

**ECONOMIC DEVELOPMENT AGREEMENT**

**THIS ECONOMIC DEVELOPMENT AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of August, 2018, by and among **THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT** (the “City”), **BROADWAY REDEVELOPMENT PARTNERS, LLC**, a Delaware limited liability company (“Broadway”), **EW WEST CAMPUS LANDLORD, LLC**, an Indiana limited liability company (“EW West”) (Broadway and EW West, collectively, “Owner”), **EW EAST CAMPUS, LLC**, an Indiana limited liability company (“EW East”) and **RTM VENTURES LLC**, a Delaware limited liability company (“Developer”).

**WITNESSETH:**

**WHEREAS**, the City desires to foster the redevelopment of the former General Electric manufacturing plant, an idled, abandoned and unoccupied industrial campus consisting of over 1.2 million square feet of decaying historic buildings on approximately 39 acres of urban land just to the south and west of downtown Fort Wayne on Broadway Avenue (“GE Campus”); and

**WHEREAS**, the GE Campus contains environmental contamination and the structures located upon the GE Campus are deteriorated and deteriorating in varying degrees, constituting a potential hazard to health and safety; and

**WHEREAS**, without redevelopment, the GE Campus will continue to pose a hazard to health and safety, will continue to degrade physically and will continue to lose assessed value; and

**WHEREAS**, the City has determined that stabilizing the GE Campus and preventing further decay of the GE Campus is in the best interests of the citizens and taxpayers of the City in terms of both safety and economic development; and

**WHEREAS**, Broadway, EW West, and EW East own separate parcels of the land constituting the GE Campus; and

**WHEREAS**, Broadway, EW West, and EW East are affiliated with Developer, and pursuant to said affiliation hereby assign to Developer, as the master developer of the redevelopment project described below, any and all rights and responsibilities set forth in the Agreement granted to or to be undertaken by Broadway, EW West, individually or collectively, or EW East, or any of said parties, as the case may be; and

**WHEREAS**, notwithstanding such assignment, Broadway, EW West, EW East and Developer sign this Agreement intending to be jointly and severally obligated pursuant to this Agreement except that EW West and EW East shall only be obligated to its respective property; and

**WHEREAS**, Developer has approached the City with a master plan for redevelopment of a portion of the GE Campus which would achieve the goals of the City for stabilizing and redeveloping a portion of the GE Campus as set forth in a proposal entitled “Electric Works,

Broadway District” and dated November 21, 2017 (“Electric Works West Campus Proposal”), and supplemented by a document entitled “An Economic Impact Analysis of Electric Works – West Campus” dated November 20, 2017, prepared by Novogradac & Company LLP (“Impact Study”) which represents an unverifiable best estimate of economic impact from a nationally recognized firm using industry standard methodology; and

**WHEREAS**, Developer has further provided certain projections regarding the sources and uses of funds for the development of the Electric Works West Campus Proposal which are attached hereto as **Exhibit A** (“Financial Projections”); and

**WHEREAS**, Developer has requested certain economic development incentives to induce Developer to pursue the Electric Works West Campus Proposal and create the economic impact described in the Impact Study; and

**WHEREAS**, City has determined that inducing Developer to redevelop the GE Campus, as described in the Electric Works West Campus Proposal and creating the economic impact described in the Impact Study are in the best interests of the citizens and taxpayers of the City and justify the provision of the economic development incentives described in this Agreement;

**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 hereby acknowledged, the parties do hereby agree as follows:

## **ARTICLE I** **RECITALS AND DEFINITIONS**

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.

Section 1.02 Definitions. Certain terms used herein are defined in this Section 1.02; other terms are defined within the text of this Agreement.

(a) “Agreement” shall mean this Economic Development Agreement.

(b) “Allocation Area” shall mean the area within the EDA, as described on **Exhibit B-1** attached hereto.

(c) “BTDC” shall mean the Broadway-Taylor Development Corporation, a neighborhood development corporation to be organized by City and described in Section 4.04.

(d) “City” shall mean the City of Fort Wayne, Indiana, Department of Redevelopment.

(e) “Construction Plans” shall have the meaning ascribed to it in Section 3.01.

(f) “Construction, Rehabilitation and Repair Agreement” shall have the meaning ascribed to it in Section 4.04 and shall be in the form attached hereto as **Exhibit G**.

(g) “Declaration” shall have the meaning ascribed to it in Section 5.07.

(h) “Developer” shall mean RTM Ventures LLC, a Delaware limited liability company.

(i) “EDA” shall mean the newly created Economic Development Area within the City of Fort Wayne to be known as the “Broadway-Taylor EDA,” as described on **Exhibit B-1** attached hereto.

(j) “Effective Date” shall mean August \_\_\_\_\_, 2018.

(k) “Financial Projections” means those certain projections provided by Developer showing the sources and uses of funds necessary for the development of the Electric Works West Campus Proposal attached hereto as **Exhibit A**, and updated as of the date of Closing based upon final construction guaranteed maximum price, interest rates at the time of Closing and other factors that have an impact upon the sources and uses of funds identified on **Exhibit A**, provided the same does not substantially impact the size, scope or general development plan for the Project as of the Effective Date.

(l) “Fund Closing” shall have the meaning ascribed to it in Section 5.02.

(m) “Future Public Improvements” shall have the meaning ascribed to it in Section 3.04 and shall be as set forth on **Exhibit E** hereto.

(n) “Grant Agreement” shall have the meaning ascribed to it in Section 4.04 and shall be in the form attached hereto as **Exhibit F**.

(o) “Initial Approval Date” shall have the meaning ascribed to it in Section 5.01(b).

(p) “Permitted Delay” shall have the meaning ascribed to it in Section 5.06.

(q) “Preliminary Plans” shall have the meaning ascribed to it in Section 3.01.

(r) “Project” shall mean the west campus phase of the redevelopment of the GE Campus as described in the Electric Works West Campus Proposal, to be developed on the Project Real Estate by Developer, as further described on **Exhibit C** hereto.

(s) “Project Real Estate” shall mean the real property upon which the Project shall be located within the EDA, as legally described on **Exhibit B** hereto.

(t) “Infrastructure Improvements” shall have the meaning ascribed to it in Section 4.05.

**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 City, the adoption of such ordinances and resolutions by the City), 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 AND CONSTRUCTION AGREEMENTS**

Section 3.01 Project. Subject to the satisfaction of all terms and conditions contained herein, Developer shall develop, finance, construct, own and operate the Project upon the Project Real Estate as provided in this Agreement. Developer has prepared preliminary plans and specifications for the Project, which have been reviewed and approved by the City as attached hereto as **Exhibit D** (“Preliminary Plans”). Developer shall cause to be prepared construction plans and specifications for the Project and submit the same to the City for its review and approval, which approval the City agrees shall not be withheld, conditioned or delayed, provided the same are substantially consistent with the Preliminary Plans (“Construction Plans”). All material changes to the Construction Plans shall be subject to review and approval by the City. The City agrees that such approval shall not be unreasonably withheld, conditioned or delayed, provided said changes are substantially consistent with the Preliminary Plans. City and Developer acknowledge and agree that the Project may be constructed in phases and that the Construction Plans for each phase shall be prepared by Developer and approved by City in accordance with this Section 3.01.

Section 3.02 Approvals. Developer shall, at Developer’s cost, obtain all zoning and development plan approvals and variances necessary for the development of the Project, including, but not limited to, the approval of any necessary encroachments upon public rights of way. Developer shall, at Developer’s cost, obtain all building permits necessary to construct the Project in accordance with the Construction Plans. The City agrees to provide assistance and guidance in the preparation of such petitions and applications as are necessary for the approvals and permits to construct the Project and the City agrees to support the Project before public bodies reviewing such petitions and applications based upon the approved Preliminary Plans and Construction Plans.

Section 3.03 Public Art Fund Contribution. Developer agrees to comply with City of Fort Wayne Ordinance R-26-18 and contribute to the City’s Public Art Fund. The Developer’s contribution shall equal one percent (1%) of the total value of tax increment funds provided by the City for the benefit of the Project, not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00).

Section 3.04 Future Projects. The Electric Works West Campus Proposal contains Developer’s preliminary proposals for development of the balance of the GE campus known as the East campus (“Electric Works East Campus Proposal”) with a redevelopment and

construction budget of Two Hundred Twenty-Six Million and No/100 Dollars (\$226,000,000.00), which contemplates a State of Indiana award of Fifty Million and No/100 Dollars (\$50,000,000.00) of additional Indiana Industrial Recovery Tax Credits, which will require Fifty Million and No/100 Dollars (\$50,000,000.00) in matching local funds. In addition, Developer and City anticipate additional public infrastructure improvements may be needed to support the area around the Project and the Electric Works East Campus Proposal, as shown on **Exhibit E** attached hereto, at a cost estimated to range between Fifty-Nine Million and No/100 Dollars (\$59,000,000.00) and Seventy-Six Million and No/100 Dollars (\$76,000,000.00), which amounts include Twelve Million One Hundred Thousand and No/100 Dollars (\$12,100,000.00) of additional improvements to support the West Campus Development (“Future Public Improvements”). Developer agrees to supplement and update the Electric Works East Campus Proposal and needs for public infrastructure, including updated information regarding the Developer’s primary development plans, budgets and requests for local public funds at least quarterly, on January 15, April 15, July 15 and September 15 beginning in 2019 until such time as the Project and the Electric Works East Campus Proposal have been completed. Notwithstanding the above, nothing in this Agreement shall be construed in any way to obligate City or any other public agency to provide any public funding beyond the conditional commitments set forth in Article IV of this Agreement.

Section 3.05 Other Obligations of the Developer. The Developer agrees to use its good faith efforts to employ qualified price competitive contracts from businesses located within northeast Indiana, and to use its good faith efforts to utilize qualified and competitive contractors and trade organizations located within northeast Indiana in the construction of the Project including minority owned and women owned business enterprises. Developer shall, at Developer’s sole cost and expense, cause the Project to be constructed in compliance with applicable laws, regulations, codes and ordinances and in compliance with the Construction Agreement described in Section 4.04.

#### **ARTICLE IV** **ECONOMIC DEVELOPMENT INCENTIVES**

Section 4.01 Economic Development Area. City shall take such actions as are necessary to establish an economic development area under applicable Indiana law, to be known as the Broadway-Taylor Economic Development Area (“EDA”), as shown and outlined on **Exhibit B-1** attached hereto, which shall include the Project Real Estate. City shall take such actions as are necessary to establish an allocation area within the EDA under applicable Indiana law, as also shown and outlined on **Exhibit B-1** attached hereto (“Allocation Area”)

Section 4.02 Tax Abatement. Subject to further proceedings required by law, the City shall use good faith efforts to support the approval of a one hundred percent (100%), ten (10) year abatement of real and personal property taxes for the Project, to the extent the same is available pursuant to state law and local ordinances, under the Summit City Entrepreneur and Enterprise District program administered by the Fort Wayne Urban Enterprise Association. City agrees to work with Developer to coordinate the request for tax abatement with all of the approvals necessary to establish the economic development incentives set forth in this Article IV. Developer agrees to pay the state and local fees required for said program and otherwise agrees to comply with the state and local regulations and ordinances applicable to said program. In

order to facilitate the incentive described in this Section 4.02, Developer shall file such necessary documents, applications and statement of benefits, as required under Indiana law, in order to qualify for the deductions referenced in this Section 4.02. Developer hereby pledges and agrees to make, or to cause to be made, all property tax payments when due with respect to the existing land and improvements on the Project Real Estate.

Section 4.03 Public Funding. City shall seek the public and governmental approvals necessary to generate Sixty-Two Million and No/100 Dollars (\$62,000,000.00) of public funding for use in the Project (“Public Funding”), including, but not limited to, the authorization of the issuance of City of Fort Wayne Redevelopment Authority Lease Revenue Bonds (Electric Works West Campus Project) (“Bonds”). City shall seek the approvals necessary to authorize the issuance of the Bonds and to secure the pledge of funds required to generate the Public Funding and pay the principal and interest pursuant to the Bonds from the City of Fort Wayne Redevelopment Authority, the City of Fort Wayne Redevelopment Commission, the City of Fort Wayne Common Council, the Allen County Fort Wayne Capital Improvement Board of Managers, the Allen County Board of Commissioners, the Allen County Council and all other required boards or commissions. Developer agrees to provide support and assistance in the City’s efforts to obtain such approvals.

Section 4.04 Neighborhood Development Corporation. City shall organize a neighborhood development corporation to be known as the “Broadway-Taylor Development Corporation” for the purpose of constructing, rehabilitating and repairing commercial properties within the EDA, as provided in Indiana Code 36-7-14-12.2(25)(B) (“BTDC”). Subject to the terms and conditions set forth in this Agreement, City shall make a grant of all Public Funding, including, but not limited to, the proceeds of the sale of the Bonds to the BTDC, as provided in Indiana Code 36-7-14-12.2(25)(B), pursuant to a Grant Agreement with the BTDC in substantially the form attached hereto as **Exhibit F** (“Grant Agreement”). The BTDC shall provide financial assistance to the Project for construction, rehabilitation and repair of commercial property within the Project Real Estate located within the EDA, as provided in Indiana Code 36-7-14-12.2(25)(B), pursuant to a Construction, Rehabilitation and Repair Agreement with the Developer in substantially the form attached hereto as **Exhibit G** (“Construction Agreement”)

Section 4.05 Infrastructure Improvements. City agrees to develop and construct or install certain infrastructure improvements within the EDA to support the Project and additional development in the EDA, as generally described on **Exhibit H** attached hereto (the “Infrastructure Improvements”). The timing of construction of the Infrastructure Improvements will be coordinated with construction of the Project by the Developer with the parties attempting, if and to the extent financially feasible or physically possible, simultaneous completion.

Section 4.06 Other Federal and State Incentives. City shall provide all reasonable and appropriate support to Developer to the extent Developer applies for additional federal and state development incentives, including, but not limited to, New Market Tax Credits, Historic Preservation Tax Credits, Indiana Economic Development Corporation grants, or other similar federal and state development incentive programs to support the Project. As of the Effective Date, Developer has applied for and received an allocation of federal New Market Tax Credits from the Fort Wayne New Markets Revitalization Fund in the amount of Twelve Million and

No/100 Dollars (\$12,000,000.00) and an allocation of Historic Tax Credits in the amount of Thirty Million and No/100 Dollars (\$30,000,000.00) and an award of up to Fifty Million and No/100 Dollars (\$50,000,000.00) in Indiana Industrial Recovery Tax Credits. Notwithstanding the above, nothing in this Agreement shall be construed in any way to provide public funding beyond the conditional commitments set forth in Article IV of this Agreement. In the event that Developer pursues additional federal and state development incentives to support the Electric Works East Campus Proposal or other areas within or adjacent to the EDA, City agrees to provide all reasonable and appropriate support to Developer, including the making of applications or the submission of letters of support to the extent required by the governmental authority providing such incentives, provided that the additional incentive is consistent with the Electric Works East Campus Proposal and provided further that said support shall not commit City to provide additional funding that has not already been approved by the appropriate governmental bodies.

## **ARTICLE V**

### **DEVELOPMENT TERMS**

#### Section 5.01 Timing of Development.

(a) Approval of Preliminary Plans. Developer has provided to City Preliminary Plans for the Project as described on **Exhibit D**, and City has approved said Preliminary Plans.

(b) Initial Approval Date. From and after the Effective Date, City shall seek the necessary governmental approvals required to provide the economic incentives to support the Project set forth in Article IV of this Agreement on or before October 31, 2018 (“Initial Approval Date”). In the event that City is not able to obtain the necessary governmental approvals on or before October 31, 2018, the Initial Approval Date shall be automatically extended to November 30, 2018, for the purpose of obtaining the necessary governmental approvals. In the event that City is unable to obtain the necessary governmental approvals to provide the economic development incentives pursuant to the terms and conditions of Article IV of this Agreement upon the expiration of the Initial Approval Date, as it may be extended, City may terminate this Agreement by written notice to Developer within five (5) days of the expiration of the Initial Approval Date, as it may be extended, and neither party shall have any further liability to the other pursuant hereto. Developer agrees to diligently pursue the balance of the financing necessary for the Project as shown on the Financial Projections and shall submit to City commitments to finance development of the Project from a qualified private financial institution or institutions in the amounts shown on the Financial Projections on the earlier of (i) the date that is sixty (60) days after the Initial Approval Date, as it may be extended, or (ii) December 31, 2018 (“Financing Commitment Date”). In the event Developer fails to provide such evidence of a commitment to finance development of the Project prior to the Financing Commitment Date, either City or Developer shall have the right to terminate this Agreement by written notice to the other prior to the date that is five (5) days after the Financing Commitment Date, and neither party shall have any further liability to the other pursuant hereto.

(c) Approval of Construction Plans. From and after the Initial Approval Date, Developer shall complete the Construction Plans as soon as possible under the circumstances, but in no event later than ninety (90) days after the Initial Approval Date. Upon completion of the Construction Plans, Developer shall request the approval of the Construction Plans by City no later than February 28, 2019. City agrees that its approval of the Construction Plans shall not be unreasonably withheld, conditioned or delayed, provided the Construction Plans are substantially consistent with the Preliminary Plans approved by City for the Project.

Section 5.02 Fund Closing. Upon completion of the conditions set forth in Section 5.03 below, City shall collect the Public Funding and cause the Bonds to be marketed, sold and closed in compliance with applicable state and federal laws (“Fund Closing”). It is the express intent of the parties that the Fund Closing shall occur simultaneously with the closing of all of the Developer’s equity, financing and all other funding as shown on the Financial Projections. Upon receipt of the Public Funding, including, but not limited to, the proceeds of the Bonds, the City shall cause the transfer of the Public Funding to the BTDC pursuant to the terms and conditions of the Grant Agreement described in Section 4.04 and shall cause the BTDC to make the proceeds available to the Developer pursuant to the terms and conditions of the Construction Agreement described in Section 4.04 (“Fund Closing”).

Section 5.03 Conditions to Fund Closing.

(a) Initial Conditions to Fund Closing. Developer and City agree that the Fund Closing is subject to the satisfaction (or waiver by both parties) of the following contingencies and conditions prior to December 31, 2018 (“Initial Fund Closing Condition Date”), and if not so satisfied then either City or Developer may terminate this Agreement without liability to the other.

(i) Developer shall have provided to City commercially reasonable evidence that the Developer has conducted an environmental inspection of the Project Real Estate along with copies of all reports relating to said inspections and any environmental conditions or contamination found on the Project Real Estate.

(ii) Developer shall have provided to City commercially reasonable evidence that it has a plan to remediate environmental conditions and contaminants found pursuant to the environmental inspection and (i) will be in compliance with the terms and conditions of all applicable federal, state and local laws regarding the remediation of such contaminants, including, but not limited to, compliance with the programs for remediation of such contaminants established by the Indiana Department of Environmental Management; and (ii) will permit the development of the Project consistent with the Electric Works West Campus Proposal within the Financial Projections provided by Developer.

(iii) Developer shall have provided to City commercially reasonable evidence that one hundred thousand (100,000) square feet of the space available for lease within the Project is subject to a written lease or letter of intent executed by the Developer and a prospective tenant that will occupy and conduct

operations within the space leased with at least twenty five thousand (25,000) square feet subject to a written lease or letter of intent with a prospective tenant that is either (a) a business new to Allen County, Indiana, or (b) a business creating new jobs in Allen County, Indiana. Developer may satisfy this condition, in whole or in part, by entering into a master lease with a master tenant that does not intend to occupy or conduct business in some or all of the master leased premises, provided such master tenant has written subleases or letters of intent to sublease the master leased premises with subtenants that will occupy and conduct business within the space subleased. City and Developer acknowledge and agree that an operator of a farmers' market or an innovation center may constitute such a subtenant for purposes of this subparagraph in the event that such farmers' market or innovation center subtenant occupies and conducts business within the space subleased. For purposes of this subparagraph, occupying and conducting business within a premises means, at a minimum, to fully and physically occupy the space subleased and conduct business therein open to the public at least five (5) days per week for a total of forty (40) hours per week. The written leases and letters of intent shall be reviewed by an independent financial consultant selected by City with at least ten (10) years' experience in the commercial real estate industry within the State of Indiana and the independent consultant shall advise City that the leases and letters of intent (i) contain commercially reasonable terms and conditions; (ii) with prospective tenants that are reasonably creditworthy, applying commercially reasonable standards of creditworthiness; (iii) for a term of at least five (5) years; and (iv) permit only uses which are consistent with the Electric Works West Campus Proposal and designed to achieve the Financial Projections.

(iv) Developer shall have provided to City a strategic market analysis, prepared by RCLCO, Inc.

(v) City shall have received a supplemental report from the Allen County-Fort Wayne Capital Improvement Board of Managers prepared by RCLCO, Inc., which shall provide an analysis of the potential tenants of the Project and an analysis of the Impact Study.

(vi) Developer shall have provided to City a strategic parking strategy and implementation plan for the Project along with commercially reasonable evidence that said plan can be completed and is adequate to support the Project.

(b) Final Conditions to Fund Closing. Developer and City agree that the Fund Closing is subject to the satisfaction (or waiver by both parties) of the following conditions prior to June 30, 2019 ("Final Fund Closing Condition Date") and, if not so satisfied, then either City or Developer may terminate this Agreement by written notice without liability to the other.

(i) City shall have obtained from all necessary governmental bodies or third parties all necessary final approvals and authorizations for the issuance of the Bonds and City shall be prepared to close upon the Bonds.

(ii) Developer shall have provided to City commercially reasonable evidence that Developer has obtained all necessary approvals, permits, licenses and other supporting agreements required to commence construction of the Project upon the Project Real Estate pursuant to this Agreement.

(iii) Developer shall have obtained the approval of the Construction Plans by City as provided by this Agreement.

(iv) Developer shall have provided to City commercially reasonable evidence that the Project can be redeveloped and constructed at a cost which is consistent with Developer's Financial Projections, including, but not limited to, firm bids for construction of the Project consistent with Developer's Financial Projections, as they may be revised prior to Closing.

(v) Developer shall have provided to City commercially reasonable evidence that two hundred fifty thousand (250,000) square feet of the space available for lease within the Project is subject to a written lease or letter of intent executed by the Developer and a prospective tenant that will occupy and conduct operations within the space leased with at least one hundred fifty thousand (150,000) square feet subject to a written lease or letter of intent with a prospective tenant that is either (a) a business new to Allen County, Indiana, or (b) a business creating new jobs in Allen County, Indiana. Developer may satisfy this condition, in whole or in part, by entering into a master lease with a master tenant that does not intend to occupy or conduct business in some or all of the master leased premises, provided such master tenant has written subleases or letters of intent to sublease the master leased premises with subtenants that will occupy and conduct business within the space subleased. City and Developer acknowledge and agree that an operator of a farmers' market or an innovation center may constitute such a subtenant for purposes of this subparagraph in the event that such farmers' market or innovation center subtenant occupies and conducts business within the space subleased. For purposes of this subparagraph, occupying and conducting business within a premises means, at a minimum, to fully and physically occupy the space subleased and conduct business therein open to the public at least five (5) days per week for a total of forty (40) hours per week. The written leases and letters of intent shall be reviewed by an independent financial consultant selected by City with at least ten (10) years' experience in the commercial real estate industry within the State of Indiana and the independent consultant shall advise City that the leases and letters of intent (i) contain commercially reasonable terms and conditions; (ii) with prospective tenants that are reasonably creditworthy, applying commercially reasonable standards of creditworthiness; (iii) for a term of at least five (5) years; and (iv) permit only uses which are consistent with the Electric Works West Campus Proposal and designed to achieve the Financial Projections.

(vi) Developer shall be prepared to consummate the closing on all state and federal development incentives utilized by Developer to finance the Project in a manner consistent with the Financial Projections, including, but not limited to,

Indiana DINO credits, New Market Tax Credits and Historic Preservation Tax Credits. It is the express agreement of the parties that the Fund Closing shall occur simultaneously with the closing of the state and federal incentives.

(vii) Developer shall be prepared to consummate the closing on all necessary private construction financing utilized by Developer to finance the Project in a manner consistent with the Financial Projections. It is the express agreement of the parties that the Fund Closing shall occur simultaneously with the closing of Developer's private construction financing.

(viii) Developer shall be prepared to consummate the closing on all contributions to the Developer's equity in a manner consistent with the Financial Projections. It is the express agreement of the parties that the Fund Closing shall occur simultaneously with the contributions to Developer's equity.

(ix) City and BTDC shall have executed the Grant Agreement.

(x) Developer and BTDC shall have executed the Construction Agreement.

(xi) Developer shall have prepared, executed and recorded the Declaration described in Section 5.07.

Section 5.04 Project Construction. Developer shall diligently pursue all applicable legal and/or regulatory permits, licenses or approvals as are legally required to commence construction of the Project from any federal, state or local commission or authority having jurisdiction over the Project from and after the Effective Date. Developer agrees to commence construction of the Project as soon as possible after the Fund Closing Date. In the event Developer has not commenced and diligently pursued construction of the Project within sixty (60) days of the Fund Closing Date, through no fault of City, in addition to any other rights that may accrue to the City pursuant to this Agreement, City shall have the right to terminate this Agreement.

Section 5.05 Legal Compliance and Completion. Developer acknowledges and agrees that compliance with all applicable laws, regulations, codes and ordinances with respect to the development, construction and operation of the Project shall be the sole responsibility of Developer. Developer agrees to commence and subsequently complete, in all material respects, construction of the Project as soon as reasonably possible after the Development Closing, but in no event later than thirty-six (36) months from the Fund Closing, subject to permitted delays provided for in Section 5.06 hereof.

Section 5.06 Permitted Delays. Whenever performance is required of any party, such party shall act in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, 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 cause beyond the reasonable control of a party (other than financial reasons), including actions or approvals required from public or other governmental bodies, then the time for performance as herein specified shall be appropriately

extended by the time of the delay actually caused by such circumstances (“Permitted Delays”, and in the singular form, each a “Permitted Delay”). If (i) there should arise any Permitted Delay for which Developer or City are entitled to delay its performance under this Agreement, and (ii) Developer or City anticipates that the Permitted Delay will cause a delay in its performance under this Agreement, then Developer or City, as the case may be, agree to provide written notice to the other party of the nature and the anticipated length of such delay.

Section 5.07 Declaration. Prior to the Fund Closing, Developer shall prepare a form of Declaration containing private restrictions governing the development of the Project Real Estate in a form subject to City approval, which approval City agrees shall not be withheld, conditioned or delayed (“Declaration”). The Declaration shall be executed and recorded at the Development Closing. The Declaration shall include restrictions prohibiting the use of any part of the Project for the following:

- (a) Adult book stores;
- (b) Drug paraphernalia stores or “head shops”;
- (c) Tattoo parlors;
- (d) “Adult Entertainment” establishments;
- (e) Amusement or other activities violating the City Noise Ordinance, creating a nuisance, or that are otherwise inconsistent with similar multi-use campuses incorporating outdoor space;
- (f) “Fast-food”- type restaurants, such as McDonald’s, Subway, and the like (but “quick serve”-type restaurants such as Panera Bread and Chipotle Grill, or coffee shops, such as Starbucks, would be permitted);
- (g) Casinos; or
- (h) Any other uses which are prohibited by any of the financing vehicles utilized by Developer to finance the development and construction of the Project, including, but not limited to, New Markets Tax Credits and Historic Preservation Tax Credits.

Section 5.08 Development Fees. Developer covenants and agrees that the Developer shall not collect a development fee or any other form of success fee, management fee, earned equity or the like, including, but not limited to, the development fee set forth in the Financial Projections (“Development Fees”), until the Project has stabilized, as defined in **Exhibit I** (“Stabilized”). Once the Project has Stabilized, Developer shall be entitled to withdraw from the Project fifty percent (50%) of any remaining amount of the Development Fees in the first twelve (12) months following the date the Project Stabilized. In the event the Project remains Stabilized for twelve (12) months following the date the Project initially Stabilized, then the remaining balance of the Development Fees may be withdrawn by the Developer in the following twelve (12) months. In the event that the Project does not remain Stabilized for twelve (12) months following the date the Project initially Stabilized, then the

remaining balance of the Development Fee may be withdrawn by the Developer in the twelve (12) months following the date the Project is again Stabilized. Prior to the date the Project has Stabilized, Developer may (i) withdraw and compensate itself a portion of the Development Fees at Closing for accrued expenses not exceeding Seven Hundred Thousand and No/100 Dollars (\$700,000.00) (“Past Expenses”), and (ii) withdraw and compensate itself, to the extent funds are available and approved for disbursement by the Project lender, in an amount not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per month until the Project has been Stabilized (“Future Expenses”). Developer may, at any time, withdraw any amount of the Development Fees, to the extent that funds are available and approved for disbursement by the Project lender, provided the Development Fees are immediately reinvested into the Project (“Reinvestment Amounts”). The aggregate total of the Past Expenses and Future Expenses shall in no event exceed the amount which would leave a balance of the total Development Fees shown on the Financial Projections of Ten Million and No/100 Dollars (\$10,000,000.00) to be distributed once the Project has Stabilized as provided herein. Developer shall provide City with written notice of any withdrawal of the Development Fees, including, but not limited to, withdrawals for Past Expenses, Future Expenses and Reinvestment Amounts.

## **ARTICLE VI** **AUTHORITY**

Section 6.01 Actions. Each of the parties hereto represents and warrants that it has taken or will use good faith efforts to take (subject to the Developer’s performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable each to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part as provided by the terms and provisions hereof.

Section 6.02 Powers. Subject to the conditions described herein and subject to such procedures as may be required by law, each party represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its obligations under this Agreement, including, but not limited to, the right, power and authority, subject to such procedures as may be required by law, to carry out the terms and conditions of this Agreement.

## **ARTICLE VII** **GENERAL PROVISIONS**

Section 7.01 Indemnity; No Joint Venture or Partnership. The Developer covenants and agrees at its expense to pay and to indemnify and save the City and its officers and agents (the “Indemnitees”) harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from the Developer’s (and/or any affiliates thereof) development activities with respect to the Project unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the City or other Indemnitees. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the City and the Developer or any affiliate thereof. The City covenants and agrees at its expense to pay and to indemnify and save the Developer and its officers and agents

(the “Developer Indemnitees”) harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from the City’s (and/or any affiliates thereof) activities with respect to the Project unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the Developer or other Developer Indemnitees.

Section 7.02 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 7.03 Breach. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the non-breaching party shall notify the breaching party in writing, specifying the alleged breach and demanding a cure. No breach of this Agreement may be found to have occurred if the breaching party has commenced a cure of the alleged breach within thirty (30) days of the receipt of such notice and diligently proceeds to cure said alleged breach. If after said notice, the breaching party fails to cure the alleged breach within a reasonable time, the same shall constitute a breach of this Agreement. In the event of a breach by either party, the non-breaching party may terminate this Agreement and recover from the breaching party the direct out-of-pocket expenses incurred by the non-breaching party as a result of such breach, including attorney fees and court costs, which shall be the non-breaching party’s sole remedy at law or in equity.

Section 7.04 Performance Commitment. As further assurance of Developer’s commitment to complete the Project pursuant to the terms of this Agreement, recovery of damages through the exercise by the City of its remedies set forth above shall be secured by an Irrevocable Letter of Credit in substantially the form attached hereto as **Exhibit J** and obtained from a financial institution reasonably acceptable to the City in the amount of Five Million and No/100 Dollars (\$5,000,000.00) (the “Letter of Credit”), which shall be issued as of the date of the Fund Closing. The Letter of Credit shall be granted for the purpose of securing Developer’s performance and shall be kept in place until 250,000 square feet of rentable square feet of the Project has a completed core and shell and is eligible for the issuance of a temporary certificate of occupancy, as certified by Developer’s general contractor and Project architect. In addition, Developer shall provide City with evidence of a bond for completion by the general contractor for the core and shell of the balance of the Project. Upon City’s receipt of such certification and bond, Developer shall no longer be required to maintain the Letter of Credit.

Section 7.05 Right of First Refusal. Developer hereby grants and conveys to City a right of first refusal to acquire the Project Real Estate which shall commence on the Effective Date and expire on the Fund Closing. In the event Developer elects to sell the Project Real Estate at any time prior to the Fund Closing, Developer shall first notify City in writing of its intent to sell and provide City with a copy of the fully-executed agreement of sale (“Offer Notice”). City shall have a period of thirty (30) days within which to elect to purchase the Project Real Estate upon the terms and conditions set forth on the Offer Notice. In the event that City does not elect to purchase the Project Real Estate pursuant to the Offer Notice, then the provisions of this Section 7.05 shall expire and be of no further force or effect upon the consummation of the purchase set forth in the Offer Notice, provided, however, that Section 7.12

shall remain applicable with regard to the rights and obligations of this Agreement. In the event the City does elect to purchase the Project Real Estate pursuant to the Offer Notice, City shall proceed to purchase the Project Real Estate in accordance with the terms and conditions contained in the Offer Notice. Developer and City shall prepare, execute and record in the Office of the Recorder for Allen County, Indiana, a memorandum of the provisions contained in this Section 7.05.

Section 7.06 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties and by the execution of said amendment by the parties or their successors in interest.

Section 7.07 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions between the parties hereto relative to the subject matter hereof and is a full integration of the agreement of the parties. In the event either party elects to terminate this Agreement as permitted herein, City and Developer acknowledge and agree that they shall in all events be responsible for their own costs, expenses and fees incurred in fulfilling their obligations pursuant to this Agreement and, upon such termination, they shall have no further rights or obligations pursuant to this Agreement.

Section 7.08 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 7.09 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

Section 7.10 Notices. Any notice, consent or waiver required or permitted to be given or served by either party to this Agreement shall be in writing and either (1) delivered personally to the other party, (2) mailed by certified or registered mail, return receipt requested, or (3) sent via nationally recognized overnight courier addressed as follows, and shall be deemed given when personally delivered (or upon refusal to accept delivery), or the third (3<sup>rd</sup>) day after deposit in the mail, or the first (1<sup>st</sup>) day after sending by overnight courier.

To the Developer:      Broadway Redevelopment Partners LLC  
                                         c/o Joshua Parker  
                                         2400 Boston Street, Suite 404  
                                         Baltimore, Maryland 21224  
                                         Telephone: 919-688-9054  
                                         Email: [jparker@crossstpartners.com](mailto:jparker@crossstpartners.com)

With a copy to: Peter G. Mallers  
Beers Mallers Backs & Salin, LLP  
110 West Berry Street, Suite 1100  
Fort Wayne, Indiana 46802  
Telephone: 260-426-9706  
Facsimile: 260-420-1314  
Email: [pgmallers@beersmallers.com](mailto:pgmallers@beersmallers.com)

To the City: The City of Fort Wayne, Indiana  
Department of Redevelopment  
Attention: Executive Director  
Citizen's Square  
200 East Berry Street, Suite 320  
Fort Wayne, Indiana 46802  
Telephone: 260-427-2323  
Facsimile: 260-427-1375

With a copy to: Jon A. Bomberger  
Faegre Baker Daniels LLP  
110 W. Berry Street, Suite 2400  
Fort Wayne, Indiana 46802  
Telephone: 260-424-8000  
Facsimile: 260-460-1700  
Email: [jon.bomberger@faegrebd.com](mailto:jon.bomberger@faegrebd.com)

Either party may, from time to time, change its notice address by notice to the other in accordance with the provisions of this section.

Section 7.11 Counterparts. Facsimile or emailed signatures appearing hereon shall be deemed an original and this Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

Section 7.12 Assignment. The rights and obligations contained in this Agreement may not be assigned by the Developer or any affiliate thereof without the express prior written consent of the City.

Section 7.13 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the City has approved or ratified this Agreement at the appropriate public meeting(s).

*[Remainder of page intentionally blank. Signature pages follow.]*

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

BROADWAY REDEVELOPMENT PARTNERS, LLC,  
a Delaware limited liability company

By: RTM Ventures, LLC,  
a Delaware limited liability company,  
its Manager

By: Cross Street Partners, LLC  
a Maryland limited liability company,  
its Manager

By: \_\_\_\_\_  
Joshua M. Parker, Authorized Representative

RTM VENTURES, LLC,  
a Delaware limited liability company

By: Cross Street Partners, LLC  
a Maryland limited liability company,  
its Manager

By: \_\_\_\_\_  
Joshua M. Parker, Authorized Representative

*[Signature Page for Developer]*

EW WEST CAMPUS LANDLORD LLC,  
an Indiana limited liability company

By: Broadway Redevelopment Partners, LLC,  
a Delaware limited liability company,  
its Manager

By: RTM Ventures, LLC,  
a Delaware limited liability company,  
its Manager

By: Cross Street Partners, LLC,  
a Maryland limited liability company,  
its Manager

By: \_\_\_\_\_  
Joshua M. Parker, Authorized Representative

EW EAST CAMPUS LANDLORD LLC,  
an Indiana limited liability company

By: Broadway Redevelopment Partners, LLC,  
a Delaware limited liability company,  
its Manager

By: RTM Ventures, LLC,  
a Delaware limited liability company,  
its Manager

By: Cross Street Partners, LLC,  
a Maryland limited liability company,  
its Manager

By: \_\_\_\_\_  
Joshua M. Parker, Authorized Representative

**“Developer”**

*[Signature Page for Developer]*

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

THE FORT WAYNE REDEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
Christopher Guerin, President

**“City”**

**EXHIBIT A**  
**FINANCIAL PROJECTIONS**

<b>Exhibit A</b>			
<b>Sources and Uses</b>	8/10/2018		
<b><u>SOURCES</u></b>			
Senior Permanent Loan			62,756,626
State Tax Credit Equity & Bridge			43,603,682
New Markets Tax Credit Equity			10,148,000
Federal Tax Credit Equity & Bridge			32,447,866
Fort Wayne BDDC Local Financing			65,000,000
Owner Equity			24,390,354
RTM Ventures' Deferred Development Fee			10,453,009
<b>Total Project Sources</b>			<b>\$248,799,537</b>
<b><u>USES</u></b>			
Land/Site Costs			11,700,000
Hard Costs			134,769,185
Loan Costs			941,349
Capitalized Interest Carry Costs			12,341,513
RTM Ventures Developer Fee			16,050,000
Soft Costs			26,035,779
<b>Base Building Total</b>			<b>\$201,837,826</b>
TI's & Leasing Costs			46,961,710
<b>Total Project Costs</b>			<b>\$248,799,536</b>

Exhibit A

**EXHIBIT B**

**LEGAL DESCRIPTION OF PROJECT REAL ESTATE**

***EXHIBIT B***  
Page 1 of 2

Parcel B:

Lot 23 and the East Half of Lot 24 in Swinney's Addition to the City of Fort Wayne, Indiana, as per plat thereof as recorded in Deed Record 95, page 332 in the Office of the Recorder of Allen County, Indiana.

Parcel C:

The South 100 feet of Lot 26 in Swinney's Addition to the City of Fort Wayne, Indiana, as per plat thereof as recorded in Deed Record 95, page 332 in the Office of the Recorder of Allen County, Indiana.

Parcel G:

Lots 25 through 31, Inclusive and the West 28 Feet of Lot 32 in Edsall's Addition to the City of Fort Wayne, Indiana as per plat thereof recorded in Plat Record N, page 332 in the Office of the Recorder of Allen County, Indiana.

Together with that portion of a 16 foot alley extending from the north boundary line of Lots 29 and 30 in Edsall's Addition to the south boundary line of Lots 29 and 30 in Edsall's Addition to the City of Fort Wayne, Indiana heretofore vacated by proceeds under General Ordinance No. G-23-85 adopted September 24, 1985 by the City Planning Commission and as depicted in Plat Map 16, page 5.

Parcel J:

The South 13 and one-half feet of Lot Numbered 1, Lots 2 through 8, Inclusive, and the South 29 and one-half feet of Lot Numbered 9 in Wall's Addition to the City of Fort Wayne, Indiana, as per plat thereof as recorded in the Office of the Recorder of Allen County, Indiana.

Parcel K:

Lots 1 through 4, Inclusive, in the General Electric Company Addition as per plat thereof recorded in the Office of the Recorder of Allen County, Indiana.

ALSO

Lot 5 in General Electric Company Addition as per plat thereof recorded in the Office of the Recorder of Allen County, Indiana.

Parcel O:

Together with that portion of Factory Street lying south of and adjacent to Lot 1 in General Electric Company Addition as vacated in Declaratory Resolution No. 687-1937 and as depicted in Plat Book 15, page 27, recorded February 24, 1939 in the Office of the Recorder of Allen County, Indiana.

**EXHIBIT B**  
Page 2 of 2

Parcel P:

Lots numbered 5, 6, 7, 8, 9, 10 and 11 in Swinney's Addition to the City of Fort Wayne, as per plat thereof recorded in Deed Record 95, pages 332 and 333, in the Office of the Recorder of Allen County, Indiana.

Parcel Q:

Lots 56, 57, 58, 59, 60 and 61 in Swinney's Addition to the City of Fort Wayne, as per plat thereof recorded in Deed Record 95, pages 332 and 333, in the Office of the Recorder of Allen County, Indiana.

Also a tract of ground described as follows:

Commencing at the Northwest corner of Garden and Wall Streets, in the City of Fort Wayne, Indiana; thence West on the North line of Wall Street 142 feet to the East line of the Old Cemetery grounds; thence North along the East line of the Old Cemetery grounds 159 1/2 feet to the South line of the right of way of the Pittsburgh, Fort Wayne and Chicago Railway Company; thence East along said South line of said right of way to the West line of Garden Street, now Thompson Street; thence South 159 1/2 feet to the Place of Beginning.

Also, the 12 ft. vacated alley adjoining on the North of the aforesaid Lots, 56-61, both inclusive.

TOGETHER WITH:

1729 College Street, Fort Wayne, Indiana 46802  
Parcel ID #02-12-10-280-001.000-074

North 50 feet of Lot Number 26, Swinney's Addition to the City of Fort Wayne, Allen County, Indiana according to the Plat thereof, recorded in Deed 95, Pages 332-333, in the Office of the Recorder of Allen County, Indiana

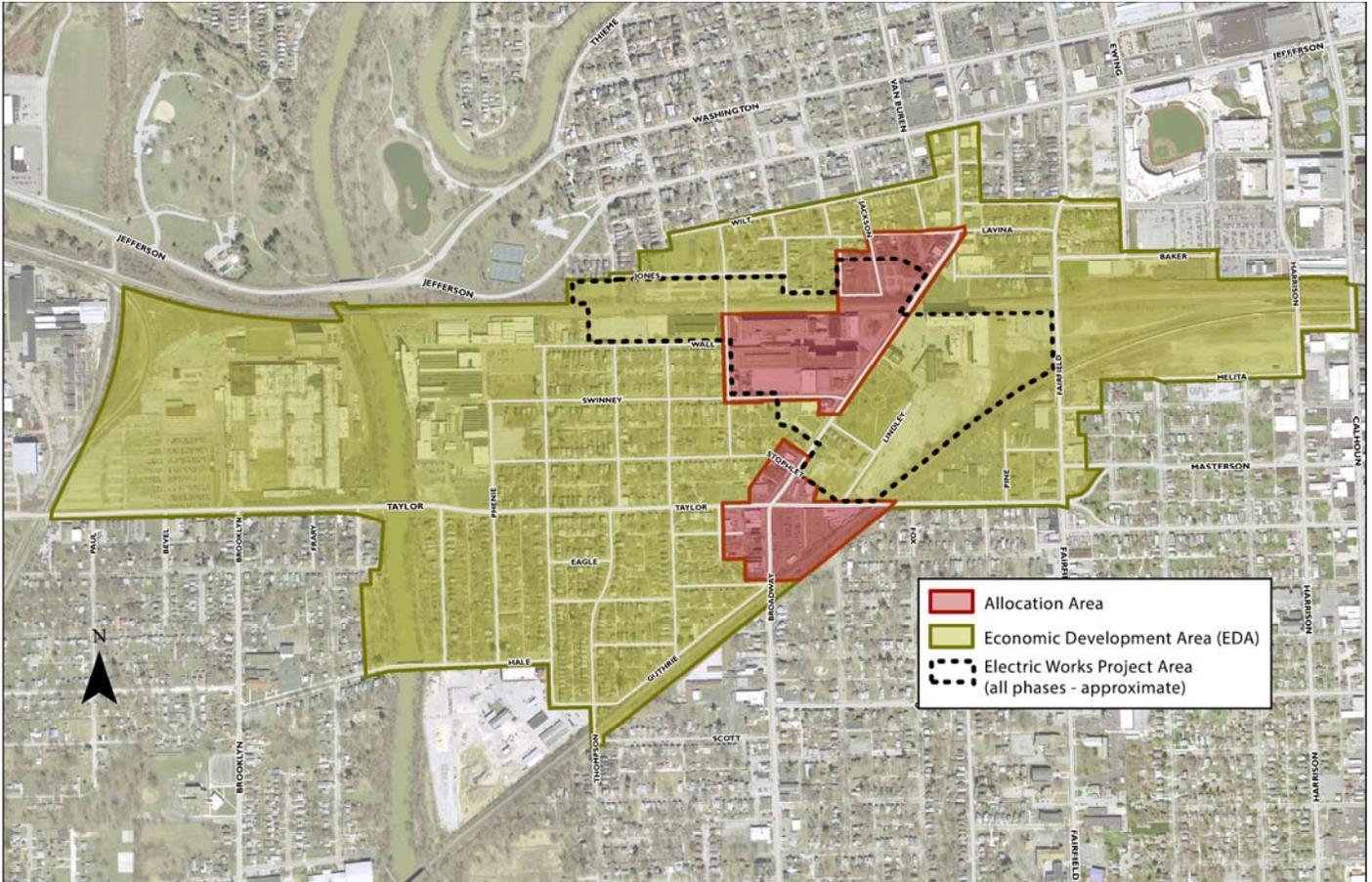
TOGETHER WITH:

1112 Swinney Avenue, Fort Wayne, Indiana 46803  
Parcel ID #02-12-10-280-004.000-074

The West 1/2 of Lot Number 244 in Swinney's Addition, an addition to the City of Fort Wayne, according to the plat thereof, and recorded in Deed Book 95, page 332, recorded in the Office of the Recorder of Allen County, Indiana.

**EXHIBIT B-1**

**ECONOMIC DEVELOPMENT AREA  
AND ALLOCATION AREA**



## **EXHIBIT C**

### **PROJECT DESCRIPTION**

The renovation and new construction of Buildings 19, 20, 21, 22, 22(a), 23, 23(a), 24, 25, 25(a), 26, 26(c), 27, 27(a), 31, 36 and F, all as part of the Development Plan of Electric Works West Campus, a mixed-use development that will be an 18-hour Campus allowing the public to live, work, and play in buildings that will preserve the history of the site and that will be repurposed to revitalize space for offices, residences, education, health care, entertainment, retail, and innovation and entrepreneurship.

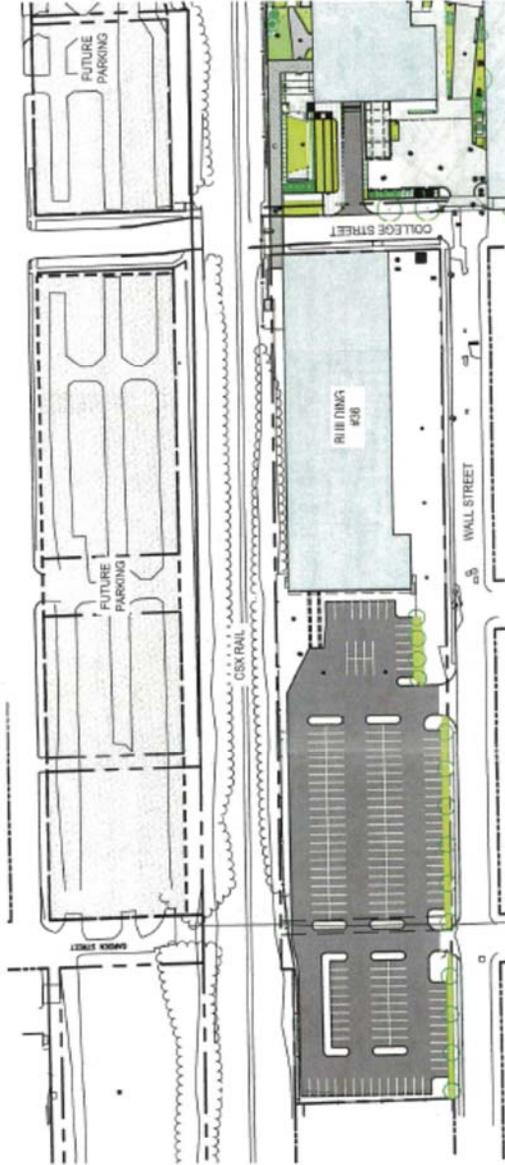
The project will be located in the former General Electric Campus, south of the CSX railroad tracks, west of Broadway, and north of Swinney Avenue. The depiction of the West Campus site with building information is attached hereto as Exhibits C-2 and C-3.

# EXHIBIT C-2

EXHIBIT C-2

## ELECTRIC WORKS

BROADWAY | DISTRICT



ELECTRIC WORKS - WEST CAMPUS - 1 of 2

BUILDING INFORMATION				
BLDG	SF	HT	EX / PROP	PROP USE
19	240,000	125'	EXISTING	INSTITUTIONAL / OFFICE
20	26,500	57'	EXISTING	OFFICE / RETAIL
21	6,878	18'-7"	EXISTING	OFFICE
22	11,250	45'	EXISTING	ENTERTAINMENT
22a	5,200	25'	EXISTING	CIRCULATION / RETAIL
22b	27,690	47'-6"	EXISTING	MULTI-PURPOSE
23a	14,592	33'-6"	PROPOSED	COMMON / CIRCULATION
24	5,200	38'	EXISTING	OFFICE TENANT
25	3,255	24'	EXISTING	UNKNOWN
25a	9,400	40'	PROPOSED	ENTERTAINMENT
26	250,000	125'	EXISTING	PARKING / BUSINESS / RESIDENTIAL
26c	3,700	40'	EXISTING	RETAIL TENANT
27	60,000	38'	EXISTING	MARKET / OFFICE / ENTERTAINMENT
27a	8,200	40'	EXISTING	MARKET / COMMON / ENTERTAINMENT
31	26,626	33'-9"	EXISTING	EDUCATIONAL
36	41,000	55'	EXISTING	PARKING / ENTERTAINMENT
F	15,000	38'	PROPOSED	OFFICE / RETAIL

**EXHIBIT C-3**

EXHIBIT C-3

**ELECTRIC WORKS**

BROADWAY | DISTRICT



ELECTRIC WORKS - WEST CAMPUS - 2 of 2

SCALE 1" = 50'



BUILDING INFORMATION				
BLDG	SF	HT	EX / PROP	PROP USE
19	240,000	125'	EXISTING	INSTITUTIONAL / OFFICE
20	28,500	5'	EXISTING	OFFICE / RETAIL
21	6,676	18'-7"	EXISTING	OFFICE
22	11,250	48'	EXISTING	ENTERTAINMENT
22a	5,200	25'	EXISTING	CIRCULATION / RETAIL
23	27,660	47'-6"	EXISTING	MULTI-PURPOSE
23a	14,502	33'-4"	PROPOSED	COMMON / CIRCULATION
24	5,200	20'	EXISTING	OFFICE TENANT
25	3,255	24'	EXISTING	UNKNOWN
25a	9,400	40'	PROPOSED	ENTERTAINMENT
26	295,000	125'	EXISTING	PARKING / BUSINESS / RESIDENTIAL
26c	3,700	40'	EXISTING	RETAIL TENANT
27	60,000	30'	EXISTING	MARKET / OFFICE / ENTERTAINMENT
27a	8,200	40'	EXISTING	MARKET / COMMON / ENTERTAINMENT
31	26,026	32'-5"	EXISTING	EDUCATIONAL
30	41,000	50'	EXISTING	PARKING / ENTERTAINMENT
F	15,000	30'	PROPOSED	OFFICE / RETAIL

**EXHIBIT D**  
**PRELIMINARY PLANS**

Design Development Drawings prepared by Elevatus Architecture dated May 21, 2018, and indexed as follows:

Name ▲	Size	Uploaded	Creator
 1601824_Bldg 19 Bound_D...	14 MB	7/13/18	C. Miller
 1601824_Bldg 20 Bound_D...	13 MB	7/13/18	C. Miller
 1601824_Bldg 21 Bound_D...	7 MB	7/13/18	C. Miller
 1601824_Bldg 23 Bound_D...	31 MB	7/13/18	C. Miller
 1601824_Bldg 26 Bound_D...	13 MB	7/13/18	C. Miller
 1601824_Bldg 26_Residenti...	17 MB	7/13/18	C. Miller
 1601824_Bldg 27 Bound_D...	6 MB	7/13/18	C. Miller
 1601824_Bldg 31 Bound_D...	8 MB	7/13/18	C. Miller
 1601824_Bldg 33 Bound_D...	10 MB	7/13/18	C. Miller
 1601824_Bldg 36 Bound_D...	8 MB	7/13/18	C. Miller
 1601824_Civil Bound_DD_0...	34 MB	7/13/18	C. Miller
 1601824_Landscape Bound...	73 MB	7/13/18	C. Miller
 Specifications DD Final Set -...	14 MB	7/13/18	C. Miller

**EXHIBIT E**  
**FUTURE PUBLIC IMPROVEMENTS**

(See attached.)

**Electric Works**

Potential Cost Ranges for TIF-eligible Projects  
 DRAFT August 9, 2017 -CONFIDENTIAL

Total All Projects	low	average	high
	<b>\$58,868,500</b>	<b>\$68,689,250</b>	<b>\$76,072,000</b>

GRAY CELLS = Calculation

Connectivity		Project #	Project Name	Size (in sf)	Unit Cost/sf (low)	Unit Cost/sf (average)	Unit Cost/sf (high)	Area Cost (low)	Area Cost (average)	Area Cost (high)
		1	Jefferson Deceleration Area	51,000	\$15	\$20	\$25	\$765,000	\$1,020,000	\$1,275,000
		2	New Road & Trail adjacent to RR	76,000	\$20	\$23	\$25	\$1,520,000	\$1,710,000	\$1,900,000
		3	S. River Greenway Connector - Taylor St.							
		3a.	Electric Ave. to Broadway Bike lanes	2,700	\$100	\$175	\$250	\$270,000	\$472,500	\$675,000
		3b.	Broadway to Fairfield Bike lanes	1,900	\$100	\$175	\$250	\$190,000	\$332,500	\$475,000
		4	N. River Greenway Connector - College St.							
		4a.	Washington St. Bike Lane	1,100	\$100	\$175	\$250	\$110,000	\$192,500	\$275,000
		4b.	College St. Bike Lane	2,000	\$100	\$175	\$250	\$200,000	\$350,000	\$500,000
		Total "Connectivity":								
								<b>low</b>	<b>average</b>	<b>high</b>
								<b>\$3,055,000</b>	<b>\$4,077,500</b>	<b>\$5,100,000</b>
Streets		Project #	Project Name	Size (in sf)	Unit Cost/sf (low)	Unit Cost/sf (average)	Unit Cost/sf (high)	Area Cost (low)	Area Cost (average)	Area Cost (high)
		5	Broadway St. (Taylor to Jefferson)	187,000	\$25	\$30	\$35	\$4,675,000	\$5,610,000	\$6,545,000
		6	College St. (Swinney to Jefferson)	83,300	\$25	\$30	\$35	\$2,082,500	\$2,499,000	\$2,915,500
		7	Swinney Ave. (College to Broadway)	44,200	\$45	\$50	\$55	\$1,989,000	\$2,210,000	\$2,431,000
		8	Wall St. (Reidmiller to College)	64,200	\$35	\$40	\$45	\$2,247,000	\$2,568,000	\$2,889,000
		9	Jones St. (Garden to Rockhill)	52,500	\$35	\$40	\$45	\$1,837,500	\$2,100,000	\$2,362,500
		10	Union St. (Lavina to Parking Garage)	17,000	\$25	\$30	\$35	\$425,000	\$510,000	\$595,000
		11	Jackson St. (Lavina to Parking Garage)	9,000	\$20	\$23	\$25	\$180,000	\$202,500	\$225,000
		12	12. Lavina St. (Union to Broadway)	40,000	\$20	\$23	\$25	\$800,000	\$900,000	\$1,000,000
		Total "Streets":								
								<b>low</b>	<b>average</b>	<b>high</b>
								<b>\$14,236,000</b>	<b>\$16,599,500</b>	<b>\$18,963,000</b>
Parks & Open Space		Project #	Project Name	Size (in sf)	Unit Cost/sf (low)	Unit Cost/sf (average)	Unit Cost/sf (high)	Area Cost (low)	Area Cost (average)	Area Cost (high)
		13	McCulloch Park	168,200	\$45	\$50	\$55	\$7,569,000	\$8,410,000	\$9,251,000
		14	Electric Works Public Open Space							
		14a.	Dynamo Alley	50,800	\$70	\$78	\$85	\$3,556,000	\$3,937,000	\$4,318,000
		14b.	Gateway Plaza	16,500	\$40	\$48	\$55	\$660,000	\$783,750	\$907,500
		15	Connector Path							
		15a.	Adjacent to West Campus	43,500	\$45	\$50	\$55	\$1,957,500	\$2,175,000	\$2,392,500
		15b.	Adjacent to Broadway	12,000	\$70	\$78	\$85	\$840,000	\$930,000	\$1,020,000
		15c.	Adjacent to East Campus	18,600	\$45	\$50	\$55	\$837,000	\$930,000	\$1,023,000
		Total "Parks & Open Space":								
								<b>low</b>	<b>average</b>	<b>high</b>
								<b>\$15,419,500</b>	<b>\$17,165,750</b>	<b>\$18,912,000</b>

needed off site improvements Ph I

desired mid/long term ideas

Phase I - in budget

May not need

Rail, Rail Bridges, & Underpasses	Project #	Project Name	Size (in sf)	Unit Cost/sf (low)	Unit Cost/sf (average)	Unit Cost/sf (high)	Area Cost (low)	Area Cost (average)	Area Cost (high)
	16	Union St. Ped. Underpass/Tunnel	3,600	\$55	\$63	\$70	\$198,000	\$225,000	\$252,000
	17	Broadway CSX Underpass	0	\$0	\$0	\$0	\$0	\$0	\$0
	18	College St. Underpass	0	\$0	\$0	\$0	\$0	\$0	\$0
	19	Fairfield Underpasses/Street Lowering	0	\$0	\$0	\$0	\$0	\$0	\$0
		Total "Rail, Rail Bridges, & Underpasses":					low	average	high
				<b>\$198,000</b>				<b>\$225,000</b>	<b>\$252,000</b>
Buildings	Project #	Project Name	Size (in sf)	Unit Cost/sf (low)	Unit Cost/sf (average)	Unit Cost/sf (high)	Area Cost (low)	Area Cost (average)	Area Cost (high)
	20	GE Club	0	\$0	\$0	\$0	\$0	\$0	\$0
	21	Food Hall	0	\$0	\$0	\$0	\$0	\$0	\$0
		Total "Buildings":					low	average	high
				<b>\$0</b>				<b>\$0</b>	<b>\$0</b>
Utilities	Project #	Project Name	Size (in sf)	Unit Cost/sf (low)	Unit Cost/sf (average)	Unit Cost/sf (high)	Area Cost (low)	Area Cost (average)	Area Cost (high)
	22	Mitigate AEP Impacts - Plantings	158,000	\$10	\$13	\$15	\$1,580,000	\$1,975,000	\$2,370,000
		Total "Utilities":					low	average	high
				<b>\$1,580,000</b>				<b>\$1,975,000</b>	<b>\$2,370,000</b>
Parking	Project #	Project Name	Number of Spaces	Unit Cost/space (low)	Unit Cost/space (average)	Unit Cost/space (high)	Area Cost (low)	Area Cost (average)	Area Cost (high)
	23	Parking Deck 'A'	1,219	\$20,000	\$23,500	\$25,000	\$24,380,000	\$28,646,500	\$30,475,000
		Total "Parking":					low	average	high
				<b>\$24,380,000</b>				<b>\$28,646,500</b>	<b>\$30,475,000</b>
									Completion and move in on Ph I will trigger this at some point. Will develop proforma
				<b>\$58,868,500</b>			low	average	high
				<b>\$68,689,250</b>				<b>\$76,072,000</b>	

\*Is : Lu mp Sum – Budget to be informed by recent comparable underpass improvement projects.

\*TBD : To be determined

**EXHIBIT F**  
**GRANT AGREEMENT**

(See attached.)

**BROADWAY TAYLOR ECONOMIC DEVELOPMENT AREA  
NEIGHBORHOOD DEVELOPMENT CORPORATION GRANT AGREEMENT**

This Broadway Taylor Economic Development Area Neighborhood Development Corporation Grant Agreement (“Grant Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT** (“Grantor”) and the **BROADWAY TAYLOR DEVELOPMENT CORPORATION**, an Indiana neighborhood development corporation (“Grantee”).

**WITNESSETH:**

WHEREAS, Grantor executed that certain Economic Development Agreement dated August \_\_\_\_\_, 2018 (“Development Agreement”) with RTM Ventures LLC, a Delaware limited liability company (“Developer”) and Broadway Redevelopment Partners, LLC, a Delaware limited liability company, EW West Campus Landlord, LLC, a Delaware limited liability company, and EW East Campus, LLC, a Delaware limited liability company (“Developer Affiliates”);

WHEREAS, Grantor has established the Broadway Taylor Economic Development Area (“EDA”) and the Electric Works Phase I Allocation Area (“AA”) pursuant to Section 4.01 of the Development Agreement, as shown on **Exhibit A** attached hereto;

WHEREAS, Grantor has organized Grantee as a neighborhood development corporation pursuant to Section 4.04 of the Development Agreement for the purposes of (a) constructing, rehabilitating and repairing commercial properties within the EDA as provided in Indiana Code 36-7-14-12.2(25)(B); and (b) administering the public funding made available to the Developer and Developer Affiliates for the construction, rehabilitation and repair of commercial properties within the EDA;

WHEREAS, Grantor has taken receipt of Sixty-Two Million and No/100 Dollars (\$62,000,000.00) of public funding pursuant to Section 4.03 of the Development Agreement; and

WHEREAS, Grantor desires to make a grant to Grantee in the amount of Sixty-Two Million and No/100 Dollars (\$62,000,000.00) for the purposes set forth in Sections 4.03 and 4.04 of the Development Agreement, subject to the terms and conditions of the Development Agreement.

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 hereby acknowledged, the parties do hereby agree as follows:

**ARTICLE I**  
**GRANT**

1.01 Grantor does hereby grant to Grantee the sum of Sixty-Two Million and No/100 Dollars (\$62,000,000.00) (“Public Funds”) for use in the construction, rehabilitation and repair of commercial properties within the EDA, specifically limited by this Grant Agreement to the construction, rehabilitation and repair to be accomplished by Developer and Developer Affiliates as part of the Project, as defined in the Development Agreement, as permitted by Indiana Code 36-7-14-12.2(25)(B).

1.02 Grantee does hereby accept the Public Funds from Grantor to be used solely for the construction, rehabilitation and repair of commercial properties to be accomplished by Developer and Developer Affiliates as part of the Project, as defined in the Development Agreement, as permitted by Indiana Code 36-7-14-12.2(25)(B).

1.03 Grantee agrees to deposit the Public Funds in a segregated account with a financial institution selected by Grantor. Grantee shall hold the Public Funds in the segregated account throughout the term of this Grant Agreement and shall make distributions from the Public Funds in compliance with the terms of this Grant Agreement.

**ARTICLE II**  
**TERM OF THIS GRANT AGREEMENT**

2.01 This Grant Agreement shall remain in effect for two (2) years commencing on \_\_\_\_\_ (the “Effective Date”) and shall remain in effect through the earlier of (a) the date that the Public Funds have been fully distributed, or (b) the second anniversary of the Effective Date, unless sooner terminated as provided herein (the “Expiration Date”).

2.02 Any provisions which, by their nature, are intended to apply after termination of this Grant Agreement shall survive termination of the Grant Agreement until their purposes are fulfilled.

**ARTICLE III**  
**DUTIES AND RESPONSIBILITIES OF THE GRANTEE**

3.01 Contemporaneously with the execution of this Grant Agreement and prior to the release of any portion of the Public Funds, Grantee shall enter into a Construction, Rehabilitation and Repair Agreement with Developer and Developer Affiliates (“Construction Agreement”) wherein Developer and Developer Affiliates shall submit applications for distribution of the Public Funds for construction, rehabilitation and repair of commercial properties within the EDA which constitute a portion of the Project described in the Development Agreement, and Grantee agrees to accept such applications in accordance with this Grant Agreement and, in the event such applications are in compliance with the terms and conditions of this Grant Agreement, the

Construction Agreement and the Development Agreement, to pay such applications promptly in accordance with this Grant Agreement.

3.02 Grantor and Grantee agree that the Construction Agreement shall be in the form attached hereto as **Exhibit B**.

3.03 Grantee shall provide a written notice to Grantor of each application for distribution received and each such application subsequently paid. Each application for distribution must contain a request for payment for the cost of construction, rehabilitation or repair included within the Construction Plans approved by Grantor for the Project, as described in the Development Agreement. In the event that an application for distribution does not comply with the conditions set forth in this Section 3.03, Grantee shall not honor said application in accordance with this Grant Agreement and shall suspend all further payments from the Public Funds until the noncompliance is resolved to the satisfaction of Grantor.

3.04 Grantee shall provide written notice to Grantor when the Public Funds have been reduced by Twenty-Five Percent (25%), Fifty Percent (50%), Seventy-Five Percent (75%) and One Hundred Percent (100%).

3.05 Grantee shall be responsible for evaluating each application for distribution submitted by Developer or Developer Affiliates for compliance with the terms of this Grant Agreement, the Development Agreement and the Construction Agreement.

3.06 Upon written request, Grantee shall provide Grantor with any information in Grantee's possession or control relating to the Project or any application for distribution made by the Developer or Developer Affiliates pursuant to the Construction Agreement.

3.07 Grantee may enter into an agreement with a third-party servicer and/or construction compliance inspector approved by Grantor for the administration and execution of Grantee's responsibilities pursuant to this Grant Agreement and the fees and expenses charged by said third party may be paid from the Public Funds, provided the amount of said fees and expenses is approved by Grantor prior to payment. The Construction Agreement shall provide that such fees may be paid from the Public Funds.

#### **ARTICLE IV** **DISTRIBUTION OF PUBLIC FUNDS**

4.01 Grantee may make payments to Developer or Developer Affiliates upon Grantee approval of an application for distribution received by Grantee from Developer or Developer Affiliates.

4.02 Grantee's obligations pursuant to this Grant Agreement shall terminate upon the distribution of all of the Public Funds.

**ARTICLE V**  
**USE OF PUBLIC FUNDS**

5.01 Except as otherwise specifically provided herein, Public Funds shall only be distributed in compliance with this Grant Agreement, the Development Agreement and the Construction Agreement as provided in an approved application for distribution. Grantee may distribute the Public Funds to pay the fees of an independent servicer and/or construction inspector approved by Grantor.

5.02 Public Funds approved for use subject to an approved application for distribution shall be used only for costs directly associated with construction, rehabilitation and repair incurred by Developer or Developer Affiliates with regard to the Project.

5.03 In the event the Grantee does not distribute all of the Public Funds allocated for the Project, the Grantee shall return the unused Public Funds to the Grantor within thirty (30) days of the Expiration Date. Such Public Funds shall not be used by the Grantee for any other purpose unless approved in writing by Grantor.

5.04 Notwithstanding any other provision of this Grant Agreement, Public Funds shall not be expended by Grantee or transferred by Grantee to the Developer or Developer Affiliates to cover any costs associated with the Project which are not costs incurred in the construction, rehabilitation and repair of commercial properties within the EDA as part of the Project described in the Development Agreement.

**ARTICLE VI**  
**COMPLIANCE**

6.01 Grantee shall promptly notify Grantor of any failure to use Public Funds in accordance with this Grant Agreement. In the event Grantor determines that there has been a failure to use Public Funds in accordance with this Grant Agreement:

(a) Grantor may notify Grantee to require the Developer or Developer Affiliates to return all Public Funds transferred to it by Grantee, in which case Grantor shall allow Grantee a reasonable period of time during which to collect misused Public Funds (using all legal remedies) in order to reimburse and replenish the Public Funds for the same; provided, however that after exercising all reasonable means to collect from the Developer or Developer Affiliates, Grantee shall not be responsible for reimbursement of Public Funds that are uncollectable (in whole or in part);

(b) Grantor may notify Grantee to assign and delegate its rights under the Construction Agreement to Grantor;

(c) Grantor may notify Grantee to return all undistributed Public Funds transferred to it for the Project;

(d) Grantor may notify Grantee that the Grantor is withholding future distributions of Public Funds;

(e) Grantor may suspend this Grant Agreement pursuant to Article XV; and/or

(f) Grantor may take any other action permitted by this Grant Agreement or otherwise permitted by law to recover Public Funds not used in accordance with this Grant Agreement.

6.02 If Grantee fails to comply with applicable laws, rules, regulations, terms and conditions of this Grant Agreement, Grantor may, in its sole discretion, suspend or terminate this Grant Agreement in accordance with Article XV.

## **ARTICLE VII**

### **REPORTING BY GRANTEE**

7.01 Grantor shall monitor and assess Grantee's performance in accordance with this Grant Agreement.

7.02 Grantee shall submit a written progress report on a quarterly basis to Grantor ("Quarterly Progress Report(s)") as follows:

(a) The first Quarterly Progress Report shall be provided by Grantee to Grantor not later than \_\_\_\_\_, with each subsequent Quarterly Progress Report submitted by Grantee to Grantor not later than the last day of the month following the last day of each subsequent quarter.

(b) Each Quarterly Progress Report shall include:

(i) An executive summary of the contents of the Quarterly Progress Report;

(ii) A description of each application for distribution made pursuant to the Construction Agreement, with a listing of the amount of the application for distribution, the amount paid, and the uses of the Public Funds distributed; and

(iii) A description of the current status of the Project.

7.03 Within forty-five (45) days of the Expiration Date of this Grant Agreement, Grantee shall submit a final written report to Grantor. The final report shall include an account of Grantee's efforts pursuant to this Grant Agreement with a summary of all applications for

distribution received and paid, an accounting of all transactions involving the Public Funds, and any additional information that Grantor may reasonably request.

7.04 In the event that a report is not timely submitted to Grantor, Grantor may, among its other remedies under this Grant Agreement, direct the Grantee to suspend the distribution of Public Funds until such time as such report is submitted.

## **ARTICLE VIII**

### **AUDITS AND ACCESS TO RECORDS**

8.01 Within ten (10) days of a written request by Grantor, Grantee shall deliver to Grantor an accounting of all Public Funds distributed by Grantor to Grantee.

8.02 Upon reasonable notice, Grantee shall make available to Grantor and its agents all books or records in its possession or control which pertains to this Grant Agreement, including any and all documents and records pertaining to the Project. If any site visit is made Grantee shall provide and shall require all reasonable facilities and assistance for the safety and convenience of Grantor or its representatives in the performance of their duties. All such inspections are to be performed so as not to unreasonably disrupt or interfere with the normal business operations of Grantee, Developer or Developer Affiliates.

8.03 Grantor and its agents have the right, at all reasonable times, to make site visits to:

(a) Review Project accomplishments and to confer with Grantee, Developer and Developer Affiliates; and

(b) Audit records and management control systems applicable to the Public Funds and the Project.

8.04 Grantee shall ensure the cooperation of Grantee's employees and designees in such monitoring and evaluation efforts. Grantee shall take all steps reasonably necessary to correct or cure any problems or deficiencies identified by Grantor during its monitoring and evaluation.

8.05 Each party shall be responsible for its own costs, except as provided by law.

## **ARTICLE IX**

### **COMPLIANCE WITH LAWS**

9.01 Grantee agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference.

9.02 Grantee shall require Developer and Developer Affiliates to obtain and maintain all required permits, licenses and approvals, as well as comply with all health, safety and environmental statutes, rules and regulations. In the event Developer or Developer Affiliates breach this covenant, Grantor may suspend this Grant Agreement in accordance with Article XV.

9.03 Any distribution that Grantor may delay, withhold, deny or apply under this Grant Agreement shall not be subject to penalty or interest.

**ARTICLE X**  
**NOTICE TO PARTIES**

10.01 Whenever any notice, statement, submission or other communication (“Notice”) is required under this Grant Agreement, it shall be sent as follows:

(a) Notice to Grantor shall be sent to:

The City of Fort Wayne, Indiana  
Department of Redevelopment  
Attention: Executive Director  
Citizen’s Square  
200 East Berry Street, Suite 320  
Fort Wayne, IN 46802  
Telephone: 260-427-2323  
Facsimile: 260-427-1375  
Email: [nancy.townsend@cityoffortwayne.org](mailto:nancy.townsend@cityoffortwayne.org)

(b) Notice to Grantee shall be sent to:

Broadway Taylor Development Corporation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

10.02 Any change in a party’s contact information must be provided in writing to the other party in accordance with this Article X.

10.03 Except as set forth in Section 10.04 below, notice by electronic mail shall be sufficient. Notice shall be deemed delivered upon dispatch.

10.04 Notice regarding breach of contract, suspension, default and/or termination under this Grant Agreement shall be properly addressed and provided via electronic mail and via a nationally recognized overnight delivery service. Notice shall be deemed delivered upon dispatch.

**ARTICLE XI**  
**ASSIGNMENT**

11.01 This Grant Agreement binds Grantor, Grantee and their successors and assigns to all terms and conditions of this Grant Agreement.

11.02 Neither Grantor nor Grantee shall assign the whole or any part of this Grant Agreement without prior written approval of the other.

**ARTICLE XII**  
**INDEMNIFICATION**

12.01 Grantee agrees to indemnify, defend and hold harmless Grantor and its agents, officers, employees and representatives from all third-party claims and suits arising from or relating to this Grant Agreement. Grantee shall bear all reasonable costs, including court costs, attorneys' fees and other expenses caused by any act or omission of Grantee or its agents, contractors, officers or employees relating to said third-party claims or suits.

12.02 Notwithstanding the foregoing, Grantee shall not be responsible to Grantor for any costs for defense or indemnification arising from a breach of this Grant Agreement by Grantor. Grantor shall not provide any indemnification whatsoever to Grantee or its agents, contractors, officers or employees in connection with performance of this Grant Agreement.

**ARTICLE XIII**  
**GOVERNING LAW**

13.01 This Grant Agreement shall be construed in accordance with and governed by the laws of the State of Indiana without regard to principles of choice of law, and suit, if any, must be brought in the State of Indiana.

13.02 The venue for any court action shall be the circuit or superior court of Allen County, Indiana. The Grantee consents to the personal jurisdiction of Indiana courts.

**ARTICLE XIV**  
**MISCELLANEOUS**

14.01 The headings in this Grant Agreement are intended solely for reference and will be given no effect in the construction or interpretation of this Grant Agreement.

14.02 The parties agree that this Grant Agreement, including any attached exhibits and/or attachments, supersedes all prior oral and written proposals and communications, if any, and sets forth the entire agreement of the parties with respect to the subject matter hereof.

14.03 This Grant Agreement may not be altered or amended except in writing, signed by authorized representatives of Grantor and Grantee.

14.04 No waiver of any default, failure to perform, condition, provision or breach of this Grant Agreement will be deemed to imply or constitute a waiver of any other like default, failure to perform, condition, provision or breach of this Grant Agreement.

14.05 If any paragraph, term, condition, or provision of this Grant Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, or if any paragraph, term, condition, or provision is found to violate or contravene the laws of the State of Indiana, then the paragraph, term, condition, or provision so found will be deemed severed from this Grant Agreement, but all other paragraphs, terms, conditions, and provisions will remain in full force and effect.

14.06 The parties to this Grant Agreement, in the performance thereof, will be acting in an individual capacity, and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of any other party for any purposes whatsoever. No party will assume any liability for any injury (including death) to any persons or any damage to any property arising out of the acts or omissions of the agents, employees or subagents of any other party.

14.07 Unless otherwise terminated or modified as expressly permitted hereunder, this Grant Agreement shall remain in force during the term of this Grant Agreement. Notwithstanding anything contained herein to the contrary, provisions of this Grant Agreement which by their nature contemplate rights and obligations of the parties to be enjoyed or performed after the Expiration Date shall survive until their purposes are fulfilled.

14.08 This Grant Agreement may be executed through an original or electronically, and in duplicate or through counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same agreement.

14.09 The Grantee understands that this Grant Agreement is a public record as defined by the Indiana Access to Public Records Act (Indiana Code 5-14-3-1, et seq.) and, once fully executed, will be publicly available.

14.10 If the Grantee refers to more than one entity, such entity shall be jointly and severally responsible to satisfy the obligations under this Grant Agreement. In the event of a default, all entities are jointly and severally liable for the obligations in this Grant Agreement, irrespective of which entity caused the default.

14.11 Nothing in this Grant Agreement shall be construed to confer any rights or remedies on any third party not a signatory to this Grant Agreement, including the employees or other contractors of Grantee.

14.12 This Grant Agreement was reviewed and/or revised by legal counsel for Grantor and Grantee, and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Grant Agreement.

14.13 Nothing in this Grant Agreement is intended to preclude or limit Grantor's ability to seek remedies available at law or in equity against Grantee with respect to claims of mismanagement, misappropriation, fraud, concealment or similar claims of distributed Public Funds.

14.14 Notwithstanding anything in this Grant Agreement to the contrary, the signatory for Grantee represents that he/she has been duly authorized to execute contracts on behalf of the Grantee and has obtained all necessary and applicable approvals to make this Grant Agreement fully binding upon Grantee when his/her signature is affixed.

## **ARTICLE XV**

### **SUSPENSION AND TERMINATION**

15.01 Grantor reserves the right to suspend, in whole or in part, this Grant Agreement for the occurrence of an actual or potential violation of this Grant Agreement or any relevant provision of federal or state laws, rules, or regulations applicable to the Project. Grantee shall be provided with notice of the suspension and a thirty (30) day period in which to cure said violation or demonstrate that no violation exists. In the event an act (or failure) of Grantee requires prompt intervention by Grantor, an authorized representative may provide Grantee with verbal notification of the suspension and extent thereof. Written notice of the suspension shall be provided to Grantee within fifteen (15) days from the date of verbal notification. The notice shall include the qualifying violation(s) for such suspension and the extent to which the Grantee's duties set-forth in this Grant Agreement shall be suspended. During the suspension period, (i) Grantor may give notice of its election to any of the remedies provided under this Article XV and (ii) Grantee will correct, cure, rectify or otherwise address the violations, which may include presenting measures to Grantor to prevent further violations. In the event Grantor determines that the issue is resolved, Grantor shall provide notice to Grantee that the parties shall resume, as soon as practical, their duties of this Grant Agreement. No distributions of Public Funds shall be issued by Grantee during the suspension period unless otherwise agreed to in writing by Grantor.

15.02 This Grant Agreement may be terminated by Grantor whenever a material breach of this Grant Agreement goes uncured by Grantee after thirty (30) days' notice is provided to Grantee. Termination for a material breach of this Grant Agreement shall be effected by delivery to Grantee of notice, at least thirty (30) days prior to the date of termination ("Termination Notice"). The Termination Notice shall instruct Grantee to return to Grantor all unused Public

Funds in the possession of Grantee. Upon Grantee's receipt of the Termination Notice, no new or additional liabilities for Public Funds shall be incurred without the prior written approval of Grantor. Grantee shall continue to be responsible and liable to perform its obligations pursuant to this Grant Agreement to the date set forth in the Termination Notice, unless otherwise agreed to in writing by Grantor.

*[Remainder intentionally blank. Signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have executed this Broadway Taylor Economic Development Area Neighborhood Development Corporation Grant Agreement on the date first set forth above.

CITY OF FORT WAYNE, INDIANA,  
DEPARTMENT OF REDEVELOPMENT

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

“GRANTOR”

BROADWAY TAYLOR DEVELOPMENT  
CORPORATION, an Indiana nonprofit corporation

By: \_\_\_\_\_

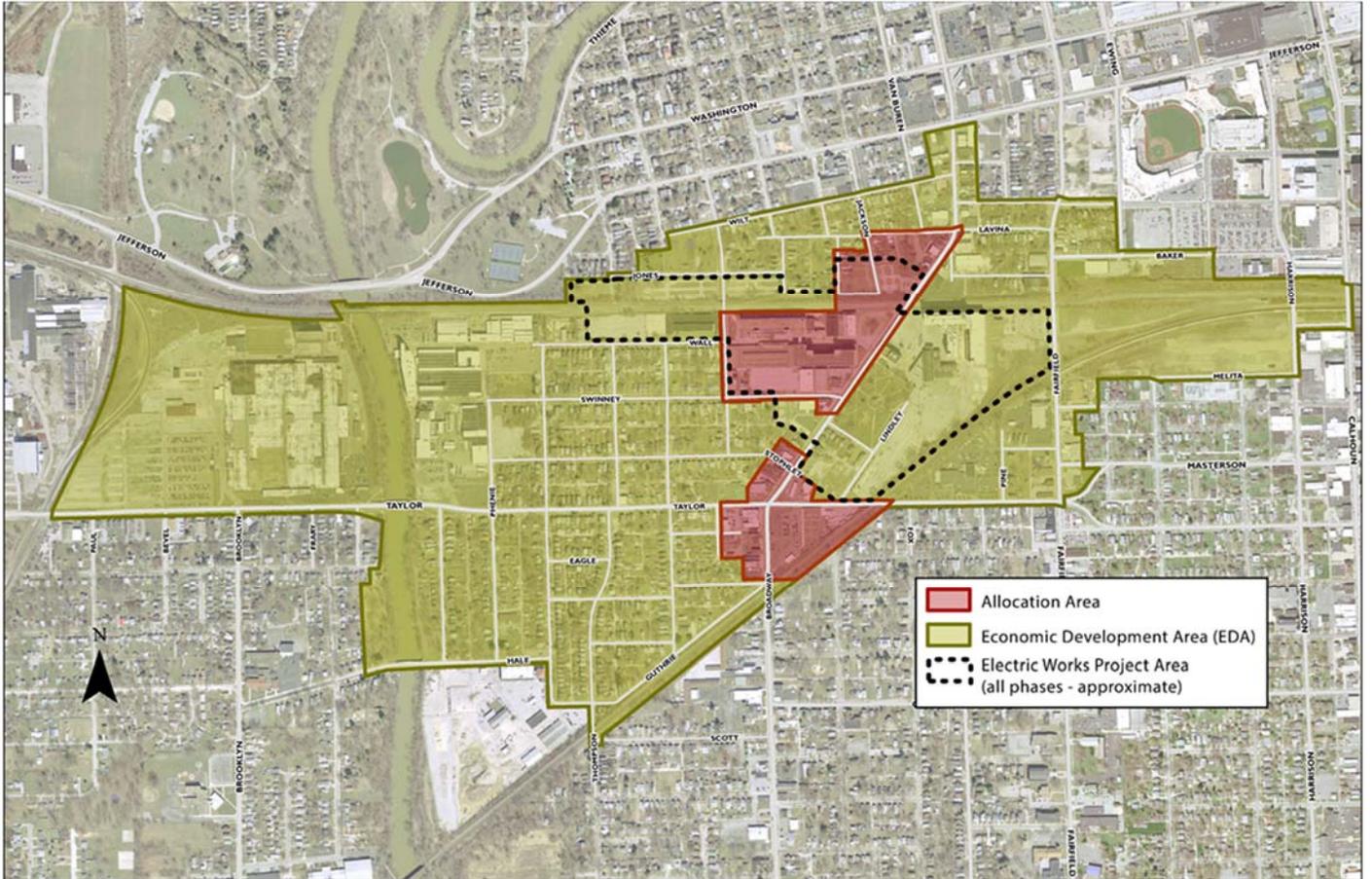
Printed: \_\_\_\_\_

Its: \_\_\_\_\_

“GRANTEE”

**EXHIBIT A**  
**TO GRANT AGREEMENT**

**DESCRIPTION OF**  
**BROADWAY TAYLOR ECONOMIC DEVELOPMENT AREA**



**EXHIBIT B**  
**TO GRANT AGREEMENT**

**BROADWAY TAYLOR ECONOMIC DEVELOPMENT AREA**  
**CONSTRUCTION, REHABILITATION AND REPAIR AGREEMENT**

**EXHIBIT G**

**CONSTRUCTION, REHABILITATION AND REPAIR AGREEMENT**

(See attached.)

**BROADWAY TAYLOR ECONOMIC DEVELOPMENT AREA  
CONSTRUCTION, REHABILITATION AND REPAIR AGREEMENT**

This Broadway Taylor Economic Development Area Construction, Rehabilitation and Repair Agreement (“Construction Agreement”) is entered into as of \_\_\_\_\_ (“Effective Date”), by and between the **BROADWAY TAYLOR DEVELOPMENT CORPORATION**, an Indiana neighborhood development corporation (the “BTDC”), and **RTM VENTURES LLC**, a Delaware limited liability company (“Developer”) and **BROADWAY REDEVELOPMENT PARTNERS, LLC**, a Delaware limited liability company, and **EW WEST CAMPUS LANDLORD, LLC**, a Delaware limited liability company (“Developer Affiliates”).

**WITNESSETH:**

WHEREAS, the City of Fort Wayne, Indiana, Department of Redevelopment (“City”) entered into that certain Economic Development Agreement dated August \_\_\_\_\_, 2018 (“Development Agreement”) with Developer and Developer Affiliates, wherein City agreed to provide economic development incentives, including, but not limited to, Sixty-Two Million and No/100 Dollars (\$62,000,000.00) in financial assistance to the Project described in the Development Agreement in consideration of the commitment of Developer and Developer Affiliates to complete the Project described in the Development Agreement;

WHEREAS, City has established the Broadway Taylor Economic Development Area (“EDA”) and the Electric Works Phase I Allocation Area (“AA”) pursuant to Section 4.01 of the Development Agreement;

WHEREAS, City has organized the BTDC as a neighborhood development corporation for purposes set forth in Section 4.04 of the Development Agreement;

WHEREAS, City has entered into a Grant Agreement of even date herewith with BTDC as a neighborhood development corporation as provided in Indiana Code 36-7-14-12.2(25(B)), pursuant to Section 4.04 of the Development Agreement (the “Grant Agreement”);

WHEREAS City and Developer have consummated the Fund Closing as described in Section 5.02 of the Development Agreement and the City has Sixty-Two Million and No/100 Dollars (\$62,000,000.00) in public funding, which it has provided to BTDC pursuant to the Grant Agreement in accordance with Section 4.04 of the Development Agreement, for construction, rehabilitation and repair of commercial properties located upon the Project Real Estate within the EDA (“Public Funds”); and

WHEREAS, Developer and Developer Affiliates desire to use the Public Funds to construct, rehabilitate and repair commercial properties located upon the Project Real Estate within the EDA and BTDC has agreed in the Grant Agreement to administer the Public Funds and to distribute the Public Funds to Developer and Developer Affiliates in accordance with the Development Agreement, the Grant Agreement and this Construction Agreement;

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 hereby acknowledged, the parties do hereby agree as follows:

1. Definitions. Capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement.

2. BTDC Obligations. BTDC agrees to disburse the Public Funds to Developer and Developer Affiliates in accordance with the terms and conditions of the Development Agreement, the Grant Agreement and this Construction Agreement.

3. Obligations of Developer and Developer Affiliates. Developer and Developer Affiliates agree to construct, rehabilitate and repair commercial properties located on the Project Real Estate within the EDA and to pay for such construction, rehabilitation and repair by making applications for distribution from the Public Funds held by BTDC in accordance with the terms and conditions of the Development Agreement, the Grant Agreement and this Construction Agreement.

4. Term of Agreement. This Construction Agreement shall be effective upon the Effective Date and shall remain in full force and effect, unless sooner terminated in accordance with the terms herein until the earlier of (a) the date the Public Funds have been fully disbursed or (b) December 31, 2020 (the "Expiration Date").

5. Grant Agreement. Contemporaneously with the execution of this Construction Agreement, BTDC has entered into the Grant Agreement with the City whereby City has deposited the Public Funds with BTDC for distribution to Developer pursuant to Section 4.04 of the Development Agreement. The terms and conditions of the Grant Agreement are incorporated herein by reference.

6. Distributions. BTDC agrees to make distributions to Developer for construction, rehabilitation and repair of commercial properties within the EDA as a part of the Project in consideration of Developer's agreement to construct the Project and otherwise comply with the terms and conditions of the Development Agreement and this Construction Agreement.

7. Distribution Threshold. Public Funds shall not be disbursed until after Developer shall have invested in the Project all of Developer's equity as indicated on the Financial Projections shown on Exhibit A to the Development Agreement. Prior to requesting any Public Funds pursuant to this Construction Agreement, Developer shall provide written notice to BTDC that Developer has met the Distribution Threshold, with commercially reasonable evidence thereof.

8. Distribution Conditions. Developer acknowledges and agrees that distributions of Public Funds pursuant to this Construction Agreement shall be conditioned upon the following:

A. Developer shall have invested its equity in the Project to the Distribution Threshold, as provided in Section 7 above.

B. Developer shall have submitted an application for distribution in compliance with Section 9 of this Construction Agreement.

C. Developer shall be in full compliance with the terms and conditions of the Development Agreement.

D. Developer shall be in full compliance with the terms and conditions of this Construction Agreement.

E. All of the representations and warranties of Developer as contained in the Development Agreement and this Construction Agreement are true and correct as of the date of the application for distribution.

F. Developer is not in default beyond any applicable grace period with regard to any loan agreement, note, mortgage, contract or other obligation with regard to the Project.

G. Developer shall be in compliance with all applicable laws, regulations, codes and ordinances with respect to the Project.

H. Developer shall be in existence in accordance with the laws of the state of its organization and authorized to do business in the State of Indiana.

I. Developer's application for distribution of Public Funds shall be fully authorized by all requisite corporate action.

J. Developer shall have complied with all applicable Indiana laws with regard to the use of the Public Funds, including, but not limited to, public bidding requirements.

K. Developer shall have delivered to BTDC true and correct copies of all of the architects' contracts for the design of the Project.

L. Developer shall have delivered to BTDC true and correct copies of all of the construction contracts for the construction, rehabilitation and repair of the Project.

M. Developer shall have delivered to BTDC a true and correct copy of the Construction Plans for the Project.

9. Application for Distribution. The application for distribution of Public Funds shall be made in writing and shall be directed to the BTDC containing all of the information set forth in this Section 9. The application for distribution shall include a certification of the Developer that as of the date of such application, all representations and warranties contained in the Development Agreement and this Construction Agreement are true and correct, that the conditions to distribution set forth in Section 8 of this Construction Agreement have been fully satisfied, that construction to the date of the application is in full compliance with the Construction Plans approved by City pursuant to the Development Agreement and delivered to BTDC, and that Developer is otherwise in full compliance with all the provisions of the

Development Agreement and this Construction Agreement. The application for distribution shall contain a certification by Developer that after distribution of the Public Funds there will be sufficient funds available to Developer to complete the Project in accordance with the Development Agreement. The Developer's application shall be made on an AIA Form 702/703 supplemented by the information required by this Section 9. The Developer's application shall request payment in a defined amount to the contractor or contractors listed in the application for work which constitutes a part of the Project, as shown on the Construction Plans. The application for payment shall be accompanied by invoices and partial lien waivers from each contractor included in the application for payment. Distribution of Public Funds for the Project shall be made within fifteen (15) days of receipt of the application and supporting documentation outlined herein and shall be made in accordance with this Construction Agreement. Developer shall be solely responsible for submitting a complete application for the Public Funds in accordance with the terms and conditions of this Construction Agreement. BTDC shall have no obligation to distribute Public Funds unless the conditions set forth in Section 8 above have been fully satisfied and a completed application for distribution of Public Funds has been submitted to the BTDC in accordance with this Section 9. Developer releases and forever holds BTDC harmless from and against any and all liability for withholding Public Funds in the event that the conditions set forth in Section 8 have not been fully satisfied or if the application for distribution is incomplete for failure to include the matters set forth in this Section 9.

10. Duties and Responsibilities of Developer. Developer shall use the Public Funds received pursuant to this Construction Agreement exclusively in compliance with the provisions of the Development Agreement and this Construction Agreement to construct the Project in accordance with the Construction Plans.

11. Design and Construction. The Developer shall be solely responsible for the proper design and construction of the Project. The BTDC shall have no liability whatsoever to Developer or Developer's architects, engineers, surveyors, contractors, agents or employees with regard to the Project. The Developer shall furnish all labor, supervision, materials, temporary structures, scaffolding, equipment, tools, and appliances of any sort which are necessary to complete the Project. Developer agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. Developer shall be solely responsible and agrees to obtain all necessary permits and licenses required for the Project and shall be responsible for the payment of any required fees. Developer represents and warrants that it is in compliance with all health, safety, and environmental statutes, rules and regulations in regard to the Project.

12. Documentation. Upon written request, Developer shall provide the BTDC with any necessary information or documentation regarding any contracts, accountings, agreements or similar documents with other parties relating to this Construction Agreement, including, but not limited to, any leases, contracts, subcontracts, memorandums of understanding, letters of intent, agreements with other local, state or federal agencies, and consulting agreements related to the Project that are in Developer's possession or control. Developer shall from time to time execute and deliver all other documents and instruments and do all things and acts as the BTDC reasonably deems necessary to comply with the Grant Agreement or to carry out, better evidence or perfect the full meaning of this Construction Agreement.

13. Construction Plans. Developer shall not undertake any work on the Project not a part of the Construction Plans. The Project is to be made complete in accordance with the Construction Plans.

14. Material Changes. Developer shall provide written notice to the BTDC of any material changes to the Project and the Construction Plans. A material change occurs when there is: (i) an increase or decrease in the total cost of the Project of five percent (5%) or more, or (ii) a substantive change in the size, scope or use of the Project from the size, scope or use of the Project approved by the City in the Development Agreement (“Material Change”). After receipt of notice of a Material Change, the BTDC will promptly notify the City. Notwithstanding any other remedy herein, in the event that Public Funds have been disbursed to the Developer and the City and/or the BTDC reasonably determines the Project is becoming unviable due to a Material Change, or the BTDC and/or the City reasonably determines Public Funds have or will be used in a manner not permitted by this Construction Agreement, the Developer shall cease any further expenditure of Public Funds for the Project and BTDC shall suspend distributions of Public Funds until the date that the Material Change has been approved by City and BTDC.

15. Restrictions of Project Funds. Developer represents and warrants that any Public Funds it receives for the Project will be used only for construction, rehabilitation and repair of commercial properties on the Project Real Estate within the EDA, as permitted by this Construction Agreement. Developer shall promptly notify the BTDC of any suspected failure to use the Public Funds in accordance with this Construction Agreement.

16. Risk of Loss and Insurance. The Project shall be under the charge and control of the Developer and all risks of loss or damage in connection therewith and the materials, supplies and equipment to be used therein shall be borne exclusively by the Developer. Developer shall maintain, at Developer’s own expense insurance coverages, insuring Developer, Developer’s employees, agents and designees and the indemnitees as required herein in commercially reasonable amounts, which insurance shall name the City and the BTDC as additional named insureds and shall incorporate a provision requiring the giving of written notice to the City and the BTDC at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies. Developer shall also maintain builder’s risk insurance in an amount at least equal to the projected completion value of the Project covering property damage during construction. All deductibles of any policy of insurance to be purchased by Developer hereunder shall be borne by Developer. Developer shall submit valid certificates in form and substance satisfactory to the BTDC evidencing the effectiveness of the foregoing insurance policies.

17. Indemnity. Developer shall indemnify, defend, and hold harmless the City, the BTDC and their officers, employees, and agents, from any and all damages, losses, claims, demands, suits, liabilities, penalties, or forfeitures of every kind and nature (collectively “Claims”), including but not limited to reasonable attorneys’ and experts’ fees and expenses and other costs and expenses of defending against the same and payment of any settlement or judgment therefore, by reason of bodily and other personal injuries to or deaths of persons; damages to tools or equipment owned or leased by Developer; damages to other property; the release or threatened release of a hazardous substance or any pollution or contamination of or other adverse effects on the environment; violations of any applicable laws; or infringement of patent, copyright, trademark, trade secret, or other property right to the extent resulting or alleged

to have resulted from acts or omissions of Developer, its employees, agents, contractors, subcontractors, or other representatives or otherwise arising out of, directly or indirectly relating to, or in connection with the performance of this Construction Agreement, the Project or otherwise, whether suffered directly by the City or the BTDC or indirectly by reason of third-party claims, demands, or suits. This obligation to indemnify, defend, and hold harmless shall survive termination or expiration of this Construction Agreement and shall apply whether or not it is alleged that the City or the BTDC in any way contributed to the Claims or is liable due to a non delegable duty, however the Developer shall not be responsible for any Claim(s) which are caused by the sole negligence or sole willful misconduct of the City or the BTDC where such is contrary to law. The indemnification obligation under the Agreement may not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Developer or any contractor(s), subcontractor(s) or materialmen under worker's or workmen's compensation acts, disability benefit acts or other employee benefits acts. Without limiting the generality of the foregoing, the indemnity herein shall include all Claims arising out of personal injury, death or damage to personal property of the Developer or its contractors or subcontractor's employees or agents or licensees or invitees or to any other persons, whether based upon or claimed to be based upon, statutory, contractual, common law, tort (including but not limited to negligence, fraud, conversion, intentional tort or other common law tort) or other liability of Developer, Developer's representatives, employees, contractors, subcontractors, material men or suppliers or any other persons. The promise of indemnification herein shall be construed to reflect Developer's intent to indemnify the City and the BTDC to the fullest extent permitted by law for such Claims. Developer shall insure specifically the indemnity contained hereinabove and shall include the City and the BTDC as additional insureds.

18. Liens. The Developer shall make prompt payments to all persons who have done work or furnished materials for the Developer's performance of the work and shall, from time to time upon demand, furnish satisfactory evidence to the BTDC that such persons are entitled to no further compensation. In the event a lien shall be filed against the Project, by any person who has done work or furnished materials for or in the performance of the Developer or its representatives work, the Developer shall at its expense, upon demand of the BTDC, take all necessary action, by bond or otherwise, to cause any such lien to be release or discharged therefrom, and Developer shall fully indemnify the BTDC against any loss or expense in connection therewith, including reasonable expert and attorneys' fees and court costs incurred by the BTDC.

19. Suspension. The BTDC reserves the right to immediately suspend, in whole or in part, this Construction Agreement upon the occurrence of a potential violation of the Development Agreement, this Construction Agreement, or any relevant provision of federal or state laws, rules, or regulations. Developer shall be provided with notice of the suspension and a thirty (30) day period after written notice from the BTDC to Developer in which to cure said violation or demonstrate that no violation exists. The notice shall include the qualifying violation(s) for such suspension and the extent of the suspension. In the event the BTDC reasonably determines that the violation is resolved or does not exist, the BTDC shall provide notice to the Developer that the parties shall resume, as soon as practical, their duties as set forth in this Construction Agreement. No distributions of Public Funds shall be issued to the Developer during the suspension period.

20. Termination. This Construction Agreement may be terminated by the BTDC whenever a material breach of this Construction Agreement goes uncured by the Developer after thirty (30) days' notice is provided by the BTDC to the Developer. In the event that the breach requires more than thirty (30) days to cure and Developer commences the cure promptly upon notification within the initial thirty (30) day period, Developer shall have the period reasonably required to cure said breach, provided Developer continues to diligently pursue the cure of said breach to completion. The BTDC shall terminate this Construction Agreement by delivery to the Developer of notice of termination at least fifteen (15) days prior to the date of termination ("Termination Notice"). The Termination Notice shall set forth the Developer's required dissolution procedures to conclude this Construction Agreement, including return of all unused Public Funds in the possession of Developer. Upon Developer's receipt of the Termination Notice, no new or additional liabilities for Public Funds distribution by the BTDC shall be incurred without the prior written approval of the BTDC. Developer shall continue to be responsible and liable for the proper performance of its obligations to the date set forth in the Termination Notice. Notwithstanding anything contained herein, the BTDC may notify the Developer to return all Public Funds transferred to it by the BTDC and may use any and all legal remedies to collect the same if Developer is noncompliant with such request.

21. Notices. All notices to be given under this Construction Agreement shall be in writing, and shall be deemed to have been given and served when delivered in person, by Federal Express, UPS or similar overnight carrier, or by United States mail, postage pre-paid to the addressee at the following addresses:

If to BTDC: Broadway Taylor Development Corporation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Developer: Broadway Redevelopment Partners LLC  
c/o Joshua Parker  
2400 Boston Street, Suite 404  
Baltimore, Maryland 21224  
Telephone: 919-688-9054  
Email: [jparker@crossstpartners.com](mailto:jparker@crossstpartners.com)

Any party may change its mailing address by serving written notice of such change and of such new address upon the other party.

22. Periodic Monitoring Reviews. The BTDC may carry out periodic monitoring reviews ("Periodic Monitoring Reviews") of the Project, as deemed appropriate by the BTDC. Developer and Developer Affiliates shall cooperate in such monitoring and evaluation efforts and shall produce all documentation reasonably requested by the City and BTDC in connection with such activities.

23. Disclosure of Public Records. Developer understands that this Construction Agreement is a public record as defined by the Indiana Access to Public Records Act (Indiana Code § 5-14-3-1, *et seq.*), and, once fully executed, will be publicly available. Any applications for funding submitted hereunder are public documents and are subject to public inspection pursuant to the Indiana Access to Public Records Act.

24. Assignment. The BTDC shall have the right to unilaterally assign its rights to recover Public Funds and delegate its rights under this Construction Agreement to the City. Developer shall not assign, transfer, or convey or otherwise dispose of this Construction Agreement or any part hereof, to any person, company, or corporation, without the prior written consent of the City and the BTDC.

25. Good Faith Assurances. The parties to this Construction Agreement shall in good faith undertake to perform their obligations under this Construction Agreement, to satisfy all conditions and to cause the transactions contemplated by this Construction Agreement to be carried out promptly in accordance with the terms of this Construction Agreement. Upon the execution of this Construction Agreement and thereafter, each party shall do such things as may be reasonably requested by the other party hereto in order more effectively to consummate or document the transactions contemplated by this Construction Agreement.

26. Miscellaneous.

A. The headings in this Construction Agreement are intended solely for reference and will be given no effect in the construction or interpretation of this Construction Agreement.

B. The parties agree that the Development Agreement, the Grant Agreement and this Construction Agreement, including any attached exhibits and/or attachments, supersede all prior oral and written proposals and communications, if any, and set forth the entire agreement of the parties with respect to the subject matter hereof.

C. This Construction Agreement may not be altered or amended except in writing, signed by authorized representatives of the BTDC and Developer.

D. No waiver of any default, failure to perform, condition, provision, or breach of this Construction Agreement will be deemed to imply or constitute a waiver of any other like default, failure to perform, condition, provision, or breach of this Construction Agreement.

E. If any paragraph, term, condition, or provision of this Construction Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, or if any paragraph, term, condition, or provision is found to violate or contravene the laws of the State of Indiana, then the paragraph, term, condition, or provision so found will be deemed severed from this Construction Agreement, but all other paragraphs, terms, conditions, and provisions will remain in full force and effect.

F. This Construction Agreement shall be governed in accordance with the laws of the state of Indiana. The venue for disputes hereunder shall be exclusive to local and federal courts of Allen County, Indiana.

G. Notwithstanding anything contained herein to the contrary, provisions of this Construction Agreement which by their nature contemplate rights and obligations of the parties to be enjoyed or performed after the Expiration Date shall survive until their purposes are fulfilled.

H. This Construction Agreement may be executed through an original or electronically, and in duplicate or through counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same agreement.

I. If the Developer refers to more than one entity, each entity shall be jointly and severally responsible to satisfy the obligations under this Construction Agreement. In the event of a default, all entities are jointly and severally liable for the obligations in this Construction Agreement, irrespective of which entity caused the default.

J. Nothing in this Construction Agreement shall be construed to confer any rights or remedies on any third party not a signatory to this Construction Agreement, including the employees, tenants or other contractors of the Developer.

K. This Construction Agreement was reviewed and/or revised by legal counsel for the BTDC and Developer, and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Construction Agreement.

L. Nothing in this Construction Agreement is intended to preclude or limit the BTDC's ability to seek remedies available at law or in equity against the Developer for a breach of this Construction Agreement.

M. In this Construction Agreement, each reference to an obligation of the Developer shall also include the Developer Affiliates.

N. The BTDC shall have the right to engage the services of a financial institution and a construction consultant to assist the BTDC in managing the Public Funds, evaluating and approving applications for distribution of Public Funds and assessing the status and progress of construction of the Project. The BTDC and the Developer acknowledge and agree that cost of such assistance shall be paid from the Public Funds.

*[Remainder intentionally blank. Signature pages follow.]*

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

BROADWAY REDEVELOPMENT PARTNERS, LLC,  
a Delaware limited liability company

By: RTM Ventures, LLC,  
a Delaware limited liability company,  
its Manager

By: Cross Street Partners, LLC  
a Maryland limited liability company,  
its Manager

By: \_\_\_\_\_  
Joshua M. Parker, Authorized Representative

RTM VENTURES, LLC,  
a Delaware limited liability company

By: Cross Street Partners, LLC  
a Maryland limited liability company,  
its Manager

By: \_\_\_\_\_  
Joshua M. Parker, Authorized Representative

EW WEST CAMPUS LANDLORD LLC,  
an Indiana limited liability company

By: Broadway Redevelopment Partners, LLC,  
a Delaware limited liability company,  
its Manager

By: RTM Ventures, LLC,  
a Delaware limited liability company,  
its Manager

By: Cross Street Partners, LLC,  
a Maryland limited liability company,  
its Manager

By: \_\_\_\_\_  
Joshua M. Parker, Authorized Representative

**“Developer”**

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

BROADWAY TAYLOR DEVELOPMENT CORPORATION, an Indiana nonprofit corporation

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

**“City”**

## EXHIBIT H

### INFRASTRUCTURE IMPROVEMENTS

<b>Electric Works Phase I Off-Site Public Improvements</b>	
<b>Connectivity (subtotal)</b>	<b>\$417,000</b>
Union St Pedestrian Tunnel	\$225,000
College/Washington to Rivergreenway bike lanes	\$192,000
<b>Utilities (subtotal)</b>	<b>\$2,438,191</b>
Sewer*	\$1,204,351
Water	\$1,233,840
<b>Roads/Sidewalks (subtotal)</b>	<b>\$2,092,145</b>
Broadway	\$607,478
College St	\$358,600
Jones St	\$623,600
Swinney Ave	\$496,533
Wall St	\$249,067
<b>Total Cost</b>	<b>\$5,190,469</b>
*Option 1 displayed. Option 2 estimated at \$1,556,619	

**EXHIBIT I**

**DEFINITION OF PROJECT STABILIZATION**

Net operating income in an amount equal to 1.25 times the amount of debt service required as shown on the financial projections prepared by Novogradac as submitted to City dated \_\_\_\_\_, on a trailing twelve (12) month basis.

**EXHIBIT J**

**FORM OF IRREVOCABLE LETTER OF CREDIT**

**PRO FORMA LETTER OF CREDIT**

City of Fort Wayne  
Citizen's Square  
200 East Berry Street  
Fort Wayne, IN 46802  
Attn: Office of the Mayor

The Redevelopment Commission of the  
City of Fort Wayne, Indiana  
Citizen's Square  
200 East Berry Street, Room 320  
Fort Wayne, IN 46802  
Attn: Executive Director

Re: Letter of Credit No.

Gentlemen:

We hereby establish our Irrevocable Letter of Credit and authorize you to draw on us at sight for the account of \_\_\_\_\_ (the "Applicant"), the aggregate amount of Five Million and No/100 Dollars (\$5,000,000.00).

Funds under this Letter of Credit are available to the beneficiary hereof as follows:

Any and all of the sums hereunder may be drawn down at any time and from time to time from and after the date hereof by the City of Fort Wayne ("Beneficiary") when accompanied by this Letter of Credit and a written statement signed by an authorized signatory of Beneficiary, certifying that Beneficiary is entitled to make such drawing pursuant to the terms and conditions of the Economic Development Agreement by and between Applicant and Beneficiary dated \_\_\_\_\_, 2018 (the "Development Agreement"), together with a notarized certification by any such individual representing that such individual is authorized by Beneficiary to take such action on behalf of Beneficiary, and a sight draft drawn on \_\_\_\_\_ Bank (INSERT BANK ADDRESS) executed and endorsed by such individual.

The amount of each draft must be endorsed on the reverse hereof by the negotiating bank. We hereby agree that this Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above. All drafts must be marked: "Drawn under \_\_\_\_\_ Bank Letter of Credit No. (LOC #) \_\_\_\_\_, issued on \_\_\_\_\_, 2018."

This Letter of Credit is effective immediately and shall expire at 5:00 P.M., Eastern Standard Time, on \_\_\_\_\_.

Our obligation under this Letter of Credit shall not be affected by any circumstances, claims or defense, real or personal, of any party as to the enforceability of the Development Agreement between Beneficiary and Applicant, or the validity of Beneficiary's claim, it being understood that our obligation shall be that of a primary obligor and not that of a surety, guarantor, or accommodation maker.

Applicant shall pay all costs of, or in connection with, this Letter of Credit, including without limitation, any fees associated with the transfer or assignment of this Letter of Credit by Beneficiary.

Unless otherwise stated herein, this Standby Letter of Credit is issued subject to the International Standby Practices ("ISP98") (1998 Revision) International Chamber of Commerce, Publication No. 590. This Letter of Credit sets forth in full the terms of our undertaking, and such terms shall not in any way be modified, amended, limited, discharged, or terminated except by written approval, signed by authorized representatives of Beneficiary and the undersigned on or before the Expiration Date.

Very truly yours