

ECONOMIC DEVELOPMENT AGREEMENT

By and Between

City of Franklin Redevelopment Commission

City of Franklin Board of Public Works and Safety

Investment One, Inc. d/b/a Bemis Group

Young's Creek Neighborhood Redevelopment Project

(Garment Factory – Wayne Street Rehabilitation)

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into effective this ____ day of _____, _____, by and between the City of Franklin, Indiana, by and through its Board of Public Works and Safety (the "City"), the City of Franklin, Indiana, by and through its Redevelopment Commission (the "RDC"), and Investment One, Inc. d/b/a Bemis Group, an Indiana corporation ("Developer").

WITNESSETH:

WHEREAS, the Developer has proposed a revitalization project for the Young's Creek Neighborhood south of downtown Franklin, Indiana that will serve to connect Province Park, the existing Greenway Trail, and Young's Creek with a focus on the underutilized, existing 60,000 square feet "Garment Factory" warehouse at 101 East Wayne Street, four single-family residential homes at 45 East Wayne Street, 49 East Wayne Street, 51 East Wayne Street, and 55 East Wayne Street (collectively, these residential properties are referred to hereafter as the "Parking Lot"), and the underutilized "Double Cola" property at 199 South Water Street.

WHEREAS, the Developer proposes, in conjunction and in partnership with the RDC and the City, to (1) purchase and rehabilitate the Garment Factory into a mixed-use facility housing an event space, a marketplace/commercial retail space, and residential units; (2) purchase the properties comprising the Parking Lot in order for the RDC to re-purchase same and for the City to raze the existing structures, and construct approximately fifty (50) public parking spaces thereon; and (3) purchase and rehabilitate the existing "Double Cola" building with a possible end-use as a small-business incubator, office-sharing, co-op business space, private office, or retail space., all of which is referred to hereafter as the "Project". The attached Exhibit "A" – Project Description provides additional detail.

WHEREAS, the Developer anticipates a total Project budget of approximately Four Million Dollars (\$4,000,000.00), of which at least Two Million Five Hundred Thousand Dollars (\$2,500,000.00) will be contributed by Developer.

WHEREAS, Developer has requested financial assistance from the RDC and City to undertake the Project; and

WHEREAS, the RDC and City have determined that the completion of the Project 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, subject to compliance with all applicable statutory requirements, desires to contract with Developer 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, 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 Improvements and Personal Property. Subject to compliance with all applicable statutory requirements, (1) the RDC intends to incentivize the Project by providing One Million Four Hundred Thousand Dollars (\$1,400,000.00) toward the purchase and implementation of real and personal property improvements (collectively, the "Improvements"); and (2) the City will fund and complete the construction of the Parking Lot and Wayne Street Rehabilitation discussed below.

Section 3.02 Project Development. Developer shall commence and undertake the Project no later than thirty (30) days following the parties' execution of this Agreement, and shall

substantially complete the Project within thirty-six (36) 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 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.

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) Wayne Street Residences – Future Parking Lot.
 - (i) Developer will purchase the following four (4) existing single-family residences: 45 East Wayne Street, 49 East Wayne Street, 51 East Wayne Street, and 55 East Wayne Street (the “Parking Lot” properties).
 - (ii) The RDC will obtain two (2) independent professional appraisals of these Parking Lot properties, and will pass a resolution authorizing the purchase of these properties from the Developer for the sum of Two Hundred Fifty Three Thousand Dollars (\$253,000.00), plus closing costs and related expenses, plus any interest-related carrying costs incurred by the Developer between the time of its purchase of the Parking Lot properties and its sale of same to the RDC. The RDC will then purchase these Parking Lot properties from the Developer (free and clear of all claims and liens, as evidenced by an owner's policy of title insurance, at the RDC's expense) in order to convert them into the Parking Lot.
 - (iii) The City of Franklin, by and through its Board of Public Works and Safety (the “City”), working in conjunction with the RDC, will raze the structures, prepare

the properties, and construct on the site a public parking lot consisting of approximately fifty (50) parking spaces.

- (iv) As and when appropriate, the RDC may transfer ownership of the Parking Lot properties to the City.

(b) Wayne Street Reconstruction.

- (i) The City will take those steps necessary to repair and reconstruct Wayne Street consistent with the recent rehabilitation of Monroe Street to both beautify the street as well as provide additional street-side public parking spaces and appropriate signage and lighting.
- (ii) The Developer and RDC agree to grant right-of-way as necessary for this Wayne Street rehabilitation, at no additional cost to the City.

(c) Garment Factory Rehabilitation.

- i) Developer will purchase the real property and improvements located thereon commonly known as the “Garment Factory” located at 101 East Wayne Street, Franklin, Indiana.
- ii) The RDC will partially fund the rehabilitation and repair of the Garment Factory in conjunction with the Developer’s Project in an amount not to exceed One Million One Hundred Forty Seven Thousand Dollars (\$1,147,000.00) by making period payments, as and when reasonably requested in an amount and for the purposes identified by the Developer (the “Improvements”), all of which are to be used for the Project.
- iii) If Developer fails to substantially complete the Project within thirty-six (36) months of the date of this agreement, Developer will re-pay the RDC’s Interests on demand. Developer shall have no further obligation or liability to the RDC beyond the total amount advanced to Developer at the expiration of the thirty-six (36) month period;
- iv) If Developer substantially completes the Project within thirty-six (36) months of the date of this agreement, Developer will pay nothing to the RDC.

(d) Double Cola Building.

- (i) Developer will purchase the Double Cola property, and rehabilitate same consistent with the proposed, intended purpose of creating a small-business incubator, office-sharing, co-op business space, private office, or retail space.

- (e) Quality of Work: Developer will complete the Project in a professional and workmanlike manner, and in compliance with all applicable laws, pursuant to the terms of its agreement with the RDC and City, and no later than thirty-six (36) months after the execution of this Agreement, subject to the permitted delays.
- (f) Substantial Completion: Developer will certify in writing to the RDC once the Project is substantially complete such that (1) the Garment Factory's event space and commercial retail spaces are open for business to the public, and the Garment Factory's residential units are sufficiently finished for them to be occupied, and (2) the Double Cola building is sufficiently finished for it to be occupied. Upon the RDC's agreement that the Project is substantially complete, the RDC will release its security, as addressed below.
- (g) RDC Security:
 - (i) The RDC will have an equitable lien on the Property and the Project for any monies expended relative to same, and Developer agrees to grant a legal lien (in the form of a mortgage or other mutually agreed legal instrument) on the Garment Factory Property to further secure the RDC's interests in the Project in an amount equal to the RDC's Interests, but not to exceed One Million Four Hundred Thousand Dollars (\$1,400,000.00). The RDC agrees to subordinate these equitable and legal liens as necessary to facilitate and enable the Developer's financing of the Project.
 - (ii) Developer agrees to assign any lease rights it may have (including the right to receive rent and profits arising from the Property) (in the form of an assignment of rents and profits or other mutually agreed legal instrument) to the RDC to further secure the RDC's Interests. The RDC agrees to subordinate this assignment as necessary to facilitate and enable the Developer's financing of the Project.
 - (iii) Developer agrees to procure life insurance on the following key people, each in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), naming the RDC as sole beneficiary, which life insurance shall remain in full force and effect until the RDC determines the Project is substantially complete or the expiration of thirty-six (36) months, whichever first occurs, as defined below: A. Todd Bemis and Billy L. Bemis.
- (g) Financing: The Developer is permitted to finance the cost of the Project at a rate and on terms acceptable to Developer, and RDC agrees to subordinate its security interests to same.
- (h) Substantial Completion: Developer shall certify in writing to the RDC when the Project is substantially complete, which will occur when the Project is sufficiently complete

according to the parties' agreements such that the Garment Factory Events space if open and operational, the Garment Factory marketplace / commercial retail space is open and operational, and the Garment Factory residential units are being offered for sale or lease.

Section 4.02 Developer's Indemnity and Defense Obligations. The Work performed by the Developer shall be at the risk of the Developer exclusively. To the fullest extent permitted by law, Developer shall indemnify, defend (at its sole expense), and hold harmless the City of Franklin, Indiana, the RDC, and their 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 premises, work performed, materials furnished, or services provided under this agreement by the Developer 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 Developer, its employees or agents, whether active or passive. The Developer's 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 Developer's Insurance Requirements. Upon execution of this Agreement, and prior to the Developer commencing any work or services, and at any time requested by the City of Franklin, Indiana, or the RDC, the Developer shall provide the City of Franklin, Indiana and/or the RDC with a Certificate of Insurance as evidence of Commercial General Liability insurance, Workers' Compensation, Developer's Risk, and Automobile Liability for any employees, agents, contractors or subcontractors of the Developer. The Developer'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) Developer'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, the RDC, and the Owners at least thirty (30) days' prior written notice of cancellation and termination of the Developer's coverage.

Section 4.04 Taxes. The responsibility for all taxes assessed on the Property and the Project will be assumed by the Developer. However, Developer will have no liability for real estate taxes assessed against the Parking Lot properties subsequent to the RDC's purchase of same from the Developer.

Section 4.05 Alternative Financing. If the RDC and Developer agree that an alternative form of financing the incentives would better accomplish the purposes of this Agreement, the terms of this Agreement will be amended to provide for such alternative financing.

Article V. AUTHORITY

Section 5.06 Actions. The RDC represents and warrants that it has taken or will take (subject to further proceedings required by law and Developer's performance of its agreements and

obligations hereunder) such action(s) as may be required and necessary to enable 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 5.07 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 its 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 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 6.03 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 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 Developer:	Investment One, Inc. Attn: Mr. Todd Bemis P.O. Box 1092 Greenwood IN 46142
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 6.09 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 / 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. Developer may not transfer ownership of the Property to any third-party without written consent from the RDC being first obtained. However, Developer may transfer ownership to an affiliated company of which it controls a majority interest, specifically including Blue Chip Corp.

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 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 6.14 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 Developer, or any affiliates thereof. Neither RDC nor Developer is 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

Investment One, Inc.

By: _____
A. Todd Bemis, President

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

By: _____
Signed

By: _____
Signed

By: _____
Signed

Attest: _____
Jayne W. Rhoades, Clerk-Treasurer