

ECONOMIC DEVELOPMENT AGREEMENT

Redevelopment Commission of the City of Franklin, Indiana and AMayZing Food & Beverage, LLC

Purchase, Expansion, Completion and Use of Shell Building No. 2

This Economic Development Agreement (the “Agreement”) is entered into as of the ____ day of _____, 2018 (“Effective Date”), between and among the **Redevelopment Commission of the City of Franklin, Indiana (“RDC”)**, as the governing body of the City of Franklin, Indiana Redevelopment District, and **AMayZing Food & Beverage, LLC (“Developer”)**, an Indiana limited liability company (individually a “Party” and collectively, the RDC and the Developer are the “Parties”).

RECITALS

WHEREAS, the Developer proposes to purchase expand, complete, and use the RDC’s shell building (currently under construction) on approximately 13.112 acres of real property (the “Land”) owned by the RDC at the northeast corner of Graham Road and Commerce Drive in Franklin, Indiana (more particularly described in the attached Exhibit “B” – Legal Description) for commercial and retail purposes, which project will include substantial capital investment in the Project by December 31, 2022 (the “Completion Deadline”), generate increased assessed value, and bring additional employment opportunities, 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 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 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 are willing to provide financial assistance for the Project in accordance with the terms and conditions provided within this Agreement;

WHEREAS, the Project to 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 inducing the Developer 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 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, and (b) 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 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 Review Panel.

“Capital Commitment” for Developer shall mean Ten Million Dollars (\$10,000,000.00) of real property improvements and Twenty Million Dollars (\$20,000,000.00) of personal property improvements.

“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 real and personal property improvements and installed equipment costs of the Project, and any other costs approved for expenditure by the RDC. 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 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, now or hereafter located on the Land in Franklin, Indiana, depicted on Exhibit B 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 RDC President (or designee), the Mayor of the City of Franklin, Indiana (or designee), and the Director of Community Development (or designee).

“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.

“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.

“Term” and “Term of this Agreement” shall mean, unless the context implies otherwise, the period from the Effective Date to the Completion Date.

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. Developer shall have one hundred twenty (120) days following the Effective Date (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 Developer's exclusive discretion. As owner of the Property, the RDC shall provide Developer reasonable access to the Property and cooperate in all respects in order for Purchaser to exercise inspection rights or to complete due diligence activities. Developer may in its sole discretion and for any reason determine that the Project is not feasible or that Developer no longer desires to proceed with the Project and terminate this Agreement without liability or penalty at any time prior to the conclusion of the Due Diligence Period.

During the Due Diligence Period, modifications by Developer to the Property (including to the shell building currently under construction) may be permitted at Developer's sole expense provided that same will not substantially limit future possible uses of the Property, will not impair the current value of the Property, are approved in advance by the Review Panel (provided below), and are performed and accompanied by insurance coverage approved in advance by the Review Panel. Developer is responsible for all third-party damages, losses, claims, and liability related to any such modifications, and releases and agrees to indemnify the RDC from same. In the event of a termination of this Agreement without a Closing, Developer waives all rights to reimbursement and claims relative to any such modifications, but the RDC will not require the removal of any modifications approved in advance by the Review Panel.

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

2.3. Extension of Due Diligence Period. Developer shall have the option and right to extend the Due Diligence Period past one hundred twenty (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 another sixty (60) days, provided Construction Plans have been submitted to the State of Indiana for building permit approval.

2.4. Plan Packet. Within one hundred (100) days following 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 RDC agrees to work in good faith to resolve the issue, including giving consideration to providing additional funding from the RDC.

2.5. Conduct of the Review Panel. Any Building Plan Change Request submitted by the Developer shall be promptly 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.

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 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 one hundred fifteen (115) 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.

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 materially alters the aesthetic appearance of the Project, or that clearly materially 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 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; (B) include the specific basis for such rejection and (C) make recommendations for substitutions that would be acceptable. 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.

2.10. No Representations. Neither the RDC nor any officer, member, 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, the RDC does not make, 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 that the Approved Plans comply with, or are approved under, applicable Laws. The Developer acknowledges that RDC cannot (and does 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 following the Effective Date, all information relevant to the Property will be shared by the RDC with Developer 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 commitments or policies, recorded documents, construction contracts, change orders, notices of default or deficiencies under any construction contracts, notices regarding any violations of Laws, surveys, plans, utility costs, environmental assessments, insurance or other information related to the Property.

3. Purchase of Real Property and Existing Improvements. 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 Two Million Two Hundred Eighty-Two Thousand Six Hundred Seventy Dollars (\$2,282,670.00), payable in cash at closing, subject to commercially reasonable terms and conditions, including an owner's policy of title insurance in the same amount, 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 following the Effective Date a separate Purchase 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 to Developer all right, title and interest in the Land, including all rights, privileges and easements appurtenant to the Land, 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 also all improvements, equipment, fixtures, and all personal property or detached fixtures remaining on or associated with the Property.

3.2 Brokers. 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, except as follows: Sixty-Eight Thousand Four Hundred Eighty Dollars (\$68,480.00) to Avison Young - Indiana, all of which will be sole responsibility of Developer to pay at the time of the Closing.

3.3 Purchase Agreement. 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 Purchase Agreement will further specify the timing and process to complete the sale and purchase of the Property.

3.4 Warranties & Representations. The Purchase 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 Developer's performance under this Agreement, 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 C) in favor of the RDC to secure the Developer's performance under the terms of this Agreement and the RDC's investment in same which shall be released by RDC upon the issuance of a Certificate of Occupancy for the building. The RDC agrees to subordinate this mortgage to the lien of Developer's lender(s) in the event additional funding is required for the project.

4. 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.

5. Compliance Report. The Developer agrees to file a written Annual Report ("Annual Report") with the RDC for each of the fiscal years ending during the term of this Agreement (the "Reporting Year").

5.1. The written Annual Report shall include the following:

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

5.1.2. The estimated assessed value increase generated by the Project.

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

5.1.4. 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.

5.1.5. 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.

5.1.6. 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.

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

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

5.1.9. 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 actual knowledge true in all material respects."

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

7. Representations and Warranties of Developer. The Developer represents and warrants to the RDC as follows:

7.1. 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.

7.2. The execution, delivery, and performance by the Developer of the Agreement are within its entity powers, have been duly authorized by all necessary entity action, and to its actual knowledge does not (i) conflict with, or result in a breach of, any provision of its Articles of Organization and Operating Agreement, or similar entity documents; (ii) require any approval or consent of any other person (including, without limitation, any other member); (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.

7.3. It has received no written 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.

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

8.1. Promptly pay and discharge or cause to be paid and discharged 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 RDC with assurance of protection of the Property from the foreclosure to judgment of a lien or charge against the Property.

8.2. Permit with reasonable notice any authorized representative of the RDC, 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.

8.3. Give prompt written notice to the RDC 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

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

8.5. Permit no nuisance to occur on the Land, and will secure all structures from exposure to weather.

9. Representations, Warranties, and Covenants of the RDC.

9.1. The RDC represents and warrants, subject to all applicable legal requirements, as of the date hereof, that (i) it has 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, will constitute the legal, valid and binding obligation of the RDC, enforceable against the RDC in accordance with its terms.

9.2. The RDC 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.

10. Events of Default.

10.1. 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 notice and 30 days to cure, or such longer period of time as may be reasonably necessary to cure such matter so long as the defaulting party commences the cure within such 30 days and diligently pursues the matter to completion, shall constitute an “Event of Default” hereunder:

10.1.1. 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

10.1.2. Material breach of a duty or obligation imposed by the terms of this Agreement.

11. Suspension of Obligations Upon Uncured Event of Default.

11.1. Upon an uncured Event of Default by Developer hereunder, the RDC may suspend its obligation to perform under the terms of the parties’ agreement or pursue specific performance or any other legal or equitable remedies.

11.2. Upon an uncured Event of Default by the RDC hereunder, Developer may suspend its obligation to perform under the terms of the parties’ agreement or pursue specific performance or any other legal or equitable remedies.

12. 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.

13. Submission of Disagreements to Mediation. In the event the Parties disagree as to any material matter (such as but not limited to whether a default has occurred, whether one Party has a duty to act or a duty to refrain from acting, or whether an ambiguity exists as to the scope and terms of the Parties’ agreements), the dispute will be submitted to non-binding mediation under the Indiana rules of alternative dispute resolution, prior to filing suit in a court of competent jurisdiction. The Parties agree Johnson County, Indiana is preferred venue.

14. **Intentionally Omitted**

15. 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.

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

17. 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.

18. 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

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

With 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

To Developer:

AMayZing Food & Beverage, LLC
c/o Mr. Tim W. May
861 Golden Bear Drive
Reunion FL 34747

With a copy to:

Taft Stettinius & Hollister LLP
c/o Jeffrey Abrams
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204

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.

19. Miscellaneous.

19.1. 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.

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

19.3. Other Entities. This Agreement will be non-assignable by Developer without the consent of the RDC. The RDC agrees that Developer may enter agreements with and utilize or partner with other entities which are wholly or partially owned by Developer, or wholly or partially owned by Developer and its owners, (such entities known as “Affiliate Entities” to (a) work on the Project development and (b) hold the Property title and serve as lessor of the Property. Developer will remain responsible under this Agreement for the completion of all duties imposed under this Agreement.

19.4. 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 or electronically 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 or electronically, the original shall be delivered promptly after delivery of the facsimile or electronic counterpart.

19.5. 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.

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

19.7. 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.

19.8. 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 in the event such time deadlines are not met.

19.9. 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.

19.10. 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.

19.11. 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.

19.12. Consents. No consent, agreement, or approval shall be effective unless in writing signed by the Party or sent electronically from the person from whom such consent, agreement, or approval is required.

19.13. 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.

19.14. No Agent Liability. No official, director, member, officer, employee or agent of the RDC shall be charged personally by Developer, its employees or agents, with any liabilities or be held personally liable to Developer 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, member, officer, employee or agent of Developer, its employees or agents, or Affiliate Entities, shall be charged personally with any liabilities by the RDC or be held personally liable to the RDC 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.

19.15. 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.

19.16. 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.

19.17. 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.

19.18. No Partnership/Joint Venture. It is hereby acknowledged by the RDC and Developer 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.

19.19. 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 the 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 and AMayZing Food & Beverage, LLC have caused this Agreement to be executed by their authorized officers and/or representatives, all as of the date first above-written.

AMayZing Food & Beverage, LLC

By: _____
Printed: _____
Title: _____

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

By: _____
Robert D. Heuchan, President

By: _____
Brian J. Deppe, Secretary

EXHIBIT A

Exhibit A

Description of Project

The Developer will expand the existing building to operate an approximately 100,000 square feet cold-brew manufacturing facility with product being distributed to grocery and convenience stores for consumer consumption. Real property improvements are expected to be approximately Ten Million Dollars (\$10,000,000) and personal property improvements are expected to be approximately Twenty Million Dollars (\$20,000,000). Employment is expected grow as follows: 50 employees in Year 1, 75 employees in Year 2, 125 employees in Year 3, reaching full anticipated employment of 150 employees in Year 4, all with an average hourly wage of \$20.00, increasing annually

EXHIBIT B

Exhibit B

LAND DESCRIPTION

A portion of the property formerly owned by Maurice Fred Linville and Helen Ann Linville

Part of Deed Book 160, page 303

June 16, 2017

A part of the Southeast Quarter of Section 2, Township 12 North, Range 4 East of the Second Principal Meridian, Franklin Township, Johnson County, Indiana, more particularly described as follows:

Commencing at the Southwest Corner of the Southeast Quarter of said Section 2, Township 12 North, Range 4 East; thence North 00 degrees 30 minutes 09 seconds West (Basis of Bearings: Indiana State Plane Coordinates, East Zone, NAD 83) 1185.11 feet along the West Line of said Southeast Quarter to the northwestern corner of the tract of land granted to Maurice Fred Linville and Helen Ann Linville (recorded as Deed Book 160, page 303 in the Office of the Recorder of Johnson County Indiana) and the southwestern corner of the tract of land granted to Raymond Eugene Canary and Terry Lee Canary (recorded as Instrument Number 2007-012267 in said Recorder's Office); thence North 89 degrees 09 minutes 29 seconds East 40.00 feet along the common line of said tracts to a point lying 40.00 feet (measured easterly in a perpendicular direction) from the West Line of said Southeast Quarter) to the northeastern corner of the 3.805-acre proposed eastern right-of-way of Graham Road ("proposed right-of-way") as described in Exhibits A & B, prepared for the City of Franklin, Indiana by Crossroads Engineers, PC, being the POINT OF BEGINNING of this description; thence continue North 89 degrees 09 minutes 29 seconds East 840.19 feet along said common line; thence South 00 degrees 30 minutes 09 seconds East 682.45 feet parallel with the West Line of said Southeast Quarter to a northern line of said proposed right-of-way (all of the remaining courses are along said proposed right-of-way); thence South 89 degrees 09 minutes 29 seconds West 644.76 feet; thence North 83 degrees 26 minutes 06 seconds West 100.84 feet; thence South 89 degrees 09 minutes 29 seconds West 70.36 feet; thence North 45 degrees 40 minutes 20 seconds West 35.25 feet; thence North 00 degrees 30 minutes 09 seconds West 644.45 feet parallel with the West Line of said Southeast Quarter to the POINT OF BEGINNING, containing 13.112 acres, more or less.

EXHIBIT C

Exhibit C

Pro Forma Draft

INDEMNIFYING MORTGAGE

THIS INDENTURE WITNESSETH that **AMayZing Food & Beverage, LLC** [or its **Affiliate Entity if applicable**] (“Mortgagor”) mortgages and warrants to the **City of Franklin, Indiana Department of Redevelopment**, of Johnson County, in the State of Indiana (“Mortgagee”), the following described real estate, as well as any present and future improvements made thereon (collectively, the “Property”), in Johnson County, State of Indiana, to-wit:

See Exhibit “A” – Legal Description

commonly known as _____, Franklin, Johnson County, Indiana, 46131, subject to all restrictions, covenants, agreements, and easements of record, including all rents, profits, and any other income which may be derived therefrom, to secure the Mortgagor’s performance pursuant to a certain Economic Development Agreement by and between the Mortgagor and the Mortgagee dated the ____ day of _____, 2018 (the “EDA”).

Indemnification and Limited Recourse. This Indemnifying Mortgage is given to secure performance by Mortgagor of the covenants and agreements contained in the EDA. Upon an uncured Event of Default by Mortgagor under the EDA, following such notice and cure period as provided in the EDA, Mortgagee shall have the right to foreclose this Indemnifying Mortgage. Mortgagee’s rights and interests under this Indemnifying Mortgage shall be *in rem* with respect to the Property, and not otherwise, and Mortgagor shall not be personally or otherwise liable for payment of any sum or performance of any obligation except as such is provided by the EDA.

Termination, Discharge and Release. Mortgagor’s obligations under the EDA shall be satisfied and discharged in full upon Final Completion of the Project as provided in the EDA

("Satisfaction and Discharge"). Upon Satisfaction and Discharge, this Indemnifying Mortgage shall be promptly terminated and released of record by Mortgagee. In addition, and notwithstanding the foregoing, unless released earlier, this Mortgage shall automatically expire, terminate and be released upon the issuance of a Certificate of Occupancy for the Property unless Mortgagee has both (a) commenced a foreclosure action on or before that date, and (b) filed a notice to that effect with the real estate records of the County Recorder for the Property. If a foreclosure action has been commenced, this Indemnifying Mortgage shall continue in force while the action is pending.

Mortgagor and Mortgagee further agree as follows:

1. Mortgagor will keep the Property insured against loss, casualty, or damage in such sums and with such insurers as may be approved by Mortgagee, with such insurance carrying a mortgage clause with loss payable to Mortgagee in a form satisfactory to Mortgagee to be delivered to the possession of Mortgagee;
2. Mortgagor will exercise due diligence and care in the construction, operation, management and occupation of the Property and not to remove or suffer to be removed any fixtures and/or appliances, now or hereafter placed on the Property;
3. Mortgagor will not do or suffer to be done any acts which will impair the security of this Mortgage nor any illegal or immoral acts on the Property;
4. Mortgagee shall have the right to inspect the Property at all reasonable times upon no less than 24 hours' notice.
5. No sale of the Property or extension of time for performance of any term shall operate to release, discharge, or modify in any manner the original liability of the Mortgagor; and any extension of time on this Mortgage by Mortgagee or its assigns shall not operate to cause a loss of the priority of this Mortgage over any junior or senior lien.
6. This Mortgage shall be subordinate to the lien of any mortgage or security interest conveyed by Mortgagor for improvements to the Property (the "First Lien"). Mortgagee shall execute any document reasonably requested by Mortgagor to effectuate such subordination.
7. Time is of the essence of this agreement and that, in case of an Event of Default after applicable notice and cure periods, the Mortgagee may, at its option, declare a default

under the EDA, and any failure to exercise said option shall not constitute a waiver of right to exercise the same at a later date. In the event any proceedings shall be instituted on any other lien or encumbrance against said real estate, then the Mortgagee herein may immediately declare a default under the EDA and institute such foreclosure proceedings as may be necessary to protect its interest. The lien of this Mortgage shall include all heating, plumbing and lighting or other fixtures now or hereafter attached to or used in connection with said premises, except for personal business property and equipment located and installed on the Property and owned by Mortgagor, its affiliates or tenants.

8. In case of an Event of Default after applicable notice and cure period under the EDA, Mortgagee is expressly authorized to secure a record title search at the expense of the Mortgagor to show the condition of the title at the date of said search which sums necessarily spent for said title search, together with interest thereon at the rate of eight percent (8%) per annum, shall become a debt secured by this Mortgage and collectable as such; and in case of foreclosure and purchase of said real estate pursuant to said foreclosure by the holder thereof, the title search so secured shall be the absolute property of the Mortgagee.
9. In the event of such foreclosure, the Mortgagee, or its assigns, may apply for the appointment of a receiver, which receiver is hereby authorized to take possession of the Property, collect the rents, income or profit, in money or in kind, and hold the proceeds subject to the order of the Court for the benefit of the Mortgagee pending foreclosure proceedings.
10. In the event of such foreclosure and sheriff's sale, Mortgagor shall at any time prior to sheriff's sale be able to remove the Property from sale and redeem the Property by (a) curing the default under the EDA and paying any court costs and reasonable attorney's fees incurred by Mortgagee. In the event Mortgagee receives the amounts secured by this Mortgage, such payment shall constitute Mortgagee's sole and exclusive remedy under this Mortgage.
11. That all terms of this Mortgage shall be binding on each and all successors in ownership of the Property as well as upon all heirs, executors, administrators of Mortgagor or successors in ownership.
12. Construction and Interpretation of Agreement / Indiana Law. This Indemnifying Mortgage shall be construed in accordance with the laws of the State of Indiana. The parties agree that they and their attorneys have each reviewed this Indemnifying Mortgage, and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party or parties shall not be used in the interpretation of this mortgage. In the event of ambiguity or other uncertainty as to the parties'

intentions with respect to this mortgage, the parties agree to apply and abide by terms and conditions commonly used in commercial real estate mortgage industry.

IN WITNESS WHEREOF, the Mortgagors have hereunto set their hand and seal this
____ day of _____, 2018.

MORTGAGOR

AMayZing Food & Beverage, LLC

By:_____

Signed

Printed

Title

STATE OF _____)

)SS:

COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said County and State, this ____
day of _____, 2018, personally appeared _____, duly authorized
representative of the Mortgagor, who averred and acknowledged the execution of the foregoing
Mortgage for and on behalf of said _____.

IN WITNESS WHEREOF, I have hereunto affixed my name and affixed my official seal.

My Commission Expires: _____

Residing: _____ Notary Public

This instrument was prepared by Robert H. Schafstall, Schafstall & Admire, LLP, Attorney at
Law, Franklin, Indiana.

I affirm under penalties for perjury that I have used reasonable efforts to redact all social security numbers unless required by law. /s/ Robert H. Schafstall