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RECORDER  
STATE OF INDIANA  
LAKE COUNTY  
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**2023-000666**

10:39 AM 2023 Jan 10

# DEVELOPMENT AGREEMENT

BETWEEN

CITY OF HOBART REDEVELOPMENT COMMISSION

AND

HICKORY HOLLOW NWI, LLC  
an Indiana limited liability company

RE:

+/- 59.5 Acres at the Northwest Corner of 61<sup>st</sup> Avenue and Arizona Street

DATED: DECEMBER 19, 2022

\$2500  
V# 078219  
LK

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") made as of this 19<sup>th</sup> day of DECEMBER, 2022, by and between the City of Hobart Redevelopment Commission (the "Redevelopment Commission"), the governing body of the Hobart, Indiana Department of Redevelopment, and the Redevelopment District of the City of Hobart, Indiana (the "District"), and Hickory Hollow NWI, LLC, an Indiana limited liability company (the "Developer").

### WITNESSETH:

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

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

C. The Redevelopment Commission desires to stimulate and promote economic development activities in or about the Northwest corner of 61<sup>st</sup> Avenue and Arizona Street (as depicted on Exhibit "A") ; and

D. Simultaneously herewith, Developer has entered into an agreement with the Redevelopment Commission to acquire the real estate located at 4010 E. 61st Avenue, Hobart, Indiana, (+/- 59.5 acres ) and has submitted to the Redevelopment Commission a proposal to develop residential single family homes and multi-unit villas at that location; and

E. The Redevelopment Commission desires to induce Developer to proceed with the Project in the City, by supporting Developer's request for a short term loan and providing a timeline for payment of the loan (the "Incentive"); and

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

### **DEFINED TERMS**

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

**"Agreement"** means this Development Agreement between the Redevelopment Commission and Developer.

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

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

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

"**Developer**" means Hickory Hollow NWI, LLC, an Indiana limited liability company, and its agents, assigns and subsidiaries.

"**Mayor**" means the Mayor of the City, or the duly authorized representative of the Mayor of the City serving solely at the Mayor's pleasure and designated by the Mayor to carry out certain actions and responsibilities required to be performed by the Mayor of the City hereunder.

"**Project**" means the development of a residential subdivision with approximately seventy-one (71) lots with a mixture of single family homes and multi-villa homes (approximately 46 single family homes and 70 multi-family villa homes) on the property located at 4010 E. 61st Avenue, Hobart, Indiana.

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

"**Project Site**" means the real property described on Exhibit "B" hereto and which is the site of the Project.

"**Property**" means a +/- 59.5 acre parcel located at the Northwest corner of 61<sup>st</sup> Avenue and Arizona Street.

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

"**Redevelopment Commission**" means the City of Hobart Redevelopment Commission, the governing body of the Hobart, Indiana Department of Redevelopment and the Redevelopment District of the City of Hobart, Indiana, duly organized and validly existing under the RDC Act.

"**State**" means the State of Indiana.

**ARTICLE I**  
**CONSTRUCTION**

**Section 1.1 Construction of Project.**

A. Developer shall apply for Primary Plat approval for the Project within 90 days of execution of this Agreement or the City Prerequisite Approvals (defined below), whichever is later; and will reasonably proceed through the subdivision process. Thereafter, Developer shall commence or cause the commencement of construction of Phase 1 of the Project on or before the 90<sup>th</sup> day following Plan Commission’s unconditional approval of the Primary Plat (the “Phase 1 Commencement Date”). Phase 1 of the Project shall be defined by the work within that portion of the Project depicted on Exhibit “C” attached hereto and incorporated herein. Developer shall substantially complete construction of Phase 1 of the Project no later than two (2) years following the Phase 1 Commencement Date.

B. Developer shall commence or cause the commencement of construction of Phase 2 of the Project on or before the later of the date that is two (2) years after the completion of Phase 1 or the sale of 85% of the lots in Phase 1 (the “Phase 2 Commencement Date”). Developer shall substantially complete construction of Phase 2 of the Project no later than two (2) years following the Phase 2 Commencement Date.

C. Developer shall be deemed to have commenced construction by entering into a contract for construction of infrastructure and giving the contractor a formal notice to proceed.

D. The City’s Thoroughfare Plan identifies the intersection of Arizona Street & 61<sup>st</sup> Avenue as the location of a future roundabout. Fair share contributions to the construction of a future roundabout in this location are to be made from adjacent properties as they develop. The amount of the contribution is calculated by determining the daily traffic

volume that is estimated to be generated by the land use type. The required contribution for each single-family residential lot is \$1,490. Developer agrees that the contribution is to be paid upon application for a building permit for each lot and will be deposited into a non-reverting City fund for Traffic Management Capital Improvements, which will be used for costs related to the construction of the roundabout.

E. The Prerequisite Approvals shall mean the final adoption of the Ordinance to amend the zone map for a portion of the Property currently pending with the City and the vacation of the 60-foot wide right-of-way located on the northwest corner of the Property.

**Section 1.2 Construction and Operation of the Project.**

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

**Section 1.3 Developer to Construct the Project.**

Developer shall commence or cause the commencement of the construction of the Project in accordance with all applicable building codes of the City and the terms of this Agreement. Developer shall complete or cause the completion of the Project in accordance with the schedule set forth in Section 1.1 of this Agreement.

**Section 1.4 Project Cooperation Between Developer and the City.**

The Redevelopment Commission acknowledges and agrees to the right of Developer to develop, acquire, lease, construct, equip and operate the Project in accordance with Applicable Laws, without undue interference from or disruption by the Redevelopment Commission, as a successful commercial venture. The Redevelopment Commission and Developer recognize that by creating additional jobs and investment, the construction of the Project benefits the community.

Accordingly, the Redevelopment Commission and Developer agree to work together towards the successful completion of the Project.

**Section 1.5 Areas Affected by Work.**

The Redevelopment Commission shall not be liable or responsible for any damage to any land or area, or the owner/occupant of any land or area that results from construction of the Project or relates to the performance of work or the non-performance of Developer's obligations under this Agreement.

**Section 1.6 Project Documents.**

Developer shall maintain during construction of the Project in a safe place at the Project Site one (1) set of all plans, specifications, drawings, addenda, written amendments, shop drawings, change orders, work directive changes, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction, relating to the performance of the work or construction of the Project or any component thereof, which documents shall be available to the City and the Mayor for such reference as may reasonably be required. Developer will provide two (2) architectural renderings for the Project to the City for display at various City government buildings during the construction of the Project. Upon completion of the construction of the Project, a copy of all "as built" and recorded drawings shall be properly delivered to the City of Hobart Building Commissioner.

**Section 1.7 Project Safety.**

Developer's general contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the development and construction of the Project and performance of the work. Developer's general contractor shall take

all legally necessary precautions for the safety of, and provide protection as reasonably necessary to prevent damage, injury or loss to:

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

**Section 1.8 Drug Free Workplace.**

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

**Section 1.9 Labor Objectives and Requirements.**

- A. Intentionally Left Blank.
- B. Developer shall not discriminate against any applicant for employment with respect to the employee's hire, tenure, terms, conditions of employment or in any manner directly or indirectly related to employment, because of the employee's race, religion, color, sex, age, genetic information, disability, sexual orientation, national origin, ancestry, disabled veterans' status or veterans' status.

**Section 1.10 Developer Covenants.**

Developer covenants and agrees that it will:

- A. Provide a full and complete Primary and Secondary Plat to the Plan Commission and appropriate agencies for approval.

B. Apply for zoning and subdivision approvals within time frames set forth in Section 1.1 of this Agreement and reasonably proceed through the subdivision and zoning process.

C. Close on the sale of the entire Property within 90 days after receiving Secondary Plat approval and execute all necessary documents to close the sale of the Property on the terms and conditions set forth herein, including but not limited to a Promissory Note and Mortgage. Developer shall purchase all of the Property even if the Secondary Plat only applies to less than the entire Project or Property.

D. Commence construction of the Project in two phases on the dates set forth in Section 1.1 of this Agreement.

E. Complete the Project in no more than two phases on the dates set forth in Section 1.1 of this Agreement.

**Section 1.11 Sale of Property.**

In the event that Developer provides all of the above and complies with all of its obligations pursuant to this Development Agreement, and thereafter proceeds with the construction and development of the Project in accordance with this Agreement, the Redevelopment Commission shall sell Developer the Property on the terms and conditions of this Section 1.11 .

In the event that there is a material Event of Default on the part of Developer, which Event of Default is not cured within the time extension periods provided in Section 5.2 hereof, the Redevelopment Commission shall be entitled to seek any of its remedies pursuant to Section 5.3, and Developer shall reimburse the Redevelopment Commission all funds expended and/or disbursed pursuant to this Agreement.

Subject to compliance with all procedures required by law, the Redevelopment Commission shall sell to Developer the Property, at the price of Six Hundred Five Thousand Five

Hundred and 00/100ths (\$605,500.00) Dollars pursuant to a Purchase Agreement in substantively similar form as the purchase agreement attached as Exhibit “D”. The purchase price shall be paid by Developer as follows:

1. \$ 25,000 Initial Earnest Money upon execution of this Agreement;
2. \$150,000 Additional Earnest Money after receipt of Secondary Plat for Phase 1 approval (for any portion of the Property) by the Plan Commission or within one (1) year of execution of this Agreement, whichever occurs first;
3. \$200,000 shall be paid at closing which shall occur within 60 days after Developer receives Secondary Plat approval by the Plan Commission for Phase I of the Project; and
4. \$230,500 shall be paid by Developer with a Redevelopment Commission financed Promissory Note and Mortgage. Developer and Developer’s agent, Daniel P. Steiner, shall sign/guarantee the Promissory Note. The form of Promissory Note, Mortgage, and Guarantee are attached as Exhibit “E”. The City and the Redevelopment Commission shall subordinate the Mortgage to Developer’s construction lender for the Project and cooperate with Developer and Developer’s construction lender to memorialize the subordination by executing any reasonable instruments necessary in the reasonable discretion of the construction lender.

**Section 1.12 Permits and Compliance with Applicable Laws.**

Developer shall be responsible for (a) giving all necessary notices to and obtaining all necessary permits, approvals, consents and authorizations of the proper governmental authorities having jurisdiction over the construction of the Project and (b) complying with all Applicable Laws bearing on the construction of the Project and shall notify the City of any of the plans and specifications for construction that are at variance therewith. The City shall cooperate with Developer in obtaining all such permits, approvals, consents and authorizations to the extent

permitted by law. In addition, the City shall process all such necessary permits, approvals, consents and authorizations that it issues or over which it has authority in an expedited manner.

**Section 1.13 Site Management.**

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

**Section 1.14 Utility Service During Construction.**

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

**Section 1.15 Access to Work.**

Prior to final completion of the Project, the City and all governmental agencies having legal jurisdiction thereover shall be afforded such access to the Project Site as may reasonably be necessary for their observation and inspection of the Project. The City and any such governmental agencies shall notify Developer of their desire to access the Project Site, not less than one Business

Day prior to the desired date of the access to the Project Site. The City and any such governmental agencies accessing the Project Site shall not interfere with the construction or operation the Project by Developer and shall be accompanied at all times by personnel of Developer. Developer shall advise persons with such access of Developer's site safety procedures and programs so that they may comply therewith as applicable. This Section 1.15 shall not limit the rights, otherwise provided by law, of the building inspector, fire inspector or other similar regulatory office to inspect the Project.

**Section 1.16 Insurance.**

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

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

**ARTICLE II**

**REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

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

**Section 2.1 Organization and Existence.**

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

**Section 2.2 Power and Authority.**

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

**Section 2.3 Due Authorization.**

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

**Section 2.4 Due Execution.**

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

**Section 2.5 No Violation.**

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

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

**Section 2.6 No Consents Required.**

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

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

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

**Section 2.8 Financial Capacity to Complete Project.**

As of the date hereof, Developer has or will have sufficient assets or has or will have otherwise secured all financing necessary to carry out and complete its obligations with respect to the Project under this Agreement.

**Section 2.9 Survival of Representations and Warranties.**

Developer covenants that the representations and warranties made by it in this Agreement shall be true and correct on each day that this Agreement remains in full force and effect, with the same effect as if such representations and warranties had been made and given on and as of such day; except that if any such representation and warranty is specifically given in respect of a

particular date or particular period of time and related only to such date or period of time, then such representation and warranty shall continue to be given only as of such date or for such period of time.

### **ARTICLE III**

#### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE THE REDEVELOPMENT COMMISSION**

The Redevelopment Commission makes the following representations and warranties, which representations and warranties are true and correct on the date hereof, and makes the following covenants and agreements:

##### **Section 3.1 Power and Authority.**

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

##### **Section 3.2 Due Authorization.**

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

##### **Section 3.3 Due Execution.**

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

the State, and the United States of America; and (iv) public policy of the State and the United States of America.

**Section 3.4 No Violation.**

The execution and delivery of this Agreement by the Redevelopment Commission does not, and the consummation by the Redevelopment Commission of the transactions contemplated hereby and compliance by the Redevelopment Commission with the terms hereof will not:

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

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

**Section 3.5 Intentionally Left Blank.**

**Section 3.6 Legal Procedural Requirements.**

Execution of this Development Agreement is subject to all legal procedural requirements.

**Section 3.7 No Litigation.**

Other than the lawsuit entitled Jean Rakoczy et. al. v. The City of Hobart, pending under cause number 45D12-2208-PL-451, there is no proceeding against or involving the Redevelopment Commission (whether in progress or to the best of knowledge of the Redevelopment Commission threatened) which, if determined adversely to the Redevelopment Commission would materially adversely affect its ability to perform any of the provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement; to the Redevelopment Commission's knowledge, no event has occurred which might give rise to any proceeding; and there is no judgment, decree, injunction, rule, aware or order of any governmental body outstanding against the Redevelopment Commission which has or may have a material adverse effect on its ability to perform any of the provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement.

**Section 3.8 Survival of Representations and Warranties.**

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

## ARTICLE IV

### AFFIRMATIVE COVENANTS OF DEVELOPER

Developer covenants and agrees as follows:

#### **Section 4.1 Conduct of Business.**

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

#### **Section 4.2 Compliance with Applicable Laws, Sublease and Contracts.**

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

#### **Section 4.3 Payment of Taxes and Claims.**

Developer shall or shall cause each contractor, with respect to the construction of the Project, to (i) pay and discharge all lawful claims for labor, material and supplies; (ii) pay and discharge all taxes payable by it; and (iii) withhold and collect all taxes required to be withheld and collected by it and remit such taxes to the appropriate governmental body at the time and in the manner required; provided, however, that no such claim or taxes need be paid, collected or remitted if (a) it is being actively and diligently contested in good faith by appropriate proceedings; (b) reserves considered adequate by Developer and its accountants shall have been set aside; and

(c) all enforceable proceedings with respect to such claim or taxes have been stayed and appropriate security shall have been given, if required, to prevent the commencement or continuation of proceedings.

**Section 4.4 Site Visit.**

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

**ARTICLE V**

**DEFAULT AND REMEDIES**

**Section 5.1 Events of Default.**

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

A. Developer's failure to construct the Project in accordance with the schedule set forth in Section 1.1 hereof;

B. The failure by the Redevelopment Commission to perform any covenant or agreement herein on its part to be kept or performed.

**Section 5.2 Extensions Upon Default.**

In the event of an Event of Default by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such

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

**Section 5.3. Remedies.**

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

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

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

**Section 5.4 Exclusion of Certain Damages.**

The Redevelopment Commission and Developer shall be entitled to make claims against each other solely for direct damages. The Redevelopment Commission and Developer waive all claims against each other (and against each other's respective Affiliates members, managers, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect,

special, exemplary or punitive damages, regardless of whether any such claim arises out of breach of contract, tort, product liability, indemnity, contribution, strict liability, or any other legal theory.

## **ARTICLE VI**

### **TERM OF AGREEMENT AND TERMINATION**

The term ("Term") of this Agreement, and its effectiveness, shall commence upon the full execution of this Agreement by each of the parties hereto and shall continue in full force and effect until the first to occur of (i) Developer's completion of construction of the Project, or (ii) the termination of this Agreement by the Redevelopment Commission upon not less than thirty (30) days' prior written notice to Developer due to a failure by Developer to complete the construction of the Project in accordance with Section 1.1 hereof following the applicable cure periods set forth in Section 5.2 hereof or elsewhere in this Agreement, or (iii) the termination of this Agreement by Developer upon not less than thirty (30) days' prior written notice to the Redevelopment Commission due to a failure by the Redevelopment Commission to deliver to Developer any portion of the Incentive pursuant to Section 1.11 or the inability of Developer to receive the zoning variance or any other local, State or federal approval necessary to complete the construction or operation of the Project.

## **ARTICLE VII**

### **MISCELLANEOUS**

#### **Section 7.1 No Agency, Partnership or Joint Venture.**

Nothing contained in this Agreement nor any act of the Redevelopment Commission or Developer, or any other person, shall be deemed or construed by any person to create any relationship of third- party beneficiary, or if principal and agent, limited or general partnership, or joint venture between the Redevelopment Commission and Developer.

**Section 7.2 Negotiated Document.**

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

**Section 7.3 Compliance with Laws.**

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

**Section 7.4 Force Majeure.**

Neither Developer nor any successor in interest to Developer shall be considered in breach or default of its obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by an event of force majeure, including with limitation, an Act of God, strike, lockout or other industrial disturbance (whether or not such strike, lockout or other industrial disturbance could be avoided or mitigated by acceding to worker demands), acts of vandals, criminals or public enemies, act of terrorism, war, blockade, public riot, lightning, fire, storm, flood, explosion, blackout, orders of the government of the United States of America, the State or municipality or any of their departments, agencies or officials, orders of any civil military authority, unavailability, disruptions, shortages or failure to

perform (as applicable) of transportation, carriers, suppliers, contractors, subcontractors, product or equipment, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, and any other cause which is not reasonably within the control of Developer; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by either party in bad faith, and further provided that Developer notifies the Redevelopment Commission in writing within sixty (60) days of the commencement of such claimed event of force majeure.

**Section 7.5 Exhibits.**

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

**Section 7.6 Captions.**

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

**Section 7.7 Number and Gender.**

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

**Section 7.8 Notices.**

No notice, approval, consent or other communication authorized or required by this Agreement shall be effective unless the same shall be in writing. Any such communications shall be effective (i) upon receipt if it emailed or hand delivered, with signed receipt of such hand delivery therefor obtained, (ii) seventy two (72) hours after it is sent postage prepaid by United States registered or certified mail, return receipt requested, (iii) twenty four (24) hours after it is deposited with a national courier for overnight delivery, or (iv) twenty four (24) hours after it is

sent by fax, with written confirmation therefor obtained, directed or addressed in each case set forth in (i) through (iv) above to the other party at its address (or fax number) set forth below.

The addresses and fax numbers for notices are:

To the Redevelopment Commission: City of Hobart Redevelopment Commission  
414 Main Street  
Hobart IN 46342  
Attention: Executive Director  
Fax No.: \_\_\_\_\_

With a copy to: David W. Westland  
Westland & Bennett P.C.  
2929 Carlson Drive, Suite 300  
Hammond IN 46323  
Email: [dwestland@westlandbennett.com](mailto:dwestland@westlandbennett.com)

To Developer: Hickory Hollow NWI, LLC  
40 Warren Drive  
Valparaiso IN 46385  
Attention: Daniel P. Steiner  
Fax No: \_\_\_\_\_  
Email: [dan@steinerhomesltd.com](mailto:dan@steinerhomesltd.com)

With a copy to: Todd A. Leeth  
Hoepfner Wagner & Evans, LLP  
103 E Lincolnway  
Valparaiso, In, 46383  
Email: [tleeth@hwelaw.com](mailto:tleeth@hwelaw.com)

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

**Section 7.9 Survival.**

All representations, warranties and indemnities set forth in this Agreement shall survive the termination hereof.

**Section 7.10 Counterparts.**

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

**Section 7.11 Binding Effect.**

Developer may assign its rights and obligations under this Agreement to an Affiliate of Developer without the consent of the Redevelopment Commission and may otherwise assign its rights and obligations under this Agreement with the consent of the Redevelopment Commission, which consent shall not be unreasonably withheld. The rights of Developer and the Redevelopment Commission under this Agreement shall inure to Developer and the Redevelopment Commission, respectively, and upon their respective successors and permitted assigns.

**Section 7.12 Time of the Essence.**

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

**Section 7.13 Costs of Proceedings.**

In the event of the institution of any proceeding relating to the performance of this Agreement, the parties agree that costs and expenses, including reasonable attorneys' fees and expenses, incurred by the prevailing party (as defined herein) in connection with such proceeding, will be paid by the prevailing party. The prevailing party shall be defined as (i) the party which ultimately is awarded an amount (net of any offsets or counterclaims awarded to the other party) in excess of the last settlement offer made in writing by the other party, or (ii) the party which made the last settlement offer in writing, if the amount ultimately awarded (net of any offsets or counterclaims awarded to the other party) is less than such last settlement offer, or (iii) the party which ultimately is awarded an amount, regardless of sum, if no settlement offer was ever made

in writing by the other party, or (iv) if no amount is awarded, but instead equitable relief is granted, the party in whose favor such equitable relief is granted.

**Section 7.14 Severability.**

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

**Section 7.15 Non-Waiver.**

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

**Section 7.16 Governing Law.**

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

**Section 7.17 No Third-Party Beneficiaries.**

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

**Section 7.18 Jurisdiction and Consent to Suit.**

Subject to the provisions of this Agreement, the Redevelopment Commission and Developer hereby agrees and consents to the exclusive personal and subject matter jurisdiction of the Circuit or Superior Courts of Lake County, Indiana, which shall be the sole and exclusive forum in connection with any claim, cause of action or other dispute by either of them against the other arising out of or relating to the terms, obligations and conditions of this Agreement. The parties agree that service shall be effective by notice under the Indiana Rules of Trial Procedure to any individual listed in Section 7.8 or authorized representative or agent; provided, however, that each party shall retain any rights it may have under Applicable Laws then in effect to seek a change of judge in any proceeding before such designated court. The Redevelopment Commission covenants that it shall not assert in any such action, as a defense to any claim by Developer for breach or violation by the Redevelopment Commission of this Agreement, any defense of sovereign or governmental immunity to which the Redevelopment Commission might otherwise claim to be entitled under Applicable Laws then in effect.

**Section 7.19 Confidentiality.**

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

**Section 7.20 Standards for Consent.**

Where any provision of this Agreement requires the consent or approval of either party, each party agrees that it will not unreasonably withhold, condition, or delay such consent or approval, except as otherwise expressly provided in this Agreement, and the reasonableness of each party's determination shall be evaluated in accordance with any particular standards governing such particular consent or approval as expressly set forth in this Agreement, or if no

standards are expressly set forth, then in accordance with all relevant facts and circumstances. Where any provision of this Agreement requires one party to do anything to the satisfaction of the other party, the other party agrees that it will not unreasonably refuse to state its satisfaction with such action. Any dispute over the reasonableness of either party withholding or conditioning its consent or satisfaction shall be resolved pursuant to this article of this Agreement.

## **ARTICLE VIII**

### **DISPUTE RESOLUTION AND TERMINATION**

#### **Section 8.1 Alternative Dispute Resolution.**

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

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

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

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

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

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

## **ARTICLE IX**

### **DEVELOPER'S INDEMNIFICATION OBLIGATIONS**

#### **Section 9.1 Environmental Indemnification.**

Developer agrees, at Developer's sole cost and expense, to protect, defend, indemnify and save harmless the Redevelopment Commission from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, response and clean-up costs, and other costs and expenses (including, without limitation, reasonable attorneys' fees, the cost of any remedial action, consultant fees, investigation and laboratory fees, court costs and litigation expenses) arising out of or relating to, the presence, disposal, escape, seepage, leakage, spillage discharge, emission, release or threatened release of any Hazardous Materials on, from or affecting the Project Site to the extent caused by Developer in the construction of the Project and as a result of a breach of this Agreement; provided, however, in no event shall Developer have any liability or obligation to indemnify the Redevelopment Commission for any such claims, damages, penalties, causes of action, response and clean-up costs, and other costs and expenses arising out of or relating to, the presence, disposal, escape, seepage, leakage, spillage discharge, emission, release or threatened

release of any Hazardous Materials on, from or affecting the Project Site to the extent such action occurred prior to Developer taking possession of the Project Site.

**Section 9.2 General Indemnification.**

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

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

C. Developer and its members, officers, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Redevelopment Commission or City or its governing body members, officers, agents, employees, independent contractors or any other persons who may be about the construction of the Project except for matters arising out of the gross negligence or willful misconduct of Developer and its members, officers, agents, attorneys, employees and independent contractors.

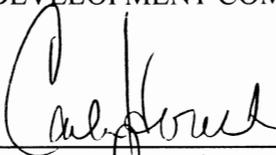
D. All covenants, stipulations, promises, agreements and obligations of the Redevelopment Commission contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Redevelopment Commission and not of any of its governing body members, officers, agents,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

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

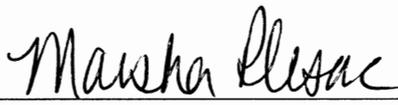
[signature pages follow this page]

SIGNATURE PAGE OF  
CITY OF HOBART REDEVELOPMENT COMMISSION  
TO  
DEVELOPMENT AGREEMENT

CITY OF HOBART  
REDEVELOPMENT COMMISSION

By:   
Title: President

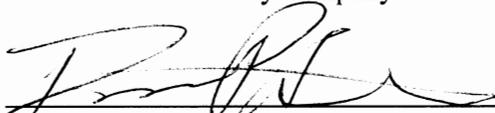
ATTEST:

By:   
Secretary

SIGNATURE PAGE OF  
HICKORY HOLLOW NWI, LLC  
TO  
DEVELOPMENT AGREEMENT

HICKORY HOLLOW NWI, LLC  
an Indiana limited liability company

By:



Daniel P. Steiner, Member

**EXHIBIT "A"**  
**PROJECT DESCRIPTION**

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Parcel No. 45-12-01-376-001.000-018

4010 E. 61<sup>st</sup> Avenue, Hobart, Indiana 46342

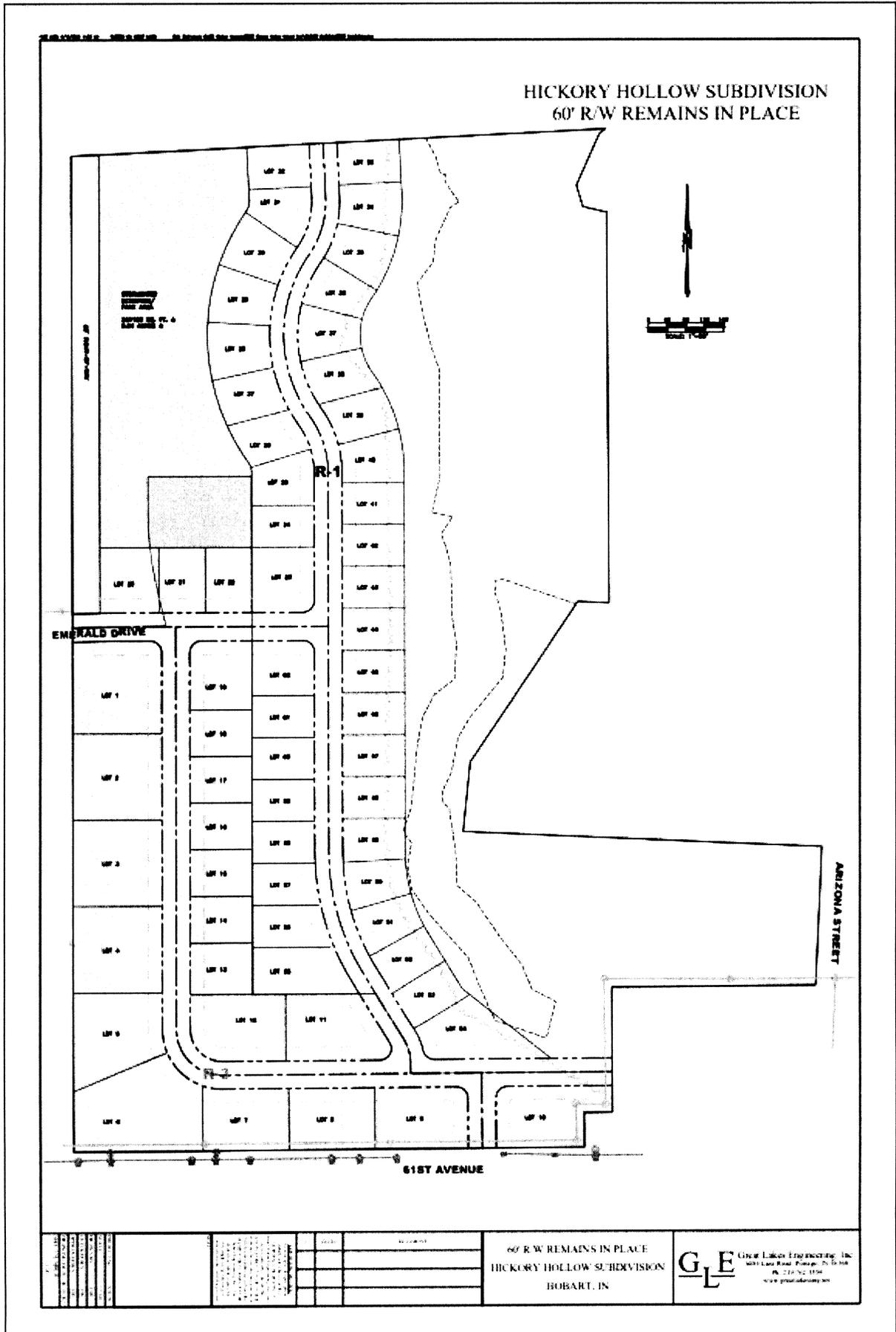
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Hickory Hollow Subdivision is a mixed residential subdivision on approximately 62 acres located on the north side of 61<sup>st</sup> Avenue west of Arizona Street and immediately east of Arbor Creek Estates Unit 1. The site is zoned R-1 Single Family which shall allow for an anticipated 46 single family detached home lots and in addition 15.8 acres recently rezoned to R-3 Single to Four Family Residential District. Within the R-3 District, there is anticipated 12 townhome lots with 48 homes total, and 11 duplex lots with 22 homes total. Overall, Hickory Hollow Subdivision will have 116 new homes with varying home styles for diverse market appeal.

# EXHIBIT "A"

page 2



1. PROJECT	HICKORY HOLLOW SUBDIVISION
2. SHEET NO.	2 OF 2
3. DATE	10/1/00
4. DRAWN BY	GLE
5. CHECKED BY	GLE
6. APPROVED BY	GLE
7. SCALE	AS SHOWN
8. NOTES	

60' R/W REMAINS IN PLACE  
HICKORY HOLLOW SUBDIVISION  
HOBBART, IN

**GLE** Great Lakes Engineering, Inc.  
3000 Lake Road, P.O. Box 100  
P.O. 2147, St. Louis, MO 63116  
www.greatlakeseng.com

## EXHIBIT "B"

### LEGAL DESCRIPTION OF PROJECT SITE

PART OF THE SOUTH 1/2 SECTION 1, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P.M. IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SW 1/4 OF SAID SECTION 1; THENCE SOUTH 90°00'00" WEST ALONG THE SOUTH LINE OF SAID SECTION 1, A DISTANCE OF 161.43 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL; THENCE CONTINUING NORTH 90°00'00" WEST, 1158.42 FEET TO THE SOUTHWEST CORNER OF THE EAST 1/2, SW 1/4 OF SAID SECTION 1; THENCE NORTH 00°11'48 EAST ALONG THE WEST LINE OF THE EAST 1/2, OF THE SW1/4, 1341.45 FEET TO THE NORTHWEST CORNER OF THE SE 1/4, SW 1/4 OF SAID SECTION 1; THENCE NORTH 00°12'22" EAST ALONG THE WEST LINE OF THE NE 1/4, SW 1/4, A DISTANCE OF 844.55 FEET TO THE SOUTHWEST CORNER OF THE NORTH 15 ACRES OF THE NE 1/4, SW 1/4 OF SAID SECTION 1; THENCE NORTH 87°32'05" EAST ALONG THE SOUTH LINE OF THE NORTH 15 ACRES, A DISTANCE OF 1151.84 FEET TO A POINT ON A LINE BEARING NORTH 00°00'00" EAST FROM THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST, 1518.46 FEET; THENCE SOUTH 87°05'00" EAST, 490.83 FEET TO THE CENTERLINE OF ARIZONA STREET; THENCE SOUTH 02°55'00" EAST ALONG THE CENTERLINE OF ARIZONA STREET, 295.30 FEET; THENCE NORTH 90°00'00" WEST, 475.17 FEET; THENCE SOUTH 00°00'00" EAST, 397.18 FEET TO THE POINT OF BEGINNING, CONTAINING 62.005 ACRES MORE OR LESS, EXCEPTING THEREFROM THAT PART LYING EAST OF THE WINDING CENTERLINE OF DEEP RIVER.

EXCEPTING THEREFROM

2 PART OF THE SW 1/4 OF SECTION 1, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P.M. IN LAKE COUNTY, INDIANA, DESCRIBED AS COMMENCING AT A POINT ON THE SOUTH LINE OF SAID SECTION 1 AND 161.43 FEET WEST OF THE SOUTHEAST CORNER OF SAID SW 1/4; THENCE NORTH 00°00'00" EAST, 717.08 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL; THENCE NORTH 87°05'00" WEST, 316.20 FEET; THENCE NORTH 06°13'31" EAST, 150.55 FEET; THENCE NORTH 34°21'26" EAST, 412.24; THENCE SOUTH 86°38'51" EAST, 66.94 FEET; THENCE SOUTH 00°00'00" EAST, 505.15 FEET TO THE POINT OF BEGINNING, CONTAINING 2.543 ACRES, MORE OR LESS;

ALSO EXCEPTING

3 THE EAST 40.00 FEET FROM THE NORTHERNMOST BOUNDARY TO THE SOUTHERNMOST BOUNDARY ADJACENT TO ARIZONA STREET, A DISTANCE OF APPROXIMATELY 295.30 FEET; THE SOUTH 50.00 FEET FROM THE EASTERNMOST BOUNDARY TO THE WESTERNMOST BOUNDARY ADJACENT TO 61ST AVENUE, A DISTANCE OF APPROXIMATELY 1158.28 FEET; BOTH PARCELS TO BE DEDICATED TO THE CITY OF HOBART FOR ROADWAY AND RIGHT-OF-WAY PURPOSES;

ALSO EXCEPTING

4 THE NORTH 60 FEET OF THE FOLLOWING TRACT:

A TRACT OF LAND BEING THE NORTH 1039.39 FEET OF THE WEST 60 FEET OF THE FOLLOWING PARENT PARCEL. SAID PARCEL BEING DESCRIBED AS PART OF THE SOUTH 1/2 SECTION 1, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND P.M. IN LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SW 1/4 OF SAID SECTION 1; THENCE SOUTH 90°00'00" WEST ALONG THE SOUTH LINE OF SAID SECTION 1, A DISTANCE OF 161.63 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL; THENCE CONTINUING NORTH 90°00'00" WEST, 1158.42 FEET TO THE SOUTHWEST CORNER OF THE EAST 1/2, SW 1/4 OF SAID SECTION 1; THENCE NORTH 00°11'48 EAST ALONG THE WEST LINE OF THE SW 1/4, SW1/4, 1341.45 FEET TO THE NORTHWEST CORNER OF THE SE 1/4, SW 1/4 OF SAID SECTION 1; THENCE NORTH 00°12'22" EAST ALONG THE WEST LINE OF THE NE 1/4, SW 1/4, A DISTANCE OF 844.55 FEET TO THE SOUTHWEST CORNER OF THE NORTH 15 ACRES OF THE NE 1/4, SW 1/4 OF SAID SECTION 1; THENCE NORTH 87°32'05" EAST ALONG THE SOUTH LINE OF

THE NORTH 15 ACRES, A DISTANCE OF 1151.84 FEET TO A POINT ON A LINE BEARING NORTH 00°00'00" EAST FROM THE POINT OF BEGINNING; THENCE SOUTH 00°00'00" EAST, 1518.46 FEET; THENCE SOUTH 87°05'00" EAST, 490.83 FEET TO THE CENTERLINE OF ARIZONA STREET; THENCE SOUTH 02°55'00" EAST ALONG THE CENTERLINE OF ARIZONA STREET, 295.30 FEET; THENCE NORTH 90°00'00" WEST, 475.17 FEET; THENCE SOUTH 00°00'00" EAST, 397.18 FEET TO THE POINT OF BEGINNING, CONTAINING 62.005 ACRES MORE OR LESS. SAID TRACT OF LAND CONTAINS 1.432 ACRES MORE OR LESS.

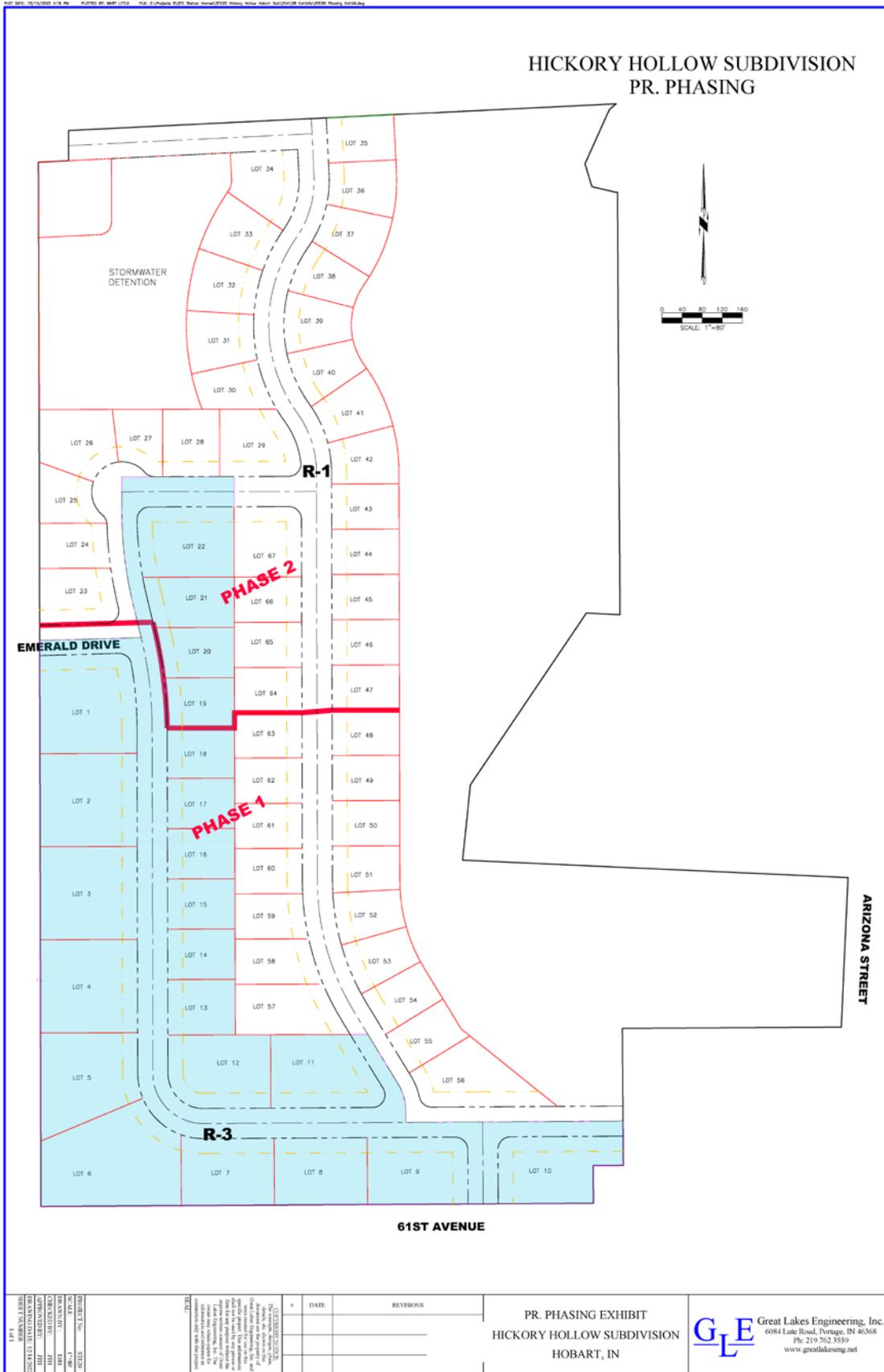
ALSO EXCEPTING

5 A PART OF THE SOUTH HALF OF SECTION 1, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND PRINCIPAL MERIDIAN IN LAKE COUNTY, INDIANA, AS DEPICTED ON A PLAT OF SURVEY BY KRULL & SON, DATED MARCH 10, 2008, RECORDED IN BOOK 19, PAGE 12 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 1; THENCE SOUTH 90°00'00" WEST ALONG THE SOUTH LINE OF SAID SECTION 1, A DISTANCE OF 161.43 FEET; THENCE NORTH 00°00'00" WEST 50.00 FEET TO THE PROPOSED NORTH RIGHT-OF-WAY LINE OF 61ST AVENUE AND A POINT ON THE EAST LINE OF AN EASEMENT GRANTED TO GTE BY DOCUMENT NO. 91053712 AS RECORDED IN SAID RECORDER'S OFFICE, AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 90°00'00" WEST ALONG SAID PROPOSED NORTH RIGHT-OF-WAY LINE, 60.00 FEET; THENCE NORTH 00°00'00" WEST 75.00 FEET; THENCE NORTH 90°00'00" EAST, 60.00 FEET; THENCE SOUTH 00°00'00" EAST, 75.00 FEET TO THE POINT OF BEGINNING, CONTAINING 4,500 SQUARE FEET MORE OF LESS.

# EXHIBIT "C"

## PROJECT PHASING



NO.	DATE	REVISIONS

PR. PHASING EXHIBIT  
HICKORY HOLLOW SUBDIVISION  
HOBART, IN

**GLE** Great Lakes Engineering, Inc.  
6084 Lake Road, Portage, IN 46368  
Ph: 219-763-3559  
www.greatlakeseng.net

## EXHIBIT "D"

### PURCHASE AGREEMENT

## PURCHASE AGREEMENT

THIS AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2022, by and between the **CITY OF HOBART REDEVELOPMENT COMMISSION** (hereinafter referred to as "Seller") and **HICKORY HOLLOW NWI, LLC**, an Indiana limited liability company (hereinafter referred to as "Purchaser") to evidence the following understandings, covenants and agreements:

### 1. LEGAL DESCRIPTION

Purchaser agrees to buy and Seller agrees to sell certain property located at 4010 E. 61<sup>st</sup> Avenue, Hobart IN 46342, containing ± 59.5 acres as depicted on Exhibit "A". The legal description is as follows:

*See attached legal description*

Parcel No. 45-12-01-376-001.000-018

More commonly known as: 4010 E. 61<sup>st</sup> Avenue, Hobart IN 46342

AND ALSO, the land described in that certain Plat of Vacation dated 20<sup>th</sup> day of July, 2022 and recorded August 3, 2022 as Document No. 2022- 024961, which vacates that former public way described and shown on the Plat.

(the "Property").

The Property includes: (a) the land; and (b) all appurtenant rights, privileges and easements. All of the Property shall be free and clear of liens and security interests on the Closing Date (as defined in paragraph 6 below).

### 2. PURCHASE PRICE AND EARNEST MONEY

By this Agreement, Seller hereby agrees to sell and Purchaser agrees to purchase, subject to certain conditions contained herein, the Property. The total purchase price for the Property shall be Six Hundred Five Thousand Five Hundred and 00/100ths (\$605,500.00) Dollars. The Purchase Price shall be paid as follows:

- A. Earnest Money. Upon the execution of this Agreement by both parties, Purchaser shall deposit Initial Earnest Money of Twenty-Five Thousand and 00/100ths (\$25,000.00) Dollars with Greater Indiana Title Insurance Company to be held pursuant to the terms hereof. Purchaser shall deposit an additional \$150,000.00, as Additional Earnest Money, with Greater Indiana Title Insurance Company within 10 days after receipt of Secondary Plat for Phase 1 approval (for any portion of the Property) by the Plan Commission or within one (1) year of execution of this Agreement, whichever occurs first.

The Earnest Money Deposit shall be credited toward the Purchase Price at Closing or shall be otherwise dealt with according to the terms of this Agreement. If the closing does not occur because of Seller's default or because any condition of this Contract is not satisfied or waived, Purchaser shall be entitled to the Earnest Money. If Purchaser defaults, Seller shall be entitled to the Earnest Money as liquidated damages. The Earnest Money shall be held by the Escrow Agent until one of the following occurs: (1)

the transaction closes and the Escrow Agent disburses the Earnest Money pursuant to the terms of this Agreement; (2) the parties provide the Escrow Agent with written instructions that both parties have signed that specify how the Escrow Agent is to disburse the Earnest Money; (3) the Escrow Agent receives a copy of a final court order that specifies to whom the Earnest Money is to be awarded; or (4) the funds become unclaimed and the Escrow Agent turns them over to the Division of Unclaimed Funds. However, if within two years from the date the Earnest Money is deposited with the Escrow Agent, the parties have not provided the Escrow Agent with such signed instructions or written notice that legal action to resolve the dispute has been filed, the Escrow Agent may return the Earnest Money to Purchaser with no further notice to Seller. Payment or refund of the Earnest Money shall not prejudice the rights of the non-defaulting party in an action for damages or specific performance against the defaulting party.

- B. \$200,000.00 shall be paid at closing which shall occur within 60 days after Purchaser receives Secondary Plat approval by the Plan Commission for Phase I of the Project. Purchaser shall diligently pursue all approvals for Secondary Plat with the City of Hobart; and
- C. \$230,500.00 shall be paid by Purchaser with a Redevelopment Commission financed Promissory Note and Mortgage. Purchaser and Purchaser's agent, Daniel P. Steiner, shall sign/guarantee the Promissory Note. The City of Hobart and the Redevelopment Commission shall subordinate the Mortgage to Purchaser's construction lender for the Project and cooperate with Purchaser and Purchaser's construction lender to memorialize the subordination by executing any reasonable instruments necessary in the reasonable discretion of the construction lender.

The Promissory Note, whether it expressly provides or not, shall be subject to certain potential credit provisions provided in the event of unforeseen circumstances relating to the Rakoczy Action (as defined in §3(D)(ii)). If at such time as Phase 2 must be commenced pursuant to §1.1(B) of the Development Agreement by and between the parties hereto, the Rakoczy Action is still pending and/or appeal rights are not exhausted or expired, then Purchaser shall elect, at Purchaser's sole discretion, to either:

- 1. Wait or pause Purchaser's obligations to proceed with development of Phase 2 of the Project (as defined in the Development Agreement) until such time as the Rakoczy Action is resolved and all appeal rights are exhausted or expired. During any delay elected by Purchaser, the interest on the Promissory Note shall also be paused for such time as the Rakoczy Action is still pending. The suspension of interest shall commence on the date that Purchaser was obligated to start construction of Phase 2 pursuant to Section 1.1(B) of the Development Agreement and ends on the date that the Rakoczy Action is resolved and all appeal rights are exhausted or expired.
- 2. Proceed with the development of Phase 2, which shall set aside the area in dispute in the Rakoczy Action resulting in the loss of lots within the Project. The parties acknowledge that this may require re-platting of the subdivision which Purchaser shall diligently undertake upon the election to proceed under this subsection (2). During the time beginning with the

election to proceed hereunder and the approval of the re-plat, interest shall be waived. Purchaser shall receive a credit of \$8,500 for the number of lots lost from the original plans for the Project and the final lot count after re-platting to remove the disputed right-of-way; provide however, that the credit under this provision shall be capped at, and shall not exceed, \$42,500.

3. If Purchaser initially elects option (1) above, and prior to the resolution of the Rakoczy Action, Purchaser may proceed with Phase 2 and elect (2) above.
4. If the result of the Rakoczy Action is such that the right-of-way which is the subject of the lawsuit is returned to public access and is not part of the Property, then the parties shall proceed under (2) above with Purchaser receiving the per lot credit against the outstanding balance of the Promissory Note.

### 3. OBLIGATIONS CONDITIONAL

A. Purchaser's Conditions Precedent. The Purchaser's obligations under this Agreement shall be subject to satisfaction of each of the following conditions listed in subparagraphs (1) through (7) inclusive (collectively, the "Conditions"). Seller shall pay the cost of a title commitment. Otherwise, except as set forth below, the cost of satisfying the Conditions shall be the responsibility of Purchaser.

Purchaser shall have a period of thirty (30) days commencing on the day that Purchaser receives a fully executed copy of this Agreement (the "Due Diligence Period") in which to determine if the Conditions have been met, except if another time frame is specified below. If, during the Due Diligence Period (or at the end of any applicable cure period), Purchaser determines that any Condition has not been reasonably satisfied, then Purchaser shall have the right to terminate this Agreement by written notice to Seller and Escrow Agent shall promptly refund the Earnest Money to Purchaser. If Purchaser terminates the Agreement as provided in this Section, then Purchaser agrees to deliver originals or copies of its inspection reports to Seller. However, if Purchaser has not notified Seller that any Condition remains unsatisfied by the expiration of the Due Diligence Period (or the end of any applicable cure period which extends beyond the Due Diligence Period), then all of the Conditions will conclusively be deemed to have been satisfied or waived.

(1) Title. Seller, at Seller's sole cost and expense, shall order a commitment for an owner's policy of title insurance within ten (10) days after the date of execution of this Contract.

(2) Survey. Seller has delivered to Purchaser any existing survey of the Property that Seller has in its possession within ten (10) days after the execution of this Contract.

(3) Inspections. Purchaser shall have the right to make a thorough inspection of the Property. Seller shall cooperate with Purchaser and its engineers, analysts and appraisers, to provide access to the Property for the purpose of completing the inspections.

(4) Environmental Study. Purchaser may order a Phase I environmental site assessment to be performed regarding the Property, which assessment shall be made by a qualified environmental assessment professional person or organization. If such report concludes that the Property, or any part thereof, is unsuited for Purchaser's intended use of the Property due to land contamination by any Hazardous Material, as defined below, Purchaser shall have the option to terminate this Agreement in its entirety or as to such part of the Property which contains the contamination.

(5) Quantity of Utilities. Purchaser shall have satisfied itself that electricity, gas, water, telephone, sanitary sewer and storm sewers are available to the Property in sufficient capacities to service the Purchaser's proposed use of the Property.

(6) Zoning. Purchaser shall have determined that the current zoning of the Property permits Purchaser's intended use of the Property within 90 days of execution of this Agreement.

(7) Temporary Access Easement. Seller shall grant and assign to Purchaser all of its rights, privileges and options set forth in that certain Temporary Access Easement dated June 27, 2022 and recorded August 3, 2022 as Document No. 2022-024959 in the Office of the Recorder of Lake County, Indiana.

(8) Rakoczy Lawsuit. On or about August 4, 2022, a Complaint for Damages, Injunctive Relief, Declaratory Relief, Inverse Condemnation and Jury Demand was filed as Cause No. 45D11-2208-PL-000451 in the Lake Superior Court, Civil Division 7 naming the City of Hobart as defendant (the "Rakoczy Action"). The Rakoczy Action seeks, inter alia, to reverse or overturn the vacation of the former public right-of-way land described in that certain Plat of Vacation dated 20<sup>th</sup> day of July, 2022 and recorded August 3, 2022 as Document No. 2022- 024961.

B. Seller's Right to Cure. If any of the above reports or inspections disclose any materially adverse condition unacceptable to Purchaser, then the Purchaser shall promptly deliver written notice to the Seller and Seller shall have thirty (30) days to remedy (at Seller's sole cost and expense) any materially adverse condition Purchaser has objected to in writing. If Seller does not begin efforts reasonably calculated to remedy the objection within fifteen (15) days after the date of Purchaser's notice then Purchaser shall have the right to terminate this Agreement by written notice to the Seller and the Earnest Money shall be returned to Purchaser. However, in the event that Seller is unable or unwilling to cure any objection made by Purchaser, Purchaser may, by written notice to Seller, waive such condition and proceed to purchase the Property.

C. Inspections. Purchaser, or its consultants, shall have the right during the Due Diligence Period to enter upon the Property at reasonable times so as not to interfere with Seller's use of the Property, to gather such information, including, but not limited to, surveys, soils tests, and environmental assessment reports, as it deems necessary. Purchaser agrees to return or restore the Property to substantially its original state within a reasonable time period after the tests are conducted, not to exceed sixty (60) days after completion of the tests. Purchaser shall indemnify and hold Seller harmless from any and all claims, costs or liability arising from the entry onto the Property and testing performed by Purchaser, its consultants, agents or employees.

D. Further Requirements Precedent to Closing. In addition to the Conditions set forth in A above, the Purchaser's obligations under this Agreement shall be further subject to the following:

(i) On the closing date, the Property shall be zoned for and Purchaser shall have obtained all necessary subdivision and land use approvals and permits for the development of the Property as a 71 lot subdivision development with a mix of single family homes and villa homes in reasonable conformity with its concept plan. The above and foregoing shall be referred to as the "Plat Approval Requirement".

(ii) On the closing date Counts II, Declaratory Relief for Unlawful Vacation of Permanent Public Right of Way and County III, Claim for Injunctive Relief for Unlawful Vacation of Permanent Public Right of Way, of the Rakoczy Action shall be dismissed or judgment entered unconditionally in favor of the City and all appeal rights shall expire with regard to Counts II and III.

In addition to any other contingencies or conditions enumerated in this Agreement, the foregoing matters shall be an additional condition precedent to Purchaser's obligation to purchase the Property and close hereunder. These conditions precedent shall be for the exclusive benefit of Purchaser and Purchaser reserves the right to waive all of the Conditions, requirements, and conditions precedent and close the sale within ten (10) days of notice of such waiver.

#### 4. COVENANTS AND WARRANTIES OF PURCHASER

Purchaser covenants and warrants to Seller as follows:

A. Authorization. Purchaser has full legal power and authority to purchase the Property as provided for herein, without any other consent or proceeding required from any other person, entity or organization and the person executing this Agreement on behalf of Purchaser is fully authorized to act on behalf of the Purchaser.

B. Conflict. The execution, delivery and performance of this Agreement by Purchaser does not conflict with or result in a breach of the provisions of, or constitute a default under the terms of Purchaser's organizational documents or any mortgage, deed of trust, franchises, permit, license, note, agreement or other instrument to which Purchaser is a party or by which Purchaser may be bound. Purchaser will not use the Property in violation of any existing use restrictions of record.

#### 5. COVENANTS AND WARRANTIES OF SELLER

Seller covenants and warrants to Purchaser as follows:

A. Ownership. Seller has fee simple marketable title to all of the Property, free and clear of any encumbrances except those accepted by Purchaser.

B. Authorization. Seller has full legal power and authority to own and convey the Property as provided for herein, without any other consent or proceeding required from any other person, entity or organization and the person executing this Agreement on behalf of Seller is fully authorized to act on behalf of Seller.

C. Conflict. Neither the entering into of this Agreement nor any Closing under this Agreement will constitute a violation or breach by Seller of any contract, agreement, encumbrance, court order or other instrument to or by which Seller may be bound.

D. Litigation. There is no pending litigation or claim which affects or which might affect the Property.

E. Work in Progress. No work has been performed or is in progress upon the Property and no materials have been furnished to the Property or any portion thereof which after Closing could give rise to any mechanics, materialmen, or other liens and at Closing, Seller shall furnish to Purchaser an affidavit attesting to the absence of any such liens or rights to liens. Further, as of the date of this Agreement, no assessments for public improvements or otherwise have been made against the Property which remain unpaid (including without limitation, those for construction of water, sewer, gas and electric lines).

F. Hazardous Materials. Seller represents that, to the best of Seller's knowledge, the Property is free from any material or substance presently prohibited or regulated by any governmental authority or which is presently known to pose a hazard to the health or safety of occupants or the Property ("Hazardous Material").

G. Title. Seller owns fee simple marketable title to the Property and no other person or entity has any right to the Property which is based on encumbrances, written agreements or oral understandings, other than matters which appear in the public record.

H. No Encroachments. Seller has no notice and no knowledge of any facts which would reasonably put Seller on notice: (1) of any dispute regarding the location of the Property lines; (2) that any improvements on adjacent properties encroach onto the Property; or (3) that any improvement on the Property encroaches upon any adjacent property.

I. No Violations. Seller has no notice and no knowledge of any facts which would reasonably put Seller on notice regarding: (1) the removal or abatement of any nuisance; (2) any building code violation on the Property; (3) the violation of any zoning ordinances affecting the Property; or (4) any violation of any other regulation of any governmental authority having jurisdiction over the Property.

J. No Condemnations. The Property is not subject to any pending condemnation or proceeding in Eminent Domain and Seller is not aware of any planned or threatened proceedings.

K. Utilities. Seller represents that utilities (including storm sewer, gas, water, and sanitary sewer) are available at the Southern property line of the Property.

L. Use. Seller represents that Purchaser's use does not violate existing use restrictions.

M. Exclusive Negotiation. Seller shall not negotiate with any other parties for the sale of the Property during the pendency of this Agreement and shall hold the terms hereof in strict confidence to the extent permitted by law.

N. Rakoczy Lawsuit. To the maximum extent permitted by applicable law, Seller agrees to indemnify, defend (with counsel acceptable to Purchaser) and hold harmless Purchaser, and their respective employees, officers, directors, agents, subsidiaries, affiliates, legal representatives, successors and assigns, from and against any and all claims, actions, proceedings, judgments, damages (including consequential damages), liens, fines, liabilities, losses, costs and expenses (including but not limited to attorneys' fees) arising from the Rakoczy Action, and any appeals, counter-claims, cross claims or matters arising from the Rakoczy Action.

Seller shall reaffirm to Purchaser that these warranties are true at the time of the Closing,

6. CLOSING AND POSSESSION

Subject to the conditions precedent to Purchaser's obligation to close as provided in Item 3 hereof, the Closing shall occur after the conclusion of the Due Diligence Period and the satisfaction of the Plat Approval Requirement. The Closing shall be at such place as agreed upon by both parties (not later than March 15, 2023, subject to such extension as may be necessary for Seller to satisfy the conditions precedent to Closing provided that Purchaser is not in default hereunder (the "Closing Date")) Possession of the Property shall be delivered to Purchaser on the Closing Date ("Closing").

Seller shall provide, at Seller's cost and expense, an ALTA Form B extended coverage title policy. Seller shall pay the cost of documentary stamps and intangible taxes, transfer taxes, one-half of any escrow fees, survey, and costs to clear title, if any. Purchaser shall pay its own inspection and recording costs, and one-half of the escrow fees. Each party will pay its own attorney's fees. All other costs shall be adjusted in accordance with local pricing and local custom.

At Closing, Seller shall deliver to Purchaser a general warranty deed for the Property; an owner's policy of title insurance; evidence of Seller's authority for the conveyance of the Property, such other documents as may be reasonably requested by the insuring title company; and all other items reasonably requested by the insuring title company; and all other items reasonably requested by Purchaser to transfer title of Seller in the Property to Purchaser.

7. MARKETABLE TITLE AND REAL ESTATE TAXES

At the Closing, Seller shall convey to Purchaser good and marketable title to the Property by general warranty deed. Such deed shall vest in Purchaser full title to the Property, free and clear of all liens and encumbrances and the rights to take liens and encumbrances, except: (a) legal highways; (b) installments of taxes and assessments becoming due and payable after the Closing Date; (c) zoning; and (d) any other exception disclosed in the title insurance commitment and accepted by the Purchaser in writing on or before the Closing Date. Seller shall have paid (or shall credit against the Purchase Price at Closing) all taxes and assessments, if any, due and payable prior to the Closing Date.

8. PRORATIONS AT CLOSING

Seller shall also pay or credit a prorata share (computed in accordance with local custom) of the next estimated semi-annual installment of taxes and assessments; except that if the assessments are assessed annually, then the proration of assessments shall be based upon the annual assessment. The Seller's prorata share shall be computed based upon the number of days elapsing between the most recent semi-annual installment and the Closing Date.

9. DAMAGE OR DESTRUCTION OF PROPERTY

Seller shall keep the Property adequately insured against fire and extended coverage perils and shall maintain the Property in its present condition until Closing. Seller shall bear all risk of loss to the Property until Closing. If any portion of the Property is materially damaged, or destroyed before the Closing, Purchaser may either: (a) proceed with the Closing and be entitled to all insurance proceeds not exceeding the Purchase Price, if any, payable to the Seller under

all policies covering the Property plus an amount equal to Seller's insurance deductible(s); or (b) terminate this Agreement by giving written notice to Seller within twenty (20) days after the Purchaser receives written notice of the damage or destruction, including the amount of insurance proceeds payable. If Purchaser terminates this Agreement for the reasons stated in this Section the Escrow Agent shall immediately refund the Earnest Money to Purchaser.

10. DEFAULT BY SELLER

Seller shall be in Default hereunder if, (a) Seller fails or refuses to deliver good and marketable title to the Property at the Closing; (b) Seller shall fail to comply with any material term, provision or condition of this Agreement; or (c) any of the representations and warranties made by Seller herein shall be in any material respect misleading, inaccurate or untrue. Upon the occurrence of any default of Seller hereunder, Purchaser shall give Seller written notice specifying the nature of the default. If Seller does not cure the default within thirty (30) days, or other period of time agreed upon by Purchaser, the Purchaser may then, (a) seek specific performance of this Agreement; (b) cancel future obligations under this Agreement by giving written notice of such cancellation to Seller; (c) take title subject to the defect, exception, objection inaccuracy or failure and receive a credit against the Purchase Price in an amount equal to the cost of removing the defect, exception, objection or inaccuracy; or (d) seek damages or any other remedy available to Purchaser in law or in equity.

11. DEFAULT BY PURCHASER

Purchaser shall be in Default hereunder if Purchaser (a) fails to comply with any material term, provision or condition of this Agreement; (b) fails to timely close the purchase of the Property and such closing deadline is not extended in writing by Seller; (c) enters into a general assignment or arrangement for the benefit of creditors; (d) files a voluntary petition in bankruptcy; (e) has filed against it a petition in bankruptcy and the same not having been dismissed within ninety (90) days after its filing; or (f) has appointed a receiver with respect to the property or assets of Purchaser. Upon the occurrence of a default by Purchaser hereunder, Seller shall give Purchaser written notice specifying the nature of the default. If Purchaser does not cure the default within thirty (30) days, or other period of time agreed upon by Seller, Seller may then (a) terminate this Agreement upon written notice to Purchaser and thereby relieve the Property from the terms of this Agreement, or (b) seek damages or any other remedy available to Seller in law or in equity.

12. COMMISSIONS

Each party represents to the other that it has not retained any broker or agreed to pay any brokerage fee or commission to any agent or broker for, or on account of, this Agreement or the transactions contemplated hereby and each party agrees to indemnify the other against claims for commissions arising from the actions of said party.

13. SURVIVAL

The representations, warranties and covenants contained herein shall survive the closings provided for herein and delivery of the deeds pursuant hereto.

14. NOTICES

Notice to Purchaser required or provided for herein shall be in writing and shall be deemed given when deposited in the U.S. mail, certified or registered, postage prepaid, address to Purchaser at:

Hickory Hollow NWI, LLC  
P.O Box 1374  
Portage, IN 46368  
Attention: John Hannon

with copy to: Todd A. Leeth  
Hoepfner Wagner & Evans, LLP  
103 E Lincolnway  
Valparaiso, In, 46383  
Email: [tleeth@hwelaw.com](mailto:tleeth@hwelaw.com)

or such other address as Purchaser shall notify Seller in writing. Notice to Seller required or provided for herein shall be in writing and shall be deemed given when deposited in the U.S. mail, certified or registered, postage prepaid, addressed to Seller at:

City of Hobart Redevelopment Commission  
414 Main Street  
Hobart IN 46342  
Attention: Executive Director

with copy to: David W. Westland  
Westland & Bennett P.C.  
2929 Carlson Drive, Suite 300  
Hammond IN 46323  
Email: [dwestland@westlandbennett.com](mailto:dwestland@westlandbennett.com)

or such other address as Seller shall notify Purchaser in writing.

15. PERSONS BOUND

This Agreement shall be binding upon and shall inure to the benefit of the undersigned parties and their respective successors and permitted assigns.

16. APPLICABLE LAW; TIME OF ESSENCE

This Agreement shall be controlled, construed and enforced in accordance with the laws of the State of Indiana. Time is of the essence in the performance of all obligations of each of the parties under this Agreement.

17. AMENDMENT

This Agreement including all Exhibits and attachments hereto which are hereby incorporated by reference into this Agreement, represents the entire Agreement between the parties and supersedes all prior oral and written proposals and communications and may be





**EXHIBIT “E”**

PROMISSORY NOTE, MORTGAGE and GUARANTEE

TO BE PROVIDED AT CLOSING