

ECONOMIC DEVELOPMENT AGREEMENT

ELKS – 56/58 East Jefferson Street, Franklin

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into effective this 13th day of July, 2013, by and among the City of Franklin, Indiana (“City”), by and through its Redevelopment Commission (the “RDC”), and the Franklin Lodge 1818 of the Benevolent and Protective Order of Elks, Inc. (the “Elks”).

WITNESSETH:

WHEREAS, the RDC desires to foster economic development and redevelopment within the City, and has determined that the redevelopment of 56/58 East Jefferson Street, Franklin, Indiana, commonly known as the “G.C. Murphy Building” (the “Property”), is in the community’s best interests and furthers RDC’s statutory duties; and

WHEREAS, the Elks have proposed to purchase the Property, make certain improvements to same, and use the Property for mixed-use purposes; and

WHEREAS, the Elks have requested certain economic development assistance from the RDC to undertake the Project; and

WHEREAS, the RDC has determined that the completion of the Project is in the best interests of the citizens of the City, and, therefore, the RDC, subject to compliance with all applicable statutory requirements, desires to take certain steps in order to induce the Elks to complete the Project; and

WHEREAS, to stimulate and induce the development and the completion of the Project, the RDC agrees, subject to further proceedings as required by law, to provide the economic development incentives stated below;

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, 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 Disposition of Real Property by RDC. Subject to compliance with all applicable statutory requirements, the RDC intends to transfer the Property to the Elks for One Dollar (\$1.00) and other valuable consideration, including the Elks' performance under the terms of this agreement.

Section 3.02 Project Description and Development. The Project shall consist of the items and parameters set forth in the Elks' submittal (see Exhibit "A") made in response to the RDC's Request for Proposals (see Exhibit "B"), subject to further refinements agreed by the parties. Prior to the Elks commencing any work relative to the Project, the RDC will first issue a Notice to Proceed. The Elks shall commence construction of the Project by no later than thirty (30) days following the issuance of the Notice to Proceed, and shall complete construction and equipping of the Project within twelve (12) months thereafter, subject to permitted delays provided for in Section 3.03 hereof.

Section 3.03 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 the Elks or the RDC is entitled to delay its performance under this Agreement and (ii) the Elks or RDC anticipates that such permitted delay will cause a delay in its performance under this Agreement, then the Elks or RDC, as the case may be, agrees to provide written notice to the other parties of this Agreement of the nature and the anticipated length of such delay. Given the projected construction schedule, the parties acknowledge that weather-related delays will likely occur and will not serve as grounds for a breach or default of this Agreement.

Article IV. ECONOMIC DEVELOPMENT INCENTIVES

Section 4.01 Form of Incentives / Parties' Rights and Duties. The incentives offered by the RDC and the parties' rights and duties will be as follows, all subject to compliance with applicable statutory requirements:

- (a) Right to Enter: Upon execution of this Agreement, the RDC will permit the Elks to enter the Property, store materials and equipment thereon, and prepare to construct the improvements on the Property necessary to complete the Project.
- (b) Quality of Work / Completion Date: The Elks will complete the Project in a professional and competent manner, and in compliance with all applicable laws, pursuant to the terms of its agreement with the RDC, and no later than twelve (12) months after the RDC issues the Notice Proceed, subject to the permitted delays provided for in Section 3.03.
- (c) RDC's Transfer of Title to the Elks: Subject to all applicable statutory requirements relative to the disposition of real property by the RDC, the RDC agrees to transfer title to the Property by Warranty Deed (the substantially-complete form of which is attached as Exhibit "C" – Warranty Deed) to the Elks for One Dollar (\$1.00) and other valuable consideration, including the Elks' performance of the terms of this Agreement. Upon the transfer by Warranty Deed of the Property from the RDC to the Elks, the Elks may use the Property to secure first-priority construction financing.
- (d) RDC Lien Rights: The RDC will have an equitable lien on the Property for any monies expended relative to the Project, and the Elks agrees to grant a legal lien (in the form of a mortgage, the substantially-complete form of which is attached as Exhibit "D" - Mortgage) on the Property to further secure the RDC's interests in the Project. These equitable and legal liens will be subordinate to the Elks' construction mortgage, if one is required. The RDC's lien rights will be released upon Substantial Completion, defined below.
- (e) Funding and Financing: Subject to compliance with applicable statutory requirements, the parties intend to fund and finance the project as follows:
 - 1. The Elks agree to invest at least \$250,000 in renovation work;
 - 2. The RDC agrees to invest up to an additional \$200,000 for personal property and improvements to real property related to the renovation;
 - * 3. Subject to the Elks receiving up to \$100,000 from the Franklin Development Corporation for a matching grant for façade work; and
 - 4. Incidental costs, including closing costs, to be paid by RDC (including owner's and mortgagee's title insurance policies, deed, mortgage and sales disclosures) and reimbursement from RDC to Elks of government-required permit fees.
- (f) Substantial Completion: When the Elks believe the Project is sufficiently complete according to the parties' agreement, the Elks will certify to the RDC that the Project is substantially complete. Upon the RDC's agreement, the Project will be deemed to have reached Substantial Completion. Thereupon, the RDC will release the mortgage securing the RDC's interests in the project.

- (g) Project Schedule: The Elks shall complete the Project within twelve (12) months from the RDC's issuance of the Notice to Proceed, subject to the permitted delays provided for in Section 3.03.

Section 4.02 Elks' Indemnity and Defense Obligations. The Work performed by the Elks shall be at the risk of the Elks exclusively. To the fullest extent permitted by law, the Elks shall indemnify, defend (at its sole expense), and hold harmless the City of Franklin, Indiana, the RDC, and its members, officers, employees, and agents ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and consultants' fees and costs) ("Claims") which arise or are in any way connected with the work performed, materials furnished, or services provided under this agreement by the Elks or its agents unless such Claims arise by reason of the negligence or omission of the City, RDC, or the Indemnified Parties. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of the Elks, its employees or agents, whether active or passive. The Elks' indemnification and defense obligations hereunder shall extend to claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated.

Section 4.03 Elks' Insurance Requirements. Upon execution of this Agreement, and prior to the Elks commencing any work or services, and at any time requested by the City of Franklin, Indiana, the RDC, the Elks shall provide the City of Franklin, Indiana and the RDC with a Certificate of Insurance as evidence of Commercial General Liability insurance, Workers' Compensation, Builder's Risk, and Automobile Liability for any employees, agents, or Subcontractors of the Builder. The Builder's liability coverage shall use ISO form CG 00 01 10 01 (or equivalent coverage) and include the City of Franklin, Indiana and the RDC as an Additional Insureds using ISO Form CG 20 10 11 85 (or equivalent coverage) or on the combination of ISO Forms CG 20 10 10 01 and CG 20 37 10 01 (or equivalent coverage). This Additional Insureds coverage shall apply as primary & non-contributory insurance with respect to any other insurance afforded to the City of Franklin, Indiana or the RDC. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from explosion, collapse, underground property damage or work performed by subcontractors. The coverage limits shall not be less than the following:

- (a) Commercial General Liability Insurance:

- i) \$1,000,000 Each Occurrence

- ii) \$2,000,000 General Aggregate
 - iii) \$2,000,000 Products/Completed Operations Aggregate
 - iv) \$1,000,000 Personal and Advertising Injury
- (b) Workers' Compensation and Employers' Liability Insurance:
 - i) \$500,000 Bodily Injury by Accident
 - ii) \$500,000 Bodily Injury by Disease - Policy Limit
 - iii) \$500,000 Bodily Injury by Disease - Each Employee
- (c) Automobile Liability Insurance:
 - i) \$1,000,000 Each Accident
- (d) Commercial Umbrella Liability:
 - i) \$1,000,000 Each Occurrence
 - ii) \$1,000,000 Aggregate
- (e) Builder's Risk: In an amount equal to the total Project budget, including the cost of the real property and the projected cost of the finished improvements
- (f) All coverage shall be placed with an insurance company duly admitted in the State of Indiana and have an AM Best rating of "A-" or better. Each Certificate of Insurance shall provide that the insurer must give the City of Franklin, Indiana and the RDC at least thirty (30) days' prior written notice of cancellation and termination of the Elks' coverage.

Section 4.04 Taxes. The responsibility for all real property taxes assessed on the Property and the Project will be assumed by the Elks beginning with the installment due and payable in November, 2014.

Section 4.05 Alternative Financing. If the parties agree that an alternative form of financing the incentive would better accomplish the purposes of this Agreement, the terms of this Agreement may be amended to provide for such alternative financing.

Article V. AUTHORITY

Section 5.01 Actions. The RDC represents and warrants that it has taken or will take (subject to further proceedings required by law and the Elks' performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable it to execute

this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

Section 5.02 Powers. The RDC represents and warrants that it has full lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective 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 Breach. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed 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, the non-breaching party may seek any remedy available at law or equity, subject however to the compulsory non-binding mediation provided in Section 6.13, below.

Section 6.03 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 approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

Section 6.04 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 6.05 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 6.06 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 Development Agreement.

Section 6.07 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 6.08 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Elks: Franklin Lodge 1818 of the Benevolent and
Protective Order of Elks, Inc.
40 North Water Street
Franklin IN 46131

To the RDC: Franklin Redevelopment Commission
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 6.09 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 6.10 Assignment. The rights and obligations contained in this Agreement may not be assigned by the Elks, the City of Franklin, RDC, or any affiliate thereof without the express prior written consent of the parties; provided, however, that the Elks may transfer all or a portion of its rights and obligations hereunder to an affiliate of the Elks upon notice to but without the consent of the RDC, but any such transfer to an affiliate of the Elks shall not have the effect of releasing the Elks from its obligations hereunder. Further, the Elks may operate under an assumed business name.

Section 6.11 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 6.12 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 has approved or ratified this Agreement at a public meeting.

Section 6.13 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 'Substantial Completion' 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 meditation under the Indiana Rules of Alternative Dispute Resolution.

Section 6.14 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 and the Elks, or any affiliates thereof.

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
Robert D. Heuchan, President

Attest

FRANKLIN LODGE 1818 OF THE BENEVOLENT AND
PROTECTIVE ORDER OF ELKS INC.

By: Robert Swinehamer
Robert Swinehamer, Exalted Ruler
Robert J. Baker
Robert J Baker, Chairman of the Board of Directors
Loren Myers
Loren Myers, Secretary