

## AGENDA RESERVATION REQUEST

### CITY OF FRANKLIN COMMON COUNCIL

Please type or print

|  |  |                      |                |
|--|--|----------------------|----------------|
| <b>Date Submitted:</b>   | July 24, 2017                                  | <b>Meeting Date:</b> | August 7, 2017 |
| <b>Contact Information:</b>  |  |                      |                |
| <b>Requested by:</b>   | Rhoni Oliver, Community Development Specialist |                      |                |
| <b>On Behalf of Organization or Individual:</b> Franklin Redevelopment Commission                                |  |                      |                |
| <b>Telephone:</b>  | 317-736-3631                                   |                      |                |
| <b>Email address:</b>  | roliver@franklin.in.gov                        |                      |                |
| <b>Mailing Address:</b>  | 70 E. Monroe St., Franklin, IN 46131           |                      |                |
| <b>Describe Request:</b>   |  |                      |                |
| Resolution 17-06   |  |                      |                |
| A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA APPROVING THE SALE OF 55 WEST MADISON STREET |  |                      |                |
| <b>List Supporting Documentation Provided:</b>   |  |                      |                |
| 1. City Council memo   |  |                      |                |
| 2. Resolution 2017-06  |  |                      |                |
| 3. Economic Development Agreement  |  |                      |                |
| <b>Who will present the request?</b>   |  |                      |                |
| <b>Name:</b>   | Krista Linke                                   | <b>Telephone:</b>    | (317) 346-1254 |

*The Franklin City Council meets on the 1st and 3rd Monday of each month at 6:00 p.m. in the Council Chambers of City Hall located at 70 E. Monroe Street. In order for an individual and/or agency to be considered for new business on the agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 12:00 p.m. on the Wednesday before the meeting.*



## Memorandum

**To:** City Council

**From:** Rhoni Oliver, Community Development Specialist

**Date:** July 24, 2017 for the August 7, 2017 Meeting

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The City of Franklin Redevelopment Commission, as the governing body for the City of Franklin Redevelopment Department, pursuant to Indiana Code 36-7-14, approved an Economic Development Agreement among the Commission, Franklin Development Corporation and Madison Street Renovation, LLC, effective April 1, 2017 relative to the redevelopment of 55 West Madison Street, Franklin, Indiana, commonly known as "Old City Hall."

Pursuant to Indiana Code Section 36-7-14-22.5(e), the Commission submits the proposed sale of the property as provided in the Economic Development Agreement to Common Council of the City for approval.

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## **RESOLUTION NO. 17-06**

### **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA APPROVING THE SALE OF 55 WEST MADISON STREET**

WHEREAS, the City of Franklin Redevelopment Commission (the “Commission”), as the governing body for the City of Franklin Redevelopment Department, pursuant to Indiana Code 36-7-14, as amended (the “Act”), approved an Economic Development Agreement (“EDA”) among the Commission, Franklin Development Corporation and Madison Street Renovation, LLC, effective April 1, 2017 relative to the redevelopment of 55 West Madison Street, Franklin, Indiana, commonly known as “Old City Hall.”

WHEREAS, pursuant to Indiana Code Section 36-7-14-22.5(e) of the Act, the Commission has submitted the proposed sale of the property as provided in the EDA ("Exhibit A") to Common Council of the City (the “Council”) for approval.

NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Franklin, Indiana, as follows:

1. Pursuant to Indiana Code Section 36-7-14-22.5(e) of the Act, the Council approves the sale of the property at 55 West Madison Street, Franklin, IN 46131 as provided in the EDA.
2. This Resolution shall be in full force and effect from and after its passage by the Council and approval by the Mayor as required by law.

Introduced and Filed on this 7th day of August, 2017.

DULY PASSED on this 7th day of August, 2017, by the Common Council of the City of Franklin, Johnson County, Indiana, having been passed by a vote of \_\_\_\_\_ in Favor and \_\_\_\_\_ Opposed.

City of Franklin, Indiana, By its Common Council:

Voting Affirmative:

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Keith Fox, Council President

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Joseph P. Abban

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Joseph R. Ault

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Kenneth Austin

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Andrew Eggers

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Robert Heuchan

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Richard L. Wertz

Attest:

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Jayne Rhoades  
City Clerk-Treasurer

Voting Opposed:

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Keith Fox, Council President

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Joseph P. Abban

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Joseph R. Ault

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Kenneth Austin

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Andrew Eggers

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Robert Heuchan

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Richard L. Wertz

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, this 7th day of August, 2017 at \_\_\_\_\_ o'clock a.m./p.m.

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Jayne Rhoades  
City Clerk-Treasurer

This Resolution having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16 (a)(1), this \_\_\_\_ day of August, 2017 at \_\_\_\_\_ o'clock a.m./p.m.

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Steve Barnett  
Mayor

Attest:

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Jayne Rhoades  
City Clerk-Treasurer

## EXHIBIT A

### ECONOMIC DEVELOPMENT AGREEMENT

Between and Among

**Redevelopment Commission of the City of Franklin, Indiana**  
and  
**Franklin Development Corporation**  
and  
**Madison Street Renovation, LLC**  
for

**55 West Madison Street, Franklin, Indiana**

This Economic Development Agreement (the "Agreement") is entered into as of the first (1<sup>st</sup>) day of April, 2017 ("Effective Date"), by and between the **Redevelopment Commission of the City of Franklin, Indiana ("RDC")**, as the governing body of the City of Franklin, Indiana Redevelopment District, **Franklin Development Corporation ("FDC")**, an Indiana non-profit neighborhood development corporation, and **Madison Street Renovation, LLC ("Developer" and "MSR")**, an Indiana limited liability company. (Collectively, the RDC, the FDC, and the Developer are the "Parties").

#### RECITALS

**WHEREAS**, the Developer is pursuing the redevelopment and revitalization of certain property located at 55 West Madison Street (commonly, "Old City Hall"), in Franklin, Indiana, for commercial and retail purposes, which project will include substantial capital investment in the Project by March 31, 2019 (the "Completion Deadline"), generate increased assessed value, and accelerate the revitalization of Old City Hall, all as more generally described in the attached Exhibit "A" - Project Description (the "Project");

**WHEREAS**, the Project is located within the City's Amended Integrated Economic Development Target Area (the "Area"), and will serve both the Area and the existing Allocation areas in the City;

**WHEREAS**, the Developer is willing to undertake the Project if the RDC and FDC will provide certain financial incentives for the Project as provided in this Agreement;

**WHEREAS**, in order to induce the Developer to undertake the Project, the RDC and FDC are willing to provide financial assistance for the Project in accordance with the terms and conditions provided within this Agreement;

**WHEREAS**, in order to induce the Developer to undertake the Project, the RDC and FDC are willing support vacant property tax abatement for the Project in accordance with the procedures and criteria for such abatements;

**WHEREAS**, the Project to redevelop and revitalize the Property will: (i) bring additional capital investment to the Area; (ii) return underutilized and vacant space in the Area to its highest and best use; (iii) be of public utility and benefit as measured by the creation and retention of full time jobs; and (iv) increase the level and diversity of the Area's tax base; all of which help to

strengthen the economic well-being of the Area and encourage additional growth in the Area; and

**WHEREAS**, entering into this Agreement and providing funds to the Developer to induce it to undertake the Project and continue future Project operations in the Area fosters and encourages economic development, promotes the use of the Property in a manner that best serves the interest of the City and its citizens, and promotes significant opportunities for gainful employment, all of which help the RDC accomplish its statutory purposes.

**NOW THEREFORE**, in consideration of the terms and conditions contained in this Agreement, the RDC, FDC, and the Developer agree as follows:

- 1) Definitions. As used in this Agreement, the following terms shall have the below meanings unless the context clearly otherwise requires:

“Approved Plans” shall mean the Building Plan submitted by the Developer to the Review Panel and reviewed and approved in accordance with the Plan Refinement Process of Section 2.

“Building Plan” shall mean (a) the Site Plan, (b) the Design Development Plan, and (c) the following design drawings for the Project: (i) building elevations, and (ii) exterior building materials.

“Construction Budget” shall mean a budget projecting the cost of the Project in accordance with the Approved Plans and reflecting Final Completion of the Project by the Developer by the Completion Deadline.

“Approved Plan Change” shall mean a change executed by the FDC Review Panel and the Developer finalizing the inclusion into the Approved Plans of a change proposed in a Change Request by the Developer that is approved by the FDC Review Panel.

“Capital Commitment” for Developer shall mean Three Hundred Thousand Dollars of Eligible Expenses.

“Change Request” shall mean a written request by the Developer for a change to the Approved Plans.

“Construction Schedule” shall mean a schedule for construction of the Project in accordance with the Approved Plans, which schedule shall reflect Final Completion of the Project by the Developer by the Completion Deadline.

“Eligible Expenditures” means the improvement and installed equipment costs of the Project listed on Exhibit “B”, attached hereto, and any other costs approved for expenditure by the FDC. All such costs must be costs generated by and attributable to third party vendors. An Eligible Expenditure billed to an Affiliate Entity of Developer will be an Eligible Expenditure to the extent of the third-party cost and not include any mark-up or profit margin for the Developer’s Affiliate Entity.

“Final Completion” shall mean that the redevelopment and revitalization of the Property has been substantially completed according consistent with the Approved Plans.

“Laws” shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees.

“Project Documents” means the Agreement and the documents referenced in the Agreement to be executed as part of the fulfilling of the Agreement.

“Property” means the real estate and improvements located at 55 West Madison Street, in Franklin, Indiana, depicted on Exhibit C attached hereto.

"Redevelopment Statute" means Ind. Code § 36-7-14 and Ind. Code § 36-7-25 and all related and supplemental statutes as in effect on the Effective Date of this Agreement.

“Required Permits” shall mean all permits required by the Laws, for construction and use of the Project.

“Review Panel” shall mean a committee comprised of the FDC President (or designee), the RDC President (or designee), and the Mayor of the City of Franklin, Indiana (or designee) (the “Review Panel”).

“Site Plan” shall mean the overall site development plan for the Property, depicting the positioning of all exterior improvements on the Property as they are planned to exist after the Project is complete, and identifying new exterior improvements or renovations to be accomplished as part of the Project.

“Sources and Uses Statement” shall mean a document illustrating the sources and uses of funding required for the Project, including those amounts which are expected by the Developer to be funded by the RDC and FDC.

“Tenant” shall mean the person(s) and entity(ies) that operate a business as a going concern on the Property under a lease or similar agreement with the Developer. In the event there is no such operator, the term “Tenant” shall mean the Developer.

2. Due Diligence / Project Refinement Process. Subsequent to the parties’ execution of this Agreement, the Developer shall undertake a comprehensive inspection, analysis, and review of the Property, the Project, and the likely associated schedule and costs.

2.1 Conditions Precedent to Developer Obligations. MSR shall have one hundred twenty (120) days (the “Due Diligence Period”) to examine the Property and determine technical and economic feasibility of the Project. During the Due Diligence Period, Purchaser may (a) conduct due diligence studies including such physical inspections and other tests, (b) obtain information, analysis, proposals and contracts from contractors, architects, consultants and other experts, examinations, studies, title and survey reviews and appraisals of the Property as Purchaser shall deem necessary, (c) collect further information on Project schedule and costs, and construction requirements and timing, and other information as needed, including without limitation the preparation of architectural, engineering and construction plans, including mechanical, plumbing, electric and HVAC plans satisfactory to Developer, (d) pursue any type of zoning, site plan approvals and permits as may be required for Purchaser to utilize the Property for the Project, (e) acquire leases, operating agreements or other commitments pertaining to operation of the tenant spaces; and (f) determine overall economic feasibility of the Project in MSR's exclusive discretion. As owner of the Property, the RDC shall provide



MSR reasonable access to the Property in order for Purchaser to exercise inspection rights or to complete due diligence activities. MSR may in its sole discretion and for any reason determine that the Project is not feasible or that MSR no longer desires to proceed with the Project and terminate the EDA without liability or penalty at any time prior to the conclusion of the Due Diligence Period.

2.2. Exclusivity of Dealing. During the Due Diligence Period and any extensions, the RDC and FDC will deal exclusively with the Developer relative to the Property, and will not solicit, accept, or consider other proposals.

2.3. Extension of Due Diligence Period. MSR shall have the option and right to extend the Due Diligence Period past 120 days for an initial extension period of sixty (60) days provided the Plan Packet has been submitted to the Review Panel, and a second extension period of sixty (60) days, provided Construction Plans have been submitted for state building permit approval.

2.4. Plan Packet. Within sixty (60) days of the Effective Date, the Developer shall submit its proposed Building Plan, Construction Schedule, Construction Budget, and Sources and Uses Statement (all of which constitute the "Plan Packet") to the Review Panel for review and approval. The Review Panel shall, after consultation with the Developer, provide notice of its approval or disapproval of the Building Plan within ten (10) calendar days after receipt of the Plan Packet from the Developer. The Construction Schedule, Construction Budget and Sources and Uses statement are for review and discussion only, and do not require approval by the Review Panel. The Review Panel may exercise reasonable discretion in approving or disapproving the Building Plan, consistent with this Agreement and building permit and zoning requirements. If the Review Panel disapproves of the Building Plan, the Developer and the Review Panel shall meet to discuss the Review Panel's concerns and options for modifying the Building Plan to make it acceptable to the Review Panel. If the Review Panel's requested changes increase the costs of the Project by more than Three Thousand Dollars (\$3,000.00), the FDC and/or RDC agree to work in good faith to resolve the issue, including giving consideration to requesting additional funding from the RDC.

2.5. Conduct of the Review Panel. Any Building Plan Change Request submitted by the Developer shall be reviewed by the Review Panel, which may utilize the services of architects, engineers, and other persons possessing design expertise and experience in evaluating the Plan Packet and any Building Plan Change Request. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated with the RDC or FDC.

2.6. The Developer and Review Panel will work together to refine the Building Plan, and if modifications to this Agreement are required, will advise the FDC and RDC of same, and cooperate in their efforts to reach a mutually agreeable modification of this Agreement.

2.7. Unless otherwise mutually agreed, the Building Plan shall be completed, reviewed, and approved before the end of ninety (90) days after the Effective Date, and if not, either party may terminate this Agreement.

2.8. Upon approval of the Building Plan by the Review Panel, the Building Plan will be deemed the Approved Plans (as hereinafter defined).

2.9. Plan Changes. If the Developer desires to make any material change to the Building Plan, then it shall submit a "Plan Change Request" to the Review Panel for review and approval. For purposes of this paragraph, a "material change" shall mean any change that substantially deviates from the approved Site Plan, approved building elevations, or approved landscaping plan, or that clearly alters the aesthetic appearance of the Project, or that clearly reduces the quality of the materials used on the Building Plan, which shall be determined in the reasonable discretion of the Review Panel. Within ten (10) calendar days after the receiving a Plan Change Request, the Review Panel shall deliver to the Developer written notice that it approves or rejects the Plan Change Request; provided that: (i) the Review Panel shall not withhold its approval unreasonably; and (ii) if the Review Panel rejects all or any part of the Plan Change Request, then such notice shall: (A) specify the part or parts that the Review Panel is rejecting; and (B) include the specific basis for such rejection. If the Review Panel approves a Plan Change Request, then the Review Panel and the Developer shall execute a Plan Change. The Review Panel's failure to timely approve or disapprove of any Plan Change Request shall be deemed an approval so long as such request(s) for approval expressly note(s) the Review Panel's time for response therein and that failure to timely respond is deemed approval. If not cured after written notice and reasonable opportunity during the term of this Agreement, material changes to the Approved Plans that are not identified in a Plan Change approved by the Review Panel, may be deemed by the Review Panel to be a breach hereunder.

2.10. No Representations. Neither the RDC nor the FDC, nor any officer, employee, contractor, or agent thereof, shall be responsible in any way for any defects in the Approved Plans, or for any defects in any work done according thereto. Further, neither the RDC nor FDC makes, and shall not be deemed by virtue of any action of approval or disapproval taken by either to have made, any representation or warranty as to the suitability or advisability of the Approved Plans or their compliance with any Laws.

2.11. Required Permits. The Developer acknowledges that this Plan Refinement Process is in addition to, and not in lieu of, any plan review or Required Permits required under applicable Laws, and it shall not be deemed a warranty or representation of any kind by the RDC or FDC that the Approved Plans comply with, or are approved under, applicable Laws. The Developer acknowledges that RDC and FDC cannot (and do not) guarantee that the Developer will be able to obtain the Required Permits. Any changes sought by the Review Panel will be consistent with specifications to obtain Required Permits, and the Review Panel shall approve reasonable Plan Change Requests as needed to reflect any changes needed to obtain permits.

2.12. Information. Within thirty days of the Effective Date, all information relevant to the Property will be shared by the RDC with MSR about the Property, (to the extent such information is in the possession or control of the RDC), including any past title searches, easements, title insurance, recorded documents, surveys, plans, utility costs, environmental assessments, insurance or other information related to the Property.

3. Purchase of 55 West Madison Street, Franklin, Indiana. Subsequent to the approval of the Building Plan, and within thirty (30) days following the end of the Due Diligence Period or

earlier, the Developer will purchase the Property from the RDC for the sum of One Dollar (\$1.00), payable in cash at closing, subject to commercially reasonable terms and conditions, including an owner's policy of title insurance in the amount of \$160,000. with a rider providing additional coverage for the increasing value of the Property as the Project ensues, said owner's policy of title insurance provided at the RDC's expense, with the cost of the rider to be at the developer's expense. The parties agree to execute within ninety (90) days of the Effective Date a separate Closing Agreement as defined below as necessary to accomplish the closing.

3.1 Closing. A Closing Date will be agreed by the Parties to occur not later than thirty (30) days from the end of the Due Diligence Period. At Closing, the RDC shall convey title, including all rights, privileges and easements appurtenant to the Land, including all rights, rights-of-way, roadways, roadbeds, and reversions or other appurtenances used in connection with the Land (the "Appurtenant Rights"). The conveyance shall include the real estate and all fixtures, and all personal property or detached fixtures remaining on or associated with the Property, (including without limitation parts to the boiler or steam systems, detached trim or panels, detached plumbing, light or other fixtures, detached fin covers and elements of the heat system, and all other personal property, equipment, items, or elements from, currently at, or related to the building).

3.2 No Broker. Seller and Purchaser represent and warrant to each other that no brokerage fees or real estate commissions are or shall be due or owing in connection with this transaction or in any way.

3.3 Closing Agreement. Within ninety (90) days of the Effective Date of the EDA, the RDC and MSR will enter a Closing Agreement more fully detailing the process, terms, and timing of title conveyance. If Franklin Common Council approval for the conveyance of the Property is determined by any Party to be needed or advisable, the Parties shall pursue such approval with reasonable promptness, and prior to the end of the Due Diligence period. The Closing Agreement will further specify the timing and process.

3.4 Warranties & Representations. The Closing Agreement will contain customary warranties and representations of the Parties, as to due legal authority, binding effect, organization, and lawful existence, and any other terms as may be agreed.

3.5 Mortgage in Favor of RDC. To secure the RDC's investment in the project (including the value of the real property and improvements as of the Closing, plus the additional TIF Incentive discussed below), the Developer (or Developer's Affiliate Entity if applicable) will grant at Closing a mortgage (the substantially complete form of which is attached as Exhibit D) in favor of the RDC to secure the Developer's performance under the terms of this Agreement and the RDC's investment in same. The RDC agrees to subordinate this mortgage to Developer's other secured lenders in the event additional funding is required for the project.

4. Escrow Account. At the Closing of the RDC's sale of the Property to the Developer, the Developer (with its own funds) and the FDC (with the TIF Incentives granted to it by the RDC, discussed below) shall each deposit Three Hundred Thousand Dollars (\$300,000.00) (the "Escrowed Funds") into an interest bearing escrow account, which may be invested only in

secure investments approved by both the FDC and the Developer, to be held by Mutual Savings Bank (the “Escrow Agent”), pursuant to a mutually agreeable escrow and control agreement (the substantially complete form of which is attached as Exhibit E) to be executed by the FDC, the Developer, and Mutual Savings Bank at Closing.

4.1. Security Interest in Escrow Account. In order to secure the parties’ financial obligations under the terms of this Agreement, the FDC and Developer grant and convey to each other a mutual security interest in the Escrow Account and Escrowed Funds in the amount of Three Hundred Thousand (\$300,000) (the Secured Amount).

4.2. Disbursement of Funds. Subject to Section 4.3 below concerning the Completion Deadline, the Developer and FDC’s Escrowed Funds shall be disbursed only upon written approval by the FDC and the Developer equally, *pari passu*, from the FDC and Developer’s contributed escrowed funds, and upon satisfaction of the disbursement conditions below:

4.3. Disbursements from the Escrow Account shall only be for expenses incurred or paid for Eligible Expenditure consistent with the Approved Building Plan, unless otherwise approved by the FDC. Subject to the terms of this Agreement, disbursements may be made to the Developer as reimbursements for Eligible Expenditures paid by it or paid by an Affiliate Entity of Developer to third-party vendors. A list of Eligible Expenditures is attached as Exhibit B, and the FDC in its discretion may approve additional costs. Eligible Expenditures include costs incurred both before and after Closing.

4.3.1. To obtain the FDC’s approval for a disbursement of funds, the Developer shall submit to the FDC a written request for disbursement of funds accompanied by a copy of an invoice from a third-party vendor documenting the Eligible Expenditure eligible for payment or reimbursement and a payment request form (collectively, “Payment Request”), and the original Payment Request shall be delivered to the FDC in care of its President, the FDC’s Attorney, and the City’s Community Development Director. In the event the Payment Request is for a reimbursement to the Developer for Eligible Expenditures paid by Developer (or paid for by an Affiliate Entity of Developer) to a third-party vendor, the Payment Request shall include a copy of a cancelled check, receipt, or other evidence of such payment to the third-party vendor. A certification by the Developer of payment shall constitute evidence of payment for invoices under Ten Thousand Dollars (\$10,000.00). The copies of the Payment Request may be delivered via email.

4.3.2. Each Payment Request from the Developer is subject to the reasonable review and approval of the FDC and must include a certified statement from the Developer that the Eligible Expenditure was incurred for the redevelopment and revitalization of the Property, that the amount requested to be paid for the Eligible Expenditure is believed reasonable for the goods and/or services provided, that the goods or services referenced in the Payment Request have been received by the Developer, and that no part of the Payment Request was included in any prior Payment Request.

4.3.3. As part of each Payment Request by a general contractor after the first Payment Request, the Developer shall also provide executed lien waivers from the general contractor that issued the invoices included in the prior Payment Request, evidencing that such prior invoices have been paid. Lien waivers will not be required if (a) Developer

utilizes a no lien contract for the Project, or (b) if the vendor or contractor has no lien rights, or (c) the amount of the cost or invoice is under ten thousand dollars (\$10,000). [The FDC and Developer will establish a procedure for processing partial payments and/or handling a dispute with a contractor.]

4.3.4. The FDC or its representative may inspect the Property to sufficiently confirm the accuracy of the statements and representations made in connection with the Payment Request.

4.3.5. No Event of Default shall have occurred and remain uncured under this Agreement.

4.3.6. Limit on Frequency of Payment Requests. Unless otherwise agreed to by the FDC, Payment Requests shall be reviewed and approved once a month in accordance with the FDC's normal monthly claims approval process. Provided a proper Payment Request is executed and delivered at least seven days prior to the FDC's regular monthly meeting, the FDC will consider the Payment Request at such regular monthly meeting.

4.3.7. The capital spending by Developer will first be allocated toward items such as interior building improvements which fall within the definition of "qualified improvement property" for bonus depreciation purposes, and to interior building improvements and architect and engineering costs that are within the definition of "qualified rehabilitation expenses" as defined for historic tax credits, and expenses of kitchen and restaurant equipment, and to ADA access improvements. The grant assistance paid by the FDC shall be first allocated toward costs of the exterior improvements, site preparation, building enlargement, mechanicals related to the kitchen and building enlargement, exterior mechanical components, roof and related costs. These allocations do not change the funding amounts or terms of this Agreement, and the Parties agree that Developer may allocate specific categories of costs within those limits.

4.4. Completion Deadline. Notwithstanding any other provision of this Agreement to the contrary, in the event any Escrowed Funds remain unexpended on the Completion Deadline, such remaining Escrowed Funds shall be immediately disbursed by the Escrow Agent jointly to the FDC and the Developer, and upon such final disbursement, the Escrow Agent is absolved of further responsibility. The FDC shall have no claim or right to any remaining Escrowed Funds deposited by MSR unless and only to the extent the FDC has actual damages from a breach by Developer. MSR shall have no claim or right to any remaining Escrowed Funds deposited by the FDC unless and only to the extent the MSR has actual damages from a breach by the RDC or the FDC.

5. TIF Incentive. In exchange for the Developer agreeing to expeditiously pursue and complete the Project, and in consideration of the benefits to the Area and the City of Franklin, and the terms and conditions of this Agreement, the RDC agrees to grant Three Hundred Thousand Dollars (\$300,000.00) (the "TIF Incentive") to the FDC for it to deposit into the Escrow Account discussed above and expend on Eligible Expenditures. The FDC agrees to expend the TIF Incentive for the Project expenses consistent with this Agreement. The FDC's

expenditure of the grant will follow the disbursement procedure described above in Paragraph 4.2.

6. Good Faith Purchasing Commitment. The Developer agrees to make commercially reasonable efforts to purchase supplies and materials from or make bidding opportunities available to qualified, price-competitive suppliers located or residing in the City of Franklin.

7. Compliance Report. The Developer agrees to file a written Annual Report (“Annual Report”) with the FDC for each of the fiscal years ending during the term of this Agreement (the “Reporting Year”).

7.1. The written Annual Report shall include the following:

7.1.1. The amount the Developer has expended to date on the Project.

7.1.2. The assessed value increase generated by the Project.

7.1.3. The real property taxes and assessments paid and attributable to the Property in the Reporting Year, along with a copy of the tax bill.

7.1.4. A list of the Tenants occupying the Property, the total rentable square footage within the Property, and the percentage of the rentable square footage that was leased during the Reporting Year.

7.1.5. To the extent reasonably obtainable, the number of full-time equivalent employees employed on the Property on the Effective Date of this Agreement, the number of full-time equivalent employees employed on the Property at the end of the Reporting Year, and the difference between those numbers.

7.1.6. To the extent reasonably obtainable, the average hourly wage (with salaried positions converted to hourly wage) of the employees employed on the Property on the Effective Date of this Agreement and the average hourly wage (with salaried positions converted to hourly wage) of the employees employed on the Property at the end of the Reporting Year.

7.1.7. Whether any portion of the restaurant business operations has closed or been transferred to a location outside of Franklin, Indiana.

7.1.8. The general status of and future expectations for the Project.

7.1.9. A certification of the accuracy of the information provided, to be signed by the highest executive officer of the Developer as follows: “I hereby certify, subject to the penalties for perjury, that, after due inquiry, I have personal knowledge of the subject matter covered by this Annual Report and that the representations in this Annual Report are to my knowledge true in all material respects.”

8. Tax Abatements. The Developer is permitted to seek to be exempt from personal property taxes that may be assessed relative to the Property as a result of personal property improvements made to the Property that are provided for outside of the terms of this Agreement.

Further, the Developer is permitted to seek vacant building real estate property tax abatements from the City of Franklin's Economic Development Commission and Common Council.

9. Representations and Warranties of Madison Street Renovation, LLC. The Developer represents and warrants to the RDC as follows:

9.1. It is duly organized and validly existing under the laws of the State of Indiana, and the Agreement is the legal, valid, and binding obligation and enforceable against it in accordance with its terms.

9.2. The execution, delivery, and performance by the Developer of the Agreement are within its corporate or entity powers, have been duly authorized by all necessary corporate or entity action, and do not (i) conflict with, or result in a breach of, any provision of its Articles of Incorporation and Bylaws, or similar entity documents; (ii) require any approval or consent of any other person (including, without limitation, any shareholder); (iii) contravene any law, rule, or regulation of the State of Indiana or of the United States, or any order, writ, judgment, injunction, decree, determination, or award presently in effect that affects or binds it or any of its properties; (iv) conflict with or result in a breach of or default under any indenture, loan, credit agreement, or any other agreement or instrument to which it is a party in respect of indebtedness for money borrowed; or (v) result in the creation or imposition of any lien, security interest, or other charge or encumbrance upon any of its properties pursuant to any such indenture, agreement, or instrument, except pursuant to or as permitted by the Agreement.

9.3. It has received no notice of any action, suit, or proceeding at law or equity, or before or by any federal, state, local, or other governmental departments, commission, board, bureau, agency, or instrumentality, domestic or foreign, pending or threatened against it or its properties that, if determined adversely, would be a material adverse occurrence, and it is not in default with respect to any final judgment, writ, injunction, decree, rule, or regulation of any court or federal, state, local, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, that constitutes a material adverse occurrence.

10. Additional Duties of the Developer. The Developer agrees that until Final Completion, it shall:

10.1. Promptly pay and discharge all taxes, assessments and governmental charges which may be lawfully levied, assessed or imposed upon the Property, or upon the Developer's income or profits, and all lawful and undisputed claims for labor, material and services which, if unpaid, might become a lien or charge against the Property. In the event of a good faith dispute as to a claim for labor, material or service, Developer retains its rights to withhold such payment and dispute the amount, and to provide the FDC with assurance of protection of the Property from a lien or charge against the Property.

10.2. Permit with reasonable notice any authorized representative of the FDC, including but not limited to its attorneys and inspectors, to enter upon and inspect and examine the Property at reasonable times during normal business hours utilizing safe construction area precautions.

10.3. Give prompt written notice to the FDC of any process or action taken or pending whereby a third-party is asserting a material claim against the Developer or any of its assets; and

10.4. Pay when due all liabilities, including trade accounts, in accordance with regular terms, except for claims contested in good faith by appropriate proceedings.

11. Representations, Warranties, and Covenants of the RDC and FDC.

11.1. The RDC and FDC represent and warrant, subject to all applicable legal requirements, as of the date hereof, that (i) they have the requisite power, right and legal authority to execute, deliver and perform their obligations under this Agreement and have taken all action necessary to authorize the execution, delivery, performance and observance of their obligations under this Agreement, and (ii) this Agreement, when executed and delivered by duly authorized representatives of the RDC and FDC, will constitute the legal, valid and binding obligation of the RDC and FDC, enforceable against the RDC and FDC in accordance with its terms.

11.2. The RDC and FDC covenant and agree to take or cause to be taken (and shall cooperate with the Developer to enable it to take or cause to be taken) all actions reasonably necessary under statutes, regulations and rules applicable to the Project, and to execute and deliver or cause to be executed and delivered such documents as may be reasonably necessary under such statutes, regulations and rules, to assist and permit the Developer to undertake and complete the Project.

12. Events of Default.

12.1. Any one (1) or more of the following which occur during the term of this Agreement and prior to Final Completion, and which are not cured after reasonable notice and opportunity to cure, shall constitute an “Event of Default” hereunder:

12.1.1. Dissolution, liquidation, or termination of the business of the Developer; assignment by the Developer for the benefit of its creditors; appointment of a receiver or a trustee for the Developer or any of their assets, which appointment is consented to or, if not consented to, is not removed or discharged within sixty (60) days after such appointment; or the filing by the Developer of a petition for relief under the United States Bankruptcy Code, which petition is consented to, or, if involuntary, remains un-dismissed for sixty (60) days after such filing; and

12.1.2. Material breach of a duty or obligation imposed by the terms of this agreement.

13. Suspension of Obligations Upon Uncured Event of Default.

13.1. Upon an uncured Event of Default by MSR hereunder, the FDC may suspend its obligation to fund any further payments or approve any disbursements otherwise provided for hereunder.

13.2. Upon an uncured Event of Default by the RDC or FDC hereunder, MSR may suspend its obligation to perform under the terms of the parties’ agreement.



14. 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.

15. 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.

16. Breach: Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach or default 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 or default 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 compulsory non-binding mediation.

17. Remedies and Boilerplate. All remedies shall be reasonably tailored to alleviate actual damage, and not cause forfeiture of value nor a loss to one Party disproportionate to the amount required to remedy actual harm to the other Party. Protective boilerplate provisions will be interpreted to be bilateral.

18. Satisfaction and Discharge. Upon Final Completion, Developer's obligations under this Agreement shall be fully satisfied and discharged. The Developer, the RDC and the FDC shall promptly execute a certificate of satisfaction and discharge and a release of the Mortgage at that time.

19. Cumulative Rights and Remedies. All rights and remedies of the Parties herein specified are cumulative and in addition to, and not in limitation of, any rights and remedies that the Parties may have pursuant to the Project Agreement, by law or in equity, or otherwise.

20. Notices. All notices required or permitted to be given hereunder shall be in writing and delivered either in person, by a nationally recognized overnight delivery carrier, or by certified mail, return receipt requested, with additional copy delivered by email, if such delivery information is known by the sender, to the parties at their respective addresses set forth below, or at such other address as notice of which may have been given to the other party.

To the RDC:

Franklin Redevelopment Commission  
c/o President  
70 East Monroe Street  
Franklin, Indiana 46131  
Phone No: 317-736-3631  
Email: [klinke@franklin.in.gov](mailto:klinke@franklin.in.gov)

With copy to:

Franklin Redevelopment Commission  
c/o Community Development Director  
70 East Monroe Street  
Franklin, Indiana 46131  
Phone No: 317-736-3631  
Email: [klinke@franklin.in.gov](mailto:klinke@franklin.in.gov)

Robert H. Schafstall, Attorney  
Schafstall and Admire, LLP  
98 N. Jackson Street  
Franklin, Indiana 46131  
Phone No: 317-736-7146  
Email: [rob@schafstalladmire.com](mailto:rob@schafstalladmire.com)

To Madison Street Renovation, LLC:

Madison Street Renovation, LLC  
c/o John Talley and Lesa McDaniel Talley  
1797 North Centerline Road  
Franklin, IN, 46131  
Phone No: John (317) 607-0453 Lesa (317) 607-0440  
Email: [55westmadison@gmail.com](mailto:55westmadison@gmail.com)

To Franklin Development Corporation:

Franklin Development Corporation  
c/o Community Development Director  
70 East Monroe Street  
Franklin, Indiana 46131  
Phone No: 317-736-3631  
Email: [klinke@franklin.in.gov](mailto:klinke@franklin.in.gov)

Any notice given in accordance with this Section shall be deemed to have been duly given or delivered: a) on the date the same is personally delivered to the recipient as evidenced by a duly acknowledged written receipt, b) on the date the same is received by the recipient as evidenced

by the returned postal receipt, c) on the date the recipient delivers a non-automated email message acknowledging receipt of the notice by email or otherwise, or d) on the date following the day the notice is timely delivered to a nationally recognized overnight delivery carrier for delivery on the next business day.

## 21. Miscellaneous.

21.1. Entire Agreement. This Agreement, together with all agreements referenced herein and any other certificates and documents executed in conjunction herewith, constitutes the entire agreement of the parties and supersedes any and all prior agreements, arrangements, and understandings relating to the subject matter hereof. All recitals herein and exhibits, schedules and related agreements attached hereto are incorporated herein by this reference and expressly made a part of this Agreement. Neither this Agreement, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated, except by written instrument.

21.2. Binding Agreement. This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.

21.3. Other Entities. The EDA with MSR will be non-assignable by MSR without the consent of the RDC and FDC. The RDC and FDC agree that MSR may enter agreements with and utilize or partner with other entities which are wholly owned by MSR, or wholly owned by MSR and its owners (John Talley and Lesa McDaniel Talley), (such entities known as "Affiliate Entities" to (a) work on the Project development, (b) hold the Property title and serve as lessor of the Property, and (c) hold the restaurant assets and operate the restaurant. MSR will remain responsible under the EDA for the completion of all duties imposed under the EDA. MSR will form a subsidiary LLC to accept and own title to the Property at Closing and this entity will later operate as the owner and lessor of the Property when it is occupied. MSR and its owners may also form and work with other affiliated entities to assist with the Project development and to own the equipment or other assets and operate the planned restaurant.

21.4. Duplicates. This Agreement shall be executed in at least two (2) duplicates, with at least one originally executed version for each party. This Agreement may be executed in any number of counterparts, but all of such counterparts together shall constitute one and the same Agreement. For purposes of this Agreement, signatures by facsimile (including e-mail with a .pdf copy of the executed instrument attached) shall be binding to the same extent as original signatures. When a counterpart is delivered by facsimile, the original shall be delivered promptly after delivery of the facsimile counterpart.

21.5. Headings. The section headings and titles herein are solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

21.6. Amendment. Neither this Agreement, nor any term hereof, may be changed, modified, altered, waived, discharged, or terminated, except by written instrument.

21.7. No Waiver Provision. Except as expressly set forth herein to the contrary, no waiver of any provision of this Agreement shall be deemed to have been made unless

expressed in writing and signed by the party charged therewith. Failure to insist upon strict adherence to any term of this Agreement shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

21.8. Time of Essence. Time is of the essence in this Agreement. The parties shall have the right to treat all time deadlines contained or referenced in this Agreement as material and to exercise such remedies as may be provided in this Agreement, at law, in equity, or otherwise, in the event such time deadlines are not met.

21.9. Computation of Time. In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period shall be extended to the next day that is not a weekend day or legal holiday.

21.10. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the balance of this Agreement shall remain in full force and effect, and if any provision herein is held to be inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances, unless the result thereof would result in an unjust modification of the balance of rights and obligations hereunder.

21.11. Governing Law. This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of Indiana. The Parties hereto: (a) irrevocably consent to the exclusive jurisdiction of the courts of the State of Indiana; and (b) irrevocably waive any and all objections to such consents. Each party shall be responsible for its own legal expenses for review of this Agreement or in pursuit of any claim related to or arising under it.

21.12. Consents. No consent, agreement, or approval shall be effective unless in writing signed by the party from whom such consent, agreement, or approval is required.

21.13. Interpretation. The Agreement shall be liberally construed to accomplish the intent and purpose of the Agreement. When applicable, use of the singular form of any word shall mean or apply to the plural, and the use of the masculine form of any word shall mean or apply to the feminine, and vice versa.

21.14. No Agent Liability. No official, director, officer, employee or agent of the RDC or FDC shall be charged personally by Madison Street Renovation, LLC, its employees or agents, with any liabilities or be held personally liable to Madison Street Renovation, LLC under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder. No official, director, officer, employee or agent of Madison Street Renovation, LLC, its employees or agents, or Affiliate Entities, shall be charged personally with any liabilities by the RDC or the FDC or be held personally liable to the RDC or the FDC under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

21.15. Review by Counsel. The parties acknowledge that each has had the opportunity to be represented by counsel in this matter, and, for purposes of the rule of contract interpretation that construes a document against its drafter, the parties agree that neither party nor its counsel shall be considered the drafter hereof.

21.16. No Third-Party Benefit. Nothing herein expressed or implied is intended to confer on any person other than the parties hereto or their respective successors, assigns, and legal representatives, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

21.17. Additional Documents. The parties hereto shall execute and deliver any and all consents, releases, authorizations, transfers and other documents as may be reasonably required to carry out the provisions of this Agreement and to fully accomplish its purposes and intents.

21.18. No Partnership/Joint Venture. It is hereby acknowledged by the RDC, FDC, and Madison Street Renovation, LLC that the relationship between and among them created hereby and by any other document executed in connection with this Agreement is that of donor and donee, and is not intended to be and shall not in any way be construed to be that of a partnership, a joint venture or that of principal and agent.

21.19. Force Majeure. Each party shall be excused for any delay in performing any of its obligations under this Agreement, if such delay is caused by an event of Force Majeure. "Force Majeure" shall mean any act of God; any accident (including equipment failure, HVAC failure or electricity outage for extended periods of time, utility outages or utility connection failures or delays, or destruction or damage to equipment not caused by the party relying upon such circumstance or event); any explosion; any fire, flood, ice, earthquake, lightning, tornado or other severe weather condition or calamity; any civil disturbance, labor dispute or labor or material shortage; any sabotage or act (or specific, imminent threatened act) of terrorism; any act of a public enemy, uprising, insurrection, civil unrest, war or rebellion; or any action or restraint by court order or public or governmental authority or lawfully established civilian authorities. In an event of Force Majeure, an extension of time equal to one day for each day of delay due to Force Majeure shall be provided.

IN WITNESS WHEREOF, the RDC, FDC, and Madison Street Renovation, LLC have caused this Agreement to be executed by their authorized officers and/or representatives, all as of the date first above-written.

**Madison Street Renovation, LLC**

By: Lesa McDaniel Talley  
Printed: Lesa McDaniel Talley  
Title: Member

By: John R. Talley  
Printed: JOHN R. TALLEY  
Title: Member

**CITY OF FRANKLIN, BY AND THROUGH THE  
FRANKLIN REDEVELOPMENT COMMISSION**

By: Robert D. Heuchan  
Robert D. Heuchan, President

By: Brian J. Deppe  
Brian J. Deppe, Secretary

**Franklin Development Corporation**

By: Jeffrey R. Mercer  
Jeffrey R. Mercer, President

By: Kim Minton  
Kim Minton, Secretary

## Exhibit A

### Description of Project

The Developer will pursue the redevelopment and revitalization of the Property located at 55 West Madison Street (commonly, “Old City Hall”), in Franklin, Indiana, for commercial uses (restaurant and retail purposes, and possible offices) which project is expected preliminarily to include capital investment of Eligible Expenditures in the Project of at least \$600,000.00 (includes Developer’s Capital Commitment and the TIF Incentives) by March 31, 2019 (the “Completion Deadline”). Developer plans to adapt the Property for primary use as a restaurant with retail space and possible offices.

## Exhibit B

“Eligible Expenditures” Includes the following Cost Categories:

### **Preconstruction**

Closing costs

Legal and accounting costs (LLC formation, EDA review, tax review)

Permit costs

Engineering fees

Architect fees

Consultant fees

Environmental assessment fee

Title Insurance

### **Construction Period Operating Costs**

Insurance

Utilities

Property maintenance

Taxes

### **HVAC – (includes heating and air conditioning and ducts)**

Upstairs HVAC

Downstairs HVAC

Addition HVAC

Boiler piping changes

Boiler fins and covers

Boiler back flow and drain if needed

### **Plumbing**

Test and assess existing lines and drains



Back flow sewer valve

Water main work, backflow protection and main connection

Sewer main work and connection, piping to building

Plumbing to fixtures in building addition, including restrooms, floor drains, and kitchen plumbing, equipment connects

Plumbing and drains in existing building, repair as needed and removing obsolete, adding where needed

Plumbing and drains to bar area

Distribution piping

Water heaters and pumps

Floor drains, equipment drains, condensate drains

Storm drain work, patio and exterior drains

Gas piping

Relocate gas meter

Grease traps

Rough-ins and equipment connects

## **Electric and Fixtures**

Rewire first floor

Rewire basement

New electric fuse, junction or service boxes and wiring

Distribution wiring

Surge protection

Addition wiring, kitchen rough-ins, and equipment connects

Light fixtures, first floor (new or repair)

Light fixtures, basement (new or repair)

Light fixtures in addition

Emergency and exit lighting

Fire alarm strobes, wiring, and communications

Light controls  
Telephone and communications wiring  
Relocate electric meter  
Ceiling fans  
Exterior floods and cupola lighting  
Landscape lighting  
Rough-ins and equipment connections

## **Interior**

Refurbish remaining windows, doors, well covers, storms  
Remaining interior walls, prep, repair, prime, finish paint  
Repair brick, stone, waterproof north wall  
Finishes- trim carpentry, etc.  
Refurbish wood flooring  
Reseal concrete flooring lower level after cuts  
Refurbish tile flooring lobby  
New firewall doors/security  
Path carpeting  
Insulation  
Bar cabinets and top  
New doors and cuts  
Repair plaster walls, ceilings  
Interior partitions  
Paint walls, ductwork, ceiling  
Lift/hoist

## **Kitchen Mechanicals**

Hoods and vents  
Walk in freezer

Walk in refrigeration

Dishwashers

Kitchen mechanicals

Kitchen/food area ceilings

Kitchen floor drains

Equipment location, installation, testing

## **Roof**

Coat metal roof, repair liner, flash wall caps, chimney cap

Tin roof,

Rubber roof

Skylight caulking, wood repair, aluminum clad

## **Exterior**

Signage

New concrete patio, railing

Patio canopy roof

Sidewalk work

Landscaping

Ext lighting

ADA concrete ramps

Cupola and wind vane

Repair hose bibs

Basement entry northeast

Basement entry northwest and ADA access

ADA entry southwest

New exterior wall louver

Handrails

**Site**

Parking lot

Dumpster enclosure

Construction dumpster

Trash removal

Port-o-let

Grading

**Addition**

Costs of building enlargement

Foundation

Walls

Drywall

Roof

Plumbing

Electric

HVAC

Other

**Kitchen and Restaurant**

New kitchen, bar equipment

Tables, chairs

Decor

Licenses

POS and security systems

Wi-Fi system

Bar supplies

Phone, fax system

Video, audio system

Laundry equipment

**General Contractor Fee**

**Other:**

Work and costs needed to obtain or comply with permit, zoning or other requirements