

OPTION TO ENTER PURCHASE AGREEMENT

THIS Option to Enter Purchase Agreement (hereinafter referred to as "Option Agreement") is made this 3rd day of June 2019 (hereinafter referred to as the "Effective Date") by and between the Town of Munster (hereinafter referred to as "The Town") and Maple Leaf Crossing, LLC (hereinafter referred to as "Developer").

W I T N E S S E T H

WHEREAS, Developer and The Town have entered a Development Agreement, dated June 3, 2019 (hereinafter collectively referred to as the "**Development Agreement**");

WHEREAS, the Development Agreement sets forth terms and conditions for the development of Project Site for Developer, subject to the Town's rights and options related thereto (hereinafter referred to as "**Project**");

WHEREAS, the Development Agreement also imposes certain obligations on the Town to facilitate development of the Project;

WHEREAS, the Project is currently being developed in phases on the real estate described within the Development Agreement as the "Project Site", which real estate is commonly known as 9450 Calumet Avenue and consists of $\pm$ 6.07 acres (hereinafter referred to as the "**Project Site**");

WHEREAS, Developer holds legal title to the Project Site to develop the Project in accordance with the terms of the Development Agreement;

WHEREAS, the Development Agreement obligates Developer to grant and convey to the Town an option to purchase specified real estate upon terms described herein (hereinafter referred to as "**Purchase Option**");

WHEREAS, the real estate subject to the Purchase Option is as follows:

any portion of the real property comprising the Project Site which at any time following the execution of this Agreement shall be vacant, unimproved, unoccupied or otherwise undeveloped for its intended use as part of the Development in accordance with the plans and specifications approved by the Town Parties including reasonable access thereto (described within the Development Agreement and hereinafter referred to as the "**Undeveloped Land**").

WHEREAS, the Purchase Option may be exercised as to any portion of the Undeveloped Land, at the Town's discretion, upon the following occurrences:

- (i) the occurrence of an Event of Material Default of the Development Agreement that is not corrected by Developer after notice and a reasonable opportunity to cure, or
- (ii) the Developer's failure to complete the Project in accordance with the schedule set forth in Section 1.1 of the Development Agreement;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties agree as follows:

1. **Right to Exercise Option-Conditions Precedent.** The Town's Purchase Option to purchase the "Option Property" (as described in this Option Agreement) shall be conditioned upon the occurrence of the following:
 - a. Developer's material default of the Development Agreement and failure to cure; or,
 - b. Developer's failure to complete the Project in accordance with the schedule set forth in Section 1.1 of the Development Agreement.

The foregoing occurrence events shall be necessary conditions precedent, either of which must be fulfilled to give rise to the Town's right to exercise the Purchase Option.

2. **Property Subject to Purchase Option.** The real estate subject to this Purchase Option shall consist of that real estate owned by Developer within the Development Site (hereinafter described as "Option Property"). The Option Property shall be any portion of the real property comprising the Development Site, which, shall be vacant, unimproved, unoccupied or otherwise undeveloped for its intended use as part of the Development in accordance with the plans and specifications approved by the Town Parties.
3. **Grant of Purchase Option.** During the term of this Option Agreement, the Purchase Option granted to the Town shall convey to the Town the right to enter a purchase agreement ("Purchase and Sale Agreement") with Developer containing the material terms and conditions set forth in this Option Agreement and, if such terms and conditions are not expressly set forth in this Option Agreement, to be negotiated by and between the parties in good faith. In the event that the parties are unable to agree upon terms, the Purchase and Sale Agreement shall contain reasonable and customary terms and conditions for a commercial real estate transaction of this character and scope. Upon the Town's exercise of the option given herein, Developer and the Town shall execute the Purchase and Sale Agreement contemplated hereby and shall be deemed as having consented to be bound by the terms and conditions of this Option Agreement, including the additional terms and conditions contemplated hereby.
4. **Designation of Option Property.** Prior to any exercise of the Purchase Option, the Town shall designate to the Developer the real estate the Town asserts is Option Property. To designate the Option Property, the Town shall deliver to Developer a survey depicting the designated Option Property ("Survey"). The Survey shall be prepared and certified by a land surveyor licensed in the State of Indiana. The Survey shall: (a) be made in accordance

with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and ACSM in 2011; (b) include the items marked on the attached Table A subject to adjustment based upon communication with the land surveyor; (c) be made pursuant to the Accuracy Standards (as adopted by ALTA and ACSM and in effect on the date of the Certification) of an Urban Survey; and (d) be made in accordance with the appropriate state land survey standards. The Survey shall show the exact location, boundaries, and the number of square feet in the Option Property and shall show the elevations of the principal parts of the Option Property and shall disclose no gaps, gores, encroachments, easements, boundary overlaps or physical matters which would adversely affect the marketability of title to the Option Property or which would adversely affect or interfere with the development of the Option Property in accordance with the Developer's plans, and shall show that all parcels making up the Option Property adjoin each other along their common boundaries without gaps or overlaps.

5. **Exercise of Purchase Option.** This Purchase Option shall be exercised by The Town by executing and delivering to Developer a written notification of the exercise of the Purchase Option together with a copy of the Survey ("Option Notice"). The Town shall be deemed to have delivered the documents upon depositing the same with the United States Postal Service, having directed and arranged for the delivery of said documents, by registered mail, return receipt requested, to Developer at the address set forth herein.

Developer shall be allowed thirty (30) days after receipt of the Option Notice for examination and the making of any objections thereto. Developer's objections shall be made in writing or deemed waived ("Developer Objection"). In the event of a Developer Objection, the Town shall within thirty (30) days after receipt of Developer's objections ("Town's Objection Response Period") respond to any such Developer Objection Developer in writing setting forth the Town's basis for opposition to Developer's Objection or Developer's Objection shall be deemed as well taken and the Town shall not have the right to exercise the Purchase Option.

6. **Purchase Price.** The purchase price for the Option Property shall be equal to: (i) the acreage of the Option Property, multiplied by (ii) the Option Price per acre (each amount, a "Purchase Price"). For purposes of this Option Agreement, the "Option Price" per acre shall mean 100% of the Current Appraised Value of the Option Property, and "Current Appraised Value" shall mean the median of two appraisals of the Option Property to be undertaken and completed within sixty days following the date of execution and delivery of this Agreement, divided by the total acreage of the Option Property, which Current Appraised Value and Option Price per acre shall be set forth as Exhibit E to this Agreement. For such purposes, one appraiser shall be selected by the Town and one appraiser shall be selected by the Developer.
7. **Purchase and Sale Agreement.** A proposed form of the definitive Purchase and Sale Agreement shall be provided by the Town to Developer within thirty (30) days of the date that the Purchase Option is deemed exercised and fully operable. Thereafter, Developer shall respond to the proposed Purchase and Sale Agreement within fifteen (15) days and the parties shall complete negotiation of the Purchase and Sale Agreement within fifteen (15) days thereafter and shall

execute the Purchase and Sale Agreement within five (5) days completion of the final agreed upon Purchase and Sale Agreement.

8. **Title Insurance.** The Town shall order, obtain and provide to Developer an ALTA owner's title insurance commitment in the amount of the Purchase Price (the "Title Commitment"). The Title Commitment shall be issued through Greater Indiana Title Insurance Company (the "Title Company"). The Title Commitment will be provided within 7 business days of execution of the Purchase and Sale Agreement along with all title documents referenced therein for Developer's review.
9. **Closing Date.** The closing date on the Town's purchase of the Option Property (the "**Closing Date**") shall be Forty-Five (45) days from the date of execution of the Purchase and Sale Agreement. However, the Closing Date may be earlier or later set upon the mutual agreement of the parties, or extended, pursuant to other specific provisions set forth in this Option Agreement.
10. **Closing Costs.** Developer shall pay the following closing costs: (i) all recording costs associated with releasing any liens or encumbrances; (ii) 50% of all closing and escrow fees; and, (iii) all costs associated with a title commitment/search. The Town shall pay the following closing costs: (i) all recording costs associated with the Deed and any new mortgage documents; (ii) 50% of all closing and escrow fees; (iii) the cost for a later date update and Owner's Title policy, including extended coverage and any special endorsements to the Updated Title Policy; (iv) all costs associated with any Phase I ESA report; and, (v) all costs for the ALTA survey.

In the event that a specific closing expense is not expressly addressed herein, the parties agree that such expense shall be assigned to The Town or Developer as is customary, as determined by the Closing Agent in accordance with established custom in the locale where the closing is held. Each party will pay its own attorneys' fees to close this transaction.

11. **Prorations.** Town and Developer shall apportion as of 11:59 p.m. of the day preceding the Closing (the "Proration Date"), the items for the Option Property hereinafter set forth. Any errors or omissions in computing apportionments at Closing shall be promptly corrected. The obligations set forth in this Section 10 shall survive the Closing. The items to be adjusted are:
 - (a) City, state, county, and school ad valorem taxes and other assessments for the fiscal year of sale. Should such proration be inaccurate based on the actual ad valorem tax bill, if the same has not been received by the date of Closing, either party may demand after the date of Closing, and shall be entitled to receive upon demand, a payment correcting any mal-apportionment favoring the other party.
 - (b) If, at Closing, if the Option Property or any part thereof shall have been affected by an assessment or assessments, which are or may become payable in annual installments, of which the first installment is then a charge

or lien, then for the purposes of this Agreement, all the unpaid installments of any such assessment due and payable in calendar years prior to the year in which the Closing occurs shall be paid by Developer and all installments becoming due and payable after the delivery of the deed shall be assumed and paid by the Town, except, however, that any installments which are due and payable in the calendar year in which the Closing occurs shall be adjusted pro rata. However, if such an assessment or assessments shall be due in one lump sum payment, then to the extent such assessment(s) is for improvements in place as of the date of this Agreement, then such assessment(s) shall be paid by Developer but if such assessment(s) is for improvements to be made subsequent to the date of this Agreement, then the same shall be paid by the Town.

All such prorations shall be final at Closing.

12. **Notices.** All notices from either of the parties hereto to the other shall be in writing and shall be considered to have been duly given or served if sent by first class certified mail, return receipt requested, postage prepaid, or by a nationally recognized courier service guaranteeing overnight delivery to the party at his or its address set forth below, or by email to the respective email address set forth below with confirmation of delivery, or to such other address as such party may hereafter designate by written notice to the other party. Notice given in accordance herewith shall be effective upon delivery to the address of the addressee. Any notice given by facsimile transmission shall be followed by a hard copy or by hand delivery.

If to Developer:

Maple Leaf Crossing, LLC
Attn: Jay Lieser
400 Fisher Street, Suite J
Munster, IN 46321

With a copy to:

David Beach
Eichhorn and Eichhorn
2929 Carlson Drive, Suite 100
Hammond, IN 46323

If to Town:

Town of Munster
c/o Town Manager
1005 Ridge Rd.,
Munster, IN 46321

With a copy to:

Town of Munster
c/o Clerk-Treasurer
1005 Ridge Rd.,
Munster, IN 46321

With a copy to:

David W. Westland
Westland & Bennett, P.C.
2929 Carlson Drive, Suite 300
Hammond, IN. 46323

13. General Provisions.

- 13.1 Entire Agreement. This Agreement supersedes any and all prior agreements, whether oral or in writing., and sets forth the entire understanding and agreement between the parties hereto regarding the subject matter hereof. This Agreement may be amended, modified or supplemented only in writing as agreed to and signed by authorized representatives of the parties hereto.
- 13.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Indiana, without regard to its choice of laws rules.
- 13.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and/or assignees of the parties hereto.
- 13.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and which together shall constitute the agreement of the parties hereto.
- 13.5 Recitals. The recitals set forth above are incorporated herein by reference and constitute the agreed upon terms of the parties.
- 13.6 Computation of Time. If the time period or date by which any right, option, or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires or occurs on a Saturday, Sunday, or legal or bank holiday, then such time period or date shall be automatically extended through the close of business on the next regularly scheduled business day.
- 13.7 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.
- 13.8 Electronic Execution and Delivery. This Agreement may be signed and delivered by facsimile or other electronic copy (such as .pdf). The parties may sign and deliver any closing documents to be executed and delivered by facsimile or other electronic copy (such as .pdf) at Closing.

[SIGNATURES ARE TO FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, Developer and The Town have hereunto executed this Lease on the date above written.

TOWN:

Town of Munster, Lake County, Indiana,
a municipal corporation.

By: _____
Dustin Anderson, Town Manager

Date: _____ (“Effective Date” to be inserted within preamble)

DEVELOPER:

Maple Leaf Crossing, LLC

By: _____
Jay Lieser, Authorized Member