

**ECONOMIC DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF  
FISHERS, FISHERS TOWN HALL BUILDING CORPORATION, RQAW  
CORPORATION, AND BW DEVELOPMENT, LLC**

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of June, 2016, by and among the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation ("City"), the Fishers Town Hall Building Corporation, an Indiana non-profit corporation ("Building Corp."), RQAW Corporation, an Indiana for-profit corporation ("RQAW"), and BW Development, LLC, an Indiana limited liability corporation ("Developer") as follows:

WHEREAS, RQAW desires to relocate its headquarters to the Office Site;

WHEREAS, within the next thirty (30) days, Building Corp. anticipates becoming the contract purchaser of portions of the Office Site that it does not currently own;

WHEREAS, Developer desires to construct the Office Building on the Office Site;

WHEREAS, Developer anticipates a capital investment of not less than Four Million and no/100 Dollars (\$4,000,000.00) in the Project;

WHEREAS, as a result of the Project, by or before December 31, 2021, RQAW will relocate to or hire one hundred (100) FTEs at the Office Site;

WHEREAS, each of RQAW and Developer have advised the City that it will complete the Project, if the City or Building Corp. will: (a) acquire all portions of the Office Site; (b) transfer the Office Site to Developer; (c) waive City Fees on the Office Site; and (d) provide Developer the Garage Spaces; and

WHEREAS, the City and Building Corp. have determined that it is in the best interest of the City to incent RQAW to relocate its headquarters and to incent Developer to construct the Project.

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

**ARTICLE I. RECITALS**

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

**ARTICLE II. MUTUAL ASSISTANCE**

The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications,

as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent of this Agreement.

### **ARTICLE III. DEFINITIONS**

**City Fees** means eligible, applicable local fees assessed by the City and associated with the Office Project on the Office Site, including but not limited to impact fees, improvement location fees, building permit fees, sign permit fees, variance or re-zoning request fees and inspection fees.

**Closing** means: (a) with respect to Developer and RQAW: (i) the payment of the Purchase Price; and (ii) the closing of the Project Loan; and (b) with respect to City and Building Corp.: (i) the transfer of the Office Site to Developer; and (b) the grant of the Parking Easement to Developer and RQAW, all consistent with **Section VIII**.

**Closing Agent** means Gina Longere, First American Title Insurance Company, 251 E. Ohio Street, Suite 555, Indianapolis, IN 46204.

**Closing Date** means the date of Closing.

**Code** means the Nickel Plate District Code.

**Commencement Date** means the date that Developer Commences Construction of the Project.

**Commence(s) Construction** means material and substantial work on the Office Site related to the construction of the Project such as demolition of the existing buildings together with installation of footings, foundations, and infrastructure and shall not be deemed to occur as a result of mere excavation work.

**Commitment Violation** means Developer's failure to meet the Development Commitment, including the commitment to Commence Construction and Continuously Construct the Office Building.

**Continuously Construct** means construction without delay or lapse in time of more than five (5) consecutive days or fifteen (15) non-consecutive days within a sixty (60) day time period, subject to Force Majeure.

**Cure Period** means a period of: (a) ten (10) days after written notice of default in the case of any monetary default; and (b) fifteen (15) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within fifteen (15) days, despite reasonably diligent efforts, then the fifteen (15) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the

fifteen (15) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than thirty (30) days after the date of the default. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under **Section 6.03**, any specific cure periods for such default being expressly set forth in **Section 6.03**.

**Development Commitment** means Developer's agreement and obligation to complete construction of the Office Building on the Office Site.

**Divestiture Payment** means (i) the amount of the proceeds of the Project Loan disbursed pursuant to the terms and conditions of the Project Loan Documents; plus (ii) unpaid, accrued interest on the Project Loan at the regular (non-default) rate of interest.

**Effective Date** means the date in the first paragraph of this Agreement.

**Force Majeure** means any delay occasioned by causes beyond a party's control, including, but not limited to, work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies but not including normal inclement weather in Central Indiana, such as cold, ice, sleet, snow or hail. The party asserting Force Majeure shall deliver written notice to the other party and any performance required shall be excused for the period of days that such performance is delayed and the deadline for such performance shall be extended by the same period.

**FTE** means full-time employee equivalents.

**Garage** means a parking garage to be constructed at and about the Office Site.

**Garage Spaces** means one hundred (100) exclusive parking spaces in the Garage.

**Job Commitment** means RQAW's agreement and obligation to employ not less than one hundred (100) FTEs at the Office Site at an average salary of not less than Eighty Thousand and no/100 Dollars (\$80,000) annually per FTE by December 31, 2021.

**Multi-Party Agreement** shall mean an agreement by and among City or Building Corp., Developer, and the Project Lender pursuant to which (a) the Project Lender agrees to give to City or Building Corp.: (i) notices of defaults by Developer under the Project Loan Documents; (ii) the right (but not obligation) to cure defaults by Developer under the Project Loan Documents; (iii) the right to purchase the Loan in the event of a default by Developer under this Agreement, or the Project Loan Documents if such default is not cured within the applicable cure period for an amount equal to: (A) the proceeds of the Project Loan disbursed pursuant to the terms and conditions of the Project Loan Documents; and (B) unpaid, accrued interest at the regular (non-default) rate of interest on the Project Loan; and (b) provides for the release of the Project Loan in the event of the exercise of the Power of Termination and upon payment of the Divestiture Payment under **Section 6.03**. The Multi-Party Agreement shall be in form and substance reasonably acceptable to City, Building Corp., Developer, and Project Lender.

**NPR Committee** means the Nickel Plate Review Committee.

**Office Building** means a commercial office building that is at least twenty-five thousand square feet (25,000sq. ft.) in size to be constructed on the Office Site.

**Office Site** means property currently generally known as 11697 Maple Street and 11678 Moore Street, currently identified by parcel identification nos. 15-10-36-04-04-003.000, 15-10-36-04-04-004.000 and 15-10-36-04-03-001.000 and depicted in **Exhibit A** attached hereto and incorporated herein.

**Office Site Deed** means a limited warranty deed by which Building Corp. transfers the Office Site to Developer which deed reserves the Power of Termination and is subject to the Permitted Exceptions.

**Parking Easement** means an easement provided to RQAW and Developer that includes the following minimum terms, among others: (a) the right to exclusively use the Garage Spaces from 7:00 a.m. to 5:30 p.m. Monday through Friday; (b) that the easement is perpetual and non-revocable; (c) that the easement runs with the Office Site; (d) that there is no charge to Developer or RQAW for the use, operation, maintenance, or insurance coverage of the Garage Spaces, except that, if taxes are assessed on the Garage, Developer and/or RQAW shall be responsible for its proportionate share (based on the Garage Spaces compared to the total number of spaces in the Garage (100/total number of spaces)) of such taxes; (e) the requirement that City provide one hundred (100) replacement parking spaces if the Garage becomes obsolete, or is destroyed or condemned which spaces shall be located within the vicinity of the Office Building and reasonably acceptable to a commercial office tenant; and (f) the Power of Termination.

**Permitted Exception** means (a) real estate taxes for the year of closing and thereafter; (b) all applicable zoning and other ordinances, regulations, and laws; (c) all covenants, easements, conditions, restrictions, and other exceptions disclosed on the title commitment and/or survey, which are not objected to by Developer pursuant to **Section 8.02**; and (d) the Power of Termination permitting Building Corp. or City, to re-enter the Office Site and, upon payment of the Divestiture Payment, divest Developer or RQAW, as applicable, of title thereto and to cause (i) title to Office Site to re-vest in Building Corp.; and (ii) the Parking Easement to terminate.

**Permitting Violation** means Developer's failure to comply with applicable City ordinances or to obtain applicable permits or complete all applicable reviews and inspections.

**Power of Termination** means an exception in the Office Site Deed and the Parking Easement permitting Building Corp. or the City to re-enter the Office Site and, upon payment of the Divestiture Payment, divest RQAW of title thereto and to cause title to Office Site to re-vest in Building Corp. and cause the Parking Easement to terminate, in the event of a default described in **Sections 6.03** which re-vesting and termination shall be free and clear of all matters other than those to which title was subject upon Building Corp.'s delivery of the Office Site Deed to Developer. The Power of Termination shall lapse and expire by its own terms upon Substantial Completion of the Project. Upon lapse and expiration of the Power of Termination,

the applicable City or Building Corp., upon Developer's written request, shall execute and deliver an affidavit releasing such right in recordable form.

**Project** means Developer's development and construction of the Office Building on the Office Site.

**Project Lender** shall mean the financial institution that is not affiliated with Developer making the Project Loan, and any successor or assignee thereof.

**Project Loan** shall mean a construction loan to Developer closed at Closing used to: (a) acquire the materials to construct the Project; (b) design and/or construct the Project; and (c) fund other soft costs, fees, and expenses incurred by Developer in connection with the design and/or construction of the Project.

**Project Loan Documents** means the documents evidencing and related to the Project Loan.

**Purchase Price** means Five and no/100 Dollars.

**Reimbursement Amount** means an amount equal to the amount of City Fees waived related to the Project.

**Substantial Completion** shall mean with respect to the Project, the date that Developer receives the final certificate of occupancy for the Office Building, subject only to tenant improvements, certificates of occupancy for individual tenant spaces, and minor punch list items that do not interfere with the use or operation thereof.

**UDO** means the City's Unified Development Ordinance.

#### **ARTICLE IV. RQAW AND DEVELOPER OBLIGATIONS**

In consideration of the incentives provided in Article V, RQAW or Developer shall perform or cause to be performed the following:

- A. Accept fee simple title to the Office Site;
- B. Reach Substantial Completion on the Project within thirty (30) months of the Execution Date;
- C. Obtain the Project Loan;
- D. Maintain the Project in good condition and repair;
- E. By or before December 31, 2018, relocate its headquarters to the Office Site;
- F. By or before December 31, 2021, fulfill the Job Commitment; and
- G. Perform its other obligations set forth herein.

#### **ARTICLE V. ECONOMIC DEVELOPMENT INCENTIVES**

In consideration for Developer fulfilling the Development Commitment and for RQAW fulfilling the Job Commitment, the City shall provide the following economic development incentives:

**Section 5.01. Fee Waiver.** For a period of thirty (30) months from the date of this Agreement, the City shall waive the City Fees for the development and construction of the Project.

**Section 5.02. Transfer of Site.** As further set forth in Article VIII, Building Corp. shall convey the Office Site to Developer pursuant to the Office Site Deed.

**Section 5.03. Parking Easement.** At Closing, the City shall execute and provide to Developer the Parking Easement.

## ARTICLE VI. COMPLIANCE AND DEFAULTS

**Section 6.01. Architecture and Design.** Prior the Commencement Date, Developer shall obtain all requisite approvals of the City's NPR Committee as required by the Code. Developer, at its sole cost and expense, shall submit, among other documents required by the Code, architecture and design documents for the Project. The NPR Committee shall timely review Developer's submittals for compliance with the Code and applicable standards included in the City's UDO or other applicable City ordinances.

**Section 6.02. Continuous Construction.** Developer hereby acknowledges and agrees that Developer's agreement to Continuously Construct the Project after it Commences Construction and fulfill the Development Commitment is in consideration and a material inducement for the City's and Building Corp.'s obligations described herein. Accordingly, Developer hereby agrees to diligently and uninterruptedly Continuously Construct the Project until it is complete.

If Developer fails to Continuously Construct the Office Building, the waiver of City Fees on the Office Building and Office Site shall automatically terminate.

**Section 6.03. Work Stop.** Subject to Force Majeure, (i) if the Project is not completed within thirty (30) months of the Execution Date; or (ii) all construction work of a material nature ceases with respect to the Project for a period of at least sixty (60) consecutive days or for more than a total of ninety (90) days during any one hundred eighty (180) day period, then, at any time until construction work of a material nature resumes and is continuing, City may elect, in addition to any other legal and equitable remedies available to City, to: (i) unilaterally terminate this Agreement and the Parking Easement; and (ii) re-enter the Office Site and exercise its Power of Termination and cause title to the Office Site to re-vest in Building Corp.; in each case, without any liability or obligation to RQAW, Developer or Project Lender. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to: (A) Developer and RQAW of written notice: (1) at any time after the expiration of the 30<sup>th</sup> month in the case of clause (i) of the preceding sentence (but prior to Substantial Completion of the Project); or (2) prior to material resumption of the construction work in the case of clause (ii) of the preceding sentence; and (B) Project Lender of the Divestiture Payment. Such notice together with evidence of remittance of the Divestiture Payment to Project Lender may be recorded by Building Corp. contemporaneously with, or at any time after, its delivery of such notice and payment to Developer, RQAW and Project Lender. Upon delivery of such notice, Developer or RQAW, as applicable, shall surrender possession of the Office Site, and the Parking Easement, and title to, and all estates of Developer and RQAW in the Office Site and Parking Easement

shall terminate, and the Office Site and the Parking Easement shall automatically, and without further action, re-vest in Building Corp. Any such re-vesting of shall be free and clear of the Project Loan and any and all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than those existing immediately prior to Building Corp.'s delivery of the Office Site to Developer, and Project Lender shall immediately execute releases of any mortgages, assignments of leases and rents, and any other instruments encumbering the Office Site whether or not such instruments are deemed released and/or extinguished by operation of law. No consent from, or notice to, Project Lender or any cure right in favor of Project Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Office Site Deed, the Parking Easement and the Multi-Party Agreement.

The Power of Termination described in this **Section 6.03** shall be an exception included in the Office Site Deed and Parking Easement.

**Section 6.04. Permitting Required.** The waiver of fees described herein shall not negate or impact Developer's obligation to obtain all applicable permits, complete all applicable reviews and inspections and otherwise continuously maintain compliance with City ordinances, including without limitation, its UDO, as amended.

**Section 6.05. City Approvals.** In the event that Developer is unable to obtain, in a timely manner and without the imposition of unusual conditions, any and all City approvals, including, but not limited to NPR Committee approvals, zoning approvals, and building and construction approvals, Developer may, at Developer's sole discretion, terminate this Agreement without penalty. The phrase "unusual conditions" means conditions to which developers of similar projects to the Project are not typically subjected. Notwithstanding the foregoing or anything contained herein to the contrary, this Section shall not apply to the Power of Termination or Reimbursement Amount, each of which shall not be construed as a penalty as described in this **Section 6.05**.

## ARTICLE VII. TERMINATION OF INCENTIVES

### Termination of City Fee Waiver

**A. Termination – Permitting.** Within thirty (30) business days (Monday-Friday) written notice that Developer has committed a Permitting Violation, Developer shall come into full compliance by obtaining the requisite permit, completing the applicable review or inspection or otherwise coming into compliance with the applicable ordinance. If Developer fails to come into such compliance, obtain such permit or complete the applicable review or inspection, **Section 5.01** concerning the waiver of City Fees shall automatically terminate with respect to the Office Building and Office Site, and City shall not have any additional obligation to waive City Fees.

**B. Termination - Development Commitment.** Further, if Developer commits a Commitment Violation, the waiver of City Fees shall automatically terminate for the Office Building and Office Site. Notwithstanding the foregoing, it shall not be construed as a Commitment Violation for Developer to have construction costs savings, if the design and size

of the Office Building on the Office Site does vary from the Project approved by the City and other City bodies responsible for issuing approvals for the Project.

**C. Reimbursement.** Upon termination of the waiver of City Fees, whether caused by a Permitting Violation or Commitment Violation, the City shall submit an invoice to Developer for the Reimbursement Amount, and within thirty (30) of receiving the invoice, Developer shall pay the Reimbursement Amount. If Developer fails to pay the City any portion of the Reimbursement Amount when due, interest shall accrue on the balance owed in the amount of seven percent (7%) per annum. Interest shall continue to accrue until the outstanding amount owed, together with interest, is paid in full. RQAW's obligation to repay the City pursuant this **Article VII(C)** shall survive termination of this Agreement.

## ARTICLE VIII. CLOSING

Building Corp. shall transfer the Office Site to Developer pursuant to the following terms:

**Section 8.01. Purchase Price and Manner of Payment.** On the Closing Date, Developer shall pay the Purchase Price to the Building Corp.

**Section 8.02. Conditions to Closing.** Developer shall have opportunity to study and investigate the Office Site in any manner deemed necessary or desirable by Developer. Developer, at its election and in its sole discretion, shall have the right to terminate this Agreement, with or without cause, by delivering written notice to the City on or before the Closing Date. As an illustration only and without limiting the forgoing, it is expressly agreed that Developer or its designee may access the Office Site to perform or cause to be performed the inspections described in the following subsections.

**A. Title Commitment.** A title commitment update shall be ordered by Developer at Developer's expense promptly upon execution of this Agreement by both parties. The title search performed by Closing Agent (also referred to sometimes herein as the Title Company) shall show marketable title in Building Corps.' or City's name. If the Title Company is unable to issue a satisfactory Title Commitment, Developer, in its sole discretion, may terminate this Agreement without any additional obligation to City or Building Corp.

**B. Survey.** A survey of the Office Site may be ordered by Developer upon acceptance of this Agreement or at any time thereafter at Developer's expense and (if ordered) shall comply with requirements for ALTA Surveys, including but not limited to whether the Office Site is located in a designated flood zone area and shall be certified to Developer and the Title Company. Developer shall determine that the Survey does not reflect any defects, other than those defects that will be cured or removed at or before the Closing.

### **C. Inspections.**

1. Environmental Report. A Phase I and/or Phase II environmental site assessment of the Office Site may be ordered by Developer promptly upon acceptance of this



Agreement at Developer's expense and (if ordered) shall be conducted in accordance with current All-Appropriate-Inquiry standards. Developer, at its expense, shall have determined that: (a) there is no contamination or pollution of the Office Site, or any groundwater thereunder, by any hazardous waste, material, or substance in violation of any Laws; and (ii) there are no underground storage tanks located on the Office Site.

2. **Physical Inspections:** Promptly upon execution of this Agreement, all physical inspections desired by Developer shall be ordered by Developer at Developer's expense, all of which shall be performed by qualified inspectors or contractors selected by Developer. Inspections may include but are not limited to the following: asbestos, heating, cooling, electrical plumbing, roof, walls, ceilings, floors, foundation, basement, crawl space, mold, water storm and waste sewer, and well/septic. Developer, at its expense, shall have determined that no test, inspection, examination, study, or investigation of the Office Site establishes that there are conditions that materially interfere with the construction and use of the Project in accordance with the terms and conditions of this Agreement.
3. **Geotechnical and Other Soil Related Tests.** Developer, at Developer's expense, may also have a soil bearing assessment and report completed which (if ordered) shall be promptly provided to Building Corp.
4. **Utility Availability.** Developer, at its expense, shall determine that gas, electricity, telephone, water, storm and sanitary sewer, and other utility services in adjoining public rights-of-way or properly granted and recorded utility easements are serving or will serve the Office Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of the Agreement.

**D. Zoning.** Developer, at its expense, shall determine that the zoning of the Office Site is proper or will be proper for the construction and use of the Project in accordance with the terms and conditions of this Agreement.

**E. Required Permits.** Developer shall obtain (or determine that it will be able to obtain) all required permits.

If one or more of the items set forth in this Article is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer may (a) waive in writing satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement by providing written notice to City. If Developer fails to terminate this Agreement as permitted in this **Section 8.02**, any unsatisfied condition is automatically deemed waived by Developer.

In addition to the forgoing, Developer's obligation to close the transactions contemplated by this Agreement is contingent upon the City and Building Corp.'s compliance with all terms of this Agreement.

**Section 8.03. Closing Deliveries.** At Closing, City and Building Corp., as applicable, shall deliver and/or cause to be delivered to Developer the following:

1. The Office Site Deed which deed shall be subject to the Permitted Exceptions and reserve the Power of Termination in favor of Building Corp.;
2. The Parking Easement which shall reserve the Power of Termination in favor of Building Corp.;
3. Seller's counterpart to an Indiana Sales Disclosure form;
4. Satisfactory evidence of the authority of the signers of the conveyance documents to consummate the transactions on behalf of City and/or Building Corp., as reasonably required by the Title Company or Developer;
5. Vendor's affidavit in form and substance consistent with a limited warranty deed;
6. Affidavit that City and Building Corp. is not a "foreign person", in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder; and
7. Such other documents as may be required by the terms of this Agreement, or as may be reasonably necessary to consummate the transactions contemplated by this Agreement, including the Multi-Party Agreement. All of the documents and instruments referenced in this **Section 8.03** shall be in a form reasonably acceptable to Developer.

At the Closing, Developer shall be responsible, at its expense, to obtain any: (a) owner's policy of title insurance; and (b) lender's policy of title insurance, if necessary; and (c) endorsements to the owner's policy and/or lender's policy that it deems to be necessary or appropriate.

#### **ARTICLE IX. REAL ESTATE TAXES**

City assumes and agrees to pay all real estate taxes and assessments first becoming a lien against the Office Site prior to the Closing Date. Developer shall assume all real estate taxes and assessments upon conveyance of the Office Site to Developer.

#### **ARTICLE X. SUCCESSORS AND ASSIGNS**

**A. RQAW.** RQAW specifically acknowledges and agrees that its respective obligations pursuant to this Agreement shall inure to the benefit of and be binding upon and enforceable against RQAW and its heirs, executors, administrators, successors and assigns. In any merger, acquisition or assignment of assets, such obligation shall continue as a liability of RQAW and shall be disclosed as a binding obligation and liability of RQAW and any successors in interest.

**B. Developer.** Developer specifically acknowledges and agrees that its respective obligations pursuant to this Agreement shall inure to the benefit of and be binding upon and enforceable against Developer and its heirs, executors, administrators, successors and assigns. In any merger, acquisition or assignment of assets, such obligation shall continue as a liability of Developer and shall be disclosed as a binding obligation and liability of Developer and any successors in interest.

#### **ARTICLE XI. AUTHORITY**

**Section 11.01. Building Corp. and City.** Building Corp. and the City represent and warrant that they have full constitutional and lawful right, power and authority, under currently

applicable law, to execute and deliver this Agreement upon proper approval by Building Corp. and the City. The performance by the City and Building Corp. of their respective obligations under this Agreement shall be subject to completion of such procedures as are required by law.

Building Corp. and the City further represent and warrant that they have taken or will use their best efforts to take (subject to Developer and RQAW's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable Building Corp. and the City to execute this Agreement and perform their respective terms, covenants, duties and obligations as provided by the terms and provisions hereof.

**Section 11.02. RQAW.** RQAW represents and warrants to Building Corp. and the City that: (a) RQAW is a for-profit corporation duly registered with the Indiana Secretary of State's Office; (b) RQAW shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (c) RQAW has the authority: (i) to enter into this Agreement; and (ii) to perform its obligations hereunder, (d) RQAW duly has been authorized by proper action: (i) to execute and deliver this Agreement; and (ii) to perform its obligations hereunder; and (e) this Agreement is the legal, valid, and binding obligation of RQAW.

**Section 11.03. Developer.** Developer represents and warrants to Building Corp. and the City that: (a) Developer is a limited liability corporation duly registered with the Indiana Secretary of State's Office; (b) Developer shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (c) Developer has the authority: (i) to enter into this Agreement; and (ii) to perform its obligations hereunder, (d) Developer duly has been authorized by proper action: (i) to execute and deliver this Agreement; and (ii) to perform its obligations hereunder; and (e) this Agreement is the legal, valid, and binding obligation of Developer.

## **ARTICLE XII. GENERAL PROVISIONS**

**Section 12.01. Indemnity; No Joint Venture or Partnership.** Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between Building Corp., the City, Developer, RQAW or any affiliate thereof.

Further, each of Developer and RQAW covenant and agree at its sole expense to pay and to indemnify and save harmless Building Corp., the City and their respective officers and agents (the "Indemnitees") harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from Developer's (and/or any affiliate's thereof) development and construction of the Project unless such claims, damages, demands, expenses or liabilities arise by reason of the willful act or omission of Building Corp. or the City.

To the extent allowed by law, City shall indemnify and hold harmless Developer from and against any and all claims, damages, demands, expenses, and liabilities related to breach of this Agreement by City.

**Section 12.02. Time of Essence.** Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**Section 12.03. Breach.** Except as otherwise specifically stated herein, before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within seven (7) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

**Section 12.04. Amendment.** This Agreement may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of Building Corp. and the City approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

**Section 12.05. No Other Agreement.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

**Section 12.06. Severability.** If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

**Section 12.07. Indiana Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana.

**Section 12.08. Notices.** All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To RQAW:

RQAW Corporation  
Attn: Brad Battin  
10401 North Meridian Street,  
Indianapolis, Indiana 46290

To Developer:

BW Development, LLC  
Attn: Brad Battin  
14643 Cuchara Court  
Fishers, Indiana 46040

With a Copy to:

Wallack Somers & Haas, P.C.  
Attn: Adam Collins  
One Indiana Square, Suite 2300  
Indianapolis, Indiana 46204

To the City of Fishers Redevelopment Commission

City of Fishers Redevelopment Building Corp.  
Attn: Wayne Crane, President  
1 Municipal Drive  
Fishers, Indiana 46038

To the City of Fishers

City of Fishers  
Attn: Scott Fadness, Mayor  
1 Municipal Drive  
Fishers, Indiana 46038

With a Copy to:

City of Fishers  
Attn: Chris Greisl, City Attorney  
1 Municipal Drive  
Fishers, Indiana 46038

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

**Section 12.09. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**Section 12.10. Assignment.** Until the Project is complete and RQAW has met the Job Commitment, the rights and obligations contained in this Agreement may not be assigned by RQAW, Developer, or any affiliate thereof without the express prior written consent of Building

Corp. and the City; provided that without the prior written approval of the City and Building Corp., Developer may collaterally assign this Agreement to Developer's construction lender.

**Section 12.11. No Third Party Beneficiaries.** This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

**Section 12.12. Effective Date.** Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and Building Corp. and the City have approved or ratified this Agreement as required by law.

**Section 12.13. Indiana Tort Claims/Indemnification.** Notwithstanding anything to the contrary contained herein, Developer and RQAW hereby acknowledge and agree that City's financial exposure for certain claims is limited by the Indiana Tort Claims Act, and City's obligation to indemnify and save Developer or RQAW, their agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

**[signatures on following page]**

RQAW Corporation

Fishers Town Hall Building Corporation

By: \_\_\_\_\_  
\_\_\_\_\_, President

\_\_\_\_\_  
\_\_\_\_\_, President

Developer

City of Fishers

\_\_\_\_\_

\_\_\_\_\_

Printed: \_\_\_\_\_

Scott Fadness, Mayor

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