

PROJECT AGREEMENT

University of Notre Dame du Lac,

the City of South Bend, Indiana, by and through its Board of Public Works, Board of Park

Commissioners, and Redevelopment Commission

and

FREG Stephenson Mill Associates, LLC

1) PURPOSE

A. This Project Agreement (this “Agreement”) sets forth the terms and conditions by and among the **University of Notre Dame du Lac** (the “University”), the **City of South Bend, Indiana**, acting by and through its Board of Public Works, its Board of Park Commissioners, and its Redevelopment Commission (collectively the “City”), and **FREG Stephenson Mill Associates, LLC**, a Colorado limited liability company (“FREG Stephenson”), as owner of Stephenson Mill Apartments located at 322 E. Colfax, South Bend, Indiana (the “Property”), regarding their mutual interest in facilitating (i) a project for the construction by the University of a hydroelectric power generation facility to be situated adjacent to the dam on the St. Joseph River owned by the City for the purpose of providing renewable electric power for the University (the “University Project”), (ii) the restoration and renovation of Seitz Park by the City (the “City Project”), and (iii) the replatting of the Property and parcels adjacent to the Property to accommodate the foregoing (“Replat” or “Replattng” and together with the University Project and the City Project, collectively the “Project”).

B. FREG Stephenson’s current interests in the real property depicted on **Exhibit A-1**, attached hereto, is currently comprised of (i) fee simple interest in Lot 1 of the Opelika Minor Subdivision; (ii) an exclusive and perpetual easement in, and option to purchase portions of, the proposed Lot 1 and Lot 2 of Seitz Park Minor Subdivision (“Seitz Park Subdivision”); and (iii) certain easement and easement rights to use portions of the neighboring Lots 1-3 of the Cascade Minor Subdivision for parking and access.

C. This Agreement will further address facilitation of (i) construction access during the Project, (ii) tenant access and parking at the Property, on Lot 2 of the Seitz Park Subdivision and the East Drive (as defined below), during and after completion of the Project, (iii) compensation to FREG Stephenson in the event of negative financial impact to the Property (including leasing and business operations of the Property) during and immediately following the Project and (iv) Replatting of the Property resulting in (A) FREG Stephenson releasing its rights to Lot 1 of Seitz Park Subdivision and Lots 1-3 of the Cascade Minor Subdivision comprising approximately 0.58 acres as shown by cross-hatchmarks on **Exhibit B** attached hereto (the “Released Parcels”), and (B) the City conveying, for no additional consideration from FREG Stephenson, (1) fee simple interest in Lot 2 of the Seitz Park Subdivision free and clear of all liens, prior easements and other encumbrances, with the exception of the utility easements shown on the Seitz Park Subdivision, (2) a shared, perpetual, non-exclusive ingress and egress easement over a portion of Lot 1 of the Seitz Park Subdivision, as described in **Exhibit A-2**, attached hereto, and (3) fee simple interest to FREG Central High Associates, LLC, a

Colorado limited liability company (“FREG Central High”) in the real property and improvements comprising the exclusive and perpetual easement in and option to purchase of Parcel 2 of 330 W. Colfax, South Bend, Indiana, consisting of approximately 2.247 acres, and more particularly described and depicted on Exhibit C attached hereto (“Parcel 2 of Central High”); all in accordance with the terms and conditions of this Agreement.

2) CONVEYANCE; CLOSING

A. Exhibit A-3 to this Agreement is the proposed Replat for the parcels adjacent to the Property, which such Replat has been approved by the Parties to this Agreement. The City further represents and warrants that Wharf Partners, LLC, an Indiana limited liability company (“Wharf Partners”), and owner of Lots 1-3 of the Cascade Minor Subdivision, has approved the Replat. Notwithstanding the foregoing approval of the Replat, the Parties understand the same remain subject to the final review and approval by FREG Stephenson’s lender (“FREG’s Lender”).

B. After final approval of this Agreement (including, without limitation, the Replat and the Easement Termination Agreement [as defined below]) by FREG’s Lender (“Lender Approval”), and the filing of the Replat, at the Closing (as defined below), the University shall pay FREG Stephenson the sum of \$500,000 (the “Purchase Price”) as consideration of the Replat and the termination of FREG Stephenson’s right, title and interest in and to the Released Parcels. The Replat requires review and approval (“Replat Approval”) from the plat committee of the Area Plan Commission of St Joseph County (“APC”).

C. Both the Released Parcels and the Property contain certain easements and easement rights for Wharf Partners to use portions of the same for parking and access. The neighboring lot owned by Wharf Partners also contains certain easement and easement rights for FREG Stephenson to use portions of the same for parking and access. The City shall cause all of the foregoing easements and easement rights to be terminated promptly after the recording of the Replat. The City shall also cause the easements and easement rights related to Parcel 2 of Central High to be recorded concurrent with the Closing. Such terminations shall be documented by the applicable form of easement termination agreement set forth on Exhibit D attached hereto (the “Easement Termination Agreement”). The City shall obtain any consent, signature or other necessary approval of the Wharf Partners to the Replat and the applicable Easement Termination Agreement. Notwithstanding the foregoing, the Replat shall continue to contain a shared, perpetual, non-exclusive, ingress and egress easement over a portion of Lot 1 of the Seitz Park Subdivision for both FREG Stephenson and Wharf Partners, and their respective successors, assigns, tenants, visitors, occupants and guests to use the same. Such shared, perpetual, non-exclusive ingress and egress easement (including the maintenance, repair and snow removal obligations related to the same, which shall be the sole obligation of the City) shall be documented on the Replat.

D. Notwithstanding any other provision contained herein, express or implied to the contrary, FREG makes no representations or warranties with respect to the physical condition or any other aspect of the Released Parcels, including, without limitation, (i) the conformity of the Released Parcels to past, current or future applicable zoning, building, subdivision, land use, health, safety,

environmental or nondiscrimination laws, statutes, ordinances, rules, regulations, orders, codes or other legal requirements or with any past, present or future documents of record, (ii) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, (iii) the sufficiency of any under shoring, (iv) the sufficiency of any drainage, (v) the existence or non-existence of underground storage tanks, (vi) the potential for further development of the Released Parcels, (vii) the existence of vested land use, zoning, building or other entitlements affecting the Released Parcels, or (viii) the presence of toxic wastes, hazardous materials or hazardous waste in, on or about the Released Parcels (collectively the “Released Parcels Property Conditions”). Without limiting the foregoing in any manner, the City and the University acknowledge that FREG Stephenson has made no representations or warranties of any kind or nature concerning the Released Parcels Property Conditions, and the City and the University acknowledge further that each party is relying solely upon its own investigations and due diligence in regard to each and all such matters, and assumes the risk that the Released Parcels may or may not be suitable or feasible for any intended use by the City or the University. The City and the University each further expressly acknowledge that the Released Parcels are being sold and accepted “AS IS, WHERE-IS, WITH ALL FAULTS” and are being accepted without any representation or warranty. AS PART OF THIS AGREEMENT, THE CITY AND THE UNIVERSITY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY AND ALL ACTUAL OR POTENTIAL RIGHTS EACH PARTY MIGHT HAVE AGAINST FREG STEPHENSON REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, RELATING TO THE RELEASED PARCELS, OR THE RELEASED PARCELS PROPERTY CONDITIONS. SUCH WAIVER IS ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED TO, A WAIVER OF EXPRESS WARRANTIES, IMPLIED WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF HABITABILITY, STRICT LIABILITY RIGHTS, AND CLAIMS OF EVERY KIND AND TYPE, INCLUDING, BUT NOT LIMITED TO, CLAIMS REGARDING DEFECTS WHICH MIGHT HAVE BEEN DISCOVERABLE, CLAIMS REGARDING DEFECTS WHICH WERE NOT OR ARE NOT DISCOVERABLE, PRODUCT LIABILITY CLAIMS, PRODUCT LIABILITY TYPE CLAIMS, AND ALL OTHER EXTANT OR LATER CREATED OR CONCEIVED OF STRICT LIABILITY OR STRICT LIABILITY TYPE CLAIMS AND RIGHTS WITH REGARD TO THE RELEASED PARCELS. Effective upon the Closing, and to the fullest extent permitted by law, the City and the University hereby release, discharge and forever acquits FREG Stephenson, FREG Stephenson’s manager and FREG’s Lender and their respective affiliates, officers, directors, shareholders, members, employees, agents and independent contractors, and the successors, heirs, personal representatives and assigns of each and every one of them, from all demands, claims, liabilities, obligations, costs and expenses which the City or the University may suffer or incur relating to the Released Parcel Property Conditions or any other aspect of the Released Parcels, whether known or unknown. The provisions of this section are material and included as a material portion of the consideration given to FREG Stephenson in exchange for FREG Stephenson’s execution and delivery hereof and performance hereunder. The provisions of this section shall not be construed to merge with the release of interest in the Released Parcels and shall survive the Closing or any termination of this Agreement.

E. The transaction contemplated by this Agreement shall close (the “Closing”) on June 25, 2019 unless agreed otherwise in writing by the Parties.

F. Prior to the Closing, the City and/or the University, as set forth in this Agreement, shall submit (or cause to be submitted) into escrow with Fidelity National Title Insurance Company located at 8055 E. Tufts Avenue, Suite 300, Denver, CO 80237 (Attn: Lindsey Mann; Phone: (720) 200-1227, Email: lindsey.mann@fnf.com) (“Fidelity”), the following items (each of which shall be properly executed by the applicable parties and notarized, if applicable):

- (i) the Replat;
- (ii) the Easement Termination Agreement executed and notarized by City and Wharf Partners, LLC;
- (iii) a Special Warranty Deed to FREG Stephenson for Lot 2 of the Seitz Park Subdivision;
- (iv) a Special Warranty Deed to FREG Central for Parcel 2 of Central High;
- (v) a Shared, Perpetual, Non-Exclusive Ingress and Egress Easement over a portion of Lot 1 of the Seitz Park Subdivision;
- (vi) the Purchase Price; and
- (vii) Such other documents or items as may be reasonably required by Fidelity to affect the consummation of the transaction contemplated by this Agreement.

G. Prior to the Closing, FREG Stephenson shall submit (or cause to be submitted) into escrow with Fidelity the following items (each of which shall be properly executed by FREG Stephenson and FREG’s Lender, if applicable, and notarized, if applicable):

- (i) the Replat;
- (ii) the Easement Termination Agreement executed and notarized by FREG Stephenson;
- (iii) a release of mortgage/deed of trust by FREG’s Lender for the Released Parcels only;
and
- (iv) Such other documents or items as may be reasonably required by Fidelity to affect the consummation of the transaction contemplated by this Agreement.

H. Unless set forth otherwise in agreements between the City and FREG Stephenson or FREG Central, real estate taxes, special assessments and other assessments, ad valorem taxes, district improvement impositions and the like with respect to the Released Parcels, Lot 2 of the Seitz Park Subdivision, and Parcel 2 of Central High (collectively “Taxes”) will be pro-rated on the basis of the

fiscal tax period for which assessed (based upon the maximum discount rate available, if applicable). Taxes shall be prorated at the Closing based upon the most recently issued bills therefor, and once the final tax bill is issued, if the Taxes set forth in the final tax bill are different from the amounts used for preliminary proration, then the proration will be recalculated using the final tax bill with any deficiency or over payment reconciled and refunded or paid by the City, FREG Stephenson or FREG Central, as the case may be. The obligations of this section shall survive shall the Closing or any termination of this Agreement.

I. At the Closing, the City shall pay for: (i) the cost of an updated or new ALTA Extended Coverage Owner's Policy of Title Insurance (each an "Owner's Policy") for (A) Lot 1 of the Opelika Minor Subdivision, Lot 2 of the Seitz Park Subdivision and Shared, Perpetual, Non-Exclusive Ingress and Egress Easement over a portion of Lot 1 of the Seitz Park Subdivision for FREG Stephenson, and (B) Parcels 1 and 2 of Central High for FREG Central, each in the same insured amount and with the same endorsements as the existing owner's policy for FREG Stephenson and FREG Central; (ii) the cost of an updated or new ALTA Coverage Lender's Policy of Title Insurance (each a "Lender's Policy") in such amount and such endorsements as reasonably required by FREG's Lender; (iii) all transfer tax, stamp tax, deed tax, documentary fees or similar taxes imposed on account of the recordation of the deeds or the transfer of Lot 2 of the Seitz Park Subdivision and Parcel 2 of Central High; (iv) all recording fees; and (v) all escrow fees and closing fees of Fidelity related to these transactions.

3) **POST-CLOSING RESPONSIBILITIES OF THE PARTIES**

A. Property Tenant Parking

1. The City will cause not less than 26 free parking spaces (the "26 Free Parking Spaces") to be provided at the site (318 E. Colfax, South Bend, Indiana) owned by Wharf Partners and located nearby the Property or (in addition to the 25 Parking Spaces, as defined in Section 3.A.2) within the existing parking lot adjacent to the Property (the "Replacement 26 Parking Spaces") for use by the Property's tenants and as partial consideration for the reduction in the number of parking spots for the duration of the Project. The location of the 26 Free Parking Spaces shall be in the area outlined on **Exhibits E** attached hereto. Prior to the commencement of the University Project, the University will, at its sole cost and expense, provide for reasonable pavement and striping of the 26 Free Parking Spaces, in addition to adequate lighting of the 26 Free Parking Space where necessary. FREG Stephenson will be responsible for general winter care of the 26 Free Parking Spaces including, but not limited to, snow removal and salting, but in no event shall FREG Stephenson be responsible for filling of any pot holes, patching, resealing or other such costs.

2. In addition to the 26 Free Parking Spaces, a minimum of 25 parking spaces (the "25 Parking Spaces") will, at all times, remain available during the Project within the existing parking lot adjacent to the Property comprised of Lot 2 of the Seitz Park Subdivision and depicted on **Exhibit F-1** attached hereto, as the same may be replaced

by the Replacement 26 Parking Spaces depicted on **Exhibit F-2** attached hereto. Prior to the commencement of the University Project, the University will, at its sole cost and expense, build a “one-way” (from south to north) exit drive on the East side of the Property in the location depicted on **Exhibit G** attached hereto (the “**East Drive**”) to allow for a more efficient flow of vehicle traffic with entry into the Property from Colfax Avenue and exit from the Property using the East Drive. The East Drive shall not be used by any construction vehicles, garbage trucks, or construction staff, or any large vehicles and is intended by the used only for non-commercial light-weight vehicles typically owned by residents, guests, vendors and invitees of the Property. FREG Stephenson will be responsible for general winter care of the East Drive including, but not limited to, snow removal and salting, but in no event shall FREG Stephenson by responsible for filling of any pot holes, patching, resealing or other such costs. FREG Stephenson agrees to execute a temporary easement or other document reasonably acceptable to FREG Stephenson allowing reasonable modifications to sidewalks and landscaping to facilitate construction of the East Drive as well as vehicular access on both the east and west sides of the Property during the Project; provided, however, that promptly after completion of the Project, the University shall, at its sole cost and expense, be responsible for the removal of the East Drive and the restoration of the area comprising the East Drive and other surrounding areas (including any modifications made to the west side of the Property) to its prior condition including, but not limited to, sidewalks and landscaping. The obligations of this section shall survive shall the Closing or any termination of this Agreement.

3. Pursuant to City Board of Public Works Resolution No. 73-2016 and Section 20-3(a)(2) of the City Code of Ordinances, the City has established temporary parking along Colfax Avenue. The City agrees to designate and mark 12 parking spaces on E. Colfax Avenue as “Residential Permit Parking” (or similar designation as provided by City) and depicted on **Exhibit E** attached hereto solely for the use and benefit of the residents of FREG Stephenson during the term of the Project. The City will ticket parking violators in the course of its regular parking enforcement efforts. If parking violators become a chronic problem, then FREG Stephenson shall have the right to have any parking violators towed at such owner’s expense and the City shall cooperate with FREG Stephenson to select a pre-approved tow company that will perform such services upon FREG Stephenson’s request.

B. Property Façade Maintenance

1. The construction associated with the University Project and the City Project are not expected to create significant dust or dirt from the Project worksite. Notwithstanding the foregoing, an initial assessment of the condition of the Property’s building façade has been performed by Keller Engineering, Inc. (“**Keller**”) and is set forth on **Exhibit H** attached hereto (the “**Initial Assessment**”). Within thirty (30) days of the completion of the University Project by the University and within thirty (30) days of the completion of the City Project by the City, the same inspector that

performed the Initial Assessment shall be engaged at the cost of the University or the City, as the case may be, to determine whether reasonable cleaning of the Property's façade is directly warranted due to the performance of the University Project or the City Project, as the case may be. If such reasonable cleaning of the Property's façade is determined to be warranted then the University or the City, as the case may be, shall complete the same no later than 60 days after the date of such determination. If the University or the City, as the case may be, fails to timely complete the reasonable cleaning of the Property's façade, then FREG Stephenson may complete the same and the University or the City shall reimburse FREG Stephenson for the cost of completing the reasonable cleaning of the Property's façade, plus a 15% administrative fee and interest at 10% per annum if not paid within 20 business days after receipt of an invoice.

2. Additionally, the construction associated with the Project is not expected to create significant vibration, impact, or other major physical disruption to the surrounding environment or infrastructure. To establish a baseline to determine if any such damage is caused as a result of the construction associated with the University Project, FREG Stephenson shall provide a comprehensive set of photographs and thorough video inspection, date-stamped within 10 days of Closing, that evidence in sufficient visual detail the physical structure or integrity of the Property. In the event of a claim by FREG Stephenson that the Project adversely impacted the physical structure or integrity of the Property, it will notify the University and the City and provide documentation to the University and the City of such claim and the adverse impact upon discovery of the damage and the rationale for the proximate causation of such damage by the Project to the University and the City and so long as the same does not constitute an emergency that adversely affects the health, safety or welfare of tenant's employees, customers, guests or invitees of the Property, or adversely affects FREG Stephenson's ability to conduct normal business operations from the Property (each, an "Emergency Situation"), then the Parties agree to consider and attempt to resolve any such claims in an amicable, good faith manner. If the Parties are unable to resolve any such claim within 30 days after FREG Stephenson's initial notification of the same, or if there is an Emergency Situation, then FREG Stephenson may pursue any and all remedies at law or in equity.

3. The obligations of this Section 3.B. shall survive shall the Closing or any termination of this Agreement.

C. Compensation for Impaired Rental Revenues

1. During the period set forth in Section 3.C. 2 below, if the total income for the Property collected by FREG Stephenson does not meet or exceed the baseline numbers set forth on **Exhibit I** attached hereto (the "Income Baseline"), then the University and the City, as the case may be, will reimburse FREG Stephenson, on a quarterly basis,

for any reduction in income below the Income Baseline. FREG Stephenson will provide documentation of the total income collected for the applicable quarter. During the performance of the Project, FREG Stephenson will maintain a standard operating environment with respect to maintenance and landlord-tenant interaction/relations and will continue to provide services to tenants at a minimum at the level provided prior to commencement of the Project.

2. The University's reimbursement obligation pursuant to Section 3.C.1. above will only occur during the period of commencement of the University Project until six months after the University Project is complete and the City's reimbursement obligation pursuant to Section 3.C.1. above will only occur during the period of commencement of the City's Project until six months after the City Project is complete (each, a "Recovery Period").

3. For purpose of clarity:

a) The University Project is anticipated to be complete within 12 months after the Closing.

b) The City Project is anticipated to be complete within 12 months following the completion of the University Project.

c) All construction under the Project will be deemed concluded once normal traffic and access has been restored to the University site related to the Project and Seitz Park, and the City has (i) repaved and restriped the parking areas on the property owned by FREG Stephenson and (ii) rebuilt the trash enclosure to match the condition depicted in Exhibit J attached hereto, which includes 48 parking stalls directly south of the Property and 13 parking stalls directly West of the Property as depicted on Exhibit K attached hereto and comprised of Lot 2 of the Seitz Park Subdivision.

d) Notwithstanding anything to the contrary contained in this Agreement, if the Project is not completed within 30 months after the Closing (the "Outside Completion Date"), then the University or the City shall pay FREG Stephenson additional consideration of \$200.00 per day for each day from the expiration of the Outside Completion Date until the Project is complete.

4. The provisions of this Section 3.C. shall survive the Closing or any termination of this Agreement.

D. Project Documentation

1. FREG Stephenson shall allow the University to install not more than two (2)

cameras on the Property in locations determined by FREG Stephenson to document the Project progress. Any such equipment shall be temporarily secured on the Property in a manner that shall not create substantial or permanent damage or impact to the Property. The University shall be responsible to FREG Stephenson for any damages to the Property directly related to the installation, operation or removal of the camera(s). The obligations of this section shall survive the Closing or any termination of this Agreement.

4) NOTICE

All written notifications required hereunder must be sent via certified mail or overnight carrier to the addresses designated below:

The University:

Associate Vice President, State and Local Public Affairs
University of Notre Dame
405 Main Building
Notre Dame, IN 46556

With a copy to:

Office of General Counsel
University of Notre Dame
203 Main Building
Notre Dame, IN 46556

The City:

Executive Director
Venues Parks and Arts
321 East Walter Street
South Bend, IN 46614

With a copy to:

Executive Director
Department of Community Investment
1400 County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601

and

Corporation Counsel
1200 County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601

FREG Stephenson:

FREG Stephenson Mill Associates, LLC
c/o Forum Management, Inc.
4500 Cherry Creek Drive South, Suite 550
Glendale, CO 80246
Attn: Luke Davis

With a copy to:

Fisher & Suhr, P.C.
1125 17th Street, Suite 710
Denver, Colorado 80202
Attn: Edie M. Suhr, Esq.

5) REIMBURSEMENT OF FEES

- A. Concurrent with the execution and delivery of this Agreement, and predicated upon the submission by FREG Stephenson of sufficient documentation thereof, the City shall reimburse FREG Stephenson \$ _____ for attorneys' fees and costs incurred in connection with the Project to date including, but not limited to, prior negotiations of the Temporary License Agreement For Site Examination, any Memorandum of Understanding and this Agreement. FREG Stephenson acknowledges receipt of payment of Five Thousand Dollars (\$5,000), which represents the fees required by FREG Lender to be submitted concurrent with FREG Stephenson's request to review and consider this Agreement.
- B. In addition to the closing costs to be paid by the City pursuant to Sections 2) H and 2) I. above and the reimbursement obligations set forth in Section 4) A. above, the University agrees to reimburse FREG Stephenson and FREG Central for (i) the cost for services provided by Keller pursuant to Section 3)B.1., (ii) \$6,000 for the cost of new appraisals required by FREG Lender, and (iii) attorneys' fees or costs (including but not limited to additional lender fees and costs) which exceed amounts already paid under this Agreement, incurred in connection with closing the transaction contemplated by this Agreement.

6) MISCELLANEOUS

- A. The Parties will coordinate press releases concerning the Project if any proposed statement includes any reference to any other Party. To the extent possible, each Party shall provide notice and advance copy of press releases to the public relations office of the other parties in advance of public release.
- B. The Parties agree and acknowledge that other construction in the vicinity of the Project not

conducted by the University or the City shall not create obligations to the Parties pursuant to this Agreement.

- C. The Parties agree that they shall meet at least quarterly during the term of this Agreement unless all Parties mutually waive such meeting, to review occupancy rates and the progress of the Project.
- D. This Agreement shall become effective when all Parties have signed and delivered it to the other Parties. The date this Agreement is signed by the last Party to sign it (as indicated by the date stated above that Party's signature) will be deemed the date of this Agreement. This Agreement shall terminate upon completion of the Project or upon the mutual agreement of all Parties, at which time the University and the City shall have no further obligation to FREG Stephenson, except those that expressly survive the expiration or termination of this Agreement.
- E. This Agreement may be modified only by the written mutual consent of the authorized representative of the Parties.
- F. This Agreement shall be construed and governed according to the laws of the State of Indiana, and any disputes arising hereunder that cannot be resolved amicably as set forth herein shall be resolved exclusively in the State or Federal Courts seated in St. Joseph County, Indiana. The Parties desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all Parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by all Parties.
- G. To the extent there is any legal action or proceeding between any of the Parties arising from or based on this Agreement or the interpretation or enforcement of any provisions related thereto, then the substantially prevailing party or parties shall recover from the substantially non-prevailing party or parties all costs and expenses, including reasonable attorneys' fees and costs, incurred by such substantially prevailing party or parties in such action or proceeding and in any appeal in connection therewith. If such substantially prevailing party or parties recovers a judgment in any such action, proceeding or appeal, then such costs, expenses and attorneys' fees shall be included in and as a part of such judgment. The obligations of this section shall survive shall the Closing or any termination of this Agreement.
- H. Each Party represents and certifies that the undersigned person executing and delivering this Agreement on its behalf is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.
- I. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon

any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

- J. Neither the University nor the City may assign rights or obligations under this Agreement to any third party without obtaining the prior written consent of FREG Stephenson, which may be given or withheld in their sole discretion. FREG Stephenson may assign rights and obligation under this Agreement to any purchaser of the Property or FREG's Lender.

- K. The University shall indemnify, hold harmless and, if elected by FREG Stephenson, defend FREG Stephenson and FREG's Lender and their respective officers, directors, partners, agents, employees, parents, subsidiaries and affiliates, and each person who holds a direct or indirect ownership interest in Forum or Owner (collectively the "Forum Parties") from and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorney's fees and litigation expenses) arising out of or in connection with: (i) bodily injury to or death of a person or damage to tangible personal property owned by a third party to the extent arising or resulting from the negligent acts or omissions (including, but not limited to, willful misconduct) of the University or any of its officers, employees or authorized agents in respect of the Project; (b) the negligent acts or omissions (including, but not limited to, willful misconduct) of the University or any of its officers, employees and (c) a breach of this Agreement by the University or any of its officers, employees or authorized agents. This indemnity shall not be construed to include claims, demands, liabilities, losses, damages, costs and expenses to the extent arising from the negligent acts or omissions of the City or the Forum Parties, their members, directors, officers, employees or agents. The obligations of this section shall survive shall the Closing or any termination of this Agreement.

- L. The City shall indemnify, hold harmless and, if elected by FREG Stephenson Mill, defend the Forum Parties from and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorney's fees and litigation expenses) arising out of or in connection with: (i) bodily injury to or death of a person or damage to tangible personal property owned by a third party to the extent arising or resulting from the negligent acts or omissions (including, but not limited to, willful misconduct) of the City or any of its officers, employees or authorized agents in respect of the Project; (ii) the negligent acts or omissions (including, but not limited to, willful misconduct) of the City or any of its officers, employees and (iii) a breach of this Agreement by the City or any of its officers, employees or authorized agents. This indemnity shall not be construed to include claims, demands, liabilities, losses, damages, costs and expenses to the extent arising from the negligent acts or omissions of the University or the Forum Parties, their members, directors, officers, employees, invitees, or agents. Notwithstanding the foregoing or anything in this Agreement to the contrary, the City does not waive any governmental immunity or liability limitations available to it under Indiana law. The obligations of this section shall survive shall the Closing or any termination of this Agreement.

- M. Concurrently with the execution of this Agreement, and thereafter upon renewal of such

policies, the University shall deliver to FREG Stephenson certificates evidencing the University's commercial general liability insurance, automobile liability insurance and workers compensation insurance, with limits of liability as currently maintained by the University shall also add the Forum Parties as additional insureds under these policies. The University agrees that insurance will not be canceled without 30 days' prior written notice to FREG Stephenson (unless cancellation is due to non-payment in which case only 10 days' prior notice will be given).

- N. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to a person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term, covenant or condition of this Agreement shall be enforced to the fullest extent permitted by law.
- O. This Agreement embodies the entire agreement and understanding between the Parties with respect to its subject matter and supersedes all prior agreements and understandings, written and oral, between the Parties related to that subject matter.
- P. Time is of the essence in the performance of this Agreement.
- Q. This Agreement may be signed and delivered by facsimile or electronically and the same facsimile or "pdf" signatures shall constitute original signatures hereof with all force and effect of law. This Agreement may be executed in counterparts, each of which will constitute an original and all of which together shall constitute one and the same document.

[SIGNATURE PAGE FOLLOWS]

UNIVERSITY OF NOTRE DAME DU LAC

By: _____

Name: _____

Title: _____

Date Signed: _____

FREG STEPHENSON MILL ASSOCIATES, LLC,
a Colorado limited liability company

By: Forum Management, Inc.,
a Colorado corporation, its Manager

By: _____
Name: _____
Title: _____

Date Signed: _____

**CITY OF SOUTH BEND INDIANA
BOARD OF PUBLIC WORKS**

Gary Gilot, President

Therese Dorau, Member

Elizabeth Maradik, Member

Genevieve Miller, Member

Laura O'Sullivan, Member

Attest: _____
Linda Martin, Clerk

Date Signed: _____

**SOUTH BEND
BOARD OF PARK COMMISSIONERS**

Mark Neal, President

Consuella Hopkins, Vice President

Dan Farrell, Member

Aimee Bucellato, Member

ATTEST:

Eva Ennis

Date Signed: _____

**SOUTH BEND REDEVELOPMENT
COMMISSION**

Marcia I. Jones, President

ATTEST:

Quentin Phillips, Secretary

Date Signed: _____

EXHIBIT A-1 -DEPICTION OF SEITZ PARK MINOR SUBDIVISION

(SEE ATTACHED 2 PAGES)

EXHIBIT A-2 – LEGAL DESCRIPTION OF EASEMENT AREA

A PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, CITY OF SOUTH BEND, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF LOT # 3 IN THE PLAT OF "CASCADE MINOR SUBDIVISION" AS RECORDED AS DOCUMENT NUMBER 1808428 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE; THENCE SOUTH 89°54'00" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE, A DISTANCE OF 19.00 FEET; THENCE SOUTH 00°56'55" EAST, A DISTANCE OF 123.85 FEET; THENCE NORTH 89°03'05" EAST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 00°56'55" EAST, A DISTANCE OF 213.21 FEET; THENCE SOUTH 89°55'28" WEST, A DISTANCE OF 24.00 FEET; THENCE NORTH 00°56'55" EAST; A DISTANCE OF 336.94 FEET TO THE POINT OF BEGINNING.
CONTAINING 0.17 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHTS-OF-WAY, EASEMENTS, AND RESTRICTIONS OF RECORD.

EXHIBIT A-3 – PROPOSED REPLAT

(SEE ATTACHED 3 PAGES)

EXHIBIT B-DEPICTION OF THE RELEASED PARCELS

(SEE ATTACHED 1 PAGE)

EXHIBIT C-LEGAL DESCRIPTION OF PARCEL 2 CENTRAL HIGH

LOT NUMBER TWO (2) OF THE RECORDED PLAT OF "CENTRAL HIGH ASSOCIATES MINOR SUBDIVISION" RECORDED AS DOCUMENT NO. 9408747 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE AND BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 OF SAID SUBDIVISION; THENCE SOUTH 00° 01' 34" WEST, 313.76 FT.; THENCE SOUTH 89° 58' 26" WEST, 172.35 FT.; THENCE NORTH 00° 01' 34" EAST, 42.66 FT.; THENCE NORTH 89° 57' 21" WEST, 197.41 FT. TO THE EAST LINE OF WILLIAM STREET; THENCE SOUTH 00° 00' 00" WEST ALONG SAID EAST LINE 91.15 FT. TO THE NORTH LINE OF WASHINGTON STREET; THENCE SOUTH 89° 48' 08" EAST ALONG SAID NORTH LINE, 430.07 FT. TO THE WEST LINE OF ST. JAMES COURT; THENCE NORTH 00° 01' 34" EAST ALONG SAID WEST LINE, 411.05 FT. TO THE SOUTH LINE OF COLFAX AVENUE; THENCE NORTH 89° 43' 16" WEST ALONG SAID SOUTH LINE, 430.26 FT. TO THE EAST LINE OF WILLIAM STREET; THENCE SOUTH 00° 00' 00" WEST ALONG SAID EAST LINE, 206.31 FT.; THENCE SOUTH 89° 57' 21" EAST, 145.29 FT.; THENCE NORTH 06° 01' 09" EAST, 13.57 FT.; THENCE NORTH 00° 02' 39" EAST, 34.30 FT.; THENCE NORTH 89° 58' 26" EAST, 50.83 FT.; THENCE NORTH 00° 01' 34" WEST, 109.01 FT.; THENCE NORTH 89° 58' 26" EAST, 172.36 FT. TO THE POINT OF BEGINNING.

(ALSO SEE ATTACHED 2 PAGES)

EXHIBIT D-EASEMENT TERMINATION AGREEMENT

(SEE ATTACHED 8 PAGES-STEPHENSON MILLS)

(SEE ATTACHED 9 PAGES-CENTRAL HIGH)

EXHIBIT E-LOCATION OF 26 FREE PARKING SPACES
AT WHARF PARTNERS PROPERTY

(SEE ATTACHED 1 PAGE)

EXHIBIT F-1-LOCATION OF 25 PARKING SPACES

(SEE ATTACHED 1 PAGE)

EXHIBIT F-2-LOCATION OF 26 FREE PARKING SPACES
AT STEPHENSON MILLS PROPERTY

(SEE ATTACHED 2 PAGES)

**EXHIBIT G-LOCATION OF “ONE-WAY” (FROM SOUTH TO NORTH) EXIT DRIVE ON
THE EAST SIDE OF THE PROPERTY**

(SEE ATTACHED 1 PAGE)

EXHIBIT H-KELLER ENGINEERING INITIAL ASSESSMENT

(SEE ATTACHED 9 PAGES)

EXHIBIT I-INCOME BASELINE

(SEE ATTACHED 5 PAGES)

EXHIBIT J-POST-PROJECT TRASH ENCLOSURE REBUILD

(SEE ATTACHED 1 PAGE)

EXHIBIT K-LOCATION OF 61 PARKING SPACES
AT STEPHENSON MILLS PROPERTY

(SEE ATTACHED 1 PAGE)