

## AGREEMENT

This Agreement, executed this \_\_\_\_ day of January, 2010, by and among The City of Carmel Redevelopment Commission ("CRC"), Carmel City Center Community Development Corporation ("4CDC"), Carmel Garage Development Company, LLC ("Carmel Garage"), and Carmel Theater Development Company, LLC ("Carmel Theater"), Witnesses:

### Recitals

WHEREAS, CRC and VOTG executed the Purchase Agreement;

WHEREAS, as permitted pursuant to the Purchase Agreement, CRC assigned its right, title, and interest in, to, and under the Purchase Agreement to 4CDC pursuant to that certain Assignment and Assumption of Purchase Agreement dated \_\_\_\_\_;

WHEREAS, 4CDC, as assignee of CRC, this day has acquired the Real Estate;

WHEREAS, CRC and Carmel Garage have executed the Garage Installment Contract;

WHEREAS, pursuant to the Garage Installment Contract, Carmel Garage is obligated to: (a) construct the Garage Improvements; and (b) convey the Garage Improvements to CRC;

WHEREAS, in connection with the construction of the Garage Improvements, and as contemplated pursuant to the Garage Installment Contract, Carmel Garage obtained the Garage Loan;

WHEREAS, CRC and Carmel Theater have executed the Theater Installment Contract;

WHEREAS, pursuant to the Theater Installment Contract, Carmel Theater is obligated to: (a) construct the Theater Building Improvements; and (b) convey the Theater Building Improvements to CRC;

WHEREAS, in connection with the construction of the Theater Building Improvements, and as contemplated pursuant to the Theater Installment Contract, Carmel Theater obtained the Theater Loan;

WHEREAS, CRC, acting on behalf of the District, and Carmel Theater intend to execute the Oppenheimer Installment Contract;

WHEREAS, pursuant to the Oppenheimer Installment Contract, Carmel Theater will be obligated to: (a) construct the Project; and (b) convey the Project to CRC;

WHEREAS, in connection with the construction of the Project, and as contemplated pursuant to the Oppenheimer Installment Contract, the Certificates are being sold;

WHEREAS, the COPS Closing is occurring on the date hereof;

WHEREAS, subsequent to the COPS Closing, CRC and Carmel Garage shall amend the Garage Loan Documents so that, instead of: (a) constructing the Garage Improvements; and (b) conveying the Garage Improvements to CRC; Carmel Garage is obligated to: (a) acquire and install the PAC Elevator Equipment; and (b) convey the PAC Elevator Equipment to CRC;

WHEREAS, as a result of such amendments to the Garage Loan Documents, the Garage Installment Contract will be replaced and superseded by the Elevator Installment Contract;

WHEREAS, because the PAC Elevator Equipment is for use in the PAC (and not the Project), the Elevator Installment Contract will not be an installment contract that has any relation to the Project or the Real Estate;

WHEREAS, subsequent to the COPS Closing, CRC and Carmel Theater shall amend the Theater Loan Documents so that , instead of: (a) constructing the Theater Building Improvements; and (b) conveying the Theater Building Improvements to CRC; Carmel Theater is obligated to: (a) acquire and install the PAC Interior Ornamental Equipment; and (b) convey the PAC Interior Ornamental Equipment to CRC;

WHEREAS, as a result of such amendments to the Theater Loan Documents, the Theater Installment Contract will be replaced and superseded by the Interior Ornamental Installment Contract;

WHEREAS, because the PAC Interior Ornamental Equipment is for use in the PAC (and not the Project), the Interior Ornamental Installment Contract will not be an installment contract that has any relation to the Project or the Real Estate; and

WHEREAS, the parties desire to enter into this Agreement;

#### Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree as follows:

#### **1. Definitions.**

**Black Box Theater** shall mean that certain black box theater to be housed in the Office Building. The Black Box Theater is separate from, and in addition to, the Main Stage Theater.

**Carmel Theater Conveyance Parcel** shall mean that portion of the Real Estate comprised of: (a) the Garage Site; (b) the Theater Site; and (c) Office Building Conveyance Parcel.

**Certificates** shall mean certificates of participation in the Oppenheimer Installment Contract. The Certificates are the "Certificates" under the Oppenheimer Installment Contract.

**Commercial Office Space** shall mean the portion of the Office Building comprised of: (a) the SEP Premises; and (b) the eastern portion of the second floor that will be used for commercial office space (and not as support facilities for the Black Box Theater).

**Common Lobby** shall mean that portion of the Office Building comprised of the two story common lobby that will serve: (a) the remainder of the Office Building; (b) the Garage; and (c) the Theater Building.

**COPS Closing** shall mean the closing with respect to the issuance of the Certificates.

**Declarations** shall mean the Parcel Declaration and the Office Building Stacking Declaration.

**District** shall mean the special taxing district constituted by all of the territory within the corporate boundaries of the City of Carmel, Indiana, established under Indiana Code §36-7-14-3(b).

**Elevator Account** shall mean an interest-bearing, FDIC insured account with Regions that is owned by Carmel Garage, the terms of which specifically dictate that all funds on deposit therein shall be disbursed only in accordance with the terms and conditions of the documents by which the Garage Loan Documents are amended.

**Elevator Installment Contract** shall mean an Installment Purchase Contract (Elevators, Fire Protection, and Pumps) to be executed by and between CRC and Carmel Garage, which shall replace and supersede the Garage Installment Contract.

**Garage** shall mean the parking garage currently under construction on the Garage Site.

**Garage Improvements** shall mean the Underground Detention and certain elements of the foundation of the Garage. The Garage Improvements are the "Base Improvements" under the Garage Installment Contract.

**Garage Installment Contract** shall mean that certain Installment Purchase Contract (Detention and Foundation) dated August 14, 2009.

**Garage Loan** shall mean a loan from Regions to Carmel Garage in the original principal amount of \$3,550,000.00.

**Garage Loan Documents** shall mean the documents evidencing and securing the Garage Loan.

**Garage Loan Note** shall mean the promissory note evidencing the Garage Loan.

**Garage Site** shall mean that portion of the Real Estate delineated as the "Garage Site" on Exhibit A.

**Interior Ornamental Account** shall mean an interest-bearing, FDIC insured account with Regions that is owned by Carmel Theater, the terms of which specifically dictate that all funds on deposit therein shall be disbursed only in accordance with the terms and conditions of the documents by which the Theater Loan Documents are amended.

**Interior Ornamental Installment Contract** shall mean an Installment Purchase Contract (Interior Ornamental and Mechanical) to be executed by and between CRC and Carmel Theater, which shall replace and supersede the Theater Installment Contract.

**Lobby/Black Box Facilities** shall mean the portion of the Office Building comprised of: (a) the Common Lobby; (b) the Black Box Theater; and (c) support facilities for: (i) the Black Box Theater; and (ii) the Main Stage Theater.

**Main Stage Theater** shall mean a theater for the performing arts with approximately 500 seats.

**Office Building** shall mean the office building to be constructed on the Office Building Site. The Lobby/Black Box Facilities and the Commercial Office Space comprise the entirety of the Office Building.

**Office Building Conveyance Parcel** shall mean the Office Building Site, excluding the Office Building Retention Parcel.

**Office Building Retention Parcel** shall mean air rights above: (a) the real estate comprising the Office Building Site; and (b) where the Lobby/Black Box Facilities are being constructed. Such air rights begin at the "top" of the Lobby/Black Box Facilities (or, stated alternatively, at the "bottom" of the Commercial Office Space).

**Office Building Site** shall mean that portion of the Real Estate delineated as the "Office Building Site" on Exhibit A.

**Office Building Stacking Declaration** shall mean that certain Declaration of Covenants and Easements (Office Building Stacking) executed by and between 4CDC and CRC.

**Oppenheimer Installment Contract** shall mean that certain Installment Contract, the terms of which currently are being negotiated by and between CRC and Carmel Theater.

**PAC** shall mean a world-class concert hall being constructed on real estate located to the north of the Real Estate (and directly south of 126<sup>th</sup> Street).

**PAC Elevator Equipment** shall mean: (a) passenger and/or freight elevators, lifts, doors, elevator shafts, motors, cables, and related equipment; (b) fire protection sprinklers and related equipment; and (c) pumps, plumbing fixtures, HVAC equipment, and related equipment; that will be used in the operation of the PAC. The PAC Elevator Equipment will be the "PAC Equipment" under the Elevator Installment contract.

**PAC Interior Ornamental Equipment** shall mean certain: (a) interior ornamental steel, including, as applicable, railings and stairs; and (b) mechanical equipment and fixtures; together with related equipment, that will be used in the operation of the PAC. The PAC Interior Ornamental Equipment will be the "PAC Equipment" under the Interior Ornamental Installment Contract.

**Parcel Declaration** shall mean that certain Declaration of Covenants and Easements (Parcel 7c) executed by and between 4CDC and CRC.

**Project** shall mean that portion of the project constructed, under construction, or to be constructed on the Real Estate, as applicable, that is comprised of the Theater Building, the Underground Detention, the Garage, and the Lobby/Black Box Facilities. The Project is the "Project" under the Oppenheimer Installment Contract

**Purchase Agreement** shall mean that certain Purchase Agreement dated December \_\_, 2009, pursuant and subject to which VOTG committed to convey the Real Estate to CRC.

**Real Estate** shall mean that certain real estate depicted and/or described on Exhibit A. The Real Estate commonly is known as "Parcel 7c"; provided that the Real Estate excludes that portion of "Parcel 7c" commonly known as the "Energy Center Site".

**Regions** shall mean Regions Bank.

**Remaining Real Estate** shall mean all of the Real Estate other than the Carmel Theater Conveyance Parcel.

**SEP** shall mean Software Engineering Professionals, Inc.

**SEP Lease** shall mean that certain Lease for space in the Office Building executed by and between 4CDC (as Landlord) and SEP (as Tenant), which Lease is dated July 8, 2009.

**SEP Premises** shall mean the premises within the Office Building that is leased to SEP pursuant to the SEP Lease.

**Theater Building** shall mean a building to be constructed on the Theater Site, which building will house the Main Stage Theater.

**Theater Building Improvements** shall mean certain foundation, structural, and/or base building elements of the Theater Building. The Theater Building Improvements are the "Base Structure Improvements" under the Theater Installment Contract.

**Theater Installment Contract** shall mean that certain Base Structure Installment Purchase Contract dated June 30, 2009.

**Theater Loan** shall mean a loan from Regions to Carmel Theater in the original principal amount of \$2,750,000.00.

**Theater Loan Documents** shall mean the documents evidencing and securing the Theater Loan.

**Theater Loan Note** shall mean the promissory note evidencing the Theater Loan.

**Theater Site** shall mean that portion of the Real Estate delineated as the "Theater Site" on Exhibit A.

**Underground Detention** shall mean underground detention facilities on the Garage Site, above which detention facilities the Garage will be located.

**VOTG** shall mean Village on the Green, LLC.

## **2. Contract Validation.**

(a) **Garage Installment.** 4CDC, as owner of the Garage Site, validates the Garage Installment Contract, and, accordingly, agrees that Carmel Garage: (i) has the right to satisfy its obligations under the Garage Installment Contract, including, without limitation, its obligations with respect to the construction of the Garage Improvements; and (ii) shall be the owner of the Garage Improvements, notwithstanding that 4CDC is the owner of the Garage Site.

(b) **Theater Installment.** 4CDC, as owner of the Theater Site, validates the Theater Installment Contract, and, accordingly, agrees that Carmel Theater: (i) has the right to satisfy its obligations under the Theater Installment Contract, including, without limitation, its obligations with respect to the construction of the Theater Building Improvements; and (ii) shall be the owner of the Theater Building Improvements, notwithstanding that 4CDC is the owner of the Theater Site.

(c) **Oppenheimer Installment.** 4CDC, as owner of the Real Estate, consents to the execution by CRC, acting on behalf of the District, and Carmel Theater of the Oppenheimer Installment Contract.

## **3. Deposits.** Contemporaneously with the COPS Closing, the following shall occur:

(a) **Theater Loan.** Carmel Theater, using the proceeds obtained in connection with the COPS Closing, shall deposit into the Interior Ornamental Account an amount equal to the outstanding balance of the Theater Loan Note. The funds on deposit in the Interior Ornamental Account shall be disbursed only in accordance with the terms and conditions of the documents by which the Theater Loan Documents are amended.

(b) **Garage Loan.** Carmel Theater, using the proceeds obtained in connection with the COPS Closing, shall pay to Carmel Garage an amount equal to the outstanding balance of the Garage Loan Note. Immediately upon receipt thereof, Carmel Garage shall deposit such amount into the Elevator Account. The funds on deposit in the Elevator Account shall be disbursed only in accordance with the terms and conditions of the documents by which the Garage Loan Documents are amended.

## **4. Contracts and Ownership.**

(a) **Amendments.** At such time as the documents amending the Theater Loan Documents and the Garage Loan Documents (including the Interior Ornamental Installment Contract and the Elevator Installment Contract, respectively) are executed: (i) the Theater Installment Contract and the Garage Installment Contract shall have been replaced and superseded; and (ii) the sole installment contract in effect with respect to the Project will be the Oppenheimer Installment Contract.

(b) **Declarations.** Contemporaneously with the COPS Closing, 4CDC shall record the Declarations.

(c) **Conveyance to Carmel Theater.** Contemporaneously with the COPS Closing, 4CDC shall convey the Carmel Theater Conveyance Parcel to Carmel Theater so that Carmel Theater is able to satisfy its obligations under the Oppenheimer Installment Contract and the other documents executed in connection with the issuance of the Certificates. The Carmel Theater Conveyance Parcel shall be conveyed to Carmel Theater subject to: (i) the Declarations; and (ii) the obligation to record adjustments to the legal description of the Office Building Conveyance Parcel upon completion of construction of the Office Building.

(d) **4CDC Ownership.** Subject to the terms and conditions of Subsection 4(c), 4CDC shall: (i) retain the Remaining Real Estate; and (ii) not convey or further encumber the Remaining Real Estate without the prior written consent of CRC.

(e) **Additional Conveyances.** 4CDC shall convey all or a portion of the Remaining Real Estate as directed, and on terms and conditions set, by CRC, so long as: (i) 4CDC: (A) is released upon such conveyance from all liabilities with respect to the applicable portion of the Remaining Real Estate; and (B) will not incur any additional liabilities in connection with the conveyance of the applicable portion of the Remaining Real Estate; and/or (ii) CRC provides to 4CDC an indemnification against any liabilities with respect to the applicable portion of the Remaining Real Estate (including any liabilities that 4CDC may incur in connection with the conveyance of the applicable portion of the Remaining Real Estate. Proceeds from any sale of a portion of the Remaining Real Estate shall be applied: (i) first, to the costs and expenses of obtaining any release of 4CDC from liabilities with respect to such portion of the Remaining Real Estate; and (ii) second, as directed by CRC.

**5. Notice.** Any notice given by any party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the applicable party; (b) sent by facsimile, with electronic confirmation of receipt; or (c) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to CRC at City of Carmel, Indiana, One Civic Square, Carmel, Indiana 46032, Facsimile: 317-844-3498, Attn: Les Olds, with a copy to: Karl P. Haas, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 1500, Indianapolis, Indiana 46204, Facsimile: 317-231-9900; to 4CDC at One Civic Square, Carmel, Indiana 46032, Facsimile: 317-844-3498, Attn: Les Olds; and to Carmel Garage and/or Carmel Theater at 11711 North Pennsylvania Street, Suite 200, Carmel, Indiana 46032, Attn: Jeffrey Sporleder, Facsimile: 317-573-6055. Any party may change its address for notice from time to time by delivering notice to the other parties as provided above.

**6. Authority.** Each undersigned person executing this Agreement on behalf of CRC, 4CDC, Carmel Garage, and Carmel Theater represents and certifies that: (a) he or she is empowered, and has been authorized by all necessary action of CRC, 4CDC, Carmel Garage, and Carmel Theater, 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; and (c) the execution, delivery, and performance of this Agreement have been authorized by CRC, 4CDC, Carmel Garage, and Carmel Theater, respectively.

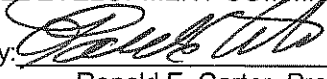
**7. Applicable Law.** The validity, construction, interpretation, and enforcement of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana, without regard to principles of conflicts of law. All actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts located in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. The parties waive, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right to assert the doctrine of "forum non conveniens" or to object to venue; in either case to the extent any proceeding is brought in accordance with this Section.

**8. Miscellaneous.** This Agreement shall inure to the benefit of, and be binding upon, each of CRC,

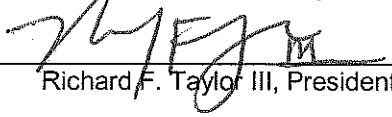
4CDC, Carmel Garage, and Carmel Theater, and its respective successors and assigns. The captions used in this Agreement are for convenience only and are not to be construed as defining or limiting the terms and conditions of this Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof, and may be modified, amended, or revised only by a written agreement signed by each of the parties. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, when taken together, shall constitute the same agreement.

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

THE CITY OF CARMEL  
REDEVELOPMENT COMMISSION

By:   
Ronald E. Carter, President

CARMEL CITY CENTER COMMUNITY  
DEVELOPMENT CORPORATION

By:   
Richard F. Taylor III, President

CARMEL GARAGE DEVELOPMENT  
COMPANY, LLC

By: REI Real Estate Services, LLC, sole  
Member

By:   
Jeffrey Spangler, CFO

CARMEL THEATER DEVELOPMENT  
COMPANY, LLC

By: REI Real Estate Services, LLC, sole  
Member

By:   
Jeffrey Spangler, CFO

**EXHIBIT A**  
**Description/Depiction of Real Estate (7c less Energy Center Site)**  
**Depiction to show Real Estate, Garage Site, Office Building Site, Theater Site**