

PURCHASE AGREEMENT *as of December 1, 2009*

This Purchase Agreement (the "Agreement"), dated ~~September 2, 2009~~ *as of December 1, 2009*, is executed by and between Village on the Green, LLC (the "Seller"), and The City of Carmel Redevelopment Commission (the "Purchaser").

1. **Conveyance.** Subject to terms and conditions of this Agreement, Purchaser shall purchase from Seller, and Seller shall convey to Purchaser, certain real estate owned by Seller and located in Hamilton County, Indiana, which real estate is depicted and/or described on Exhibit A, attached hereto and incorporated herein by reference (the "Property").

2. **Purchase Price.** The purchase price for the Property shall be \$*2,880,000* (the "Purchase Price"). The Purchase Price represents the average of two appraisals for the Property.

3. **Closing.**

(a) **Closing.** Subject to the terms and conditions of this Agreement, the transaction contemplated herein (the "Transaction") shall be closed on or before the date that is 30 days after all of the conditions set forth in Section 6 (other than those that continue until the Closing Date) are satisfied in full or waived in writing by Purchaser, with the exact date of closing (the "Closing Date") to occur on a date mutually acceptable to Purchaser and Seller. The closing shall take place either at the office of the Hamilton Title Security, LLC (the "Title Insurer"), or at such other place as Purchaser and Seller mutually may agree.

(b) **Purchaser Payment.** At the closing, Purchaser shall pay the Purchase Price to Seller in cash or by wire transfer, reduced by any reductions, credits, or prorations for which this Agreement provides.

(c) **Existing Loan.** Purchaser acknowledges that: (i) there currently is a mortgage encumbering the Property, which mortgage secures that certain loan made to Seller by National City Bank ("NCB") in the original principal amount of \$2,400,000.00 (the "Existing Loan"); and (ii) the amount that remains outstanding on the Existing Loan (the "Existing Loan Payoff Amount") on the Execution Date is \$\_\_\_\_\_. Contemporaneously with its receipt of the Purchase Price, Seller shall pay to NCB the Existing Loan Payoff Amount, thereby paying off the Existing Loan in full.

(d) **Possession.** Seller shall deliver possession of the Property to Purchaser on the Closing Date, free and clear of all rights and claims of any other party to the possession, use, or occupancy of the Property.

4. **Seller Closing Documents.** At the closing, Seller shall execute (to the extent applicable) and deliver to Purchaser:

(a) a fully executed limited warranty deed conveying to Purchaser marketable, indefeasible fee simple title to the Property, free and clear of any and all liens, encumbrances, easements, restrictions, covenants, and other title defects, except those matters: (i) to which Seller's title was subject when it obtained fee simple title to the Property; (ii) that arose by, through, or under Purchaser or any of its affiliates, agents, contractors, or employees; or (iii) that Purchaser agrees in writing to accept (collectively, the "Permitted Exceptions");

(b) a vendor's affidavit in form and substance satisfactory to Purchaser and the Title Insurer;

(c) an affidavit that Seller 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;

(d) an affidavit that the Property is not "property" under the Indiana Responsible Property Transfer Law, as amended, in form and substance satisfactory to Purchaser;

(e) a certification that all of the representations and warranties set forth in Section 9 remain true and accurate in all respects as of the Closing Date;

(f) evidence establishing to the reasonable satisfaction of CRC that: (i) the Purchase Price is being used to pay the Existing Loan Payoff Amount to NCB; and (ii) NCB shall record a release of the mortgage securing the Existing Loan.

(g) copies of such resolutions, consents of members, partners, and/or shareholders, and other evidence as Purchaser or the Title Insurer reasonably may request, establishing that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Seller; and (ii) the execution and delivery of such documents, and the conveyance of the Property to Purchaser in accordance with the terms and conditions of this Agreement, have been authorized by Seller; and

(h) such other customary documents or instruments as Purchaser or the Title Insurer may request in connection with closing the Transaction.

5. **Taxes.** Purchaser assumes and agrees to pay all real estate taxes and assessments with respect to the Property (the "Real Estate Taxes") that first become due and payable after the Closing Date. Seller shall pay all Real Estate Taxes that first became due and payable prior to or on the Closing Date.

6. **Purchaser Conditions.** The obligations of Purchaser under this Agreement are subject to the satisfaction of the following conditions within: (a) 60 days after the date hereof (the "Due Diligence Period"); or (b) such other period as is set forth in this Section; unless waived in writing by Purchaser.

(a) **Property Information.** Within five days after the date hereof (the "Execution Date"), Seller shall provide to Purchaser full and complete copies of all reports and results of surveys, borings, soil, water and engineering tests, and other tests, inspections, examinations, studies, and investigations, conducted by or for, or in the possession of, Seller or its affiliates, including, without limitation, the: (i) survey provided to Seller in connection with its acquisition of the Property (the "Existing Survey"); and (ii) Phase One Environmental Assessment provided to Seller in connection with its acquisition of the Property (the "Existing Phase One").

(b) **Formal Approval.** Within 30 days after the Execution Date, formal approval of this Agreement shall have been obtained pursuant to a resolution adopted at a public meeting of Purchaser (the "Formal Approval").

(c) **Title.** Purchaser, at its expense, shall have determined that the Title Insurer shall: (i) insure, for the full amount of the Purchase Price, marketable, indefeasible fee simple title to the Property in the name of Purchaser, free of the standard exceptions and all other exceptions except the Permitted Exceptions; and (ii) issue such customary endorsements as Purchaser reasonably deems to be necessary or appropriate. Purchaser shall be responsible for obtaining the owner's policy of title insurance and the desired endorsements.

(d) Survey. Purchaser, at its expense, shall have obtained an update of the Existing Survey that reasonably is satisfactory to Purchaser (the "Updated Survey"). The Updated Survey shall establish the precise legal description of the Property for purposes of title insurance and closing documents.

(e) Environmental. Purchaser, at its expense, shall have: (i) obtained a reliance letter from the consultant that provided the Existing Phase One pursuant to which Purchaser is entitled to rely on the Existing Phase One; and (ii) determined to its satisfaction that there has not been any adverse change in the environmental condition of the Property since the date on which the Existing Phase One was completed.

(f) Developer. Purchaser shall have reached an agreement with a developer that will: (i) accept an assignment of this Agreement; (ii) satisfy all of the obligations of Purchaser hereunder with respect to the acquisition of the Property (including, without limitation, payment of the Purchase Price at the closing); and (iii) enter into an installment contract pursuant to which such developer shall sell the Property to Purchaser on an installment basis that: (i) reasonably is acceptable to Purchaser; and (ii) is consistent in form and substance with other installment contracts entered into by Purchaser in the past six months.

(g) Other Conditions. As of the Closing Date, no action or proceeding before a court or other governmental agency or officer shall be pending, and no such action or proceeding shall be threatened, that might impair the value of the Property or prevent or impair the use or operation by Purchaser of the Property. There shall be no breach of this Agreement by Seller, and, as of the Closing Date, all of the representations and warranties set forth in Section 9 shall be true and accurate in all respects.

If one or more of the conditions set forth in this Section is not (or cannot be) timely and completely satisfied, then Purchaser, at its sole option, may cancel this Agreement and all of its obligations hereunder by a written notice to Seller.

7. Seller Condition. If, as part of the Formal Approval, there are conditions imposed to which Seller is subject, then: (a) Purchaser shall provide to Seller written notice of such conditions; and (b) Seller shall have ten days from receipt of such notice within which to provide to Purchaser written notice that it approves or rejects such conditions; provided that Seller shall not reject such conditions unreasonably. If Seller: (a) rejects such conditions as permitted pursuant to this Section, then this Agreement shall terminate as of the date that such rejection is delivered to Purchaser; or (b) fails to provide timely written notice of its approval or rejection, then Seller shall be deemed to have approved such conditions.

8. Inspection. Purchaser and its agents, employees, and contractors shall have the right to enter upon the Property at reasonable times to conduct all surveys, borings, tests, inspections, examinations, studies, and investigations that Purchaser deems to be necessary or appropriate (the "Physical Inspections"). Purchaser promptly shall repair any damage to the Property resulting from the Physical Inspections so that the Property is restored to the condition that existed before the Physical Inspection.

9. Representations. Seller hereby represents and warrants to Purchaser that:

(a) Seller: (i) owns the Property in fee simple; and (ii) has full capacity, power, and authority to enter into and carry out this Agreement.

(b) Seller has not received any notification from any governmental agency, authority, or instrumentality of any pending or threatened assessments on or against the Property;

(c) after the Execution Date, Seller shall not permit any lien or other encumbrance to attach to or affect the Property, except for the lien of current real estate taxes and assessments;

(d) after the Execution Date, Seller shall not enter into, modify, amend, or terminate any easement or other document, instrument, or agreement affecting or concerning the Property or the Interest of Seller therein;

(e) on the Execution Date, the Existing Loan Payoff Amount is \$\_\_\_\_\_;

(f) to the best of Seller's knowledge, there are no violations of any applicable federal, state, or local laws, statutes, or ordinances, or governmental rules, regulations, or orders (the "Laws") affecting the Property (and no fact or circumstance exists that likely would give rise to such a violation);

(g) after the Execution Date, Seller shall maintain the Property: (i) in safe and good order, condition, and repair, normal wear and tear excepted; and (ii) in compliance with all Laws so that, as of the Closing Date, there are no violations thereof; and

(h) to the best of Seller's knowledge, there is no any contamination or pollution of the Property, any part thereof, or of any groundwater thereunder, by any hazardous waste, material, or substance in violation of any Laws.

10. **Risk of Loss.** If the Property, or any part thereof, is damaged or destroyed by fire or other casualty, then Purchaser, at its sole option, may terminate this Agreement or proceed with closing. If Purchaser elects to proceed with closing, then Purchaser may apply the proceeds of any insurance policy to reduce the Purchase Price.

11. **Notices.** All notices permitted or required to be given hereunder shall be in writing, and shall be deemed to be delivered when: (a) delivered personally; or (b) sent by national overnight courier; in either case to the following addresses: to Seller at 770 3<sup>rd</sup> Avenue Southwest, Carmel, Indiana 46032, Attn: Bruce Cordingley; and to Purchaser at City of Carmel, Indiana, One Civic Square, Carmel, Indiana 46032, Attn: Les Olds, with a copy to: Karl P. Haas, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 1500, Indianapolis, Indiana 46204. Either party may change its address for notice by written notice delivered to the other party as provided above.

12. **Remedies.** Seller agrees that: (a) money damages are not an adequate remedy for breach of this Agreement by Seller; and (b) in addition to any other remedies available to Purchaser in the event of a breach by Seller, Purchaser shall be entitled to: (i) the remedy of specific performance to enforce the terms and conditions of this Agreement; or (ii) cure the breach at the expense of Seller. If: (a) Seller breaches this Agreement; and (b) Purchaser does not elect the remedy of specific performance or to cure the breach at the expense of Seller; then Purchaser may terminate this Agreement.

13. **Authority.** Each of the undersigned persons executing this Agreement on behalf of Purchaser and Seller represents and certifies that: (a) he or she is empowered and authorized by all necessary action of Purchaser and Seller, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; (c) the execution, delivery, and performance of this Agreement have been authorized by Purchaser and Seller, respectively; and (d) this Agreement is the legal, valid, and binding obligation of Purchaser and Seller, respectively.

14. **Successors.** Purchaser may assign this Agreement without the prior written consent of Seller to: (a) any agency or instrumentality of the City of Carmel, Indiana; or (b) the developer with which Purchaser reaches an agreement that results in the satisfaction of the condition set forth in Subsection 6(f). Purchaser otherwise shall not assign this Agreement without the prior written consent of Seller, which

consent shall not be withheld unreasonably. This Agreement otherwise shall be binding upon and shall inure to the benefit of Purchaser and Seller, and their respective successors and assigns.

15. **Miscellaneous.** The terms and conditions of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. The section headings shall not be considered in any way to effect the interpretation of this Agreement. This Agreement is the final expression of the complete and exclusive agreement between Purchaser and Seller. No agreement by and between Purchaser and Seller to modify or amend this Agreement shall be binding and enforceable, unless all terms and conditions of the modification or amendment are set forth in writing and signed by Purchaser and Seller. All representations, warranties, and agreements contained in this Agreement shall survive the closing, and Purchaser and Seller each shall indemnify and hold harmless the other from and against any and all claims, actions, liabilities, losses, damages, injuries, costs, and expenses (including, without limitation, attorneys' fees and court costs) incurred as a result of, or in connection with, any breach of any representation, warranty, or agreement contained in this Agreement.

IN WITNESS WHEREOF, Purchaser and Seller have executed this Agreement as of the date set forth above.

VILLAGE ON THE GREEN, LLC

By: 

Printed: Ronald Brown

Title: Senior Vice President

THE CITY OF CARMEL  
REDEVELOPMENT COMMISSION

By: 

Ronald E. Carter, President

**EXHIBIT A**  
**Depiction or Description of Property**  
**(Parcel 7c less the Energy Center)**