

## INSTALLMENT PURCHASE CONTRACT

This Installment Purchase Contract (the "Contract") is executed this \_\_\_\_ day of June, 2017, by and between the City of Franklin Redevelopment Commission ("FRC") and Franklin Shell Building LLC (the "Developer").

### 1. Definitions.

**Acquisition Property** shall mean the completed Project.

**Acquisition Property Price** shall mean the total aggregated IP Principal Amounts.

**Agency** shall mean any applicable: (a) governmental agency, board, commission, or department; or (b) other judicial, administrative, or regulatory body.

**Allocation Areas** shall mean those allocation areas within the City's Franklin/I-65 Integrated Economic Development Area that commonly are known as the Franklin Eastside Business Park Allocation Area, the Franklin Power Products Economic Development Allocation Area, the Musicland Allocation Area, the Casting Technology Company Allocation Area, and the Amended Franklin Park Allocation Area,

**Amortization Period** shall mean a period of 20 years, commencing on the first day of the Second Period.

**Assignment Transaction** shall mean the purchase of an absolute assignment of the Payment Rights, the proceeds of the sale of which shall be used to pay the Project Costs.

**AT Closing** shall mean the closing with respect to the Assignment Transaction.

**AT Closing Date** shall mean the date of the AT Closing.

**AT Documents** shall mean all instruments, agreements, and other documents evidencing, or required in connection with, the Assignment Transaction, including, without limitation, the Participation Agreement.

**Books and Records** shall mean all of the books and records pertaining to: (a) the acquisition of materials to construct, and the construction of, the Project in accordance with the Project Agreement, this Contract and the Construction Contract; and (b) the operation of the Acquisition Property during the Operating Period.

**City** shall mean the City of Franklin, Indiana.

**Claims** shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees).

~~Code shall mean the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations in effect with respect thereto.~~

~~Consolidated Allocation Area shall mean [Need text to identify the applicable allocation area/tif district from which the Increment is being pledged. I see in the Loan Package that there currently are multiple districts, and the Bank Term Sheet references the consolidation of those districts into just two, though doesn't say which ones will be included here]~~

**Construction Contract** shall have the meaning ascribed to the term "Construction Contract" in the Project Agreement.

**Cure Period** shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Contract to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

**Custodial Agreement** shall mean a "Custodial Agreement" to be executed at the AT Closing by Developer and the Payment Rights Purchaser or its designee, as "Custodial Agent".

**Developer Transfer** shall mean, prior to the conveyance of the Acquisition Property to FRC: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project or the materials to construct the Project, or any interest in the foregoing; or (b) any granting of a security interest in the Project or the materials to construct the Project, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the AT Documents, or required by the Project Agreement or this Contract, shall not constitute a Developer Transfer.

**Event of Default** shall have the meaning set forth in Section 12.

**Fixed Rate** shall mean the fixed per annum rate of 3.05%.

**Force Majeure** shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; and (iii) utility or energy shortages or acts or omissions of public utility providers).

**FRC Transfer** shall mean: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project Site, the Acquisition Property, or any interest in the Project Site or the Acquisition Property; or (b) any granting of a mortgage or security interest in the Project Site or the Acquisition Property, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the AT Documents, or required by the Project Agreement or this Contract, shall not constitute an FRC Transfer.

**Full Prepayment Closing Date** shall mean, in the case of the exercise by FRC of the Full Prepayment Option (or the declaration by Developer of the exercise of the Full Prepayment Option pursuant to Subsection 13(a)), the date on which the Full Prepayment Price is to be paid.

**Full Prepayment Notice** shall mean a written notice pursuant to which FRC notifies Developer that it is exercising the Full Prepayment Option.

**Full Prepayment Option** shall mean the option (but not the obligation) of FRC to satisfy its obligation in full with respect to the payment of the Acquisition Property Price in advance of the expiration of the Payment Period by paying the Full Prepayment Price.

**Full Prepayment Price** shall mean the sum of: (a) the Outstanding IP Principal Amount on the Full Prepayment Closing Date; plus (b) interest thereon that has: (i) accrued at the Fixed Rate; and (ii) not been paid prior to the Full Prepayment Closing Date (stated alternatively, interest that has accrued, but has not been paid as part of the Installment Payments).

**Increment** shall mean the allocated property tax proceeds that are: (a) generated from ad valorem real property taxes that are levied, imposed, or charged by the applicable taxing authorities on, against, for, or with respect to real property within the Consolidated Allocation Area<sup>s</sup>; and (b) attributable to the assessment of such real property above a base assessed value ("increment"); which allocated property tax proceeds (increment) are to be on deposit in an allocation fund pursuant to IC §36-7-14-39(b).

**Initial Period** shall mean the period: (a) beginning on the AT Closing Date; and (b) ending on the third anniversary of the last day of the calendar month in which the AT Closing Date occurs.

**Installment Payments** shall mean semi-annual installment payments for the purchase of the Acquisition Property, which installment payments shall be in the amounts specified on Exhibit A.

**IP Interest Amount** shall mean, with respect to any given Installment Payment, the amount thereof that is attributable to interest that has accrued on the Outstanding IP Principal Amount at the Fixed Rate, which amount is specified on Exhibit A in the column entitled "Interest" or "Interest Amount".

**IP Principal Amount** shall mean, with respect to any given Installment Payment, the amount thereof specified on Exhibit A in the column entitled "Principal" or "Principal Amount". The aggregated IP Principal Amounts specified on Exhibit A constitute the Acquisition Property Price.

**Laws** shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

**Operating Period** shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the first to occur of the date that is ~~30 days~~ (i) six months after the Substantial Completion Date; or (ii) set forth in a notice from FRC to Developer in accordance with Subsection 9(c) of the Project Agreement.

**Outstanding IP Principal Amount** shall mean, as of any given date, the aggregate outstanding IP Principal Amount.

**Partial Prepayment** shall mean a payment of a portion of the Outstanding IP Principal Amount, which payment is made by FRC in addition to an Installment Payment.

**Participation Agreement** shall mean a "Participation and Purchase Agreement" to be executed at the AT Closing by FRC, Developer, and the Payment Rights Purchaser.

**Payment Due Date** shall mean each January 15 and July 15 during the Payment Period, commencing on January 15, 2018.

**Payment Period** shall mean, collectively, the Initial Period and the Second Period.

**Payment Rights** shall mean the rights hereunder with respect to the receipt of the Installment Payments.

**Payment Rights Purchaser** shall mean Horizon Bank and its successors and assigns.

**Project** shall mean the "Project" to be constructed on the Project Site by Developer pursuant to the Project Agreement.

**Project Agreement** shall mean that certain Project Agreement executed by and between FRC and Developer and dated June     , 2017.

**Project Costs** shall have the meaning ascribed to the term “Project Costs” in the Project Agreement.

**Project Fund** shall mean a fund to be established by the Payment Rights Purchaser, as “Custodial Agent”, pursuant to the Custodial Agreement, which fund shall be a separate and dedicated account established for the benefit of Developer from which disbursements shall be made to Developer pursuant to the Custodial Agreement to pay (or reimburse Developer for) Project Costs.

**Project Site** shall mean that certain real estate located on Graham Road in the City that is defined as the “Project Site” in the Project Agreement.

**Second Period** shall mean the period: (a) commencing on the date immediately following the expiration date of the Initial Period; and (b) ending on July 15, 2020, which is the 12<sup>th</sup> Payment Due Date; representing a portion of the Payment Term. Accordingly, the Second Period that includes six Payment Due Dates (or approximately three years). For purposes of clarity, the final Installment Payment shall be due on the Payment Due Date that is the last day of the Second Period.

**Substantial Completion Date** shall have the meaning ascribed to the term “Substantial Completion Date” in the Project Agreement.

## **2. General Obligations.**

- (a) Assignment Transaction. Subject to the terms and conditions of this Contract:
  - (i) Developer shall: (A) close the Assignment Transaction; and (B) satisfy its obligations under the AT Documents;
  - (ii) FRC shall execute the AT Documents to which it is a party;
  - (iii) Developer shall use the proceeds of the Assignment Transaction for the sole purpose of paying Project Costs.
  - (iv) Developer shall comply with all of its obligations under the Project Agreement with respect to the construction of the Project.
- (b) Conveyance. Subject to the terms and conditions of this Contract: (i) Developer shall convey to FRC; and (ii) FRC shall purchase; title to the Acquisition Property for the Acquisition Property Price; provided that, if FRC exercises the Full Prepayment Option, then, in lieu of the Acquisition Property Price, FRC shall pay the Full Prepayment Price.

**3. AT Closing.** The AT Closing Date shall be established mutually by FRC and Developer, acting in cooperation with the Payment Rights Purchaser. The AT Closing shall take place at such place as FRC and Developer mutually agree, acting in cooperation with the Payment Rights Purchaser. At the AT Closing, FRC and Developer shall execute the Participation Agreement, together with such other customary documents as the Payment Rights Purchaser reasonably may request.

**4. Conditions of Performance AT Closing.** The obligations of each of FRC and Developer with respect to proceeding with the AT Closing shall be subject to the satisfaction, or waiver in writing, of the following as of the AT Closing Date:

- (a) each of FRC and Developer, exercising commercially reasonable discretion, have approved the terms and conditions of: (i) the sale and assignment of the Payment Rights; and (ii) the AT Documents to which it is a party;
- (b) each of FRC and Developer, exercising commercially reasonable discretion, have determined that the other party and the Payment Rights Purchaser are prepared to execute the AT Documents at the AT Closing;
- (c) each condition to closing set forth in the Project Agreement has been satisfied or waived in writing by the parties to which such condition applies;
- (d) there is no breach of this Contract by either party that such party has failed to cure within the Cure Period; and
- (e) all of the representations and warranties set forth in Section 5 are true and accurate in all respects.

**5. Representations.** Each of FRC and Developer represents and warrants that:

- (a) it has: (i) the power and authority to enter into this Contract and perform its obligations hereunder; (ii) the power and authority to carry out all transactions contemplated by this Contract; and (iii) complied with the Laws in all matters relating to such transactions;
- (b) it has been authorized by proper action to execute, deliver, and perform its obligations under this Contract; and
- (c) neither the execution and delivery of this Contract by it, nor the performance by it of its obligations hereunder: (i) violates any Law or the terms and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (ii) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (iii) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets.

In addition to the foregoing: (a) FRC represents and warrants that it is a redevelopment commission organized and existing under the laws of the State of Indiana; and (b) Developer represents and warrants that it is a limited liability company organized and existing under the laws of the State of Indiana.

**6. Project Fund.**

- (a) **Project Fund.** Amounts on deposit in the Project Fund shall be disbursed to Developer in accordance with the Custodial Agreement to pay (or reimburse Developer for) Project Costs.
- (b) **Completion.** Upon the occurrence of the Substantial Completion Date, Developer shall deliver written notice pursuant to the Custodial Agreement stating that: (i) the Project has been constructed and/or installed substantially in accordance with the terms and conditions of the Project Agreement; and (ii) all of the Project Costs have been determined and paid (or that: (A) all of the Project Costs have been paid, other than specified claims that are subject to dispute; and (B) there is to be retained in the Project Fund, until resolution of the dispute, the full amount of such specified claims). Upon the receipt of such statement,

the remaining balance in the Project Fund less: (i) any amounts needed for Project Fund purposes; and (ii) the amount certified by Developer as sufficient to cover the full amount of the specified claims that are subject to dispute; shall be applied to the next due Installment Payments as specified in the Custodial Agreement.

## **7. Acquisition Property-Payment.**

(a) Interest. During the Payment Period interest shall accrue: (i) on the Outstanding IP Principal Amount at the Fixed Rate; and (ii) on the basis of a 360-day year based on the number of actual days elapsed.

(b) Payments.

(i) During the Payment Period, FRC shall pay an Installment Payment on each Payment Due Date. Each Installment Payment shall be paid by FRC directly to the Payment Rights Purchaser, as "Custodial Agent", in accordance with the Custodial Agreement. If FRC fails to make any Installment Payment on the applicable Payment Due Date, then FRC shall: (A) remain obligated to pay the full amount of such Installment Payment; and (B) pay interest on the unpaid amount of the Installment Payment at the Fixed Rate.

(ii) The amount of each Installment Payment is as set forth on Exhibit A, which reflects that the Installment Payments: (A) payable during the Initial Period consist of IP Interest Amounts only; and (B) payable during the Second Period (with the exception of the Installment Payment due on the final Payment Due Date) consist of IP Interest Amounts and IP Principal Amounts as necessary to fully amortize the Acquisition Property Price over the Amortization Period at the Fixed Rate. Because the Second Period is shorter than the Amortization Period, the installment payment due on the final Payment Due Date consists of: (A) an IP Principal Amount equal to what would be the total of all remaining IP Principal Amounts if the Second Period and the Amortization Period ended on the same date; and (B) an IP Interest Amount equal to the accrued and unpaid interest on the foregoing IP Principal Amount on the final Payment Due Date.

(c) Partial Prepayment. FRC may make a Partial Prepayment at any time.

(d) Full Prepayment. FRC may exercise the Full Prepayment Option, to be effective at any time during the Payment Period, by delivery of the Full Prepayment Notice. Within ten days after receipt by Developer of the Full Prepayment Notice, FRC and Developer, each acting reasonably, shall agree on the Full Prepayment Closing Date; provided that, if the Full Prepayment Notice is delivered more than 90 days prior to the expiration of the Payment Period, then the Full Prepayment Closing Date shall not occur for at least 30 days after delivery of the Full Prepayment Notice. If FRC properly exercises the Full Prepayment Option, then, in lieu of the remainder of the Acquisition Property Price, FRC shall pay the Full Prepayment Price (thereby paying off the Acquisition Property Price in full and satisfying all obligations to the Payment Rights Purchaser with respect to the payment of the Installment Payments).

(e) **Absolute Obligation.** The obligation of FRC to pay the Installment Payments is absolute and unconditional, and until the Outstanding IP Principal Amount, together with all interest that has accrued thereon and remains unpaid, has been paid in full: (i) FRC shall not discontinue or suspend payment of any Installment Payments; and (ii) no Installment Payment shall be: (A) subject to reduction, whether by offset or otherwise; or (B) conditional upon the performance or nonperformance by any party of any agreement or any other cause.

(f) **Payment Source.** The Installment Payments are payable: (i) first, from the Increment, which has been pledged by FRC to the payment of the Installment Payments; and (ii) second, from such other funds of FRC that legally may be used to pay the Installment Payments. For purposes of clarity, the pledge of the Increment by FRC is junior and subordinate in all respects to the pledge of the Increment to the payment of debt service on the City of Franklin, Indiana Redevelopment District Tax Increment Revenue Bonds, Series 2015.

**8. Conveyance.** Upon the expiration of the Operating Period, Developer shall convey the Acquisition Property to FRC pursuant to conveyance documents that reasonably are approved by each of Developer and FRC. The conveyance of the Acquisition Property shall not: (a) result in a merger of this Contract into the conveyance documents by which FRC receives ownership, so that this Contract, and all of the rights of the parties hereunder, shall remain in full force and effect; or (b) have any effect on the obligation of FRC to make the Installment Payments pursuant to the terms and conditions of this Contract (stated alternatively, it shall not accelerate payment of the Outstanding IP Principal Amount or decrease the period within which Installment Payments are made).

**9. FRC Covenants.**

(a) **Contract Compliance.** FRC: (i) shall pay the Installment Payments punctually and in strict conformity with the terms of this Contract; (ii) faithfully shall observe and perform all of its obligations under this Contract; and (iii) shall not terminate this Contract for any cause whatsoever.

(b) **Other Compliance.** FRC shall: (i) not take, or omit to take, any action under any contract, if the effect of such act or failure to act would in any manner impair or adversely affect the ability of FRC to pay Installment Payments; and (ii) observe and perform all of its obligations under all other contracts affecting or involving the Project to which FRC is a party.

(c) **No Liens.** At all times FRC shall: (i) keep the Project Site and, after the acquisition thereof, the Acquisition Property, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) any of the foregoing existing on the AT Closing Date; (B) the lien of current real estate taxes not delinquent; and (C) any of the foregoing existing due to compliance with the Project Agreement, this Contract, and/or the AT Documents; and (ii) defend the Project Site against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Acquisition Property, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, FRC, then FRC shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(d) **Taxes.** FRC: (i) shall pay and discharge when due all taxes, assessments, and other governmental charges that lawfully are imposed upon the Project Site, the Project and, after the acquisition thereof, the Acquisition Property, or any part thereof; and (ii) upon request by

Developer or the Payment Rights Purchaser, shall take such actions as may be necessary or appropriate to remedy or cure any defect in, or cloud upon, the title to the Project Site, the Project and, after the acquisition thereof, the Acquisition Property, or any part thereof.

(e) Protection. FRC shall: (i) preserve and protect the security hereof, and the rights of Developer and the Payment Rights Purchaser to the Installment Payments; and (ii) warrant and defend such rights against all claims and demands of all persons.

(f) Laws. FRC shall comply with the Laws in connection with its use and operation of the Acquisition Property.

(g) Assurances. FRC shall adopt such resolutions, execute and deliver such instruments, and make any and all further assurances as reasonably may be necessary or proper: (i) to carry out the intention of this Contract; (ii) to facilitate the performance of this Contract; and/or (iii) in connection with assuring and confirming the rights and benefits provided to Developer and the Payment Rights Purchaser.

(h) No Transfer. Except as permitted pursuant to the AT Documents: (i) there shall be no FRC Transfer by FRC; and (ii) FRC shall not cause or permit any FRC Transfer. The execution by Developer of the AT Documents shall not be deemed to be a consent by Developer to any FRC Transfer.

#### **10. Developer Covenants.**

(a) Filings. Developer shall keep in full force and effect, without any violations by Developer, any and all filings or registrations with any Agency necessary in connection with: (i) the performance by Developer of its obligations under the AT Documents; (ii) the acquisition of the materials to construct, and/or the construction of, the Project in accordance with the Project Agreement, this Contract, and the Construction Contract; or (iii) the sale of the Acquisition Property to FRC in accordance with this Contract.

(b) No Liens. At all times prior to conveyance of the Acquisition Property to FRC, Developer shall: (i) keep the Project, and the materials to construct the Project, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) any of the foregoing existing on the AT Closing Date; (B) the lien of current real estate taxes not delinquent; and (C) any of the foregoing existing due to compliance with the Project Agreement, this Contract, and/or the AT Documents; and (ii) defend the Project, and the materials to construct the Project, against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Project, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, Developer, then Developer shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(c) Laws. Developer shall comply with all Laws in the performance of its obligations under the Project Agreement, this Contract, the Construction Contract, and the AT Documents.

(d) No Transfer. Except as permitted pursuant to the AT Documents: (i) there shall be no Developer Transfer by Developer; and (ii) Developer shall not cause or permit any



Developer Transfer. The execution by FRC of the AT Documents shall not be deemed to be a consent by FRC to any Developer Transfer.

(e) No Merger. Developer shall not: (i) change its name; (ii) merge into, or consolidate with, any other entity, or otherwise reorganize; (iii) permit any change in the members of Developer or the percentage of ownership in Developer, if the effect of such change is that Developer no longer is controlled by, or under common control with, Gregory W. Martz; or (iv) fail to promptly notify FRC in writing of any change in the members of Developer or the percentage of ownership in Developer.

(f) No Amendments. Developer shall not: (i) amend, modify, or restate the articles of organization or operating agreement of Developer; (ii) cause or permit any such amendment, modification, or restatement; or (iii) be dissolved, wound up, or converted to another type of entity, or have its existence as a limited liability company terminated.

(g) Developer Interests. Developer shall not: (i) sell, convey, or transfer to any person any interest in Developer in violation of Subsection 10(e); (ii) otherwise encumber, pledge, or assign any interest in Developer in violation of Subsection 10(e); (iii) grant any security interest in any interest in Developer; or (iv) cause or permit any such sale, conveyance, transfer, encumbrance, pledge, assignment, or grant of security interest.

(h) Business. Developer shall not make or permit to be made any material change in the character of its business as currently conducted.

(i) Records. During construction of the Project and the Operating Period, Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. FRC and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records.

## **11. Insurance.**

(a) Construction. During construction of the Project, Developer shall maintain the insurance required by the Project Agreement.

(b) Post Conveyance. After conveyance of the Acquisition Property to FRC, FRC shall maintain adequate and customary insurance in connection with its ownership, occupancy, possession, use, operation, and maintenance of the Acquisition Property.

(c) Policies. Each policy of general liability insurance required to be maintained by this Section shall name FRC or Developer, as applicable, and the Payment Rights Purchaser as additional insureds, and FRC or Developer, as applicable, shall provide notice of any intended modification to, or cancellation of, such policy to Developer or FRC, respectively, and the Payment Rights Purchaser at least 30 days in advance.

~~(d) Self Insurance. Any insurance required to be maintained by this Section may be maintained under a self-insurance program, so long as such self-insurance: (i) is maintained in the amounts customarily maintained in connection with projects similar to the Project; and (ii) in the opinion of an accredited actuary, is actuarially sound.~~

**12. Events of Default.** Each of the following shall be deemed to be an “Event of Default” by FRC or Developer, as applicable:

- (a) the failure by the applicable party to pay any amount due hereunder on the date due, including, without limitation, the failure by FRC to make any Installment Payment when due;
- (b) the failure by the applicable party to observe or perform any term or condition of this Contract to be observed or performed by it (other than the payment of any amount due hereunder), and the continuance of such failure beyond the Cure Period;
- (c) an “Event of Default” by the applicable party under the Participation Agreement;
- (d) the filing of a petition or answer seeking arrangement or reorganization of the applicable party under the Laws;
- (e) the approval by a court of competent jurisdiction of a petition, filed with or without the consent of the applicable party, seeking arrangement or reorganization under the Laws; or
- (f) the assumption by a court of competent jurisdiction of custody or control of by the applicable party, or all or a substantial portion of the property of such party, pursuant to the provisions of any Law for the relief or aid of debtors.

**13. Remedies.**

(a) Remedies. If there is an Event of Default, then the non-defaulting party, without further notice or demand, shall have the following rights and remedies:

- (i) if the defaulting party has failed to perform any of its obligations under this Contract, the right to: (A) enjoin the failure or specifically enforce the performance of such obligation; or (B) perform the obligation that the defaulting party has failed to perform; provided that the performance by the non-defaulting party of such obligation shall not be construed to be a waiver of the Event of Default; and
  - (ii) if FRC is the defaulting party, then Developer may declare the Full Prepayment Option to have been exercised; provided that: (A) the Full Prepayment Closing Date shall occur on a date designated by Developer; and (B) if FRC fails to pay the Full Prepayment Price on the date designated by Developer as the Full Prepayment Closing Date, then such failure shall constitute an Event of Default, with the result being that Developer shall have the right to exercise any rights and remedies available to it at law or in equity (including, without limitation, those set forth in this Section).
- (b) No Waiver. Neither: (i) a waiver by either party of an Event of Default; nor (ii) a delay in the exercise by either party of any right or remedy with respect to an Event of Default; shall be deemed either to: (i) constitute a waiver of any subsequent Event of Default; (ii) release or relieve the other party from performing any of its obligations under this Contract; or (iii) constitute an amendment or modification of this Contract. If Installment Payments are accepted during the continuance of an Event of Default, then such acceptance shall not be construed as a waiver of: (i) such Event of Default; or (ii) any right or remedy of Developer

or the Payment Rights Purchaser with respect to such Event of Default. The rights and remedies hereunder are cumulative, and, except as specifically limited in this Contract, no: (i) right or remedy shall be deemed to be, or construed as, exclusive of any other right or remedy hereunder, at law, or in equity; or (ii) failure to exercise any right or remedy shall operate to prevent the subsequent exercise of such right or remedy.

(c) **Damages.** The non-defaulting party may recover from the defaulting party all damages that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default; together with interest thereon at the rate of 12% per annum. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the other party, and the obligation of the defaulting party to pay such amounts shall survive the acquisition by FRC of the Acquisition Property.

**14. Notice.** Any notice required or permitted to be given by either party to this Contract shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at 8561 N. 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz, with a copy to: Jennifer R. Shoup, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; and to FRC at 70 East Monroe Street, Franklin, Indiana 46131, Attn: President, with a copy to Robert H. Schafstall, Schafstall & Admire, LLP, 98 North Jackson Street, Franklin, Indiana 46131. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

**15. Assignment.** Neither FRC nor Developer shall: (a) assign this Contract or any interest herein; or (b) delegate any duty or obligation hereunder; except as permitted by the AT Documents. Notwithstanding any assignment as permitted by the AT Documents: (a) the assigning or delegating party shall remain fully liable to perform all of its obligations under this Contract; and (b) a consent by a party to any assignment or delegation shall not release the assigning or delegating party from such performance. Any transfer of this Contract by operation of law (including, without limitation, a transfer as a result of merger, consolidation, or liquidation of FRC or Developer) shall constitute an assignment for purposes of this Contract.

**16. Mutual Indemnification.** Each of FRC and Developer shall indemnify and hold harmless the other from and against any and all Claims arising from, or connected with: (a) the negligence or wilful misconduct of: (i) FRC or Developer, respectively; or (ii) any party acting by, under, through, or on behalf of FRC or Developer, respectively; and/or (b) the: (i) breach by FRC or Developer, respectively, of any term or condition of the Project Agreement, this Contract, or the AT Documents; and (ii) resulting exercise by Developer or FRC of its rights and remedies with respect to such breach.

**17. Force Majeure.** Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Contract as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

**18. CodeStatutory Authority.** This Contract is intended to be a ~~contract for the purchase of property~~public-private agreement authorized by Indiana Code ~~§§36-7-14-12.2 and 36-7-14-19~~§5-23. If and to the extent this Contract is not such a ~~contract~~public-private agreement, then this Contract shall be deemed to: (i) include such terms not otherwise included; and (ii) exclude such terms not otherwise excluded; as is necessary to cause this Contract to be ~~such a contract~~a public-private agreement.

**19. Miscellaneous.** Subject to Section 15, this Contract shall inure to the benefit of, and be binding upon, FRC and Developer, and their respective successors and assigns. This Contract constitutes the entire agreement between FRC and Developer with respect to the subject matter hereof, and may be modified only by a written agreement signed by both FRC and Developer. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Contract shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Contract may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. This Contract shall be governed by, and construed in accordance with, the laws of the State of Indiana, and all proceedings arising in connection with this Contract shall be tried and litigated only in the state courts in Johnson County, Indiana or the federal courts with venue that includes Johnson County, Indiana. All Exhibits to this Contract are attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, FRC and Developer have executed this Contract on the date set forth above.

CITY OF FRANKLIN REDEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
Bob Heuchan, President

FRANKLIN SHELL BUILDING LLC

By: GM Development Companies LLC

By: \_\_\_\_\_  
Gregory W. Martz, Member

**EXHIBIT A**  
**Installment Payments**