

**CITY OF HOBART, INDIANA
BOARD OF PUBLIC WORKS AND SAFETY**

Resolution Number 2017- 01

**A Resolution Approving Agreements for the Purchase of Improvements
for New Public Works Maintenance Facility**

WHEREAS, the Common Council (“Council”) of the City of Hobart, Indiana (“City”), through the adoption of its Resolution No. 2017-10 on May 3, 2017, considered and approved the entry by the City into an installment contract (“Installment Contract”) with GM Development Companies LLC, or an affiliate thereof (“Developer”), for the purchase of fully developed improvements for a new Department of Public Works Maintenance Facility in the City (the “Project”) together with the entry into a Project Agreement (the “Project Agreement”), generally outlining the responsibilities of the Developer and City with respect to the development of the Project; and

WHEREAS, the Council, through said Resolution, further took note of the fact that the City is authorized by I.C. §36-1-10.5-1, *et seq.* to purchase land or structures for the operation of the City government and to pay an amount not to exceed the average of two (2) appraisals performed by Indiana licensed appraisers; and

WHEREAS, said Resolution also pledged Highway Revenues received and to be received by the City (“Gaming Revenues”) to the payment of the Installment Contract for a period of 10 years; and

WHEREAS, the Council, through said Resolution, also authorized the City to enter into the Installment Contract and the Project Agreement, to execute and deliver any agreements, acknowledgements or assignments as may be requested by the Developer’s Lender and to take any other action necessary to consummate the purchase of the Project pursuant to the Installment Contract; and

WHEREAS, the Board of Public Works and Safety (“Board”) of the City is the purchasing agency for the City pursuant to §31.004(A) of the Municipal Code of the City of Hobart enacted pursuant to the authority of I.C. §5-22-4-5(a); and

WHEREAS, the Board, as the City’s purchasing agency, has all of the powers and duties authorized under the laws of the State of Indiana governing purchasing under I.C. §5-22; and

WHEREAS, the Board, in the exercise of said powers and duties, has received and reviewed the following agreements, which are required for the implementation of the purchase and financing of the purchase of said improvements as part of the Project; and

WHEREAS, the following documents, which are attached hereto and made a part hereof, and which are referred to collectively as the (“Contract Documents”), have been received and reviewed by the Board:

- 43 1. Project Agreement between City of Hobart and Hobart
- 44 Maintenance Building, LLC;
- 45
- 46 2. Participation Agreement between Hobart Maintenance Facility,
- 47 LLC, City of Hobart and People’s Bank;
- 48
- 49 3. Installment Purchase Contract between City of Hobart and Hobart
- 50 Maintenance Facility, LLC;
- 51
- 52 4. Temporary Easement Agreement between the City of Hobart and
- 53 Hobart Maintenance Facility, LLC; and
- 54

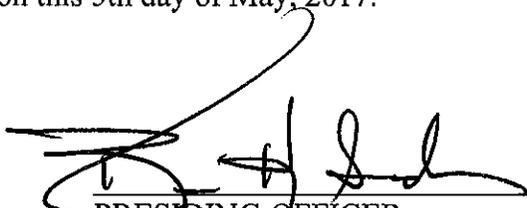
55 WHEREAS, the Board desires to find that all of said documents are in accord with and in
56 conformance to said Resolution 2017- 10 of the Common Council of the City and that the
57 Contract Documents may be executed on behalf of the City.

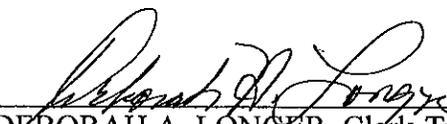
58 THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of the City
59 of Hobart that:

60 1. The Contract Documents and each of them are found and
61 determined by the Board to be in good order, in accord with and conformance to
62 the letter and spirit of Resolution 2017-10 of the Common Council, and are
63 hereby approved and authorized for execution and attestation by the Mayor and
64 Clerk-Treasurer of the City.

65 2. This Resolution shall be in full force and effect from and after its
66 passage.

67 ALL OF WHICH is ADOPTED AND APPROVED by the Board of Public Works and
68 Safety of the City of Hobart, Indiana on this 5th day of May, 2017.

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75 _____
76 PRESIDING OFFICER

77
78 ATTEST: 
79 DEBORAH A. LONGER, Clerk-Treasurer

PROJECT AGREEMENT
City of Hobart
Maintenance Facility

This Project Agreement (City of Hobart/Maintenance Facility) (the "Agreement") is executed this ____ day of May, 2017 by and between Hobart Maintenance Building LLC (the "Developer"), and City of Hobart, Indiana (the "City").

1. Defined Terms.

Agency shall mean any applicable: (a) governmental agency, board, commission, or department; or (b) other judicial, administrative, or regulatory body.

Assignment Transaction shall mean the purchase of an absolute assignment of the Payment Rights, the proceeds of the sale of which shall be used to pay Project Costs.

AT Documents shall mean all instruments, agreements, and other documents evidencing, or required in connection with, the Assignment Transaction, including, without limitation, an agreement pursuant to which Developer shall convey and assign the Payment Rights to the Payment Rights Purchaser for the Payment Rights Price, which agreement shall be on the terms and conditions set forth on Exhibit C.

Books and Records shall mean all of the books and records pertaining to the Project Costs.

Change Order shall mean a change order executed by Developer and City finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

Change Order Request shall mean a written request for a change to the Final Plans.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees).

Closing shall mean the closing with respect to the execution of the Installment Contract and the AT Documents.

Closing Date shall mean the date of the Closing.

Construction Contract shall mean the contract executed by and between Developer and the Contractor for construction of the Project in accordance with the Final Plans, the approved Project Budget, and the terms and conditions of this Agreement.

Construction Drawings shall mean construction drawings consistent with the Design Development Documents.

Construction Schedule shall mean a reasonably detailed schedule for construction of the Project.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

Contractor shall mean the entity that will be the general contractor or the construction manager in connection with the construction of the Project.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure;

provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

Design Development Documents shall mean reasonably detailed design development documents that are consistent with the Schematic Design Drawings and the Laws.

Documentation Costs shall mean all fees, costs, and expenses incurred by Developer in connection with drafting and negotiating: (a) this Agreement; (b) the AT Documents; (c) the Installment Contract; and (d) any other documents contemplated by this Agreement or the AT Documents to be executed in connection with the Project.

Easement Agreement shall mean an agreement pursuant to which City grants to Developer a temporary easement to construct the Project on the Project Site in accordance with the terms and conditions of this Agreement.

Event of Default shall have the meaning set forth in Subsection 12(a).

Final Documents and Drawings shall mean final Schematic Design Drawings, final Design Development Documents, final Construction Drawings, and the final Construction Schedule, as each is finalized and approved or reviewed by City pursuant to Section 7.

Final Inspection shall mean an inspection of the Project by City after substantial completion thereof.

Final Plans shall mean the aggregated Final Documents and Drawings.

Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; and (iii) utility or energy shortages or acts or omissions of public utility providers).

Installment Contract shall mean an installment contract pursuant to which City shall purchase the completed Project from Developer, which installment contract shall provide that: (a) Developer shall convey the completed Project to City as soon as reasonably is practicable after the issuance of a "Certificate of Occupancy" with respect to the Project; but (b) notwithstanding such conveyance, there shall be no merger of the installment contract into the conveyance documents by which City receives ownership of the completed Project, so that the installment contract shall remain in full force and effect (including that City shall remain obligated to make the payments due under the installment contract). Stated alternatively, such conveyance shall not accelerate payment of the installment payments under the installment contract, or decrease the period within which the installment payments are to be paid.

Inspection shall mean a Permitted Inspection or the Final Inspection, as applicable.

Installment Purchase Price shall mean the purchase price for the acquisition of the completed Project pursuant to the Installment Contract, the amount of which shall be determined as provided in Subsection 7(f).

Latent Defect shall mean those material defects in the construction and/or installation of the Project that: (a) are not discovered; and (b) reasonably are not discoverable; by City during a Permitted Inspection or the Final Inspection.

Law shall mean any applicable federal, state, or local law, statute, ordinance, rule, or regulation, or any order

or decree of any Agency.

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been constructed and/or installed materially in accordance with the terms and conditions of this Agreement.

Non-Compliance Notice shall mean a written notice from City that identifies Material Defects with respect to the Project discovered by City during a Permitted Inspection or the Final Inspection.

Payment Rights shall mean the rights with respect to the receipt of the installment payments payable by City pursuant to the Installment Contract.

Payment Rights Price shall mean the amount for which the Payment Rights are purchased, which amount shall be determined pursuant to Subsection 7(f).

Payment Rights Purchaser shall mean Peoples Bank SB and its successors and assigns.

Permitted Change shall mean any change proposed by Developer to that portion of the Final Plans consisting of the final Construction Drawings, so long as such change: (a) is not inconsistent with the Schematic Design Drawings or the Design Development Documents approved by City; (b) does not result in the Final Plans containing structurally flawed elements; (c) does not result in an increase in the Project Budget; and (d) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule.

Permitted Inspection shall mean an inspection by City of any item or component of the Project when reasonably deemed to be necessary or appropriate by City.

Plan Refinement Process shall mean the process set forth in Section 7 for completion of the Final Plans and the Project Budget.

Plan Schedule shall mean the schedule in accordance with which Developer shall prepare and provide to City the Schematic Design Drawings, the Design Development Documents, the Construction Drawings, and the Construction Schedule, which schedule is attached hereto as Exhibit B.

Project shall mean a single story maintenance facility consisting of approximately 16,800 square feet, which building will: (a) include six service bays; and (b) be natural gas compliant.

Project Budget shall mean the budget for the Project Costs and the contingencies.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including: (a) the Documentation Costs; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 5 have been satisfied and/or will be waived by Developer; (c) the costs incurred in connection with the closing of the Assignment Transaction and the purchase of the Payment Rights (to the extent that such costs are not included in the Documentation Costs); (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of this Agreement; (e) a reasonable and customary amount for contingencies; and (f) the 6% fee to be paid by City to Developer.

Project Site shall mean that certain real estate located in the City and delineated on Exhibit A as the "Project Site".

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the

construction of the Project.

Sales Tax Exemption Form shall mean Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which City shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

Schematic Design Drawings shall mean the schematic design drawings for the Project that have been approved by City, which drawings, or identifying information with respect thereto, are attached hereto as Exhibit E.

Substantial Completion Date shall mean the date on which Developer delivers to City a copy of an architect's certificate of substantial completion indicating that the Project has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Inspection, which "punch-list" items do not materially affect the use of the Project for its intended use.

Utility Services shall mean gas, electricity, telephone, water, storm and sanitary sewer, and other utility services.

2. General Obligations.

(a) Project. Subject to the terms and conditions of this Agreement: (i) Developer and City shall execute the Installment Contract; and (ii) Developer shall construct the Project on the Project Site.

(b) Utility Availability. City, at its cost and expense, shall ensure that there are Utility Services in adjoining public rights-of-way or properly granted and recorded utility easements that serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement, including, without limitation, that City, at its cost and expense, shall make any improvements outside the Project Site that are necessary for City to satisfy the foregoing obligation with respect to Utility Services.

(c) Assignment Transaction. City shall provide such assistance to Developer in connection with the Assignment Transaction as Developer reasonably may request.

3. **Closing.** Subject to the terms and conditions of this Agreement, the Closing shall occur on or before May 15, 2017. The Closing Date shall be established mutually by Developer and City, and the Closing shall take place at such location as Developer and City mutually agree.

4. **Closing Documents.** At the Closing, the documents and instruments set forth in this Section shall be executed and/or delivered.

(a) the Installment Contract and the AT Documents;

(b) the Easement Agreement;

(c) a confirmation by each of Developer and City of the representations and warranties set forth in Section 6;

(d) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or City, as the case may be; and (ii) the execution and delivery of such

documents, and the performance by Developer or City of its obligations hereunder and under the foregoing documents, have been authorized by Developer or City, as the case may be; and

(e) such other customary documents and instruments as either party or the Payment Rights Purchaser reasonably may request in connection with the Closing.

5. Conditions.

(a) Mutual. Except to the extent waived by proceeding to the Closing, the obligation of each of Developer and City to proceed to the Closing are subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has obtained, or Developer and City have determined that Developer will be able to obtain, all Required Permits.

(ii) The Final Plans and the Project Budget have been completed pursuant to the Plan Refinement Process.

(iii) Developer and City have agreed to the form and substance of each of the Installment Contract and the Easement Agreement.

(iv) Developer, City and all other parties to the AT Documents have agreed to the form and substance of the AT Documents, and each of Developer and City has determined, in the exercise of its reasonable discretion, that the Payment Rights Purchaser is prepared to close the Assignment Transaction on the Closing Date.

(b) Developer. In addition to the conditions set forth in Subsection 5(a), the obligation of Developer to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has determined that no test, inspection, examination, study, investigation, or title search of or with respect to the Project Site establishes that there are conditions that would interfere with, or prohibit, the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(ii) There is no continuing breach by City of this Agreement, and (ii) all of the representations and warranties of City set forth in Section 6 are true and accurate in all respects.

(c) City. In addition to the conditions set forth in Subsection 5(a), the obligation of City to proceed to the Closing is subject to the condition that: (i) there is no continuing breach by Developer of this Agreement; and (ii) all of the representations and warranties of Developer set forth in Section 6 are true and accurate in all respects.

(d) Condition Failure. If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (a) waive satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement by a written notice to the other party; provided that, with respect to breaches of this Agreement by a party, the other party shall have the rights

and remedies set forth in Section 12. Notwithstanding anything to the contrary set forth herein, Developer and City shall work diligently and in good faith to satisfy the conditions set forth in this Section.

6. Representations and Warranties. Each of Developer and City represents and warrants to the other as follows: (a) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (b) it has the power to enter into this Agreement and to perform its obligations hereunder; (c) it has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; and (d) this Agreement, once executed, is its legal, valid, and binding obligation. In addition to the foregoing: (a) Developer represents and warrants to City that it: (i) is a limited liability company organized and existing under the laws of the State of Indiana; and (ii) is not a financial advisor, as such term is: (A) commonly understood; or (B) defined in the Laws; and (b) City represents and warrants to Developer that: (i) to the best of its knowledge, there is not now, and there has not been, any contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws, except as may be disclosed in any property information provided by City to Developer; and (ii) it is a city incorporated under the laws of the State of Indiana.

7. Plan Refinement Process.

(a) Design Development Documents. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit the Design Development Documents to City for its review and approval. Within ten days after City receives the Design Development Documents, City shall deliver to Developer written notice that it approves or rejects the Design Development Documents; provided that, if City rejects all or any part of the Design Development Documents, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of all of the Design Development Documents with respect to any Construction Trade, the Design Development Documents shall be final as to such Construction Trade, subject to modifications by Change Orders.

(b) Construction Drawings. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to City for its review the Construction Drawings with respect to each Construction Trade. Thereafter, such Construction Drawings shall be final construction drawings with respect to the applicable Construction Trade, subject to modifications by Change Orders.

(c) Construction Schedule. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit the Construction Schedule to City for its review and approval. Within ten days after City receives the Construction Schedule, City shall deliver to Developer written notice that it approves or rejects the Construction Schedule; provided that, if City rejects all or any part of the Construction Schedule, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the Construction Schedule, the Construction Schedule shall be the final construction schedule with respect to construction of the Project, subject to modifications by Change Orders.

(d) Re-submissions. If, at any stage of the Plan Refinement Process, City, rather than approving any drawings, documents, or schedules, instead rejects any of the foregoing, then, within ten days after Developer receives notice from City that it has rejected any drawings, documents, or schedules, Developer shall: (i) revise the drawings, documents, or schedules; and (ii) resubmit the drawings, documents, or schedules to City. Within ten days after City receives a re-submission, City shall deliver to Developer written notice that

it approves or rejects the resubmitted drawings, documents, or schedules; provided that, if City rejects all or any part of the foregoing, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the resubmitted drawings, documents, or schedules, the resubmitted drawings, documents, or schedules shall become part of the Final Plans, subject to modifications by Change Orders. Notwithstanding the involvement of City in the Plan Refinement Process, Developer shall be responsible for insuring that revisions submitted by Developer to City in writing are implemented in the Final Plans.

(e) Final Plans. Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified by Change Orders.

(f) Budget/Costs.

(i) At the appropriate points during the Plan Refinement Process, as determined by Developer and City, Developer shall: (A) deliver the Project Budget to City for its review and approval; and (B) make such adjustments to the Project Budget as are determined by Developer and City to be necessary or appropriate in connection with the finalization of the drawings, documents, and schedules pursuant to the Plan Refinement Process; provided that Developer shall not be obligated to make adjustments to the Project Budget that would cause the Project Costs to exceed \$1,450,000.00, unless City agrees: (A) that the amount in excess of \$1,450,000.00 is not included in the Payment Rights Price or the Installment Purchase Price; (B) that City will pay all amounts in excess of \$1,450,000.00 as such amounts are incurred; and (C) Developer shall not have any obligations with respect to the payment of the amount in excess of \$1,450,000.00.

(ii) Upon approval of the Project Budget: (A) the Project Budget shall be the final budget with respect to construction of the Project, subject to modifications by Change Orders; and (B) the total amount set forth in the approved Project Budget, less any amount in excess of \$1,450,000.00, shall become the Payment Rights Price and the Installment Purchase Price.

(g) Sales Tax.

(i) As soon as reasonably is practicable, Developer shall submit the Construction Contract to City for its review.

(ii) Promptly after receipt of the Construction Contract, City shall deliver the Sales Tax Exemption Form to: (A) Developer; and (B) the Contractor, at the notice address set forth in the Construction Contract.

(iii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to

construct, install, and/or complete the Project, Developer (or the Contractor, pursuant to the terms and conditions of the Construction Contract) promptly shall notify City in writing. From and after receipt of the foregoing notice, City shall provide such cooperation, information, and assistance as Developer and/or the Contractor reasonably shall request.

8. Change Orders.

(a) **Developer Changes.** If Developer desires to make any changes to the Final Plans, then Developer shall submit a Change Order Request to City for review and approval, together with an estimate of any increases to the approved Project Budget that would result from the change proposed in the Change Order Request. Within ten days after City receives the Change Order Request, City shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) City shall not withhold its approval unreasonably; (ii) it shall not be unreasonable for City to reject a Change Order Request if the change proposed in the Change Order Request would result in an increase in the Project Budget; and (iii) if City approves a Change Order Request for a change that would result in an increase in the Project Budget, then, notwithstanding anything to the contrary set forth herein, the amount of such increase: (A) shall not be included in the Payment Rights Price or the Installment Purchase Price; and (B) instead, shall be paid by City as such costs are incurred; provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase. If City rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. If City approves a Change Order Request, then City and Developer shall execute a Change Order.

(b) City Changes.

(i) If City desires to make any changes to the Final Plans, then City shall submit a Change Order Request to Developer for review and approval. Within five business days after Developer receives the Change Order Request, Developer shall deliver to City written notice stating whether the change proposed in the Change Order Request would result in an increase in the Project Budget; provided that, if the proposed change would result in an increase, then such notice also shall include an estimate of the amount of the increase.

(i) If the foregoing notice states that the change proposed in the Change Order Request would not result in an increase in the Project Budget, then, within five business days after delivery of such notice, Developer shall deliver to City written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iii) If the foregoing notice states that the change proposed in the Change Order Request would result in an increase in the Project Budget, then: (A) such notice also shall include an estimate of the amount of the increase; (B) within five business days after receipt of such notice, City shall provide written notice to Developer as to whether City would like to withdraw the Change Order Request. If City does not elect to withdraw the Change Order Request, then, within five additional business days, Developer shall deliver to City written notice that it approves or rejects the

Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iv) If Developer approves a Change Order Request, then City and Developer shall execute a Change Order. If the approved Change Order Request is for a change that will result in an increase in the Project Budget, then, notwithstanding anything to the contrary set forth herein, the increase in the Project Budget: (A) shall not be included in the Payment Rights Price or the Installment Purchase Price; and (B) instead, shall be paid by City as such costs are incurred; provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase.

(v) If Developer rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.

(c) Permitted Change. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of City with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer.

9. Construction.

(a) Permits. Prior to commencing construction of the Project, Developer, at its cost and expense, shall obtain and submit to City for its review the Required Permits.

(b) Construction. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; and (iii) in compliance with the Laws and the Required Permits.

(c) Records. Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. City and the Payment Rights Purchaser, and their respective attorneys, accountants, representatives, architects, engineers, and consultants, at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records.

10. Inspection.

(a) Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, City may perform a Permitted Inspection. Within ten days after a Permitted Inspection, City may deliver to Developer a Non-Compliance Notice. If City timely delivers a Non-Compliance Notice, then, as soon as is practicable, Developer shall correct all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or deemed to have been accepted, by City. Notwithstanding anything to the contrary set forth herein, all items or components of the Project with respect to which: (i) a Permitted Inspection is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by City.

(b) **Final Inspection.** Developer shall deliver to City a written request for the Final Inspection of the Project at least five business days prior to the Substantial Completion Date. On or before the later of the date that is five business days after: (i) receipt by City of such request; or (ii) the Substantial Completion Date; City shall: (i) conduct (or waive its right to conduct) the Final Inspection; and (ii) deliver a Non-Compliance Notice (if applicable) to Developer; provided that: (i) upon receipt of a Non-Compliance Notice, Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice; and (ii) all items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by City. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this Subsection; City shall have no further inspection rights pursuant to this Agreement with respect to the Project. Within five business days after City conducts the Final Inspection, Developer and City shall identify the "punch-list" items. Developer shall complete all "punch-list" items within 60 days after the "punch-list" items are identified.

(c) **Latent Defects.** Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by City pursuant to this Section shall be applicable with respect to any Latent Defects. An acceptance, or deemed acceptance, by City pursuant to this Section shall not mean that City has accepted, or Developer has been relieved of, responsibility for: (i) compliance with the Laws; (ii) the proper application of construction means or methods; or (iii) correcting any portion of the Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project.

(d) **General.** In connection with any Inspection, City shall: (i) comply with all health and safety rules of which City has been informed that have been established for personnel present on the construction site; and (ii) coordinate the inspections so that the inspections do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, City during any Final Inspection.

11. Insurance. During construction of the Project, Developer shall maintain the policies of insurance reflected on the certificate attached hereto as Exhibit D. Each such policy shall: (a) be written by a company reasonably acceptable to City; and (b) provide that it shall not be modified or canceled without written notice to City at least 30 days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name City and the Payment Rights Purchaser as additional insureds. Developer shall deliver to City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. From and after the Substantial Completion Date: (a) the obligation of Developer to maintain insurance with respect to the Project Site and/or the Project shall cease; and (b) City shall maintain such insurance with respect to the completed Project as it deems to be necessary and appropriate.

12. Default.

(a) **Events of Default.** It shall be an "Event of Default" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it: (i) with respect to the obligation to pay money, if such failure is not cured within ten days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured within the Cure Period.

(b) **Remedies.** Whenever an Event of Default occurs, the non-defaulting party may take

such actions at law or in equity as are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement (including, without limitation, attorneys' fees and court costs), then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses (including, without limitation, attorneys' fees and court costs), together with interest at the rate of 12% per annum.

(c) **No Remedy Exclusive.** No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

13. Mutual Indemnification.

(a) **Developer.** Developer shall indemnify and hold harmless City from and against any and all Claims arising from or connected with: (i) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or wilful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement.

(b) **City.** City shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with: (i) the negligence or wilful misconduct of City or any party acting by, under, through, or on behalf of City; or (ii) the breach by City of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the termination of this Agreement.

14. Assignment. Neither City nor Developer shall assign this Agreement without the prior written consent of the other party. Notwithstanding any assignment permitted under this Section, Developer or City, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release Developer or City, as the case may be, from such performance.

15. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at 8561 N. 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz, with a copy to: Jennifer R. Shoup, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; and to City at Office of the Mayor, City of Hobart, 414 Main Street, Hobart, Indiana 46342, with a copy to Hobart City Attorney, 214 Main Street, Hobart, Indiana 46342. In connection with any notice given by a party, a copy of such notice shall be provided to the Payment Rights Purchaser at 9204 Columbia Avenue, Munster, Indiana 46231, Attn: Commercial Loan Department, with a copy to Ross D. Taylor, Esq., Krieg DeVault LLP, 8001 Broadway, Suite 400, Merrillville, Indiana 46410. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

17. Authority. Each undersigned person executing this Agreement on behalf of Developer and City represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Developer and City, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by Developer and City, respectively.

18. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

19. Miscellaneous. Subject to Section 14, this Agreement shall inure to the benefit of, and be binding upon, Developer and City, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and City with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and City. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

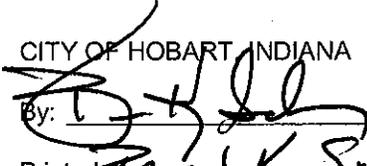
IN WITNESS WHEREOF, Developer and City have executed this Project Agreement as of the date set forth above.

HOBART MAINTENANCE BUILDING
LLC

By: GM Development Companies LLC

By: _____
Gregory W. Martz, Member

CITY OF HOBART, INDIANA

By:  _____

Printed: BRIAN K. SNEED

Title: MAYOR

INDEX TO EXHIBITS

Exhibit A	Depiction of Project Site
Exhibit B	Plan Schedule
Exhibit C	Term Sheet for Assignment Transaction (rights purchaser commitment)
Exhibit D	Required Insurance Policies (Developer)
Exhibit E	Schematic Design Drawings

PARTICIPATION AND PURCHASE AGREEMENT
City of Hobart
Maintenance Facility

This Participation and Purchase Agreement (City of Hobart/Maintenance Facility) (the "Agreement"), is executed this ___ day of May, 2017, by and among Hobart Maintenance Building LLC (the "Company"), City of Hobart, Indiana (the "City"), and Peoples Bank SB (the "Bank").

1. Definitions.

Agency shall mean any applicable: (a) governmental agency, board, commission, or department; or (b) other judicial, administrative, or regulatory body.

Bonds shall mean all bonds, notes, or similar obligations (excluding Contracts) of City with respect to which principal and interest are payable from the Pledged Revenue.

City Account shall mean an account maintained by City with the Bank.

Closing shall mean the closing with respect to the Transaction.

Closing Date shall mean the date of the Closing.

Completion Affidavit shall mean an affidavit of Company stating that: (a) the Project has been constructed in substantial accordance with the terms and conditions of the Project Agreement; and (b) all of the Project Costs have been determined and paid (or that: (i) all of the Project Costs have been paid, other than specified claims that are subject to dispute; and (ii) there is to be retained in the Project Fund, until resolution of the dispute, the full amount of such specified claims).

Contracts shall mean all contracts of City with respect to which amounts are payable from Pledged Revenue, excluding: (a) the Installment Contract; (b) contracts entered into for the continued operations of City; and (c) contracts entered into on a "pay-as-you-go" basis, the term of which does not exceed 24 months.

Disbursement Instructions shall mean instructions from City for disbursement of funds on deposit in the Project Fund to (or for the account of) Company, which instructions shall be substantially in the form attached hereto as Exhibit C.

Disbursement Request shall mean: (a) a request for disbursement of Transaction Proceeds to (or for the account of) Company, which request shall be substantially in the form attached hereto as Exhibit B; together with (b) copies of inspection reports, AIA forms, or other reports reasonably acceptable to City showing: (i) the total amount disbursed to date; (ii) the percentage of completion of the Project; and (iii) the anticipated cost to complete the Project.

Event of Default shall have the meaning set forth in Subsection 9(a).

Full Prepayment Price shall have the meaning ascribed to such term in the Installment Contract.

Installment Contract shall mean that certain Installment Purchase Contract (City of Hobart/Maintenance Facility) of even date herewith executed by and between Company and City.

Installment Payments shall mean the installment payments payable by City pursuant to the Installment Contract. The Installment Payments are the "Installment Payments" under the Installment Contract.

IP Principal Amount shall mean, with respect to any given Installment Payment, the amount thereof

specified on Exhibit A to the Installment Contract in the column entitled "Principal" or "Principal Amount". The IP Principal Amount is the "IP Principal Amount" under the Installment Contract.

Law shall mean any applicable federal, state, or local law, statute, ordinance, rule, or regulation, or any order or decree of any Agency.

Outstanding IP Principal Amount shall mean, as of any given date, the aggregated outstanding IP Principal Amount. The Outstanding IP Principal Amount is the "Outstanding IP Principal Amount" under the Installment Contract.

Payment Due Date shall mean each January 15 and July 15 during the Payment Period (as defined in the Installment Contract), commencing on _____ 15, 2017.

Payment Rights shall mean the rights under the Installment Contract with respect to the receipt of the Installment Payments. The Payment Rights are the "Payment Rights" under the Installment Contract.

Payment Rights Price shall mean the amount of \$1,450,000.00.

Pledged Revenue shall mean distributions received by City from: (a) the "Motor Vehicle Highway Account" pursuant to I.C. §8-14-1; and (b) the "Local Road and Street Account" pursuant to I.C. §8-14-2; and pledged by City to the payment of the Installment Payments.

Pledged Revenue Account shall mean the account into which the Pledged Revenue is deposited by or on behalf of City.

PR Account Minimum shall mean, for each year: (a) the total amount of the Installment Payments for such year; multiplied by (b) 1.10.

Project shall mean the project to be constructed by Company pursuant to, and in accordance with, the Project Agreement.

Project Agreement shall mean that certain Project Agreement (City of Hobart/Maintenance Facility) of even date herewith executed by and between Company and City.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including: (a) the costs to draft and negotiate this Agreement, the Project Agreement, the Installment Contract, and any other documents contemplated by any of the foregoing; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 5 of the Project Agreement have been satisfied and/or will be waived by Company; (c) the costs incurred in connection with the closing of the Transaction and the purchase of the Payment Rights (to the extent that such costs are not included in Subsection (a) of this definition); (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of the Project Agreement; (e) a reasonable and customary amount for contingencies; and (f) the 6% fee to be paid by City to Company.

Project Fund shall mean a separate and dedicated account established by the Bank for the benefit of

Company from which disbursements shall be made to Company pursuant to this Agreement to pay Project Costs.

Special Tax Counsel shall mean any firm of attorneys: (a) of nationally-recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions; and (b) admitted to practice law before the highest court of any state of the United States of America; that is selected by City.

Taxable Event shall have the meaning ascribed to such term in the Installment Contract.

Transaction shall mean the sale and absolute assignment of the Payment Rights to the Bank, as the "Payment Rights Purchaser" under the Installment Contract.

Transaction Proceeds shall mean the proceeds of the closing of the Transaction.

2. Sale/Assignment. Subject to the terms and conditions of this Agreement, Bank shall purchase from Company, and Company shall sell and assign to Bank, the Payment Rights for the Payment Rights Price. The Transaction Proceeds shall be used by Company to pay (or reimburse Company for) the Project Costs. The parties acknowledge and agree that: (a) Company is not an "investment advisor" under the U.S. Investment Advisers Act of 1940, and the rules and regulations adopted thereunder; and (b) neither the execution of the Installment Contract, nor the Transaction, is intended to: (i) be a municipal or other securities offering; or (ii) create a securities financing. Each of Company and the Bank acknowledges that it has consulted such municipal financial advisors, tax advisors, and/or attorneys as it deems to be necessary or appropriate in connection with the foregoing.

3. Closing.

(a) **Closing.** The Closing Date shall be established by the parties, acting jointly. At the Closing: (i) fully executed copies of this Agreement, the Project Agreement, the Installment Contract, and any other documents reasonably determined by Company, City, and/or the Bank to be necessary to consummate the Transaction shall be delivered to each of Company, City, and the Bank; and (ii) the Bank shall: (A) establish the Project Fund; and (B) disburse the Payment Rights Price in accordance with Exhibit A, as Exhibit A may be modified to contemplate additional Closing costs and expenses approved by Company, City, and the Bank.

(b) **Absolute Assignment.** From and after the Closing: (i) this Agreement shall constitute an absolute and complete sale, assignment, and transfer by Company of the Payment Rights to the Bank; and (ii) the Installment Contract shall be deemed to be registered in the name of the Bank. If the Bank sells or assigns any of its right, title, and/or interest in or to the Payment Rights to any other entity, then the Bank shall: (i) give written notice thereof to City; and (ii) obtain an agreement from the assignee that it will give written notice to City of any subsequent sale or assignment of the interest of the assignee in the Payment Rights.

4. **Payments.**

(a) **Payment.** For so long as the Bank is the owner of the Payment Rights, City shall pay all Installment Payments (and, if applicable, the Full Prepayment Price) either: (i) at the address for the Bank set forth in Section 11 on or before the Payment Due Date; or (ii) by delivering to the Bank written notice, at least five business days in advance of the Payment Due Date, authorizing the Bank to withdraw the amount of the Installment Payment from a City Account. All Installment Payments not authorized to be withdrawn by the Bank directly from a City Account shall be paid in lawful money of the United States of America, in immediately available funds at the place of payment, without setoff, counterclaim, or deduction.

(b) **Absolute Obligation.** The obligation of City to pay the Installment Payments is absolute and unconditional, and until the Outstanding IP Principal Amount, together with all interest that has accrued thereon and remains unpaid, has been paid in full: (i) City shall not discontinue or suspend payment of any Installment Payments; and (ii) no Installment Payment shall be: (A) subject to reduction, whether by offset or otherwise; or (B) conditional upon the performance or nonperformance by any party of any agreement (including, without limitation, the performance or nonperformance by Company under the Project Agreement) or any other cause.

(c) **Source.** The Installment Payments are payable from: (i) first, the Pledged Revenue, which has been pledged to the payment of the Installment Payments; and (ii) second, such other funds of City that legally may be used to pay the Installment Payments.

5. **Representations.**

(a) Each of Company and City represents and warrants as follows:

(i) It has: (A) the power and authority to enter into, and perform its obligations under, this Agreement and the Installment Contract; (B) the power and authority to carry out all transactions contemplated by this Agreement and the Installment Contract; and (C) complied with the Laws in all matters relating to the foregoing transactions;

(ii) It has: (A) taken all actions necessary to authorize the execution, delivery, and performance of its obligations under this Agreement and the Installment Contract; and (B) been authorized by proper action to execute, deliver, and perform its obligations under this Agreement and the Installment Contract;

(iii) Neither the execution and delivery of this Agreement, nor the performance by it hereunder: (A) violates any Law or any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (B) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement,

or other instrument; or (C) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets;

(iv) No litigation is pending or, to its knowledge, threatened: (A) seeking to restrain or enjoin: (1) the Transaction; or (2) the collection of the Pledged Revenue, or the use thereof for payment of the Installment Payments; (B) in any way contesting or affecting: (1) any authority for the consummation of the Transaction; or (2) the validity of this Agreement, the Installment Contract, or the Transaction; or (C) in any other manner contesting its existence or powers;

(v) This Agreement and the Installment Contract, when executed and delivered by it will be its valid and binding obligation; provided that the enforceability of the foregoing may be subject to: (A) Laws relating to bankruptcy, insolvency, reorganization, moratorium, or other similar subjects; (B) the exercise of judicial discretion in appropriate cases; and/or (C) general principles of equity; and

(vi) During the last five years, it has not been in default beyond any applicable cure periods in the payment of principal or interest due and payable with respect to any obligations issued or guaranteed by it, or with respect to which it is an obligor.

(b) City. In addition to the representations and warranties set forth in Subsection 5(a), City represents and warrants as follows:

(i) It is a city incorporated under the laws of the State of Indiana;

(ii) It has not pledged, encumbered, or granted any lien on, or security interest in, the Pledged Revenue, other than the pledge of the Pledged Revenue to make Installment Payments;

(iii) There has been no material adverse change in the financial condition of City from that shown in the most recent financial statements of City that have been delivered to the Bank;

(iv) There is no litigation or governmental proceeding pending or, to the knowledge of City, threatened against City or any of its property that, if adversely determined, would have a material adverse effect on the financial condition of City; and

(v) In connection with effectuating the Transaction, it has complied with all Laws, including that it has followed and/or complied with all required local procedures and requirements.

(c) Company. In addition to the representations and warranties set forth in Subsection 5(a), Company represents and warrants that it is a limited liability company organized and existing under the laws of the State of Indiana.

6. Consents/Covenants.

(a) City consents to the sale and assignment of the Payment Rights to the Bank;

(b) City shall: (i) comply with all of its obligations under the Installment Contract; and (ii) pay the Installment Payments directly to the Bank on or before the applicable Payment Due Date, as required pursuant to Section 4;

(c) City shall not issue any Bonds, or enter into any Contracts, the payments under which are superior to the Installment Payments. For purposes of clarity, City may issue Bonds, and enter into Contracts, the payments under which are subordinate to the Installment Payments.

(d) City may issue Bonds, or enter into Contracts, the payments under which are on parity with the Installment Payments, so long as City certifies to the Bank that:

(i) For the fiscal year immediately preceding the year in which City intends to issue such Bonds or enter into such Contracts, City maintained on deposit in the Pledged Revenue Account an amount equal at least to the PR Account Minimum; and

(ii) For the fiscal year immediately following the year in which City intends to issue such Bonds or enter into such Contracts, funds on deposit in the Pledged Revenue Account will equal or exceed the PR Account Minimum.

(e) Each year, City shall maintain on deposit in the Pledged Revenue Account an amount equal at least to the PR Account Minimum; determined semi-annually based upon the reports delivered to the Bank pursuant to Subsection 6(g);

(f) Promptly after knowledge thereof has come to the attention of the City, City shall provide to the Bank written notice of: (i) any Event of Default; (ii) any litigation or governmental proceeding pending or threatened against City or any of its property that, if adversely determined, would have a material adverse effect on the financial condition of City; or (iii) any event that has a material adverse effect on the financial condition of City;

(g) City shall provide to the Bank: (i) semi-annual reports with respect to the Pledged Revenues received by City; and (ii) financial statements for each fiscal year, which financial statements shall be provided on or before the later of the date that is: (A) 150 days after the end of the applicable fiscal year; or (B) 15 days after City's receipt thereof from the State Board of Accounts;

(h) Upon receipt of written request, City shall provide to the Bank such other financial information as the Bank reasonably may request; and

(i) Until such time as the Outstanding IP Principal Amount, together with all interest that has accrued thereon and remains unpaid, has been paid in full, Company shall maintain a deposit account with the Bank; provided that the maintenance of the Project Fund shall be deemed to satisfy this requirement.

7. Conditions. The obligation of the Bank to proceed to the Closing is subject to the satisfaction, or waiver in writing, as of the Closing Date of the conditions set forth in this Section.

(a) The Bank shall have approved the form of the Installment Contract; provided that, if the approved Installment Contract is executed prior to the Closing, then, on the Closing Date, the Installment Contract shall be: (i) reasonably satisfactory to the Bank; and (ii) in full force and effect.

(b) No general banking moratorium shall have been declared by authorities of the United States of America or the State of Indiana.

(c) The Bank shall have received an opinion from the Special Tax Counsel, dated the Closing Date, which opinion shall be: (i) addressed to the Bank, or accompanied by a letter from Special Tax Counsel that is addressed to the Bank and specifies that the Bank may rely on such opinion; and (ii) in form and substance acceptable to the Bank.

(d) The Bank shall have received an opinion from Wallack Somers & Haas P.C., as counsel to Company, which opinion shall be: (i) dated the Closing Date; (ii) addressed to Company, City, and the Bank; and (iii) in form and substance acceptable to the Bank.

(e) The Bank shall have received an opinion from counsel to City, which opinion shall be: (i) dated the Closing Date; (ii) addressed to Company, City, and the Bank; and (iii) in a form and substance acceptable to the Bank.

(f) The Bank shall have received from City certified copies of the resolutions, minutes, and/or approvals enacted and/or obtained by City authorizing the execution and delivery of all documents to be executed and delivered by City in connection with the Transaction, which certification shall state that such resolutions and/or approvals remain in full force and effect without amendment.

(g) The Bank shall have received from Company:

(i) certified copies of the resolutions and/or approvals enacted and/or obtained by Company authorizing the execution and delivery of all documents to be executed and delivered by Company in connection with the Transaction, which certification shall state that such resolutions and/or approvals remain in full force and effect without amendment; and

(ii) copies of the Articles of Organization, Operating Agreement, and Certificate of Existence of Company.

(h) The Bank, in the exercise of its reasonable discretion, shall be satisfied that, at the Closing, all of its expenses in connection with the Transaction (including, without limitation, processing, closing, and reasonable attorneys' fees) will be paid by Company and/or the City.

(i) The Bank shall have received such additional documentation as counsel for the Bank or the Special Tax Counsel reasonably may request to: (i) evidence compliance with all Laws; or (ii) provide further assurances to the Bank; which documentation shall be in form and substance reasonably acceptable to the Bank.

If any of the foregoing conditions are not satisfied, or waived in writing, on the Closing Date, then the Bank may terminate this Agreement by delivery of written notice to Company and City.

8. Disbursements.

(a) The funds on deposit in the Project Fund shall be disbursed to, or on behalf of, Company to pay (or reimburse Company for) Project Costs. To obtain a disbursement from the Project Fund, Company shall deliver a Disbursement Request to City. Upon approval of such Disbursement Request, City shall submit Disbursement Instructions (which shall include the Disbursement Request submitted by Developer to City, as contemplated by the form Disbursement Instructions attached hereto as Exhibit C) to the Bank. Upon receipt of the foregoing from City, the Bank shall disburse funds in the amount specified in the Disbursement Instructions, which funds shall be used to pay (or reimburse Company for) Project Costs; provided that the Bank shall not be obligated to make disbursements from the Project Fund more frequently than once per month. For purposes of clarity, the Bank shall disburse funds only: (i) when it has received a Disbursement Request and Disbursement Instructions; and (ii) in the amount specified in the Disbursement Instructions. So long as funds are disbursed in accordance with the terms and conditions of this Subsection, the Bank shall not be liable in connection with any dispute regarding the amount of the funds disbursed.

(b) Upon completion of the Project in accordance with the Project Agreement such that no further disbursements from the Project Fund will be needed to pay (or reimburse Company for) Project Costs, Company will provide the Completion Affidavit to the Bank.

(c) After receipt of the Completion Affidavit, any funds remaining in the Project Fund, less the amount thereof specified in the Completion Affidavit as sufficient to cover the full amount of any specified claims that are subject to dispute, shall be applied by the Bank to the next due Installment Payments.

(d) Except to the extent set forth in this Section, neither City nor the Bank shall have any responsibility for ensuring that the Transaction Proceeds are used in the proper

manner.

9. Defaults/Remedies.

- (a) Each of the following shall constitute an "Event of Default":
- (i) A material misrepresentation by Company or City hereunder or under the Installment Contract;
 - (ii) Any failure by City to pay an Installment Payment when due; provided that, it shall not be an Event of Default if such failure is due to the failure of the Bank to withdraw the amount of the Installment Payment from a City Account after authorized by City to do so in accordance with Subsection 4(a);
 - (iii) The issuance of any Bonds, or entering into of any Contracts, by City in violation of Subsections 6(c) or 6(d);
 - (iv) Any "Event of Default" by Company or City under the Installment Contract or the Project Agreement, including, without limitation, the failure by the applicable party to comply with the terms and conditions of Section 11 of the Installment Contract (entitled "Tax Covenants");
 - (v) Commencement of any voluntary or involuntary bankruptcy or similar proceeding against City;
 - (vi) City becomes insolvent or generally is unable to pay its debts as they become due; and/or
 - (vii) A receiver is appointed for a substantial portion of City's property.
- (b) Company and City agree that, during the continuance of an Event of Default, the Bank shall have the right to exercise any right or remedy available to Company under the Installment Contract as a result of an "Event of Default" under the Installment Contract.

10. Indemnification. To the extent permitted by the Laws: (a) Company and City shall indemnify and hold harmless the Bank from and against any and all claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising from, or connected with: (i) the consummation of the Transaction; and/or (ii) the breach by Company and/or City, respectively, of any term or condition to be observed or performed by it pursuant to this Agreement, the Installment Contract, and/or the Project Agreement; and (b) City shall indemnify and hold harmless the Bank from and against any actual losses resulting from the occurrence of a Taxable Event. The foregoing indemnifications shall survive the termination of this Agreement.

11. Notice. Any notice or approval required or permitted to be given pursuant to this Agreement shall

be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Company at 8561 N. 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz, with a copy to: Jennifer R. Shoup, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; to City at Office of the Mayor, City of Hobart, 414 Main Street, Hobart, Indiana 46342, with a copy to Hobart City Attorney, 214 Main Street, Hobart, Indiana 46342; and to the Bank at 9204 Columbia Avenue, Munster, Indiana 46231, Attn: Commercial Loan Department, with a copy to Ross D. Taylor, Esq., Krieg DeVault LLP, 8001 Broadway, Suite 400, Merrillville, Indiana 46410. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

12. Miscellaneous. This Agreement: (a) shall be binding upon, and shall inure to the benefit of, the Company, City, and the Bank, and no person or entity shall be deemed to be a third-party beneficiary hereof; (b) shall be governed by the laws of the State of Indiana; and (c) may be executed in counterparts, each of which shall constitute an original, but all of which together shall be a single instrument.

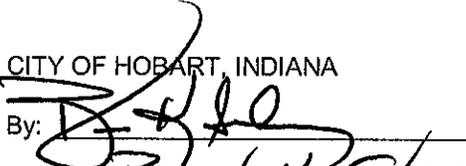
IN WITNESS WHEREOF, the Company, City, and the Bank have executed this Agreement as of the date set forth above.

HOBART MAINTENANCE BUILDING
LLC

By: GM Development Companies LLC

By: _____
Gregory W. Martz, Member

CITY OF HOBART, INDIANA

By: 

Printed: BRIAN K. SNEED

Title: MAYOR

PEOPLES BANK SB

By: _____

Printed: _____

Title: _____

EXHIBIT A

Purchase Price \$1,450,000.00

<u>Item Number</u>	<u>Payee Name and Address</u>	<u>Purpose of Obligation</u>	<u>Amount</u>
1	Peoples Bank SB, for deposit into Project Fund	Deposit into Project Fund/ Project Costs Funding	\$ _____
1	Wallack Somers & Haas, PC One Indiana Square, Suite 2300 Indianapolis, IN 46204	Company Counsel Fees	\$ _____
2	Krieg DeVault LLP 8001 Broadway Suite 400 Merrillville, Indiana 46410	Bank Counsel Fees	\$ _____
3	Peoples Bank SB	Transaction Fee	\$3,750.00
4	Hall Render, Killian, Heath & Lyman, P.C. 500 North Meridian Suite 400 Indianapolis, IN 46204	Special Tax Counsel Fees	\$ _____

EXHIBIT B
Disbursement Request

The undersigned hereby states and certifies that:

- (a) he is the sole Member of GM Development Companies LLC, which is the sole Member of Hobart Maintenance Building LLC (the "Company") and, as such, is: (i) familiar with the facts herein certified; and (ii) authorized to make the certifications set forth herein;
- (b) pursuant to Subsection 8(a) of the Participation Agreement (City of Hobart/Maintenance Facility) executed by and among Company, City of Hobart, Indiana (the "City"), and Peoples Bank (the "Bank") dated May ____, 2017 (the "Participation Agreement"), the undersigned hereby requests that City direct the Bank to disburse from the Project Fund to the payees set forth on the attached Schedule 1 the amounts set forth on Schedule 1 for the purposes set forth on Schedule 1;
- (c) all amounts being paid pursuant to Schedule 1 are Project Costs; and
- (d) the Project Costs being paid pursuant to Schedule 1 have not been paid previously with a disbursement from the Project Fund.

All capitalized terms used but not defined in this request shall have the meanings ascribed to such terms in the Participation Agreement.

HOBART MAINTENANCE BUILDING
LLC

By: GM Development Companies LLC

By: _____
Gregory W. Martz, Member

Date: _____

Schedule 1
PROJECT FUND DISBURSEMENTS

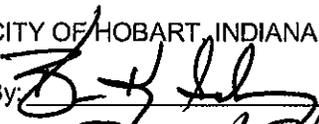
<u>Item Number</u>	<u>Payee Name and Address</u>	<u>Purpose of Obligation</u>	<u>Amount</u>
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EXHIBIT C
Disbursement Instructions

Pursuant to Subsection 8(a) of the Participation Agreement (City of Hobart/Maintenance Facility) executed by and among Hobart Firehouse LLC (the "Company"), City of Hobart, Indiana (the "City"), and Peoples Bank (the "Bank") dated May __, 2017 (the "Bank"), City hereby directs the Bank to make a disbursement of funds from the Project Fund to (or for the account of) Company in accordance with: (a) the Disbursement Request enclosed with these instructions; and (b) the terms and conditions of the Participation Agreement.

All capitalized terms used but not defined in these instructions shall have the meanings ascribed to such terms in the Participation Agreement.

CITY OF HOBART, INDIANA

By: 

Printed: Brian R. Sneed

Title: Mayor

Date: 3/5/17

INSTALLMENT PURCHASE CONTRACT
City of Hobart
Maintenance Facility

This Installment Purchase Contract (City of Hobart/Maintenance Facility) (the "Contract") is executed this ____ day of May, 2017, by and between Hobart Maintenance Building LLC (the "Developer"), and City of Hobart, Indiana (the "City").

1. Definitions.

Acquisition Property shall mean the completed Project.

Acquisition Property Price shall mean the total aggregated IP Principal Amounts.

Agency shall mean any applicable: (a) governmental agency, board, commission, or department; or (b) other judicial, administrative, or regulatory body.

Assignment Transaction shall mean the purchase of an absolute assignment of the Payment Rights, the proceeds of the sale of which shall be used to pay the Project Costs.

AT Closing shall mean the closing with respect to the Assignment Transaction.

AT Closing Date shall mean the date of the AT Closing.

AT Documents shall mean all instruments, agreements, and other documents evidencing, or required in connection with, the Assignment Transaction, including, without limitation, the Participation Agreement.

Books and Records shall mean have the meaning ascribed to the term "Books and Records" in the Project Agreement.

City Transfer shall mean: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project Site, the Acquisition Property, or any interest in the Project Site or the Acquisition Property; or (b) any granting of a mortgage or security interest in the Project Site or the Acquisition Property, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the AT Documents, or required by the Project Agreement or this Contract, shall not constitute a City Transfer.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees).

Code shall mean the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations in effect with respect thereto.

Construction Contract shall have the meaning ascribed to the term "Construction Contract" in the Project Agreement.

Contract Price shall mean the sum of all of the Installment Payments.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Contract to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting

party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

Developer Transfer shall mean, prior to the conveyance of the Acquisition Property to City: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project or the materials to construct the Project, or any interest in the foregoing; or (b) any granting of a security interest in the Project or the materials to construct the Project, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the AT Documents, or required by the Project Agreement or this Contract, shall not constitute a Developer Transfer.

Event of Default shall have the meaning set forth in Section 12.

Fixed Rate shall mean a fixed annual interest rate of 3.48%; provided that, if there is a Taxable Event, then, from and after the occurrence of such Taxable Event, "Fixed Rate" shall mean a fixed annual interest rate of ____%.

Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; and (iii) utility or energy shortages or acts or omissions of public utility providers).

Full Prepayment Closing Date shall mean, in the case of the exercise by City of the Full Prepayment Option (or the declaration by Developer of the exercise of the Full Prepayment Option pursuant to Subsection 13(a)), the date on which the Full Prepayment Price is to be paid.

Full Prepayment Notice shall mean a written notice pursuant to which City notifies Developer that it is exercising the Full Prepayment Option.

Full Prepayment Option shall mean the option (but not the obligation) of City to satisfy its obligation in full with respect to the payment of the Acquisition Property Price in advance of the expiration of the Payment Period by paying the Full Prepayment Price.

Full Prepayment Price shall mean the sum of: (a) the Outstanding IP Principal Amount on the Full Prepayment Closing Date; plus (b) interest thereon that has: (i) accrued at the Fixed Rate; and (ii) not been paid prior to the Full Prepayment Closing Date (stated alternatively, interest that has accrued, but has not been paid as part of the Installment Payments).

Installment Payments shall mean semi-annual installment payments for the purchase of the Acquisition Property, which installment payments: (a) shall be in the amounts specified on Exhibit A; and (b) in the aggregate constitute the Contract Price. The installment payments consist of IP Interest Amounts and IP Principal Amounts as necessary to fully amortize the Acquisition Property Price over the Payment Period at the Fixed Rate.

IP Interest Amount shall mean, with respect to any given Installment Payment, the amount thereof that is attributable to interest that has accrued on the Outstanding IP Principal Amount at the Fixed Rate, which amount is specified on Exhibit A in the column entitled "Interest" or "Interest Amount".

IP Principal Amount shall mean, with respect to any given Installment Payment, the amount thereof specified on Exhibit A in the column entitled "Principal" or "Principal Amount". The aggregated IP Principal Amounts specified on Exhibit A constitute the Acquisition Property Price.

Law shall mean any applicable federal, state, or local law, statute, ordinance, rule, or regulation, or any order or decree of any Agency.

Outstanding IP Principal Amount shall mean, as of any given date, the aggregate outstanding IP Principal Amount.

Partial Prepayment shall mean a payment of a portion of the Outstanding IP Principal Amount, which payment is made by City in addition to an Installment Payment.

Participation Agreement shall mean that certain Participation and Purchase Agreement (City of Hobart/Maintenance Facility) of even date herewith executed by and among Developer, City, and the Payment Rights Purchaser.

Payment Due Date shall mean each January 15 and July 15 during the Payment Period, commencing on _____ 15, 2017.

Payment Period shall mean the period: (a) beginning on the AT Closing Date; and (b) ending on _____ 15, 2027, which is the date on which the 20th and final Installment Payment is due and payable.

Payment Rights shall mean the rights hereunder with respect to the receipt of the Installment Payments.

Payment Rights Price shall have the meaning ascribed to the term "Payment Rights Price" in the Project Agreement.

Payment Rights Purchaser shall mean Peoples Bank SB and its successors and assigns.

Pledged Revenue shall mean distributions received by City from: (a) the "Motor Vehicle Highway Account" pursuant to I.C. §8-14-1; and (b) the "Local Road and Street Account" pursuant to I.C. §8-14-2; and pledged by City to the payment of the Installment Payments.

Project shall mean the "Project" to be constructed on the Project Site by Developer pursuant to the Project Agreement.

Project Agreement shall mean that certain Project Agreement (City of Hobart/Maintenance Facility) of even date herewith executed by and between Developer and City.

Project Costs shall mean have the meaning ascribed to the term "Project Costs" in the Project Agreement.

Project Fund shall mean the fund of the same name established pursuant to the Participation Agreement

Project Site shall mean that certain real estate that is defined as the "Project Site" in the Project Agreement.

Substantial Completion Date shall have the meaning ascribed to the term "Substantial Completion Date" in the Project Agreement.

Taxable Event shall mean any action or event that results in the loss of the exclusion of the IP Interest Amount from gross income for federal and/or state income tax purposes under the Code or any Laws regarding Indiana income taxation.

2. General Obligations.

(a) Assignment Transaction. Subject to the terms and conditions of this Contract:

(i) Developer shall: (A) close the Assignment Transaction, including executing and delivering the AT Documents; and (B) satisfy its obligations under the AT Documents;

(ii) City shall execute the AT Documents to which it is a party;

(iii) Developer shall use the proceeds of Assignment Transaction for the sole purpose of paying the Project Costs.

(iv) Developer shall comply with all of its obligations under the Project Agreement with respect to the construction of the Project.

(b) Conveyance. Subject to the terms and conditions of this Contract: (i) Developer shall convey to City; and (ii) City shall purchase; title to the Acquisition Property for the Acquisition Property Price; provided that, if City exercises the Full Prepayment Option, then, in lieu of the Acquisition Property Price, City shall pay the Full Prepayment Price.

3. Assignment Transaction Closing. The AT Closing Date shall be established mutually by Developer and City, acting in cooperation with the Payment Rights Purchaser. The AT Closing shall take place at such location as Developer and City mutually agree, acting in cooperation with the Payment Rights Purchaser. At the AT Closing, Developer and City shall execute the Participation Agreement, together with such other customary documents as the Payment Rights Purchaser reasonably may request.

4. Conditions of Performance. The obligations of each of Developer and City with respect to proceeding with the AT Closing shall be subject to the satisfaction, or waiver in writing, of the following as of the Closing Date:

(a) each of Developer and City, exercising commercially reasonable discretion, has approved the terms and conditions of: (i) the sale and assignment of the Payment Rights; and (ii) the AT Documents to which it is a party;

(b) each of Developer and City, exercising commercially reasonable discretion, has determined that the other party and the Payment Rights Purchaser are prepared to execute the AT Documents at the AT Closing;

(c) there is no breach of this Contract by either party that such party has failed to cure within the Cure Period; and

(d) all of the representations and warranties set forth in Section 5 are true and accurate in all respects.

5. Representations. Each of Developer and City represents and warrants that:

(a) it has: (i) the power and authority to enter into this Contract and perform its obligations hereunder; (ii) the power and authority to carry out all transactions contemplated by this Contract; and (iii) complied with the Laws in all matters relating to the foregoing transactions;

(b) it has been authorized by proper action to execute, deliver, and perform its obligations under this Contract;

(c) neither the execution and delivery of this Contract by it, nor the performance by it of its obligations hereunder: (i) violates any Law or the terms and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (B) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (C) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets; and

(d) it shall not take or, to the extent within its power, permit to be taken, any action that would cause a Taxable Event.

In addition to the foregoing: (a) City represents and warrants that: (i) it is a city incorporated under the laws of the State of Indiana; and (ii) it has not pledged, encumbered, or granted any lien on, or security interest in, the Pledged Revenue, other than the pledge of the Pledged Revenue to make Installment Payments; and (b) Developer represents and warrants that it is a limited liability company organized and existing under the laws of the State of Indiana.

6. Project Fund.

(a) Project Fund. Funds in the Project Fund shall be disbursed to Developer in accordance with the Participation Agreement to pay (or reimburse Developer for) Project Costs.

(b) Completion. Upon the occurrence of the Substantial Completion Date, Company shall deliver written notice pursuant to the Participation Agreement stating that: (i) the Project has been constructed and/or installed in accordance with the terms and conditions of the Project Agreement; and (ii) all of the Project Costs have been determined and paid (or that: (A) all of the Project Costs have been paid, other than specified claims that are subject to dispute; and (B) there is to be retained in the Project Fund, until resolution of the dispute, the full amount of such specified claims). Upon the receipt of such statement, the remaining balance in the Project Fund less: (i) any amounts needed for Project Fund purposes; and (ii) the amount certified by Developer as sufficient to cover the full amount of the specified claims that are subject to dispute; shall be applied to the next due Installment Payments, as specified in the Participation Agreement.

7. Acquisition Property-Payment.

(a) Interest. During the Payment Period, interest shall accrue on the Outstanding IP Principal Amount: (i) at the Fixed Rate; and (ii) on the basis of a 360-day year based on the number of actual days elapsed.

(b) Payments. During the Payment Period, City shall pay an Installment Payment on each Payment Due Date. Each Installment Payment shall be: (i) in the amount set forth on Exhibit B; and (ii) paid by City directly to the Payment Rights Purchaser in accordance with the Participation Agreement. If City fails to make any Installment Payment on the applicable Payment Due Date, then City shall: (i) remain obligated to pay the full amount of such Installment Payment; and (ii) pay interest on the unpaid amount of the Installment Payment at the Fixed Rate. If there is a Taxable Event, then a replacement Exhibit B shall be

attached to this Contract, which replacement Exhibit B shall reflect the increase in the Fixed Rate, as set forth in the definition thereof.

(c) **Partial Prepayment.** City may make a Partial Prepayment at any time.

(d) **Full Prepayment.** City may exercise the Full Prepayment Option, to be effective at any time during the Payment Period, by delivery of the Full Prepayment Notice. Within ten days after receipt by Developer of the Full Prepayment Notice, Developer and City, each acting reasonably, shall agree on the Full Prepayment Closing Date; provided that, if the Full Prepayment Notice is delivered more than 90 days prior to the expiration of the Payment Period, then the Full Prepayment Closing Date shall not occur for at least 30 days after delivery of the Full Prepayment Notice. If City properly exercises the Full Prepayment Option, then, in lieu of the remainder of the Acquisition Property Price, City shall pay the Full Prepayment Price (thereby paying off the Acquisition Property Price in full and satisfying all obligations to the Payment Rights Purchaser with respect to the payment of the Installment Payments).

(e) **Absolute Obligation.** The obligation of City to pay the Installment Payments is absolute and unconditional, and until the Outstanding IP Principal Amount, together with all interest that has accrued thereon and remains unpaid, has been paid in full: (i) City shall not discontinue or suspend payment of any Installment Payments; and (ii) no Installment Payment shall be: (A) subject to reduction, whether by offset or otherwise; or (B) conditional upon the performance or nonperformance by any party of any agreement (including, without limitation, the performance or nonperformance by Developer under the Project Agreement) or any other cause.

(f) **Principal/Interest.** The obligation of City hereunder to pay the Installment Payments shall constitute an "obligation" under Section 1.150-1(b) of the Regulations: (i) the principal of which is the IP Principal Amount; and (ii) the interest on which is the IP Interest Amount; although, for purposes of the laws of the State of Indiana, the IP Principal Amount and the IP Interest Amount simply are two amounts that serve as the basis for calculating the amount of each Installment Payment, which, when aggregated, constitute the Contract Price. The obligations of City under this Contract are those of a purchaser under an installment purchase agreement of real and personal property. Accordingly, this Contract is neither a bond nor a loan to, nor a borrowing of, City.

(g) **Payment Source.** The Installment Payments are payable from: (i) first, the Pledged Revenue, which has been pledged to the payment of the Installment Payments; and (ii) second, such other funds of City that legally may be used to pay the Installment Payments.

8. Conveyance. As soon as reasonably is practicable after the issuance of a "Certificate of Occupancy" with respect to the Project, Developer shall convey the Acquisition Property to City (or its designee) pursuant to conveyance documents that reasonably are approved by each of Developer and City. The conveyance of the Acquisition Property shall not: (a) result in a merger of this Contract into the conveyance documents by which City (or its designee) receives ownership, so that this Contract, and all of the rights of the parties hereunder, shall remain in full force and effect; or (b) have any effect on the obligation of City to make the Installment Payments pursuant to the terms and conditions of this Contract (stated alternatively, it shall not accelerate payment of the Outstanding IP Principal Amount or decrease the period within which Installment Payments are made).

9. City Covenants.

(a) **Contract Compliance.** City: (i) shall pay the Installment Payments punctually and in strict conformity with the terms of this Contract; (ii) faithfully shall observe and perform all of its obligations under this Contract; and (iii) shall not terminate this Contract for any cause whatsoever.

(b) **Other Compliance.** City shall: (i) not take, or omit to take, any action under any contract, if the effect of such act or failure to act would in any manner impair or adversely affect the obligation or ability of City to pay Installment Payments; and (ii) observe and perform all of its obligations under all other contracts affecting or involving the Project to which City is a party.

(c) **No Liens.** At all times City shall: (i) keep the Project Site and, after the acquisition thereof, the Acquisition Property, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) the lien of current real estate taxes not delinquent; and (B) any of the foregoing existing due to compliance with the Project Agreement, this Contract, and/or the AT Documents; and (ii) defend the Project Site against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Acquisition Property, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, City, then City shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(d) **Taxes.** City: (i) shall pay and discharge when due all taxes, assessments, and other governmental charges that lawfully are imposed upon the Project or any part thereof; and (ii) upon request by Developer or the Payment Rights Purchaser, shall take such actions as may be necessary or appropriate to remedy or cure any defect in, or cloud upon, the title to the Project or any part thereof.

(e) **Protection.** City shall: (i) preserve and protect the security hereof, and the rights of Developer and the Payment Rights Purchaser to the Installment Payments; and (ii) warrant and defend such rights against all claims and demands of all persons.

(f) **Laws.** City shall comply with the Laws in connection with its use and operation of the Acquisition Property.

(g) **Assurances.** City shall adopt such resolutions, execute and deliver such instruments, and make any and all further assurances as reasonably may be necessary or proper: (i) to carry out the intention of this Contract; (ii) to facilitate the performance of this Contract; and/or (iii) in connection with assuring and confirming the rights and benefits provided to Developer and the Payment Rights Purchaser.

(h) **No Transfer.** Except as approved by Developer and the Payment Rights Purchaser: (i) there shall be no City Transfer by City; and (ii) City shall not cause or permit any City Transfer. The execution by Developer of the AT Documents shall not be deemed to be a consent by Developer to any City Transfer.

(i) **No Mortgage.** City shall not: (i) record or file any mortgage or financing statement covering all or any portion of the Project Site, the Acquisition Property, or the materials to construct the Project, in any public office, except financing statements in favor of the

Payment Rights Purchaser; or (ii) cause or permit any such mortgage or financing statement to be recorded or filed.

10. Developer Covenants.

(a) Filings. Developer shall keep in full force and effect, without any violations by Developer, any and all filings or registrations with any Agency necessary in connection with: (i) the performance by Developer of its obligations under the AT Documents; (ii) the acquisition of the materials to construct, and/or the construction of, the Project in accordance with the Project Agreement, this Contract, and the Construction Contract; or (iii) the sale of the Acquisition Property to City in accordance with this Contract.

(b) No Liens. At all times prior to conveyance of the Acquisition Property to City, Developer shall: (i) keep the Acquisition Property, and the materials to construct the Project, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) the lien of current real estate taxes not delinquent; and (B) any of the foregoing existing due to compliance with the Project Agreement, this Contract, and/or the AT Documents; and (ii) defend the Acquisition Property, and the materials to construct the Project, against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Project, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, Developer, then Developer shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(c) Laws. Developer shall comply with all Laws in the performance of its obligations under the Project Agreement, the Construction Contract, this Contract, and the AT Documents.

(d) No Transfer. Except as approved by City and the Payment Rights Purchaser: (i) there shall be no Developer Transfer by Developer; and (ii) Developer shall not cause or permit any Developer Transfer. The execution by City of the AT Documents to which it is a party shall not be deemed to be a consent by City to any Developer Transfer.

(e) No Mortgage. Developer shall not: (i) record or file any mortgage or financing statement covering all or any portion of the Project Site, the Project, or the materials to construct the Project, in any public office, except financing statements in favor of the Payment Rights Purchaser; or (ii) cause or permit any such mortgage or financing statement to be recorded or filed.

(f) No Merger. Developer shall not: (i) change its name; (ii) merge into, or consolidate with, any other entity, or otherwise reorganize; (iii) permit any change in the members of Developer or the percentage of ownership in Developer, if the effect of such change is that Developer no longer is controlled by, or under common control with, Gregory W. Martz; or (iv) fail to promptly notify City in writing of any change in the members of Developer or the percentage of ownership in Developer.

(g) No Amendments. Developer shall not: (i) amend, modify, or restate the articles of organization or operating agreement of Developer; (ii) cause or permit any such amendment, modification, or restatement; or (iii) be dissolved, wound up, or converted to another type of entity, or have its existence as a limited liability company terminated.

(h) **Developer Interests.** Developer shall not: (i) sell, convey, or transfer to any person any interest in Developer; (ii) otherwise encumber, pledge, or assign any interest in Developer; (iii) grant any security interest in any interest in Developer; or (iv) cause or permit any such sale, conveyance, transfer, encumbrance, pledge, assignment, or grant of security interest.

(i) **Business.** Developer shall not make or permit to be made any material change in the character of its business as currently conducted.

(j) **Records.** Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. City and the Payment Rights Purchaser, and their respective attorneys, accountants, representatives, architects, engineers, and consultants, at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records.

(k) **Insurance.** Developer shall comply with its obligations under the Project Agreement with respect to the maintenance of insurance during construction of the Project.

11. Tax Covenants. Notwithstanding anything to the contrary set forth herein, neither Developer nor City shall: (a) take any action; or (b) fail to take any action; that would cause a Taxable Event. Any agreement entered into by City or Developer that would result in a Taxable Event shall: (a) be of no force or effect; and (b) not convey any rights, or impose any obligation, at law or in equity. If Developer incurs out-of-pocket costs and expenses to comply with the terms and conditions of this Section, then City shall reimburse Developer for such costs and expenses.

12. Events of Default. Each of the following shall be deemed to be an "Event of Default" by Developer or City, as applicable:

(a) the failure by the applicable party to pay any amount due hereunder on the date due, including, without limitation, the failure by City to make any Installment Payment when due;

(b) the occurrence of any City Transfer or Developer Transfer without the consents required to be obtained pursuant to this Contract;

(c) the failure by the applicable party to comply with the terms and conditions of Section 11;

(d) the failure by the applicable party to observe or perform any term or condition of this Contract to be observed or performed by it (other than those reflected in Subsections 12(a), 12(b), and 12(c)), and the continuance of such failure beyond the Cure Period;

(e) an "Event of Default" by the applicable party under the Participation Agreement;

(f) the filing of a petition or answer seeking arrangement or reorganization of the applicable party under the Laws;

(g) the approval by a court of competent jurisdiction of a petition, filed with or without the consent of the applicable party, seeking arrangement or reorganization under the Laws; or

(h) the assumption by a court of competent jurisdiction of custody or control of by the applicable party, or all or a substantial portion of the property of such party, pursuant to the provisions of any Law for the relief or aid of debtors;

13. Remedies.

(a) Remedies. If there is an Event of Default, then the non-defaulting party, without further notice or demand, shall have the following rights and remedies:

(i) if the defaulting party has failed to perform any of its obligations under this Contract: (A) enjoining the failure or specifically enforcing the performance of such obligation; or (B) performing the obligation that the defaulting party has failed to perform; provided that the performance by the non-defaulting party of such obligation shall not be construed to be a waiver of the Event of Default; and

(ii) if City is the defaulting party, then Developer may declare the Full Prepayment Option to have been exercised; provided that: (A) the Full Prepayment Closing Date shall occur on a date designated by Developer; and (B) if City fails to pay the Full Prepayment Price on the date designated by Developer as the Full Prepayment Closing Date, then such failure shall constitute an Event of Default, with the result being that Developer shall have the right to exercise any rights and remedies available to it at law or in equity (including, without limitation, those set forth in this Section).

(b) No Waiver. Neither: (i) a waiver by either party of an Event of Default; nor (ii) a delay in the exercise by either party of any right or remedy with respect to an Event of Default; shall be deemed either to: (i) constitute a waiver of any subsequent Event of Default; (ii) release or relieve the other party from performing any of its obligations under this Contract; or (iii) constitute an amendment or modification of this Contract. If Installment Payments are accepted during the continuance of an Event of Default, then such acceptance shall not be construed as a waiver of: (i) such Event of Default; or (ii) any right or remedy of Developer or the Payment Rights Purchaser with respect to such Event of Default. The rights and remedies hereunder are cumulative, and, except as specifically limited in this Contract, no: (i) right or remedy shall be deemed to be, or construed as, exclusive of any other right or remedy hereunder, at law, or in equity; or (ii) failure to exercise any right or remedy shall operate to prevent the subsequent exercise of such right or remedy.

(c) Damages. The non-defaulting party may recover from the defaulting party all damages that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default; together with interest thereon at the rate of 12% per annum. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the other party, and the obligation of the defaulting party to pay such amounts shall survive the acquisition by City of the Acquisition Property.

14. Notice. Any notice required or permitted to be given by either party to this Contract shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at 8561 N. 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz, with a copy to: Jennifer R. Shoup, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; and to City at Office of the Mayor, City of Hobart, 414 Main Street, Hobart, Indiana 46342, with a copy to: (a) Hobart City Attorney, 214 Main Street, Hobart, Indiana 46342; (b) Peoples Bank SB, 9204 Columbia Avenue, Munster, Indiana 46231, Attn: Commercial Loan Department; and (c) Ross D. Taylor, Esq., Krieg DeVault LLP, 8001 Broadway, Suite 400, Merrillville, Indiana 46410. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

15. Assignment. Neither Developer nor City shall: (a) assign this Contract or any interest herein; or (b) delegate any duty or obligation hereunder; except as permitted by the Participation Agreement. Notwithstanding any assignment as permitted by the Participation Agreement: (a) the assigning or delegating party shall remain fully liable to perform all of its obligations under this Contract; and (b) a consent by a party to any assignment or delegation shall not release the assigning or delegating party from such performance. Any transfer of this Contract by operation of law (including, without limitation, a transfer as a result of merger, consolidation, or liquidation of Developer or City) shall constitute an assignment for purposes of this Contract.

16. Mutual Indemnification. Each of Developer and City shall indemnify and hold harmless the other from and against any and all Claims arising from, or connected with: (a) the negligence or willful misconduct of: (i) Developer or City, respectively; or (ii) any party acting by, under, through, or on behalf of Developer or City, respectively; and/or (b) the: (i) breach by Developer or City, respectively, of any term or condition of the Project Agreement, this Contract, or the AT Documents; and (ii) resulting exercise by City or Developer of its rights and remedies with respect to such breach. The Participation Agreement shall provide that City shall indemnify and hold harmless the Payment Rights Purchaser from and against any and all actual losses arising from, or connected with, the occurrence of a Taxable Event.

17. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Contract as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

18. Miscellaneous. Subject to Section 15, this Contract shall inure to the benefit of, and be binding upon, Developer and City, and their respective successors and assigns. This Contract constitutes the entire agreement between Developer and City with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and City. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Contract shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Contract may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. This Contract shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Contract are attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, Developer and City have executed this Contract on the date set forth above.

HOBART MAINTENANCE BUILDING LLC

By: GM Development Companies LLC

By: _____
Gregory W. Martz, Member

CITY OF HOBART, INDIANA

By:  _____

Printed: Brian K. Spede

Title: Mayor

EXHIBIT A
Installment Payments

Cross-Reference

The deed conveying title to the grantor is recorded as Instrument number _____, in the Office of the Lake County Recorder.

TEMPORARY EASEMENT AGREEMENT City of Hobart

This Temporary Easement Agreement (City of Hobart) (the "Agreement"), executed this ___ day of May, 2017, by and between the City of Hobart, Indiana (the "Grantor") and Hobart Maintenance Building LLC (the "Grantee"), Witnesses:

Recitals

WHEREAS, Grantor is the fee simple owner of that certain real estate particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Grantor Property");

WHEREAS, Grantor and Grantee have executed that certain Project Agreement (City of Hobart/Maintenance Facility) of even date herewith (the "Project Agreement");

WHEREAS, pursuant to the Project Agreement, Grantee is obligated to construct the project described in the Project Agreement (the "Project"); and

WHEREAS, Grantor has agreed to grant to Grantee a temporary easement on, over, above, across, and through the Grantor Property for the purpose of constructing the Project in accordance with the terms and conditions of the Project Agreement;

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Grantor and Grantee agree as follows:

- 1. Easement.** Grantor hereby grants to Grantee a temporary construction easement for the benefit of Grantee, its successor and assigns, and the agents, subcontractors, and employees of Grantee and its successors or assigns, on, over, above, across, and through the Grantor Property for the purposes of constructing the Project in accordance with the terms and conditions of the Project Agreement. The easement granted pursuant to this Section is the "Construction Easement".
- 2. Termination.** The Construction Easement shall terminate automatically without any action of, or instrument signed by, Grantor or Grantee on the date that is 10 business days after the Project has been completed (the "Termination Date"). Notwithstanding that no instrument is necessary to terminate the Construction Easement on the Termination Date, upon receipt of written request from Grantor, accompanied by a recordable memorandum of termination that reasonably is acceptable to Grantee, Grantee shall execute such memorandum of termination.
- 3. Miscellaneous.** This Agreement shall: (a) run with the Grantor Property; and (b) inure to the benefit of, and be binding upon, Grantor and Grantee, and their respective successors and assigns. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Agreement may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana.

HOBART MAINTENANCE BUILDING
LLC

By: GM Development Companies LLC

By: _____
Gregory W. Martz, Member

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared Gregory W. Martz, Member of GM Development Companies LLC, Member of Hobart Maintenance Building LLC, who acknowledged the execution of the foregoing Easement Agreement (City of Hobart) on behalf of such entity.

WITNESS my hand and Notarial Seal this ____ day of May, 2017.

By: _____
Notary Public

Printed Name: _____

I am a resident of _____ County, Indiana.

My commission expires _____.

Return following recording to Grantor at 414 Main Street, Hobart, Indiana 46342.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Wallack, Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jennifer R. Shoup

EXHIBIT A
Grantor Property