

## **ESCROW AND CONTROL AGREEMENT**

THIS ESCROW AND CONTROL AGREEMENT (this "Escrow Agreement" or "Agreement"), is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 ("Effective Date"), by and between the **Redevelopment Commission of the City of Franklin, Indiana ("RDC")**, the **Franklin Development Corporation ("FDC")**, an Indiana non-profit neighborhood development corporation, and **JART Properties, Inc. ("Developer")**, an Indiana limited liability company, and **Mutual Savings Bank ("Escrow Agent")**.

WHEREAS, the RDC, FDC, and Developer have entered into an Economic Development Agreement, dated as of \_\_\_\_\_, 201\_\_ (the "Economic Development Agreement"), and pursuant to same, the parties desire to enter into this Escrow Agreement.

**NOW, THEREFORE**, in consideration of the premises, the covenants and agreements hereinafter contained, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the parties hereto as follows:

Section 1. Escrow Account. There is hereby established and created with the Escrow Agent an irrevocable trust account (the "Escrow Account") for the parties' benefit designated as the JART Properties, Inc. Escrow Account.

Section 2. Funding of Escrow Account. Pursuant to the terms of the Escrow Agreement, on the date hereof, the RDC is granting to the FDC and the FDC is depositing with the Escrow Agent, the sum of Five Hundred Sixty Thousand Dollars (\$560,000). Upon receipt of such funds, the Escrow Agent shall deposit all of such funds in the Escrow Account.

Section 3. Disbursement of Escrow Account. Subject to Section 11 hereof concerning Termination, upon the receipt of a disbursement request in the form set forth on Exhibit A hereto, signed jointly by duly authorized representatives of the ~~RDC, FDC,~~ and Developer, as identified on Exhibit B, the Escrow Agent shall disburse funds from the Escrow Account solely for the purposes of the payment (or reimbursement for the prior payment by the Developer) of the costs of certain permitted expenditures as set forth in the Economic Development Agreement and the disbursement request. The Escrow Agent has no duty to verify the propriety of the jointly requested disbursement.

Section 4. Records. The Escrow Agent shall keep and maintain adequate records pertaining to the Escrow Account, which shall be subject to inspection by the parties upon request. The Escrow Agent shall furnish monthly statements to the RDC, FDC, and Developer.

Section 5. Security Interest. Until termination of this Agreement, the RDC and FDC shall have a security interest in the Escrow Account and Funds. Neither party will have any access to the Escrow Account or the Funds, investments, or other assets credited thereto, except as expressly provided in this Agreement. Additionally, except for the claims and interest of the ~~RDC, FDC, FDC~~ and Developer in the Escrow Account and Funds (hereinafter defined) (subject only to any claim in favor of the Escrow Agent permitted under Section 5(a) hereof), the Escrow Agent has no notice of and makes no claim of any adverse claim to or interest in the Escrow Account or Funds.

(a) The Escrow Agent hereby acknowledges the security interest granted in the Escrow Account and the Funds maintained therein. Except as provided in Section 5(b) below (Compliance with Court Orders), the Escrow Agent will not agree with any third party to comply with such third party's direction or order concerning the Escrow Account without the prior written consent of the RDC, FDC, and Developer. In no event shall Escrow Agent accept any instruction nor shall it permit any distribution or release of any part of the Escrow Account or Fund without written authorization of the RDC, FDC, and Developer.

(b) Compliance with Court Orders. In the event that any of the Escrow Account or Funds shall be attached, garnished, or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment, or decree shall be made or entered by any court order affecting any of the Escrow Account or Funds, the Escrow Agent shall provide immediate notice thereof to the RDC, FDC, and the Developer and an opportunity for the RDC, FDC, and the Developer to intervene or defend against the order or decree, and the Escrow Agent is hereby expressly authorized to obey and comply with all final, non-appealable writs, orders, or decrees so entered or issued, that it is advised by legal counsel of its own choosing are binding upon it, and in the event that the Escrow Agent obeys or complies with any such final, non-appealable writ, order or decree, Escrow Agent shall not be liable to the ~~RDC, FDC, FDC~~ or the Developer or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order, or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 6. Waiver of Defenses. The Escrow Agent hereby waives any and all liens, encumbrances, claims, right of attachment, set-off, counterclaim, reduction, or diminution of an obligation, or any defense of any kind or nature which the Escrow Agent has or may have against the RDC, FDC, or Developer insofar as such lien, encumbrance, claim, right of attachment, set-off, counterclaim, reduction, diminution or defense would have an adverse effect on the availability of funds sufficient to comply with the obligations of the parties contained herein.

Section 7. Investment of Funds. The Escrow Agent is hereby directed and authorized to invest the moneys on deposit in the Escrow Account (the "Funds") in accordance with Exhibit D. All investment earnings on the funds on deposit in the Escrow Account shall be deposited in the Escrow Account and shall be subject to disbursement pursuant to Section 3 of this Escrow Agreement.

Section 8. Limitation of Liability. The RDC, FDC, and Developer jointly and severally shall indemnify, defend and hold harmless the Escrow Agent from any and all claims, liabilities, losses, damages, fines, penalties, and expenses (including out-of-pocket and incidental expenses and fees and expenses of an in-house or outside counsel) ("Losses") arising out of or in connection with Escrow Agent's performance of this Agreement after the effective date of this Agreement, except to the extent and that such Losses are due to the negligence or willful misconduct of the Escrow Agent. The Escrow Agent shall not be liable for any act done or step taken or omitted by it, or for any mistake of fact or law, or for anything which it may do or refrain from doing, except for its negligence or willful misconduct in the performance of any obligation imposed upon it hereunder. The Escrow Agent shall not be liable or responsible for any loss resulting from any investment made pursuant to this Escrow Agreement and in full compliance with the provisions hereof. None of the provisions contained in the Escrow Agreement shall require the Escrow Agent to use or

advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights or powers hereunder. The Escrow Agent shall be under no liability for interest on any funds or other property received by it hereunder, except as herein expressly provided. The Escrow Agent may: act in reliance upon any writing, notice, certificate, instruction, instrument or signature which it, in good faith, believes to be genuine; assume the validity and accuracy of any statement or assertion contained in such a writing, notice, certificate, instruction or instrument; and assume that any person purporting to give any such writing, notice, certificate, instruction or instrument in connection with the provisions hereof has been duly authorized to do so. Except as expressly provided otherwise in the Agreement, the Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form of, the manner of execution of, or the validity, accuracy or authenticity of any writing, notice, certificate, instruction or instrument deposited with it, nor as to the identity, authority or right of any person executing the same. The Escrow Agent's duties hereunder (including, without limitation, its duties as to the safekeeping, investment and disbursement of moneys in the Escrow Account) shall be limited to those specifically provided herein.

Section 9. Resignation or Removal of Escrow Agent: Successor Escrow Agent. The Escrow Agent at the time acting hereunder may at any time resign and be discharged from the trusts hereby created by giving not less than thirty (30) days' written notice to the RDC, FDC, and Developer, but no resignation shall take effect unless a successor Escrow Agent shall have been appointed by the RDC, FDC, and Developer as hereinafter provided and the successor Escrow Agent shall have accepted such appointment and acceptance of a successor Escrow Agent. The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent, by the RDC, FDC, and Developer.

In the event the Escrow Agent hereunder shall resign, be removed, be dissolved or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the RDC, FDC, and Developer. Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the RDC, FDC, and Developer, an instrument in writing accepting such appointment hereunder, and thereupon such successor Escrow Agent without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent, the RDC, FDC, or Developer, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor; provided, however, that before any such delivery is required to be made, all fees, advances and expenses, if any, of the retiring or removed Escrow Agent shall be paid in full.

Should any transfer, assignment or instrument in writing from the RDC, FDC, and Developer be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the respective parties.

Any corporation into which the Escrow Agent or any successor to it in the trusts created by this Escrow Agreement may be merged into or consolidated with, or any corporation resulting from any merger, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party, shall, if satisfactory to the RDC, FDC, and Developer, be the successor Escrow Agent under this Escrow Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 10. Fees and Expenses. All fees and expenses of the Escrow Agent shall be as set forth on Exhibit C attached hereto and shall be paid to the Escrow Agent from amounts on deposit in the Escrow Account, upon the written approval of the RDC, FDC, and Developer.

Section 11. Termination. This Escrow Agreement shall terminate upon the earliest of (a) the date on which all the funds on deposit in the Escrow Account have been disbursed pursuant to Section 3 of this Escrow Agreement, (b) March 31, 2019, or (c) such termination date specified in a joint written notice to the Escrow Agent from the RDC, FDC, and Developer. Upon such termination, the Escrow Agent shall disburse any amounts remaining in the Escrow Account (including any investment earnings) jointly to the RDC, FDC, and Developer.

Section 12. Severability. If any one or more of the covenants or agreements provided in this Escrow Agreement should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

Section 13. Successors or Assigns. All the covenants, promises and agreements in this Escrow Agreement contained by or on behalf of the parties hereto shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 14. Counterparts. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument. This Agreement shall be executed in at least three (3) duplicates, with at least one originally executed version for each party. 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.

Section 15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. The parties hereto: (a) irrevocably consent to the exclusive jurisdiction and venue of the courts of the State of Indiana, sitting in Johnson County; and (b) irrevocably waive any and all objections to such consents.

Section 16. 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 Developer:

JART Properties, Inc.  
Attn: Mr. Robert Richardson  
**7607 Banta Woods Drive,  
Bargersville, In, 46106**  
Phone No: \_\_\_\_\_  
Email: \_\_\_\_\_

Abbey Ops, LLC  
Attn: Mrs. Amy Richardson  
**7607 Banta Woods Drive,  
Bargersville, In, 46106**  
Phone No: \_\_\_\_\_  
Email: \_\_\_\_\_

To Redevelopment Commission:

Redevelopment Commission of the  
City of Franklin  
Attn: President  
70 East Monroe Street  
Franklin IN 46131

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)

With a copy to:

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)

If to the Escrow Agent:      Mutual Savings Bank  
Trust Department  
80 E. Jefferson St.  
Post Office Box 325  
Franklin, IN 46131  
Fax No: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Email: \_\_\_\_\_

The RDC, FDC, Developer, and the Escrow Agent may designate any further or different addresses to which subsequent notices, requests, communications or other papers shall be sent. 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 the notice is timely delivered to a nationally recognized overnight delivery carrier for delivery on the next business day.

Section 17.    Headings The section headings used herein are for convenience of reference only, and in no way define, limit or describe the scope or intent of any provisions hereof.

Section 18.    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.

Section 19.    Assignment.    No Party may assign this Escrow and Control Agreement without the express written consent of the other Parties, which consent shall be at the reasonable discretion of the Party. Any attempted assignment in contravention of this provision shall be null, void, and of no force and effect. This provision, however, shall not restrict or limit the Developer's ability to work with, enter agreements with, and utilize or partner with its Affiliate Entities as permitted under the Economic Development Agreement.

Section 20.    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.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed for and on their behalf as of the day and year first herein above written.

**REDEVELOPMENT COMMISSION**

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

**FRANKLIN DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
Jeff Mercer, President

**JART PROPERTIES, INC.**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

**MUTUAL SAVINGS BANK**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

DISBURSEMENT FROM ESCROW ACCOUNT

Requisition No. \_\_\_\_\_

Pursuant to the Escrow Agreement, dated \_\_\_\_\_, 201\_\_ (the "Escrow Agreement"), among the Redevelopment Commission of the City of Franklin, Indiana, the Franklin Development Corporation, JART Properties, Inc., and Mutual Savings Bank (the "Escrow Agent"), the undersigned direct the Escrow Agent to pay the aggregate sum of \$\_\_\_\_\_ from moneys deposited in the Escrow Account under the Escrow Agreement to the following parties: \_\_\_\_\_.

This statement shall constitute full warrant and protection to the Escrow Agent for its actions taken pursuant hereto. This document evidences the approval of the undersigned of the payments hereby.

All terms used herein, which are not otherwise defined herein, shall have the meanings set forth in the Escrow Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**JART Properties, Inc.**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

**REDEVELOPMENT COMMISSION**

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

**Franklin Development Corporation**

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



**EXHIBIT B**

**Authorized Representatives of the FDC and Specimen Signatures**

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	President	
Name	Title	Signature

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	Vice President	
Name	Title	Signature

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	Secretary	
Name	Title	Signature

**Authorized Representatives of JART Properties, Inc. and Specimen Signatures**

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Name	Title	Signature

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Name	Title	Signature

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Name	Title	Signature

## **EXHIBIT C**

### **ESCROW AGENT FEES AND EXPENSES**

I. Setup Fee: \$250.00

The acceptance fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a flat one-time fee, payable at account opening.

11. Closing Fee: \$250.00

Administrative Fee to close the escrow account. This fee is payable at closing.

III. Administrative Distribution Fee: \$50/per;  
Max. Annual \$500.00

Administration fee for performance of the routine distributions of the escrow agent associated with the management of the account. Administration fees are payable annually in advance for each year or part thereof.

IV. Investments: (Bank Deposit Products)

No fees are invoiced for standard money market bank deposits. N/A

V. Out-of-Pocket Expenses: At Cost

Reimbursement of expenses associated with the performance of our duties, including but not limited to fees and expenses of legal counsel, accountants and other agents, tax preparation, reporting and filing, publications, and filing fees.

VI. Extraordinary Expenses:

Extraordinary services are duties or responsibilities of an unusual nature but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the service and the responsibility involved. At our option, these charges will be billed at a flat fee or our hourly rate then in effect.

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a nonindividual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

## **EXHIBIT D**

### **AUTOMATIC MONEY MARKET INVESTMENT AUTHORIZATION**

The Mutual Savings Bank Money Market account is a Mutual Savings Bank ("Mutual Savings Bank") interest-bearing money market deposit account designed to meet the needs of Mutual Savings Bank's customers. Selection of this investment includes authorization to place funds on deposit and invest with Mutual Savings Bank.

Mutual Savings Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at Mutual Savings Bank's discretion, and may be tiered by customer deposit amount.

The owner of the account is Mutual Savings Bank as Agent for its trust customers. Mutual Savings Bank's trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

In the absence of specific written direction to the contrary, Mutual Savings Bank is hereby directed to invest and reinvest proceeds and other available moneys in the Mutual Savings Bank Money Market Account. The Mutual Savings Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.