Said restoration shall be limited to the Grantee re-grading and seeding the portion of Grantors' adjoining property that is disturbed by Grantee.

MISCELLANEOUS a. Binding Agreement. This Agreement shall run with the Property, be a burden on the Property and shall be binding upon Grantor, Grantee and all successors and assigns. b. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Indiana. Any lawsuit filed in connection with this Agreement shall be filed in Johnson County, Indiana. c. Litigation. Grantor and Grantee agree that any litigation associated with or arising from this Agreement shall be filed with a court of competent jurisdiction within Johnson County in the State of Indiana. d. Liens. Grantor covenants and represents that to the best of its knowledge the Property is not presently the subject of any federal, state or states, or local environmentally related lien, proceeding, claim, liability or action or the threat or likelihood thereof. e. Environmental Liability. Grantor agrees that between Grantor and Grantee, the acceptance of this Agreement by Grantee shall not increase the liability of Grantee for environmentally related claims arising from or related to conditions on the Grantor Parcel prior to the acceptance of the Agreement. f. Taxes, Assessments. Grantor agrees that this Agreement shall not transfer to Grantee any past, present, or future obligation(s) of Grantor to be responsible for, or to pay, any tax, assessment, or fee associated with or related to the Grantor Parcel. g. Modification, Release. The parties agree that this Agreement shall only be modified or released by the express, written agreement of both Grantor and Grantee. h. Authority. The undersigned represents and warrants that (he)(she) has full authority to convey the real estate interest described herein; that pursuant to resolution of the board of directors or shareholders of Grantor or by the by-laws of Grantor, (he)(she) has full authority to execute and deliver this instrument on its behalf and that said authority has not been revoked; that (he)(she) is therefore fully authorized and empowered to convey to Grantee the real estate of Grantor and that on the date of execution of this Agreement (he)(she) had full authority to so act; and that all necessary action for the making of this conveyance has been duly taken. i. Entire Agreement. Grantor and Grantee agree that this Agreement, and the documents incorporated herein, represent the entire understanding between Grantor and Grantee. The signing of this Agreement by Grantor and Grantee constitutes their mutual recognition that no other agreements or promises, oral or written, except as attached hereto and incorporated herein, exists between them, and that if such oral or written agreements or promises exist, such are hereby cancelled. Grantor and Grantee hereby represent to the other that Grantor and Grantee will not rely upon any agreement, promise or understanding not incorporated herein at the time of execution of this Agreement or not reduced to writing, incorporated in written amendments to this Agreement, and recorded. j. Severability. The invalidity or unenforceability of any covenant, condition, term or provision in this Agreement shall not affect the validity or enforceability of any other covenant, condition, term or provision contained herein. k. Counterparts. This

Agreement may be executed in counterparts, and by each of the parties on separate counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one in the same instrument.

NOTICE. All notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly and properly given on the date of service if delivered personal, or, if mailed, on the second business day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first business day following deposit with a nationally recognized overnight courier service (e.g., FedEx), postage prepaid, in any event addressed appropriately as follows:

To The Linvilles: Mr. and Mrs. Fred and Helen Linville
2504 North Graham Road
Franklin IN 46131

To the RDC: Franklin Redevelopment Commission
70 East Monroe Street
Franklin, IN 46131

To the City: City of Franklin, Indiana
Attn: Mayor's Office
70 East Monroe Street
Franklin IN 46131

Agreed this ____ day of _____, _____.

Mr. and Mrs. Linville

By: _____
Maurice Fred Linville

By: Helen A. Linville

Agreed this ____ day of _____, _____.

City of Franklin, Indiana - Board of Public Works and Safety

By: _____
Steve Barnett, Mayor

By: _____
Bob Swinehamer, Member

By: _____
Lisa Jones, Member

Attest: _____
Jayne W. Rhoades, Clerk-Treasurer

Prepared by:

Robert H. Schafstall
Schafstall & Admire, LLP
98 North Jackson Street
Franklin IN 46131
O: 317.736.7146

Exhibit "A"

Part of the Northeast quarter of Section 11, Township 12 North, Range 4 East, Franklin Township, Johnson County, Indiana described as follows:

Commencing at the Northeast corner of said quarter; thence South 00 degrees 06 minutes 07 seconds East along the East line of said quarter a distance of 1816.17 feet to the Place of Beginning; thence South 00 degrees 06 minutes 07 seconds East along said East line a distance of 60.00 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 1225.13 feet; thence South 83 degrees 43 minutes 22 seconds West a distance of 74.40 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 90.97 feet to the East line of Commerce Parkway per Instrument Number 2016-001380 as recorded in the Office of the Recorder of Johnson County, Indiana; thence North 00 degrees 00 minutes 10 seconds West along said East line a distance of 68.14 feet; thence South 90 degrees 00 minutes 00 seconds East a distance of 1389.94 feet to the Place of Beginning.

Containing 1.938 Acres, more or less