

EVANSVILLE REDEVELOPMENT COMMISSION
Proposal Package for the Downtown Hotel Development

The Evansville Redevelopment Commission (the “Redevelopment Commission”) of the City of Evansville (the “City”) is seeking written offers (“Proposals”) for the purchase of the Real Property as described below and set forth in the attached exhibits. Any Proposal submitted in response to this Proposal Package must conform with, and is subject to, the terms set forth in the below described Notice.

1. Attachment A: Referred to as the “Notice” – “Notice of Offer to Convey Real Property by the Evansville Redevelopment Commission” – Sets forth the notice published to offer the Real Property for sale pursuant to IC 36-7-14-22.
2. Attachment B: Referred to as the “Real Property” – Sets forth (a) the description of the Real Property being offered for sale, (b) matters of record known to the Redevelopment Commission through its receipt of a commitment for title insurance as contained in such exhibit, and (c) other title matters disclosed to Proposers as part of the offer to sell the Real Property.
3. Attachment C: Referred to as the “Proposer’s Offer Terms” – Sets forth a substantially acceptable form by which a Proposer may offer to purchase the Real Property in response to the Notice.
4. Attachment D: Referred to as the “Development Agreement” – Sets forth the form of a definitive agreement to be entered into by the Developer and the Redevelopment Commission which will provide for the terms applicable to the purchase, sale and development of the Real Property.

For further information regarding the offering, contact Lana J. Abel at the Department of Metropolitan Development, 306 Civic Center Complex, 1 N.W. Martin Luther King, Jr. Boulevard, Evansville, IN 47708 (telephone number: 812-436-7823).

Date: July 4, 2011
Evansville Redevelopment Commission

**NOTICE OF OFFER TO CONVEY REAL PROPERTY
BY THE EVANSVILLE REDEVELOPMENT COMMISSION**

This Notice of Offer to Convey Real Property by the Evansville Redevelopment Commission (the "Redevelopment Commission") of the City of Evansville (the "City") is seeking written offers ("Proposals") for the purchase of the real property as described below. All Proposals must be submitted to the office of the Department of Metropolitan Development, 306 Civic Center Complex, 1 N.W. Martin Luther King, Jr. Boulevard, Evansville, IN 47708 on or before 4:00 p.m. (local time) on July 18, 2011. Any Proposal received after the time and date stated shall be returned unopened and shall not be considered. Any Proposal may consist of consideration in the form of cash, other property, other consideration or a combination thereof, as long as the offer meets the conditions set forth below. Any Proposal must be accompanied by evidence of its ability to meet such conditions that is satisfactory to the Redevelopment Commission in its sole discretion. The Redevelopment Commission may reject any or all Proposals, negotiate changes to any Proposal, and/or award to the proposer providing the best overall Proposal ("Developer"), as determined in the sole discretion of the Redevelopment Commission.

The Redevelopment Commission owns, or has an interest in, and is offering for sale, the parcel of real property (the "Real Property") located in the Downtown Redevelopment Area, generally between Martin Luther King, Jr. Blvd and 6th Street, and Walnut and Chestnut Streets, which is more particularly described in legal description available in the below described Proposal Package.

The Real Property is being offered subject to the following terms and conditions (among others available in the below described Proposal Package):

Sale: The Redevelopment Commission owns and will be offering for sale the parcels constituting the Real Property. The transfer of the Real Property (including any improvements thereon) will be subject to covenants and other matters of record. The Developer will be responsible for termination (or other resolution) of existing leases or other tenancies or interests in the Real Property, if any, necessary to permit the hereinafter described required development. Alternatively, the Redevelopment Commission will retain the option to undertake all or portion of such termination (or other resolution) of existing leases or other tenancies or interests in the Real Property at its cost ("Direct Expenditures"), which if done would permit it to off-set its actual related costs to terminate such interest against any of Proposer's Requested Public Incentives.

Required Development: The Developer will be required to agree to design, finance, construct and operate a hotel consisting of a minimum of 220 rooms, with a quality and brand of a Hyatt Place® or such other comparable brand as is acceptable to the Redevelopment Commission, together with on-site parking (or parking on property owned by the proposer on an adjoining block) with a minimum of 305 parking spaces (a portion of which parking is to be made available for use by the Redevelopment Commission related to its operation of the downtown arena). The Developer will also be responsible for (a) site preparation including removal and disposal of any demolition debris from prior structures on the Real Property and (b) removal and disposal of any demolition debris from prior structures on the parcel across Walnut Street adjacent to the Real Property ("Former Tower Site"). Alternatively, the Redevelopment Commission will retain the option to undertake all or portion of such removal and disposal of any demolition debris at its cost (which are also herein called "Direct Expenditures"), which if done would permit it to off-set its actual related costs to

remove and dispose of such demolition debris from such site(s) against any of Proposer's Requested Public Incentives.

Offering Price: \$1,000,000, which amount is not less than the average of two independent appraisals of the Real Property as obtained by the Redevelopment Commission. Each proposal shall include the proposer's offer price for the purchase of the Real Property ("Proposer's Offer Price"). The Proposer's Offer Price is subject to the terms of an offering process as described herein and in IC 36-7-14-22.

Other Offering Terms: Each Proposal will be required to comply with the following.

- Construction is to be performed under the terms of a project labor agreement with local construction employee organizations, the terms of which will require the use of local workforce to the extent available and to the extent that the obligation is reasonable.
- Design and construction is to be accomplished using local construction companies and local engineers and architects with appropriate experience, supplemented by non-local professionals with the appropriate experience.
- Developer is responsible to reimburse the Redevelopment Commission for its costs to engage an independent professional to monitor the project on behalf of the Redevelopment Commission.
- Construction is to be accomplished with a goal of 14% MBE and 7% WBE participation.
- Developer is to pay \$50,000 to the Redevelopment Commission upon execution of a Development Agreement to defray its costs.
- Developer is to be responsible for all capital, operating and other expenses of hotel and parking facility.

Public Incentives: Proposals may include requests for public incentives ("Proposer's Requested Public Incentives") in the form of loans made to the Developer (and/or Direct Expenditures by the Redevelopment Commission) in amounts *not-to-exceed* requests consistent with the following:

- Up to \$8,000,000 from loans made available from Economic Development Commission of the City pursuant to IC 36-7-11.9 and -12.
- Loan repayment terms may be made subject to profitability terms. Additionally a portion of the loan up to \$4,500,000 may be requested to be forgivable subject to compliance with development and operational commitments. Loan to be secured by a mortgage and other security instruments on a basis subordinate to Developer loans obtained from non-public sources, provided that the Redevelopment Commission, in its discretion, may cause bonds (as issued by the City pursuant to IC 36-7-11.9 and -12 to fund any public incentive loans to the Developer) to be secured and payable from the Evansville Downtown Arena Allocation Fund to the extent permitted pursuant to the IC 36-7-14-39(b).
- Any Direct Expenditures by the Redevelopment Commission will be off-set against (i.e., reduce) the forgivable portion of any loan otherwise requested by the Developer.
- Loan funds will be disbursed (and Direct Expenditures will be made) in proportion with the expenditure of other non-public funding sources (as set out in approved budgets) unless otherwise consented to by the Redevelopment Commission.
- Final award of public incentive funds is to be subject to completing approvals required by law (including the availability of funds).

- Property tax phase-in may be requested in amounts up to a 10-year property tax phase-in schedule as allowable by applicable law.
- Terms are to be set forth in definitive Redevelopment Related Agreements as described below.

General Terms and Conditions: The terms for sale of the Real Property, the required development thereon, and Proposer's Requested Public Incentives shall be consistent with a Proposal Package to be made available by the Redevelopment Commission in advance of any Proposal being submitted, which will contemplate that certain related definitive agreements ("Redevelopment Related Agreements") will be entered into between the City of Evansville (whether acting through the Redevelopment Commission or otherwise) and the Developer, the terms of which (and the forms of which Redevelopment Related Agreements) will be contained in the Proposal Package. When entered into such Redevelopment Related Agreements will supersede all proposed terms set forth in this Notice, the Proposal Package and the Proposal.

Special Conditions: The Redevelopment Commission hereby informs each prospective bidder that a Downtown Hotel Development Agreement, dated as of March 22, 2011 (the "Existing Development Agreement"), by and between (A) the City acting by or through the Redevelopment Commission, the Department of Metropolitan Development, and subject to joinder, the Economic Development Commission, and (B) Woodruff Hospitality LLC, has been entered into concerning the purchase of the Real Property and its development as a hotel. The acceptance of any Proposal submitted pursuant to this notice will only occur in the event the Existing Development Agreement is terminated pursuant to its terms by the Redevelopment Commission.

Award: The Redevelopment Commission may reject any or all Proposals and may make an award to the Proposer providing the best overall Proposal as determined by the sole discretion of the Redevelopment Commission. Along with other permitted factors pursuant to IC 36-7-14-22, when determining the best Proposal, the Redevelopment Commission will take into consideration the following factors, which are to be addressed, in detail, in each Proposal:

1. The size and character of the improvements proposed to be made by the Proposer on the offered Real Property.
2. The benefit to the community through the creation of additional employment opportunities and the retention of existing employment.
3. The Proposer's plans and ability to improve the Real Property with reasonable promptness.
4. Whether the Real Property when improved will be sold or rented.
5. The Proposer's Offer Price and the Proposer's Requested Public Incentives.
6. Any other factors that assure the Redevelopment Commission that the sale, if made, will further the execution of the Downtown Redevelopment Area and best serve the interest of the Evansville Redevelopment District, from the standpoint of both human and economic welfare.

In the event of a rejection of all proposals, pursuant to I.C 36-7-14-22(g) the Redevelopment Commission may, after a period of 30 days after the date of the opening of the proposals, adjust and agree to terms in a manner the Redevelopment Commission considers necessary to further the redevelopment plan for the Downtown Redevelopment Area.

A Proposal Package is available via electronic means from the office of the Department of Metropolitan Development, 306 Civic Center Complex, 1 N.W. Martin Luther King, Jr. Boulevard,

Evansville, IN 47708, during normal business hours or may be requested by email (to: LJAbel@evansvillegov.org).

All Proposals (as received) shall be kept open for public inspection. Any Proposal submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each beneficiary of the trust and settler empowered to revoke or modify the trust.

Any Proposal received after 4:00 p.m. (local time) on July 18, 2011 will not be considered. For further information regarding the offering, contact Lana J. Abel at the Department of Metropolitan Development, 306 Civic Center Complex, 1 N.W. Martin Luther King, Jr. Boulevard, Evansville, IN 47708 (telephone number: 812-436-7823).

Date: July 4, 2011
Evansville Redevelopment Commission

LEGAL DESCRIPTION OF REAL PROPERTY

❖ See Exhibit B to the form of Development Agreement set out in Attachment D.

EXISTING MATTERS OF RECORD, OTHER THAN THE STANDARD EXCEPTIONS, KNOWN TO THE REDEVELOPMENT COMMISSION THROUGH ITS RECEIPT OF A COMMITMENT FOR TITLE INSURANCE

❖ See Exhibit I to the form of Development Agreement set out in Attachment D.

Proposer's Offer Terms

Name of Proposer: _____

Contact Information: _____

Capitalized terms used herein shall have the meanings set forth in the Proposal Package of Evansville Redevelopment Commission of the City of Evansville made available pursuant to its "Notice of Offer to Convey Real Property by the Evansville Redevelopment Commission" as first published on July 4 and again on July 11, 2011 in the Evansville Courier & Press.

The above named Proposer hereby offers to purchase the Real Property on the following terms:

1. The Proposer's Offer Price is \$_____ (which would be the proposed Project Real Estate Purchase Price for purposes of the Development Agreement found in the Proposal Package).
2. The Proposer's Requested Public Incentives are an aggregate amount of \$_____ from loans made available from Economic Development Commission of the City pursuant to IC 36-7-11.9 and -12, with an amount not to exceed:
 - a. \$_____, being the amortizing loan portion referred to as Developer Limited Recourse Loan #1 described in the Development Agreement; and
 - b. \$_____, being the forgivable loan portion referred to as Developer Limited Recourse Loan #2 described in the Development Agreement found in the Proposal Package.
3. Property tax phase-in on the terms as provided in sections 4.1(s) and 4.2(i) of the Development Agreement found in the Proposal Package *[is][is not]* requested as part of the Proposal. *[Bracketed words are mutual exclusive alternatives, with the Proposer to strike and/or include as applicable.]* If requested, such phase-in request is for ___ tax years. *[Strike prior sentence if phase-in is not requested.]*
4. Set forth in the attached Annex 1 is a detailed description of (a) the size and character of the improvements proposed to be made by the Proposer on the offered Real Property, (b) the plans for the development and operation of the improvements proposed to be made by the Proposer on the offered Real Property, (c) the Proposer's budget (including subtotals for costs of (i) land acquisition for the Real Property, site preparation for the Real Property, Downtown Hotel improvements, parking improvements and related furniture, fixtures and equipment and (ii) site clearing for the Former Tower Site) and (d) the expected benefits to accrue to the community through the creation of additional employment opportunities and the retention of existing employment as a result of the development and operation for improvements proposed to be made by the Proposer on the offered Real Property. The submitted information is intended to serve as the Budget and Preliminary Project Plan described in the Development Agreement found in the Proposal Package. *[Annex 1 information should also been separated and submitted on a basis to allow its use in Exhibit B and D as referenced in the form of the Development Agreement in the Proposal Package.]*

5. The form of the Development Agreement (as found in the Proposal Package) is acceptable to the Proposer subject only to (a) completion reflecting the terms proposed herein and (b) those modifications, if any, set forth in an attached Annex 2. [*Proposer to attach any requested changes as Annex 2.*]
6. The Proposer agrees to negotiate any final modifications (as requested in Annex 2) to such Redevelopment Related Agreements in good faith, no later than 15 days after the Redevelopment Commission determines the Proposer has been selected to be the Developer as described in the Notice.
7. The Proposer hereby identifies the below for purposes of completing the Development Agreement found in the Proposal Package:
 - a. Developer Senior Lender is expected to be _____
(and attached are its Developer Senior Lender's lending commitments, if any, or other comparable evidence or information demonstrating the availability to the Developer of all non-public funding sources consistent with approved budgets);
 - b. Hotel Brand is expected to be _____;
 - c. Hotel Brand Operator is expected to be _____;
 - d. Project Engineer is expected to be _____;
 - e. Required Investment Amount is expected to be _____;
8. It is not the present intention of the Proposer to sell, lease or otherwise dispose of the Real Property when so improved (or grant any operational interests in Real Property when so improved) except as set forth in an attached Annex 3.
9. Proposer acknowledges its understanding and acceptance of the "Special Conditions" as set forth in the Notice.

This Proposal is intended to be (and shall be construed as offering to purchase the Real Property on terms that are) consistent with the terms of the Notice and the Proposal Package (including capitalized words corresponding to those in the form of the Development Agreement found in the Proposal Package) unless otherwise set forth in the Proposal.

[NAME OF PROPOSER]

BY: _____
Print: _____
Date: _____

DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

_____, 2011

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND OTHER APPLICABLE TERMS	3
ARTICLE II. DEVELOPMENT	18
Section 2.1 Term.	18
Section 2.2 Project Description and Cost.....	18
Section 2.3 Construction of the Downtown Hotel	18
Section 2.4 Site and Preconstruction Work and Matters.....	19
Section 2.5 Substantial Completion of the Downtown Hotel.	20
Section 2.6 Changes to Construction	20
Section 2.7 Construction Oversight; Meetings.	20
Section 2.8 Skybridge Connection to the Convention Center and the Downtown Arena	20
Section 2.9 Project Labor Agreement	21
Section 2.10 Commitments	21
Section 2.11 Tower Site Work.	21
Section 2.12 Developer Fee	22
ARTICLE III. EEDC LOAN AND SALE OF PROJECT REAL ESTATE	22
Section 3.1 Purchase and Sale of Project Real Estate; Closing	22
Section 3.2 Conditions of EEDC Loan	23
Section 3.3 Conditions of Project Real Estate Closing.....	24
Section 3.4 Conditions Precedent to an Advance	25
Section 3.5 Failure to Satisfy Conditions.....	26
ARTICLE IV. REPRESENTATIONS AND COVENANTS	27
Section 4.1 Representations and Covenants of Developer.....	27
Section 4.2 Representations and Covenants of EEDC, ERC or DMD	30
ARTICLE V. ADDITIONAL MAINTENANCE TERM REQUIREMENTS.....	31
Section 5.1 Operation of the Downtown Hotel; Compliance with Covenants	31
Section 5.2 Franchise Agreement.....	31
Section 5.3 Management Agreement	31
Section 5.4 Parking	32
Section 5.5 Employment Regulations	32
Section 5.6 Annual Certifications	32
ARTICLE VI. EVENTS OF DEFAULT AND INDEMNITIES	33
Section 6.1 Events of Default – Developer.	33
Section 6.2 Event of Default – EEDC/ERC/DMD.	34
Section 6.3 Indemnity and Waiver for EEDC/ERC/DMD Indemnified Parties.	34
Section 6.4 Indemnity for Developer Indemnified Parties.....	34

ARTICLE VII. MISCELLANEOUS PROVISIONS	34
Section 7.1 Waiver of Subrogation	34
Section 7.2 Notices.....	35
Section 7.3 Time is of the Essence.....	35
Section 7.4 Binding Effect	36
Section 7.5 Assignment.....	36
Section 7.6 Amendments and Modifications.	36
Section 7.7 Severability.....	36
Section 7.8 Governing Law.....	36
Section 7.9 Captions.....	36
Section 7.10 Counterparts	36
Section 7.11 No Brokers	36
Section 7.12 Mutual Assistance.	37
Section 7.13 Estoppels	37
Section 7.14 No Third Party Beneficiaries and No Partnership or Joint Venture Created	37

DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

THIS DOWNTOWN HOTEL DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of the ____ day of _____, 2011 (the “Effective Date”), by and between:

A. CITY OF EVANSVILLE (the “City”) acting by or through THE EVANSVILLE REDEVELOPMENT COMMISSION (“ERC”) established and existing pursuant to Indiana Code 36-7-14 (the “ERC Act”) and THE CITY OF EVANSVILLE DEPARTMENT OF METROPOLITAN DEVELOPMENT (“DMD”) established and existing pursuant to Indiana Code 36-4-9 (and as of the date the EEDC executes the hereinafter described Joinder or as otherwise as set forth in Section 1.04 herein, THE EVANSVILLE ECONOMIC DEVELOPMENT COMMISSION (“EEDC”), established and existing pursuant to Indiana Code 36-7-11.9 and 12 (the “EDC Act”)), and

B. _____, an _____ (“Developer”).

RECITALS

1. EEDC and ERC are authorized by the EDC Act and the ERC Act, respectively, to assist in providing opportunities for economic development in the City in Vanderburgh County, Indiana;

2. Tourism and conventions provide significant economic benefits for the City, including the creation of jobs and the generation of tax revenues;

3. The City, through its various bodies, boards and staff and discussions with third-party operators of the Evansville Downtown Arena and the Evansville Auditorium and Convention Centre (the “Convention Center”) regarding Arena and Convention Center demand and activity, and the resultant anticipated positive impact on the City of Evansville and Vanderburgh County economies; coupled with the favorable results of studies and other industry analysis, has determined that in order to sustain and promote growth in the City’s tourism and convention industry it is necessary to attract a new Downtown Hotel to be located adjacent to the Arena and Convention Center;

4. The City’s business community leaders have informed the City that it is necessary to attract a new Downtown Hotel to fostering a healthy, pro-growth business environment in the City;

5. To effectuate this result, the ERC issued a Request for Proposals, dated July 4, 2011 (the “RFP”), pursuant to which the ERC solicited proposals for the development of a site, owned by the City through the ERC, as a Downtown Hotel;

6. After the completion of a process to evaluate and analyze the proposals and other information submitted in response to the RFP, the ERC, in concert with its advisers, selected

Developer's (or a related party's) proposal as being the proposal that contained the components that most closely aligned with the interests of the City and the ERC;

7. Developer has proposed to construct a minimum 220-room Downtown Hotel adjacent to the Convention Center (the "Downtown Hotel"), together with certain other improvements that shall include a minimum 305-space parking facility (collectively, the "Project"), on the condition that the ERC and/or the City provide certain financial incentives to Developer, all as more particularly set forth in this Agreement;

8. EEDC and ERC desire to assist Developer in the redevelopment of a certain tract of property located in the Downtown Redevelopment Area, generally between Martin Luther King, Jr. Blvd and 6th Street, and Walnut and Chestnut Streets as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Project Real Estate");

9. In connection with the redevelopment of the Project Real Estate the Developer has agreed to acquire and prepare the Project Real Estate and to design, finance, construct and operate the Project, as more particularly described in Exhibit B attached hereto and incorporated herein by reference, at a cost of at least \$_____ (such acquisition and preparation, construction and equipping being the Project");

10. EEDC is willing to offer assistance in the form of arranging certain loans from the EEDC to Developer (the "EEDC Loan") in return for Developer's agreement to undertake certain obligations and covenants regarding redevelopment of the Project Real Estate;

11. ERC is authorized, pursuant to the ERC Act, to pledge Tax Increment Revenues (as hereinafter defined) from the TIF Area (as hereinafter defined) to support the TIF Bonds (as hereinafter defined) of the City to be issued to fund the EEDC Loan;

12. DMD is a department of the City and will act on behalf of the City in monitoring the progress of the Project; and

13. The Parties desire to enter into this Agreement to more particularly set forth such specific provisions *provided that* the Developer, ERC and DMD understand that the EEDC will not be a party to this Agreement as of the Effective Date but they anticipate that following its required approvals, the EEDC will join this Agreement as a Party when and if the EEDC executes and delivers the Joinder attached hereto as Exhibit C and incorporated herein by reference (the "Joinder") or all the Parties otherwise execute an amendment to this Agreement, and until such a Joinder or amendment is so authorized, executed and delivered, the Developer, ERC and DMD desire that this Agreement be their valid and binding agreement;

NOW, THEREFORE, in consideration of the premises and mutual obligations of the parties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I.

DEFINITIONS AND OTHER APPLICABLE TERMS

Section 1.01. Recitals. The Recitals set forth above are incorporated into this Agreement for all purposes.

Section 1.02. Definitions. Each of the following terms is defined, for all purposes of this Agreement, as set forth below. The definition of each such term is applicable both to the singular and the plural form thereof as the context may require. The use of the masculine, feminine or neuter gender in this Agreement is applicable to any other gender as the context may require.

“Advance” or “Advanced” shall mean any disbursement of proceeds of the EEDC Loan (including from any escrow in which any such proceed may be held) to the Developer or for the benefit the Developer’s account, each such advance of which unless otherwise consented to by DMD shall be Proportionate.

“Agreement” shall have the meaning set forth in the Preamble to this Agreement.

“Ancillary Developer Agreement” shall mean any material agreement of the Developer related to the Downtown Hotel or the Project including the Franchise Agreement, the Management Agreement, the Project Labor Agreement, each Project Construction Contract, the Project Real Estate Documents, any of Developer Senior Lender Agreements, the Developer EEDC Loan Documents, any Skybridge Agreement or any agreement in connection with the EEDC Loan, the Developer Senior Debt or the Developer Equity.

“Approved Equity Expenditures” shall mean the aggregate amount of Developer Equity that has been paid and expended by the Developer related to Project prior to the Closing, which shall be the sum of (a) any costs and expenses that have been paid by the Developer as of the Effective Date as set forth on the attached Exhibit G (which is incorporated herein by this reference) which shall be limited to an amount equal to _____ Dollars (\$_____), (b) any costs and expenses not to exceed _____ Dollars (\$_____) in the aggregate when paid for work related to the Tower Site under Section 2.11 herein, (c) any costs and expenses not to exceed Dollars (\$_____) in the aggregate when paid for work related to the Project Real Estate under Section 2.4 herein, and (d) any other Direct Cost approved by DMD whether paid before or after the Effective Date.

“Bond Bank” shall mean The Evansville Local Public Improvement Bond Bank existing pursuant to Indiana Code 5-1.4 as amended.

“Budget” shall mean a development budget in a form acceptable to DMD for the Project with a projection of the anticipated cash receipts and disbursements, indicating in detail satisfactory to DMD the cost of each major item of the Project. As of the Effective Date, the Developer has caused to be provided to DMD an initial version of a budget (as attached hereto as Exhibit D which is incorporated herein by reference), which version is not intended to serve as

the Budget. When submitted to the DMD by Developer, the Budget will be subject to review and approval by DMD as set forth in Section 3.02(d) herein.

“City” shall mean the City of Evansville, Indiana.

“City Approvals” shall mean the final adoption and effectiveness of one or more ordinances and/or resolutions of the Common Council of the City of Evansville and the EEDC, authorizing or approving the issuance of TIF Bonds and the EEDC Loans, approving the Tax Phase-in, and any other matters necessary for the EEDC, ERC, DMD or the City to undertake each of their respective obligations under this Agreement.

“Closing” shall mean both the EEDC Loan Closing and the Project Real Estate Closing.

“Construction Easement” shall mean the Grant of Easement granting Developer a temporary easement in, under, over, across and through Project Real Estate or the Tower Site (or both), as applicable, for purposes of (a) demolishing all improvements located on, in, over or under Project Real Estate or the Tower Site, as applicable, (b) remediating any contamination on, in, around or about Project Real Estate or the Tower Site, as applicable, (c) restoring the Tower Site to grade level with clean fill and otherwise in accordance with applicable Law and the reasonable requirements of the ERC and DMD, and (d) restoring the Project Real Estate (if the Closing shall not occur by Outside Closing Date and if requested by DMD) grade level with clean fill and otherwise in accordance with applicable Law and the reasonable requirements of the ERC and DMD, all to be in substantially the form attached hereto as Exhibit E (subject to whether such pertains to Project Real Estate or the Tower Site, or both), which is incorporated herein by reference.

“Contractor” shall mean qualified construction companies, engineers, architects and other parties with appropriate experience engaged by the Developer to perform the material work and tasks of undertake the design, site preparation, construction or acquisition related to the Project, which unless otherwise consented by DMD shall only be persons or entities that have had a significant preexisting presence in the City, *provided that* such persons or entities may be supplemented by non-local professionals with the appropriate experience.

“Deferred Principal” shall have the meaning set forth in the definition of Developer EEDC Loan Documents.

“Defined Profit” shall mean the excess of the Gross Revenues over the following deductions actually incurred by Developer in operating the Downtown Hotel:

(a) the cost of sales, including compensation, fringe benefits, payroll taxes, ERISA-related liabilities, pension-fund withdrawal liabilities, and other costs related to employees at the Downtown Hotel;

(b) departmental expenses incurred at departments within the Downtown Hotel; administrative and general expenses; the cost of marketing incurred by the Downtown Hotel; advertising and business promotion incurred by the Downtown Hotel;

heat, light, and power; computer line charges; and routine repairs, maintenance and minor alterations;

(c) the cost of inventories and fixed asset supplies consumed in the operation of the Downtown Hotel;

(d) a reasonable reserve for un-collectible accounts receivable;

(e) all costs and fees of independent professionals or other third parties who are retained to perform services required in connection with the operation of the Downtown Hotel;

(f) all costs and fees of technical consultants, professionals and operational experts who are retained or employed for specialized services (including quality assurance inspectors, personnel providing architectural, technical or procurement services with respect to the Downtown Hotel, tax consultants, and personnel, providing legal services in connection with matters directly involving the Downtown Hotel) and the cost of attendance by employees at the Downtown Hotel at training and manpower development programs sponsored by the Hotel Brand Operator or the franchisor;

(g) the amount of base, incentive or other management fees pursuant to the Management Agreement between Developer and the Hotel Brand Operator;

(h) insurance costs and expenses;

(i) all taxes (other than income taxes) related to the operation of the Downtown Hotel and all real estate taxes related to the Project Real Estate (net of any applicable refund);

(j) the amount of any transfers into the furniture, fixtures and equipment refurbishment reserve (the "FF&E Reserve") during the applicable Defined Profit Measurement Period to cause the amount maintained therein on the last day of the Defined Profit Measurement Period to be equal to four percent (4%) of Gross Revenue for the Defined Profit Measurement Period then ending;

(k) the Downtown Hotel's pro rata share of costs and expenses incurred in connection with marketing programs developed for the Hotel Brand or other Franchisor System, including its _____ Program or any other frequent guest program;

(l) the Downtown Hotel's pro rata share of the charges for group services;
and

(m) such other costs and expenses incurred that are reasonably necessary for the proper and efficient operation of the Downtown Hotel.

For purposes of clarification, the deductions described in subparagraphs (a) through (m) above shall not include (i) any non-cash deductions or transactions or any capital expenditures, except to the extent that the deductions described in subparagraph (j) constitute capital expenditures, (ii) any costs or expense that does not affect the cash flow including any reserve, depreciation or amortization adjustment, charge or other non-cash item or expense other than the FF&E Reserve, (iii) any cost or expense incurred by the Developer owed, paid or otherwise accruing the benefit of any Related Party unless approved in writing in advance by DMD as to type and amount, (iv) taxes, surcharges or other governmentally imposed assessment based upon Developer's income or (v) any debt service, interest or other financing expenses or charges, in each case with respect to the permanent or working capital financing of the Downtown Hotel (other than as paid in respect of the Developer Senior Debt when such is limited to the lesser of principal and interest amounts actually paid to the Senior Lender or the annual amortization commencing with initial Defined Profit Measurement Period under a 20-year level debt service amortization assumption using Developer Senior Debt's average annual per annum interest rate during the Defined Profit Measurement Period).

"Defined Profit Floor" shall mean an amount equal to the lesser of (a) _____ Dollars (\$_____) or (b) _____ Dollars (\$_____) multiplied by a fraction, the numerator of which is the Developer Equity expended as of the Substantial Completion on Direct Costs (including Approved Equity Expenditures) and the denominator of which is _____ Dollars (\$_____).

"Defined Profit Measurement Period" shall mean the fiscal year ending on the first day of the calendar month that precedes each Principal Payment Date.

"Developer" shall have the meaning set forth in the Preamble to this Agreement.

"Developer Contact" shall mean the point of contact person named by the Developer in notice given to the ERC, EEDC and DMD.

"Developer EEDC Loan Documents" shall mean the loan agreement and related ancillary undertakings (including any note, mortgage or other security agreements and financing statements) evidencing and securing the EEDC Loan as hereafter prepared and presented to the Developer by the EEDC (and agreed to by the Developer and the EEDC as of the Closing), which will include the following unless otherwise agreed to the EEDC and the Developer as conclusively evidenced their respective execution and delivery of the same:

- (a) A loan agreement between the EEDC and the Developer ("EEDC Loan Agreement") to provide for the terms of the EEDC Loan including providing that:
 - (i) Any amount thereof (whether borrowed by the Developer or available credit to the Developer thereunder) not applied to the payment of a Direct Cost by an Advance submitted by the Developer within ninety (90) days after Substantial Completion shall be applied first to the prepayment of the Developer Limited Recourse Note #1 and next to the prepayment of the Developer Limited Recourse Note #2; and

- (ii) In the event that there is any Deferred Principal related to the eleventh (11th) or any subsequent Defined Profit Measurement Period, then the EEDC Loan shall by its terms be modified such that an amount equal to the *lesser of* such Deferred Principal or fifty percent (50%) of real property taxes paid by the Developer attributable to the Project during such Defined Profit Measurement Period will be (a) added to the available credit under the Developer Limited Recourse Loan #2 (and the principal sum of the related note and advances thereunder) (such amount being “Modified Forgivable Amount”) and (b) subtracted from the available credit under the Developer Limited Recourse Loan #1 (and the principal sum of the related note and advances thereunder).
- (b) An interest bearing promissory note of the Developer payable to the order of the EEDC evidencing Developer’s payment obligations related to the Developer Limited Recourse Loan #1 (the “Developer Limited Recourse Note #1”), the principal sum of which as Advanced, together with interest thereon at the rate of five percent (5%) per annum from the date of each such Advance until paid, shall be payable as follows:
 - (i) interest to be payable annually in arrears commencing on the first day of the second calendar month following the first anniversary of the date of Substantial Completion;
 - (ii) principal to be payable annually commencing on the first Principal Payment Date;
 - (iii) principal to be payable in fifteen (15) annual installments (or such other period as may be consented to by DMD), which on a combined basis with annual interest payments shall be approximately equal in amount, *provided that* the principal that is part of each such annual installment shall be subject to deferral as follows (and if so deferred shall be combined with any previously unpaid, deferred principal installments and the next annual principal installment, which shall again on a combined basis be payable or subject to deferral as follows) (with the amount of any such deferred principal at any Principal Payment Date, being referred to as “Deferred Principal”):
 - (A) in its entirety in the event Defined Profit for the applicable Defined Profit Measurement Period shall be less the Defined Profit Floor;
 - (B) as and to the extent that such annual principal installment exceeds 25% of the Defined Profit for the related Defined Profit Measurement Period; and
 - (C) for avoidance of doubt, any unpaid Deferred Principal when added to the current period’s annual installment of principal and

interest will cause the cumulative annual installment payment due on such Principal Payment Date to be more than the originally scheduled equal installment amounts with such higher installment amount then being subject to such deferral tests *provided that* in no event shall the interest component thereof be deferred; and

- (iv) notwithstanding the foregoing, the entire unpaid principal balance of the Developer Limited Recourse Note #1 shall be due and payable upon on earlier of (A) the occurrence of a Developer Event of Default or (B) the fifteenth (15th) anniversary (or such other date as consented to by DMD pursuant to (iii) above) of the first day of the second calendar month following the date of Substantial Completion.
- (c) A non-interest bearing promissory note of the Developer payable to the order of the EEDC evidencing Developer's payment obligations related to the Developer Limited Recourse Loan #2 (the "Developer Limited Recourse Note #2") which is to be forgiven and discharged on the dates and in the amounts as set forth in the schedule in the attached Exhibit F (which is incorporated herein by this reference) if no Developer Event of Default has occurred and is then continuing on such date;
- (d) Mortgages, security interests, guaranties and other collateral interests and rights shall be granted and made securing the EEDC Loan either substantially in form required by the EEDC Loan Agreement or in a substantially same form securing Developer's obligation to Developer Senior Lender as directed by the EEDC by the EEDC Loan Closing ("EEDC Security Documents"); *provided however that* such rights and interests in favor of the EEDC shall be (i) subordinated to any payment obligations related to the Developer Senior Debt as and if agreed to consistent with Section 7.5 herein and (ii) senior to any payment obligations related to Developer Equity.
- (e) The Escrow Agreement.

"Developer Equity" shall mean the equity or mezzanine debt subordinate to the EEDC Loan that together with the EEDC Loan and Developer Senior Debt is sufficient for the construction financing for the Project and the working capital requirements to reasonably operate the Downtown Hotel during the Maintenance Term in a manner required by this Agreement and each Ancillary Developer Agreement, which at minimum shall be sufficient to permit the Developer to (a) meet the aggregate funding requirements demonstrated by the Budget and (b) comply with the Financial Covenants.

"Developer Event of Default" shall have the meaning set forth in Section 6.1(a) herein.

"Developer Limited Recourse Loan #1" shall mean a limited recourse loan through the EEDC in an amount up to _____ Dollars (\$_____) subject to any modification pursuant to Section 4.2(i) or the terms of the EEDC Loan Agreement, payable

to Developer in one or more Advances to pay, or reimburse the Developer for payment of, Direct Costs, which loan is in addition to and distinct from Developer Limited Recourse Loan #2.

“Developer Limited Recourse Loan #2” shall mean a limited recourse loan through the EEDC in an amount up to _____ Dollars (\$_____) subject to any modification pursuant to Section 4.2(i) or the terms of the EEDC Loan Agreement, payable to Developer in one or more Advances to pay, or reimburse the Developer for payment of, Direct Costs, which loan is in addition to and distinct from Developer Limited Recourse Loan #1.

“Developer Limited Recourse Note #1” shall have the meaning set forth in the definition of Developer EEDC Loan Documents.

“Developer Limited Recourse Note #2” shall have the meaning set forth in the definition of Developer EEDC Loan Documents.

“Developer Indemnified Parties” shall mean Developer and its attorneys, affiliates, subsidiaries, partners, directors, managers, officers, agents, employees, mortgagees, successors and assigns, and their respective partners, directors, managers, officers, agents and employees.

“Developer Senior Debt” shall mean an available credit amount of not more than _____ Million Dollars (\$_____) (or such higher amount as consented to by DMD in its discretion) to be provided and made available by the Developer Senior Lender in respect of the original construction of the Project.

“Developer Senior Lender” shall initially mean the Developer’s primary construction lender providing Developer Senior Debt to pay Direct Costs, and any successor lender(s) refinancing such debt.

“Developer Senior Lender Agreements” shall the loan agreements and related ancillary undertakings (including any note, mortgage or other security agreements and financing statements) evidencing and securing the Developer Senior Debt. When submitted to the DMD by Developer, the Developer Senior Lender Agreements will be subject to review and approval by DMD as set forth in Section 3.02(e) herein.

“Direct Costs” shall mean all cost and expense for, incurred or to be incurred by the Developer for the acquisition and preparation of the Project Real Estate (including the payment of the Project Real Estate Purchase Price to the ERC) and for work, labor, services or materials in connection with the Project or the Tower Site, *other than* such fees, costs and expenses incurred by the Developer that are:

- (a) owed, paid or otherwise accruing to the benefit of any Related Party unless approved in writing in advance by DMD as to type and amount;
- (b) financing related payments, fees and costs (including principal amortization, interest payments, commitment fees, placement fees, origination costs, legal and accounting fees, servicer assessments, escrows, or other such similar payments, fees and costs);

- (c) reserves including the FF&E Reserve; or
- (d) related to preconstruction services or costs, legal and accounting fees, servicer assessments, property taxes and escrows, and other non-construction items commonly known as soft costs unless approved in writing in advance by DMD as to type and amount.

“DMD Contact” shall mean Thomas Barnett, as Executive Director of the Department of Metropolitan Development (or his designee as designated from time to time in writing to the Developer), or the successor Executive Director of the Department of Metropolitan Development in the event he is no longer serving in such capacity.

“Downtown Hotel” shall mean a hotel located on the Project Real Estate of a type, quality and specification as required by this Agreement.

“EEDC” shall have the meaning set forth in the Preamble to this Agreement.

“EEDC Loan” shall mean the Developer Limited Recourse Loan #1 and the Developer Limited Recourse Loan #2.

“EEDC Loan Agreement” shall have the meaning set forth in the definition of Developer EEDC Loan Documents.

“EEDC Loan Closing” shall mean the date of funding of the initial Advance.

“EEDC Security Documents” shall have the meaning set forth in the definition of Developer EEDC Loan Documents.

“EEDC/ERC/DMD Event of Default” shall have the meaning set forth in Section 6.2(a) herein.

“EEDC/ERC/DMD Indemnified Parties” shall mean EEDC, ERC and DMD and their representative attorneys, affiliates, commissions, partners, directors, officers, agents, employees, successors and assigns, and their respective partners, directors, managers, officers, agents and employees.

“Effective Date” shall have the meaning set forth in the Preamble to this Agreement.

“ERC” shall have the meaning set forth in the Preamble to this Agreement.

“ERC Project Representative” shall mean an architect or architectural firm, a construction management firm or other independent inspector with significant appropriate experience in the management of construction of the type, size and scope as the Project, who shall be engaged by the ERC (the fees, costs and expenses of which shall be reimbursed to the ERC by Developer), to serve as the qualified, independent inspector for the EEDC, ERC and DMD.

“Escrow Agreement” shall mean an escrow agreement substantially in the form attached hereto as Exhibit K which is incorporated herein by reference.

“FF&E Reserve” shall have the meaning set forth in the definition of Defined Profit.

“Financial Covenants” shall mean the covenants from time to time made by the Developer pursuant to the terms applicable to the Developer Senior Debt, the EEDC Loan and each other Ancillary Developer Agreement which demonstrate the Developer’s financial ability during Maintenance Term to provide for the staffing, management, operation and maintenance of the Downtown Hotel, and the timely payment of Developer’s obligations (including related to the Developer Senior Debt and the EEDC Loan), in a manner required by this Agreement and each of the Ancillary Developer Agreements, which shall include requirements to comply with debt-to-equity ratios, current asset-to-current liability ratios, debt service coverage ratios, reserve requirements (including for working capital, debt service reserves and the FF&E Reserve), restrictions on making any payments or distributions to any Related Party and such other like indices and covenants, all as may be approved by the ERC pursuant to Section 3.2(k) or Section 4.1(n) herein.

“Franchise Agreement” shall mean the Franchise Agreement by and between Developer and Hotel Brand Operator with respect to a Hotel Brand franchise for the Downtown Hotel (for a term that is not less than the Minimum Term unless otherwise agreed by DMD), which shall be in a form approved by DMD.

“Fulfillment Date” shall mean the last date of Maintenance Term.

“Full-Time Employee” or “FTE” shall mean a person employed by the Developer and its subsidiaries during any applicable calendar year of the Maintenance Term of this Agreement, working an average of not less than thirty-five (35) hours per week, whether on an hourly, salaried or other basis at the Developer’s Downtown Hotel facilities.

“Gross Revenues” shall mean all revenues and receipts of every kind derived and obtained by Developer from operating the Downtown Hotel, including: (a) income (from both cash and credit transactions) from the rental of guest rooms, ballrooms, meeting rooms, convention space, telephone charges, stores, offices, exhibit or sales space of every kind; (b) license, lease and concession fees and rentals (not including gross receipts of licensees, lessees and concessionaires); (c) income from vending machines, (d) income from the Downtown Hotel parking garage; (e) health club membership fees; (f) food and beverage sales; (g) wholesale and retail sales of merchandise; (h) service charges; (i) proceeds, if any, from business interruption or other loss of income insurance; (j) any incentive or other fees payable to the Developer (or any Related Party) pursuant to the Franchise Agreement, the Management Agreement, or any other agreement with the Hotel Brand Operator (or any affiliate thereof) including in respect of causing the Downtown Hotel to be Substantially Completed by a specified incentive date; and (k) any other income derived from the ownership, operation, leasing or licensing of all or any part of the Downtown Hotel; *provided that* Gross Revenues shall not include the following: (i) gratuities to employees of the Downtown Hotel; (ii) federal, state or municipal excise, sales or use taxes or any other taxes collected directly from patrons or guests or included as part of the sales price of any goods or services; (iii) proceeds from the sale of furniture, fixtures and

equipment, but only to the extent such sales proceeds exceed amounts previously transferred to the FF&E Reserve; (iv) any refunds, rebates, discounts and credits of a similar nature, given, paid or returned in the course of obtaining Gross Revenues or components thereof; (v) insurance proceeds (other than proceeds from business interruption or other loss of income insurance); (vi) condemnation proceeds (other than for a temporary taking); (vii) any proceeds from any sale or transfer of the Downtown Hotel (or any sale or transfer of any equity interest in Developer or any successor or assign); or (viii) any proceeds from the financing and/or refinancing of any debt encumbering the Downtown Hotel.

“Hotel Brand” shall initially mean the national hotel brand commonly referred to as “_____” and thereafter shall mean a reasonably similar national hotel brand generally considered in the hospitality industry to be an operator of upscale, first class hotels as may from time to time be proposed by the Developer and which is consented to by DMD.

“Hotel Brand Operator” shall mean the owner and operator of the Hotel Brand, which initially means _____.

“Laws” shall mean the local, state and federal codes, laws, ordinances, statutes, rules and regulations.

“Maintenance Term” shall mean the twenty-five (25) year period starting on first day of the calendar month during which the Project is Substantially Completed.

“Management Agreement” shall mean the operating, management, license or other agreement between Developer and the Hotel Brand Operator (for a term that is not less than the Minimum Term unless otherwise agreed by DMD), which shall be in a form approved by DMD.

“Material Change” shall mean a change (or series of related changes) which (a) causes any portion of the Project to fail to materially comply with any applicable codes, laws, ordinances, statutes, rules or regulations or (b) results in a significant modification to the design, location, layout, or appearance of the Project from that approved in the Project Construction Drawings or if there is a material reduction in expenditure from the Budget.

“Minimum Term” shall mean a term that is not less than five (5) years, which initially shall be a term starting on first day of the calendar month during which Project is Substantially Completed and thereafter contemporaneous with the expiration of the prior related term.

“Modified Forgivable Amount” shall have the meaning set forth in the definition of Developer EEDC Loan Documents.

“Negative Covenants” shall mean such restricted transactions and other negative covenants from time to time made by the Developer pursuant to this Agreement and the terms applicable to the Developer Senior Debt, the EEDC Loan and each other Ancillary Developer Agreement, the occurrence of which shall unless consented to by the EEDC, ERC and DMD cause the EEDC Loan then outstanding to be immediately due and payable (and such event shall be deemed to be a Developer Event of Default), which Developer agrees that the EEDC Loan Agreement shall include the covenants so restricting the following transactions:

(a) Any material change in the nature of Developer's business, or the sell, lease, transfer, exchange, or otherwise dispose of all or a substantial part of Developer's properties and/or assets to any person, firm, corporation or other entity except for sales of assets or leases in the ordinary course of business or sales or other dispositions of obsolete assets for fair value;

(b) Any consolidation, merger, acquisition or otherwise combination with any other corporation or other entity undertaken by the Developer;

(c) Any declaration of or payment of any distributions on Developer's shareholder or membership interests; provided, however, that so long as no Developer Event of Default has occurred and is continuing, distributions to Developer's shareholders or members will be permitted subject to the Financial Covenants;

(d) Any consolidation, merger, or entry into any other combination with any person or other entity, whether sale or the transfer of shareholder or membership interest, without the consent of EEDC, ERC and DMD, except that Developer and Developer's shareholders or membership shall not be prohibited from transfers of shareholder or membership interest made (i) for estate planning purposes; (ii) as a result of a shareholder's or members' death; or (iii) between current shareholders so long as: (A) such transfers, in the aggregate, do not result in the shareholders of Developer as of the date hereof holding less than fifty-one percent (51%) of the shareholder interest in Developer; and (B) ERC, EEDC and DMD receives advance notice of such transfer; or

(e) Refinancing of the Developer Senior Loan in an amount that exceeds the principal balance outstanding immediately prior to such refinancing.

"Original Title Commitment" shall mean a commitment for title insurance as issued by the Title Company prior to the Closing.

"Outside Closing Date" shall mean by a date that is the later of (i) sixty (60) days from the Effective Date, or (ii) ten (10) days following written notice from the ERC to the Developer that ERC, EEDC and DMD are ready to proceed with both the EEDC Loan Closing and the Project Real Estate Closing.

"Outside Completion Date" shall mean by December 31, 2012, by which date (a) the Project shall be Substantially Completed, and (b) the Downtown Hotel shall have commenced business operations including lodging guests, unless otherwise agreed by DMD.

"Preliminary Project Plan" shall mean the preliminary design drawings, the preliminary plans and specifications and the Budget for the redevelopment and construction of the Project, as submitted as of the Submission Date to the DMD by Developer.

"Principal Payment Date" shall mean on the first day of the second calendar month following the first anniversary of the date of Substantial Completion and annually thereafter.

"Project" shall have the meaning set forth in the Recitals to this Agreement.

“Project Commencement Date” shall mean as soon as reasonably practicable within thirty (30) days after the Closing.

“Project Construction Contract” shall mean the construction agreements with each Contractor for the redevelopment, construction and acquisition of the Project, as submitted prior to the Closing to the DMD by Developer (or as approved by DMD when submitted by Developer after the Closing). Each Project Construction Contract submitted prior to the Closing will be subject to review and approval by DMD as set forth in Section 3.02(c) herein.

“Project Construction Drawings” shall mean the architectural plans and specifications prepared by the Project Engineer for the Project, which plans and specifications shall be referenced in each Project Construction Contract and be based upon, and conform in all material respects to, the Preliminary Project Plan, as the same may be amended as contemplated herein.

“Project Engineer” shall mean _____.

“Project Labor Agreement” shall have the meaning set forth in Section 2.9 herein.

“Project Real Estate” shall have the meaning set forth in the Recitals to this Agreement.

“Project Real Estate Closing” shall mean the date of sale, purchase and transfer of the Project Real Estate pursuant Section 3.3 herein.

“Project Real Estate Documents” shall mean the following:

- (a) a duly executed Limited Warranty Deed conveying fee simple title to Project Real Estate, subject to (i) the lien of non-delinquent real estate taxes and assessments, (ii) easements, covenants, conditions, restrictions and rights-of-way of record, (iii) all matters created, permitted or suffered by Developer, (iv) the Title Matters, (v) the Restrictive Covenant Agreement and (vi) all other matters disclosed in the Original Title Commitment;
- (b) a duly executed bill of sale conveying merchantable fee simple title to the personal property components of the Project Real Estate to Developer;
- (c) a duly executed vendor's affidavit in form and substance that is sufficient for the Title Company to delete its standard exceptions from the Title Commitment;
- (d) a duly executed non-foreign affidavit in form and substance required by the Internal Revenue Code;
- (e) an Indiana Sales Disclosure Form in form and substance required by Indiana law;
- (f) the Restrictive Covenant Agreement; and
- (g) any and all other documents contemplated by this Agreement or necessary to consummate the sale of Project Real Estate.

“Project Real Estate Purchase Price” shall mean an amount equal to _____ Dollars (\$_____).

“Proportionate” shall mean in respect of any Direct Costs to be paid with an Advance, a fraction of such Direct Costs, the numerator of which shall be _____ Dollars (\$_____) and the denominator of which shall be the Proposed Investment Amount *less* the Approved Equity Expenditures; *provided that* such proportion shall be maintained unless otherwise consented by DMD.

“Proposed Investment Amount” shall mean an amount equal to _____ Dollars (\$_____), which amount is the aggregate Direct Costs (including any Approved Equity Expenditures) reflected in the initial Budget excluding the Project Real Estate Purchase Price.

“Related Party” shall mean with respect to Developer: (i) any Person that directly or indirectly controls, is controlled by, or is under common control with Developer; (ii) any Person that directly or indirectly owns or controls Five Percent (5%) or more of any class of equity securities of Developer; (iii) any Person (including any of their immediate family members) that has contributed cash or in-kind goods or services constituting part of Developer Equity which aggregates One Hundred Thousand Dollars (\$100,000) or more; (iv) any Person of which Developer owns or controls Five Percent (5%) or more of any class of equity securities related to the Developer; (v) any Person that is an officer of Developer; (vi) _____ and any of his/her/their immediate family members; and (vii) any Person that directly or indirectly controls, is controlled by or is under common control with any Person described in clauses (iv) through (vi). For purposes of this definition, the term “controls” (including the term “controlled by” and “under common control with”) means the direct or indirect ability or power to direct or cause the direction of management policies of a Person, or otherwise direct the affairs of such Person, whether through ownership of equity, voting securities, beneficial interests, by contract or otherwise. The term “Person” used herein shall mean any person, partnership or entity.

“Restrictive Covenant Agreement” shall mean an agreement imposing covenants on real estate substantially in the form attached hereto as Exhibit L which is incorporated herein by reference.

“Skybridge” shall mean physical above-ground pedestrian walkway connections between the Downtown Hotel and the Convention Center and between the Downtown Hotel and the Downtown Arena (as set forth in the Preliminary Project Plans).

“Skybridge Agreement” shall mean a skybridge construction, easement and operation agreement in a form to be agreed to by and among the Developer, ERC, and the owners of the Convention Center and the Downtown Arena.

“Substantial Completion” or “Substantially Completed” shall mean the Project Engineer's certification to DMD and Developer in writing that the Project is substantially complete in accordance with the Project Construction Contracts and the Project Construction Drawings and is compliant with all applicable codes, statutes, ordinances, laws, rules and regulations.

“Suitability Assessment” shall mean such studies, due diligence and other activities determined by the Developer to be sufficient for it to make the determination that the condition precedent set forth in Section 3.3(b) herein has been met (or is otherwise waived by the Developer), as evidenced by its consummation of the Project Real Estate Closing.

“Tax Increment Revenues” shall mean the incremental tax revenues available to the ERC from the TIF Area pursuant to the ERC Act.

“Tax Phase-in” shall mean the granting by the City of a ten (10) year tax abatement for the real property of the Developer containing the Project as described in Indiana Code § 6-1.1-12.1-1, *et Seq.*

“Term” shall have the meaning set forth in Article II of this Agreement.

“TIF Area” shall mean the Downtown Redevelopment Area and the corresponding allocation area as established and amended from time to time by the ERC.

“TIF Bonds” shall mean obligations issued by the EEDC to provide funds for the EEDC Loan that are supported by EEDC Loan payments together with Tax Increment Revenues pledged by the ERC, all pursuant to revenue bonds, in substantially the forms attached to this Agreement as Exhibit H, which is incorporated herein by reference.

“Title Company” shall mean Hamilton Title Security LLC or such other title insurance company as the Developer and the DMD may reasonably agree to.

“Title Matters” shall mean those matters and interest as more particularly described in Exhibit I attached hereto and incorporated herein by reference, which Developer has agreed to (a) accept title to the Project Real Estate subject to them and (b) terminate or modify such in a manner that will permit the Developer to carry out its obligations under this Agreement on a timely basis.

“Tower Site” shall mean the real property immediately across Walnut Street from the Project Real Estate, as more particularly described in Exhibit J attached hereto and incorporated herein by reference, which contains the remainder of the hotel improvements formerly known as the Executive Inn in downtown Evansville.

“Tower Site Work Period” shall mean a period of not more than sixty (60) days commencing on the day after the giving of the Tower Site Commencement Notice; *provided that* such period shall toll for any day that a Tower Site Work Cessation Notice is in effect for more than one (1) hour.

“Tower Site Commencement Notice” shall have the meaning set forth in Section 2.11 herein.

“Tower Site Work Cessation Notice” shall mean a verbal or written notice given by the DMD Contact to the Developer Contact requesting a temporary cessation of Tower Site work as commenced pursuant to Section 2.11 herein, which notice shall (a) specify the date and hour as of which such cessation goes into effect and the length of such cessation, (b) specify the date and hour such cessation is no longer in effect after which the Developer may resume such Tower Site work pursuant to Section 2.11 herein and (c) be given no less than twenty-four (24) hours in advance of the time set for such cessation pursuant to the foregoing clause (a).

“Unavoidable Delay” shall mean any delay beyond the reasonable control of a party, including but not limited to a delay resulting from acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, material shortages, labor shortages, freight embargoes or unusually severe weather. The party claiming Unavoidable Delay shall notify the other party to this Agreement in writing within ten (10) days of knowledge that an event will give rise to the Unavoidable Delay.

“Zoning Excess Parking Spaces” shall mean a number of parking spaces related to the Project that are controlled by the Developer and are in excess of the Zoning Minimum Parking Spaces.

“Zoning Minimum Parking Spaces” shall mean such minimum number of parking spaces that are required to service the Downtown Hotel pursuant to applicable local zoning requirements.

Section 1.03. Interpretation.

(a) The terms “herein”, “hereto”, “hereunder” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article, Section or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section ____” or “Article ____” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit ____” or “Schedule ____” shall be deemed to refer to the Exhibit or Schedule of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, Schedules and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to”.

Section 1.04. Parties. The Developer understands and agrees that it has entered into this Agreement with the ERC and DMD as of the Effective Date, prior to the City Approvals required for the EEDC to become a party to this Agreement and its being able to perform the obligations of the EEDC set forth in this Agreement. The Developer, ERC and DMD understand and agree that the EEDC is not a party to this Agreement as of the Effective Date but intend that following its required City Approvals, the EEDC will join this Agreement as a Party when and if the EEDC executes and delivers the Joinder or all the Parties otherwise execute an amendment to this Agreement, and until such a Joinder or amendment is so authorized, executed and delivered, the Developer, ERC and DMD desire that this Agreement be their valid and binding agreement notwithstanding that such Parties would expect to terminate this Agreement prior to any Closing in the event the EEDC were to not become a party to this Agreement prior to the Outside Closing Date.

ARTICLE II.

DEVELOPMENT

Section 2.1 Term. The term of this Agreement shall be for the period commencing on the Effective Date and continuing through the Fulfillment Date (the “Term”). Except as otherwise indicated, the terms and conditions set forth in this Agreement shall continue throughout, but otherwise expire at the end of the Term of this Agreement.

Section 2.2 Project Description and Cost. Subject to the terms and conditions of this Agreement and after the Closing, Developer shall cause the Project to be acquired and constructed upon the Project Real Estate as follows:

(a) The Downtown Hotel shall include a (not less than) 220 guest room hotel that is properly licensed under the Hotel Brand. Upon Substantial Completion of the Downtown Hotel, Developer shall install all equipment, fixtures and furniture necessary for the Downtown Hotel to be operated as an upscale, first class Downtown Hotel as required by this Agreement.

(b) The Downtown Hotel shall include on-site parking (or parking on property owned by the Developer on an adjoining block) with a minimum of 305 parking spaces.

(c) The Project shall be designed and constructed to accommodate (i) cellular antennae operating on the Project Real Estate, if any, as designated by DMD and (ii) a Skybridge to be connected to the Downtown Hotel at a location and elevation approved by DMD that is consistent with Section 2.8 herein.

Section 2.3 Construction of the Downtown Hotel. Subject to the terms and conditions of this Agreement and as of and after the Closing, Developer shall, at its cost and expense, diligently:

(a) enter into all material Project Construction Contracts with only qualified Contractors, whose performance obligations under each such Project Construction Contract shall be secured by a performance bond consented to by DMD;

(b) commence construction of the Downtown Hotel by the Project Commencement Date and shall proceed diligently to Substantial Completion without undue delay;

(c) construct the Downtown Hotel upon the Project Real Estate in substantial accordance with this Agreement, the Preliminary Project Plans, the Budget and all applicable Laws;

(d) use commercially reasonable efforts to obtain all required permits and approvals (including related to zoning) for the Project in a timely manner; and

(e) enforce each Project Construction Contract against each Contractor in accordance with the terms and provisions thereof.

(f) reimburse the ERC, upon its request, for the fees, costs and expenses of the ERC Project Representative.

Section 2.4 Site and Preconstruction Work and Matters. Subject to the terms and conditions of this Agreement and immediately after the Effective Date, Developer may, at its cost and expense:

(a) and in furtherance of obligations under Section 4.1(k) herein, enter upon the Project Real Estate and cause (i) all improvements located on, in, over or under Project Real Estate to be demolished and disposed of in accordance with applicable Law and the reasonable requirements of the ERC and DMD, (ii) the remediation of any contamination on, in, around or about Project Real Estate in accordance with applicable Law and the reasonable requirements of the ERC and DMD, and (iii) if the Closing shall not occur by Outside Closing Date, at DMD's request, the Project Real Estate to be restored to grade level with clean fill and otherwise in accordance with applicable Law and the reasonable requirements of the ERC and DMD; *provided that* prior to entering such site, Developer shall secure for the benefit of the ERC and DMD performance bonds and liability insurance consented to by DMD. To effectuate the foregoing, upon seven (7) days notice from Developer of its commitment to commence the foregoing site and preconstruction Work, the Developer shall request and the ERC shall deliver a duly executed Construction Easement with respect to the Project Real Estate.

(b) Negotiate a termination or other resolution to any existing interest or right in respect of the Title Matters which in the reasonable judgment of Developer, with the consent of the DMD, will permit the Developer to undertake the Project without restriction or interference resulting from any such Title Matter; *provided that* in the event that any such matter involves physical work related to such actions, then prior to entering such site for such purposes, Developer shall secure for the benefit of the ERC and DMD performance bonds and liability insurance acceptable DMD. To effectuate the foregoing, after seven (7) days notice from Developer, the ERC shall either deliver a duly executed related instruments proposed by Developer or DMD shall inform Developer why such proposed instruments are unacceptable to the ERC or DMD. Nothing in such instruments shall obligated the ERC or DMD to pay, grant or otherwise transfer any

consideration in respect of the Title Matters regardless of whether the Closing or the Project occurs.

Notwithstanding the foregoing, the ERC may, but is not obligated to, undertake all or a portion of the work and actions set forth in this Section and in the event so undertaken by ERC or DMD, the actual costs and expenses incurred in respect of taking such work or actions shall reduce the maximum amount of the Developer Limited Recourse Loan #2 to be provided by the EEDC by a corresponding amount.

Section 2.5 Substantial Completion of the Downtown Hotel. Developer shall achieve Substantial Completion of the Downtown Hotel on or before Outside Completion Date. Within thirty (30) days after Substantial Completion, Developer shall provide the City with an update of the Budget, and within one year after Substantial Completion, Developer shall provide the City with a final update of the Budget, based upon actual costs incurred and paid. The Downtown Hotel shall be ready to open for business to the general public on or before Outside Completion Date.

Section 2.6 Changes to Construction. Developer may revise the Preliminary Project Plan. The Developer shall, if it is a not Material Change, notify the DMD and the DMD shall be deemed to have approved such change (*provided that* such change is not a violation of Laws or contrary to this Agreement). Other changes to the Preliminary Project Plan requested but constituting a Material Change shall be subject to the approval of the DMD, which approval shall not be unreasonably withheld. Changes to the exterior design of the Project shall be consented to by DMD.

Section 2.7 Construction Oversight; Meetings. The Developer Contact shall be available to meet with the DMD Contact (or his designee) and the ERC Project Representative as part of the regularly scheduled development and construction meetings to discuss the progress of the Project and to address any issues and/or complications which may arise, from time to time, during the development and construction process. Developer shall give the ERC Project Representative access to, and Developer shall promptly respond to information requests by the ERC Project Representative relating to or involving, monthly financial statements of the Developer, Project budget information (including presenting actual cumulative expenditures to date against each category of expenditure presented in the Budget), supporting detail related to any Advance previously submitted or requested, progress meetings with Contractors and such other records and information as reasonably relates to (a) the Project, the Budget, the Preliminary Project Plan and the Project Construction Drawings or (b) Developer's compliance with this Agreement and any Ancillary Developer Agreement. In addition the Developer shall give the ERC Project Representative access to all work sites related to the Project (including Project Real Estate and the Tower Site), and shall not hinder or restrict the frequency, scope or content of any communications by the ERC Project Representative to the EEDC, the ERC or the DMD.

Section 2.8 Skybridge Connection to the Convention Center and the Downtown Arena. If requested by DMD, Developer shall permit, grant easements and other take reasonable means and actions to assist with the design and construction of a Skybridge at no charge to the Developer, *provided that* Developer shall not be reimbursed for any costs Developer, at its election, may incur in connection with its undertaking any such actions. Each Ancillary

Developer Agreement shall expressly permit Developer, if so requested by DMD, to enter into the Skybridge Agreement. Nothing in this Section shall obligate the ERC, DMD, or EEDC to enter into a Skybridge Agreement or otherwise design, construct or maintain a Skybridge; any such obligation shall only be established and determined pursuant to a Skybridge Agreement, if and when such is entered into by the ERC, DMD, or EEDC.

Section 2.9 Project Labor Agreement. Developer agrees to enter into a Project Labor Agreement with local construction employee organizations including the Southwestern Indiana Building and Construction Trades Council and the Affiliated Building and Construction Trades (relative to construction of the Project on the Project Real Estate) in a form reasonably satisfactory to the DMD, the terms of which will (a) require the use of local workforce to the extent available and to the extent that the obligation is reasonable and (b) prohibit strikes and other labor management discord in connection with the Project.

Section 2.10 Commitments. Developer shall diligently and in good faith use commercially reasonable efforts to achieve participation of minorities and women both through minority business enterprise and women business enterprise participation and work force utilization goals adopted for the construction of the Project which are as follows:

(a) 14% minority business enterprise owned and work force utilization participation as certified by the State of Indiana or the City; and

(b) 7% women business enterprise owned and work force utilization participation as certified by the State of Indiana or the City.

Developer shall diligently and in good faith use commercially reasonable efforts to attempt to utilize Contractors (including third party sub-contractors) which have a significant preexisting presence in the City with regard to the Project.

Section 2.11 Tower Site Work. Subject to the terms and conditions of this Agreement, Developer shall enter upon the Tower Site during the Tower Site Work Period and cause at its cost and expense the following to be completed by no later than the end of the Tower Site Work Period: (i) all improvements located on, in, over or under the Tower Site to be demolished and disposed of in accordance with applicable Law and the reasonable requirements of the ERC and DMD, (ii) the remediation of any contamination on, in, around or about the Tower Site in accordance with applicable Law and the reasonable requirements of the ERC and DMD and (iii) the Tower Site to be restored to grade level with clean fill and otherwise in accordance with applicable Law and the reasonable requirements of the ERC and DMD; *provided that* prior to entering such site (a) DMD shall give notice to the Developer that the ERC and DMD direct the Developer to undertake and commence the foregoing site work ("Tower Site Commencement Notice") and (b) Developer shall secure for the benefit of the ERC and DMD performance bonds and liability insurance consented to by DMD; and *provided further that* from time to time after entering such site for such purposes, for any period set forth in a Tower Site Work Cessation Notice Developer shall cause the foregoing site work to be temporarily ceased. To effectuate the foregoing, upon seven (7) days notice from Developer of its commitment to commence the foregoing site work, the Developer shall request and the ERC shall deliver a duly executed Construction Easement with respect to the Tower Site. Notwithstanding the foregoing, the ERC

may, but is not obligated to, undertake the actions set forth in this Section and in the event so taken by ERC or DMD, the actual costs and expenses incurred in respect of taking such actions shall reduce the maximum amount of the Developer Limited Recourse Loan #2 to be provided by the EEDC by a corresponding amount.

Section 2.12 Developer Fee. Developer shall pay to ERC, and the ERC hereby acknowledges receipt of, an amount equal to Fifty Thousand Dollars (\$50,000) upon the execution of this Agreement to defray costs incurred by the ERC related to the transactions contemplated herein.

ARTICLE III.

EEDC LOAN AND

SALE OF PROJECT REAL ESTATE

Section 3.1 Purchase and Sale of Project Real Estate; Closing.

(a) The Project Real Estate Closing and EEDC Loan Closing shall occur on or before thirty (30) days after satisfaction of the contingencies set forth in Sections 3.2 and 3.3 herein but not later than the Outside Closing Date, at the offices of Bradley J. Salmon, Terrell, Baugh, Salmon & Born, LLP, 700 S. Green River Rd., Ste. 2000, Evansville, IN 47715, or at such other place as consented to by the DMD Contact and Developer.

(b) At the Project Real Estate Closing, Developer shall purchase the Project Real Estate from the ERC and the ERC shall sell and transfer the Project Real Estate to the Developer. At the Project Real Estate Closing, Developer shall pay ERC an amount equal to the Project Real Estate Purchase Price in cash or by wire transfer, without credits, reductions and proration, as the purchase price for Project Real Estate. The ERC shall cause to be delivered to the Developer the Original Title Commitment at least ten (10) days prior to the Closing.

(c) Unless otherwise agreed by the ERC, EEDC and Developer, the Closings shall occur simultaneously. ERC, EEDC and/or Developer agree to deliver to each other, at the Closing, as applicable and in accordance with the terms of this Agreement, the following:

1. a certified copy of Developer's _____ and a certificate from the Indiana Secretary of State evidencing that Developer is duly organized and in existence under the laws of the State of _____;

2. a satisfactory resolution of Developer evidencing the authority of Developer to enter into and comply with the terms and conditions of this Agreement and to execute the documents described herein, and the authority of the person signing this Agreement and the documents described herein and to consummate the transactions contemplated by this Agreement on behalf of Developer;

3. satisfactory resolutions of the EEDC, ERC and DMD evidencing the authority of EEDC, ERC and DMD to enter into and comply with the terms and conditions of this Agreement and to execute the documents described herein, and the

authority of the persons signing this Agreement and the documents described herein and to consummate the transactions contemplated by this Agreement on behalf of EEDC, ERC and DMD;

4. satisfactory City Approvals including as necessary to enter into and comply with the terms and conditions of this Agreement and to execute the documents described herein, and the authority of the persons signing this Agreement and the documents described herein and to consummate the transactions contemplated by this Agreement on behalf of EEDC, ERC and DMD; and

5. all other documents and/or instruments as are reasonably customary or appropriate to complete the transactions contemplated by this Agreement (including the Developer EEDC Loan Documents and the Project Real Estate Documents) or are otherwise agreed to by EEDC, ERC or DMD and Developer.

All of the documents and instruments required pursuant to this Section (or otherwise in connection with the consummation of the transactions contemplated by this Agreement) shall be in form and substance as herein required (or if not so delineated, then as reasonably satisfactory to EEDC, ERC, DMD and Developer).

Section 3.2 Conditions of EEDC Loan. The obligation of the EEDC to issue the TIF Bonds (and enter into with the EEDC Loan Agreement with the Developer, and to fund the EEDC Loan to the Developer thereunder) pursuant to this Agreement are expressly subject to the satisfaction of the following conditions precedent by the EEDC Loan Closing:

(a) Developer shall have delivered to DMD copies of the Preliminary Project Plan and DMD shall have approved the same. Any and all Material Changes to the Preliminary Project Plan, whether made before or after the EEDC Loan Closing, must be approved in writing by DMD;

(b) Developer shall have reimbursed ERC for all ERC Project Representative fees, costs and expenses on a timely basis;

(c) Developer has delivered to DMD copies of the Project Construction Contracts (and related performance bonds) with respect to Project and the DMD has approved the same. Any and all Material Changes to a Project Construction Contract, whether made before or after the EEDC Loan Closing, must be approved in writing by DMD;

(d) Developer has made available to DMD for review and DMD has approved the Budget. Any and all Material Changes to the Budget, whether made before or after the EEDC Loan Closing, must be approved in writing by DMD;

(e) Developer has delivered to DMD copies of the Developer Senior Lender Agreements and the DMD has approved the same. Any and all changes to the Developer Senior Lender Agreements, whether made before or after the EEDC Loan Closing, must be approved in writing by DMD, which approval shall not be unreasonably withheld;

(f) Developer provides evidence, reasonably satisfactory to the DMD, of Project funding from the Developer Senior Debt in the amount of _____ Dollars (\$_____) and from the Developer Equity in the amount of at least _____ Dollars (\$_____) *less* the Approved Equity Expenditures, which Developer shall cause to be deposited under the Escrow Agreement, *provided that* if the Developer Senior Lender does not permit such proceeds of the Developer Senior Debt to be so deposited in such escrow created by the Escrow Agreement on the EEDC Loan Closing, then such proceeds of the Developer Senior Debt may be disbursed by the Developer Senior Lender to pay Direct Costs on a basis similar to Advances and Developer Equity as disbursed from such escrow pursuant to the Developer Senior Lender Agreements.

(g) Developer has delivered to DMD a copy of the approval of Hotel Brand Operator to this Development Agreement, the Developer Senior Debt, the EEDC Loan, the Developer Equity, the Preliminary Project Plan and each Ancillary Developer Agreement as and to extent that such is necessary under the Management Agreement or the Franchise Agreement;

(h) Developer, at its cost and expense, shall have obtained (or determined, in its reasonable discretion, that it shall be able to obtain) all necessary governmental and private approvals/permits and tests required for the redevelopment and construction of the Project;

(i) Receipt by EEDC of a loan, in the form of the TIF Bonds issued by EEDC and purchased by the Bond Bank, in an amount sufficient to meet the EEDC obligations to make Advances pursuant to the EEDC Loan;

(j) The ERC shall have enacted a resolution providing for a pledge of Tax Increment Revenues to the TIF Bonds; and

(k) The ERC shall have approved the Financial Covenants and the Negative Covenants applicable to the Developer Senior Debt and the EEDC Loan as set out in the Loan Agreement and the Developer Senior Lender's loan agreement; and

(l) Developer has made available to DMD for review and DMD has approved the Management Agreement and the Franchise Agreement. Any and all Material Changes to the Management Agreement or the Franchise Agreement, whether made before or after the EEDC Loan Closing, must be approved in writing by DMD;

(m) Consummation of the Project Real Estate Closing.

Section 3.3 Conditions of Project Real Estate Closing. The obligation of the ERC to sell and the Developer to purchase the Project Real Estate pursuant to this Agreement are expressly subject to the satisfaction of the following conditions precedent by the Project Real Estate Closing:

(a) Developer has paid to ERC an amount equal to the Project Real Estate Purchase Price in cash or by wire transfer, without credits, reductions and proration, as the purchase price for Project Real Estate;

(b) Developer, at its cost and expense, shall have determined, in its sole discretion, that: (i) there are no conditions existing on or with respect to the Project Real Estate or title thereto which would adversely affect Developer's intended use or development of the Project Real Estate or require unusually costly development techniques; (ii) all utilities necessary or appropriate for Developer's intended use and development are available at, or can be extended to, the property lines in sufficient quantities, pressures and/or capacities for Developer's intended use and development, without hookup, tap-in or other charges, excepting only nominal charges normally incurred and charged by the applicable utility providers; (iii) the Project Real Estate has not been contaminated by any hazardous or special wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations) and there are no conditions existing on or near the Project Real Estate that may give rise to any future civil, criminal or administrative environmental proceedings or investigations with respect to the Project Real Estate or ERC's use thereof or which require remediation or other curative actions in excess of available amount described in the Budget; and (iv) the Project Real Estate will permit Developer's intended use, development and operation of the Project Real Estate;

(c) ERC, at its cost and expense, shall have delivered to Developer the Project Real Estate Documents;

(d) Developer, at its cost and expense, shall obtain a final title policy from Title Company confirming ownership of the Project Real Estate in the name of Developer consistent with the Original Title Commitment;

(e) Developer, at its cost and expense, has entered into the Project Labor Agreement with respect to Project;

(f) Developer and ERC have entered into the Restrictive Covenant Agreement; and

(g) Consummation of the EEDC Loan Closing.

Section 3.4 Conditions Precedent to an Advance. EEDC's obligation to disburse an Advance shall be subject to and conditioned upon the consummation of the EEDC Loan Closing and satisfaction of the following conditions (which obligation may be assigned to a third party escrow agent holding the proceeds of the TIF Bonds in which case such conditions will still apply along with any additional requirements contained in the applicable resolutions and agreements pursuant to which such TIF Bonds are issued and purchased by the Bond Bank):

(a) Receipt of evidence reasonably satisfactory to DMD that the conditions of EEDC Loan set forth in Section 3.2 herein has been, and continues to be at the time of such Advance, satisfied in all material respects;

(b) Developer shall have obtained (or determined, in its reasonable discretion, that it shall be able to obtain, at Developer's expense (but still considered a Direct Cost), all necessary governmental and private approvals/permits and tests required for the redevelopment and construction of the Project related to the Advance;

(c) To the extent the Advance is related to acquisition of the Project Real Estate, the Developer shall deliver a title commitment from Title Company confirming ownership of the Project Real Estate, or portion thereof related to an Advance, in the name of Developer or a subsidiary of the Developer consistent with perfecting any interest under EEDC Security Documents.

(d) Evidence that no mechanics' or materialmen's liens on the Project shall have been filed prior to the date hereof or of any disbursement or, if filed, have been insured over or bonded;

(e) Receipt of a request for an Advance from the Developer certifying such Advance (i) shall be used for payment of or reimbursement of Direct Costs and that such Direct Costs have not been the subject of any prior request for an Advance and (ii) is Proportionate with the other Project funding sources as identified herein unless otherwise consented to by DMD;

(f) A current certificate of the ERC Project Representative or Project Engineer indicating that there have been no Material Changes from the Preliminary Project Plan with respect to the Project completed to date, if any;

(g) If requested by EEDC or DMD, photographs, certified by Developer, indicating the work performed to date;

(h) Developer shall have delivered to EEDC or DMD a schedule showing the amount of the Budget expended to date by line item category; and

(i) No Developer Event of Default shall have occurred.

EEDC shall have no obligation to disburse any Advance until such time as it, in its reasonable discretion, shall determine that each of these conditions has been met and continues to be met by Developer, or such conditions have been waived in writing by EEDC.

Section 3.5 Failure to Satisfy Conditions. If any condition set forth in Section 3.2, 3.3 or 3.4 herein is not timely satisfied (or otherwise not waived in writing by the party benefited thereby) in all material respects on or before the applicable date for each such condition, or if the Closing has not occurred on or before the Outside Closing Date, for any reason whatsoever, then EEDC, ERC, DMD and Developer shall enter into discussions for a period of thirty (30) days regarding the Project and the reason for any such delay. After the expiration of said 30-day period, if one or more of such conditions have not then been satisfied in all material respects, EEDC, ERC and DMD may in their sole and absolute discretion, terminate this Agreement (except for those rights and obligations which expressly survive the expiration or termination of this Agreement). Notwithstanding any provision of this Agreement to the contrary, any costs or expenses incurred by Developer prior the Closing shall be borne as the sole cost and expense of the Developer.

ARTICLE IV.

REPRESENTATIONS AND COVENANTS

Section 4.1 Representations and Covenants of Developer. Developer represents and covenants to EEDC, ERC and DMD that:

(a) Developer is a _____ duly organized and existing under and subject to the laws of the State of _____, and is fully qualified to do business in the State of Indiana. Developer has all requisite power and authority to enter into and deliver this Agreement and any and all related agreements and documents and to comply with and fulfill the terms and conditions of this Agreement and any and all related agreements. The execution and delivery of this Agreement and any and all related agreements by Developer and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on behalf of Developer. This Agreement constitutes, and the related agreements when executed will constitute, legal, valid and binding obligations of Developer, enforceable in accordance with their respective terms and conditions.

(b) The Developer has all requisite power and authority to enter into and deliver this Agreement and to comply with and fulfill the terms and conditions of this Agreement. The execution and delivery of this Agreement by the Developer and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on behalf of the Developer. This Agreement constitutes legal, valid and binding obligations of the Developer, enforceable in accordance with the terms and conditions hereof, but limited to the express representations and covenants of Developer made in this Section.

(c) The Developer Contact shall be available to meet with the DMD Contact (or his designee) and the ERC Project Representative on a regularly scheduled basis to discuss the progress of the Project and any controversies and/or complications which arise, from time to time, during the development and/or construction process.

(d) Developer shall obtain all required zoning clearances, permits, reviews, licenses, actions and approvals, and meet all requirements of all local, state and federal authorities, laws and regulations necessary to complete the construction of the Project.

(e) Developer will not enter into any contracts or undertakings which would limit or conflict with its obligations under, or constitute a breach of, this Agreement or any related agreements between or among the Developer and the ERC, EEDC or DMD.

(f) The execution and delivery of this Agreement and any and all related agreements and the consummation of the transactions herein and therein contemplated will not conflict with or constitute a breach or default under Developer's _____ or By-Laws or the material provisions of any bond, debenture, note or any other evidence of indebtedness, loan agreement, lease or other contract to which Developer is a party or by which it is bound, the breach of which would have a material adverse effect on Developer or affect Developer's ability to perform its obligations under this Agreement or any related agreements, or to the best of its actual knowledge, violate any law, regulation or order of the United States of America, or the

State of Indiana or any agency or political subdivision thereof or any court order or judgment in any proceeding to which Developer is or was a party or by which it is bound.

(g) The execution and delivery of this Agreement and any and all related agreements and the consummation of the transactions herein and therein contemplated will not conflict with or constitute a breach or default under the Developer's governance documents or the material provisions of any bond, debenture, note or any other evidence of indebtedness, loan agreement, lease or other contract to which the Developer is a party or by which the Developer is bound, the breach of which would have a material adverse effect on the Developer or affect the Developer's ability to perform its obligations under this Agreement or any related agreements, or to the best of Developer's actual knowledge, violate any law, regulation or order of the United States of America, or the State of Indiana or any agency or political subdivision thereof or any court order or judgment in any proceeding to which the Developer is or was a party or by which it is bound.

(h) There is no action, suit, proceeding or investigation, at law or in equity, or by or before any United States court, arbitrator, administration agency or other federal, state or local governmental authority, pending or, to the actual knowledge of Developer, threatened against Developer, wherein an unfavorable decision, ruling or finding would have a material adverse effect on the validity of this Agreement or a material adverse effect on the transactions contemplated hereby.

(i) Developer is and shall remain, in compliance with existing laws of the State of Indiana and the Revised Code of Evansville and Vanderburgh County, Indiana, regarding prohibition of discrimination in employment practices on the basis of race, color, national origin, sex, religion or handicap.

(j) Developer will comply with all of its covenants, duties and obligations hereunder and will use commercially reasonable efforts to satisfy the remaining unsatisfied conditions set forth in Sections 3.2 and 3.3 herein.

(k) Developer shall be responsible for any and all costs related to demolition and disposal of existing structures (including below grade structures and debris), environmental assessment, environmental contamination and environmental remediation, infrastructure and utility improvements, design, redevelopment and construction of the Project. Developer shall be responsible for its own Suitability Assessment related to the Project Real Estate and Developer agrees that notwithstanding the provision of any prior environmental assessment report or other work product pertaining to the Project Real Estate by any agent or employee of the ERC, EEDC or DMD to the Developer, no representation has been given or made by ERC, EEDC or DMD to the Developer regarding any such matters whether related to environmental contamination, environmental remediation or otherwise.

(l) Except as otherwise undertaken by ERC or DMD pursuant to Section 2.11 herein, Developer shall be responsible for any and all costs related to demolition and disposal of existing structures (including below grade structures and debris), environmental assessment, and environmental contamination and environmental remediation related to the Tower Site.

(m) Developer assumes and agrees to pay (a) all assessments for improvements becoming a lien against Project Real Estate after the Project Real Estate Closing Date, (b) the real estate taxes first due and payable with respect to Project Real Estate after the Project Real Estate Closing Date and (c) the fees and expenses of the ERC Project Representative.

(n) Developer will comply with all of its Financial Covenants and Negative Covenants notwithstanding (and without taking into account the effect of) any extension, waiver or modification approved or granted by the Developer Senior Lender, the EEDC or another party to any Ancillary Developer Agreement in which such Financial Covenants and Negative Covenants are contained. After the Closing, the ERC shall approve any extension, waiver or modification to any of the Financial Covenants or the Negative Covenants (and Developer's compliance with each such requirement).

(o) Developer shall indemnify and hold harmless the EEDC/ERC/DMD Indemnified Parties from all actual costs, damages and expenses, including but not limited reasonable attorneys' fees, incurred by the EEDC/ERC/DMD Indemnified Parties as a result of claims made by third parties relating to environmental assessment, past or present environmental contamination, or environmental remediation of the Project Real Estate.

(p) Developer shall indemnify and hold harmless the EEDC/ERC/DMD Indemnified Parties from all actual costs, damages and expenses, including but not limited reasonable attorneys' fees, incurred by the EEDC/ERC/DMD Indemnified Parties as a result of claims made by third parties relating to or resulting from the inaccuracy of any representation or the failure of any covenant set forth herein in any material respect.

(q) Developer agrees to be solely responsible to provide or arrange for any Developer Senior Debt or Developer Equity that may be required beyond the EEDC Loan to complete the work relating to the Project and other funding needs of the Developer during the Maintenance Term.

(r) All of Developer's representations and covenants set forth in this Section (except as otherwise indicated) shall survive for the Term of this Agreement. If any Developer representation or covenant set forth herein is breached in any material respect during the Term of this Agreement, then the indemnity rights set forth in this Section shall survive with respect to such breach until the date such material breach is cured.

(s) Developer shall, prior to the issuance of the TIF Bonds, deliver to the reasonable satisfaction of the DMD, evidence, through the use of the Statement of Benefits form (Form SB-1 or equivalent) that describes the new FTE's to be created by the Downtown Hotel and the minimum capital investment resulting from the Project.

(t) Developer shall be solely liable and responsible for any consequence, cost or expense (including taxes, penalties and interest) that in any way results from (or is otherwise related to) the EEDC Loan and the other transactions contemplated herein.

Section 4.2 Representations and Covenants of EEDC, ERC or DMD. As referenced EEDC, ERC or DMD represent and covenant to Developer that:

(a) The DMD Contact (or his designee) and the ERC Project Representative shall be available to meet with the Developer Contact on a regularly scheduled basis to discuss the progress of the redevelopment of the Project Real Estate and any controversies and/or complications which arise, from time to time, during the redevelopment and/or construction process.

(b) EEDC, ERC and DMD will cooperate reasonably with Developer (at no material cost to EEDC, ERC or DMD unless Developer agrees to reimburse EEDC, ERC and DMD for the same) in Developer's effort to obtain all applicable permits, reviews, licenses, actions, consents and approvals and submitting all applications necessary for the Project.

(c) EEDC, ERC and DMD will not enter into any contracts, instruments or undertakings which would limit or conflict with its obligations under, or constitute a breach of, this Agreement or any related agreements.

(d) There is no action, suit, proceeding or investigation, at law or in equity, or by or before any United States court, arbitrator, administrative agency or other federal, state or local governmental authority, pending or, to the actual knowledge of EEDC, ERC or DMD threatened against EEDC, ERC or DMD, wherein an unfavorable decision, ruling or finding would have a material adverse effect on the validity of this Agreement or a material adverse effect on the transactions contemplated hereby.

(e) To the extent permitted by law, EEDC, ERC or DMD (severally and not jointly) shall indemnify and hold harmless the Developer Indemnified Parties from all actual costs, damages and expenses, including but not limited to reasonable attorneys' fees, incurred by the Developer Indemnified Parties as a result of claims made by third parties relating to or resulting from the inaccuracy of any respective representation or the failure of any respective covenant set forth herein in any material respect by the EEDC, ERC or DMD.

(f) Subject to any City Approvals, the EEDC, ERC and DMD respectively, have all requisite power and authority to enter into and deliver this Agreement and to comply with and fulfill the terms and conditions of this Agreement. Subject to any City Approvals, the execution and delivery of this Agreement by the EEDC, ERC and DMD has been duly authorized by all necessary action on behalf of the EEDC, ERC and DMD, respectively. Subject to further proceedings as may be required by law and any City Approvals, this Agreement constitutes legal, valid and binding obligations of the EEDC, ERC and DMD respectively, enforceable in accordance with the terms and conditions hereof.

(g) Subject to satisfaction of the condition precedent set forth in Section 3.2(a) herein, EEDC shall use its commercially reasonable efforts and pursue all procedures required by law to

arrange for the issuance of the TIF Bonds to provide funds for the EEDC Loan in a timeframe consistent with the provisions of this Agreement.

(h) Subject to satisfaction of the conditions precedent set forth in Section 3.2 herein, EEDC shall make the EEDC Loan to Developer pursuant to the terms and conditions set forth in this Agreement to be administered by the EEDC in accordance with the terms hereof.

(i) Subject to Section 4.1(s) herein and Developer's cooperating with DMD, on or prior to Substantial Completion, DMD shall use its commercially reasonable efforts to secure approval of the Tax Phase-in pursuant to required and customary statutory procedures.

ARTICLE V.

ADDITIONAL MAINTENANCE TERM REQUIREMENTS

Section 5.1 Operation of the Downtown Hotel; Compliance with Covenants. During the Maintenance Term, Developer shall cause the Downtown Hotel to be continuously staffed, managed, operated and maintained, at its cost and expense, as an upscale, first class Downtown Hotel in a manner customary to similar assets operated by (or under the franchise of) the Hotel Brand Operator and consistent with maintaining the capacity and specifications (including parking) as reflected in the Project Construction Drawings. During the Maintenance Term, Developer shall cause sufficient Developer Equity to be continuously available to meet its obligations under this Agreement and the Ancillary Developer Agreements. During the Maintenance Term, Developer shall continuously comply with the Financial Covenants and the Negative Covenants.

Section 5.2 Franchise Agreement. The material economic terms and conditions of the Franchise Agreement shall not be materially less favorable to Developer than as set forth in the form provided to the DMD prior to the Effective Date, and, after the Franchise Agreement has been executed, Developer shall not, without the DMD's consent (not to be unreasonably withheld, conditioned or delayed), amend or modify the material economic terms and conditions or the term of the Franchise Agreement in a manner that would result in such terms and conditions or the term being materially less favorable to Developer than as set forth in the form provided to the DMD prior to the Effective Date, except, in each case, for material economic terms that are proposed by the Hotel Brand Operator on a national basis to similarly situated properties.

Section 5.3 Management Agreement. The material economic terms and conditions of the Management Agreement shall not be materially less favorable to Developer than as set forth in the form provided to the DMD prior to the Effective Date, and, after the Management Agreement has been executed, Developer shall not, without the DMD's consent (not to be unreasonably withheld, conditioned or delayed), amend or modify the material economic terms and conditions or the term of the Management Agreement in a manner that would result in such terms and conditions or the term being materially less favorable to Developer than as set forth in the form provided to the DMD prior to the Effective Date.

Section 5.4 Parking. During the Maintenance Term, Developer shall make Downtown Hotel parking spaces available for use by users of the Downtown Arena consistent with the following:

(a) Zoning Excess Parking Spaces shall be made available, without cost, to the ERC's designee subject to the same operational safety and control procedures otherwise made applicable to guests of the Downtown Hotel using such parking facilities; and

(b) Zoning Minimum Parking Spaces shall be made available to general public subject to the same operational safety and control procedures otherwise made applicable to guests of the Downtown Hotel using such parking facilities. Zoning Minimum Parking Spaces shall be made available for (i) any event held at the Downtown Arena for which notice is given by the DMD or ERC's designee to the Developer's Contact at least thirty (30) days in advance of the event, (ii) a period of three (3) hours before and three (3) hours after the scheduled commencement and ending of such Downtown Arena event, and (iii) at a commercially reasonable price that is fixed in amount for the entire event period set out in clause (ii).

Section 5.5 Employment Regulations. Developer shall not discriminate against any employee or applicant for employment, to be employed by Developer in connection with the construction or operation of the Downtown Hotel, with respect to hire, tenure terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, religion, color, age, sex, handicap, national origin, ancestry, sexual orientation, gender identity, disabled veteran status, or Vietnam era veteran status. Developer agrees that the provisions of this Section shall be included in any agreements or contracts for work or services entered into by Developer and relating to the construction and operation of the Downtown Hotel.

Section 5.6 Annual Certifications. The Developer shall provide to the DMD Contact within sixty (60) days of the end of each Defined Profit Measurement Period, a report certified by an authorized officer setting forth:

(a) The number of FTE's employed by the Developer at the Downtown Hotel for such year.

(b) An accounting of the Developer's Defined Profits, the Developer Senior Debt and the Developer Equity.

(c) Sufficient information to demonstrate Developer is in compliance with this Agreement, including the Financial Covenants and the Negative Covenants.

The Developer agrees to provide access to the EEDC, ERC and DMD (and their agents) to its books and records (including its financial statements whether or not such have been reviewed or audited by an independent certified public accountant) to verify the accuracy of any report submitted to the DMD pursuant to this Agreement. In the event any principal payments related to Developer Limited Recourse Note #1 are deferred pursuant to its terms by reason of the amount of Defined Profit, DMD may request, and Developer shall provide, at its cost and expense, a detailed report thereof prepared by independent certified public accountant consented to by the DMD Contact verifying and supporting the report otherwise made by Developer as

herein required. Except as required by Law, the EEDC, ERC and DMD shall comply with reasonable requirements established by the Developer to maintain the confidentiality of such reports, certifications, books and records.

ARTICLE VI.

EVENTS OF DEFAULT AND INDEMNITIES

Section 6.1 Events of Default – Developer.

(a) Events of Default by Developer. It shall be a “Developer Event of Default” hereunder if Developer materially breaches a covenant or representation made in this Agreement, or if Developer materially fails, subject to Unavoidable Delay, to observe and perform any covenant on its part to be observed or performed hereunder or under any other agreement, document or certificate contemplated herein (including any Ancillary Developer Agreement), within thirty (30) days after notice to Developer by EEDC, ERC or DMD specifying such failure and requesting that it be remedied; provided that any payment obligation existing pursuant to any of the Developer EEDC Loan Documents shall be subject to a three (3) day requirement in lieu of such thirty (30) day requirement.

(b) Remedies Upon a Developer Event of Default. Upon the happening of any one or more of Developer Event of Default that remains uncured, EEDC, ERC or DMD, at its option and with prior notice, may institute any action, suit or other proceeding at law, in equity (including any action to compel specific performance) or otherwise which it shall deem necessary or proper for the protection of its interests under this Agreement. In addition to any other rights and remedies set forth in this Agreement, whenever a Developer Event of Default occurs, EEDC, ERC or DMD shall be entitled to (i) specific performance against Developer (it being acknowledged and understood by Developer that monetary damages may not be an adequate remedy to EEDC, ERC or DMD for Developer's failure to observe its covenants hereunder), (ii) cause the EEDC Loan to be immediately due and payable in accordance with the Developer EEDC Loan Documents, (iii) recover as liquidated damages (in addition to other damages and remedies herein provided) an amount equal to the principal amount of the Developer Limited Recourse Note #2 that has been forgiven pursuant to its terms, and (iv) terminate this Agreement and cease further Advance payments, in which event none of the parties hereto shall have any further right or obligation hereunder (except for those rights and obligations which expressly survive the expiration or termination of this Agreement). If EEDC, ERC, or DMD enforces their rights hereunder (or defends a claim of Developer) and is the prevailing party in connection therewith, to the extent permitted by law Developer shall reimburse EEDC, ERC, or DMD, as applicable, for all reasonable attorneys' fees and court costs pursuant to the award of such fees and costs by a court of competent jurisdiction. No delay or omission to exercise any right or power accruing upon any Developer Event of Default shall impair any such right or power accruing upon any Developer Event of Default or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Section 6.2 Event of Default – EEDC/ERC/DMD.

(a) Events of Default by EEDC/ERC/DMD. It shall be a “EEDC/ERC/DMD Event of Default” hereunder if EEDC materially breaches a representation made in this Agreement or if EEDC, ERC or DMD materially fails, subject to Unavoidable Delay, to observe and perform any covenant on its part to be observed or performed hereunder or under any other agreement, document or certificate contemplated herein, within thirty (30) days after notice to EEDC, ERC or DMD (as applicable) by Developer specifying such failure and requesting that it be remedied.

(b) Remedies Upon a EEDC/ERC/DMD Event of Default. Whenever a EEDC/ERC/DMD Event of Default occurs, Developer may pursue a claim for specific performance (including curing any EEDC/ERC/DMD Event of Default). If the Developer enforces its rights hereunder (or defends a claim of EEDC, ERC, or DMD) and is the prevailing party in connection therewith, to the extent permitted by law EEDC, ERC, or DMD, as applicable, shall reimburse the Developer for all reasonable attorneys' fees and court costs pursuant to the award of such fees and costs by a court of competent jurisdiction.

Section 6.3 Indemnity and Waiver for EEDC/ERC/DMD Indemnified Parties. Developer shall indemnify and hold harmless the EEDC/ERC/DMD Indemnified Parties from and against claims, damages, losses and expenses, including but not limited to, reasonable attorneys' fees, arising out of or resulting from claims by third parties arising from (a) a Developer Event of Default hereunder or (b) the performance of any work on or about the Project Real Estate or the Tower Site by Developer or any party by, under, through or on behalf of Developer. Any agent, employee or representative of Developer entering upon the Project Real Estate or the Tower Site prior to or during the construction of the Project shall do so at his or her own risk, and Developer hereby waives and releases the EEDC/ERC/DMD Indemnified Parties from any such claims, damages and losses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from any work performed on or about the Project Real Estate or the Tower Site by any EEDC/ERC/DMD Indemnified Party. The indemnity and waiver set forth in this Section shall survive the expiration or termination of this Agreement.

Section 6.4 Indemnity for Developer Indemnified Parties. To the extent permitted by law, EEDC, ERC or DMD, respectively shall indemnify and hold harmless the Developer Indemnified Parties from and against claims, damages, losses and expenses, including but not limited to, reasonable attorneys' fees, arising out of or resulting from claims by third parties arising from a EEDC/ERC/DMD Event of Default respectively hereunder.

ARTICLE VII.

MISCELLANEOUS PROVISIONS

Section 7.1 Waiver of Subrogation. All insurance policies maintained by Developer or EEDC/ERC/ DMD providing coverage for any loss relating to the Project shall contain a clause pursuant to which the insurance carrier waives all rights of subrogation against the other parties with respect to losses payable under such policies.

Section 7.2 Notices. All notices, certificates, requests or other communications required hereunder shall be sufficient only if given in writing, prior to the matter requiring notice and shall be deemed given either when delivered personally, one (1) day after being deposited for next day delivery or five (5) days after mailing when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To EEDC/ERC/DMD: City of Evansville
Department of Metropolitan Development
306 Civic Center Complex
1 N.W. Martin Luther King, Jr. Blvd.
Evansville, IN 47708
Attention: Executive Director

With a Copy to: Bradley J. Salmon, Esq.
Terrell, Baugh, Salmon & Born, LLP
700 S. Green River Rd., Ste. 2000
Evansville, IN 47715

And if sent prior to the Closing with a Copy to:

Bingham McHale LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204
Attention: Hans W. Steck, Esq.

To Developer: _____

With a Copy to: _____

Any party hereunder may, by notice given hereunder, designate any further or different addressees to which subsequent notices, certificates, requests or other communications shall be sent.

Section 7.3 Time is of the Essence. Except for extensions of time resulting from an event of Unavoidable Delay or as otherwise provided herein, the times for performance provided in this Agreement are essential as they relate to the obligations and expenditures of the parties. If a time is not specified, performance shall be required promptly and with due regard to the conditions of performance of other parties in reliance thereon.

Section 7.4 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding to, the extent applicable, upon, EEDC, ERC, DMD and Developer and their respective successors and assigns.

Section 7.5 Assignment. Except for a collateral assignment as may be required in connection with the construction financing of the Project (in which event the Developer Senior Lender, Developer and EEDC, ERC or DMD (as their respective interests may necessitate) shall enter into a multi-party agreement whereby the parties shall set forth their respective rights and obligations upon the occurrence of a Developer Event of Default or an event of a default of Developer under the loan documents memorializing the construction financing), no party hereto may assign all or any portion of its rights and obligations hereunder without the prior consent of the other party hereto.

Section 7.6 Amendments and Modifications. This Agreement, together with the agreements and documents referenced herein, supersede all prior negotiations and agreements and constitute the entire agreement between the parties. No change, amendment or modification to, or extension or waiver of any provisions of, or consent provided under, this Agreement shall be valid unless such change, amendment, modification, extension, consent or waiver is in writing and signed by all the parties to this Agreement, or, in the case of consent or waiver, by the party granting the same.

Section 7.7 Severability. In case any Section or provision of this Agreement, or in case any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is, for any reason, held to be illegal or invalid, or is at any time inoperable by reason of any law, or actions thereunder, such illegality or invalidity or inoperability shall not affect the remainder thereof or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, which shall, at the time, be construed and enforced as if such illegal or invalid or inoperable portion were not contained therein.

Section 7.8 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.

Section 7.9 Captions. The captions of the various Sections herein contained are solely for the convenience of the various parties hereto and shall not be construed to interpret or limit the content of any provision or Section of this Agreement.

Section 7.10 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.11 No Brokers. Developer represents and warrants to EEDC, ERC and DMD that it has dealt with no broker, finder or other property location person or entity with respect to this Agreement or the transactions contemplated hereby and, insofar as Developer knows, no broker, finder or other property location person or entity is entitled to any commission or a finder's fee in connection with the EEDC Loan or any transactions related to the Closing. EEDC, ERC and DMD represent and warrant to Developer that EEDC, ERC and DMD have

dealt with no broker, finder or other person with respect to this Agreement or the transactions contemplated hereby, and, insofar as EEDC, ERC and DMD knows, no broker, finder or other person is entitled to any commission or a finder's fee in connection with the EEDC Loan or any transactions related to the Closing. EEDC, ERC and DMD, to the extent permitted by law, and Developer, each agree to indemnify and hold harmless one another against any loss, liability, damage or claim, including but not limited to attorneys' fees, incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

Section 7.12 Mutual Assistance. The parties agree to execute and deliver such additional instruments and documents, including those specifically identified herein, and provide such additional information, attend such public hearings or meetings relating to the Project and the Closings, and take such additional actions, as reasonably may be required from time to time in order to effectuate the provisions and intent of this Agreement.

Section 7.13 Estoppels. Each of the parties hereto agrees to provide to the other, or to such third parties as may be reasonably requested by the other, written estoppels from time to time certifying, among other matters, the continued effectiveness of this Agreement, the absence of any defaults hereunder (or, if defaults exist, specifying in detail the nature of such defaults), the status of the obligations of the parties each to the other, and such other matters as may reasonably be requested by the party requesting such estoppel certificate(s).

Section 7.14 No Third Party Beneficiaries and No Partnership or Joint Venture Created. Each of the parties hereto agrees that nothing contained in this Agreement shall be deemed or construed by either of them, or by any third party, as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or any other association or relationship between or among Developer, EEDC, ERC or DMD. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successors and permitted assigns, and shall not benefit in any manner any person not a party to this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day and year aforesaid.

[DEVELOPER]

By: _____

Printed: _____

Title: _____

**EVANSVILLE REDEVELOPMENT
COMMISSION**

By: _____

Printed: _____

Title: _____

**THE CITY OF EVANSVILLE DEPARTMENT
METROPOLITAN DEVELOPMENT**

By: _____

Printed: _____

Title: _____

EXHIBIT LIST

- A. Description of Project Real Estate.
- B. Project Description.
- C. Form of EEDC Joinder.
- D. Development Budget.
- E. Form of Construction Easement.
- F. Schedule of Forgiveness and Discharge for Developer Limited Recourse Note #2
- G. List of Approved Equity Expenditures (as of the Effective Date).
- H. Form of TIF Bonds.
- I. Description of Title Matters.
- J. Description of Tower Site.
- K. Form of Escrow Agreement.
- L. Form of Restrictive Covenant Agreement.

[End of Exhibit List]

EXHIBIT A
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION

All of Lots 1 thru 24, inclusive, in Block 39, the vacated portion of a 12-foot alley in said Block 39, and a part of the vacated portion of Seventh Street adjoining said Block 39 in the Eastern Enlargement of the City of Evansville, the plat of which is recorded in Deed Record E, pages 415 and 416, transcribed in Plat Book A, pages 142, 143, and 144, and re-transcribed in Plat Book E, pages 16, 17, and 18, all in the office of the Recorder of Vanderburgh County, Indiana, described as follows:

Beginning at the westernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 57 degrees 15 minutes 36 seconds East 291.12 feet along the northwestern line of said Block 39 and the prolongation thereof to the northernmost corner of said vacated portion of Seventh Street, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 32 degrees 48 minutes 11 seconds East 299.62 feet to the easternmost corner of said vacated portion of Seventh Street; thence South 57 degrees 18 minutes 21 seconds West 291.28 feet along the southeast line of said Block 39 and the prolongation thereof to the southernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 32 degrees 46 minutes 16 seconds West 299.39 feet to the point of beginning and containing 87217 square feet (2.002 acres), more or less. EXCEPTING THEREFROM the following described portion of said 12-foot alley in said Block 39: Commencing at the westernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 32 degrees 46 minutes 16 seconds East 299.39 feet to the southernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 57 degrees 18 minutes 21 seconds East 127.58 feet to the easternmost corner of Lot 12 in said Block 39 and the POINT OF BEGINNING of this description; thence North 32 degrees 47 minutes 23 seconds West 169.63 feet along the southwestern line of said 12-foot alley to the southernmost corner of that vacated portion of said alley described in Vacation and Openings Record 4, page 32 in the office of the Board of Public Works of the City of Evansville; thence North 57 degrees 15 minutes 36 seconds East 12.00 feet along the southeastern line of said vacated portion to the easternmost corner thereof; thence South 32 degrees 47 minutes 23 seconds East 169.64 feet along the northeastern line of said alley to the southernmost corner of Lot 13 in said Block 39; thence South 57 degrees 18 minutes 21 seconds West 12.00 feet to the point of beginning and containing 2036 square feet (0.047 acres), more or less, in said excepted portion, and containing 85181 square feet (1.955 acres), more or less, after said excepted portion.

The Evansville Redevelopment Commission ("Commission") is in the process of petitioning the Evansville City Council to vacate the 12-foot alley excepted above and anticipate that the Evansville City Council will vacate the alley.

[End of Exhibit A]

EXHIBIT B
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

Project Description.

EXHIBIT C
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

JOINDER

THE EVANSVILLE ECONOMIC DEVELOPMENT COMMISSION (“EEDC”), established and existing pursuant to Indiana Code 36-7-11.9 and 12 (the “EDC Act”), hereby joins, as a party in and to the DOWNTOWN HOTEL DEVELOPMENT AGREEMENT (the “Agreement”) as made and entered into as of the ____ day of ____, 2011 (“Effective Date”), by and between:

A. City of Evansville (the “City”) acting by or through THE EVANSVILLE REDEVELOPMENT COMMISSION (“ERC”) established and existing pursuant to Indiana Code 36-7-14 (the “ERC Act”), THE CITY OF EVANSVILLE DEPARTMENT OF METROPOLITAN DEVELOPMENT (“DMD”) established and existing pursuant to Indiana Code 36-4-9 and the EEDC; and

B. _____, an _____ (“Developer”), and

and, as of the date written below, hereby acknowledges that it has caused the Agreement to be duly executed and delivered by the below signed officer of the EEDC as contemplated by Section 1.04 of the Agreement. For all purposes, the EEDC shall be deemed a party to the Agreement as if it had duly authorized, executed and delivered the Agreement on and as of the Effective Date.

**THE EVANSVILLE ECONOMIC
DEVELOPMENT COMMISSION**

By:_____

Printed: _____

Title: _____

Date: _____

[End of Exhibit C]

EXHIBIT D
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

[Budget]

EXHIBIT E
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (the "**Agreement**") is made and entered into this _____ day of _____, 2011, by and between the City of Evansville For the Use and Benefit of its Department of Redevelopment, 306 Civic Center Complex, One N.W. Martin Luther King, Jr. Blvd, Evansville, Indiana, 47708, Attn: Thomas Barnett, Executive Director, or the successor Executive Director (hereafter "ERC") and _____, Attn: _____ (hereafter "Developer"), for the benefit of the real estate described on Exhibit A and Exhibit "B" attached hereto.

WITNESSETH:

WHEREAS, the ERC owns certain real property situated in the City of Evansville, Indiana, more particularly described in and depicted on Exhibit "A" attached hereto and incorporated herein by reference (the "Project Real Estate"). The Project Real Estate was conveyed to the ERC by a Corrected Warranty Deed dated January 12, 2011, and recorded on January 13, 2011, as Instrument No. 2011R00001348, in the office of the Recorder of Vanderburgh County, Indiana; and

WHEREAS, the ERC owns certain real property situated in the City of Evansville, Indiana, more particularly described in and depicted on Exhibit "B" attached hereto and incorporated herein by reference (the "Tower Site"). The Tower Site was conveyed to the ERC by a Corrected Warranty Deed dated January 12, 2011, and recorded on January 13, 2011, as Instrument No. 2011R00001348, in the office of the Recorder of Vanderburgh County, Indiana; and

WHEREAS, Developer, pursuant to that certain Downtown Hotel Development Agreement dated _____, 2011 (the "Development Agreement"), intends to (a) demolish any improvements located on, in, over or under the Project Real Estate and the Tower Site, as applicable, (b) remediate any contamination on, in, around or about the Project Real Estate and the Tower Site, as applicable, (c) restore the Tower Site to grade level with clean fill and otherwise in accordance with applicable Law and the reasonable requirements of the ERC, and (d) restore the Project Real Estate (if Developer's closing on the Project Real Estate shall not occur by the Outside Closing Date as defined in the Development Agreement and if requested by the ERC) grade level with clean fill and otherwise in accordance with applicable Law and the reasonable requirements of the ERC and construct and develop a hotel on the Project Real Estate of a type, quality and specification as detailed in the Development Agreement ("Hotel"); and

WHEREAS, in order to facilitate the timely construction and opening of the Hotel, the ERC has agreed to convey to Developer, its successors and assigns, certain non-

exclusive easements for construction, access, ingress, egress, parking, and the demolition of any improvements (the "Improvements") more particularly described in that certain Development Agreement over the Project Real Estate and the Tower Site.

NOW, THEREFORE, in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easements by the ERC. Subject to the restrictions set forth in Section Two of this Agreement, the ERC hereby declares, establishes, creates, grants, conveys and warrants the following temporary rights, privileges and easements in and to the Project Real Estate and the Tower Site for Developer, its agents, contractors, tenants, licensees, guests, invitees, grantees, employees, representatives, successors and assigns:

a. A non-exclusive right and easement for the purposes of demolishing any improvements located on, in, over or under the Project Real Estate and the Tower Site, as applicable;

b. A non-exclusive right and easement for the purposes of remediating any contamination on, in, around or about the Project Real Estate and the Tower Site, as applicable;

c. A non-exclusive right and easement for the purposes of restoring the Tower Site to grade level with clean fill and otherwise in accordance with applicable law and the reasonable requirements of the ERC;

d. A non-exclusive right and easement for the purposes of restoring the Project Real Estate (if Developer's closing on the Project Real Estate shall not occur by the Outside Closing Date as defined in the Development Agreement and if requested by the ERC) grade level with clean fill and otherwise in accordance with applicable law and the reasonable requirements of the ERC and construct and develop the Hotel on the Project Real Estate of a type, quality and specification as detailed in the Development Agreement;

e. A non-exclusive right and easement for the purposes of ingress and egress for construction equipment and personnel across the Project Real Estate and the Tower Site as required by Developer to fulfill its obligations under the Development Agreement; and

f. A non-exclusive right and easement for parking and the maintenance and demolition of the Improvements on the Project Real Estate and the Tower Site as applicable.

(collectively, the non-exclusive rights and easements referenced in Sections 1(a)–(f) above shall be referenced herein as the "Easements").

2. Nondisturbance. Notwithstanding anything to the contrary contained herein, in exercising its rights hereunder, Developer shall not interfere with the ongoing construction of the multi-purpose downtown arena ("Arena") and Developer shall coordinate all of its activities under the Development Agreement with the ERC and/or its Arena Project Director and Hotel Project Representative. Specifically, unless otherwise authorized by the ERC or the Arena Project Director, which authorization shall be granted in the ERC's sole discretion but shall not be unreasonably withheld, Developer shall not (i) demolish any improvements on the Project Real Estate until authorized in writing by the ERC and/or the Arena Project Director; (ii) demolish any improvements on the Tower Site until authorized in writing by the ERC and/or the Arena Project Director; (iii) conduct any construction staging on the Tower Site for the construction of the Hotel; and utilize the existing utility service serving the Tower Site for the construction of the Hotel. Subject to the limitations set forth in this Section 2, the ERC shall not obstruct, disrupt or otherwise interfere with Developer's use of the Easement Area as contemplated herein.

3. Construction Liens. To the extent permitted by law, all persons are hereby noticed that no lien of any type or nature is permitted on the Project Real Estate or the Tower Site. In the event any lien(s) are filed against the Project Real Estate or the Tower Site, or any portions thereof, in connection with any work performed by or on behalf of Developer or in connection with any act or omission of Developer pursuant to this Agreement, Developer shall bond over or cause said liens to be immediately discharged of record.

4. Indemnity. Developer shall defend, indemnify and save harmless the ERC and the City of Evansville, its officers, agents and employees from, against and with respect to any and all suits, demands, causes of actions, liabilities, claims, losses, costs and expenses relating to or arising from or with respect to any injury or damages of whatever nature, including death, or damage to property arising out of or related to the negligence or willful misconduct of Developer, its agents, employees, licensees or contractors, their agents or employees with respect to the Project Real Estate and the Tower Site.

5. Scope of Easements. The temporary construction Easements set forth herein shall bind and inure to the benefit and use of the parties hereto, their successors, successors in title, tenants and assigns until such time as this Agreement is terminated by the parties in writing which is intended to occur as part of the demolition of the Tower Site and Developer's closing on the Project Real Estate.

6. Maintenance. During the term of the Easements, Developer, at Developer's sole cost and expense, shall maintain the Project Real Estate and Tower Site in safe order and repair. Developer covenants and agrees to use its best efforts to complete the Hotel to be located on the Tower Site once Developer has commenced construction of such Hotel. The ERC may require Developer to post a performance bond or letter of credit to ensure that the Project Real Estate and the Tower site will be adequately restored in the event that Developer's development efforts should terminate, or be

suspended, provided that said surety shall be in a form and amount reasonably acceptable to the ERC and Developer and issued by a financial institution reasonably acceptable to the ERC and Developer. At Developer's option, it may post a cash bond with the ERC in lieu of other financial assurances, to be refunded to Developer upon the earlier of (a) the completion of the Hotel and the restoration of the Tower Site pursuant to the Development Agreement; or (b) the restoration of the Project Real Estate and Tower Site pursuant to the Development Agreement. The ERC may draw upon such financial assurance only upon thirty (30) days prior written notice to Developer and after the ERC has determined, in its reasonable discretion that Developer has failed to perform such work in accordance with the Development Agreement.

7. Effective Date. The temporary Easements and covenants created and imposed by this Agreement as to the Project Real Estate shall be effective upon the execution and delivery of this instrument and shall terminate upon (i) Developer's closing on the Project Real Estate as contemplated by the Development Agreement or (ii) after five (5) days prior written notice to Developer, the recording of an affidavit by the ERC stating that the temporary rights herein granted have terminated because Developer's activities have interfered with the construction of the Arena on the Project Real Estate or the default of Developer under the Development Agreement.

The temporary Easements and covenants created and imposed by this Agreement as to the Tower Site shall be effective upon the execution and delivery of this instrument and shall terminate upon the demolition of the Improvements on the Tower Site as contemplated by the Development Agreement or (ii) after five (5) days prior written notice to Developer, the recording of an affidavit by the ERC stating that the temporary rights herein granted have terminated by the ERC determining that (i) Developer's activities have interfered with the construction of the Arena on the Project Real Estate or (ii) the occurrence of a "Developer Event of Default" (as defined under the Development Agreement) or the Development Agreement has otherwise been terminated pursuant its terms.

Notwithstanding the preceding, except in the case of an imminent public hazard, Developer shall have ten (10) days after such five-day notice to remedy any condition causing such interference prior to any termination.

8. Governing Law/Interpretation/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana and has been negotiated by the parties hereto. The parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each party hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the document. Venue shall be in the Vanderburgh Superior Court and the parties hereto waive their right to trial by jury.

9. Approval/Consent. Each party hereby represents to the other that all approvals and consents have been obtained authorizing the execution of this Agreement by such party.

10. Waiver and Amendment. No delay or omission by any party to this Agreement to exercise any right or power accruing upon any noncompliance or failure of performance by any other party of the terms, provisions or conditions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. No amendment shall be effective unless the same shall be in writing and executed by the parties hereto, or their successors or assigns.

11. Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Relationship. Nothing contained in this Agreement shall be construed to make the parties partners or joint venturers or render either party liable for the debts or obligations of the other.

14. Benefits and Burdens Running With Real Estate. The benefits and burdens, rights and obligations, easements and restrictions created by this Agreement shall be appurtenant to and run with and burden and be binding upon the Project Real Estate and the Tower Site, and shall inure to the benefit of and be binding upon the parties and those claiming by, through, or under them.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

“ERC”

“Developer”

City of Evansville For the Use and Benefit
of Its Department of Redevelopment

By: _____

By: _____

Printed: _____

Printed: _____

Its: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named _____, known to me to be the _____ of _____, a _____ organized and existing under the laws of the State of Indiana, who acknowledged the execution of the foregoing Temporary Construction Easement Agreement as the free and voluntary act and deed of said entity for the uses and purposes therein set forth.

WITNESS MY HAND AND SEAL this ____ day of _____, 2011.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named _____, known to me to be the _____ of the Evansville Redevelopment Commission, who acknowledged the execution of the foregoing Temporary Construction Easement Agreement as the free and voluntary act and deed of said Evansville Redevelopment Commission for the uses and purposes therein set forth.

WITNESS MY HAND AND SEAL this ____ day of _____, 2011.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

This instrument was prepared by BRADLEY J. SALMON, of the Law Firm of **TERRELL BAUGH, SALMON & BORN, LLP**, 700 South Green River Road, Suite 2000, Evansville, Indiana 47715. Telephone: (812) 479-8721.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

EXHIBIT A

Legal Description of the Project Real Estate

All of Lots 1 thru 24, inclusive, in Block 39, the vacated portion of a 12-foot alley in said Block 39, and a part of the vacated portion of Seventh Street adjoining said Block 39 in the Eastern Enlargement of the City of Evansville, the plat of which is recorded in Deed Record E, pages 415 and 416, transcribed in Plat Book A, pages 142, 143, and 144, and re-transcribed in Plat Book E, pages 16, 17, and 18, all in the office of the Recorder of Vanderburgh County, Indiana, described as follows:

Beginning at the westernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 57 degrees 15 minutes 36 seconds East 291.12 feet along the northwestern line of said Block 39 and the prolongation thereof to the northernmost corner of said vacated portion of Seventh Street, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 32 degrees 48 minutes 11 seconds East 299.62 feet to the easternmost corner of said vacated portion of Seventh Street; thence South 57 degrees 18 minutes 21 seconds West 291.28 feet along the southeast line of said Block 39 and the prolongation thereof to the southernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 32 degrees 46 minutes 16 seconds West 299.39 feet to the point of beginning and containing 87217 square feet (2.002 acres), more or less. EXCEPTING THEREFROM the following described portion of said 12-foot alley in said Block 39: Commencing at the westernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 32 degrees 46 minutes 16 seconds East 299.39 feet to the southernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 57 degrees 18 minutes 21 seconds East 127.58 feet to the easternmost corner of Lot 12 in said Block 39 and the POINT OF BEGINNING of this description; thence North 32 degrees 47 minutes 23 seconds West 169.63 feet along the southwestern line of said 12-foot alley to the southernmost corner of that vacated portion of said alley described in Vacation and Openings Record 4, page 32 in the office of the Board of Public Works of the City of Evansville; thence North 57 degrees 15 minutes 36 seconds East 12.00 feet along the southeastern line of said vacated portion to the easternmost corner thereof; thence South 32 degrees 47 minutes 23 seconds East 169.64 feet along the northeastern line of said alley to the southernmost corner of Lot 13 in said Block 39; thence South 57 degrees 18 minutes 21 seconds West 12.00 feet to the point of beginning and containing 2036 square feet (0.047 acres), more or less, in said excepted portion, and containing 85181 square feet (1.955 acres), more or less, after said excepted portion.

The Evansville Redevelopment Commission ("Commission") is in the process of petitioning the Evansville City Council to vacate the 12-foot alley excepted above and anticipate that the Evansville City Council will vacate the alley.

EXHIBIT B
Legal Description of the Tower Site

A part of Block 38 in the Eastern Enlargement of the City of Evansville, the plat of which is recorded in Deed Record E, pages 415 and 416, transcribed in Plat Book A, pages 142, 143, and 144, and re-transcribed in Plat Book E, pages 16, 17, and 18, all in the office of the Recorder of Vanderburgh County, Indiana, and a part of the vacated portion of Sixth Street adjoining said Block 38, described as follows:

Beginning at the southernmost corner of said Block 38, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 57 degrees 15 minutes 36 seconds West 18.00 feet along the prolonged southeastern line of said Block 38 and along the southeastern boundary of that portion of Sixth Street vacated by Ordinance G-09-23, recorded as Instrument 2009R00030972 in the office of said Recorder, to the southernmost corner of said vacated portion of Sixth Street; thence North 32 degrees 46 minutes 16 seconds West 112.82 feet along the southwestern boundary of said vacated portion of Sixth Street; thence North 57 degrees 15 minutes 36 seconds East 184.10 feet; thence North 32 degrees 44 minutes 24 seconds West 23.75 feet; thence North 57 degrees 15 minutes 36 seconds East 122.07 feet to the southwestern line of Parcel 2 as described in Deed Record 506, page 71 in the office of said Recorder; thence South 32 degrees 44 minutes 37 seconds East 122.58 feet along the southwestern line of Parcels 2 and 1 as described in said Deed Record 506, page 71 to the northernmost corner of the easement of right-of-way described as Parcel 1 in Deed Record 526, page 155 in the office of said Recorder, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 12 degrees 15 minutes 15 seconds West 19.80 feet along the western line of said easement of right-of-way to the southernmost corner thereof and the southeastern line of said Block 38, and being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 57 degrees 15 minutes 36 seconds West 274.12 feet along said southeastern line of Block 38 to the point of beginning and containing 37342 square feet (0.857 acres), more or less.

[End of Exhibit E]

EXHIBIT F
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

**Schedule of Forgiveness and Discharge
For Developer Limited Recourse Note #2
[If Applicable]**

Date	Amount	Date	Amount	Date	Amount
SC		9		18	
1		10		19	
2		11		20	
3		12		21	
4		13		22	
5		14		23	
6		15		24	
7		16		25	
8		17		Total	

SC – *denote* on the date as of which (a) the Project is Substantially Completed and (b) the Downtown Hotel has commenced business operations including lodging guests.

Date – *denote* on the anniversary following the date of Substantial Completion to which numeric value corresponds.

Amount – *denote* the amount to be forgiven and discharged on the corresponding date to the left of such amount if no Developer Event of Default has occurred and is then continuing on such date;

* provided that any Deferred Principal constituting a Modified Forgivable Amount is to be added in a prorata manner to such amount related to the corresponding Date on this Schedule and each then following Date on this Schedule

[End of Exhibit F]

EXHIBIT G
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

List of Approved Equity Expenditures (as of the Effective Date)

EXHIBIT H
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

**UNITED STATES OF AMERICA
STATE OF INDIANA
CITY OF EVANSVILLE, INDIANA,
ECONOMIC DEVELOPMENT
REVENUE BOND, SERIES 2011
(DOWNTOWN HOTEL PROJECT)**

R-1

<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Original Date</u>	<u>Authentication Date</u>
As set forth on the attached Schedule 1	2.00%	_____, 2011	_____, 2011

REGISTERED OWNER: The Evansville Local Public Improvement Bond Bank
PRINCIPAL AMOUNT: _____ Dollars (\$_____)

The City of Evansville, Indiana (the “Issuer”), a municipal corporation organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above, but solely from revenues that are subject to the hereinafter described Pledge (“Pledged Revenues”) are available for the payment hereof, the Principal Amount set forth above, or so much thereof as may be advanced from time to time and be outstanding as evidenced by the records of the Registered Owner making payment for this Series 2011 Bond, on February 1 in the years and in the amounts as set forth on Schedule 1, unless this Series 2011 Bond shall have previously been called for redemption and payment of the redemption price made or provided for, and to pay interest on the unpaid principal amount hereof in like money, but solely from the Pledged Revenues, at the Interest Rate per annum set forth above, payable on February 1, 2012, and on each February 1 thereafter (each, an “Interest Payment Date”) until the Principal Amount is paid in full. Interest on this Series 2011 Bond shall be payable from the Interest Payment Date next preceding the date of authentication thereof (the “Interest Date”), except that: (i) if this Series 2011 Bond is authenticated on or prior to January 15, 2012, the Interest Date shall be the Original Date specified above; (ii) if this Series 2011 Bond is authenticated on or after the fifteenth day of the calendar month immediately preceding an Interest Payment Date (the “Record Date”), the Interest Date shall be such Interest Payment Date; and (iii) if interest on this Series 2011 Bond is in default, the Interest Date shall be the day after the date to which interest hereon has been paid in full.

The principal of and interest on this Series 2011 Bond is payable at the office of the City Controller (the “City Controller”) of the City of Evansville, Indiana. All payments of interest hereon will be made by the City Controller on or prior to each Interest Payment Date to the Registered Owner hereof at the address shown on the registration books of the City Controller as maintained by the City Controller, as registrar, determined on the Record Date next preceding such Interest Payment Date.

This Series 2011 Bond is one of the Issuer's Economic Development Revenue Bonds, Series 2011 (Downtown Hotel Project) (hereinbefore and hereinafter referred to as the “Series 2011 Bonds”), which are being issued pursuant to City Ordinance No. G-2011-____, adopted by the City Council of the City of Evansville, Indiana on _____, 2011 (the “Bond Ordinance”) in the aggregate principal amount of _____ Dollars (\$_____) and are secured by the hereinafter described Pledge and

payable from the Pledged Revenues. The Series 2011 Bonds are being issued for the purpose of providing funds to finance a portion of the costs of the Project, as defined in the Bond Ordinance and pursuant to the Financing Agreement by and between the Issuer and _____, dated as of _____, 2011 (the "Developer Financing Agreement").

The Series 2011 Bonds are issued pursuant to the Bond Ordinance and entitled to the pledge therein including of: (a) the payments ("Developer Payments") to be made to the City by _____ ("Developer") in respect of the loan made by and through the Economic Development Commission ("EEDC Loan") to _____ ("Developer") including Developer's grant of certain collateral interests in Developer's property to secure its obligations under the EEDC Loan; and (b) property taxes on incremental increases in assessed value of real property located within the Downtown Redevelopment Area (the "TIF Revenues") under Resolutions Nos. 08-ERC-61 and 11-ERC ____ adopted by the City of Evansville Redevelopment Commission on November 5, 2008 and _____, 2011, respectively (collectively, the "ERC Resolution"), including all rights of the Issuer under the Developer Financing Agreement, except certain rights to payment for expenses, indemnity rights and rights to perform in certain discretionary acts as set forth in the Developer Financing Agreement, which are pursuant to the Bond Ordinance and this Bond pledged and assigned by the Issuer to the Registered Owner as security for the Series 2011 Bonds (the "Pledge"). THE OWNER OF THIS SERIES 2011 BOND, BY ACCEPTANCE OF THIS SERIES 2011 BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE BOND ORDINANCE, ERC RESOLUTION, THE DEVELOPER FINANCING AGREEMENT AND THIS SERIES 2011 BOND.

The Series 2011 Bonds are issuable in registered form without coupons in the denominations of One Hundred Thousand Dollars (\$100,000) or any \$1.00 increments thereafter. This Series 2011 Bond is transferable by the registered holder hereof in person or by his or her attorney duly authorized in writing at the principal office of the City Controller, but only in the manner, subject to the limitations and upon payment of the charges provided in the Pledge and upon surrender and cancellation of this Series 2011 Bond. Upon such transfer a new registered Series 2011 Bond will be issued to the transferee in exchange therefor.

The Issuer and the City Controller may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the City Controller shall be affected by any notice to the contrary.

The Series 2011 Bonds are subject to optional redemption by the Issuer on any date, in whole or in part, upon seven days' prior written notice at a price equal to the principal amount thereof to be redeemed, and without premium, plus interest accrued to the redemption date; provided that no prior notice shall be so required if otherwise consented by the Executive Director of The Evansville Local Public Improvement Bond Bank.

If fewer than all of the Series 2011 Bonds at the time outstanding are to be called for redemption, the maturities of Series 2011 Bonds or portions thereof to be redeemed shall be selected by the City Controller at the direction of the Issuer. If fewer than all of the Series 2011 Bonds within a maturity are to be redeemed, the City Controller shall apply moneys available for redemption on a pro rata basis, based on the respective portion of the principal amount of Series 2011 Bonds held by the respective owners of the Series 2011 Bonds within such maturity that shall be redeemed.

All Series 2011 Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time,

and shall no longer be protected by the Pledge and shall not be deemed to be outstanding under the provisions of the Pledge.

The Series 2011 Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana, or any political subdivision or taxing authority thereof. The Series 2011 Bonds, as to both principal and interest, are not a general obligation or liability of the Issuer, the State of Indiana or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the revenues as pledged and assigned for their payment in accordance with the Pledge. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or premium, if any, or the interest on this Series 2011 Bond. The Series 2011 Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana or the Issuer, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any, or interest on the Series 2011 Bonds. No covenant or agreement contained in the Series 2011 Bonds or the Pledge shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Economic Development Commission, Redevelopment Commission or the Issuer in his or her individual capacity.

Modifications or alterations of the Pledge, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the instrument creating such Pledge.

This Series 2011 Bond to the extent purchased in installment by the Registered Owner, shall be deemed to be purchases of the Principal Amount set forth above in the years and in the amounts as set forth on Schedule 1 that causes approximately level debt service over its entire term as evidenced by the records of the Registered Owner making payment for this Series 2011 Bond.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the State of Indiana and under the Pledge precedent to and in the issuance of this Series 2011 Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Series 2011 Bond have been duly authorized by the Issuer.

This Series 2011 Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Pledge until the certificate of authentication hereon shall have been duly executed by the City Controller.

IN WITNESS WHEREOF, the City of Evansville, Indiana, has caused this Series 2011 Bond to be executed in its name and on its behalf by the manual or facsimile signatures of its Mayor and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual or facsimile signature of its Clerk, all as of the date shown above.

CITY OF EVANSVILLE, INDIANA

(Seal)

By: _____
Jonathan Weinzapfel, Mayor

Attest:

Alberta Matlock, Clerk

CERTIFICATE OF AUTHENTICATION

This Series 2011 Bond is one of the Series 2011 Bonds described in the within-mentioned Pledge.

Office of the City Controller

By: _____
Authorized Officer

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF TRAN MIN ACT -- _____ Custodian _____
(Cust) (Minor)

under Uniform Transfers to Minors Act, _____
(State)

TEN COM -- as tenants in common
JT TEN-- as joint tenants with right of survivorship and not
as tenants in common

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ (Please Print or Typewrite Name and Address) the within Series 2011 Bond and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints _____, as attorney to transfer the within Series 2011 Bond on the books kept for registration thereof; with full power of substitution in the premises.

Dated: _____

SIGNATURE GUARANTEED:

NOTICE: NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Series 2011 Bond in every particular without alteration or enlargement or any change whatsoever.

Schedule 1 to Series 2011 Bond

Maturity Date	Principal Sum
2/1/2012	
2/1/2013	
2/1/2014	
2/1/2015	
2/1/2016	
2/1/2017	
2/1/2018	
2/1/2019	
2/1/2020	
2/1/2021	
2/1/2022	
2/1/2023	
2/1/2024	
2/1/2025	
2/1/2026	
Total	

[End of Exhibit H]

EXHIBIT I
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

**EXISTING MATTERS OF RECORD, OTHER THAN THE STANDARD EXCEPTIONS,
KNOWN TO THE COMMISSION THROUGH ITS RECEIPT OF A COMMITMENT FOR
TITLE INSURANCE**

1. Skywalk Agreement by and between Green Construction of Indiana, Inc. and River City Hotel, L.L.C., recorded September 19, 1995, in Miscellaneous Drawer 4, Card 6779, as Instrument 95-21339.
2. Agreement Concerning Foyer of Convention Center Annex by and between Green Construction of Indiana, Inc. and River City Hotel, L.L.C., recorded September 19, 1995, in Miscellaneous Drawer 4, Card 6780, as Instrument 95-21340, as shown on survey certified November 10, 2009, by Perry E. Jones, Indiana Registered Land Surveyor, Bernadin Lochmueller & Assoc. Project No. 109-0111-OSV/SV02, hereafter referred to as the "Parking Garage Survey."
3. Agreement Establishing Party Wall by and between Green Construction of Indiana, Inc. and River City Hotel, L.L.C., recorded September 19, 1995, in Miscellaneous Drawer 4, Card 6781, as Instrument 95-21341, as shown on the Parking Garage Survey.
4. Agreement Concerning Utility Service to Convention Center Annex by and between Green Construction of Indiana, Inc. and River City Hotel, L.L.C., recorded September 19, 1995, in Miscellaneous Drawer 4, Card 6782, as Instrument 95-21342, as shown on the Parking Garage Survey.
5. Building and Rooftop Lease Agreement by and between River City Hotel, LLC, and GTE Mobilnet Service Corp. dated September 11, 1996, and recorded May 20, 1997, in Lease Drawer 2, Card 2390, as Instrument 97-12782, and also evidenced by Memorandum of Lease recorded January 21, 1997, in Lease Drawer 2, Card 2353, as Instrument 97-01470.
6. Agreement Imposing Restrictive Covenants On Real Estate by and between Evansville Executive Hotel, LLC, and the City of Evansville dated January 15, 2002, and recorded July 28, 2005, as Instrument 2005R00023113. Amended by Amendment to Agreement dated September 29, 2003, and recorded July 28, 2005, as Instrument 2005R00023114.
7. Declaratory Resolution of the Evansville Redevelopment Commission dated January 20, 1984, and recorded February 29, 1984, in Miscellaneous Drawer 1, Card 6799, as Instrument 84-03569. Amended by Resolution 03-ERC-44 Amending the Downtown Redevelopment Plan dated July 1, 2003, and recorded August 8, 2003, as Instrument 2003R00036761. Further amended by Resolution 08-ERC-35 Amending the Downtown Redevelopment Plan dated June 26, 2008, and recorded July 7, 2008, as Instrument 2008R00018681.
8. Rights of tenants in possession under unrecorded leases.
9. Rights or claims of parties in possession not shown by the public records.

[End of Exhibit I]

EXHIBIT J
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

Description of Tower Site

A part of Block 38 in the Eastern Enlargement of the City of Evansville, the plat of which is recorded in Deed Record E, pages 415 and 416, transcribed in Plat Book A, pages 142, 143, and 144, and re-transcribed in Plat Book E, pages 16, 17, and 18, all In the office of the Recorder of Vanderburgh County, Indiana, and a part of the vacated portion of Sixth Street adjoining said Block 38, described as follows:

Beginning at the southernmost corner of said Block 38, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 57 degrees 15 minutes 36 seconds West 18.00 feet along the prolonged southeastern line of said Block 38 and along the southeastern boundary of that portion of Sixth Street vacated by Ordinance G-09-23, recorded as Instrument 2009R00030972 in the office of said Recorder, to the southernmost corner of said vacated portion of Sixth Street; thence North 32 degrees 46 minutes 16 seconds West 112.82 feet along the southwestern boundary of said vacated portion of Sixth Street; thence North 57 degrees 15 minutes 36 seconds East 184.10 feet; thence North 32 degrees 44 minutes 24 seconds West 23.75 feet; thence North 57 degrees 15 minutes 36 seconds East 122.07 feet to the southwestern line of Parcel 2 as described In Deed Record 506, page 71 in the office of said Recorder; thence South 32 degrees 44 minutes 37 seconds East 122.58 feet along the southwestern line of Parcels 2 and 1 as described in said Deed Record 506, page 71 to the northernmost corner of the easement of right-of-way described as Parcel 1 in Deed Record 526, page 155 in the office of said Recorder, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 12 degrees 15 minutes 15 seconds West 19.80 feet along the western line of said easement of right-of-way to the southernmost corner thereof and the southeastern line of said Block 38, and being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 57 degrees 15 minutes 36 seconds West 274.12 feet along said southeastern line of Block 38 to the point of beginning and containing 37342 square feet (0.857 acres), more or less.

[End of Exhibit J]

EXHIBIT K
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

[Form of Escrow Agreement is attached as the next following eighteen (18) pages]

DOWNTOWN HOTEL ESCROW AGREEMENT

THIS **DOWNTOWN HOTEL ESCROW AGREEMENT** ("Escrow Agreement"), is made effective as of the ____ day of _____, 2011 by and among (A) City of Evansville (the "City") acting by or through THE EVANSVILLE REDEVELOPMENT COMMISSION ("ERC") established and existing pursuant to Indiana Code 36-7-14 (the "ERC Act"), THE CITY OF EVANSVILLE DEPARTMENT OF METROPOLITAN DEVELOPMENT ("DMD"), THE EVANSVILLE ECONOMIC DEVELOPMENT COMMISSION ("EEDC"), (B) THE EVANSVILLE LOCAL PUBLIC IMPROVEMENT BOND BANK ("Bond Bank") established and existing pursuant to Indiana Code 5-1.4, (C) _____, an _____ (the "Developer") and (D) _____, a _____ (the "Escrow Agent").

WHEREAS, pursuant to that certain Downtown Hotel Development Agreement, dated as of _____, 2011 (the "Development Agreement"), by and between (A) the City acting by or through ERC, DMD, and EEDC and (B) the Developer is to cause the Project to be constructed and acquired in accordance with the Development Agreement; and

WHEREAS, pursuant to that certain Loan Agreement by and between the City (acting by and through EEDC) and the Developer, dated of even date herewith (the "EEDC Loan Agreement"), the City is to lend and the Developer is to borrow money in an amount not to exceed _____ Dollars (\$_____) (the "Proceeds of the EEDC Loan"), which net of the Proceeds of the EEDC Loan applied to the pay the Project Real Estate Purchase Price on the date hereof, the City has agreed such remaining Proceeds of the EEDC Loan will be held under this Escrow Agreement until such are Advanced in accordance with this Escrow Agreement; and

WHEREAS, pursuant to that certain Purchase Agreement by and between the City acting by and through EEDC and the Bond Bank, dated of even date herewith (the "Purchase Agreement"), the Bond Bank is to purchase the City's TIF Bonds in an amount not to exceed _____ Dollars (\$_____) (the "Proceeds of TIF Bonds"), which, net of the Proceeds of TIF Bonds to be simultaneously disbursed as Proceeds of the EEDC Loan and applied to the pay the Project Real Estate Purchase Price on the date hereof, the Bond Bank has agreed such amount will be deposited with the Escrow Agent ("Escrowed Bond Bank Funds") and held under this Escrow Agreement until such proceeds are advanced in accordance with the Purchase Agreement and made available to the City (acting by and through EEDC) as Proceeds of TIF Bonds to thereafter be lent to the Developer as Proceeds of the EEDC Loan when Advanced in accordance with this Escrow Agreement; and

WHEREAS, in furtherance of its covenants under the Development Agreement and contemporaneously with its entering into this Escrow Agreement, the Developer has caused an amount equal to _____ Dollars (\$_____) to be deposited with the Escrow Agent and held under this Escrow as Developer Equity (the "Escrowed Developer Equity") until such amounts are advanced in accordance with this Escrow Agreement; and

WHEREAS, in furtherance of its covenants under the Development Agreement and contemporaneously with its entering into this Escrow Agreement, the Developer has caused an amount equal to _____ Dollars (\$_____) to be made available as an open line of credit to the Developer for deposit¹ with the Escrow Agent and held under this Escrow from the proceeds of the Developer Senior Debt (the “Proceeds of Developer Senior Debt”), which the Developer has agreed such Proceeds of the Developer Senior Debt are to be held under this Escrow Agreement until such are Advanced in accordance with this Escrow Agreement; and

WHEREAS, Developer shall use the Proceeds of the EEDC Loan, the Escrowed Developer Equity and Proceeds of Developer Senior Debt (collectively, the “Escrow Funds”) only to pay Direct Costs of the Project; and

WHEREAS, the parties hereto are entering into this Escrow Agreement to establish the terms and conditions pursuant to which escrow accounts are to be established and maintained.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Definitions. When used herein, the capitalized terms defined in the recitals above shall have the meanings therein stated and capitalized terms (both as used in the foregoing recital and as used in this Escrow Agreement) shall have the meanings ascribed to them in the Development Agreement and as further set out below.

- 1.1. “Advance” means an Advance (as defined in the Development Agreement), as evidenced by delivery to the Escrow Agent of a duly executed instrument in the form of Attachment 1.
- 1.2. “Contractor” means any of the Contractors (as defined in the Development Agreement) that are named on the attached Exhibit A as such may from time to time be supplemented by the Developer with the concurrence of the DMD Contact after consultation with the ERC Project Representative, as evidenced by delivery to the Escrow Agent of a duly executed update in the form of Attachment 2.
- 1.3. “Escrow Account #1” means the account established with the Escrow Agent in the name of the Bond Bank to hold the Escrowed Bond Bank Funds pending their disbursement to purchase the TIF Bonds as evidenced by their transfer to the Escrow Account #2 or as otherwise paid over in accordance with this Escrow Agreement, which shall be a bank account separate from the other Escrow Accounts.

¹ Assumes Senior Loan terms will be a draw loan that runs through this Escrow Agreement each time there is a loan draw.

- 1.4. “Escrow Account #2” means the account established with the Escrow Agent in the name of the City received therein from the Escrow Account #1 which (a) when Advanced from such Escrow Account #2 are deemed simultaneously to be Proceeds of the EEDC Loan available to pay Direct Costs of the Project or as otherwise paid over in accordance with this Escrow Agreement and (b) shall be a bank account separate from the other Escrow Accounts.
- 1.5. “Escrow Account #3” means the account established with the Escrow Agent in the name of the Developer to hold the Escrowed Developer Equity pending their disbursement to pay Direct Costs of the Project or as otherwise paid over in accordance with this Escrow Agreement, which shall be a bank account separate from the other Escrow Accounts.
- 1.6. “Escrow Account #4” means the account established with the Escrow Agent in the name of the Developer received therein as Proceeds of Developer Senior Debt from the Developer Senior Lender, which are available to pay Direct Costs of the Project or as otherwise paid over in accordance with this Escrow Agreement, which shall be a bank account separate from the other Escrow Accounts.
- 1.7. “Escrow Accounts” means respectively and collectively, as the context may require, the Escrow Account #1, the Escrow Account #2, Escrow Account #3 and the Escrow Account #4.
- 1.8. “Escrow Distribution Event” means any of the following: (a) the Escrow Agent has received confirmation of the giving notice of an Developer Event of Default to Developer and Developer has not given notice to the Escrow Agent evidencing that it has instituted legal action in a court in Vanderburgh County, Indiana to set aside the declaration of the Developer Event of Default and to enjoin such event from being acted upon as an Escrow Distribution Event under this Escrow Agreement; (b) the Escrow Agent has received notice of a [Developer Bankruptcy Filing]² (as defined in the EEDC Loan Agreement); or (c) Proceeds of Developer Senior Debt have not been received by the Escrow Agent in an amount sufficient to permit a Proportionate funding of an Advance within seven (7) days after the Escrow Agent’s receipt a Developer request to make an Advance.
- 1.9. “Government MMF” means shares of an investment company organized under or a money market fund regulated under the Investment Company Act of 1940, as amended, or units of a common trust fund which invests their assets exclusively in bonds or other obligations which the timely payment of principal and interest constitutes direct obligations of, or are unconditionally guaranteed by, the United States of America, including to the extent unconditionally guaranteed by the United States of America, bonds, debentures or other evidences of indebtedness issued or guaranteed by any agency or corporation which has been or may hereafter be created

² To be coordinated/conformed with EEDC Loan Agreement before final draft is delivered.

pursuant to an act of Congress as an agency or instrumentality of the United States of America.

- 1.10. “Project Construction Contracts” means any of the Project Construction Contracts (as defined in the Development Agreement), that are named on the attached Exhibit A as such may from time to time be supplemented by the Developer with the concurrence of the DMD Contact after consultation with the ERC Project Representative, as evidenced by delivery to the Escrow Agent of a duly executed update in the form of Attachment 2.
- 1.11. “Project Work” means work, materials and tasks undertaken or provided by a Contractor pursuant to a Project Construction Contract, which when invoiced, the payment thereof pursuant to an Advance will constitute the payment of Direct Costs related to the Project.
- 1.12. “Proportionate” means, unless otherwise agreed to and modified by the Developer and the DMD Contract as acknowledged by the Escrow Agent, the disbursement of the Escrow Funds in the following proportion in respect of each Advance requested pursuant to this Escrow Agreement:
- (a) _____ percent (___%) from Escrow Account #2;
 - (b) _____ percent (___%) from Escrow Account #3; and
 - (c) _____ percent (___%) from Escrow Account #4;

provided that when the entire amount held in the Escrow Account #2 has been fully disbursed pursuant to prior Advances, Advances thereafter shall continue to be in proportion with the respective balances then held the remaining Escrow Accounts.

Section 2. Escrow. (a) The Escrow Agent shall hold, invest and disburse amounts from time to time held in the Escrow Accounts, in trust³, for the purposes set forth in, and pursuant to the terms of, this Escrow Agreement.

(b) The Escrow Agent acknowledges receipt of \$_____ from the Bond Bank and has caused such amount to first be deposited in the Escrow Account #1 and then immediately transferred from Escrow Account #1 to Escrow Account #2, which the parties acknowledge is (i) an installment purchase of the TIF Bonds in such amount by the Bond Bank and (ii) available for Advances as part of the Developer Limited Recourse Loan #2 subject to the requirements of this Escrow Agreement. Subsequent amounts received from the Bond Bank shall be deposited in the Escrow Account #1 and held therein until transferred from Escrow Account #1 to Escrow Account #2 as part of any Advance as part of the Developer Limited Recourse Loan #1 subject to the requirements of this Escrow Agreement, which (i) transfer from Escrow Account #1 to Escrow Account #2 shall be deemed to be an installment purchase of the TIF Bonds in such amount by the

³ EEDC Loan Agreement – will grant UCC interest to EEDC; perfection issues may result in modification of this draft and/or require account designations by the depository bank. Intent is for Acct #1 part to be EBB’s cash and for Acct #2 part to be the City’s cash, rather than Developer’s, under the UCC.

Bond Bank and (ii) transfer from Escrow Account #1 to Escrow Account #2 and the related Advance from the Escrow Account #2 shall occur simultaneously and such Advance shall be deemed made from the Developer Limited Recourse Loan #1.

(c) Upon the occurrence of an Escrow Distribution Event and a request of the DMD Contact given to the Escrow Agent, the Escrow Agent shall cause any amounts then held in:

(i) Escrow Account #1 to be paid over to the Bond Bank as a return of its funds unencumbered by this Escrow Agreement or otherwise;

(ii) Escrow Account #2 to be paid over to the City as a return of its funds unencumbered by this Escrow Agreement or otherwise;

(iii) Escrow Account #3 to be held and subjected to any claims made by the Developer Senior Lender, the EEDC, the ERC and the DMD against such amounts, as directed by (A) the collective agreement of such parties regarding their interests and how they appear, (B) any court during the pendency of (or as a result of) any legal action instituted pursuant to Section 10(g) herein or otherwise; and (C) the Developer when consented to the Developer Senior Lender and the DMD Contact; *provided that* if at the end of a period of one-hundred eighty (180) days following the Escrow Distribution Event no claim has been made to the Escrow Agent by the Developer Senior Lender, the EEDC, the ERC or the DMD against such amounts, then such remaining amounts in the Escrow Account #3 shall be paid over to the Developer as a return of its funds unencumbered by this Escrow Agreement or otherwise; and

(iv) Escrow Account #4 to be paid over to the Developer Senior Lender, *first*, as a payment in respect of any accrued and unpaid interest on the Developer Senior Debt and, *second*, as a payment in respect of then outstanding principal balance on the Developer Senior Debt.

Section 3. Requirements for Advances. (a) Unless waived in whole or in part by the DMD Contract, Developer shall submit each of the following items to Escrow Agent, the ERC Project Representative, and the DMD Contact prior to or together with each request for an Advance:

(i) A current architect's or engineer's certificate indicating that the Project Work completed to date have been constructed according to the Project Construction Drawings which as approved pursuant to the Development Agreement and all applicable governmental authorities and do not encroach upon any easements or across any building set-back lines or utility lines.

(ii) Proof from the Contractor to be paid pursuant the Advance that such Contractor has been paid in full for Project Work rendered through the date of the immediately prior Advance made to such Contractor.

(iii) A current endorsement to the title commitment by the Title Company in which the Title Company shall insure over mechanic's and materialmen's liens, if any, and that no other liens or encumbrances on the Project Real Estate have been filed other than as may have been theretofore approved by the DMD Contact. Such endorsements shall increase the amount of the title insurance coverage to the total principal amount then outstanding under the EEDC Loan.

(iv) An original Advance signed by the Developer and approved by the ERC Project Representative.

(v) If requested by the DMD Contact or ERC Project Representative, photographs, certified by Developer, indicating the Project Work for which payment by an Advance is requested in the current disbursement request.

(vi) If requested by the DMD Contact or ERC Project Representative, photocopies of all bills and invoices from all contractors, subcontractors, suppliers, and materialmen for which payment by an Advance is requested in the current disbursement request.

(vii) If requested by the DMD Contact or ERC Project Representative, lien waivers from all contractors, subcontractors, suppliers, and materialmen related to the Project

(viii) If requested by the DMD Contact or ERC Project Representative, a revised and updated Budget reflecting the effects of approved change orders, detailing the amount of any costs savings or overruns, and indicating the amount, if any, of additional Developer Equity required from Developer pursuant to the Development Agreement, which additional Developer Equity shall be added to the Escrowed Developer Equity and deposited in Escrow Fund #3 prior making such requested Advance.

(ix) If requested by the DMD Contact or ERC Project Representative, such person shall have notified the Escrow Agent that they had sufficient opportunity to physically inspect the Project prior the disbursement being made pursuant to the Advance requested.

(x) Receipt of such other or additional documents, instruments or certificates which (A) Escrow Agent, in its reasonable discretion, may require or (A) the DMD Contact or the ERC Project Representative, in its reasonable discretion, may require as described in Section 3 (b) of this Escrow Agreement.

(b) Prior to making each Advance of the Escrow Funds, the Escrow Agent shall have (i) given seven (7) days notice to the ERC Project Representative and the DMD Contact of each pending Advance and (ii) not received notice from the ERC Project Representative or the DMD Contact that the Developer has failed to complete or comply with any condition precedent to the making of such Advance. Prior the expiration of the foregoing seven (7) days notice period, the

DMD Contact or the ERC Project Representative, in its reasonable discretion, may notify the Escrow Agent that further documents, instruments or certificates have been requested from the Developer to confirm that the pending Advance requested by the Developer complies with this Escrow Agreement, the Development Agreement and the EEDC Loan Agreement, following which no Advance shall be made until the Escrow Agent is notified by the DMD Contact or the ERC Project Representative, as applicable, that such has been provided and found to be acceptable.

(c) Notwithstanding any herein to the contrary, each Advance shall be paid from Proportionate amounts withdrawn from the Escrow Account #2, the Escrow Account #3 and the Escrow Account #4 unless an amount in excess of the amount that is Proportionate is authorized by (i) the DMD Contact but solely related to the Escrow Account #2, (ii) the Developer Contact but solely related to the Escrow Account #3 or (iii) the Developer Senior Lender and the Developer Contact but solely related to the Escrow Account #4. Notwithstanding any herein to the contrary, a sufficient amount shall be held in the Escrow Account #3 and the Escrow Account #4 to permit the Escrow Agent to make the pending disbursement in respect of the requested Advance that is Proportionate related any Advance from the Escrow Account #2.

Section 4. Requirements for Final Advance. In addition to the requirements set forth in Section 3 for interim Advances, the following conditions shall be satisfied and the following additional items shall be required for the final Advance of the Escrow Funds:

(a) The Project shall be Substantially Completed and shall be ready for use in Developer's business for its intended purpose. Substantial Completion shall be evidenced by such proof as DMD Contact may, in its discretion, require, which proof shall include, but not be limited to, the following:

(i) Inspection by the DMD Contact and the ERC Project Representative of the Project; and

(ii) Certification of Substantial Completion by the Project Engineer; and

(iii) Affidavits of Substantial Completion by the designing architect and engineer, certifying that construction of the Project has been performed in accordance with the Project Construction Drawings approved by the DMD Contact and all appropriate governmental authorities; and

(iv) An affidavit by the Contractors certifying that construction of the Project has been performed in accordance with the Project Construction Drawings approved by the DMD Contact and all appropriate governmental authorities, that each Contractor has been or will be with the proceeds of the final disbursement paid in full for said Project Work, that all subcontractors, laborers, materialmen, and suppliers of labor or material to the Project at the request of said Contractor have been paid in full and that no such person or entity claims or has a right to claim a valid mechanic's or materialmen's lien

on the Project Real Estate or any part thereof, and containing such other representations as the DMD Contact shall deem appropriate; and

(v) Compliance with all necessary procedures for the occupancy of the Project; and

(vi) An updated as-built survey showing that all Project Work is complete and indicating all easements, rights-of-way, etc. Such as-built survey shall be accompanied by a certificate from the surveyor indicating compliance with the Minimum Standard Detail Requirements for Indiana Land Title Surveys. Such certificate shall be addressed to Developer, ERC, DMD, EEDC, and the Title Company; and

(vii) Original waivers of lien from the Contractors and all other contractors, subcontractors, materialmen and suppliers of labor and/or material to the Project; and

(viii) Satisfactory evidence of connection of all public utilities to the Project; and

(ix) An affidavit by Developer certifying that construction of the Project is Substantially Complete and has been performed in accordance with the Project Construction Drawings previously approved by all governmental authorities, that all necessary occupancy permits have been issued, that all contractors and suppliers for the Project have been (or will be with the proceeds of the final disbursement) fully paid and no one has filed or has a right to file a valid mechanic's or materialmen's lien on the Project or any part thereof, that there are no liens or encumbrances on all or any part of the Project other than those in favor of EEDC and the Developer Senior Lender or those which have been approved by the DMD Contact, that all utilities are provided by governmental or public utility entities and have been connected to the Project Work, that the Project Real Estate is not located in a flood hazard area, and certifying to all other matters which may be requested by the DMD Contact; and

(x) If requested by the DMD Contact, photographs of all completed Project Work, certified by the photographer as to the date and property address or location thereof; and

(b) The Title Company shall issue a final endorsement to its policy, agreeing to delete all standard exceptions, including survey exceptions and mechanic's lien exceptions, from its final title insurance policy. The title insurance commitment shall indicate that there are no recorded liens or encumbrances on or security interests in the Project Real Estate or Developer's interest in the Project Real Estate other than those in favor of EEDC and the Developer Senior Lender or those which have been approved by the DMD Contact.

(c) Within ten (10) days after the payment of the final Advance by the Escrow Agent pursuant to this Section 4, the Escrow Agent shall cause amounts then held under this Escrow Agreement to be paid over in the same manner as would have been applicable upon the occurrence of the condition set forth in Section 2(c) herein.

Section 5. General Advance Requirements. In addition to the requirements of Section 3 and 4 hereof, all requests for advances of Escrow Funds proceeds, including payments to be made to the Contractors pursuant to the Project Construction Contracts, shall be made in accordance with the following requirements.

(a) No Advances shall be permitted for the purchase of materials and/or supplies which will be stored in a place other than at the Project unless Developer signs the necessary security agreements and any other requested documentation reflecting EEDC's security interest in those materials and/or supplies. These procedures are solely for the benefit of EEDC and Developer has no right to rely on these procedures for the protection of its interests against third parties.

(b) All requests for Advances shall be submitted to Escrow Agent, and shall (1) include a standard AIA Document G702/703, together with a Developer's Receipt and Certification, in form as shall be approved by DMD Contact, executed by Developer, the Contractor, and the ERC Project Representative (all change orders must be included on this form, with aggregate change orders exceeding five percent (5%) of the contract amount approved by the DMD Contact), (2) indicate thereon (i) the total cost of Project Work under each Contract commenced by Developer, (ii) the total value of work in place or stored on the Project Real Estate for Project Work, (iii) the total amounts previously disbursed by category of work for the Project, (iv) the amounts for which disbursement is then being requested, and (v) the cost of and schedule for completing the Project Work, and (3) be approved by the ERC Project Representative and the DMD Contact.

(c) The DMD Contact may require any Advance be subject to a reasonable retainage from all contractors and materialmen. Any retainage shall be disbursed with the final Advance, upon compliance with the requirements set forth in the Section 4 hereof, unless waived by the DMD Contact in writing.

(d) Each application for Advance shall be subject to approval by Escrow Agent and within three (3) banking days after such approval, Escrow Agent shall deposit into Developer's checking account (unless otherwise paid as set forth below) for the Project at Escrow Agent, an amount not to exceed the amount of the Escrow Funds in the aggregate but equal in each instance, to the approved amount of disbursement pursuant to an Advance. The cut-off date for costs to be included in any request for Advance shall be the twenty-fifth (25th) day of each calendar month. All Advance requests, once reviewed by Escrow Agent for completeness, and, upon receiving

affirmative mechanic's lien coverage, shall be approved by Escrow Agent and funds shall be deposited into Developer's checking account for the Project at Escrow Agent. Except for payment by Escrow Agent of unpaid title insurance premiums, survey expenses, ERC Project Representative's fees, and reasonable legal fees of Escrow Agent's counsel, Advances shall be made not more frequently than monthly.

(e) At Escrow Agent's discretion, disbursements may be made in whole or in part directly to Escrow Agent for all amounts then due Escrow Agent, including, without limitation, draw inspection fees and escrow funding; to the Title Company to be disbursed as provided in any disbursement agreement; directly to Developer; directly to any contractor or materialman; and/or as otherwise approved by the DMD Contact.

(f) Each Advance request by Developer shall be deemed to be a request and consent to the Advance up to the amount of such request.

(g) Each transfer from the Escrow Account #1 to the Escrow Account #2 shall thereby increase⁴ the principal balance outstanding under the TIF Bonds and shall be deemed to be an installment purchase of the TIF Bonds. Each Advance made from the Escrow Account #2 shall thereby increase⁵ the principal balance of the EEDC Loan outstanding, *first*, under the Developer Limited Recourse Loan #2 up to the maximum aggregate principal amount of _____ Dollars (\$_____) and, *second*, under the Developer Limited Recourse Loan #1.

Section 6. Default. Any material default of Developer under the terms of this Escrow Agreement shall constitute (a) an Event of Default⁶ under the EEDC Loan Agreement and (b) Developer Event of Default under the the Development Agreement.

Section 7. Investment of Escrow Fund #1 and Escrow Fund #2. (a) Escrow Agent shall invest any amounts held in Escrow Fund #1 and Escrow Fund #2 in an interest-bearing Government MMF.

(b) All interest earned on the Escrow Account #1 shall be promptly paid-over to the Bond Bank when earned and deposited in Escrow Account #1. All interest earned on the Escrow Account #2 shall be promptly paid-over to the ERC when earned and deposited in Escrow Account #2.

(c) Upon request, Escrow Agent will prepare the appropriate Internal Revenue Service documentation to report taxpayer identification information relating to the Escrow Account #1. All interest will accrue to and be reported to the Internal Revenue Service for the account of:

⁴ Editing will be done to conform this with EEDC Loan Agreement before final draft is attached to Development Agreement.

⁵ Same as prior footnote.

⁶ Same as prior footnote.

Name: THE EVANSVILLE LOCAL PUBLIC IMPROVEMENT BOND BANK
300 Civic Center Complex
1 N.W. Martin Luther King, Jr. Blvd.
Evansville, Indiana 47708-1833
Attention: Executive Director c/o City Controller
Phone: (812) 436-4919
Fax: (812) 436-4926
Tax ID: _____

In the event Bond Bank is unable or refuses to execute the Internal Revenue Service documentation as requested from time to time (in addition to the IRS Form W-9 as executed and delivered by the Bond Bank on the date hereof), Escrow Agent is authorized to execute the documents on Bond Bank's behalf.

(d) Upon request, Escrow Agent will prepare the appropriate Internal Revenue Service documentation to report taxpayer identification information relating to the Escrow Account #2. All interest will accrue to and be reported to the Internal Revenue Service for the account of:

Name: EVANSVILLE REDEVELOPMENT COMMISSION
c/o Department of Metropolitan Development of
the City of Evansville, Indiana
306 Civic Center Complex
1 N.W. Martin Luther King, Jr. Blvd.
Evansville, Indiana 47708-1833
Attention: Executive Director
Phone: (812) 436-7823
Fax: (812) 436-7809
Tax ID: 35-6001021

In the event ERC is unable or refuses to execute the Internal Revenue Service documentation as requested from time to time (in addition to the IRS Form W-9 as executed and delivered by the ERC on the date hereof), Escrow Agent is authorized to execute the documents on ERC's behalf.

Section 8. Investment of Escrow Fund #3 and Escrow Fund #4. (a) Escrow Agent shall invest amounts from time to time in the Escrow Fund #3 and Escrow Fund #4 in an interest-bearing money market account or fund.

(b) All interest earned on the earned on such amount shall be accumulated and added, respectively, to the Escrow Fund #3 and Escrow Fund #4.

(c) Upon request, Escrow Agent will prepare the appropriate Internal Revenue Service documentation to report taxpayer identification information relating to the Escrow Fund #3 and Escrow Fund #4. All interest will accrue to and be reported to the Internal Revenue Service for the account of:

Name: _____
Address: _____

Attn: _____
Phone: _____
Fax: _____
Tax ID: _____

In the event Developer is unable or refuses to execute the Internal Revenue Service documentation as requested from time to time (in addition to the IRS Form W-9 as executed and delivered by the Developer on the date hereof), Escrow Agent is authorized to execute the documents on Developer's behalf.

Section 9. Compensation. The Escrow Agent acknowledges that it has been paid on the date hereof an initial fee of _____ and 00/100 Dollars (\$_____.00) by the Developer to the Escrow Agent for acting as Escrow Agent herein, plus any out-of-pocket expenses incurred by Escrow Agent in connection with the administration of this Escrow Agreement. In addition, the Escrow Agent shall be paid from the Escrowed Developer Equity for acting as Escrow Agent herein (a) an additional annual fee of _____ and 00/100 Dollars (\$_____.00) on each anniversary of having entered into this Escrow Agreement so long as any amounts constituting Escrow Funds are then held by the Escrow Agent hereunder *plus* (b) a fee of _____ and 00/100 Dollars (\$_____.00) per Advance submitted to the Escrow Agent.

Section 11. Notices. All notices, certificates, requests or other communications required hereunder shall be sufficient only if given in writing, prior to the matter requiring notice and shall be deemed given either when delivered personally, one (1) day after being deposited for next day delivery or five (5) days after mailing when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To EEDC/ERC/DMD
or Bond Bank: City of Evansville
c/o Office of the City Controller
300 Civic Center Complex
1 N.W. Martin Luther King, Jr. Blvd.
Evansville, IN 47708
Attention: City Controller

With a copy to: City of Evansville
c/o Department of Metropolitan Development
306 Civic Center Complex
1 N.W. Martin Luther King, Jr. Blvd.
Evansville, IN 47708
Attention: Executive Director

To Developer: _____

Attn: _____

To Escrow Agent: _____

Attention: _____

Any party hereunder may, by notice given hereunder, designate any further or different addressees to which subsequent notices, certificates, requests or other communications shall be sent.

Section 11. Miscellaneous.

a. Upon distribution of the entire balance of the Escrow Accounts, the duties of Escrow Agent hereunder shall terminate. Developer shall indemnify and hold Escrow Agent harmless against any loss, liability, damages, costs or expenses incurred on its part arising out of or in connection with the performance of its duties as described herein except as may arise due to the gross negligence or willful misconduct of Escrow Agent. Escrow Agent may rely upon any statement, consent or direction it believes to have been given by Developer without investigating the validity thereof and shall have no liability to Developer as the result of such reliance.

b. Escrow Agent may resign as escrow agent under this Escrow Agreement upon giving no less than thirty (30) days prior notice to Developer, the Developer Senior Lender, the EEDC, the ERC and the DMD, during which period the DMD Contact shall designate a successor escrow agent that is banking institution and shall give notice thereof to Developer, the Developer Senior Lender, the EEDC, and the ERC. Any successor escrow agent shall execute a copy of this Escrow Agreement and agree to be bound by the terms and conditions hereof; however, this sentence does not limit Escrow Agent's right to resign. If the Escrow Agent resigns as escrow agent, Escrow Agent shall forthwith disburse the then-current amounts held in the Escrow Accounts to the successor escrow agent.

c. This Escrow Agreement may be amended only by an instrument executed by all of the parties hereto; shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors or assigns of the parties hereto; and may be executed in separate counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

d. Any other provision of this Escrow Agreement notwithstanding, the standard terms, conditions, and charges for the account used for this Escrow Agreement, if any, shall be applicable.

e. The parties agree and understand that this Escrow Agreement shall be interpreted and applied in accordance with the laws of the State of Indiana.

f. This Escrow Agreement sets forth the entire agreement among the parties with respect to the escrow arrangement described herein and may be modified only by an instrument signed by each of the parties hereto. There are no other written or oral agreements among the parties with respect to the escrow arrangement described herein.

g. In the event of a dispute between the other parties to this Escrow Agreement sufficient in the reasonable discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction all money or property in its hands under this Escrow Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Escrow Agreement. Any such legal action shall be brought in such court in Vanderburgh County, Indiana, as the Escrow Agent shall determine to have jurisdiction thereof. The filing of any legal proceedings shall not deprive the Escrow Agent of its compensation earned prior to such filing.

h. All approvals, authorizations, acknowledgement, concurrence, requests or other actions required hereunder shall be sufficient only if given in writing and prior to the matter to which they relate.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be duly executed on or as of the day and year aforesaid.

(“Developer”)

(“Escrow Agent”)

By:_____

By:_____

Printed: _____

Printed: _____

Title:_____

Title:_____

**EVANSVILLE REDEVELOPMENT
COMMISSION (“ERC”)**

**THE CITY OF EVANSVILLE DEPARTMENT
METROPOLITAN DEVELOPMENT (“DMD”)**

By:_____

By:_____

Printed: _____

Printed: _____

Title:_____

Title:_____

**THE EVANSVILLE ECONOMIC
DEVELOPMENT COMMISSION (“EEDC”)**

**THE EVANSVILLE LOCAL PUBLIC
IMPROVEMENT BOND BANK (“BOND
BANK”)**

By:_____

By:_____

Printed: _____

Printed: _____

Title:_____

Title:_____

EXHIBIT A

NAMES OF CONTRACTORS
AND LIST OF PROJECT CONSTRUCTION CONTRACTS

[complete list]

ATTACHMENT 1**DOWNTOWN HOTEL ESCROW AGREEMENT
REQUEST FOR AN ADVANCE**

THIS ADVANCE, WITNESSETH THAT:

WHEREAS, _____ ("Developer") desires to cause an Advance under the Downtown Hotel Escrow Agreement ("Escrow Agreement"), dated _____, 2011 by and among (A) City of Evansville (the "City") acting by or through the EVANSVILLE REDEVELOPMENT COMMISSION ("ERC"), THE CITY OF EVANSVILLE DEPARTMENT OF METROPOLITAN DEVELOPMENT ("DMD"), THE EVANSVILLE ECONOMIC DEVELOPMENT COMMISSION ("EEDC"), (B) THE EVANSVILLE LOCAL PUBLIC IMPROVEMENT BOND BANK ("Bond Bank") established and existing pursuant to Indiana Code 5-1.4, (C) the Developer and (D) _____ (the "Escrow Agent"), pursuant to Section [3][4] of the Escrow Agreement.

NOW, THEREFORE, on behalf of the Developer, and at the direction of the Developer, the Escrow Agent is hereby requested to disburse from the Escrow Funds as an Advance directly to the person or entity named in the attached invoice and states as follows:

Name of Contractor: _____
 Taxpayer I.D. Number: _____
 Amount of Disbursement: \$ _____

The undersigned hereby represents, warrants and certifies that:

(1) None of the items for which payment is hereby requested has formed the basis for any payment Advance heretofore made from the Escrow Funds. Each item for which payment is requested to be made from this Advance was a necessary or appropriate Direct Cost related to the Project and is due and owing in respect of the Project Construction Contract with such Contractor. The Payee is a Contractor and the payment to be made pursuant a Project Construction Contract named in the Escrow Agreement (or as supplement in an approved Attachment 2 delivered to the Escrow Agent). All conditions precedent to this Advance under the Escrow Agreement, the EEDC Loan Agreement and Development Agreement have been satisfied or waived by the party entitled to rely such condition; and

(2) Developer has caused an exact duplicate copy of this request for an Advance (including all attachments hereto) to be delivered to the DMD Contact on or prior to the date set forth below; and

(3) Attached hereto is an affidavit of payment from the Payee to the effect that such Contractor was paid in full for all work, services and materials rendered in respect of the Project and properly billed by such Contractor to the Developer through _____, which is the date of the Payee's last invoice that had been paid from a prior Advance made in respect of an invoice of the Payee submitted to the Escrow Agent for last prior Advance; and

(4) Attached hereto, if available, are true accurate and complete copies of the documents, instruments, invoices, bills or other evidence supporting the items for which payment will be made from this Advance.

All capitalized terms contained in this Advance shall have meaning ascribed in the Escrow Agreement.

Dated this ____ day of _____, _____

_____, as Developer

BY: _____
 PRINTED NAME; TITLE: _____

Review and approved by the ERC Project Representative:

BY: _____
 PRINTED NAME; TITLE: _____

ATTACHMENT 2

**DOWNTOWN HOTEL ESCROW AGREEMENT
UPDATE TO LIST OF CONTRACTOR
AND/OR PROJECT CONSTRUCTION CONTRACTS**

THIS UPDATE, WITNESSETH THAT:

WHEREAS, _____ ("Developer") desires to update Exhibit A to the Downtown Hotel Escrow Agreement ("Escrow Agreement"), dated _____, 2011 by and among (A) City of Evansville (the "City") acting by or through the EVANSVILLE REDEVELOPMENT COMMISSION ("ERC"), THE CITY OF EVANSVILLE DEPARTMENT OF METROPOLITAN DEVELOPMENT ("DMD"), THE EVANSVILLE ECONOMIC DEVELOPMENT COMMISSION ("EEDC"), (B) THE EVANSVILLE LOCAL PUBLIC IMPROVEMENT BOND BANK ("Bond Bank") established and existing pursuant to Indiana Code 5-1.4, (C) the Developer and (D) _____ (the "Escrow Agent"), pursuant to terms of the Escrow Agreement.

NOW, THEREFORE, on behalf of the Developer, and at the direction of the Developer, the Escrow Agent is hereby requested to add the following to Exhibit A to the Escrow Agreement:

Name of Payee: _____
Description of Project Construction Contract: _____

_____.

The undersigned hereby represents, warrants and certifies that a true accurate and complete copy of the above described Project Construction Contract has been delivered to and approved by the DMD Contact and the ERC Project Representative pursuant to the Development Agreement. The Developer agrees this update shall not be effective until the DMD Contact has signed it as set out below.

All capitalized terms contained in this update to Exhibit A shall have meaning ascribed in the Escrow Agreement.

Dated this ____ day of _____, _____

_____, as **Developer**

BY: _____
PRINTED NAME; TITLE: _____

Reviewed and concurred by the DMD Contact after consultation with the ERC Project Representative:

BY: _____
PRINTED NAME; TITLE: _____

EXHIBIT L
TO
DOWNTOWN HOTEL DEVELOPMENT AGREEMENT

AGREEMENT IMPOSING RESTRICTIVE COVENANTS ON REAL ESTATE

THIS AGREEMENT IMPOSING COVENANTS ON REAL ESTATE is executed as of the ____ day of _____, 2011, by and between _____ (hereafter "Developer"), and the City of Evansville For the Use and Benefit of Its Department of Redevelopment (hereafter "ERC").

WITNESSETH:

WHEREAS, the ERC owns certain real property situated in the City of Evansville, Indiana, more particularly described in and depicted on Exhibit "A" attached hereto and incorporated herein by reference (the "Project Real Estate"). The Project Real Estate was conveyed to the ERC by a Corrected Warranty Deed dated January 12, 2011, and recorded on January 13, 2011, as Instrument No. 2011R00001348, in the office of the Recorder of Vanderburgh County, Indiana; and

WHEREAS, Developer, pursuant to that certain Downtown Hotel Development Agreement dated _____, 2011 (the "Development Agreement"), intends to (a) demolish all improvements located on, in, over or under the Project Real Estate; (b) remediate any contamination on, in, around or about the Project Real Estate; and (c) construct and develop a hotel on the Project Real Estate of a type, quality and specification as detailed in the Development Agreement ("Hotel"); and

WHEREAS, the ERC has agreed to provide certain economic incentives to encourage Developer's development of the Hotel as more particularly set forth in the Development Agreement; and

WHEREAS, in connection with and as part of the consideration for the transfer to Developer of fee simple title to the Project Real Estate from the ERC pursuant to the Development Agreement, the parties contemplated and desire to enter into this Agreement; and

NOW, THEREFORE, in consideration of the covenants of Developer set forth in this Agreement and the Development Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The ERC and Developer hereby declare and provide that the Project Real Estate and all improvements located thereon shall from and after the date of recording hereof be subject to the following commitments and restrictions which commitment and restrictions shall for all purposes be construed and held to be covenants running with the title to the Project Real Estate during the term of such restrictions and shall be binding on future owners of the Project Real Estate during such term.

2. Developer agrees to operate the Hotel and own the Project Real Estate according to and under the following restrictions, terms and conditions:

A. Developer shall continue to maintain on the Project Real Estate a full service convention hotel, of a size, quality and character of improvements as required and identified by the Development Agreement (including its Exhibit "B"), the terms and conditions of which are incorporated herein and shall survive the termination of the Development Agreement, for a period of twenty-five (25) years from the date the Hotel shall commence business operations, estimated to be December 31, 2012.

B. The Project Real Estate shall be used only for the purpose of a full service convention hotel, of a size, quality and character of improvements as required and identified by the Development Agreement (including its Exhibit "B"), for a period of twenty-five (25) years from the date the Hotel shall commence business operations, estimated to be December 31, 2012.

C. Developer agrees not to acquire any additional meeting or banquet facilities which would compete directly with the adjacent "Centre" or the new multi-purpose arena ("Arena") being constructed adjacent to the Project Real Estate in downtown Evansville, Indiana, other than those facilities presently planned at the Hotel and as more particularly set forth in the Development Agreement; provided, however, this restriction shall not prohibit Developer from acquiring or using additional space for the purpose of presenting "night club" type entertainment which does not directly compete with such shows or entertainment usually presented at "The Centre" or the Arena.

3. The parties acknowledge that the injury to the other that would be occasioned by any parties' failure to abide by the terms of this Agreement shall not be adequately compensated by monetary damages. Accordingly, the parties agree that, as remedies at law would be inadequate, any party to this Agreement shall be entitled to seek and obtain, in addition to other remedies, immediate and permanent injunctive or other equitable relief: including but not limited to temporary restraining order and/or preliminary or permanent injunctions to restrain or enjoin any such breach, without the necessity of posting a bond or other security. Any breach or attempted breach of any of the conditions, covenants and restrictions contained hereinabove may be enforced by the ERC by an action at law or in equity against Developer or Developer's successors and assigns. In order that the Developer might cure, the ERC shall first provide to Developer, or Developer's successors or assigns, thirty (30) days advance written notice of the asserted, breach of the conditions, covenants and restrictions and Developer shall have this period to cure any such breach.

4. In addition to the other remedies described herein, the ERC shall be entitled to liquidated damages for each individual breach of this Agreement in an amount equal to Thirty Thousand Dollars (\$30,000) per month that each individual breach persists after delivery of the notice of a breach as provided herein below,

allowing for said thirty (30) day cure period described herein. Such damages, in any event not to exceed the total amount of the economic assistance amount paid by the ERC to Developer pursuant to the Development Agreement, less any amounts forgiven or paid pursuant to the Development Agreement.

5. All terms and conditions herein shall for all purposes be construed and considered as covenants and agreements running with the Project Real Estate for the benefit of the ERC and shall be binding upon all parties hereto, their respective heirs, devisees, legal representative, successors and assigns. Developer agrees said conditions and covenants shall be specifically incorporated into any and all contracts, leases, licenses, and deeds entered into by Developer with respect to said Project Real Estate.

6. All notices to be given under this Agreement shall be in writing, and shall be deemed to have been given and served when delivered in person, by UPS or Federal Express (or similar overnight carrier), via facsimile transmission, or by United States mail, postage pre-paid to the addresses:

TO ERC: City of Evansville For the Use and Benefit of Its
Department of Redevelopment
306 Administration Building
Civic Center Complex
1 NW Martin Luther King Jr. Blvd
Evansville, Indiana 47708

TO DEVELOPER: _____

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

7. This instrument contains the entire agreement between the parties regarding restrictive covenants to be imposed against the Project Real Estate, and supersedes all prior oral or written understandings between the parties hereto. This Agreement shall be construed under, and governed by, the laws of the State of Indiana. As used in this Agreement, the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words and pronouns of any gender shall be meant to include any other gender. All headings set forth herein are included for the convenience of reference only and shall not affect the interpretation hereof, nor shall any weight or value be given to the relative position of any part or provision hereof in relation to any other provision in determining such construction. In the event that any of the provisions of this Agreement shall be held to be unenforceable, such provision shall be enforced to the fullest extent permissible and the remaining portion of this

Agreement shall remain in full force and effect. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, strictly neither for or against either party, and without implying a presumption that the terms hereof shall be more strictly construed against one party by reason of any rule of construction to the effect that a document *is* to be construed more strictly against the party who personally or through such parties' agent prepared the same, it being agreed that representatives of both parties were involved in the preparation of this Agreement. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all which together shall constitute one and the same instrument. THIS PROVISION, AND EACH AND EVERY OTHER PROVISION OF THIS AGREEMENT MAY NOT UNDER ANY CIRCUMSTANCE BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED VERBALLY, BUT MAY ONLY BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED BY AN AGREEMENT IN WRITING EXECUTED BY ALL PARTIES HERETO AND RECORDED.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

(Signature Page to Follow)

“ERC”

“Developer”

City of Evansville For the Use and Benefit
of Its Department of Redevelopment

By: _____

Printed: _____

Its: _____

By: _____

Printed: _____

Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State,
personally appeared the within named _____, known to me to be the
_____ of _____, a _____ organized and existing under the laws of
the State of Indiana, who acknowledged the execution of the foregoing Agreement Imposing
Covenants on Real Estate as the free and voluntary act and deed of said entity for the uses and
purposes therein set forth.

WITNESS MY HAND AND SEAL this ____ day of _____, 2011.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named _____, known to me to be the _____ of the Evansville Redevelopment Commission, who acknowledged the execution of the foregoing Agreement Imposing Covenants on Real Estate as the free and voluntary act and deed of said Evansville Redevelopment Commission for the uses and purposes therein set forth.

WITNESS MY HAND AND SEAL this ____ day of _____, 2011.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

This instrument was prepared by BRADLEY J. SALMON, of the Law Firm of **TERRELL BAUGH, SALMON & BORN, LLP**, 700 South Green River Road, Suite 2000, Evansville, Indiana 47715. Telephone: (812) 479-8721.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

EXHIBIT A

Legal Description of the Project Real Estate

All of Lots 1 thru 24, inclusive, in Block 39, the vacated portion of a 12-foot alley in said Block 39, and a part of the vacated portion of Seventh Street adjoining said Block 39 in the Eastern Enlargement of the City of Evansville, the plat of which is recorded in Deed Record E, pages 415 and 416, transcribed in Plat Book A, pages 142, 143, and 144, and re-transcribed in Plat Book E, pages 16, 17, and 18, all in the office of the Recorder of Vanderburgh County, Indiana, described as follows:

Beginning at the westernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 57 degrees 15 minutes 36 seconds East 291.12 feet along the northwestern line of said Block 39 and the prolongation thereof to the northernmost corner of said vacated portion of Seventh Street, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 32 degrees 48 minutes 11 seconds East 299.62 feet to the easternmost corner of said vacated portion of Seventh Street; thence South 57 degrees 18 minutes 21 seconds West 291.28 feet along the southeast line of said Block 39 and the prolongation thereof to the southernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 32 degrees 46 minutes 16 seconds West 299.39 feet to the point of beginning and containing 87217 square feet (2.002 acres), more or less. EXCEPTING THEREFROM the following described portion of said 12-foot alley in said Block 39: Commencing at the westernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence South 32 degrees 46 minutes 16 seconds East 299.39 feet to the southernmost corner of said Block 39, being marked by a mag nail with washer stamped "BLA FIRM 0030"; thence North 57 degrees 18 minutes 21 seconds East 127.58 feet to the easternmost corner of Lot 12 in said Block 39 and the POINT OF BEGINNING of this description; thence North 32 degrees 47 minutes 23 seconds West 169.63 feet along the southwestern line of said 12-foot alley to the southernmost corner of that vacated portion of said alley described in Vacation and Openings Record 4, page 32 in the office of the Board of Public Works of the City of Evansville; thence North 57 degrees 15 minutes 36 seconds East 12.00 feet along the southeastern line of said vacated portion to the easternmost corner thereof; thence South 32 degrees 47 minutes 23 seconds East 169.64 feet along the northeastern line of said alley to the southernmost corner of Lot 13 in said Block 39; thence South 57 degrees 18 minutes 21 seconds West 12.00 feet to the point of beginning and containing 2036 square feet (0.047 acres), more or less, in said excepted portion, and containing 85181 square feet (1.955 acres), more or less, after said excepted portion.

[End of Exhibit L]