



City of Elkhart  
Redevelopment Commission

**AMENDED**

**AGENDA FOR ELKHART REDEVELOPMENT COMMISSION  
SPECIAL MEETING  
ANNEX BUILDING  
201 S. SECOND STREET  
ELKHART, IN  
LARGE CONFERENCE ROOM  
MONDAY, SEPTEMBER 25, 2023 at 4:45 P.M.**

**THIS MEETING WILL BE HELD IN-PERSON & ELECTRONICALLY VIA WEBEX**

To join, go

<https://coei.webex.com/coei/j.php?MTID=m8022a3619cfdc34abf6176a2a38a614f>

enter **2317 348 4513** as the event number and **SPECIAL** as the event password.

To join by phone, call 1-415-655-0001, enter **2317 348 4513 ##**

*Press \* 6 to unmute telephone*

Comments and questions may be submitted via the WebEx app during the meeting, or may be submitted to [adam.fann@coei.org](mailto:adam.fann@coei.org) prior to the meeting.

1. Call to Order
2. New Business
  - a) Woodland Crossing Project
  - b) Approve letter of engagement to hire Ice Miller to provide services related to River District Development Agreement
  - c) Ratify Settlement Agreement with G&W VRP
3. Public Comment
4. Adjournment

RESOLUTION NO. 23-R-075

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE CITY OF ELKHART, INDIANA, APPROVING PURCHASE AGREEMENT FOR LOTS 1, 3 5 AND 6 IN WOODLAND CROSSING AND APPROPRIATING FUNDS

Whereas, the Commission has offered to purchase the Lots 1,3,5 and 6 in the recorded Plat of Woodland Crossing owned by EGAP Elkhart I, LLC (the "Property") as more fully described in the attached Purchase Agreement (the "Agreement") and the parties have submitted the Agreement to the Commission for final approval; and

Whereas, the Commission having obtained appraisals of the Properties and having determined that the negotiated price of \$5,125,000 is a fair price, and that the Property is needed for redevelopment purposes and should be acquired; and

Whereas, the Commission has reviewed the form of Agreement and finds the terms acceptable.

NOW THEREFORE, BE IT RESOLVED:

1. The Commission hereby approves the purchase of the Property at the price of \$5,125,000.00 on the terms set forth in the attached Agreement.
2. The Commission approves the terms and conditions of the Purchase Agreement with closing contingent upon final provisions being negotiated to the satisfaction of the Commission's Executive Committee, staff and legal counsel (a) pertaining to Kroger's written acknowledgment of its review and general approval of the City's conceptual plan for redevelopment of the Property and in particular its approval of the addition of multi-family housing on the Property subject to Kroger's review and consultation as to the final redevelopment plans and specifications; (b) a compensation/reimbursement plan to Commission in the event the real estate tax appeal is not successful and the Commission loses tenants in calendar year 2024 due to the increased real estate tax burden on Tenants; and (c) the ability to complete site inspections within the limited time available to accommodate an October 5 Closing.
3. The Commission appropriates the sum of Three Million Dollars (\$3,000,000.00) from the Consolidated South Elkhart Economic Development/Redevelopment Area Allocation Area Special Fund to cover the costs of acquisition, any inspections, environmental reviews, property surveys and closing costs which may be required prior to closing to be allocated between buyer and seller as provided in the Purchase Agreement at closing. Any surplus remaining to be returned to the appropriate account.
4. The Officers of the Commission are hereby authorized to execute and deliver the Purchase Agreement, and all other documents, and do all acts which they deem necessary and desirable to complete the purchase.

ADOPTED BY MAJORITY VOTE ON THE 25<sup>TH</sup> DAY OF SEPTEMBER, 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

## PURCHASE AGREEMENT

This Purchase Agreement (this “**Agreement**”) is entered into on the \_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”), by and between EGAP Elkhart I, LLC, a Delaware limited liability company (“**Seller**”), and the City of Elkhart, Indiana, Department of Redevelopment, acting through its Redevelopment Commission (“**Buyer**”), under the following circumstances:

**WHEREAS**, Seller desires to sell approximately 17.31 acres of land, being Lot 1, Lot 3, Lot 5 and Lot 6 on the plat for Woodland Crossing, Elkhart County Parcel ID Nos. 20-06-17-276-018.000-012, 20-06-17-276-017.000-012, 20-06-17-276-019.000-012 & 20-06-17-276-021.000-012, and as more legally described in Exhibit A, and depicted on Exhibit A-1 (the “**Real Property**”), together with all of Seller’s right, title and interest, if any, in and to the Leases (as defined herein), easements, covenants, rights, privileges, tenements, hereditaments and appurtenances thereunto now or hereafter belonging or appertaining thereto, all as more fully described herein; and

**WHEREAS**, Buyer desires to purchase, and Seller desires to sell, the Property pursuant to the terms and conditions herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby agree as follows:

### **ARTICLE 1.** **CONVEYANCE OF THE PROPERTY**

**Section 1.01 Subject of Conveyance.** Seller will sell to Buyer and Buyer agrees to purchase from Seller, in accordance with the terms and conditions of this Agreement, all the following (collectively referred to as the “**Property**”):

- (a) The Real Property.
- (b) All rights, privileges, easements, and rights-of-way appurtenant to the Real Property, including, without limitation, all mineral, oil and gas and other subsurface rights, development rights, air rights, and water rights (collectively, the “**Appurtenances**”).
- (c) All improvements and fixtures located on the Real Property, including, without limitation: (i) all structures affixed to the Real Property; (ii) all apparatus, equipment, and appliances used in connection with the operation or occupancy of the Real Property; and (iii) all parking areas located thereon, and facilities used to provide any services to the Real Property and/or the structures affixed thereto (collectively, the “**Improvements**”), excluding those fixtures owned by Tenants or other occupants of the Property or vendors of the Improvements, if any.
- (d) All tangible personal property located on and used in connection with the Real Property or the Improvements (excluding the personal property of Tenants or other occupants of the Property), including but not limited to the items described on Schedule 1 attached hereto (collectively, the “**Personal Property**”).

(e) All rights, title, and interest of Seller in and to the Service Contracts (as defined in Section 3.01) which Buyer elects to assume and are listed on Exhibit B (collectively, the “**Assumed Contracts**”).

(f) All rights, warranties, guarantees, utility contracts, approvals (governmental or otherwise), permits, certificates of occupancy, surveys, plans and specifications trademarks or trade names, copyrights, and any agreements, covenants, or indemnifications that Seller received from a third party, including any prior owner, and relating to the Real Property, Appurtenances, or Improvements (collectively, the “**Intangible Property**”).

(g) All rights, title, and interest of Seller in and to those certain leases, lease amendments, guarantees, exhibits, addenda, and riders thereto and any other documents creating a possessory interest in the Real Property or Improvements as set forth on Exhibit C attached hereto (collectively, the “**Leases**”) with any persons leasing, using, or occupying the Real Property or Improvements or any part of either (collectively, the “**Tenants**”).

Notwithstanding anything herein to the contrary, “**Property**” does not include any Tenant fixtures or other property belonging to Tenants of the Property, or any item leased from third parties.

## **ARTICLE 2.** **PURCHASE PRICE**

**Section 2.01 Purchase Price and Deposit.** The purchase price to be paid by Buyer to Seller for the Property is Five Million One Hundred Twenty-Five Thousand and 00/100 Dollars (\$5,125,000.00) (the “**Purchase Price**”), payable as follows:

(a) Within three (3) Business Days (as defined below) after the Effective Date, Buyer will deposit the sum of \$20,000.00 (the “**Deposit**”) by wire transfer or official bank check, subject to collection, made payable to Riverbend Commercial Title Services, LP, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202, Attn: Mr. Gregory Haverkamp, as escrow agent (“**Title Company**”). Title Company will hold the Deposit in escrow pursuant to the terms of its standard escrow agreement in the form attached hereto as Exhibit D, which Seller and Buyer will execute promptly following Title Company’s request. If the transaction contemplated by this Agreement closes, the Deposit (including any interest earned) will be credited toward the Purchase Price upon the Closing (as defined below). If the transaction contemplated by this Agreement does not close, the Deposit (including any interest earned) will be disbursed to Seller or Buyer as provided in this Agreement.

(b) The balance of the Purchase Price will be paid to Seller on the Closing Date (as defined below), subject to any credits or apportionments as provided for under this Agreement in cash or other immediately payable funds.

**ARTICLE 3.**  
**DUE DILIGENCE INVESTIGATION**

**Section 3.01 Due Diligence Period.**

(a) Within five (5) business days after the Effective Date Seller shall deliver or make available to Buyer the following documents, to the extent in Seller's possession and/or control (the "**Due Diligence Materials**"):

(i) [*Intentionally Omitted*];

(ii) Permits: Copies of all governmental permits, Certificates of Occupancy and approvals pertaining to the Property (the "**Permits**");

(iii) Rent Roll: A current rent roll of the Property (the "**Rent Roll**"), containing such information with respect to each of the Leases as Buyer may reasonably require, including without limitation: (1) each tenant's name, address, date of the lease, and scheduled expiration date of the lease; (2) information relating to any options to extend; (3) the number of square feet of the leased premises; and (4) the base rental amount, the additional rental amount (if any), and the amount of any security or other refundable deposit, current monthly tenant billings and aged receivables, and a list of Tenants with past due rent.

(iv) A schedule of the amounts held for maintenance, utilities, insurance property taxes and similar expense charged to each Tenant.

(v) Warranties: All warranties (including, without limitation, any roof warranty), guarantees, and indemnities for the Property (the "**Warranties**").

(vi) Leases: All current leases of any portion of the Real Property (the "**Leases**");

(vii) Service Contracts: All service contracts relating to the Real Property and Improvements (the "**Service Contracts**");

(viii) [*Intentionally Omitted*];

(ix) Personal Property: A schedule listing all Personal Property to be conveyed to Buyer at Closing; and

(x) [*Intentionally Omitted*].

(b) For a period of thirty (30) days beginning on the Effective Date (the "**Diligence Period**"), Buyer may conduct or cause to be conducted any and all tests, studies, surveys, inspections, reviews, assessments, or evaluations of the Property, including, without limitation, engineering, topographic, soils, zoning, wetlands, and environmental inspections (each, an

“**Inspection**” and, collectively, the “**Inspections**”), as Buyer deems necessary, desirable, or appropriate in its sole and absolute discretion, provided, however, that any invasive or so called Phase II environmental assessments shall be performed only after the written consent from Seller, which may be withheld at Seller’s sole discretion. Buyer will have the unconditional right, for any reason or no reason whatsoever, to terminate this Agreement upon written notice to Seller delivered at any time prior to expiration of the Diligence Period. If Buyer elects to terminate this Agreement as provided in this Section 3.01, Title Company will return the Deposit to Buyer, and the parties will have no further liability under this Agreement (except with respect to those obligations that expressly survive termination). If Buyer does not terminate this Agreement as provided in this Section 3.01 or Section 3.05 below, Buyer will be deemed to have elected to proceed to the Closing, subject to the conditions described in Section 5.02 below, and the Deposit shall remain applicable to the Purchase Price, but will become non-refundable, except as provided in this Agreement.

**Section 3.02 Buyer’s Access.** At any time prior to the Closing (including during the Diligence Period), subject to Section 3.03, Buyer and its agents, employees, consultants, inspectors, appraisers, engineers, and contractors (collectively, “**Buyer’s Representatives**”) will have the right to enter upon and pass through the Property during normal business hours to examine and inspect the same, to conduct reasonable tests, studies, investigations, and surveys to assess utility availability, soil conditions, environmental conditions, physical condition, and the like of the Property, and to meet with any tenants of the Property.

**Section 3.03 Buyer’s Right to Inspect.**

(a) In conducting the Inspections or otherwise accessing the Property, Buyer will at all times comply with all laws and regulations of all applicable governmental authorities. In connection with such Inspections, neither Buyer nor any of Buyer’s Representatives will unreasonably interfere with the business of Seller (or any tenants) conducted at the Property or unreasonably disturb the use or occupancy of any occupant of the Property.

(b) If any Inspection or test disturbs the Property, and if this Agreement is terminated for any reason and Buyer does not acquire the Property, then Buyer will restore the Property to the same condition as existed prior to the Inspection or test.

(c) Before entering upon the Property, Buyer shall furnish to Seller evidence of general liability insurance coverage in the amount of \$1,000,000.00. Buyer agrees to indemnify Seller from and against all losses and liabilities incurred by Seller by reason of Buyer’s or Buyer’s Representatives’ access onto the Property or the Inspections, except to the extent caused by or resulting from any acts or omissions of Seller, Seller’s negligence, or any pre-existing condition at the Property which is not exacerbated by Buyer. The provisions of this subsection (c) shall survive the termination of this Agreement.

**Section 3.04 Title and ALTA Survey.** Buyer shall obtain at Seller’s cost, a commitment for an owner’s policy of title insurance from Title Company in an amount not less than the Purchase Price, insuring that the fee simple title to the Property will be vested in Buyer upon Closing, subject only to the Permitted Exceptions. Buyer may also obtain an updated ALTA survey of the Property, together with copies of all documents referred to as exceptions therein. Buyer shall have until ten

(10) days prior to the expiration of the Diligence Period (the “**Title Review Period**”) to provide Seller with written notice of Buyer’s objections to any matters regarding the survey or title of the Property (the “**Title Objections**”). If Buyer has not notified Seller by the end of the Title Review Period of any Title Objections, Buyer will be deemed to have waived any objection to the Property’s title.

(a) If Buyer does notify Seller within the Title Review Period of any Title Objections, then upon the receipt of such notice from Buyer, Seller will, within ten (10) days, either (a) cure the Title Objections in a manner acceptable to Buyer, (b) provide other assurances reasonably acceptable to Buyer that the Title Objections will be cured in a manner acceptable to Buyer prior to the Closing, or (c) provide written notice to Buyer that Seller is unwilling or unable to cure the Title Objections. If Seller is unwilling or unable to cure the Title Objections or to provide the assurances described above, then Buyer will have the right to terminate this Agreement, in which event the Deposit will be returned to Buyer and the parties will be released from all further obligations under this Agreement. If Buyer does not deliver the termination notice within five (5) days after receipt of Seller’s written notice to Buyer that Seller is unwilling or unable to cure the Title Objections, Buyer will be deemed to have waived any right to terminate based on the items Seller stated it is unwilling or unable to cure.

(b) Notwithstanding the foregoing, Seller will in all cases clear any monetary or adverse liens incurred on or before the date of the Closing.

(c) Buyer shall also have the right to re-examine title to the Property and/or update the survey at any time prior to the Closing Date and to object to any title matters affecting the Property and first appearing of record or on the survey after the effective date of Buyer’s initial examination. If Buyer should notify Seller of any such additional objections or defects prior to the Closing, the parties shall have the same rights set forth above in this Section 3.05.

(d) On the Closing Date, Seller shall cause Title Company to issue to Buyer an ALTA extended Owner’s Policy of Title Insurance (“**Title Policy**”) or irrevocable commitment to issue same covering the Property in the amount of the Purchase Price, showing fee simple title vested in Buyer, with extended coverage over all general exceptions and containing the following endorsements: (i) an ALTA 3.1 zoning endorsement with parking, (ii) an access endorsement, (iii) a subdivision endorsement, (iv) a utility facility endorsement, (v) a restrictions enforcement insuring over the recorded covenants, conditions or restrictions of record, (vi) an endorsement insuring that the real estate tax bills relating to the Real Property do not include real estate taxes pertaining to any other real estate, (vii) a creditor’s rights endorsement, (viii) a contiguity endorsement, if applicable, and (ix) encroachment endorsements, if applicable, subject only to (a) general taxes not yet due or payable, (b) any matters listed on Exhibit E attached (or to be attached) hereto and incorporated herein, (c) rights of tenants (as hereinafter defined) under the Leases, (d) matters created by, through or under Buyer and (e) the standard printed exceptions (collectively, “**Permitted Exceptions**”).

**ARTICLE 4.**  
**CLOSING**

**Section 4.01 Closing Date.** The closing of the transaction contemplated by this Agreement (the “Closing”) will take place on or before the date which is thirty (30) days after the expiration of the Diligence Period (the “Closing Date”) through an escrow closing with Title Company.

**Section 4.02 Seller’s Closing Deliverables.** At the Closing, Seller will deliver or cause to be delivered to Buyer, the following:

(a) A limited warranty deed conveying to Buyer fee simple title to the Property, subject to the Permitted Exceptions, and installments of real estate taxes due but not yet payable;

(b) The Title Policy or marked up commitment issued by the Title Company;

(c) A certification that Seller is not a “foreign person” as such term is defined in Section 1445 of the Internal Revenue Code, as amended, and the regulations thereunder (collectively, the “Code”), which certification will be signed under penalty of perjury;

(d) An original owner’s title affidavit in a form reasonably acceptable to Title Company;

(e) A resolution of Seller authorizing the transaction contemplated by this Agreement;

(f) A counterpart of a closing statement prepared by Title Company and approved by Seller and Buyer reflecting the prorations and adjustments required under Section 4.05 of this Agreement and the balance of the Purchase Price due to Seller;

(g) One (1) Bill of Sale (the “**Bill of Sale**”) in substantially the form attached hereto as Exhibit F, executed by Seller, conveying to Buyer good and marketable title to the Personal Property as described in the Bill of Sale, free and clear of all encumbrances and adverse claims;

(h) One (1) original Assignment and Assumption of Intangible Property (the “**Assignment of Intangible Property**”) in substantially the form attached hereto as Exhibit H, each executed by Seller and assigning to Buyer all Seller’s right, title, and interest in the Intangible Property;

(i) One (1) original Assignment and Assumption of Leases and Contracts (the “**Assignment of Leases and Contracts**”) in substantially the form attaches hereto as Exhibit G, each executed by Seller and assigning to Buyer all Seller’s right, title and interest in the Assumed Contracts and any assumed Warranties and Permits and all Seller’s rights and interest as “landlord” in all Leases (excluding Seller’s interest in rentals delinquent prior to the Closing), including any amendments and modifications thereto, and all security or other deposits held pursuant to the Leases;

(j) One (1) original Notice to Tenant for each counterparty to a Lease (the “**Notice to Tenants**”) in substantially the form attached hereto as Exhibit I, signed by Seller and notifying all Tenants under the Leases of the transfer of ownership of the Real Property;

(k) One (1) original notice to each vendor under the Assumed Contracts, if required by the terms of such Assumed Contracts;

(l) Originals or, if originals are not in the possession or control of the Seller, copies of all Leases and Assumed Contracts;

(m) Originals or, if originals are not in the possession or control of the Seller, copies of plans and specifications, technical manuals, and similar materials related to the Property, to the extent same are in Seller’s possession or under Seller’s control;

(n) Originals, or copies certified by Seller as being complete, of all applicable bills, invoices, fuel readings and other items that shall be apportioned as of the Closing Date;

(o) Originals, or if originals are not in the possession or control of the Seller, copies of all permits and licenses related to the Property, to the extent same are in Seller’s possession or under Seller’s control;

(p) All keys, key cards, passwords, combinations, and codes relating to the operation of the Property;

(q) A written certificate stating that all representations and warranties contained in Article 6 remain, as of the Closing Date, true, correct, and complete in all material respects as when first made hereunder;

(r) An updated Rent Roll dated as of the Closing and certified to be true, correct, and complete in all material respects;

(s) Evidence of termination of all Service Contracts, except for the Assumed Contracts which Buyer has elected to assume, together with, as it relates to the Assumed Contracts, proof of payment in full;

(t) Evidence of termination of the Management Agreement and all other agreements, contracts, and leases with Seller Affiliates pertaining to the Property;

(u) *[Intentionally Omitted]*;

(v) The Required Tenant Estoppels (as defined herein); and,

(w) All other documents reasonably necessary or otherwise required by Title Company to consummate the transaction contemplated by this Agreement.

**Section 4.03 Buyer’s Closing Deliverables.** On the Closing Date, Buyer will deliver or cause to be delivered to Seller, the following, executed, certified, and acknowledged by Buyer, as appropriate:

(a) The balance of the Purchase Price, as adjusted for apportionments pursuant to Section 4.05 of this Agreement, by wire transfer of immediately available funds;

(b) Buyer's signed counterpart, where applicable, of the closing documents and instruments required under Section 4.02 above;

(c) A resolution of Buyer authorizing the transaction contemplated by this Agreement; and

(d) All other documents reasonably necessary or otherwise required by Title Company and/or the Seller to consummate the transactions contemplated by this Agreement.

#### **Section 4.04 Closing Costs.**

(a) Seller and Buyer will each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement.

(b) Seller will pay:

(i) any transfer taxes and sales taxes payable in connection with the transaction contemplated by this Agreement;

(ii) half of Title Company's escrow fees and closing costs, other than as specifically provided for herein;

(iii) all recording fees for the release of any liens on the Property, as required pursuant to the terms of this Agreement;

(iv) the costs of the premium for an ALTA extended owner's title policy in the amount of the Purchase Price; and

(v) any and all costs incurred by Seller in connection with the preparation, review, and negotiation of this Agreement and the transactions and the Closing contemplated by this Agreement, including any attorneys' or consultancy fees.

(c) Buyer will pay:

(i) the cost of an updated ALTA survey, if any;

(ii) half of Title Company's escrow fees and closing costs, other than as specifically provided for herein;

(iii) the cost of any title endorsements and any loan policy title insurance premiums;

(iv) any other fees or costs related to Buyer's Inspections and due diligence reviews;

(v) all costs related to the recording fees payable in connection with the recording of the limited warranty deed and Buyer's lender's security instruments, if any; and

(vi) any and all costs incurred by Buyer in connection with the preparation, review, and negotiation of this Agreement and the transactions and the Closing contemplated by this Agreement, including any attorneys' or consultancy fees.

**Section 4.05 Apportionments.** The following will be apportioned as of 11:59 p.m. Eastern Time on the date immediately preceding the Closing Date, unless expressly provided for otherwise:

(a) Seller shall pay all real estate taxes for 2022, payable 2023, and prior years. All real estate taxes based on the calendar year 2023, payable 2024, for which they are assessed and any assessments for periods of time prior to the Closing will be prorated between the parties as indicated herein. Any recovery resulting from the Tax Appeal (as defined herein) shall be similar apportioned. If the Closing occurs before a new tax rate is fixed, the real estate taxes will be apportioned upon 105% of the basis of the tax rate for the latest assessed valuation and Seller shall be entitled to any refund relating to or arising out of periods of time prior to the Closing. If the Property is, or has been, affected by any assessments or special assessments which are, or may become, payable in installments, of which the first installment is then a charge or lien, or has already been paid, the cost thereof shall be pro-rated to the date of the Closing. If the Property is assessed as a part of a larger tax parcel, then taxes shall be prorated based on the relative square footage of the improvements upon the Property as a percentage of the total square footage of all improvements included in the tax parcel; and adjustments in the prorations shall be made if necessary upon receipt of the tax statements for the year of the Closing, and both parties agree that payment of the amount of such adjustments shall be made within (30) days of receipt of such tax statements for the year of the Closing;

(b) All tenant security deposits, unpaid tenant improvement allowances and prepaid rent shall be assumed by Buyer with credit therefor against sums due at the Closing;

(c) Excluding real estate taxes, all payments received by Seller from any tenant for items such as minimum rent, utilities, maintenance and operating expenses, insurance and similar reimbursements, expenses, escalation payments and prepaid expense items allocable to Lease periods (under any Lease) extending to periods after the Closing shall be prorated as of the Closing (with Buyer entitled to a credit for the day of the Closing) and shall be allocated and distributed to Buyer together with an accounting therefor or at Buyer's option credited to Buyer at the Closing. In the event that any tenant pays additional rental items such as maintenance and operating expenses and insurance on an estimated basis, then, prior to the Closing, Seller shall complete a reconciliation of all such expenses and shall provide Buyer with a credit at the Closing for any amounts which Buyer may be obligated to refund to any tenant. In no event shall Buyer be charged with any past due rentals, which, if collected by Buyer, shall be remitted to Seller. Seller shall have no surviving rights after the Closing to collect from any tenant any past due amounts. As of the Closing, should any current charges or billings to any tenant for utilities, including electricity, sewer and water charges that are payable in arrears, be unknown at the Closing, such charges shall be estimated and prorated as

of the Closing, with Buyer receiving a credit from Seller, based upon the last available invoices or billing therefor. Seller agrees to forward all rents received by Seller after the Closing to the Buyer within 10 business days of receipt;

(d) All water and sewer charges based on the fiscal year for which they are assessed, unless the meters are read on the date immediately preceding the Closing Date;

(e) Utilities, fuel, gas, and electric charges based on most recently issued bills, unless the meters are read on the date immediately preceding the Closing Date; and

(f) All other items customarily apportioned in connection with sales of buildings substantially similar to the Property in Elkhart County, Indiana.

Any errors in calculations or apportionments will be corrected or adjusted as soon as practicable after the Closing Date. The provisions of this Section 4.05 will survive the Closing.

## **ARTICLE 5.** **CLOSING CONDITIONS**

**Section 5.01 Conditions to Obligations of Seller.** Notwithstanding anything to the contrary in this Agreement, the obligation of Seller to close title in accordance with this Agreement is expressly conditioned upon the fulfillment, by and as of the time of the Closing, of each of the conditions listed below, provided that Seller, at its election, evidenced by written notice delivered to Buyer at or prior to the Closing, may waive any of such conditions:

(a) Buyer having executed and delivered to Seller all of the documents required to be delivered by Buyer at the Closing;

(b) The representations and warranties of Buyer contained in Section 6.02 being true and correct in all material respects as of the Closing Date, as though made as of the Closing Date; and

(c) Seller having obtained a partial release of the mortgage encumbering the Parent Tract releasing the Property, upon terms and conditions reasonably acceptable to Seller.

**Section 5.02 Conditions to Obligations of Buyer.** Notwithstanding anything to the contrary in this Agreement, the obligation of Buyer to close title and pay the Purchase Price in accordance with this Agreement is expressly conditioned upon the fulfillment, by and as of the time of the Closing, of each of the conditions listed below, provided that Buyer, at its election, evidenced by written notice delivered to Seller at or prior to the Closing, may waive all or any of such conditions:

(a) Seller having: (i) executed and delivered to Buyer, or the applicable party, all of the documents required to be delivered by Seller at the Closing; (ii) taken all other action required of Seller at the Closing; and (iii) performed and observed all of the obligations and covenants of and required by Seller pursuant to this Agreement prior to or as of the Closing Date;

(b) Seller's representations and warranties in Section 6.01 being true and correct both as of the date made and as of the Closing Date; and

(c) This Agreement not having been terminated pursuant to Article 8 or Article 10 below.

(d) Seller has, at least two (2) days prior to Closing, delivered executed Tenant estoppel certificates substantially in the form attached hereto as Exhibit J, or in any form required by a specific Lease, from Tenants representing at least fifty percent (50%) of the gross leasable area of the occupied portions of the Property, reflecting no events of default, events which may become a default upon the giving of notice or the passage of time and no unsatisfied material obligation by Seller or Tenant under its Lease (the "**Required Tenant Estoppels**"). Seller shall nevertheless use commercially reasonable best efforts to obtain estoppels from all Tenants, but only the Required Tenant Estoppels shall be a condition of Closing.

## **Article 6.**

### **REPRESENTATIONS AND WARRANTIES**

**Section 6.01 Seller's Representations and Warranties.** Seller represents and warrants to Buyer as of the Effective Date and as of the Closing Date, as follows:

(a) Seller is a limited liability company duly organized, validly existing, and in good standing under Delaware law, is qualified to conduct business in Indiana, and has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby;

(b) The execution, delivery, and performance of this Agreement by Seller and all agreements, instruments, and documents herein provided to be executed by Seller on the Closing Date: (i) do not violate the governing documents of Seller, or any contract, agreement, commitment, Lease, order, judgment, or decree to which Seller is a party; and (ii) have been duly authorized by the resolutions of the member and manager of Seller and the appropriate and necessary action has been taken by such member and manager on the part of Seller. The individual(s) executing this Agreement and the instruments referenced in this Agreement on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions of this Agreement and the instruments referenced in this Agreement. This Agreement is valid and binding upon Seller, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally;

(c) Seller is not a "foreign person" within the meaning of Section 1445 of the Code;

(d) There is no litigation, arbitration, or other legal or administrative suit, action, proceeding, or investigation pending or, to Seller's knowledge, threatened against or involving Seller or the ownership or operation of the Property, including, but not limited to, proceedings for or involving collections, condemnation, eminent domain, alleged building code or environmental or zoning violations, or personal injuries or property damage alleged to have occurred on the Property of by reason of the condition, use of, or operations on, the Property;

(e) Seller has not received notice of any material violation of any law or municipal ordinance, order, or requirement noted or issued against the Property by any governmental authority having jurisdiction over the Property, that has not been cured, corrected, or waived as of the Effective Date;

(f) Seller has not placed any, and to Seller's knowledge, there has been no release of, any Hazardous Materials, and there are no Hazardous Materials installed, stored in, or otherwise existing at, on, in, or under the Property in violation of any Environmental Laws. "**Hazardous Materials**" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials. "**Environmental Laws**" means, without limitation, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**") and other federal, state, county, municipal, and other local laws governing or relating to Hazardous Materials or the environment together with their implementing regulations, ordinances, and guidelines;

(g) Seller has not: (i) filed any voluntary or had involuntarily filed against it in any court or with any governmental body pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or seeking to effect any plan or other arrangement with creditors, or seeking the appointment of a receiver; (ii) had a receiver, conservator, or liquidating agent or similar person appointed for all or a substantial portion of its assets; (iii) suffered the attachment or other judicial seizure of all, or substantially all, of its assets; (iv) given notice to any person or governmental body of insolvency; or (v) made an assignment for the benefit of its creditors or taken any other similar action for the protection or benefit of its creditors. Seller is not insolvent and will not be rendered insolvent by the performance of its obligations under this Agreement;

(h) Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities;

(i) Seller is not a party to any contract, agreement or commitment to sell, convey, assign, transfer, provide rights of first refusal or other similar rights or otherwise dispose of any portion or portions of the Property. Neither Seller nor any person or entity claiming by, through or under Seller has or will have, at any time or times prior to the Closing, done or suffered anything whereby any lien, encumbrance, claim or right of others has been or will be created on or against the Property or any part thereof or interest therein, except for the Permitted Exceptions;

(j) As of Closing, except as created by this Agreement, there will be no obligations or liabilities of any kind or nature whatsoever, actual or contingent, including, but not limited to, any tax liabilities, contract liabilities or tort liabilities for which or to which Buyer or the Property will be liable or subject, except for non-delinquent obligations and liabilities accrued and thereafter accruing under the Permitted Exceptions;

(k) No additional easements (other than those presently in effect and included in the Permitted Exceptions) are required for such access and utilization or in connection with any utilities. To the best of Seller's knowledge, no fact, condition or proceeding exists which would result in the termination or impairment of the furnishing of or an increase in rates for services to the Property of water, sewer, gas, electric, telephone, drainage and other such utility services;

(l) To the best of Seller's knowledge, all building permits, certificates of occupancy, business licenses and, without limitation, all other notices, licenses, permits, certificates and authority, required in connection with the construction, use or occupancy of the Property have been obtained and are in effect and in good standing; and (b) the leasing, operation and use of the Property is in compliance, in all material respects, with such notices, licenses, permits, certificates and authority;

(m) To the best of Seller's knowledge, there are no unsatisfied requests for repairs, restorations or improvements from any person, entity or authority, including, but not limited to, any tenant, any lender, insurance carrier or government authority;

(n) True and complete copies of all Assumed Contracts applicable to the Property have been delivered to Buyer;

(o) The Personal Property is all located on the Property and is all of the personal property used in the operation and management of the Property. Seller has no knowledge, except as listed in any report delivered to Buyer by Seller, (i) of any material, physical or mechanical defects in the condition of the Improvements, the roofs, exterior walls or structural components of the Improvements and the heating, air conditioning, plumbing, ventilating, elevator, utility, sprinkler and other mechanical and electrical systems, apparatus and appliances located on the Improvements; (ii) of infestation by termites or other pests, insects or animals, (iii) of any material deficiencies in the working order of the Improvements, Personal Property and fixtures, including, but not limited to, the roof, foundation, structure, heating, ventilating, plumbing, electrical and all other mechanical apparatus;

(p) Seller is not or will not at the Closing be in default in respect of any of its obligations or liabilities pertaining to the Property (including, but not limited to, such obligations and liabilities under the Permitted Exceptions, Assumed Contracts or Leases), or to the best of its knowledge, by any other party thereto, and without limitation, to the best knowledge of Seller, no event has occurred which, with the giving of notice or passage of time, or both, would give rise to any such default under any of the same;

(q) To the best of Seller's knowledge, Seller having received no notice or other indication to the contrary, (i) the Property, and the use and operation thereof, is in full

compliance with all applicable municipal and other governmental laws, ordinances, regulations, codes, licenses, permits and authorizations, and there are presently and validly in effect all licenses, permits and other authorizations necessary for the use, occupancy and operation of the Property as it is presently being operated, whether required of Seller or any Tenant; (ii) the Property fully complies with all applicable requirements of the federal Americans With Disabilities Act, as amended; (iii) the Property is zoned by the municipality in which it is located so as to permit the uses and structures thereon, in a manner that accommodates and is fully compatible with the Improvements as they presently exist; (iv) the Property does not constitute a non-conforming use or non-conforming structure under applicable present zoning laws; (v) no zoning, subdivision, environmental, Hazardous Materials (defined below), building code, health, fire, safety or other law, order, or regulation is, or on the Closing Date will be, violated by the continued maintenance, operation, or use of any Building or other improvements or parking areas in the Property, and no notice of any such violation has been issued by any governmental authorities having jurisdiction over the Property;

(r) There are no presently pending, and Seller has received no notice of, any special assessments of any nature with respect to the Property or any part thereof, nor has Seller received any notice of any special assessments being contemplated;

(s) Seller hereby commits to diligently pursue and take all appropriate steps to complete the existing tax appeals in a timely manner at their sole cost and expense (the “**Tax Appeal**”);

(t) [*Intentionally Omitted*];

(u) If the transaction contemplated hereby, or any component thereof, shall require authorization or approval of any governmental agency having jurisdiction, all such authorizations and approvals shall have been obtained and shall be in full force and effect on and as of the Closing Date. If such authorizations and approvals shall not have been obtained on or prior to the last day for Closing hereinabove provided, the Closing Date may be deferred, at the election of Buyer, for an additional period of time, not to exceed 30 days, as shall be necessary to obtain any authorizations or approvals not then obtained. If such authorizations are not obtained within the stated time periods, either party shall have the right to terminate this Agreement without further penalty or obligation and the escrowed earnest money will be refunded to the Buyer; and

(v) Seller has furnished Buyer with true and complete copies of all Leases and other agreements, including all guaranties thereof and amendments thereto and modifications thereof, affecting the Property. Except as otherwise set forth in the Schedule of Leases attached hereto as Exhibit "C": (a) the Leases are in effect and the term of the same and the obligation to pay rent thereunder has commenced and each tenant thereunder is in full possession thereof and all tenant improvements required under the provisions thereof to be constructed by the landlord are completed; (b) no tenant under the Leases has prepaid any rent or other charges more than thirty (30) days in advance; (c) the Leases are free from default by the landlord; (d) to the best knowledge of Seller, no tenant is in default under any of the Leases and no circumstance exists which with notice or the passage of time or both, would give rise to such

a default; (e) no tenant is entitled to any rebate, rental concession, free rent period or set off under any of the Leases and to Seller's best knowledge, no tenant is making any claim against Seller or the Property under any of the Leases; (f) all brokerage commissions with respect to the Leases have been paid in full and there are no commissions payable with respect to renewals or extensions of the Leases; (g) neither Seller nor any agent of Seller has executed any exclusive brokerage agencies that would be binding upon Buyer or the Property at Closing; (h) omitted; (i) no security deposit has been applied toward the payment of any rent or other charge under any of the Leases; and (j) none of the Leases contains any option to purchase the Property or grants the tenant any right of refusal or option to purchase the Property; and

(w) The representations and warranties of Seller set forth in this Section 6.01 will survive the Closing for six (6) months after the Closing Date and will not be affected by any investigation, verification, or approval by any party or anyone on behalf of any party to this Agreement, but are subject to any information discovered by Buyer or other information disclosed to Buyer by Seller or any other person after the date hereof and prior to the Closing.

**Section 6.02** Seller hereby agrees to indemnify, defend (with Buyer having the right to retain counsel for the purpose of participating in such defense, at its sole cost and expense) and hold Buyer harmless from and against and with respect to any and all obligations, liabilities, claims, accounts, demands, liens or encumbrances, whether direct or contingent and no matter how arising (but specifically excluding obligations and liabilities for and to the extent Buyer received a credit to the Purchase Price pursuant to the provisions hereof) in any way related to the Property and arising or accruing on or before the Closing Date or in any way related to or arising from any act, conduct, omission, contract or commitment of Seller, at any time or times on or before the Closing Date. Without limitation on the generality of the foregoing, the foregoing indemnification herein set forth shall indemnify Buyer from any claim or judgment under any lawsuit or proceeding filed or pending against the Property or any part thereof prior to the Closing Date and any costs or expenses (including reasonable attorneys' fees and court costs) heretofore or hereafter incurred in connection with any such lawsuit or proceeding. In addition and without limitation on the generality of the foregoing, Seller agrees to indemnify, defend and hold harmless Buyer from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses (including loss of value of the property), damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out of pocket expenses, suffered or incurred by Buyer as a result of any breach of this Agreement.

Notwithstanding anything to the contrary in the foregoing, Buyer agrees that Seller shall have no liability to Buyer for any breach of Seller's representations or warranties hereunder or under any other agreement, document, certificate or instrument delivered by Seller to Buyer, or under any law applicable to the property or this transaction unless the valid claims for all such breaches collectively aggregate more than Twenty-Five Thousand Dollars (\$25,000.00), in which event the full amount of such valid claims shall be actionable, up to the cap set forth in the following sentence. Further, Buyer agrees that any recovery against Seller for any breach of Seller's covenants, representations or warranties hereunder or under any other agreement, document, certificate or instrument delivered by Seller to Buyer, or under any law applicable to the Property or this transaction, shall be limited to Buyer's actual damages not in excess of Four Hundred

Thousand Dollars (\$400,000.00) in the aggregate, and that in no event shall Buyer be entitled to seek or obtain any other damages of any kind, including, without limitation, consequential, indirect or punitive damages. The provisions of this Section 6.02 shall survive the Closing.

**Section 6.03 Buyer's Representations and Warranties.** Buyer represents and warrants that:

(a) Buyer has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby;

(b) The execution, delivery, and performance of this Agreement by Buyer and all agreements, instruments, and documents herein provided to be executed by Buyer on the Closing Date: (i) do not violate the articles of incorporation, bylaws, or other governing documents of Buyer, or any contract, agreement, commitment, lease, order, judgment, or decree to which Buyer is a party; and (ii) have been duly authorized by the resolutions of the appropriate governing body of Buyer. The individual(s) executing this Agreement and the instruments referenced in this Agreement on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms and conditions of this Agreement and the instruments referenced in this Agreement. This Agreement is valid and binding upon Buyer, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally;

(c) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated by this Agreement is prohibited by, or requires Buyer to obtain any consent, authorization, approval, or registration under, any law, statute, rule, regulation, judgment, order, writ, injunction, or decree that is binding upon Buyer;

(d) Buyer is not a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations OFAC (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities; and

(e) The representations and warranties set forth in this Section will be continuing and will be true and correct in all material respects as of the Closing Date with the same force and effect as if made at that time.

## **ARTICLE 7.**

### **SELLER'S COVENANTS**

#### **Section 7.01**

**Seller's Covenants.** Seller covenants that:

(a) During the period from the Effective Date until the Closing Date, Seller shall:

(i) Be permitted to enter into any agreements with respect to all or any portion of the Property provided that such agreements expire by their terms on or prior to the Closing Date or, in accordance with their terms, would not be effective following the Closing Date, or, in the case of Service Contracts, may be terminated by the owner of the Property without penalty upon not more than Ten (10) days or less prior notice;

(ii) Maintain in full force and effect the insurance policies currently in effect with respect to the Property (or replacements continuing similar coverage);

(iii) Operate and manage the Property in a manner consistent in all material respects with past practice, and perform its obligations under the Leases, Service Contracts, and other agreements of Seller relating to the Property in all material respects;

(iv) Promptly deliver to Buyer copies of all written notices of any violations and promptly notify Buyer of all judgments, claims, and litigation affecting Seller or any part of the Property;

(v) Promptly notify Buyer of the institution of any litigation, arbitration or administrative hearing before any court or governmental agency concerning or affecting the Seller and/or the Property, and of any such proceedings which are to Seller's knowledge threatened after the date hereof;

(vi) Promptly after the delivery or receipt thereof, deliver to Buyer copies of all notices concerning Seller or the Property which relate to the Assumed Contracts, the Leases, releases of Hazardous Materials affecting the Property, or any actual or threatened condemnation of the Property or any portion thereof given by or on behalf of any federal, state, or local agency, and copies of all other correspondence sent, filed, served on, or received by Seller from any federal, state, or local agency affecting the Property from and after the Effective Date; and

(vii) Not settle or compromise or agree to any settlement or compromise of any insurance or condemnation claim or award without the prior written consent of Buyer, which may be granted or withheld in Buyer's sole and absolute discretion except in the case of an emergency; and

(viii) Pay all utility and other service charges accrued through the date of Closing.

(b) During the period from the Effective Date until the Closing Date, Seller shall not, to the extent the same would be binding on or affect the Property or any owner thereof after the Closing, and except as permitted under Section 7.01(a), without Buyer's prior written approval, which approval may be given or withheld in its sole and absolute discretion;

(i) Enter into any new Lease, submit or consider any proposal for a new Lease, terminate any Lease, amend or modify any Lease (except any Leases which

are extended pursuant to the exercise by the Tenant of an option in such Lease and such option is exercised between the date hereof and the Closing Date), or use or apply any Security Deposits for any Tenants against the payment of rents or otherwise under the Leases unless such Tenant vacates;

(ii) Enter into any new brokerage agreement[s];

(iii) Except as permitted under Section 7.01(a)(i), amend, modify (other than nonmaterial amendments or modifications), terminate, or renew any of the Assumed Contracts;

(iv) Without Buyer's prior written consent, enter into any new Service Contracts;

(v) Affirmatively (whether by action or inaction) subject the Property to any additional liens, encumbrances, covenants, or easements;

(vi) Enter into any agreement which would require the consent of a third party to consummate the transactions contemplated by this Agreement;

(vii) Sell, transfer, encumber, or change the status of title of all or any portion of the Property;

(viii) Change or attempt to change, directly or indirectly, the current zoning of the Property;

(ix) Cancel, amend, or modify any certificate, approval, license, or permit held by Seller with respect to the Property or any part thereof which would be binding upon Buyer after the Closing; or

(x) Take any action in respect of any litigation or proceeding in respect of the Property which shall have a material adverse effect on the Property; provided, however, nothing shall preclude Seller from filing appropriate pleadings prior to the answer date or pursuant to an order of the court or administrative body. In the event Seller shall take any action in respect of any litigation or proceeding in respect of the Property, Seller shall indemnify and hold harmless Buyer from and against any and all loss, liabilities, damages, assessments, costs, and expenses (including without limitation, attorneys' fees) incurred by Buyer as a result of any such litigation or proceeding. The foregoing indemnity shall survive the Closing without any restriction or limitation.

(c) From and after the Effective Date, Seller shall not make any capital improvements or alterations or changes to the Property except those necessary to prevent loss of life, personal injury, or property damage in emergency situations.

(d) On or before the Closing Date, Seller shall, at its sole cost and expense, terminate: (i) all Service Contracts, except for the Assumed Contracts; and (ii) any agreements

with respect to the provision of any type of management services and leasing services for the Property. Seller shall indemnify, defend, and hold Buyer harmless from and against any and all liability, claims, counterclaims, actions, damages, judgments, penalties, costs, and expenses (including without limitation, reasonable attorney's fees) in connection with any liability arising under or in any way relating to the Service Contracts (other than the Assumed Contracts), the termination thereof, and the release by the counterparty thereto.

(e) Seller shall cooperate and use all commercially reasonable efforts to cause its property manager to cooperate with Buyer [and Buyer's [managing agent/property manager/asset manager]] to effectuate the transition of the Property, and its operation, to Buyer.

(f) If requested by Buyer, Seller shall: (i) send to any Tenant under a Lease, a form of subordination, non-disturbance, and attornment agreement ("SNDA") prepared by Buyer, with the request that such Tenant execute and deliver such SNDA to Buyer on or prior to the Closing Date; and (ii) provide Buyer, or its lender, with the contract information for each Tenant under a Lease and permission to contact the Tenants to negotiate any required changes to any such delivered SNDA. Buyer shall solely responsible for any costs necessitated by the requested SNDA(s).

(g) At the Closing, the Property shall be free and clear of all liens, charges, encumbrances, mortgages, pledges, security interests, easements, agreements and other interests, adverse claims, and title matters, except as otherwise provided in this Agreement.

(h) All contractors, suppliers, and others who have performed services or labor or have supplied materials in connection with Seller's development, ownership, or management of the Property have been or by Closing shall be paid in full or arrangements reasonably satisfactory to Buyer shall be made for payment thereafter to the extent the same is not yet due or is being contested in good faith, and all liens arising therefrom have been or by Closing shall be satisfied and released or affirmatively insured over by the Title Company.

## **ARTICLE 8.** **RISK OF LOSS**

**Section 8.01 Risk of Loss.** Seller will bear all risk of loss prior to the Closing. If prior to the Closing Date any portion of the Property is taken by condemnation or eminent domain or damaged or destroyed by fire or other casualty, neither party will have the right to cancel this Agreement, except as otherwise provided in Section 8.02 below. If this Agreement is not terminated in strict accordance with such Section 8.02, then the proceeds of any condemnation award or any payment under any insurance policies will be applied as a credit toward Buyer's payment of the Purchase Price (to the extent such condemnation award or insurance payments have been received by Seller), and Buyer will receive from Seller an amount equal to any applicable deductible under any such insurance policy and an assignment from Seller of Seller's right, title and interest in any such awards or payments not yet received by Seller on the date of the Closing.

**Section 8.02 Major Taking or Casualty.** If prior to the Closing Date any portion of the Property is: (a) taken by any condemnation or eminent domain which permanently and materially impairs the current use of the Property; or (b) damaged or destroyed by fire or other casualty and the cost of repair exceeds \$100,000.00, Buyer may, at any time after receipt of notice of such event, either (a) notify Seller of its intention to proceed with the Closing in accordance with this Agreement, but subject to Section 8.01 above, or (b) cancel this Agreement, in which event the Deposit will be returned to Buyer and the parties will be released from all further obligations under this Agreement.

**ARTICLE 9.**  
**NOTICES**

**Section 9.01 Delivery of Notices.** Unless specifically stated otherwise in this Agreement, all notices, demands, consents, approvals, waivers, or other communications must be in writing and delivered to Buyer, Seller, or Title Company, at the addresses set forth in Section 9.02 below, by one of the following methods:

- (a) personal delivery, whereby delivery is deemed to have occurred at the time of delivery;
- (b) overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier;
- (c) registered or certified mail, postage-prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third Business Day following deposit with the United States Postal Service; or
- (d) email, whereby delivery is deemed to have occurred on the date of transmission (or, if not sent on a Business Day, on the next Business Day after the date of transmission).

**Section 9.02 Parties' Addresses.**

- (a) Unless changed in accordance with Section 9.02(b) of this Agreement, the addresses for all communications and notices are as follows:

**If to Seller:**

EGAP Elkhart I, LLC  
c/o Essential Growth Properties  
Attn: Scott Herkamp  
312 Plum Street, Suite 875  
Cincinnati, Ohio 45202  
Email: [sherkamp@essentialgrowth.com](mailto:sherkamp@essentialgrowth.com)

**With a copy to:**

Keating Muething & Klekamp PLL  
Attn: Andrew J. Ferguson, Esq.  
One E. Fourth Street, Suite 1400  
Cincinnati, Ohio 45202  
Email: AFerguson@kmklaw.com

**If to Buyer:**

City of Elkhart, Indiana, Department of Redevelopment  
201 S. Second Street  
Elkhart, IN 46514  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

**With a copy to:**

Warrick & Boyn, LLP  
Attn: Gary D. Boyn & Christopher T. Pottratz  
861 Parkway Avenue  
Elkhart, Indiana 46516  
Email: gboyn@warrickandboyn.com  
cpottratz@warrickandboyn.com

**If to Title Company:**

Riverbend Commercial Title Services, LP  
Attn: Gregory Haverkamp  
One East Fourth Street, Suite 1400  
Cincinnati, Ohio 45202  
Email: ghaverkamp@riverbendtitle.com

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

(c) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

**ARTICLE 10.**  
**REMEDIES**

**Section 10.01 Remedies.**

(a) In the event Buyer breaches any of its representations or covenants under this Agreement, such breach is not cured within ten (10) days following written notice thereof from Seller to Buyer, and Seller has not defaulted under this Agreement, and all conditions precedent and contingencies to Buyer's obligations are satisfied, then, upon written notice to Buyer, as Seller's sole and exclusive remedy for such default, Seller may terminate this Agreement and the Deposit shall be disbursed to Seller. Buyer and Seller acknowledge that it is impossible to estimate precisely the damages which might be suffered by Seller upon Buyer's default and that the Deposit represents a reasonable estimation of such damages. Seller's retention of the Deposit is intended not as a penalty, but as full liquidated damages as provided under state law. The Deposit shall constitute the stipulated damages of Seller, and Buyer shall thereupon be relieved of all further obligations and liabilities arising out of this Agreement, except for the indemnities contained herein.

(b) In the event Seller breaches any of its representations or covenants under this Agreement, such breach is not cured within ten (10) days following written notice thereof from Buyer to Seller, then Buyer shall be entitled, as its sole and exclusive remedy, to either:

(i) close the transaction contemplated by this Agreement, thereby waiving such breach, default or failure;

(ii) seek specific performance of Seller's obligations under this Agreement, provided that such legal action is filed within sixty (60) days of the alleged Seller default; or

(iii) terminate this Agreement and receive an immediate return of the Deposit, and neither party having any further obligations hereunder except for those which expressly survive termination.

**ARTICLE 11.**  
**BROKERS**

**Section 11.01 Brokers.** Buyer and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about, the transaction contemplated by this Agreement. Seller and Buyer will each indemnify, defend, and hold harmless the other from and against any claim of any broker or other person for any brokerage commissions, finder's fees, or other compensation in connection with the transaction contemplated by this Agreement if such claim is based in whole or in part by, through or on account of, any acts of the indemnifying party or its agents, employees, or representatives and from all losses, liabilities, costs, and expenses in connection with such claim, including without limitation, reasonable attorneys' fees, court costs, and interest.

**Section 11.02 Survival.** The provisions of this Article 11 will survive the Closing or the termination of this Agreement prior to the Closing.

**ARTICLE 12.**  
**MISCELLANEOUS**

**Section 12.01 1031 Exchange.** Seller and Buyer agree to cooperate with each other in accomplishing a tax-deferred exchange for either party under Section 1031 of the Code, which will include the signing of reasonably necessary exchange documents; provided, however, that (i) neither party will incur any additional liability or financial obligations as a consequence of such exchange, (ii) such exchange will not delay the Closing, and (iii) neither party will be required to take title to any property as part of an exchange, other than Buyer receiving title to the Property. This Agreement is not subject to or contingent upon either party's ability to effectuate a tax-deferred exchange

**Section 12.02 Merger.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained in this Agreement and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 12.03 Business Days.** Whenever any action must be taken (including the giving of notices) under this Agreement during a certain time period (or by a particular date) that ends or occurs on a non-Business Day, then such period (or date) will be extended until the next succeeding Business Day. As used herein, the term "**Business Day**" means any day other than a Saturday, a Sunday, or a legal holiday on which national banks are not open for general business in the State of Ohio.

**Section 12.04 Modifications and Amendments.** This Agreement cannot under any circumstance be modified or amended orally and no agreement will be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Buyer.

**Section 12.05 Assignment.** Buyer may assign, transfer, or convey its rights and obligations under this Agreement or in the Property without the prior written consent of Seller.

**Section 12.06 Counterparts.** This Agreement may be signed by Buyer and Seller in multiple counterparts, may be signed electronically, and may be delivered by email. All signed counterparts (including those signed electronically or sent by email) will be deemed originals.

**Section 12.07 Governing Law; Venue; Jury Waiver.** This Agreement shall be construed and interpreted under the laws of the State of Indiana. Any dispute or cause of action under this Agreement shall be resolved in a court of competent subject matter jurisdiction in Elkhart County, Indiana. IN ANY LAWSUIT OR OTHER PROCEEDING INITIATED BY ANY OF THE PARTIES UNDER OR WITH RESPECT TO THIS AGREEMENT, EACH SUCH PARTY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY, TO THE EXTENT ALLOWED UNDER APPLICABLE LAW.

[SIGNATURE PAGE TO FOLLOW]

Each party is signing this Agreement on the date below that party's signature.

**SELLER:**

EGAP Elkhart I, LLC, a Delaware limited liability company

By: EGAP Fund I Manager, LLC, a Delaware limited liability company, its manager

By: \_\_\_\_\_

Name: Nicholas G. Hodge

Title: Manager

Date: \_\_\_\_\_

**BUYER:**

City of Elkhart, Indiana Department of Redevelopment

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

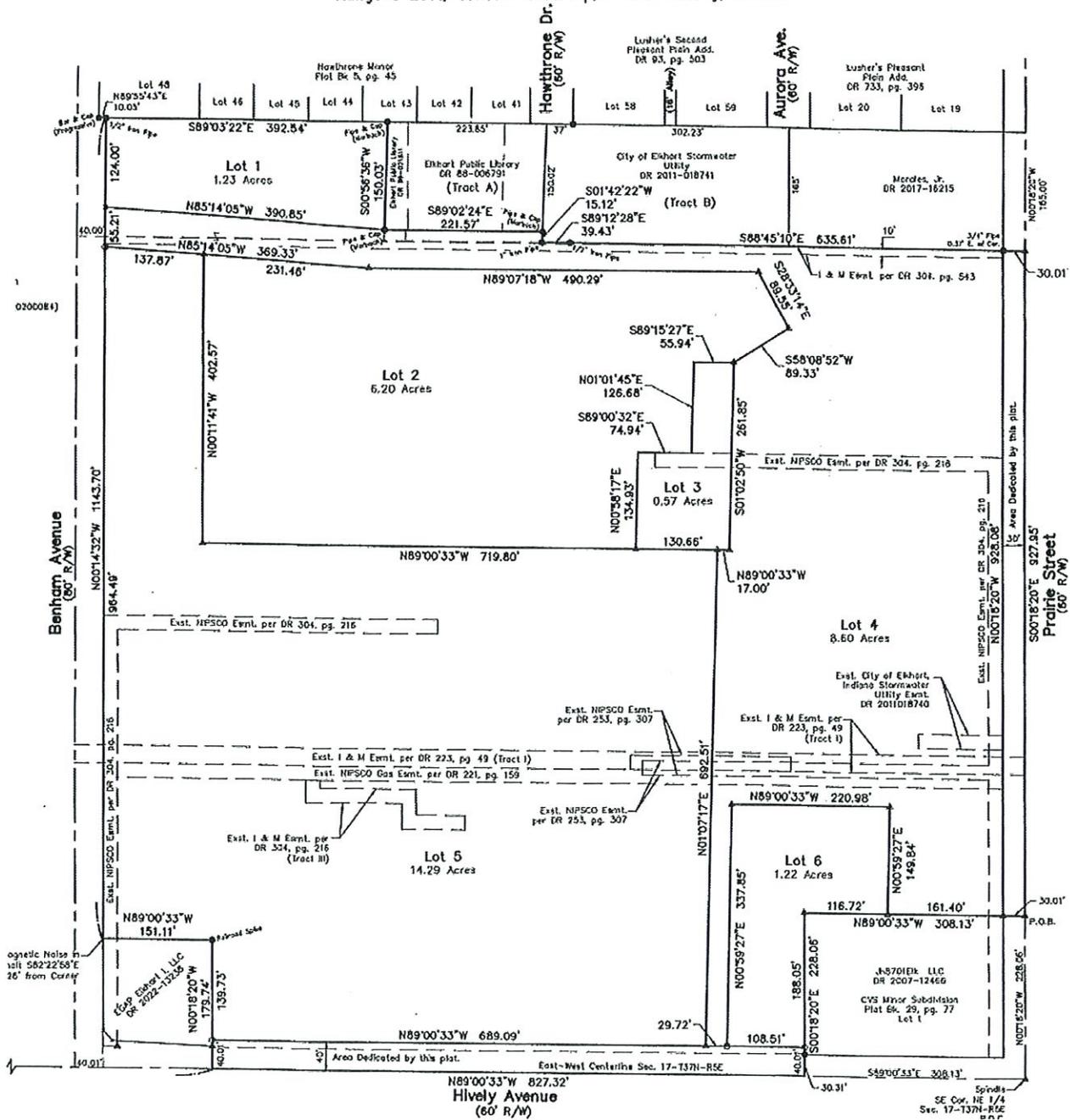
Being all of Lots Numbered 1, 3, 5 and 6, as designated on the recorded Plat of Woodland Crossing located in Concord Township, Elkhart, Indiana and recorded April 6, 2023 as Instrument No. 2023-05393, in Plat Book 42, Page 89 in the Office of the Recorder of Elkhart County, Indiana; as amended by Affidavit of Correction recorded April 14, 2023 as Document No. 2023-05809, and Affidavit of Correction recorded April 26, 2023 as Document No. 2023-06478, Elkhart County, Indiana Records.

# EXHIBIT A-1

## Depiction of Property

### WOODLAND CROSSING

A Part of the Northeast Quarter of Section 17 Township 37 North,  
Range 5 East, Concord Township, Elkhart County, Indiana



**EXHIBIT B**

**LIST OF ASSUMED CONTRACTS**

INSERT LIST

**EXHIBIT C**  
**SCHEDULE OF LEASES**

INSERT

EXHIBIT "D"

ESCROW AGREEMENT  
(Earnest Money Deposit)

This Escrow Agreement is made effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ whose address is \_\_\_\_\_, Attn: \_\_\_\_\_, E-Mail: \_\_\_\_\_ ("Seller"), \_\_\_\_\_ whose address is \_\_\_\_\_, Attn: \_\_\_\_\_, E-Mail: \_\_\_\_\_ ("Purchaser") and **RIVERBEND COMMERCIAL TITLE SERVICES LP**, whose address is One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202, Attn: Holly L. Johnson, E-Mail: hjohnson@riverbendtitle.com ("Escrow Agent"), under the following circumstances:

A. PURCHASER AND SELLER HAVE ENTERED INTO AN AGREEMENT OF PURCHASE AND SALE ("AGREEMENT"), TO PURCHASE REAL AND PERSONAL PROPERTY DESCRIBED IN THE AGREEMENT.

B. AS PART OF THIS PURCHASE, PURCHASER IS TO DEPOSIT CERTAIN EARNEST MONIES WITH THE ESCROW AGENT.

NOW, THEREFORE, the parties agree as follows:

1. Purchaser shall deposit with the Escrow Agent the sum of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_), along with any additional deposits (if applicable), as required by the Agreement (the "Deposit").

2. Escrow Agent shall subsequently disburse the Deposit and any interest earned thereon in accordance with the provisions of the Agreement as follows:

2.1 Upon written notice from Seller and Purchaser of Closing under the Agreement, Escrow Agent shall disburse the Deposit in accordance with such directive or upon Escrow Agent's receipt of an executed closing statement reflecting the application/disposition of said Deposit.

2.2 If there is a termination of, or a failure to close under, the Agreement, either Seller or Purchaser shall give written notice of said termination or failure to close to the other and to Escrow Agent, in which notice shall include written instructions as to the disposition of the Deposit pursuant to the terms of the Agreement. The other party shall have ten (10) days after it is served or deemed served with such notice to notify Escrow Agent that it disputes such written instructions. In the event of such a dispute, Escrow Agent shall continue to hold the Deposit in the non-interest-bearing account until it receives joint written instructions from both Seller and Purchaser or instruction (by order) from a court of competent jurisdiction. If, for any reason, the other party does not dispute such written instructions within the ten (10) day period, then Escrow Agent shall disburse the Deposit as first instructed by said written notice.

3. Escrow Agent shall follow any joint written instruction concerning the Deposit from Seller and Purchaser or any instruction from a court of competent jurisdiction. Escrow Agent shall not be required to investigate the authority of the person(s) executing and delivering such instructions, or otherwise verify the accuracy of the statements of information presented therein.

4. Investment of Escrow Funds:

a) Within a reasonable time after receipt of the Deposit from Purchaser, and after this Escrow Agreement has been executed by all parties, the Escrow Agent shall open an interest-bearing account at either US Bank, N.A., or First Financial Bank, each located in Cincinnati, Ohio ("Depository") for the benefit of \_\_\_\_\_ in the amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_).

b) All interest will accrue to and be reported to the Internal Revenue Service based on the information provided below. No account can be opened and no interest can be paid until Escrow Agent has been provided with the following:

(i.) A completed and executed IRS Form W-9 attached hereto as **Attachment 1**;

(ii.) The following information:

**Name:** \_\_\_\_\_  
(hereinafter "Beneficiary")

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Tax ID or Social Security No.:** \_\_\_\_\_

(iii.) Organization Documents for Beneficiary (if applicable).

c) Upon the Depository's request, Escrow Agent will deliver the W-9 to Depository. Beneficiary authorizes Escrow Agent to execute that documentation upon Beneficiary's inability or refusal to do so.

d) Escrow Agent shall not be responsible for and hereby disclaims any liability for:

(i.) penalties or loss of principal or interest or delays in the withdrawal of the funds which may be imposed by the Depository as a result of the making or redeeming of the investment pursuant to Escrow Agent's instructions;

(ii.) loss or impairment of funds while those funds are in the course of collection or while on deposit in a financial institution if such a loss

or impairment results from the failure, insolvency or suspension of a financial institution;

- (iii.) the financial status or insolvency of any other party, or any misrepresentation made by any other party;
- (iv.) the legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by or to the Escrow Agent or exchanged by the parties hereunder, whether or not the Escrow Agent prepared such instrument;
- (v.) the default, error, action or omission of any other party to this Escrow Agreement;
- (vi.) the expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction accepted by the Escrow Agent has instructed the Escrow Agent to comply with said time limit;
- (vii.) the Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed;
- (viii.) any shortfall in the sufficiency of the amount held in escrow to accomplish the purpose of the escrow; or
- (ix.) any obligation to collect additional funds, unless such obligation is in writing and signed by the Escrow Agent.

e) Purchaser authorizes Escrow Agent to sign on his/her/its behalf any and all documents as may be required by the financial institution with whom the escrow account will be established, including, Form W-9, and to make the above representations on Purchaser's behalf.

5. The Seller and Purchaser hereby certify that they are aware that the Federal Deposit Insurance Corporation's (FDIC) coverage applies only to a cumulative maximum amount of \$250,000.00 for each individual depositor for all of depositor's accounts at the same or related institution. Escrow Agent assumes no responsibility for nor will the undersigned parties hold Escrow Agent liable for, any loss occurring which arises from the fact that the amount of the above account may cause the aggregate amount of any individual depositor's accounts to exceed \$250,000.00 and that the excess amount is not insured. The undersigned parties further understand that certain banking instruments such as, but not limited to, repurchase agreements and letters of credit, are not covered at all by FDIC insurance.

6. All notices and communications herein required to be given or made to Seller, Purchaser or Escrow Agent shall be in writing and be addressed to Seller, Purchaser or Escrow Agent at their respective addresses as stated above or at such address as each shall notify the other in writing, and shall be deemed delivered three (3) days after being deposited in the mail if made by ordinary mail, or upon delivery if made by a nationally recognized overnight delivery service with confirmation receipt, by personal service delivery, or by electronic correspondence.

7. The duties and obligations of Escrow Agent shall be determined solely by the express provisions of this Escrow Agreement, and Escrow Agent shall not be liable except for the performance of the duties and obligations specifically set forth herein. In furtherance and not in limitation of the foregoing: Escrow Agent shall not be responsible in any manner and the parties (one-half each) will reimburse and indemnify Escrow Agent including, but not limited to, reasonable attorneys fees incurred, arising out of, or in connection with its acceptance of or performance of its duties and obligations under this Escrow Agreement as well as the reasonable costs and expenses of defending against any claim or liability arising out of, or relating to this Escrow Agreement; Escrow Agent shall not be liable for any error in judgment or for any act done or step taken or omitted by it in good faith or for any mistake in fact or law or for anything which it may do or refrain from doing in connection herewith; Escrow Agent shall not be liable for any loss in impairment of the Deposit in the interest bearing account.

8. Notwithstanding the foregoing, the Escrow Agent shall not be liable except for willful misconduct in the performance of its duties and obligations as set forth herein. This Escrow Agreement is a contract between the parties hereto. Escrow Agent is not acting as a fiduciary for any party, and the parties expressly disclaim any fiduciary relationship among them. All claims, including without limitation, all claims for negligence against the Escrow Agent, its officers, agents and employees, must be brought, if at all, as breach of contract claims. Escrow Agent shall have no duty or obligation which is not specifically set forth herein. Escrow Agent's duties and obligations are strictly contractual. No third party beneficiary that is not a signer to this Escrow Agreement, shall have any right to enforce this Escrow Agreement.

9. Notwithstanding anything in this Escrow Agreement to the contrary, in the event of a dispute between Seller and Purchaser arising prior to or at the time of the delivery or other disposition of the Deposit by Escrow Agent pursuant to the Agreement, which dispute shall be sufficient, in the sole discretion of Escrow Agent, to justify its doing so, Escrow Agent shall be entitled to tender the Deposit into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon Escrow Agent shall be discharged from all further duties and liabilities under this Escrow Agreement and the Agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof. Escrow Agent's determination of whether a dispute exists between Seller and Purchaser shall be binding and conclusive upon all parties hereto, notwithstanding any contention that no dispute exists. All costs and expenses incurred by Escrow Agent in taking any action pursuant to this section shall be covered by and paid pursuant to the indemnification of Escrow Agent contained in this Escrow Agreement.

10. No party may rely on any title search, title examination, title commitment and/or title policy issued in a transaction connected with this Escrow Agreement unless such party is named in such title product as the recipient, client, proposed insured, or actual insured. No party to this Escrow Agreement shall have any claim, including without limitation, any claim for negligence or for failure to disclose an encumbrance, against the Escrow Agent as to any title search, any issuance of a title commitment or any issuance of a title insurance policy. Any such claim of loss or damage, whether or not based on negligence, which arises out of the status of the title to the estate which is the subject of this Escrow Agreement, or any action asserting such claim, or which relates to a title search, a commitment or a policy, shall be restricted to the terms of the title commitment or title policy issued.

11. This is the complete Escrow Agreement between the parties. Each party has had the opportunity to read this Escrow Agreement, to understand it, to make changes to it, and, to consult with the experts of the party's choice, including legal experts. All prior representations, agreements and discussions are merged herein and are void unless contained herein. No party, person, employee or agent may modify this Escrow Agreement by any oral representation. All modifications of this agreement must be in writing signed by all parties. The signing of this agreement is the free and voluntary act and deed of each party.

12. If Escrow Agent shall notify Seller and Purchaser of its desire to be relieved of any further duties and liabilities hereunder, then Escrow Agent shall deliver the Deposit to a successor escrow agent designated by Seller and Purchaser. If Seller and Purchaser shall fail to agree upon and designate a successor escrow agent within two (2) days after having been requested by Escrow Agent to do so, then Escrow Agent shall in its discretion designate the successor escrow agent. The successor escrow agent designated by Seller and Purchaser or by Escrow Agent, as the case may be, shall be a bank or trust company having trust powers in good standing and located in Cincinnati, Ohio, and shall agree to be bound by all the terms and conditions of this Escrow Agreement and the Agreement. Immediately upon agreement by the successor escrow agent to be bound by all the terms and conditions of this Escrow Agreement and the Agreement, the original Escrow Agent shall be relieved of any and all duties and liabilities under or in connection with this Escrow Agreement and the Agreement; provided, however, that no successor escrow agent shall assume any liability for the acts or omissions of Escrow Agent under this Escrow Agreement or the Agreement.

13. The Escrow Agent shall receive no initial fee for serving as Escrow Agent, however, in the event the anticipated closing does not occur, Escrow Agent shall retain from the Deposit the sum of One Thousand and 00/100 Dollars (\$1,000.00) in payment of its time and costs and to pay the cancellation invoice for the title examination and title commitment charges incurred. If Escrow Agent's cancellation invoice exceeds \$1,000.00, then it shall charge the appropriate party for the remaining balance due. Additionally, Escrow Agent reserves the right to collect an account management fee in an amount not to exceed \$500.00 for payment of its time and cost in opening and maintaining the separate interest-bearing escrow account. If Escrow Agent determines that it requires the services of legal counsel to properly perform its duties, Seller and Purchaser agree to pay (one-half each) Escrow Agent its reasonable legal fees.

14. This Escrow Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Furthermore, this Escrow Agreement may be accepted and executed in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent), and each party's electronic acceptance and signature will be deemed an original and binding between the parties. The undersigned agree that electronic transmission of this Escrow Agreement by e-mail or telecopy shall be deemed transmission of the original Escrow Agreement for all purposes. This Escrow Agreement shall be enforced, interpreted and applied in accordance with the laws of the State of Ohio.

15. This Escrow Agreement shall terminate upon the disbursement by Escrow Agent of the Deposit. Any claim against Escrow Agent, if at all, related to this Escrow Agreement, must be made in writing and received by Escrow Agent within one year of termination of this Escrow Agreement or be forever barred.

The parties have hereto executed this Escrow Agreement as of the day and year first above written.

*The remainder of this page is intentionally blank*

**SELLER:**

\_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PURCHASER:**

\_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ESCROW AGENT:**

RIVERBEND COMMERCIAL TITLE SERVICES LP

BY: RIVERBEND COMMERCIAL TITLE  
SERVICES INC., General Partner

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## EXHIBIT E

### PERMITTED EXCEPTIONS

Easement and associated rights granted to Indiana & Michigan Electric Company by Hart Realty Co., Inc. in an instrument dated September 2, 1959 and recorded November 13, 1959 in Deed Record 223, page 49 in the Office of the Recorder of Elkhart County, Indiana.

Easement and associated rights granted to Northern Indiana Public Service Company by Hart Realty Co., Inc. in an instrument dated July 1, 1959 and recorded June 17, 1959 in Deed Record 221, page 159 in the Office of the Recorder of Elkhart County, Indiana.

Easement and associated rights granted to Northern Indiana Public Service Company by Gary National Bank in an instrument dated June 19, 1964 and recorded June 27, 1964 in Deed Record 253, page 307 in the Office of the Recorder of Elkhart County, Indiana.

Easement and associated rights granted to Northern Indiana Public Service Company by Chaet, an Illinois partnership in an instrument dated April 27, 1970 and recorded May 23, 1970 in Deed Record 304, page 216 in the Office of the Recorder of Elkhart County, Indiana.

Easement and associated rights granted to Indiana & Michigan Electric Company by Raymond J. Chaet, Paul Chaet and William Gross, co-partners d/b/a CCG Associates, an Illinois Partnership in an instrument dated June 1, 1970 and recorded June 17, 1970 in Deed Record 304, page 643 in the Office of the Recorder of Elkhart County, Indiana.

Terms and provisions of an Ingress and Egress Easement set out in an instrument by and between Elkan-SC Company and Elkhart Public Library dated March 25, 1988 and recorded April 26, 1988 as Document Number 88006792 in the Office of the Recorder of Elkhart County, Indiana.

Terms and provisions of an Ingress and Egress Cross Easement set out in an instrument by and between Elkan S C Company, Limited Partnership and Westco, dated February 10, 1989 and recorded February 15, 1989 as Document Number 89002674 in the Office of the Recorder of Elkhart County, Indiana.

Zoning Agreement between Board of Zoning Appeals of the City of Elkhart and Raymond J. Chaet dated May 3, 1977 and recorded in Miscellaneous Record 116, page 885 in the Office of the Recorder of Elkhart County, Indiana.

Easement for use of Water Retention Facility dated December 13, 1988 and recorded November 8, 1989 as Document Number 89021812 in the Office of the Recorder of Elkhart County, Indiana.

Easement for Installation of Traffic Islands dated December 13, 1988 and recorded November 8, 1989 as Document Number 89021813 in the Office of the Recorder of Elkhart County, Indiana.

Parking Regulation Ordinance No. 4413 dated April 19, 1999 and recorded May 10, 1999 as Document Number 99-15249 in the Office of the Recorder of Elkhart County, Indiana.

Rights of the public for highway purposes in and to that portion of insured Real Estate lying within the bounds of Prairie Street on the East and Hively Avenue on the South.

Reciprocal Easement Agreement with Covenants, Conditions and Restrictions by and between Elkan SC Company and ELKCVS, LLC, dated April 10, 2007 and recorded April 23, 2007 as Document Number 2007 10723 in the Office of the Recorder of Elkhart County, Indiana.

Perpetual Easement by and between Elkan SC Company by CPS Contract Property Services, Inc. and the City of Elkhart, Indiana, Stormwater Utility, dated August 17, 2011 and recorded October 7, 2011 as Document Number 2011018740 in the Office of the Recorder of Elkhart County, Indiana.

Retention Pond by and between Elkan SC Company, by CPS Contract Property Services, Inc. and the City of Elkhart, Stormwater Utility, dated August 17, 2011 and recorded October 7, 2011 as Document Number 2011018741 in the Office of the Recorder of Elkhart County, Indiana.

**EXHIBIT F**

**BILL OF SALE**

\_\_\_\_\_, in \_\_\_\_\_ ("Seller") having its principal place of business at \_\_\_\_\_, \_\_\_\_\_, in consideration of TEN AND NO/100 (\$10.00) DOLLARS, receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over to \_\_\_\_\_ ("Buyer"), the following described personal property, to wit:

All equipment, apparatus, machinery, cranes, appliances, furnishings, signs, site plans, surveys, soil and substrata studies, architectural renderings, plans and specifications, engineering plans and studies, floor plans and other plans or studies of any kind, leasing brochures, market studies, tenant data sheets and other supplies, fixtures and personal and tangible property owned by Seller and used or usable in connection with the operation and ownership of the Property described in the Purchase Agreement dated \_\_\_\_\_ between Seller and Buyer (hereinafter referred to as the "**Personal Property**").

Seller hereby represents and warrants to Buyer that (a) Seller is the absolute owner of the Personal Property, (b) the Personal Property is free and clear of all liens, charges and encumbrances, and (c) Seller has full right, power and authority to sell the Personal Property and to make this Bill of Sale. Seller makes no warranty, express or implied, as to the condition of the Personal Property or its merchantability of fitness for any particular purpose. By its acceptance of this Bill of Sale, Buyer acknowledges that Buyer accepts the Personal Property in its "as is" condition.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be signed and sealed in its name by its officers thereunto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
NAME  
Its: \_\_\_\_\_

## EXHIBIT G

### ASSIGNMENT OF LEASES AND CONTRACTS

\_\_\_\_\_ ("Assignor"), in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, hereby assigns, transfers, sets over and conveys to \_\_\_\_\_ ("Assignee"), all of Assignor's right, title and interest in and to (i) those leases and guarantees thereof set forth on Exhibit "1" attached hereto and made a part hereof ("Leases"), together with any security deposits tendered to Assignor under the Leases, and (ii) those service contracts and other agreements listed on Exhibit "1" attached hereto and made a part hereof (collectively, "Contracts"), all pertaining to the real property and improvements thereon commonly known as \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

Assignor represents and warrants to Assignee that:

- (a) Assignor is the sole owner of (i) all of the Landlord's right, title and interest in and to the Leases, and (ii) all of the owner's right, title and interest in and to the Contracts; and
- (b) No part of the rents reserved in the Leases have been previously assigned and no part of such rents, for any period subsequent to the date hereof, has been collected in advance of the due date thereof.

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- (a) Assignor hereby assigns unto Assignee, all of the right, title and interest of Assignor in and to the Leases and Contracts, TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns from and after the date hereof, subject to the terms, covenants and conditions of the Lease and/or Contracts.
- (b) Assignee assumes the performance of all of the obligations of Assignor arising or accruing under the Leases and Contracts from and after the date hereof. Assignee agrees to indemnify, protect, defend and hold Assignor harmless from and against any and all claims, demands, liabilities, losses, costs, damages or expenses including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") which Assignor may suffer arising out of Assignee's liabilities and/or obligations under the Leases and Contracts which occurred from and after the date hereof.
- (c) This Assignment shall be binding upon and inure to benefit of Assignor, Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Leases and Contracts this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which Assignment is effective this date.

*[Signature Page to Follow]*

ASSIGNOR:

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
NAME

Its: \_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
NAME

**EXHIBIT 1  
TO ASSIGNMENT OF LEASES AND CONTRACTS**

**LIST OF LEASES AND CONTRACTS**

INSERT

**EXHIBIT H**

**ASSIGNMENT OF  
INTANGIBLE PROPERTY AND OTHER RIGHTS**

FOR VALUE RECEIVED, \_\_\_\_\_, a \_\_\_\_\_  
("Assignor"), hereby conveys, assigns, transfers, and sets over unto \_\_\_\_\_  
("Assignee") all the right, title and interest of Assignor in and to any and all intangible property  
now or hereafter owned, controlled or held by Seller, solely in connection with the Improvements  
and the Personal Property, including, but not limited to: (i) all guaranties and warranties (including  
guaranties and warranties pertaining to construction of the Improvements) (collectively, the  
"Warranties"); (ii) all air rights, excess floor area rights and other development rights relating or  
appurtenant to the Real Property or the Improvements; (iii) all rights to obtain utility service in  
connection with the Improvements and the Real Property; (iv) assignable licenses and other  
governmental permits and permissions relating to the Real Property, the Improvements, and the  
operation thereof (collectively, the "Permits"); (v) all trade marks and trade names. The foregoing  
shall be collectively referred to herein as the "Intangible Property". All defined terms utilized  
herein without definition shall have the meaning ascribed to such terms in that certain Purchase  
Agreement dated \_\_\_\_\_, \_\_\_\_\_ by and between Assignor and Assignee.

This Assignment shall be binding upon and shall inure to the benefit of Assignor, Assignee  
and their respective successors and assigns. Seller makes no warranty, express or implied, as to  
the condition of the Intangible Property or its merchantability of fitness for any particular purpose.  
By its acceptance of this Assignment, Buyer acknowledges that Buyer accepts the Intangible  
Property in its "as is" condition.

IN WITNESS WHEREOF, Assignor has executed this Assignment of Intangible Property  
and Other Rights on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, which instrument  
is effective this date.

ASSIGNOR:

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
NAME

Its: \_\_\_\_\_

**EXHIBIT I**  
**NOTICE TO TENANTS**

**EXHIBIT J**

**TENANT ESTOPPEL CERTIFICATE**

Property Name: \_\_\_\_\_  
("Property")

Tenant: \_\_\_\_\_

To: \_\_\_\_\_

**DEFINITIONS:**

Lease Date: \_\_\_\_\_

Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_

Security Deposit: \_\_\_\_\_

Date of Possession: \_\_\_\_\_

Rent Commencement Date: \_\_\_\_\_

Monthly Base Rent: \_\_\_\_\_

Annual Base Rental Amount: \_\_\_\_\_

Monthly Deposits: \_\_\_\_\_

Term: \_\_\_\_\_

Termination Date: \_\_\_\_\_

Renewal Option(s): \_\_\_\_\_

Square Footage: \_\_\_\_\_

Use: \_\_\_\_\_

Tenants Address For Notices: \_\_\_\_\_

["Purchaser"] ["Lender"] proposes to [purchase the property] [finance the property] and this Tenant Estoppel Certificate is to be made and delivered in connection with that [purchase] [financing].

The undersigned Tenant under the above referenced lease dated as of the Lease Date between Landlord and Tenant ("**Lease**"), certifies, represents, confirms and agrees in favor of [Purchaser] [Lender] the following:

I. All of the information set forth on the above schedule is true and correct.

II. The above described Lease has not been canceled, modified, assigned, extended or amended and contains the entire agreement between Landlord and Tenant except as follows:

III. Rent has been paid to \_\_\_\_\_. There is no Prepaid Rent. The amount of the Security Deposit is as set forth above, which is currently being held by Landlord.

IV. Tenant took possession of the leased premises on the Date of Possession, and commenced to pay rent on the Rent Commencement Date, in the amount of the Monthly Base Rent, each payable in advance. Our current Annual Base Rental Amount is as set forth above, payable in equal monthly installments, subject to percentage rental, common area maintenance charges, escalation charges and other charges in accordance with the terms and provisions of the Lease, which as of the date hereof total the Monthly Deposit Amount, each payable in equal monthly installments in advance. We are currently in occupancy of the leased premises. No "discounts", "free rent", "discounted rent" or "abatements of rent" have been agreed to or are in effect.

V. The Lease is for the Term set forth above and ending on the Termination Date, and we have the Renewal Option(s) set forth above.

VI. All space and improvements covered by the Lease have been completed and furnished to the satisfaction of Tenant, all conditions required under the Lease have been met, and Tenant has accepted and taken possession of the leased premises on the Date of Possession as set forth above and presently occupies the leased premises, presently consisting of the Square Footage as set forth above.

VII. The Lease is (a) in full force and effect, and (b) free from default by both Landlord and Tenant; and we have no claims, liens, charges or credits against Landlord or offsets against rent.

VIII. The undersigned has not assigned or sublet the Lease, nor does the undersigned hold the Property under assignment or sublease.

IX. There are no other agreements written or oral, between the undersigned and Landlord with respect to the Lease and/or the leased premises and building. Landlord has satisfied all commitments, arrangements or understandings made to induce Tenant to enter into the Lease, and Landlord is not in any respect in default in the performance of the terms and provisions of the

Lease, nor is there now any fact or condition which, with notice or lapse of time or both, would become such a default.

X. The leased premises are currently being used for the Use set forth above.

XI. Tenant is maintaining (free of default) all insurance policies that the Lease requires Tenant to maintain.

XII. Neither Landlord nor [Purchaser] [Lender] nor any of their respective successor or assigns, has or will have any personal liability of any kind or nature under or in connection with the Lease; and, in the event of a default by Landlord or [Purchaser] [Lender] under the Lease, Tenant shall look solely to Landlord's or [Purchaser] [Lender] interest in the building in which the leased premises are located.

XIII. Tenant is not in any respect in default under the terms and provisions of the Lease (nor is there now any fact or condition which, with notice or lapse of time or both, would become such a default), and Tenant has not assigned, transferred or hypothecated its interest under the Lease.

XIV. Tenant (i) does not have any option or preferential right to purchase all or any part of the leased premises or all or any part of the building of which the leased premises are a part; and (ii) does not have any right, title or interest with respect to the leased premises other than as lessee under the Lease.

XV. We understand that [Purchaser] [Lender] is planning to [purchase] [finance] the Property on which the leased premises is located to Purchaser, and we agree to make all payments required under the Lease to [Purchaser] [Lender] upon our receipt of notice from Landlord and/or [Purchaser] [Lender]. Further, upon receipt of such notice, we will thereafter look to [Purchaser] [Lender] and not Landlord as the landlord under the Lease. We agree to give all notices required to be given by us to Landlord under the Lease to [Purchaser] [Lender] upon our receipt of said notice.

XVI. The statements contained herein may be relied upon by [Purchaser] [Lender] and by any prospective purchaser or lender of the Property.

XVII. If Tenant is a Corporation, the undersigned is a duly appointed officer of the corporation signing this Agreement, and is the incumbent in the office indicated under his or her name. If Tenant is a partnership or joint venture, the undersigned is a duly appointed partner or officer of the partnership or joint venture signing this certificate. In any event, the undersigned individual is duly authorized to execute this Agreement on behalf of Tenant.

XVIII. Tenant (a) executes this certificate with the understanding that [Purchaser] [Lender] is contemplating [purchasing] [financing] the Property, and that if [Purchaser] [Lender] [purchases] [finances] the Property, [Purchaser] [Lender] will do so in material reliance on this certificate; and (b) agrees that the certifications and representations made herein shall survive such acquisition.

XIX. The current address to which all notices to Tenant as required under the Lease should be sent is the Tenant's Address for Notices.

XX. [Purchaser's] [Lender's] rights hereunder shall inure to its successors and assigns.

XXI. Tenant is obligated under the Lease to pay the real estate taxes which are assessed against the Property in a calendar year. Tenant is obligated to pay to Landlord the real estate taxes assessed against the Property during the last year of the term upon Landlord's receipt of a real estate tax bill with respect thereto, even though the Lease term may have expired and Tenant has vacated the Property prior to the issuance of said real estate tax bill.

IN WITNESS WHEREOF, Tenant has executed this estoppel certificate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NAME

By: \_\_\_\_\_  
NAME

Its: \_\_\_\_\_

**SCHEDULE 1**  
**PERSONAL PROPERTY**

September 12, 2023

WRITER'S DIRECT NUMBER: (317) 236-2268  
fax: (317) 592-4671  
internet: [lisa.lee@icemiller.com](mailto:lisa.lee@icemiller.com)

**CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGED COMMUNICATION**

**VIA E-MAIL**

Mr. Michael Huber  
Development Services Director  
City of Elkhart, IN  
201 South 2nd Street  
Elkhart IN 46516  
E-mail: [Mike.Huber@coei.org](mailto:Mike.Huber@coei.org)

Re: City of Elkhart, Indiana  
Letter of Engagement of Ice Miller LLP

Dear **Mike**:

We are pleased you have asked us to serve as special counsel on the engagement described in this letter and appreciate the opportunity to serve you and the City of Elkhart ("City"). Please take a moment to review this letter (and the enclosed standard Ice Miller terms and conditions) to confirm our mutual understanding regarding the retention of Ice Miller, the scope of the engagement and the basis on which we will provide legal services. Please let us know if there is anything you or the Issuer do not understand or would like to discuss changing.

Client and Nature and Scope of the Relationship

We understand that we will be providing special counsel services with respect to the structuring and documenting, or reviewing documentation by other parties to the transaction, for amendments to an existing economic development area, including the creation of residential housing programs and the creation of traditional and single-family housing allocation areas, amendments to the existing economic development plan and the potential issuance of bonds for the proposed construction of certain improvements in the areas. Our engagement is limited to performance of the services related to this matter. Except to the extent otherwise specifically agreed and confirmed by us in writing, this engagement does not extend to advice or representation beyond the scope of the services described herein. We may agree with you to further limit or to expand the scope of our representation from time to time, provided that any such change is confirmed by us in writing. No other party is being represented by us. Please understand that while we cannot, and do not, guarantee the outcome or success of this or any other engagement or professional undertaking, we will earnestly strive to represent and serve

Mr. Michael Huber  
September 12, 2023  
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your interests in this engagement effectively, efficiently, and responsibly while endeavoring to accomplish your objectives in this engagement.

Our engagement is for legal services, and it is understood that you are not relying on us for business, investment or accounting advice or decisions, nor to investigate the character or credit of any person with whom you may be dealing in connection with this matter. We are not financial advisors or municipal advisors as contemplated by the Dodd-Frank Act.

I will be the primary contact as to this relationship with Ice Miller LLP. Any questions or concerns that may arise in this regard may always be directed to me. Debra Passmore, paralegal, will also provide services on the engagement.

#### Compensation; Other Important Terms and Conditions

Our base hourly rates for work performed, absent special engagements or circumstances, currently range from \$425 to \$825. When appropriate in our judgment, we will involve other attorneys and paralegals or other legal assistants on work that can be performed effectively at their rates. We will provide more refined "not to exceed" amounts for our bond and special counsel fees as we move closer to the potential amendments and issuance of the bonds, based upon what we know, time to be expended by us and our experience in working on similar transactions. None of our fees will be based upon, or related in any way to, the costs of a capital project. If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will consult with you.

In addition to fees that we charge for our legal services, we also charge for ancillary services and expenses. Such charges and expenses may include long distance telephone charges, photocopying, facsimile transmission, computer research, mileage, travel expenses, transcript development and IRS Form 8038-G and other similar charges specifically applicable to the engagement. Our charges and expenses for such ancillary services are pursuant to a schedule of charges, as the same is revised from time to time. A copy of current charges and expenses is available to you and the Issuer upon request. We estimate that these expense charges will not exceed \$1,200.

Ice Miller's standard Terms and Conditions of Engagements for Legal Services is enclosed. These terms and conditions, which cover various other aspects of this engagement, including a waiver of future conflicts of interest and provisions regarding termination and withdrawal are important and are to be read as part of this letter, as they apply to this engagement to the same extent as if they were typed as part of this letter. Unless a different engagement letter is executed in the future, the basic terms of this engagement letter will also be applicable to, and govern our professional relationship on any subsequent matters, on or in which we may become involved or engaged on behalf of the Issuer.

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Acceptance

We hope that this letter and the enclosed Terms and Conditions are helpful and accurately state the scope of the representation. If you or the Issuer have any questions or wish to discuss any portion of this letter, please call me. Please confirm for our records the Issuer's acceptance of these terms and conditions by signing the copy of this letter in the space provided and return the same to me.

Very truly yours,

ICE MILLER LLP



Lisa A. Lee

LAL:DKP

Attachments: Terms and Conditions of Engagements for Legal Services

ACKNOWLEDGED AND AGREED:

CITY OF ELKHART, INDIANA

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ICE MILLER LLP

**Terms and Conditions of Engagements for Legal Services**

Ice Miller LLP has prepared this statement of the terms and conditions that are generally applicable to its legal services representations of its clients, in the absence of an express agreement specifically to the contrary. These terms and conditions, together with the letter or other document that references them, are the Terms and Conditions applicable to our engagement by you. When used in this document, "we" or "us" or "our" and similar terms refer to Ice Miller LLP, a limited liability partnership, and "you" or "your" and similar terms refer to the person or persons specifically identified in this statement as the client or clients of Ice Miller LLP.

**Our Responsibilities**

We are responsible to provide legal services to you in accordance with these Terms and Conditions and with our express understandings with you concerning the nature and scope of our representation.

**Your Responsibilities**

You are responsible for paying our statements for services and expenses. You also are responsible for being candid and cooperative with us and for keeping us informed with complete and accurate information, documents and other communications relevant to the subject matter of our representation or otherwise requested by us. Because it is important that we be able to contact our clients at all times in order to consult with them regarding our representation, we expect that you will inform us, in writing, of any changes in the name, address, telephone number, contact person, e mail address, state of incorporation or other relevant changes regarding you and your business or affairs. If you affiliate with, acquire or your company is acquired by or merged with another company, you will provide us with sufficient notice to permit us to withdraw as your attorneys if we determine that such an affiliation, acquisition or merger creates a conflict of interest between any of our clients and the other party to such affiliation, acquisition or merger, or if we determine that it is not in the best interests of the Firm with respect to the resulting association with the new entity. Your failure to communicate and cooperate with us in these respects could have an adverse effect on our ability to effectively and efficiently represent your interests in this matter and may require that we suspend the rendition of further services in respect of or entirely withdraw from this engagement.

**Client(s) Represented**

The client or clients for this engagement are as specifically identified in the engagement letter. Our client(s) do not include natural persons or entities that are not identified as a client in the engagement letter. For clients that are companies, unless otherwise specified or agreed, this does not include individuals or persons who are shareholders, partners, members or owners of the company, or its officers, directors, managers or other representatives, or family members, nor does it include affiliates of the

company. Our representation of you for the matter described in the engagement letter does not give rise to a lawyer client relationship with any such other individual, person or affiliate. Accordingly our representation of you will not give rise to a conflict of interest in the event other clients of ours are or become adverse to any such other individual, person or affiliate. For clients that are trade associations or other group type organizations, our clients would not include their members or other constituents.

**How We Will Work For You**

We provide services to you through our attorneys and other professionals. We will designate a mutually agreeable partner whom you may contact should you have any questions or concerns at any time about our representation of you or your interests. You will keep us advised of the name(s) and contact information of the person(s) who are authorized to instruct us as to the performance of our legal services for you.

Our engagement is for legal services. While from time to time we may share with you as part of our legal advice information and insights based on our experience with respect to certain market, industry or business practices, structures, or the like, it is understood that you will be solely responsible for determining the extent to which other professional services and advice are obtained and for making all decisions concerning business, investment and accounting matters. In addition, it is understood that we will not have any responsibility to investigate the character or credit of any person with whom you may be dealing in connection with any matter directly or indirectly related to our engagement.

**How We May Communicate With You**

Unless you instruct otherwise in writing, we may communicate with you using unencrypted e-mail, facsimile transmission and cellular telephone with the understanding that these methods carry an inherent risk of interception.

**About Our Fees**

We will charge you fees based upon the time expended and other factors applicable to legal fees that are specified by applicable professional rules and standards. Unless

otherwise specifically agreed, our fees are based on our hourly rates as applied to the amount of time that we expend in providing services. Our base hourly rates for work performed by our attorneys, absent special engagements or circumstances, are established effective January 1 of each calendar year. Hourly rates may change periodically without prior notice to clients, typically after the end of each calendar year, but a current schedule for anyone working on your engagement is available at any time upon request.

Payment of our fees and other charges is in no way contingent on the outcome of any matter, unless and to the extent that there is a mutual written agreement to the contrary.

#### **Other Charges and Expenses**

Our charges for ancillary services and expenses, such as photocopying, computer research, electronic data discovery services, mileage, travel expenses and other similar charges are pursuant to a schedule of charges and expenses, as the same is revised from time to time, a copy of which is available to you upon request.

#### **Estimates**

The total amount of fees and costs relating to this matter are difficult to predict. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. If requested to provide an estimate of our fees for a given matter, we will endeavor in good faith to provide our best estimate, but unless there is a mutual written agreement to a fixed fee, the actual fees incurred on any project will likely differ from the estimate.

#### **Billing Procedures**

Unless we agree to an alternative billing arrangement, you will receive a statement on a monthly basis for services rendered, and for costs and other charges posted to your account, in the prior month. Payment is due upon receipt of our billing statement or within 30 days thereafter. If your account becomes more than 30 days past due, our Billing and Collection Committee will decide whether additional legal work will be performed while the account remains past due, taking into account obligations we owe to you under applicable professional conduct rules. While we typically do not charge interest on past due amounts, we reserve the right to charge interest on any amount invoiced that remains unpaid after 30 days at the rate of 1% per month until paid in full, plus all costs of collection (including reasonable attorneys' fees). Any questions or disagreements should be brought to our attention in writing within 60 days of the billing date.

#### **Retainers**

As a matter of standard practice for new clients and/or new matters, we typically request a retainer deposit before we

begin work, and we may request retainers or additional retainers from time to time with respect to existing clients and existing matters. Unless there is a mutual written agreement to the contrary, we will hold any such retainers in our firm's agency account until disbursed in accordance with these terms and conditions or other mutual written agreement. We may apply funds held as retainers to any past due account balance of your account. We will return any unapplied excess of your retainers to you within a reasonable period of time following the conclusion of the related engagement. Unless we determine in our discretion to apply all or a portion of the retainers sooner, we will apply the retainers to the final invoice for the related engagement. If we determine for any client or matter to initially waive the required retainer deposit, we nonetheless reserve the right at a later date to require a retainer deposit if conditions concerning either the extent or nature of the matter in our discretion so warrant, or should our statements not be timely paid as expected.

#### **Your Consent to Future Conflicts of Interest**

You are aware that the Firm has grown geographically and represents many other entities and individuals. Thus, during the time that we are representing you, some of our present or future clients may have disputes or transactions with you or other interests that may be adverse to yours. As part of this engagement, you agree that we may undertake in the future to represent existing or new clients in any matter that is not substantially related to any matter as to which we have represented or advised you, even if the interests of such clients in those other matters are directly or indirectly adverse to yours, and you agree not to disqualify our Firm for those conflicting representations. Of course, we agree that we will keep confidential any information of a nonpublic nature provided to us as a result of our representation of you. You acknowledge that we may obtain confidential information as a result of our representation of other clients that might be of interest to you but for the same reasons cannot be shared with you.

#### **Document Retention**

Unless you indicate otherwise to us in writing, we will assume that all papers and property that you provide to us are duplicates and that you retain all originals, so that we do not need to return them to you. When the representation concludes, we will (if you request) return any papers and property that you have provided to us (or that we have obtained for you and that belong to you) if we have them in our possession. Our drafts and work product that we create in relation to our work for you, however, belong to us. We reserve the right, subject to any applicable laws or rules of professional responsibility to the contrary, to apply records retention policies and procedures to these items and also to destroy within a reasonable time any items described in this paragraph that are retained by us.

### **Personal Data from the European Economic Area**

If you will be providing the Firm with the personal data of individuals in the European Economic Area during the course of the engagement, then it is your responsibility to obtain all appropriate consents, make any necessary disclosures, and take all other required steps to comply with any applicable data privacy and protection laws and regulations in connection with your use of the Firm's services. As used herein, "personal data" means any information relating to an identified or identifiable natural person, to the extent that such personal data are associated with individuals in the European Economic Area or are otherwise within the scope of the General Data Protection Regulation (EU) 2016/679.

### **Response to Audit Inquiries**

If you ask that we do so, we will respond to your auditors concerning certain "loss contingencies" as defined by accounting standards by preparing a letter to your auditors. To assist us in responding timely to your auditors, please direct all audit inquiries to:

Audit Letter Coordinator  
Ice Miller LLP  
One American Square, Suite 2900  
Indianapolis, Indiana 46282 0200.

If there are any questions presented by your audit inquiry letter, our Audit Letter Coordinator will contact you. Absent special circumstances, our current fee structure for the preparation of these letters is a minimum of \$300 and a maximum of \$700, depending on the extent and number of any matters reported. However, the fee may exceed \$700 if there are many matters to be reported upon, or if the letter requires extensive substantive attention to disclosure or other related issues. This charge will appear on your statement as a line item for "Services rendered in connection with preparation of response to audit inquiry."

### **Termination or Withdrawal**

Both you and we have the right to terminate any engagement at any time after providing reasonable advance written notice, and our withdrawal or termination is further subject to applicable rules of professional responsibility. In the event that we terminate the engagement, we will, subject to the terms hereof, take such steps as are reasonably practicable to protect your interests in the above matter and, if you so request, we will suggest to you possible successor counsel and provide that counsel with whatever papers you have provided to us. If permission for withdrawal is required by a court, we will promptly apply for such permission, and you agree to engage successor counsel to represent you. Otherwise, this representation will terminate (a) once the specific services covered within the scope of the representation have been completed and we have sent you our final statement for services rendered in this matter, or (b) if the engagement is open ended

without any specific services being described, when more than six months have elapsed from the last time you requested and we furnished legal services to you. We are not obligated to provide advice or other legal services concerning this representation to you after our representation of you is completed, or has terminated. After completion of a matter in which we have represented you, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Even though we may send you newsletters or the like after the date of termination of our engagement, we will have no responsibility to provide you with updates or advice concerning any changes in the law or regulations or future legal developments on any matter, including those matters that may have been the subject of a prior representation, unless you and we have expressly agreed that we will provide this service.

### **Certain Limitations**

Any opinions or views, formal or informal, that we may express to you or to third parties about the outcome of a legal matter are only our best professional estimates. Those opinions or views are necessarily limited by our knowledge of facts at the time that we express them and the law and regulations that are then in effect. You understand and agree that we cannot – and will not – promise to you, or guarantee to you, that any particular outcome will result from your legal matters.

### **Identification of Relationship**

We are pleased that you have chosen Ice Miller LLP as your legal advisor and would like to have your permission to share this with others. By signing the acknowledgement, you hereby grant us the authority to use your name and logo in connection with Ice Miller LLP's marketing activities, including, without limitation, identification of you as a client of Ice Miller LLP on its website and other printed marketing materials and publications issued by Ice Miller LLP. You may revoke the consent granted in this paragraph at any time by contacting our marketing department at [enews@icemiller.com](mailto:enews@icemiller.com).

Revised: July 2018

RESOLUTION NO. 23-R076

RESOLUTION OF THE REDEVELOPMENT COMMISSION OF THE  
CITY OF ELKHART, INDIANA APPROVING SETTLEMENT AGREEMENTS  
ON G&W PROPERTY AT 2306 S. MAIN ENVIRONMENTAL CLEAN-UP LITIGATION

Whereas, the Commission has employed Ice Miller, LLP to pursue claims against prior owners of contaminated property at 2306 S. Main Street in the City of Elkhart (the "Real Estate") to recover the remediation and site clean-up costs; and

Whereas, the parties to the lawsuit have reached an agreement on the terms of settlement of the litigation which will enable the Defendants to expedite and finalize a Voluntary Remediation Program with IDEM and site clean-up, and believes it will be in the best interest of the City and its inhabitants to approve the Agreement in the form attached hereto ( the "Agreement").

NOW THEREFORE, BE IT RESOLVED:

1. The Commission hereby approves the terms of settlement outlined in the Agreement, subject to any final revisions the President deems necessary and appropriate, and authorizes legal counsel to take all actions, including dismissal of the lawsuit, required to effectuate the terms of settlement as set forth in the Agreement.
2. The Officers of the Commission are hereby authorized to execute and deliver the Agreement, and do all acts, which they deem necessary and desirable to carry out the terms of this Resolution.

ADOPTED BY MAJORITY VOTE AT A SPECIAL MEETING OF THE COMMISSION THIS 25<sup>th</sup> DAY OF SEPTEMBER 2023.

CITY OF ELKHART, REDEVELOPMENT  
COMMISSION

By \_\_\_\_\_  
Sandra Schreiber, President

ATTEST:

By \_\_\_\_\_  
Alex Holtz, Secretary

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into by and between The City of Elkhart Redevelopment Commission for the City of Elkhart, on the one hand, and Southside Plating Works, Inc., McDowell Enterprises, Inc., G&W Industries, Inc., ACE Property & Casualty Insurance Company, formerly known as Cigna Property & Casualty Company, successor to Aetna Insurance Company; General Casualty Company of Wisconsin; Sparta Insurance Company, as successor in interest for certain limited purposes to AEIC; Liberty Mutual Insurance Company; West American Insurance Company; Amerisure Insurance Company; and Indiana Insurance Company, on the other hand.

### DEFINITIONS

As used herein, the following terms shall have the following meanings:

- a. "Elkhart" means the City of Elkhart Redevelopment Commission.
- b. "Southside Plating" means Southside Plating Works, Inc.
- c. "McDowell" means McDowell Enterprises, Inc.
- d. "G&W" means G&W Industries, Inc.
- e. The "Defendants" means, collectively, Southside Plating, McDowell, and G&W.
- f. The "Insurers" means, collectively, ACE Property & Casualty Insurance Company, formerly known as Cigna Property & Casualty Company, successor to Aetna Insurance Company; General Casualty Company of Wisconsin; Sparta Insurance Company, as successor in interest for certain limited purposes to AEIC; Liberty Mutual Insurance Company; West American Insurance Company; Amerisure Insurance Company; and Indiana Insurance Company.
- g. The "Parties" means, collectively, Elkhart, Southside Plating, McDowell, G&W, and the Insurers. The Parties may be referred to herein, individually, as a "Party."
- h. "IDEM" means the Indiana Department of Environmental Management.
- i. "VRP" means IDEM's Voluntary Remediation Program.
- j. The "VRA" means the Voluntary Remediation Agreement relating to the Site (IDEM VRP Site. No. 6191103), which was fully executed by Elkhart and IDEM on or around July 22, 2020.
- k. The "Agreement" means this Settlement Agreement and Release.
- l. The "Effective Date" means the date this Agreement is fully executed by all Parties.

m. The “Site” means the real property currently located at what is known as 2306 South Main Street, Elkhart, Indiana. The Site consists of three separate parcels, Nos. 06-16-276-012-012; 06-16-276-011-012; and 06-16-276-013-012.

n. The “Lawsuit” means the lawsuit filed by Elkhart in Elkhart County Superior Court 2, currently styled *City of Elkhart Redevelopment Commission for the City of Elkhart v. G&W Industries, Inc., et al.*, Case No. 20D02-1610-CT-000212.

o. “Summary Judgment Order” means the order issued by the Court in the Lawsuit on January 18, 2023.

p. “PFAS” means perfluoroalkyl and polyfluoroalkyl substances.

q. “Environmental Law” means any federal, Indiana, or applicable local laws, regulations, and ordinances relating to air quality, solid waste management, hazardous waste management, hazardous substances, toxic substances, or the protection of human health or the environment, including, but not limited to: 42 U.S.C. § 9601 et. seq.; 49 U.S.C. § 1251 et. seq.; 33 U.S.C. § 1251 et. seq.; 42 U.S.C. § 6901 et. seq.; 42 U.S.C. § 7401 et. seq.; 15 U.S.C. § 2601 et. seq.; 7 U.S.C. § 136 et. seq.; and those included in Indiana Code Title 13.

r. “Hazardous Substances” means any substance which is, or—before regulatory closure for the Site is obtained pursuant to the terms of this Agreement—becomes, defined, listed, or identified as a hazardous waste or hazardous substance under any Environmental Law or which otherwise forms the basis of liability under any Environmental Law. For purposes of clarity, the term “Hazardous Substances” includes, but is not limited to, trichloroethylene and hexavalent chromium.

s. “Contamination” means any Hazardous Substance that is or was on the Site and/or any Hazardous Substance that is migrating or has migrated from the Site, whether present in soil, groundwater, surface water, indoor air, sub-slab or subgrade vapors, soil gas, fill material, or any other media at or within the Site regardless of who may have caused or contributed to such Contamination.

t. “ELA” means the Indiana Environmental Legal Action statute, as set forth in Indiana Code § 13-30-9-1 *et. seq.*

u. “Claim” means any claim, action, count, cross-claim, counterclaim, appraisal, right, obligation, demand, request, suit, lawsuit, inquiry, subpoena, administrative proceeding, governmental claims or governmental orders, arbitration, mediation, cause of action, order and any other assertion of liability or damages of any kind, any claims or actions for personal injury, bodily injury, property damage, economic loss, response costs, natural resources damage, negligence, strict liability, breach of contract, loss of use, diminution in value, nuisance, trespass, punitive damages, exemplary damages, violation of any statute, regulation or infringement of any other right or amenity protected by law, and/or any claim or action, including but not limited to any administrative action, whether legal or equitable, and whether past, present or future, known or

unknown, anticipated or unanticipated, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or consequential, or foreseen or unforeseen.

v. "IDEM Claim" means any Claim asserted by IDEM against any Party prior to the Effective Date relating to the Contamination.

w. "Person" means singularly, collectively or in any combination of more than one, any individual (including a regulator), corporation, partnership, joint venture, group, association, organization, trust and any other entity (including any estate, guardian or beneficiary thereof) of any kind, nature or description, including, without limitation, any governmental agency.

x. "Third-Party" means any Person other than a Party.

y. "Third-Party Claim" means any Claim asserted by any Third-Party. However, the term "Third-Party Claim" does not include the IDEM Claim.

Other terms may be defined for purposes of this Agreement in other provisions of this Agreement.

### RECITALS

*WHEREAS*, the City of Elkhart is a municipal corporation organized under the laws of the State of Indiana, which is located in Elkhart County, Indiana.

*WHEREAS*, the City of Elkhart Redevelopment Commission (defined above as "Elkhart") was organized by ordinance and is part of the City of Elkhart's government.

*WHEREAS*, Elkhart is the current owner of the Site.

*WHEREAS*, Southside Plating previously owned and operated on the Site.

*WHEREAS*, G&W previously owned and operated on the Site.

*WHEREAS*, investigations conducted at and around the Site have indicated there is Contamination on and emanating from the Site.

*WHEREAS*, Elkhart has alleged that it has incurred, and will continue to incur, costs and damages conducting response and/or remedial actions relating to the Contamination.

*WHEREAS*, on October 12, 2016, Elkhart filed the Lawsuit against Southside Plating and G&W.

*WHEREAS*, Elkhart later amended its claims in the Lawsuit to include claims against McDowell.

*WHEREAS*, in the Lawsuit, Elkhart asserted multiple claims, including a claim under the ELA, and generally alleges that it has incurred, and will continue to incur, damages and costs in connection with the Contamination caused and/or contributed to by the Defendants. Elkhart

generally seeks to recover those costs and other fees and damages from the Defendants through the Lawsuit.

*WHEREAS*, in the Lawsuit, G&W filed a Cross-Claim against Southside Plating and a Third-Party Complaint against McDowell Enterprises, generally alleging that G&W has incurred damages and costs in connection with the Contamination caused and/or contributed to by Southside Plating and McDowell Enterprises. G&W generally seeks to recover those costs and other fees and damages from Southside and McDowell Enterprises through the Lawsuit.

*WHEREAS*, the Defendants deny, among other things, any fault or wrongdoing and deny they are liable for any of the claims asserted against them in the Lawsuit.

*WHEREAS*, on or about February 28, 2019, IDEM submitted a Notice of Liability and Information Request letter to Southside Plating, G&W, and Elkhart, which, among other things, identified each recipient as a potentially responsible person (PRP), notified each recipient of the potential environmental liability each may have incurred with regard to contamination on, and emanating from the Site; provided information to assist each recipient in its consideration of potential liability; served as an official request for information; served as a demand for implementation of necessary response actions; and served as a formal demand for reimbursement of costs IDEM had incurred, and would incur, in the oversight and administration of the Site.

*WHEREAS*, on or about July 22, 2020, Elkhart and IDEM entered into the VRA. Since entering into the VRA, Elkhart has communicated with IDEM regarding, among other things, additional response and/or remedial actions needed to address the Contamination.

*WHEREAS*, the Insurers issued, or are alleged to have issued, insurance policies to the Defendants.

*WHEREAS*, the Parties agree further response and/or remedial actions are needed to remediate the Contamination and obtain regulatory closure for the Site.

*WHEREAS*, on September 19, 2023, the Parties agreed to a Mediation Settlement Agreement relating to their disputes (the "Mediation Settlement Agreement"), which stated that additional documents must be drafted and executed in connection with the matter.

*WHEREAS*, without making any admissions of liability or other concessions, for the purpose of avoiding the expense, inconvenience, distraction, and risks of further litigation or as may be otherwise associated with their disputes, and only on the terms set forth herein, the Parties desire to compromise, settle, and resolve fully and finally the existing disputes between them which relate to, result from, or in any manner are connected with the Contamination, including, but not limited to, those that have been, or could have been, asserted in the Lawsuit.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby

irrevocably acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The Recitals are incorporated herein and made a part hereof as if restated in full.

2. **Settlement Payment.** On or before October 6, 2023, the Defendants and the Insurers shall make a one-time payment to Elkhart in the amount of One Million Dollars (\$1,000,000.00) (the “Settlement Payment”). The Settlement Payment shall be made by wire transfer to an account designated in writing by Elkhart’s attorneys and separately confirmed by Elkhart’s attorneys prior to the transfer being initiated. The Settlement Payment shall be deemed made on the date it is credited to the designated and confirmed account.

3. **Work Performed by the Defendants and the Insurers.** The Defendants and the Insurers shall perform whatever action—including, but not limited to, any investigation, response, and remedial action—is needed to obtain regulatory closure from IDEM’s VRP for the Site, at the commercial/industrial standard and pursuant to the other terms, limitations, standards, and/or conditions set forth in this Agreement (the “Work”). The Work shall be deemed complete only when IDEM has confirmed regulatory closure for the Site pursuant to all terms, standards, limitations, and/or conditions set forth in this Agreement.

4. **Use Restrictions.** The regulatory closure that the Defendants and the Insurers are required to obtain for the Site pursuant to this Agreement shall only impose the following use restrictions:

- a. The Site should not be used for any residential purpose, including, but not limited to, residences, daily care or educational facilities for children (e.g., daycare centers for children or K-12 schools); and
- b. Groundwater at the Site shall not be extracted and/or used for any purpose,

including, but not limited to, human consumption, gardening, industrial purposes or agriculture, except that groundwater may be extracted as part of an environmental investigation or remediation project.

5. **Prohibited Use Restrictions.** The regulatory closure that the Defendants and the Insurers are required to obtain for the Site pursuant to this Agreement shall not impose any use restrictions on the Site other than those set forth in Paragraph 4. By way of example only, the regulatory closure for the Site shall not impose any use restrictions for soil use (except as provided in Paragraph 4(a)), soil management, vapor intrusion, or buildability.

6. **Buildability And Development Of The Site.** The Defendants and the Insurers shall ensure that the performance of the Work will not impede future use or development of the Site, except for the permitted use restrictions set forth in Paragraph 4. For purposes of clarity, upon completion of any excavation performed in connection with the Work, the Site shall remain geotechnically sound for building and development.

7. **Environmental Restrictive Covenants.** For purposes of clarity, to the extent it is necessary to obtain and/or record any Environmental Restrictive Covenant (“ERC”) for any off-site property or from any Third Party to obtain the regulatory closure for the Site required under this Agreement, the Defendants and the Insurers shall bear sole responsibility for obtaining and/or recording any such ERC. This obligation includes, but is not limited to, paying any amount necessary to obtain and/or record any such ERC.

8. **Addendum to VRA.** On the Effective Date, Elkhart, Southside Plating, McDowell, and G&W shall execute an Addendum to the Voluntary Remediation Agreement that seeks to make the Defendants co-applicants to the Elkhart VRA. Elkhart shall cooperate in seeking IDEM’s acceptance of the Defendants as co-applicants to the Elkhart VRA. The regulatory closure

the Defendants and the Insurers are required to obtain for the Site pursuant to this Agreement shall be obtained under the Elkhart VRA unless all Parties agree in writing otherwise.

9. **Submission Of The RWP.** The Defendants and the Insurers shall submit their Remediation Work Plan for the regulatory closure of the Site pursuant to this Agreement (the “RWP”) to IDEM no later than the close of business on October 6, 2023.

10. **Deadline To Obtain Regulatory Closure.** The Defendants and the Insurers shall obtain the regulatory closure for the Site required pursuant to this Agreement on or before September 30, 2028.

11. **Failure To Meet Deadlines.** In the event Defendants or the Insurers fail to meet the deadline set forth in Paragraph 9 and/or fail to meet the deadline set forth in Paragraph 10, Elkhart shall be entitled (but not required) to perform whatever work is necessary to obtain regulatory closure for the Site. In the event Elkhart performs any such work, the Defendants and the Insurers shall reimburse Elkhart for any cost or fee (including, but not limited to, any attorneys’ fees, and attorneys’ fees or costs of collection incurred in seeking the amounts due under this paragraph) incurred in performing that work. The Defendants and the Insurers shall make any required reimbursement to Elkhart within thirty (30) days of receiving proof of the cost or fee incurred by Elkhart.

12. **Long-Term Stewardship.** Regardless of whether any long-term stewardship is implemented or otherwise required in connection with the Contamination or the Site, the Defendants and the Insurers shall obtain the regulatory approvals required pursuant to this Agreement by September 30, 2028, as set forth in Paragraph 10. To the extent any long-term stewardship is implemented or otherwise required in connection with the Contamination or the Site, it shall be the sole responsibility of the Defendants and the Insurers to perform that long-term

stewardship.

13. **Work On The Site.** To the extent the Defendants and the Insurers determine that any Work must be performed on the Site itself, the Defendants and the Insurers shall notify Elkhart of the intent to perform that Work at least fourteen (14) calendar days before that Work begins on the Site. The Defendants and the Insurers shall also coordinate any such Work with Elkhart's designee prior to initiating the Work on the Site. Before any Work is performed on the Site, the Person performing the Work must enter into an access agreement executed by Elkhart that permits the Person to perform the intended Work. Any such access agreement must be substantially the same to the Site Access Agreement attached hereto as Exhibit A.

14. **Contacting IDEM.** Before any Party, or any representative of any Party (including, but not limited to, any environmental consultant for any Party) contacts IDEM in connection with obtaining regulatory closure for the Site, the contacting Party must first notify each other Party in writing of the contacting Party's intent to contact IDEM and of the nature of the intended communication.

15. **Mutual Releases.** When the Settlement Payment is made to Elkhart as set forth in Paragraph 2, and except as provided in Paragraph 15, each Party, on its own behalf and on behalf of any respective former, present, and future officers, directors, employees, agents, shareholders, partners, members, parents, subsidiaries, representatives, administrators, successors, predecessors, heirs, executors, estates, beneficiaries, attorneys, insurers and assigns, releases, remises, acquits, and forever discharges each other Party, and any of its respective former, present, and future officers, directors, employees, agents, shareholders, partners, members, parents, subsidiaries, representatives, administrators, successors, predecessors, heirs, executors, estates, beneficiaries, attorneys, insurers and assigns, of and from any and all Claims that each releasing Person has, had,

or may have against the each released Person arising out of, based upon, relating to, or in any way involving the Contamination, including, but not limited to, those that have been, or could have been, asserted in the Lawsuit.

16. **No Release As To PFAS.** Nothing in this Agreement, including, but not limited to, Paragraph 14, shall require any Party to release, on its own behalf or on behalf of any other Person, any Claim relating to PFAS contamination.

17. **Third-Party Claims.** The Defendants and the Insurers shall defend, hold harmless, and indemnify Elkhart and its former, present, and future officers, directors, employees, agents, shareholders, partners, members, parents, subsidiaries, representatives, administrators, successors, predecessors, heirs, executors, estates, beneficiaries, attorneys, insurers and assigns from and against any Claim from any Third-Party relating to the Contamination and/or the Work. For purposes of clarity, nothing in this Paragraph shall require the Defendants or the Insurers to defend, hold harmless, or indemnify Elkhart or any of its former, present, and future officers, directors, employees, agents, shareholders, partners, members, parents, subsidiaries, representatives, administrators, successors, predecessors, heirs, executors, estates, beneficiaries, attorneys, insurers and assigns from and against any IDEM Claim.

18. **Dismissal of Claims in the Lawsuit.** Within seven (7) business days of the day the Settlement Payment is made to Elkhart as set forth in Paragraph 2, Elkhart and the Defendants shall file a Joint Stipulation of Dismissal With Prejudice, to dismiss the Lawsuit, and all claims asserted in it, with prejudice, with each party to bear its own costs, attorneys' fees, and expenses.

19. **Sufficiency of Consideration.** The Parties acknowledge the sufficiency of the consideration referenced herein to compromise and settle all disputes, actions, causes of action, suits, claims, and demands whatsoever settled, released, remised, acquitted, discharged, or

otherwise resolved herein. The Parties further warrant that no promise or inducement has been offered other than the consideration referenced herein.

20. **No Admission of Liability.** This Agreement and all negotiations, discussions and proceedings leading to this Agreement, as well as any action taken to carry out the terms of this Agreement, shall not constitute any admission of liability or inference of any violation of any statute or law or of any fault, wrongdoing, or liability whatsoever on the part of any Party.

21. **Warranties.** The Parties hereby expressly warrant and represent that:

- a. They are legally competent to execute this Agreement.
- b. They have fully informed themselves of the contents, terms, conditions, and effects of this Agreement, have read and understood this Agreement, and voluntarily accept the terms of this Agreement.
- c. They have not assigned, pledged, or otherwise in any manner, sold or transferred, whether by operation of law, instrument in writing or otherwise, any right, title or interest they have in the matters released and settled herein.
- d. They are not relying upon any advice of any other Party, or of any other Party's counsel or representatives, as to the legal and tax consequences of this Agreement. Further, the Parties hereby release each other and/or their respective representatives from any and all liability and obligations of any nature whatsoever that may hereafter arise by reason of the legal or tax consequences of this Agreement being other than as anticipated by any Party.

22. **Notice.** To the extent any notice must be provided to a Party pursuant to this Agreement, such notice shall be provided by electronic mail to the following representative of that Party:

Elkhart: Brent W. Huber, Ice Miller LLP  
[Brent.Huber@icemiller.com](mailto:Brent.Huber@icemiller.com)

Southside: [\*\*\*]

G&W: [\*\*\*]

For ACE Property &  
Casualty Insurance Company: [\*\*\*]

General Casualty Company  
of Wisconsin: [\*\*\*]

Sparta Insurance Company: [\*\*\*]

Liberty Mutual Insurance Company: [\*\*\*]

West American Insurance Company: [\*\*\*]

Amerisure Insurance Company: [\*\*\*]

Indiana Insurance Company: [\*\*\*]

23. **Necessary Actions.** The Parties shall take any and all steps and actions and execute any and all documents necessary to effectuate the terms and conditions of this Agreement.

24. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, successors, and assigns.

25. **Rules of Construction.** Each Party expressly understands and agrees that this Agreement shall be given a fair and reasonable construction in accordance with the intention of the Parties and without applying a presumption that the terms hereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it being agreed that representatives of each Party have participated in the preparation hereof.

26. **Severability.** All provisions within this Agreement are to be read in conjunction with each other. Provisions should be read together so as to harmonize the whole. Before declaring any provision of this Agreement invalid, the Parties intend for the court to first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents. If any provision of this Agreement is found by a court to be void, voidable, or otherwise

unenforceable, all remaining provisions of this Agreement shall remain in full force and effect so as to carry out the expressed intent of the Parties herein.

27. **Controlling Law.** This Agreement shall be governed by and interpreted, and the rights and duties of the Parties shall be determined, under the laws of the State of Indiana. Any dispute over the terms, conditions, enforcement, breach, or other interpretation of this Agreement of any kind whatsoever shall be subject to the exclusive jurisdiction of the courts of the State of Indiana, and further agree to the personal and subject-matter jurisdiction of those courts for purposes of this paragraph.

28. **Counterparts.** This Agreement may be executed in any number of counterparts and each such executed counterpart shall be deemed to be the original instrument, such that all such executed counterparts together shall constitute one and the same instrument. Electronic and .pdf signatures will constitute valid evidence of execution. All executed copies are duplicate originals equally admissible into evidence.

29. **No Waiver Of Rights By Not Insisting On Strict Compliance.** Failure by any Party to insist on strict compliance with any term, covenant or condition in this Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power in this Agreement at any one or more times be deemed a waiver or relinquishment of such right or power, at any other time or times.

30. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter contained in it and supersedes any prior oral or written negotiations, representations, discussions, understandings, or warranties, express or implied, prior to the execution of this Agreement, including, but not limited to, the Mediation Settlement Agreement. This Agreement is intended to be a final memorialization of the entire agreement and

understanding of the Parties with respect to all of the subject matter described herein. This Agreement may not be modified except in writing, signed by all of the Parties. Except as provided in Paragraph 32, all words, phrases, sentences, and paragraphs, including the Recitals hereto, are material to the execution of this Agreement. No oral representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained, incorporated, and/or memorialized herein. In addition, the Parties represent and warrant that they are not relying on any representations or warranties not contained, incorporated, and/or memorialized in this Agreement.

31. **Breach of Agreement.** In the event of litigation arising from any breach or threatened breach of any part of this Agreement by any Person subject to any of its provisions, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such litigation.

32. **Headings.** All Paragraph headings within this Agreement are provided for convenience and reference only and shall not affect the interpretation of this Agreement in any way.

THE CITY OF ELKHART REDEVELOPMENT COMMISSION FOR THE CITY OF ELKHART

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

SOUTHSIDE PLATING WORKS, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

MCDOWELL ENTERPRISES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

G&W INDUSTRIES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ACE PROPERTY & CASUALTY INSURANCE COMPANY, FORMERLY KNOWN AS  
CIGNA PROPERTY & CASUALTY COMPANY, SUCCESSOR TO AETNA INSURANCE  
COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

GENERAL CASUALTY COMPANY OF WISCONSIN

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

SPARTA INSURANCE COMPANY, AS SUCCESSOR IN INTEREST FOR CERTAIN  
LIMITED PURPOSES TO AEIC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

LIBERTY MUTUAL INSURANCE COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

WEST AMERICAN INSURANCE COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

AMERISURE INSURANCE COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

INDIANA INSURANCE COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

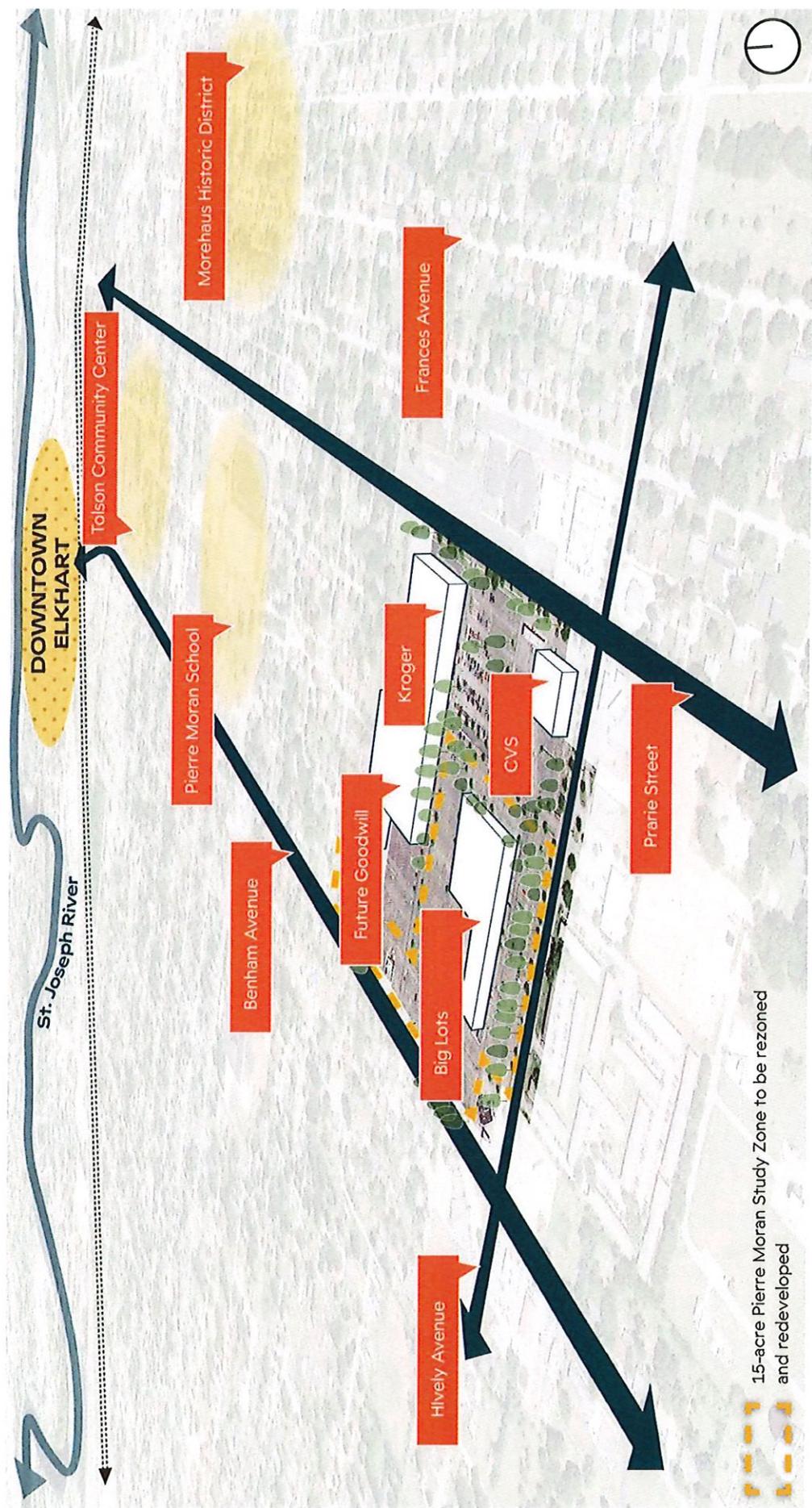
# ENVISIONING A NEW PIERRE MORAN



METICULOUS +

# EXECUTIVE SUMMARY

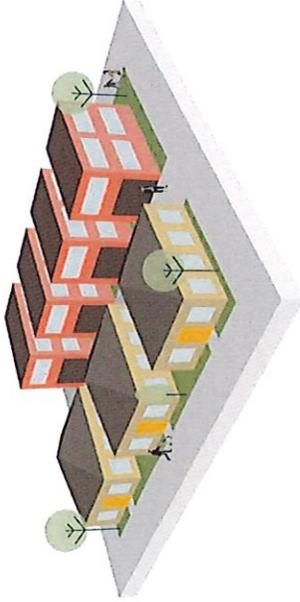
## AREA OVERVIEW



15-acre Pierre Moran Study Zone to be rezoned and redeveloped

# EXECUTIVE SUMMARY

## BUILDING BLOCKS OF DESIGN



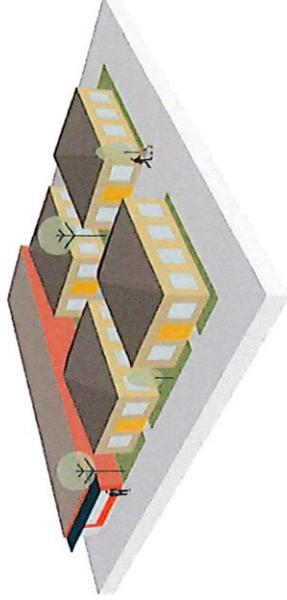
### Need for mix of housing types

The need for housing has been indicated by data throughout the inventory and analysis process. A mix of housing types and price points will be required for a successful development. Missing middle, market rate, affordable, and multi-family housing can intertwine to best optimize available space and create an economically diverse and vibrant community. As housing demand changes so does the type of housing being demanded. With changing trends and location proving to be of significant value, market data points to incoming demographics looking for dense housing in walkable communities.



### Multi-family housing needs to be contextual

The need for multi-family housing has been indicated repeatedly by data found throughout the inventory and analysis process. Multi-family housing, and specifically newer and quality multi-family housing, is scarce in the surrounding context of this study area. However, new multi-family housing should contextually fit in with the existing surrounding neighborhood as well as with any new development. Finding a harmonious blend can be difficult, but through design intervention, spatial planning, and an increase in density, multi-family housing can work to support a neighborhood.

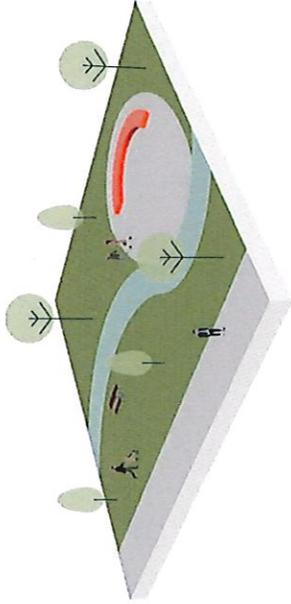
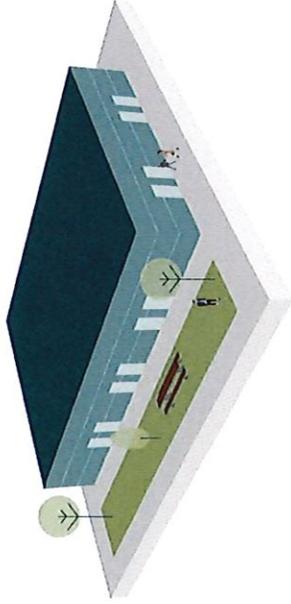


### Opportunity for modest amount of retail

Data gathered throughout the inventory and analysis process has supported a very slight increase in retail demand, more specifically neighborhood retail. Any proposed retail should face major thoroughfares or be properly intertwined in the newly developed neighborhood context. Neighborhood retail can help to support the surrounding community, instill neighborhood pride, and provide economic benefits to neighbors.

# EXECUTIVE SUMMARY

## BUILDING BLOCKS OF DESIGN



### Employment-related uses have potential

A mid-sized or large employer occupying a significant portion of the site could bring jobs and opportunity to the area, and will help to activate the site with people during working hours. Exploring demand for these entities and spatial utilization can help to inform realistic economic driven design decisions.

### Civic and recreation space should not be undervalued

Civic space offers opportunities for everyone; it is best described in flexible terms for diverse programming that has the capacity to reflect the breadth of the neighborhood and their aspirations. Civic space can support farmers markets, outdoor concerts, community festivals, and daily recreation. These spaces can be exceptionally beneficial to this study area due to the fact that they fill in underutilized space so well while benefiting the surrounding community.

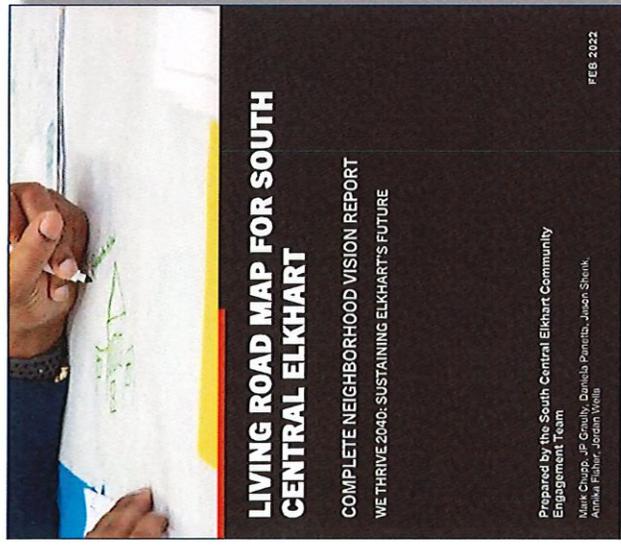


# INVENTORY + ANALYSIS

## EXISTING PLANS + INITIATIVES

The City of Elkhart contracted with a South Central Elkhart Community Engagement Team to design and facilitate a community engagement process for developing a vision and a set of priorities for a Complete Neighborhood in South Central Elkhart.

The report details the community's vision and priorities in 7 areas identified during the Visioning Event. At the January 22nd Community Summit, residents and stakeholders created a consensus vision for South Central Elkhart in each of the 7 areas. The consensus visions are listed >



### 7 PILLARS OF THE SOUTH CENTRAL PLAN:

#### HOUSING

Participants in the Housing group want to live in a vibrant neighborhood that has a higher percentage of owner-occupied properties. More education and awareness is needed on the community's housing related needs and concerns as well as more advertising of existing resources



#### BUSINESS + RETAIL

The Business & Retail group envision a commitment to the triple bottom line an economic concept where businesses do not focus solely on profit but on their social and environmental impact as well. This vision could include educational institutions and a business training incubator that encourages business models like social entrepreneurship.



#### EMPLOYMENT

The Employment group wants to see more people of color in management, better representation and awareness of Black local leaders, better technology training, living wage jobs, robust transit to large employment areas, and more business in the South Central neighborhood.



#### BUILT + NATURAL ENVIRONMENT

The Built & Natural Environment group focused on improving infrastructure, green space, and sustainability.



#### RECREATION, CULTURE, CHILDREN + FAMILIES

Their neighborhood vision includes good, local schools that parents are happy to send their kids to. More school level activities, robust leadership, and the presence of colleges were elements that completed their collective vision.



#### SAFETY, LEGAL, HEALTH + HUMAN SERVICES

Addressing behavioral and other challenges children and teens face was an important part of this collective vision. To achieve this vision teachers will also need support in learning how to effectively address "problem" behaviors demonstrated by students and how to assist students facing challenges



#### IT'S ALL ABOUT THE PEOPLE: CONNECTING, UNITING, + CREATING TOGETHER

This group believes that the community as a whole must decide how to define South Central. They envision a community that thrives on a welcoming culture where residents feel connected. This includes more active neighborhood associations, more activities people can do together and places where people can share their culture through food, picnics, music, sports, etc.



# INVENTORY + ANALYSIS

## BUILDABLE AREA

### Assessing Development Yield for Residential Units

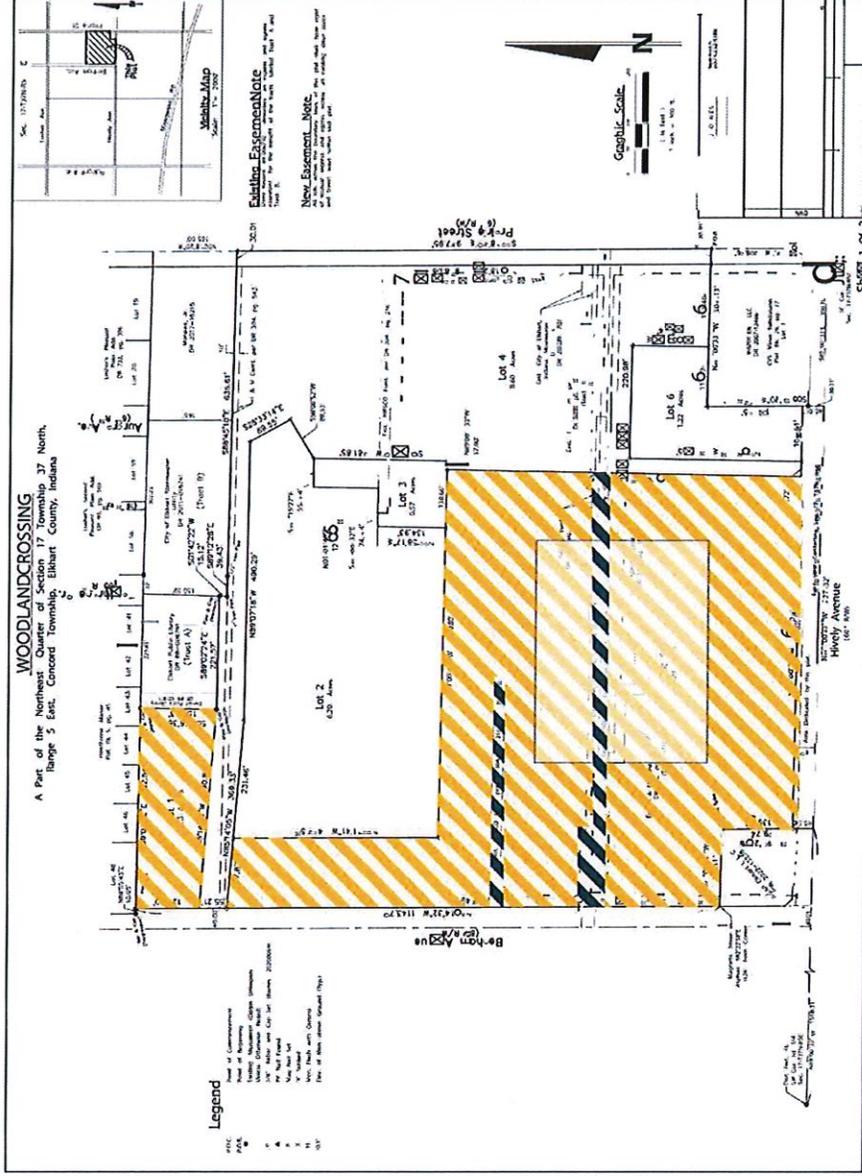
Analyzing contextual zoning is an important step when planning a new neighborhood because it can impact the overall design and development of the neighborhood, as well as its potential for success.

Contextual zoning refers to the regulations and restrictions that govern the use of land around a specific area. These regulations determine the type of uses that are allowed, such as residential, commercial, or industrial, as well as the density of development, building height, and other design elements.

### Why Does This Matter?

By analyzing contextual zoning, planners and developers can determine the most appropriate uses for the land and design the neighborhood to meet the needs and desires of the community. Understanding zoning conditions surrounding a redevelopment helps to inform future development by ensuring planners do not prepare developments out of line with its context.

Calculations of Development Yield			
Factors	AC	S.F.	DU FA
Gross	15.52	676,051	
LESS Carve Outs	-2.50	(108,900)	
LESS Environmental	-1.00	(43,560)	
EQUALS Not Buildable	12.02	523,591	
LESS ROW	-1.20	(52,140)	
LESS OS	-3.10	(135,210)	
EQUALS Buildable Lots	7.72	336,241	
<b>Development Yield</b>			
Max Units based on Bldg Footprint & Height [zoning envelope]			776
Max Units based on Density (50 DU/Acre)			672,482



# INVENTORY + ANALYSIS

## HOUSING DEMAND

### Annual Demand by Units

Housing demand includes multi-family units, attached residential, and detached residential. Market capture as a percentage of total potential housing market helps to quantify number of households actively seeking new housing in a given year. Previous housing studies have considered this figure to be between 10 and 15% of the total market potential within Elkhart County.

Utilizing median market potential figures for new housing indicates a possible market absorption of 88 units per year. This includes both for-sale and for-rent units. Of these, the study area could support 42 rental housing units per year.

	LOW	MID	HIGH
Attached Units	29	36	44
Detached Units	34	52	63
<b>Total Units (yearly)</b>	<b>63</b>	<b>88</b>	<b>107</b>

Housing market potential for Pierre Moran study area per year\* assuming a 10% market capture for low calculations, 12% as mid-, and 15% for high. Higher absorption is given to rentals as market preferences suggest.

**14,928**

Population of Elkhart Study Area

/

**206,921**

Population of Elkhart County

=

**7.2%**

Of Elkhart County lives in Pierre Moran Study Area

X

**3,899**

Rental housing market potential for Elkhart County per year

X

**15%**

Market capture of potential renters

=

**42**

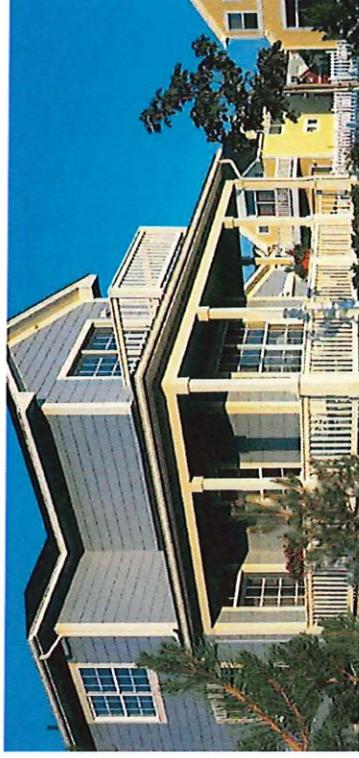
Rental housing units needed per year in Pierre Moran study area.

## ATTACHED + MULTIFAMILY HOUSING



Attached housing refers to housing where one home is "attached" to another. It includes residences that share walls, such as townhomes, apartments, or condominiums, and can be for-lease or for-sale.

## DETACHED HOUSING



Detached housing refers to housing where one home is "detached" from another. It includes residences, such as single-family homes, which can be for-lease or for-sale.

1 An Analysis of Residential Market Potential - Elkhart County, 2022. Zimmerman/Volk Associates, Inc., 2022

# INVENTORY + ANALYSIS

## RETAIL DEMAND

### Retail Demand by Square Footage

The retail trade area was determined by creating a 5-minute drive time buffer around the Woodland Crossing Shopping Center, building off a previous study conducted by Gibbs Planning Group in November 2020.

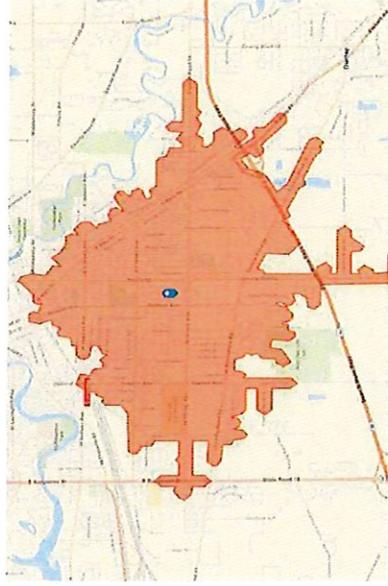
Given the current vacancy rate at Woodland Crossing and overall macroeconomic trends suggesting challenges with leasing retail, a high-level analysis found a minor retail surplus of 6,211 square feet. This indicates that the Pierre Moran redevelopment should not focus on retail as a key component. However, given the reinvestment by Goodwill and a medical urgent care in the former Sears facility, there can be some demand for convenience and/or food options in the near future. Retail market demand conducted with ESRI Business Analyst suggests an increase in residential density could lead to demand of up to 5,000 square feet of additional retail if current vacancy is accounted for, either through absorption or reprogramming.



Retail market potential for Pierre Moran study area per year<sup>1</sup> assuming absorption and/or reprogramming of existing retail vacancy.

<sup>1</sup> ESRI, South Main Retail Market Analysis-Elkhart Indiana, 2020. Gibbs Planning Group and proprietary METICULOUS methodology.

Retail Category	Total Demand	Supportable Square Footage
Apparel + Shoe Stores	\$9,954,936	2,600
Department Store Merchandise	\$27,333,370	1,300
Electronics + Appliances Stores	\$7,198,474	2,200
Furniture Stores	\$5,709,955	1,700
Hardware	\$12,543,572	2,000
Jewelry Stores	\$3,945,329	1,000
Lawn + Garden	\$3,628,907	1,300
Gift Stores	\$3,300,218	1,200
Foods: Cheeses, Meats, Produce	\$3,906,232	1,400
Sporting Goods	\$7,742,519	1,700
<b>Retailer Totals</b>	<b>\$85,263,542</b>	<b>16,400</b>
Bars, Breweries, + Pubs	\$2,847,962	1,700
Full Service Restaurants	\$12,657,590	2,100
Limited Service Eateries	\$11,398,762	2,100
Coffee, Ice Cream, Pretzels, etc.	\$1,678,297	1,200
<b>Restaurant Totals</b>	<b>\$28,582,611</b>	<b>7,100</b>
<b>Total Retail Demand</b>	<b>\$113,846,123</b>	<b>23,500</b>



Retail Trade Area: 5-Minute Drive From Woodland Crossing

**101,939**

Leasable square footage of Woodland Crossing

**29,711**

Current vacant square footage of Woodland Crossing

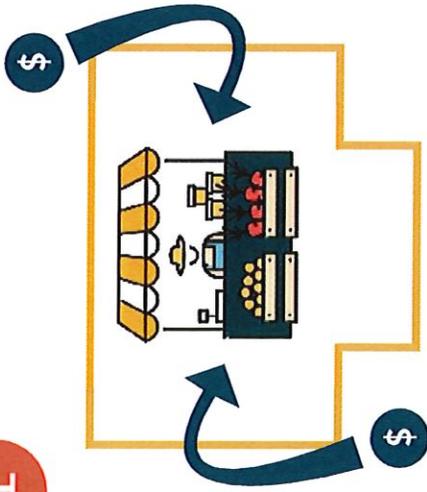
**-6,211**

Square footage of retail gap within five-minute drive of Woodland Crossing

# MASTER PLAN

## HIGH LEVEL PLANNING IDEAS

1



### Parking to Plaza

The parking to plaza idea provides a necessary space for local businesses and residents to interact. This concept focuses on tactical urbanism at the local scale and emphasizes the need for a public plaza. Providing a public plaza offers space for local markets, public events, and neighborhood activities. Acting as the beating heart of the surrounding community, this concept prioritizes local investment, opportunity, and activity while providing room for growth.

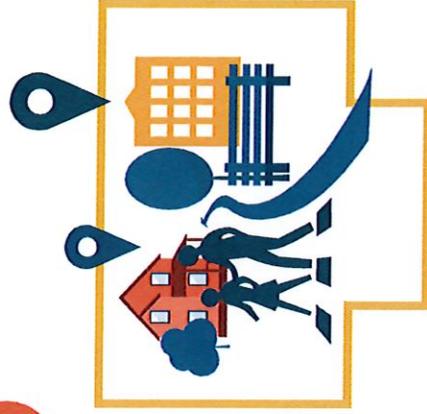
2



### Vacancy to Vibrancy

This idea focuses on infilling vacant and underutilized space with high demand uses such as housing, recreation space, and neighborhood-focused retail. This concept fills in the space surrounding existing uses with mutual beneficial development. While embracing growth, the vacant to vibrant concept preserves existing businesses and prioritizes community needs.

3



### Incubator

The incubator idea focuses on creating an optimal landscape that meets the present and future needs of the surrounding community. This concept uses development to create spaces that are currently missing from the surrounding context such as multifamily housing, neighborhood retail, recreation space, market space, and plaza space. The goal of the incubator concept is to create a destination that people not only want to visit, but also want to live in. This can be achieved by maximizing space with a diversity of programming elements.

# DESIGN CONCEPTS

## CURRENT CONDITIONS



### Short Term Opportunities (3-6 MONTHS)



Overabundance of parking - can be opportunity for pop-up markets and tactical urbanism



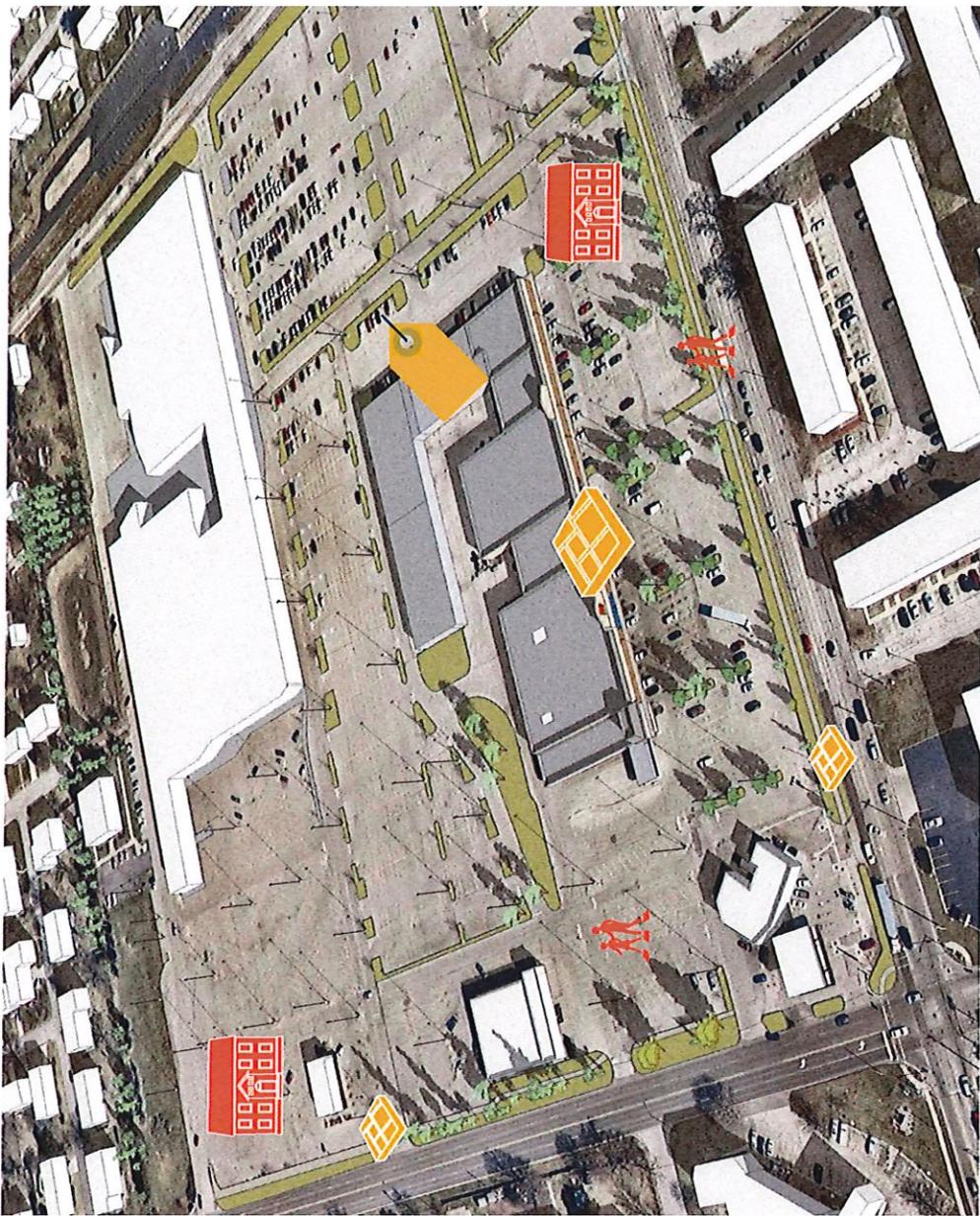
General lack of easements throughout property means new construction will not be extremely constrained



Oversaturation of retail provides opportunity for reprogramming



Lack of pedestrian infrastructure



# DESIGN CONCEPTS

## PHASING: SHORT-TERM NODE

1

### Short Term Opportunities (12-18 MONTHS)

This stage provides space for local businesses and residents to interact. This concept focuses on tactical urbanism at the local scale and emphasizes the need for a public plaza. Providing a public plaza offers space for local markets, public events, and neighborhood activities. Acting as the beating heart of the surrounding community, this concept prioritizes local investment, opportunity, and activity while providing room for growth. The conversion of a portion of the existing strip mall into a business incubator helps to support local entrepreneurs.

#### Key Elements



##### EMPLOYMENT

Partial retail of the existing strip mall is converted into a neighborhood business incubator where residents can receive job training, small business support, and business classes.



##### RECREATION, CULTURE, CHILDREN + FAMILIES

Parking lot is reclaimed for a public green where markets, pop-up fairs, and festivals can be held.



##### IT'S ALL ABOUT THE PEOPLE

Paved multi-modal paths along Hively and Benham help to increase connectivity from the development to the surrounding community.



##### HOUSING

The northern most lot can support a series of for sale residential townhomes (1-2 stories) while a mixed-use/multi-family supportive housing rises along Hively, helping to house 50-70 residents.



# DESIGN CONCEPTS

PHASING: SHORT-TERM NODE

1

## Short Term Opportunities (12-18 MONTHS)

Due to lease extension of Big Lots, phasing is sure to work around that footprint while strategically demolishing underutilized retail stalls to create opportunities for innovative infill. Retail is emphasized along the new interior "Main St." helping to create a sense of intimacy and enclosure, which builds pedestrian interaction and safety. New housing is built with neighborhood context in mind, with townhouses influenced by New American Craftsman/Farmhouse stylings. The pop-up public plaza can host year-round programming and events such as job fairs in collaboration with the business incubator.

**12,000 S.F.**

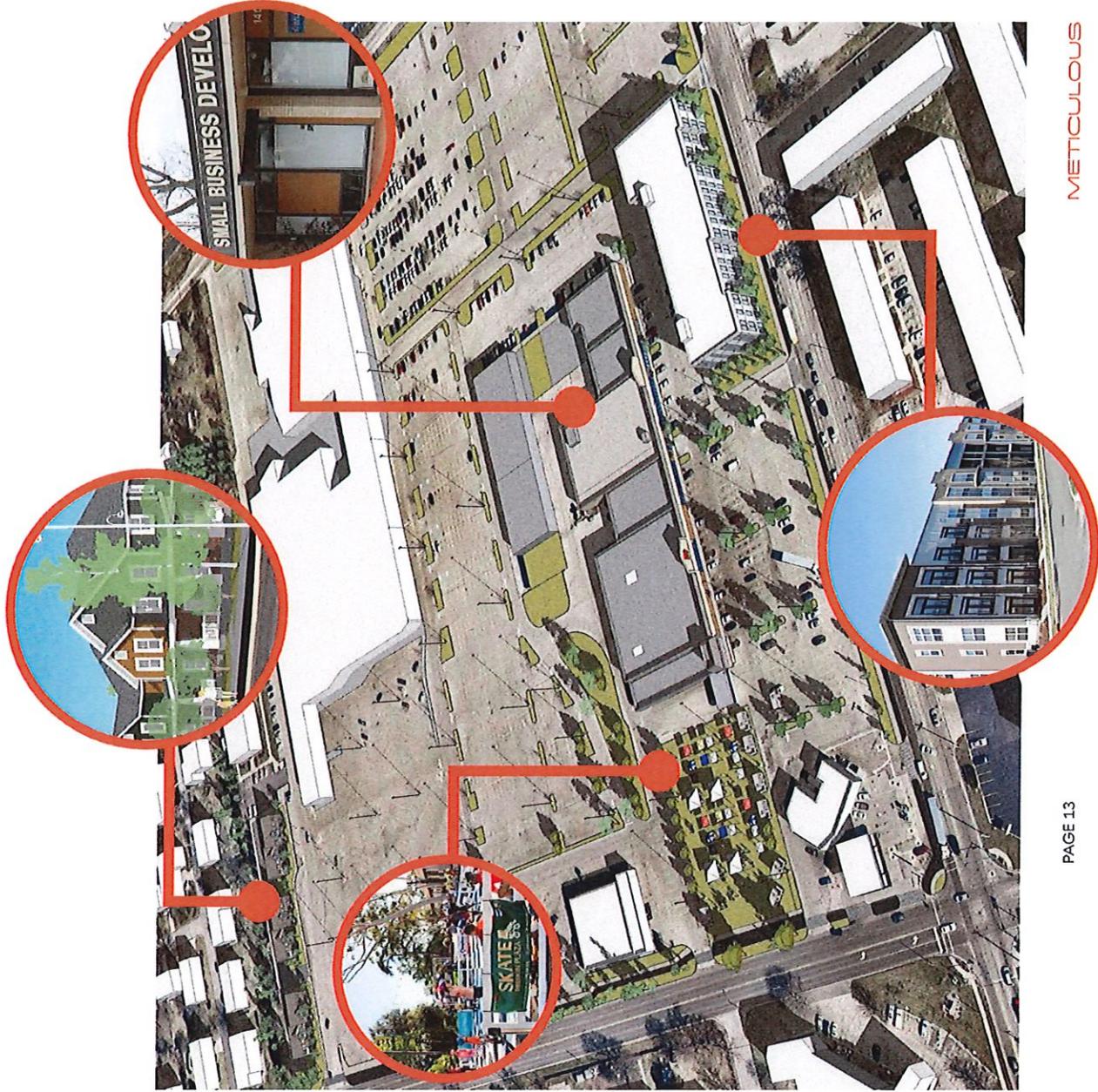
Neighborhood business incubation space helping residents build and grow skills and businesses

**55**

Rental multi-family units catered to workforce housing with a possible makers space or neighborhood retail component

**8-10**

New for-sale townhouses



# DESIGN CONCEPTS

## PHASING: MID-TERM NODE



### Mid Term Opportunities (18-36 MONTHS)

This idea focuses on infilling vacant and underutilized space with high demand uses such as housing, recreation space, and neighborhood-focused retail. This concept fills in the space surrounding existing uses with mutual beneficial development. While embracing growth, the vacant to vibrant concept preserves existing businesses and prioritizes community needs while building up a new “community center” Main Street that can offer residents all their daily needs within a short walk or drive.

#### Key Elements



##### RETAIL

The existing strip mall is retrofitted to allow partial demolition and construction of a circulation grid, similar to traditional neighborhood development. At this point in the development cycle, demand allows construction of targeted retail (like a coffee shop) for local residents and workers.



##### INFRASTRUCTURE

The paved trails are activated with lighting fixtures and benches to create a sense of place. The retrofitted southern strip mall becomes home for neighborhood services, helping to establish all resident needs within a short walk.



##### HOUSING

Housing infill continues to strategically balance both for-sale units (10-12 walk-ups) and multi-family workforce or senior housing, depending on demand drivers. Phase II would add another 60-70 rentals.



# DESIGN CONCEPTS

## PHASING: LONG-TERM NODE

3

### Mid Term Opportunities (18-36 MONTHS)

This stage begins creation of a town center, building off existing public plaza with permanent placemaking elements like lighting fixtures and seating, and infrastructure improvements around the new Node. This begins to reintroduce traditional neighborhood development patterns. Due to demand models suggesting retail may be viable at this stage, targeted retail such as a coffee shop may be introduced to provide convenience for residents and workers. Depending on demand at this time, new housing can cater to workforce or senior residents, with an eye on introducing full market-rate in the next phase.

**3-5,000 S.F.**

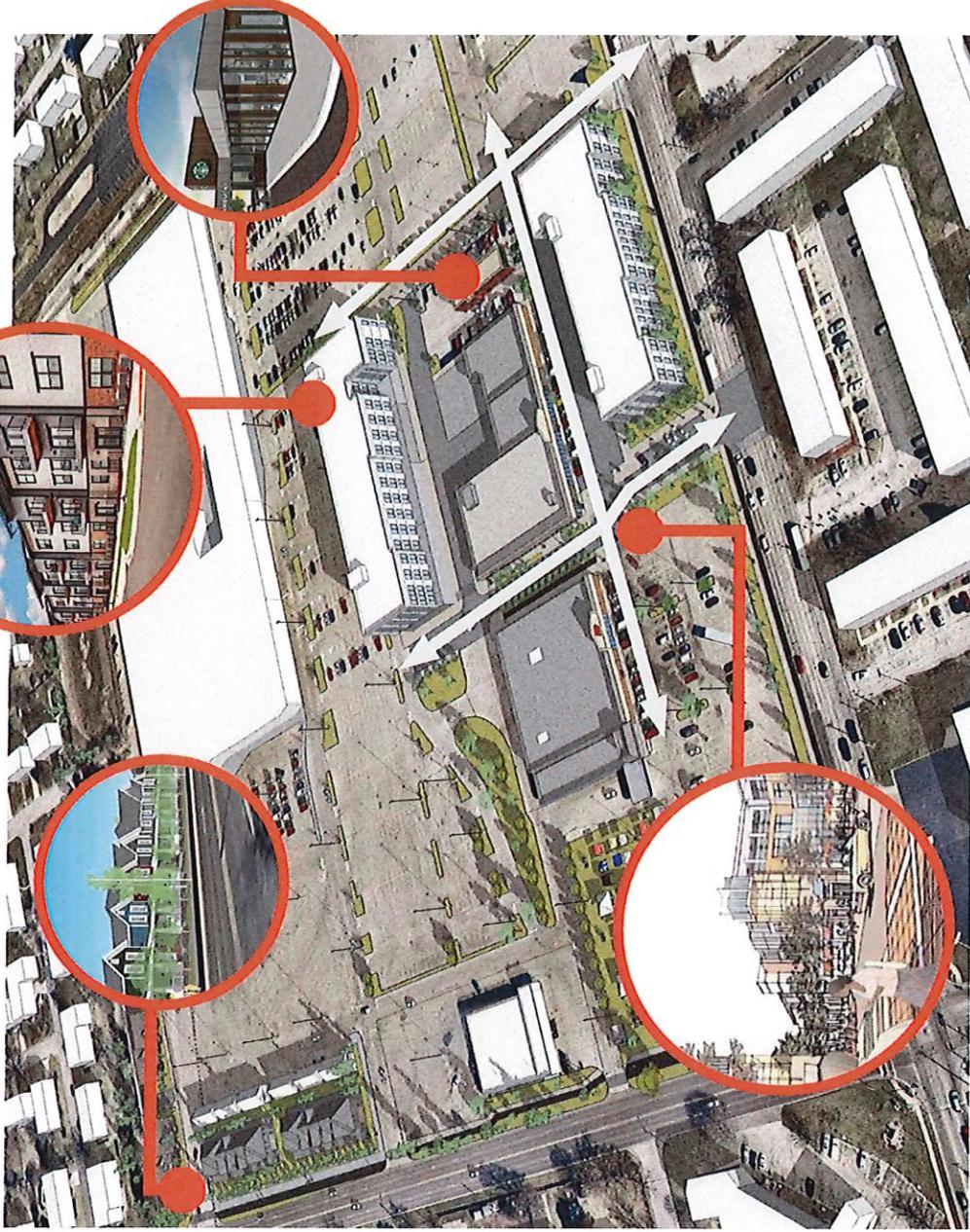
New retail targeted for residents, students, and workers in the Neighborhood Opportunity Node

**60-70**

Rental multi-family units catered to workforce housing with a possibility for retaining first floor commercial on existing strip mall.

**10-12**

New for-sale townhouses



# DESIGN CONCEPTS

## PHASING: LONG-TERM NODE

### 3

#### Long Term Opportunities (36 MONTHS+)

This idea continues infilling vacant and underutilized space with an assumption that previous phases have now included demand for extended programming. The buildout includes the introduction of mixed-use structures offering space for professional services and additional housing infilling remaining lots. A true town center is created, and allows the opportunity for acquisition of remaining gas station lot to create full enclosure of the public green.

#### Key Elements



**RETAIL**  
The existing public green is abutted by mixed-use structures allowing permeability between the pedestrian realm and inside human-scaled buildings.



**RECREATION, CULTURE, CHILDREN + FAMILIES**  
Additional green space is introduced allowing for a possible dog park or playground. These green spaces are safely enclosed by professional services and community-facing retail, creating a true public "third place"



**HOUSING**  
Housing infill continues to strategically balance both for-sale units (8-10 walk-ups) and introduce market-rate housing, depending on demand drivers. Phase III would add another 150+ rentals.



# DESIGN CONCEPTS

## PHASING: LONG-TERM NODE

3

### Long Term Opportunities (36 MONTHS+)

This stage cements the Pierre Moran study area as a Neighborhood Opportunity Node, building off increased density and activation to include supportive services, professional office space, and additional housing and retail. This buildout is contingent on market factors and success of previous phases. Future phasing would possibly involve more intensive infrastructure improvements along Hively and Benham to allow increased connectivity and perhaps a reroute of the two trolley lines to come through the development.

**7-10,000 S.F.**

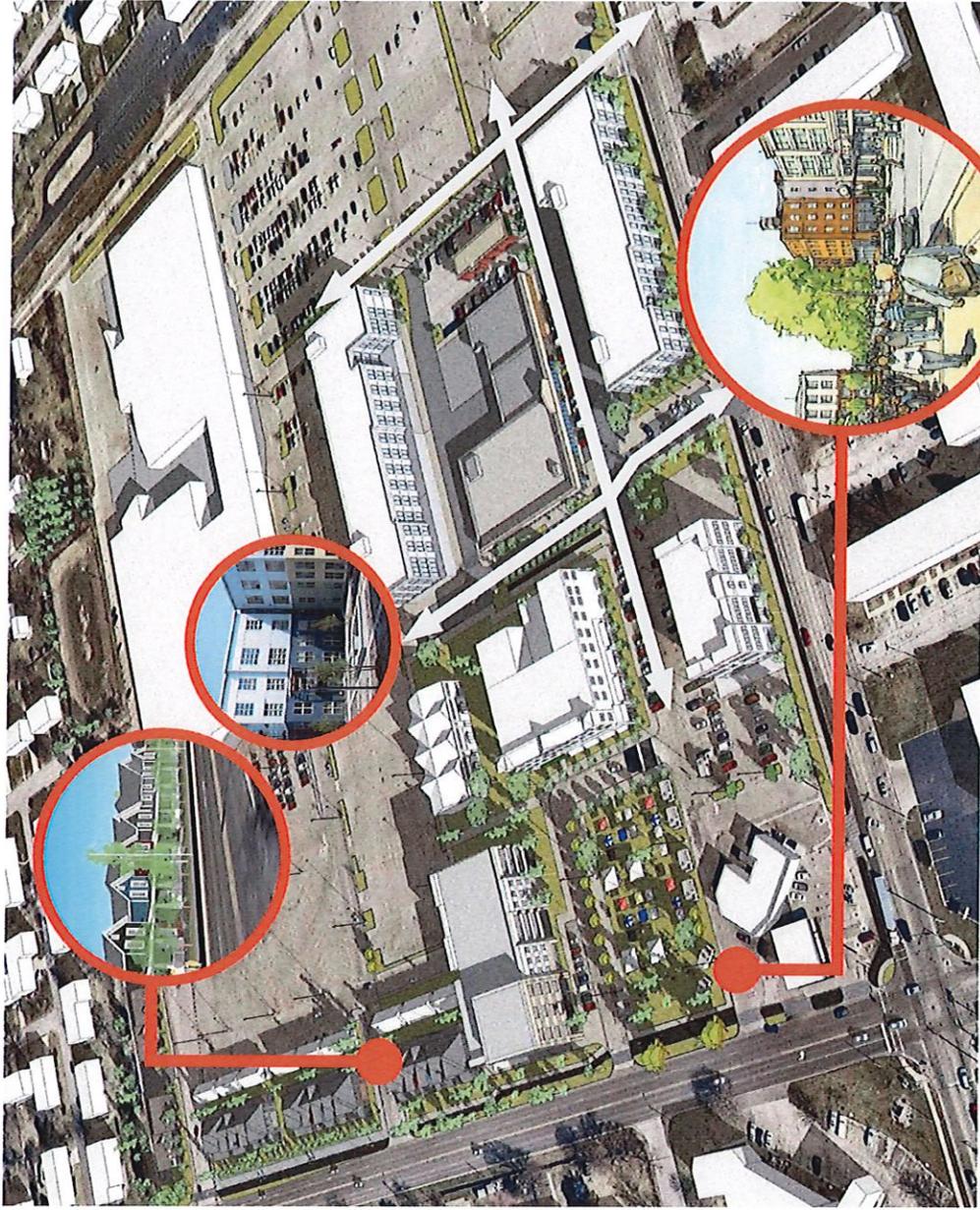
New retail and professional retail targeted for residents, students, and workers in the Neighborhood Opportunity Node

**150-250**

Rental multi-family units catered to market-rate housing with a possibility for retaining first floor commercial on existing strip mall.

**8-10**

New for-sale townhouses



# DESIGN CONCEPTS

## VISUALIZATION

