

Draft of March 11, 2013

DEVELOPMENT AGREEMENT

AMONG

TOWN OF MUNSTER, INDIANA

MUNSTER REDEVELOPMENT COMMISSION

MUNSTER ECONOMIC DEVELOPMENT COMMISSION

AND

CENTENNIAL VILLAGE, LLC

Re:

CENTENNIAL PARK DEVELOPMENT

DATED: ~~FEBRUARY~~MARCH ____, 2013

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the “Agreement”) made as of this ____ day of ~~February~~March, 2013, by and among the Town of Munster, Indiana, an Indiana municipal corporation (the “Town”), the Town of Munster Redevelopment Commission (the “Redevelopment Commission”), the governing body of the Munster, Indiana Department of Redevelopment and the Redevelopment District of the Town of Munster, Indiana (the “District”), ~~and~~the Town of Munster Economic Development Commission (the “Economic Development Commission”), and Centennial Village, LLC (the “Developer”), an Indiana limited liability company.

WITNESSETH:

A. The Town has established a Redevelopment Commission in accordance with the RDC Act (as defined herein) and the Economic Development Commission in accordance with the EDC Act (as defined herein);

B. The Redevelopment Commission has the responsibility to investigate, study and survey areas and promote the use of land in a manner that best serves the Town, and has the responsibility to cooperate with departments and agencies of the Town that best serve the development or redevelopment of areas of the Town;

C. The Town, the Redevelopment Commission and Economic Development Commission (collectively, the “Town Parties”) desire to stimulate and promote economic development activities in or about the Ridge Road Calumet Avenue Economic Development Area (the “Area”);

D. The Developer has acquired or will acquire certain real estate located in the ~~Ridge~~ Area and has submitted to the Town Parties a proposal for the \$70 - \$100 million development of such real estate, as more specifically set forth as Exhibit A hereto (the “Development”);

E. The Redevelopment Commission, pursuant to a Declaratory Resolution and a Confirmatory Resolution (each as defined herein), have taken or will take such actions as shall be reasonably necessary to amend the “economic development plan” for the Area to include the Project and the Development as eligible projects to be undertaken by the Redevelopment Commission and identified in the economic development plan (as amended, the “Plan”);

F. The Town Parties desire to induce the Developer to proceed with the Development in the Town by providing to the Developer a financial incentive in the amount of not less than Fifteen Million Dollars (\$15,000,000) to be applied to the cost of the Development (the “Cash Incentive”) and ten year tax abatement for condominium and townhouses to be constructed as part of the Development (the “Tax Incentive” and, collectively with the Cash Incentive, the “Incentive”); [NOTE: FURTHER INTERNAL TOWN DISCUSSION IS NEEDED REGARDING PROVISION OF TAX ABATEMENT.]

G. The Town Parties desire to take all steps as shall be reasonably necessary to issue the Town’s Economic Development Revenue Bonds, Series 2013 (Centennial Park Project) in the approximate amount of \$8,000,000 (the “2013 Bonds”) to provide Developer with \$7,200,000 of the Cash Incentive in 2013, and the Town’s Economic Development Revenue Bonds, Series 2014 (Centennial Park Project) in the approximate amount of \$8,500,000 (the “2014 Bonds”) to provide Developer with at least \$7,800,000 of the Cash Incentive in 2014.

H. The Town Parties have determined that it is in the best interest of the citizens of the Town to assist in (i) the ~~Development~~Project, (ii) the provision of the Incentive to ~~pay the~~

costs of the ~~Development~~Project and encourage the construction of the Development, including the housing component of the Development; and (iii) the taking of such other actions as are hereinafter set forth, all for the promotion of economic development in or about the Area; and

I. The Town Parties and the Developer desire to enter into this Agreement to effectuate the foregoing recitals, to the end that the Development shall be constructed in the Area.

NOW, THEREFORE, in consideration of the foregoing premises the mutual covenants of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town, the Redevelopment Commission, the Economic Development Commission and the Developer agree as follows:

DEFINED TERMS

“Acceptable Users” shall mean such users as are reasonably approved by the Town. Unless otherwise approved by the Town, the following uses, in addition to the uses prohibited by IC 36-7-11.9-3, as the same may be amended from time to time (collectively, the “Prohibited Uses”), are prohibited at the Project Site and any deeds or the space leases relating to the Project Site shall expressly bar the Prohibited Uses:

1. Dry Cleaning Processing Plant;
2. Laundromat;
3. Animal Clinic;
4. Adult or sexually explicit or oriented store (including bookstore or video store specializing in adult or sexually explicit material);
5. Discotheque or otherwise for musical/dance reviews or topless/nude shows;
6. Tavern, bar, nightclub, or other similar use the primary purpose of which is serving alcohol, excluding any restaurant having entertainment or serving alcohol so long as it generates the majority of its revenues from other than alcoholic beverages and devoting a majority of its customer area to sit down food and beverage service;

7. Billiard or Pool Hall;
8. Place of gambling, off-track betting, game room, amusement arcade, or pinball arcade;
9. Funeral Parlor;
10. Massage Parlor;
11. A facility for the sale of paraphernalia used for the ingestion or use of illicit or recreational drugs;
12. Weapon dealers;
13. Flea market, consignment or used good store selling primarily distressed or damaged merchandise;
14. Pawn Shop, auction house, or stores whose primary business is the purchase of gold and other precious metals;
15. Full service beauty or barber college, excluding any haircutting or nail salon only business;
16. Fireworks store;
17. A store selling or advertising primarily “dollar” merchandise;
18. Pet stores;
19. Primarily check cashing or pay day advance services (non-traditional loan stores);
20. Tobacco stores;
21. Establishments used primarily for tattooing and/or piercing;
22. Businesses that emit noxious odors; and
23. Businesses that may adversely affect the health, safety or community morals of the Issuer.

“**Affiliate**” means any entity or business that is owned or controlled by, controls or is under common control with, the Developer.

“**Agreement**” means this Development Agreement among the Town, the Redevelopment Commission, the Economic Development Commission, and the Developer.

“**Allocation Area**” means the real property described in the allocation provision of the Declaratory Resolution.

“**Applicable Laws**” means all laws, rules, regulations, ordinances, codes, administrative actions and/or orders of any Court or governmental agency or unit, whether federal, state or local properly exercising or having jurisdiction with respect to or over the subject matter in question.

“**Area**” means the geographic area within the ~~District~~Town known as Ridge Road Calumet Avenue Economic Development Area that has been designated by the Declaratory Resolution as an economic development area. [TOWN NEEDS TO VERIFY THAT ALLOCATION AREAS ARE IN PLACE, PLAN IS BROAD ENOUGH TO COVER PROJECT AND DEVELOPMENT, AND THAT REMAINING LIFE OF THE TIE DISTRICT IS SUFFICIENT.]

“**Bonds**” means, collectively, the 2013 Bonds and the 2014 Bonds and any additional bonds issued by the Town. [TOWN NEEDS TO VERIFY THAT THE REDEVELOPMENT COMMISSION HAS SUFFICIENT DEBT ISSUANCE CAPACITY.]

“**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in the Town are authorized or obligated by law or executive order to close.

“Cash Incentive” means at least Fifteen Million Dollars (\$15,000,000) to be provided to the Developer by the Town Parties to pay costs of the Project.

“**Confirmatory Resolution**” means the resolution of the Redevelopment Commission confirming all prior actions of the Redevelopment Commission in connection with the amendment of the Plan for the Area and the Allocation Area.

“Declaratory Resolution” means the resolution of the Redevelopment Commission declaring the Area to be an “economic development area” within the meaning of the RDC Act, approving the Plan for the Area and designating the Allocation Area as a tax increment finance “allocation area” within the meaning of the RDC Act.

“Developer” means Centennial Village, LLC, an Indiana limited liability company and any agents, assigns and subsidiaries.

“Development” means the acquisition and demolition of the Munster Steel Co. property and the construction of a mixed-use walkable Life Style Center with 233,400 square foot retail/commercial, 150 residential condominiums and 22 townhouses plus an 80 room limited service hotel and includes 1,103 above grade parking spaces in addition to the 206 underground parking spaces, all adjacent to Centennial Park and more fully described in Exhibit A attached hereto.

“Economic Development Commission” means the Town of Munster Economic Development Commission, established pursuant to the EDC Act.

~~**“Plan”** means the Ridge Road-Calumet Avenue Economic Development Plan approved, adopted and amended by the Redevelopment Commission in the Declaratory Resolution.~~
EDC Act” means Indiana Code 36-7-11.9 and 12, et seq., as supplemented and amended.

“Environmental Law” means any and all federal, state or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force as amended and hereafter amended, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.); (ii) the Resource

Conservation and Recovery Act (42 U.S.C. §6901 et seq.); (iii) the Clean Air Act (42 U.S.C. §7401 et seq.); (iv) the Clean Water Act (33 U.S.C. §11251 et seq.); (v) the Toxic Substances Control Act (15 U.S. C. §2601 et seq.); and (vi) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.).

~~“EDC Act” means Indiana Code 36-7-11.9 and 12, et seq., as supplemented and amended.~~ “45th Avenue Underpass” means _____.

“Hazardous Materials” means any substance, chemical, material or waste (a) the presence of which causes a nuisance or trespass of any kind; (b) which is regulated by any federal, state or local governmental authority because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including, but not limited to, petroleum and petroleum products, asbestos-containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, flammables and explosives; or (c) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law such as the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. §1801 et seq.), or the Clean Air Act (42 U.S.C. §7401 et seq.).

~~“Cash Incentive” means at least Fifteen Million Dollars (\$15,000,000) to be provided to the Developer by the Town Parties to pay costs of the Project.~~

~~“Tax Incentive” means a ten year tax abatement granted to the owners of the condominium units and townhouses to be constructed as part of the Development.~~

“**Incentive**” means, collectively, the Cash Incentive and Tax Incentive.

“**Plan**” means the Ridge Road Calumet Avenue Economic Development Plan approved, adopted and amended by the Redevelopment Commission in the Declaratory Resolution.

“**Project**” means the portion of the Development which includes the acquisition and demolition of the Munster Steel Co. property, the construction of the streets, water and sanitary and storm sewer facilities, sidewalks, bike and walking paths, streetscapes, lighting and the mitigation of environmental contaminations and wetlands, in two phases, all as more specifically described on Exhibit C hereto, which it to be financed by the proceeds of the Bonds.

“**Project Implementation Plan**” means the concept site plan for the Project submitted to the Redevelopment Commission by the Developer.

“**Project Site**” means the real property generally described on Exhibit B hereto and which is the site of the Development.

“**RDC Act**” means Indiana Code 36-7-14 and 36-7-25, et seq., as supplemented and amended.

“**Redevelopment Commission**” means the Munster Redevelopment Commission, the governing body of the Munster, Indiana Department of Redevelopment and the Redevelopment District of the Town of Munster, Indiana, duly organized and validly existing under the RDC Act.

“**State**” means the State of Indiana.

“**Tax Incentive**” means a ten-year tax abatement granted to the owners of the condominium units and townhouses to be constructed as part of the Development.

“**TIF Revenues**” means the taxes collected on the increase in assessed valuation of real property and certain personal property located within the Allocation Area above the base

assessed value of property located within the Allocation Area at the time of establishment of the Allocation Area, all as defined in the RDA Act.

“Town” means the Town of Munster, Indiana, a municipal corporation, duly organized and existing under the laws of the State; provided, that it is expressly understood and agreed by the Developer that, except as otherwise expressly provided in this Agreement, any obligations of the Town under this Agreement may be fulfilled by the duly authorized and appropriate (as the context so requires) subdivision, unit, agency, commission, department, authority, instrumentality, common council, Town Manager, or other officer, executive or representative or any combination, of the municipal corporation of the Town.

“Town Manager” means the Town Manager of the Town or the duly authorized representative of the Town Manager of the Town serving solely at the Town Manager’s pleasure and designated by the Town Manager to carry out certain actions and responsibilities required to be performed by the Town Manager of the Town hereunder.

“Town Parties” means, collectively, the Town, the Redevelopment Commission and the Economic Development Commission.

“2013 Bonds” means the Town of Munster Economic Development Revenue Bonds, Series 2013 (Centennial Park Project) to be issued in the approximate amount of \$8,000,000.

“2014 Bonds” means the Town of Munster Economic Development Revenue Bonds, Series 2014 (Centennial Park Project) to be issued in the approximate amount of at least \$8,500,000.

ARTICLE I

CONSTRUCTION

Section 1.1 Construction of Project.

A. The Developer shall commence or cause the commencement of Phase I of the Project within ~~one~~ ninety (90) days of the sale of the 2013 Bonds pursuant to the terms of this Development Agreement. The Developer shall complete construction of Phase I of the Project prior to the sale of the 2014 Bonds. The Developer expects and intends to complete construction of Phase I of the Project on or before July 1, 2014, if the Town issues the 2013 Bonds by May 15, 2013, 2013, as provided in Section 1.11 below.

B. The Developer shall commence or cause the commencement of the construction of Phase II of the Project after completion of Phase I of the Project and within ~~one~~ sixty (60) days of the sale of the 2014 Bonds pursuant to the terms of this Development Agreement. The Developer expects and intends to complete construction of Phase II of the Project on or before November 1, 2015, although Phase II may be constructed in separate subparts and not all of Phase II will be completed at the same time.

C. Prior to the issuance of the 2013 Bonds, the Developer shall provide to the Town the plans and specifications and cost estimates for Phase I of the Project, together with evidence to the reasonable satisfaction of the Town that the net proceeds of the 2013 Bonds are projected to be sufficient to pay all the costs of Phase I of the Project. The Developer shall be responsible for the completion of Phase I of the Project to the extent that the net proceeds of the 2013 Bonds are insufficient for such purpose.

D. Prior to the issuance of the 2014 Bonds, the Developer shall provide to the Town the plans and specifications and cost estimates for Phase II of the Project, together with evidence to the reasonable satisfaction of the Town that the net proceeds of the 2014 Bonds are projected to be sufficient to pay all the costs of Phase II of the Project. The Developer shall be responsible

for the completion of Phase II of the Project to the extent that the net proceeds of the 2013 Bonds and the 2014 Bonds are insufficient for such purpose.

Section 1.2 Construction and Operation of the Project.

The Developer shall not cause or permit any Hazardous Materials to be brought upon, kept, used, stored, discharged, released or transported at, or, to or from the Project Site without the prior written consent of the Town at any time during the construction or operation of the Project.

Section 1.3 Developer to Construct the Project; Issuance of Bonds; Approval of Construction Draws.

The Developer shall commence or cause the commencement of the construction of the Project and Development in a good and workmanlike manner in accordance with all applicable building codes of the Town and the terms of this Agreement. The Developer intends to complete or cause the completion of the Project in accordance with the schedule set forth in Section 1.1 of this Agreement. The completion of the Development will be contingent upon economic conditions that enable the Developer to proceed with the Development in an economically sound manner: provided, however, that the failure of the Developer to complete Phase I of the Project by not later than _____, 2014, shall be cause for the Town to terminate further draws of the net proceeds of the 2013 Bonds and not to issue the 2014 Bonds, and the failure of the Developer to complete Phase II of the Project by not later than _____ shall be cause for the Town to terminate further draws of the net proceeds of the 2014 Bonds. In such event, the Developer shall cooperate with the Town in full good faith to enable the Town to proceed on its on to complete the Project in such manner as in the Town's judgment best serves the interests of the Town.

The Town shall use its best efforts to issue the 2013 Bonds and the 2014 Bonds in accordance with the terms and conditions hereof, subject to the approval by applicable bodies of the issuance thereof and further subject to the marketability of such Bonds at an interest rate not to exceed _____% per annum. The Developer agrees to enter into such agreements with the Town as shall be reasonably required by the Town in connection with the issuance of the 2013 Bonds and the 2014 Bonds and the provision of the proceeds thereof to the Developer for the purposes set forth herein.

Upon issuance of the 2013 Bonds, net proceeds thereof shall be placed into a construction fund pursuant to a trust indenture to be entered into among the Town, the Developer and a trustee to be selected by the Town. Draws of funds by the Developer shall be subject to the approval of the Town. Draws of net proceeds of the 2013 Bonds shall be conditioned on the prior written approval by the Town of the plans and specifications for the particular component of the Project to which the draw request relates and evidence satisfactory to the Town that the Developer has secured financing for Segment 1 of the Development in the amount of not less than \$_____ (the "Segment 1 Private Funds"). Draws of the net proceeds of the 2013 Bonds shall be conditioned on evidence provided by the Developer to the reasonable satisfaction of the Town that (a) the ratio of (i) the total prior expenditures previously paid by the Developer with respect to Segment I of the Development, compared to (ii) the aggregate amount of the Segment 1 Private Funds, is greater than or equal to (b) the ratio of (i) the proposed expenditure of a portion of the net proceeds of the 2013 Bonds, plus any portion of the net proceeds of the 2013 Bonds previously drawn from the construction fund, compared to (ii) the aggregate amount of net proceeds of the 2013 Bonds.

Upon issuance of the 2014 Bonds, net proceeds thereof shall be placed into a construction fund pursuant to a trust indenture to be entered into among the Town, the Developer and a trustee to be selected by the Town. Draws of funds by the Developer shall be subject to the approval of the Town. Draws of net proceeds of the 2014 Bonds shall be conditioned on the prior written approval by the Town of the plans and specifications for the particular component of the Project to which the draw request relates and evidence satisfactory to the Town that the Developer has secured financing for Segment 2 of the Development in the amount of not less than \$_____ (the "Segment 2 Private Funds"). Draws of the net proceeds of the 2014 Bonds shall be conditioned on evidence provided by the Developer to the reasonable satisfaction of the Town that (a) the ratio of (i) the total prior expenditures previously paid by the Developer with respect to Segment II of the Development, compared to (ii) the aggregate amount of the Segment II Private Funds, is greater than or equal to (b) the ratio of (i) the proposed expenditure of a portion of the net proceeds of the 2014 Bonds, plus any portion of the net proceeds of the 2014 Bonds previously drawn from the construction fund, compared to (ii) the aggregate amount of net proceeds of the 2014 Bonds.

Section 1.4 Cooperation Between Developer and the Town.

The Town Parties acknowledge and agree to the right of the Developer to develop, acquire, lease, construct, equip and operate the Development in accordance with Applicable Laws, without undue interference from or disruption by the Town Parties, as a successful commercial venture. The Town Parties and the Developer recognize that, by creating additional jobs and investment, the construction of the Development benefits the community. Accordingly,

the Town Parties and the Developer agree to work together [in good faith](#) towards the successful completion and operation of the Development.

Section 1.5 Areas Affected by Work.

The Town Parties shall not be liable or responsible for any damage to any land or area, or the owner/occupant of any land or area that results from construction of [the Development or](#) the Project or relates to the performance of work or the non-performance of the Developer's obligation under this Agreement.

Section 1.6 Project Documents.

The Developer shall maintain in a safe place at the Project Site one (1) set of all plans, specifications, drawings, addenda, written amendments, shop drawings, change orders, work directive changes, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction, relating to the performance of the work or construction of the Project or any component thereof, which documents shall be available to the Town and the Town Manager for such reference as may reasonably be required. The Developer will provide three (3) architectural renderings for the Project to the Town for display at various Town government buildings during the construction of the Project. Upon completion of the construction of each phase of the Project, [one \(1\) paper copy and one \(1\) electronic file](#) copy of all "as built" and recorded drawings shall [at the sole expense of the Developer](#), be properly delivered to the Town of Munster Building Commissioner. Upon completion of the construction of the Development, [one \(1\) paper copy and one \(1\) electronic file](#) copy of all "as built" and recorded drawings shall [at the sole expense of the Developer](#), be properly delivered to the Town of Munster Building Commissioner.

Section 1.7 Project Safety.

The Developer²s shall ensure that its general contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Development, and construction of the Project and performance of the work. The Developer²s shall ensure that its general contractor shall take all legally necessary precautions for the safety of, and provide protection as reasonably necessary to prevent damage, injury or loss to:

- A. All workers and laborers providing labor for the construction of the Project;
- B. All materials and equipment incorporated in the Project whether in storage or located at the Project Site; and
- C. Other property at the Project Site or adjacent or in proximity thereto including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in connection with the construction.

Section 1.8 Drug Free Work Place.

The Developer agrees to undertake reasonable best efforts at all times to provide and maintain a drug free workplace at the Project Site.

Section 1.9 Labor Objectives.

A. The Developer agrees that the Developer shall be subject to all applicable Town Ordinances.

B. Munster Contractors and/or Lake County Contractors.

1. Local ~~Labors~~Labor Force. The Developer acknowledges the creation of construction jobs in the Town of Munster, Lake County, Indiana, and the Northwestern part of the State, in particular, and other portions of the State, in general, as a principal goal which the Redevelopment Commission wishes to achieve as a result of the Development. In that regard, Developer shall use reasonable good faith efforts to

contract with and engage contractors and subcontractors, with principal places of business first in the Town of Munster, second in Lake County, Indiana, and third in other areas of the State, for employment opportunities relating to the construction of the Development, to the extent such contractors and subcontractors are reasonably available on a competitive basis (including the economic, quality, performance, workforce availability and other relative considerations). Reasonable good faith efforts shall mean that the Developer shall include in all bid packages or request for proposals a provision that each contractor, construction manager, and subcontractor shall be given an incentive or other priority in awarding of a bid to: (i) hire supervisory labor and construction workers that perform any of the work, first from the Town of Munster, second from Lake County, Indiana, and third from other areas of the State of Indiana; and (ii) to have at least a majority of its non-supervisory laborers and construction workers that perform any of the work hired from such areas, with priorities set forth in (i) above. Developer shall maintain evidence of the notices or request for proposals/bids that are sent out, the identity of the bidders, the name of the successful bidders, and will present said evidence to the Redevelopment Commission upon reasonable request.

2. Record-keeping. The Developer agrees to maintain a record of all relevant data with respect to compliance with this section and to provide the Redevelopment Commission with such information, no less frequently than quarterly, until completion of the construction of the Development.

C. Non-Discrimination.

The Developer shall not discriminate against any applicant for employment with respect to the employee's hire, tenure, terms, conditions of employment or any manner directly or

indirectly related to employment, because of the employee's race, religion, color, sex, age, genetic information, handicap, national origin, ancestry, disabled veterans status or Vietnam era veterans status.

[D. Prevailing Wage. Construction of the Project and the Development will meet prevailing wage standards.]

Section 1.10 Developer Covenants.

In completing each phase of the Project as more fully set forth in Exhibit C, the Developer covenants and agrees that it will provide a full and complete site plan to the Redevelopment Commission and appropriate agencies for approval, including street and parking lot improvements, landscaping, etc.

Section 1.11 Cash Incentive; Issuance of Bonds.

~~The~~Subject to the provisions of Section 1.3 hereof, the Town Parties shall provide a portion of the Cash Incentive to the Developer in the aggregate amount of Seven Million Two Hundred Thousand Dollars (\$7,200,000) to be applied to the costs of Phase I of the Project. Prior to the commencement of Phase I of the Project and not later May 15, 2013, the Town Parties shall issue the 2013 Bonds and deposit in a trust account held by the trustee bank selected by the Town funds in the amount of Seven Million Two Hundred Thousand Dollars (\$7,200,000), which amount is net of all costs of issuance, capitalized interest on the 2013 Bonds and any required debt service reserve fund deposit. The net deposit of Seven Million Two Hundred Thousand Dollars (\$7,200,000) is to be used for the sole purpose of providing the Cash Incentive to the Developer for Phase I of the Project. For so long as this Agreement is in effect, the deposit in the trust account and designation of such funds for the sole purpose of providing

the Cash Incentive by the Town Parties shall be irrevocable; subject to the provisions of Section 1.3 hereof.

The Cash Incentive from the 2013 Bonds shall be made available to the Developer to pay costs of Phase I of the Project as invoices for the costs of the Project are submitted to the trustee bank on the tenth day of each month and approved by the Town in accordance with the provisions of Section 1.3 hereof.

The Town Parties shall provide the remaining portion of the Cash Incentive to the Developer in the aggregate amount of not less than Seven Million Eight Hundred Thousand Dollars (\$7,800,000) to be applied to the costs of Phase II of the Project. Prior to the commencement of Phase II of the Project and not later thirty (30) days after the completion of Phase I of the Project, the Town Parties shall issue the 2014 Bonds and deposit in a trust account held by the trustee bank, funds in the amount of at least Seven Million Eight Hundred Thousand Dollars (\$7,800,000) which amount is net of all costs of issuance, capitalized interest on the 2014 Bonds and any required debt service reserve fund deposit. The net deposit of at least Seven Million Eight Hundred Thousand Dollars (\$7,800,000) is to be used for the sole purpose of providing the Cash Incentive to the Developer for Phase II of the Project. ~~The~~ Notwithstanding any other provision of this Agreement to the contrary, the Town Parties ~~may also deposit~~ shall be permitted to apply a portion of the proceeds of the 2014 Bonds ~~into an account to apply to not in excess of \$ _____ to pay a portion of~~ the costs of construction of the 45th Avenue ~~underpass. For~~ Underpass. Subject to Section 1.3 hereof, for so long as this Agreement is in effect, the deposit in the trust account and designation of such funds for the sole purpose of providing the Cash Incentive by the Town Parties shall be irrevocable.

The Cash Incentive from the 2014 Bonds shall be made available to the Developer to pay costs of Phase II of the Project as invoices for the costs of the Project are submitted to the trustee bank on the tenth day of each month and approved by the Town in accordance with the provisions of Section 1.3 hereof.

~~If the assessed value of property to be completed in Development are reasonably projected to produce TIF Revenues in excess of the TIF Revenues original projected by the financial advisor selected by the Town prior to the issuance of the 2013 Bonds, the Town Parties shall provide the Cash Incentive to the Developer in the aggregate amount equal to the amount of bonds that can be amortized using 50% of the excess TIF Revenues. Such additional Cash Incentive shall be applied to the costs of Development in addition to the costs of the Project. Not later thirty (30) days after the completion of Phase II of the Project, the Town Parties shall issue the additional bonds and deposit in a trust account held by the trustee bank, funds in the amount of the principal of the bonds less reasonable costs of issuance, capitalized interest of not more than twelve (12) months on the additional bonds, and any required debt service reserve fund deposit. The proceeds of the additional bonds are to be used for the sole purpose of providing the additional Cash Incentive to the Developer. For so long as this Agreement is in effect, the deposit in the trust account and designation of such funds for the sole purpose of providing the Cash Incentive by the Town Parties shall be irrevocable.~~

~~The Cash Incentive from additional bonds shall be made available to the Developer to pay or reimburse the Developer for the payment of costs of the Development not previously paid for costs of the Project as invoices for the costs of the Development are submitted to the trustee bank on the tenth day of each month.~~

The Town Parties may pledge as security for the Bonds (i) all of the TIF Revenues generated within the Allocation Area, and (ii) such other tax revenues or funds of the Town Parties as may be required to sell the Bonds. The Developer shall have no obligation to pledge its own revenues or third-party credit enhancement as additional security for the Bonds for any reason, including in order to make the Bonds marketable or to increase the principal amount of Bonds to be issued.

Section 1.12 Proposed Tenants.

The Developer shall have ~~“acceptable users”~~Acceptable Users for the Development. Notwithstanding the foregoing, there shall be no tenants of the Development who shall conduct any bankruptcy, liquidation, going out of business, auction, or close-out sales as their primary business. The Developer shall provide the Town a written roster of tenants that have executed written leases or letters of intent relating to the retail space at the ~~Developer~~Development within thirty (30) days of the execution of such leases or letters of intent.

Section 1.13 Permits and Compliance with Applicable Laws.

The Developer shall be responsible for (a) giving all necessary notices to and obtaining all necessary permits, approvals, consents and authorizations of the proper governmental authorities having jurisdiction over the construction of the Development and (b) complying with all Applicable Laws bearing on the construction of the Development and shall notify the Town of any of the plans and specifications for construction that are at variance therewith. The Town shall cooperate with the Developer in obtaining all such permits, approvals, consents and authorizations to the extent permitted by law. In addition, the Town shall process all such necessary permits, approvals, consents and authorizations that it issues or over which it has authority in an expedited manner and shall waive all fees relating to such permits, approvals, consents and authorizations.

Section 1.14 Site Management.

During the performance of the construction of the Development, the Developer shall cause the Project Site to be kept free from accumulation of waste materials, rubbish and other debris resulting from such construction in amounts beyond those typically accumulated in a well managed and well maintained construction project of comparable scope. Upon final completion of the construction of the Development or any specified portion thereof, the Developer shall cause all refuse and debris, tools, construction equipment, machinery and surplus materials (to the extent such items are not going to be used in the Developer's operation of the Development) to be removed from that portion of the Project Site upon which the work or specified portion thereof has been completed.

Section 1.15 Utility Service During Construction.

The Developer, at its expense and in compliance with applicable rules and regulations of relevant utility companies and government agencies, shall be responsible for (a) arranging for provision to the Project Site during the construction phase of the Development of such water, electrical, waste disposal and other utility services as are reasonably required for completion of such construction in the time and manner contemplated by this Agreement, and (b) payment for all such services.

Section 1.16 Access to Work.

Prior to final completion of the Development, the Town and all governmental agencies having legal jurisdiction over the Development shall be afforded such access to the Project Site as may reasonably be necessary for their observation and inspection of the Project. The Town and any such governmental agencies shall notify the Developer of their desire to access the Project Site, not less than two Business Days prior to the desired date of the access to the Project Site. The Town and any such governmental agencies accessing the Project Site shall not interfere with the construction or operation the Development by the Developer and shall be accompanied at all times by personnel of the Developer. The Developer shall advise persons with such access of the Developer's site safety procedures and programs so that they may comply therewith as applicable. This Section 1.16 shall not limit the rights, otherwise provided by law, of the building inspector, fire inspector or other similar regulatory office to inspect the Development.

Section 1.17 Insurance.

A. The Developer shall purchase and maintain insurance at all times during the term of this Agreement as required by law.

B. The Developer shall obtain and maintain or cause its contractors to obtain and maintain in force builder's risk insurance in an amount equal to one hundred percent (100%) of the insurable value of the Project protecting against risks of physical loss of the work. Such insurance shall insure against the perils of fire, extended coverage, vandalism and malicious mischief. The Developer shall furnish the Town with a certificate of insurance showing coverage of such risks. If a fire or other insured casualty shall occur during the construction of the Project, the Developer shall apply any related insurance proceeds received by the Developer to the construction of the Project.

Section 1.18 Tax Incentive.

The Town Parties agree to grant the Developer and/or the subsequent owners of condominium units and townhouses a ten year real property tax abatement for the condominium units and townhouses constructed as part of the Development. The Tax Incentives shall be granted upon application by the Developer or subsequent owner of a timely application for the tax abatement for each condominium unit and townhouse. [NOTE: THIS SECTION IS

SUBJECT TO FURTHER INTERNAL DISCUSSION AND REVIEW BY THE TOWN.]

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

The Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

Section 2.1 Organization and Existence.

The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Indiana, and is qualified to do business in the State. The Developer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted and as contemplated under this Agreement.

Section 2.2 Power and Authority.

The Developer has all requisite corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement.

Section 2.3 Due Authorization.

All corporate acts and other proceedings required to be taken by the Developer to authorize the execution, delivery and performance of this Agreement have been duly and properly taken.

Section 2.4 Due Execution.

This Agreement has been duly executed and properly delivered by the Developer and constitutes the valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally heretofore or hereafter enacted and (ii) to the exercise of judicial discretion in accordance with the general principle of equity.

Section 2.5 No Violation.

The execution and delivery of this Agreement by the Developer does not, and the consummation of the transactions contemplated hereby and compliance with the terms hereof will not, (a) conflict with or result in a violation of (i) its organizational documents; (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation applicable to

the Developer; or (iii) Applicable Laws; or (b) conflict with, or result in or cause any material breach, violation of or default under, any material contract, agreement, other instrument, commitment, arrangement of understanding to which the Developer is a party or which otherwise applies to the Developer which would have a material adverse effect on Developer's ability to perform its obligations hereunder.

Section 2.6 No Consents Required.

No authorization, consent or approval of, or filing with or notice to, any person (including any governmental authority or body) is required in connection with the execution or delivery of this Agreement by the Developer which has not been obtained and which, if not obtained, would have a material adverse effect on the ability of the Developer to perform its obligations hereunder.

Section 2.7 No Material Non-Arm's-Length Transactions.

The Developer has not entered into any transaction or agreement with any Affiliate of the Developer on other than commercially reasonable terms which transaction or agreement could have a materially adverse effect on the Developer's ability to perform its obligation under this Agreement.

Section 2.8 No Litigation.

There is no court, administrative, regulatory or similar proceeding (whether civil, quasi-criminal), arbitration or other dispute settlement procedure, investigation or inquiry by any governmental body, or any similar matter or proceeding (collectively, “proceeding”) against or involving the Developer or any Affiliate of the Developer (whether in progress or to the best knowledge of the Developer threatened) which, if determined adversely to the Developer or any Affiliate of the Developer would materially adversely affect the Developer’s ability to perform any of its obligations under this Agreement, or which purports to affect the legality, validity or enforceability of this Agreement; to the Developer’s knowledge, no event has occurred which might give rise to any such proceedings; and there is no judgment, decree, injunction, rule, award or order of any governmental authority or body outstanding against the Developer or any Affiliate of the Developer which has or may have a material adverse affect on the Developer’s ability to perform any of its obligations under this Agreement.

Section 2.9 Survival of Representations and Warranties.

The Developer covenants that the representations and warranties made by it in this Agreement shall be true and correct on each day that this Agreement remains in full force and effect, with the same effect as if such representations and warranties had been made and given on and as of such day; except that if any such representation and warranty is specifically given in respect of a particular date or particular period of time and related only to such date or period of time, then such representation and warranty shall continue to be given only as of such date or for such period of time.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE TOWN, THE REDEVELOPMENT COMMISSION, AND THE ECONOMIC DEVELOPMENT COMMISSION

Each of the Town Parties make the following representations and warranties, which representations and warranties are true and correct on the date hereof, and makes the following covenants and agreements:

Section 3.1 Power and Authority.

Each of the Town Parties has all requisite corporate power and authority to enter into this Agreement and to perform their respective obligations under this Agreement.

Section 3.2 Due Authorization.

All acts and other proceedings required to be taken by the Town Parties to authorize the execution, delivery and performance of this Agreement have been duly and properly taken.

Section 3.3 Due Execution.

This Agreement has been duly executed and properly delivered by the Town Parties and constitutes the valid and binding obligation of each of the Town Parties, enforceable in accordance with this Agreement's terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally heretofore or hereafter enacted; (ii) the exercise of judicial discretion in accordance with the general principles of equity; (iii) the valid exercise of the constitutional powers of the Town Parties, the State and the United States of America; and (iv) public policy of the State and the United States of America.

Section 3.4 No Violation.

The execution and delivery of this Agreement by the Town Parties do not, and the consummation by the Town Parties of the transactions contemplated hereby and compliance by the Town Parties with the terms hereof will not:

A. conflict with or result in a violation of (i) any provision of any instrument governing any of the Town Parties (including, without limitation, the State Constitution, and any Town, Commission or state enabling legislation) or (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation applicable to any of the Town Parties; or

B. conflict with or result in or cause any material breach, violation of or default under any material contract, agreement, other instrument, commitment, arrangement, or understanding, or grant to which any of the Town Parties is a party or which is otherwise applicable to any of the Town Parties, including, without limitation, the terms of all bond indentures, resolutions or other similar documentation, arising from or in any way related to the planning, development, construction and maintenance of the Project.

Section 3.5 Operation of Development.

There is no law, ordinance, regulation or rule of any of the Town Parties enacted or, to the best knowledge of the Town Parties, proposed that would prohibit the Developer from fully utilizing the Development on a 24-hours-a-day, seven-days-a-week basis in the manner currently contemplated.

Section 3.6 No Consents Required.

No authorization, consent or approval of, or filing with or notice to, any person (including any governmental authority or body) is required in connection with the execution or delivery of this Agreement by the Town Parties.

Section 3.7 No Litigation.

There is no proceeding against or involving any of the Town Parties (whether in progress or to the best of knowledge of any of the Town Parties threatened) which, if determined adversely to any of the Town Parties would materially adversely affect its or their ability to perform any of the provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement; to each of the Town Party's knowledge, no event has occurred which might give rise to any proceeding; and there is no judgment, decree, injunction, rule, award or order of any governmental body outstanding against any of the Town Parties which has or may have a material adverse effect on its or their ability to perform any of the provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement.

Section 3.8 Survival of Representations and Warranties.

Each of the Town Parties covenants that the representations and warranties made by it in this Agreement shall be true and correct on each day that this Agreement remains in force and effect, with the same effect as if such representations and warranties had been made and given on and as of such day; except that if any such representation and warranty is specifically given in respect of a particular date or particular period of time and related only to such date or period of time, then such representation and warranty shall continue to be given only as of such date or for such period of time.

Section 3.9 Joint and Several Liability.

The Town Parties shall be jointly and severally liable for all obligations of any of the Town Parties under this Agreement, including, but not limited to, the payment of the Incentive to the Developer.

ARTICLE IV

AFFIRMATIVE COVENANTS OF THE DEVELOPER

The Developer covenants and agrees as follows:

Section 4.1 Conduct of Business.

The Developer shall do or cause to be done all things reasonably necessary to maintain its corporate existence and maintain its qualifications to do business in the State, to maintain its organizational power and capacity to own its properties and assets and to carry on its business in accordance with normal industry standards so as not to adversely affect Developer's ability to perform its obligations under this Agreement.

Section 4.2 Compliance with Applicable Laws and Contracts.

The Developer shall comply in all material respects with the requirements of all Applicable Laws applicable to Developer's construction of the Development. In addition, the Developer shall comply in all material respects with all obligations, insurance policies and contracts to which it is a party and which, if contravened, could have a material adverse effect on the Developer's ability to perform its obligations under this Agreement.

Section 4.3 Payment of Taxes and Claims.

The Developer shall or shall cause any contractor, with respect to the construction of the Development, to (i) pay and discharge all lawful claims for labor, material and supplies; (ii) pay and discharge all taxes payable by it; and (iii) withhold and collect all taxes required to be withheld and collected by it and remit such taxes to the appropriate governmental body at the time and in the manner required; provided, however, that no such claim or taxes need be paid, collected or remitted, [unless otherwise required by federal, state or local law, rule or ordinance](#), if (a) it is being actively and diligently contested in good faith by appropriate proceedings; (b)

reserves considered adequate by the Developer and its accountants shall have been set aside; and (c) all enforceable proceedings with respect to such claim or taxes have been stayed and appropriate security shall have been given, if required, to prevent the commencement or continuation of proceedings.

Section 4.4 Site Visit.

Except to the extent prohibited by Applicable Law or as may be necessary to protect the Developer's proprietary information, the Developer shall permit the Town and its authorized employees, representatives and agents, upon giving notice at least two Business Days in advance, to inspect the construction of the Project during normal business hours. All personnel of the Town making such an inspection shall not interfere with the construction or operation of the Project by the Developer, shall comply with all safety rules of the Developer, and shall be accompanied by the Developer.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.1 Events of Default.

The following events, if not remedied, as hereinafter provided, shall be deemed an "Event of Default" by the respective party:

A. The Developer's failure to construct the Project in accordance with the schedule set forth in Section 1.1 hereof if the Incentives have been provided within the time periods outlined herein;

B. The failure by any of the Town Parties to perform any covenant or agreement herein on such Town Party's part to be kept or performed.

Section 5.2 Extensions Upon Default.

In the event of an Event of Default by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of notice, commence to cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such thirty (30) days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional ninety (90) days to cure or remedy such default or breach. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied prior to the end of the additional ninety (90) day period, the remedy to the aggrieved party shall be as set forth below in Section 5.3.

Section 5.3. Remedies.

Upon the occurrence of any Event of Default the remedies to aggrieved party shall be as follows:

A. In the case of an Event of Default by the Developer as stated in subsection (A) of Section 5.1, the Town shall be entitled to seek any and all remedies available to it at law or in equity.

B. In the case of an Event of Default by any of the Town Parties, the Developer shall be entitled to seek any and all remedies available to it at law or in equity.

ARTICLE VI

TERM OF AGREEMENT AND TERMINATION

The term (“Term”) of this Agreement, and its effectiveness, shall commence upon the full execution of this Agreement by each of the parties hereto and shall continue in full force and effect until the first to occur of (i) the Developer completes construction of the Project and receives the entire amount of the Incentive, or (ii) the termination of this Agreement by the Town Parties upon not less than thirty (30) days’ prior written notice to the Developer due to a failure by the Developer to complete the construction of the Project in accordance with Section 1.1 hereof following the applicable cure periods set forth in Section 5.2 hereof or elsewhere in this Agreement, or (iii) the termination of this Agreement by the Developer upon not less than thirty (30) days’ prior written notice to the Town Parties due to a failure by the Town Parties to deliver to the Developer any portion of the Incentive pursuant to Section 1.11 or the failure of the Developer to receive the zoning variance or any other local, state or federal approval necessary to complete the construction or operation of the Project. The parties hereto acknowledge that, notwithstanding the termination of this Agreement, each of them may have continuing obligations under the financing agreements entered into with respect to the issuance of the Bonds.

ARTICLE VII

MISCELLANEOUS

Section 7.1 No Agency, Partnership or Joint Venture.

Nothing contained in this Agreement nor any act of the Town Parties or the Developer, or any other person, shall be deemed or construed by any person to create any relationship of

third-party beneficiary, or if principal and agent, limited or general partnership, or joint venture between the Town Parties and the Developer.

Section 7.2 Negotiated Document.

The Developer and the Town Parties acknowledge that the provisions and the language of this Agreement have been negotiated at arm's-length and agree that no provision of this Agreement shall be construed against either the Developer or the Town Parties by reason of either party having drafted such provision of this Agreement.

Section 7.3 Compliance with Laws.

The Developer and the Town Parties each acknowledge that the obligations of the Town Parties described in this Agreement, including without limitation any obligation to acquire property, or to sell, lease or dispose of any interest in property owned by the Town Parties, may involve certain and various legally required proceedings and/or approvals, and any and all such obligations or undertakings of the Town Parties described herein are accordingly subject to compliance with such proceedings and all other Applicable Laws to which the Town Parties may be subject.

Section 7.4 Force Majeure.

Neither the Developer nor any successor in interest to Developer shall be considered in breach or default of its obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by an event of force majeure, including with limitation, an Act of God, acts of vandals, criminals or public enemies, act of terrorism, war, blockade, public riot, lightning, fire, storm, flood, explosion, blackout, orders of the government of the United States of America, the State or municipality or any of their departments, agencies or officials, orders of any civil military authority, which is not reasonably within the control of the Developer; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by either party in bad faith, and further provided that the Developer notifies the Town Parties in writing within sixty (60) days of the commencement of such claimed event of force majeure.

Section 7.5 Exhibits.

All Exhibits identified in or attached to this Agreement are incorporated herein and made part hereof by this reference.

Section 7.6 Captions.

The captions, headings and arrangements in this Agreement are for convenience only and do not in any way define, limit or modify the terms or provisions hereof.

Section 7.7 Number and Gender.

Whenever the singular number is used in this Agreement, the same shall include the plural where appropriate and words of any gender shall include the other gender where appropriate.

Section 7.8 Notices.

No notice, approval, consent or other communication authorized or required by this Agreement shall be effective unless the same shall be in writing. Any such communications shall be effective (i) upon receipt if it is hand delivered, with signed receipt therefore obtained, (ii) seventy two (72) hours after it is sent postage prepaid by United States registered or certified mail, return receipt requested, (iii) twenty four (24) hours after it is deposited with a national courier for overnight delivery, or (iv) twenty four (24) hours after it is sent by fax, with written confirmation therefore obtained, directed or addressed in each case set forth in (i) through (iv) above to the other party at its address (or fax number) set forth below.

The addresses and phone numbers for notices are:

To the Town Parties: Town of Munster
1005 Ridge Road
Munster, Indiana 46321
Attention: Town Manager
Phone: 219-836-8810

With a copy to: Eugene M. Feingold, Esq.
625 Ridge Road, Suite A
Munster, Indiana 46321
Phone: 219-836-8800

To the Developer Parties: Centennial Village, LLC
9615 Boulevard Drive
Highland, Indiana 46322
Attention: M. Gene Kimmel, Managing Member
Phone: 219-924-1236

With a copy to: James A. Shanahan, Esq.

Shanahan & Shanahan LLP
230 W. Monroe Street, Suite 2620
Chicago, Illinois 60606
Phone: 312-263-0607

With a copy to: James E. Molenaar
Molenaar & Associates, Ltd.
3546 Ridge Road
Lansing, IL 60438
Phone: 708-895-2800

Any party may, in substitution of the foregoing, designate a different address and addresses (and/or fax number or numbers) within the continental United States for purposes of this Section by written notice delivered to all other parties in the manner prescribed in this Section at least ten (10) days in advance of the date upon which such change of address is to be effective.

Section 7.9 Survival.

All representations, warranties and indemnities set forth in this Agreement shall survive the termination hereof for a period equal to the term of the Bonds.

Section 7.10 Counterparts.

This Agreement may be executed in a number of identical counterparts and, if so, executed, each such counterpart is deemed an original for all purposes, and all such counterparts shall collectively constitute one Agreement.

Section 7.11 Binding Effect.

The Developer may assign its rights and obligations under this Agreement to an Affiliate of the Developer without the consent of the Town Parties, and may otherwise assign its rights and obligations under this Agreement with the consent of the Town Parties, which consent shall not be unreasonably withheld. The rights of the Developer and the Town under this Agreement shall inure to the Developer and the Town, respectively, and upon their respective successors and permitted assigns. However, the respective obligations of the Developer and the Town under this Agreement shall not extend to their shareholders, officers, directors, office holders, employees, agents, consultants, contractors, members, partners, joint ventures or Affiliates of the Developer.

Section 7.12 Time of the Essence.

Time is of the essence in the performance of this Agreement and each and every provision contained herein.

Section 7.13 Costs of Proceedings.

In the event of the institution of any proceeding relating to the performance of this Agreement, the parties agree that costs and expenses, including reasonable attorneys' fees and expenses, incurred by the prevailing party (as defined herein) in connection with such proceeding, will be paid by the party who is not the prevailing party. The prevailing party shall be defined as (i) the party which ultimately is awarded an amount (net of any offsets or counterclaims awarded to the other party) in excess of the last settlement offer made in writing by the other party, or (ii) the party which made the last settlement offer in writing, if the amount ultimately awarded (net of any offsets or counterclaims awarded to the other party) is less than such last settlement offer, or (iii) the party which ultimately is awarded an amount, regardless of sum, if no settlement offer was ever made in writing by the other party, or (iv) if no amount is awarded, but instead equitable relief is granted, the party in whose favor such equitable relief is granted.

Section 7.14 Severability.

If and in the event any provision of this Agreement is determined to be invalid for any reason, it shall be severed and all other provisions not determined invalid shall continue with full force and effect; provided, however, that if (i) such declaration of invalidity relieves a party of a material obligation to the other, or eliminates a material benefit to a party, and (ii) the effect of either of the foregoing is to deprive the other party of substantially all of the benefits to such party of the transactions contemplated by this Agreement, then the adversely affected party shall have the right to terminate this Agreement, by giving notice of such termination to the other party.

Section 7.15 Non-Waiver.

No failure by either party hereto, at any time, to require the performance by the other of an term of this Agreement, shall in any way affect the right of either party to enforce such terms, nor shall any waiver by either party of any term hereof by taken or held to be a waiver of any other provision of this Agreement. No waiver of any term or provision of this Agreement shall be effective unless the same is in writing, signed by the parties hereto.

Section 7.16 Governing Law.

This Agreement is entered into in the State and shall be governed by and construed (and all of the rights and obligations hereunder shall be determined) in accordance with the internal laws of the State, without reference to the choice of law principles thereof.

Section 7.17 No Third Party Beneficiaries.

Nothing in this Agreement shall be construed as creating any rights of entitlement that inure to the benefit of any person or entity not a party of this Agreement.

Section 7.18 Jurisdiction and Consent to Suit.

Subject to the provisions of this Agreement, each of the Town Parties and the Developer hereby agrees and consents to the exclusive personal and subject matter jurisdiction of the United States District Court for the Northern District of Indiana, Hammond Division, which shall be the sole and exclusive forum in connection with any claim, cause of action or other dispute by either of them against the other arising out of or relating to the terms, obligations and conditions of this Agreement. The parties agree that service shall be effective by notice under the Federal Rules of Civil Procedure to any individual listed in Section 7.8 or authorized representative or agent; provided, however, that each party shall retain any rights in may have under Applicable Laws then in effect to seek a change of judge in any proceeding before such designated court. Each of

the Town Parties covenants that it shall not assert in any such action, as a defense to any claim by the Developer for breach or violation by the Town Party of this Agreement, any defense of sovereign or governmental immunity to which the Town Party might otherwise claim to be entitled under Applicable Laws then in effect.

Section 7.19 Confidentiality.

The parties acknowledge that the Agreement shall be subject to public disclosure under the laws of the State, if, as and when it is executed and becomes effective.

Section 7.20 Standards for Consent.

Where any provision of this Agreement requires the consent or approval of either party, each party agrees that it will not unreasonably withhold, condition, or delay such consent or approval, except as otherwise expressly provided in this Agreement, and the reasonableness of each party's determination shall be evaluated in accordance with any particular standards governing such particular consent or approval as expressly set forth in this Agreement, or if no standards are expressly set forth, then in accordance with all relevant facts and circumstances. Where any provision of this Agreement requires one party to do anything to the satisfaction of the other party, the other party agrees that it will not unreasonably refuse to state its satisfaction with such action. Any dispute over the reasonableness of either party withholding or conditioning its consent or satisfaction shall be resolved pursuant to this article of this Agreement.

ARTICLE VIII

DISPUTE RESOLUTION AND TERMINATION

Section 8.1 Alternative Dispute Resolution.

If a dispute arises between the Developer and the Town Parties relating to this Agreement, the Developer and the Town Parties, to the fullest extent permitted by applicable law, agree to use the following procedure to resolve the dispute:

A. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; and

B. If, within fourteen (14) days after that meeting, the parties have not succeeded in negotiating a resolution to the dispute, they hereby agree to submit the dispute to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association and to bear equally the costs of the mediation.

1. The parties will jointly appoint a mutually acceptable mediator, seeking assistance in this regard from the American Arbitration Association if they are unable to agree upon this appointment within twenty-one (21) days from the conclusion of the negotiation period; and

2. The parties agree to participate in good faith in the mediation and negotiation related thereto for a period of thirty (30) days.

C. If, upon the completion of the mediation process described in subparagraphs A and B, the parties have not succeeded in reaching a resolution to the dispute, then the parties may assert claims or bring actions in a court of law, or pursue any other remedy with respect to any

rights of the parties under this Agreement or in connection with the transactions contemplated this Agreement.

ARTICLE IX

DEVELOPER'S INDEMNIFICATION OBLIGATIONS

Section 9.1 Environmental Indemnification.

The Developer agrees, at the Developer's sole cost and expense, to protect, defend, indemnify and save harmless the Town Parties from and against any and all liabilities, obligations, claims damages, penalties, causes of action, response and clean up costs, and other costs expenses (including, without limitation, reasonable attorneys' fees, the cost of any remedial action, consultant fees, investigation and laboratory fees, court costs and litigation expenses) arising out of or relating to, the presence, disposal, escape, seepage, leakage, spillage discharge, emission, release or threatened release of any Hazardous Materials on, from or affecting the Project Site to the extent caused by the Developer in the construction of the Development and as a result of a breach of this Agreement.

Section 9.2 General Indemnification.

A. The Developer shall hold harmless, indemnify and defend the Town Parties and their governing body members, officers, agents, employees and independent contractors for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the Project Site during construction of the Development, except for matters arising out of the negligence or willful misconduct of the Town Parties and their governing body members, officers, agents, employees and independent contractors.

B. The Town Parties and their governing body members, officers, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the construction of the Development except for matters arising out of the negligence or willful misconduct of the Town Parties and their governing body members, officers, agents, attorneys, employees and independent contractors.

C. All covenants, stipulations, promises, agreements and obligations of the Town Parties contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Town Parties and not of any of their governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above, to be effective on the Effective Date of this Agreement.

[signature pages follow this page]

SIGNATURE PAGE OF TOWN OF MUNSTER, INDIANA
TO
DEVELOPMENT AGREEMENT

TOWN OF MUNSTER, INDIANA

BY: _____
Thomas DeGiulio, Town Manager

BY: _____
Joseph ~~Simonetti~~ Simonetto, Council

President

ATTEST:

David Shafer, Clerk-Treasurer

TOWN OF MUNSTER
REDEVELOPMENT COMMISSION

By: _____
President

ATTEST:

By: _____
Secretary

TOWN OF MUNSTER ECONOMIC
DEVELOPMENT COMMISSION

By: _____
President

ATTEST:

By: _____

Secretary

SIGNATURE PAGE OF CENTENNIAL VILLAGE, LLC
TO
DEVELOPMENT AGREEMENT

CENTENNIAL VILLAGE, LLC

By: _____
Managing Member

EXHIBIT A

Centennial Village – Development Description

January 2013

Development Location: Calumet Avenue and 45th Avenue
Munster, Indiana

Overall Development Summary:

A mixed-use walkable Life Style Center with 233,400 square foot retail/commercial, 150 residential condominiums and 22 townhouses plus an 80 room limited service hotel. The development will be constructed in 2 phases and include 1,103 above grade parking spaces in addition to the 206 underground parking spaces, all adjacent to Centennial Park.

Development Segments:

See Master Plan

Segment I

Total Land Area – approximately 15 acres
Approximate Retail/Commercial Area – 129,400 square feet and 685 surface parking spaces.

Segment I includes:

- Mitigate wetlands and environmental issues
- Relocate communication easement
- Demolish and remove current building and improvements
- Construct 45th Avenue east of Calumet Ave. approximately 800' feet
- Construct on and off site utilities and infrastructure
- Secure commercial/retail tenants
- Develop pad sites along with parking and roads for Phase I
- Design and construct 10 commercial single story buildings

Segment II

Total Land Area – approximately 16 acres
Approximate Retail/Commercial Area – 104,000 square feet and future Hotel pad site with 418 surface parking spaces.

Segment II includes:

- Mitigate wetlands and environmental issues
- Locating and removal of existing foundations
- Construct on and off site utilities and infrastructure
- Secure commercial/retail tenants
- Market and secure residential unit buyers
- Develop parking and roads for Phase II
- Design and construct 4 Commercial/Residential multi-story buildings with 150 Condominiums that includes 206 underground parking spaces
- Design and construct 22 townhouse units
- Design and construct a single story 25,000 square feet commercial/retail building
- Design and construct a 80 room limited service hotel

EXHIBIT B

Description of Project Site

Project Location:

Calumet Avenue and 45th Avenue
Munster, Indiana

Site Description:

Approximately 35 acres of land located east of Calumet Avenue, north of Centennial Park and North Centennial Park Drive, west of Clayhole Lake including the western shoreline of Clayhole Lake and south of the railroad right-of-way that is parallel to 45th Avenue east of Calumet Avenue.

EXHIBIT C

Description of Use of Funds – Centennial Village

[NOTE: PLEASE ADD COLUMN SHOWING ESTIMATED COSTS OF COMPONENTS OF PROJECT]

Project Location: Calumet Avenue and 45th Avenue
Munster, Indiana

2013 Bonds (Phase I):

- **Professional Fees**
Land Planning, Concept Design, Surveying, Engineering (Civil, wetlands, Environmental), Legal (Development, TIF, Transaction, Acquisition, Entity Structure), Architectural, Developer Fees and other related professional fees
- **Acquisition Costs**
Site acquisition, Site Improvements, Building Improvements and other related Acquisition costs
- **Demolition/Removal costs/ Site Preparation**
Site and Improvement demolition, Disposal Fees, Piping, Foundation and other location costs, site grading, site fill, and other related costs
- **Mitigation Costs(partial)**
Partial wetland mitigation, replacement and relocation, partial environmental and related costs
- **Infrastructure Costs – 45th Street Extension**
Water, fire protection, sanitary sewer, storm sewer, utilities and related costs
- **Right-of -way/Road Const – 45th St. Extension**
Excavation, base fill, curbing, paving, striping, signals and other related costs

Relocation of Road

[DETAIL TO BE PROVIDED]

Exhibit C – con't

2014 Bonds (Phase II):

- **Professional Fees**
Surveying, Engineering (Civil, wetlands, Environmental), Legal (Development, Transaction, Entity Structure), Architectural, Leasing, Developer Fees and other related fees
- **Site Preparation**
Excavation, fill, grading and other site costs
- **Mitigation Costs (partial)**
Partial wetland mitigation, replacement and relocation, partial environmental and related costs
- **Relocation Costs**
Locate and relocate the telecommunication lines, certain utility lines and the regional recreational path
- **Infrastructure Costs**
Water, fire protection, sanitary sewer, storm sewer, utilities and other related costs
- **Roadway and Surface Parking Const.**
Excavation, base fill, curbing, paving, striping, signals and other related costs
- **Building Design and Construction**
Design and build commercial/retail single story anchor, inline and outlot tenant spaces and buildings

Construction of 45th Avenue Underpass

[Design and construct an underpass on 45th Avenue \[more specific detail to be provided\]](#)

Document comparison by Workshare Compare on Monday, March 11, 2013
11:33:46 AM

Input:	
Document 1 ID	interwovenSite://IN/INDS01/1386992/1
Description	#1386992v1<INDS01> - Munster Economic Development Agreement
Document 2 ID	interwovenSite://IN/INDS01/1386992/2
Description	#1386992v2<INDS01> - Munster Economic Development Agreement
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	104
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Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	141