

ECONOMIC DEVELOPMENT AGREEMENT

Between and Among

City of Franklin Redevelopment Commission

City of Franklin Board of Public Works and Safety

and

Maurice Fred Linville and Helen Ann Linville

The Linville Way Project

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into effective this ____ day of _____, 2017 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 Redevelopment Commission (the “RDC”), as the governing body of the City of Franklin, Indiana Redevelopment District, and Maurice Fred Linville and Helen Ann Linville (the “Linvilles”), and each of them.

WITNESSETH:

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

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

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

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

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

Article I. RECITALS

Section 1.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

Article II. MUTUAL ASSISTANCE

Section 2.01 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the RDC and the City, the adoption of resolutions), copies of which will be provided to all parties, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement, and to aid and assist each other in carrying out said terms, provisions and intent.

Article III. PROJECT DEVELOPMENT

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

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

- (a) The Linvilles will grant immediately upon their execution of this Agreement a temporary construction easement to the RDC and City to permit either to enter onto the property for purposes of constructing Linville Way, the substantially complete form of which is attached as Exhibit "C" – Temporary Construction Easement.
- (b) The RDC will obtain two (2) independent appraisals of Linville Way and two (2) independent appraisals of the Drainage Area.

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

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

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

Article V. AUTHORITY

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

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

Article VI. GENERAL PROVISIONS

Section 6.01 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 6.02 Permitted Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God (such as weather), war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (such as unforeseen delays in obtaining licensing or permits, but other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which a party is entitled to delay its performance under this Agreement and (ii) such party anticipates that such permitted delay will cause a delay in its performance under this Agreement, then such party agrees to provide written notice to the other parties of this Agreement of the nature and the anticipated length of such delay. An extension of time for a permitted delay will not be unreasonably contested, denied, or withheld by either party.

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

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

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

Section 6.06 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 6.07 Construction and Interpretation of Agreement / Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana. The parties agree that they

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

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

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

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

City of Franklin - Redevelopment Commission

By: _____
Robert D. Heuchan, President

By: _____
Brian J. Deppe, Secretary

Mr. and Mrs. Linville

By: _____
Maurice Fred Linville

By: _____
Helen A. Linville

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

By: _____
Steve Barnett, Mayor

By: _____
Bob Swinehamer, Member

By: _____
Lisa Jones, Member

Attest: _____
Jayne W. Rhoades, Clerk-Treasurer