

**INDIANA ECONOMIC DEVELOPMENT CORPORATION
REDEVELOPMENT TAX CREDIT AGREEMENT**

This Indiana Economic Development Corporation Redevelopment Tax Credit Agreement (“**this Agreement**”) is entered into this 1st day of June, 2023 between the **INDIANA ECONOMIC DEVELOPMENT CORPORATION** (the “**IEDC**”) and **BH Pool, LP** (the “**Company**”). The parties to this Agreement, in consideration of the mutual covenants, obligations, and stipulations set forth herein, witness and agree as follows:

1. PURPOSE OF THIS AGREEMENT.

- A. To fulfill the purposes provided in Indiana Code § 5-28-1-1 and Indiana Code § 6-3.1-34, and in accordance with the terms and conditions contained herein, the IEDC awarded a Redevelopment Tax Credit (the “**Tax Credit**”) to the Company.
- B. As set forth in Indiana Code § 6-3.1-34, this incentive award is intended to encourage investment in “qualified redevelopment sites” (as defined in Indiana Code § 6-3.1-34-6) that require significant rehabilitation (Indiana Code § 6-3.1-34-8) to encourage economic growth.
- C. This Agreement specifies the terms of this Tax Credit for the Company, against its Indiana “state tax liability,” as defined by Indiana Code § 6-3.1-34-9 (“**State Tax Liability**”), for each Taxable Year, as the term is defined in Paragraph 4.
- D. By entering into this Agreement in accordance with Indiana Code § 6-3.1-34-17, the Company understands and agrees that the IEDC’s obligations and commitments are made in reliance on and are conditioned upon the representations presented in the Company’s Application for a Redevelopment Tax Credit (the “**Application**”).

2. TERM OF THIS AGREEMENT.

This Agreement shall be effective as of the Commencement Date and shall remain in effect until the Expiration Date (collectively referred to as the “**Term of this Agreement**”), or as otherwise set forth in any applicable survival provisions to this Agreement.

3. DESCRIPTION OF PROJECT.

The Company shall complete the project as set forth in **Exhibit A** (the “**Project**”) and as described in the Company’s Application. The Project will be at the location(s) listed in Exhibit A and defined as the **Qualified Redevelopment Site**. The Project is anticipated to involve at least the Redevelopment Capital Investment (as referred to in Exhibit A), inclusive of all capital investment from all sources, a portion of which will be Qualified Investment (as described in the Application filed with, and approved by, the IEDC and with the maximum referred to in Exhibit A) to redevelop the Qualified Redevelopment Site, on which Tax Credits may be certified by the IEDC and claimed in accordance with this Agreement. The IEDC’s commitments and obligations are made in reliance on and are conditioned upon these representations.

4. TAXABLE YEAR.

For purposes of this Agreement, the term taxable year (“**Taxable Year**”) shall mean a period beginning on January 1st and ending on December 31st. If the Company or any assignee of the Tax Credit under Indiana Code § 6-3.1-34-14 (a “**Credit Assignee**”) files its Indiana tax return on a fiscal year basis other than the Taxable Year, neither the Company nor a Credit Assignee are required to change their fiscal filing schedule with the Indiana Department of Revenue (the “**IDOR**”) in order to qualify for, or claim, a Tax Credit under this Agreement. The Taxable Year shall commence on the first eligible tax year (the “**First Eligible Tax Year**”) for which the Company is eligible to earn a Tax Credit under this Agreement.

5. DURATION OF TAX CREDIT.

A. The Company may claim a Tax Credit for any Taxable Year during the Term of this Agreement for which the IEDC certifies a credit to the Company. A Tax Credit may first be claimed under this Agreement for the Company’s First Eligible Tax Year. Notwithstanding the foregoing or anything in this Agreement to the contrary, the Company shall not be entitled to a Tax Credit for any qualified investment, as defined in Indiana Code § 6-3.1-34-7 (“**Qualified Investment**”) made after the Redevelopment Project Investment Deadline. The Company (or any Credit Assignee) may carry forward any excess Tax Credit for nine (9) consecutive Taxable Years beginning with the Taxable Year after the Taxable Year for which the IEDC certifies the Qualified Investment, even if such Taxable Year extends beyond the Expiration Date of this Agreement.

B. Pursuant to Indiana Code § 6-3.1-34-13(b), the Company is not entitled to a carry back or refund of any unused Tax Credit.

6. TAX CREDIT AMOUNT ALLOWED FOR A TAXABLE YEAR.

A. Subject to the limitations set forth herein, the Tax Credit amount shall equal the product of the Applicable Percentage multiplied by the amount of the Qualified Investment made by the Company after the Application Date (as defined in Exhibit A) and certified and approved by the IEDC for a Taxable Year, plus any excess Tax Credit carried forward from a prior Taxable Year. Notwithstanding the foregoing or anything in this Agreement to the contrary, the aggregate Tax Credit for all Taxable Years shall not exceed the Maximum Tax Credit.

B. The Company acknowledges and agrees that the Tax Credit awarded is conditioned upon the representations of the Company in this Agreement. For each Taxable Year, the Company shall compute the amount of the Tax Credit to which it is entitled consistent with the terms and conditions of this Agreement.

C. The actual amount of the Tax Credit allowable to the Company is subject to final determination by the IDOR under Indiana Code § 6-8.1-3-12 and Indiana Code § 6-8.1-5.

7. **DUTIES AND RESPONSIBILITIES OF THE COMPANY.**

- A. The Company agrees to substantially complete the Project as set forth in Exhibit A and as required by Paragraph 3 before the Redevelopment Project Investment Deadline. For the purposes of this Agreement, “**Substantially Complete**” or “**Substantial Completion**” shall mean either (1) a certification by the architect hired for the purposes of designing the Project that the Project construction is complete but for any minor punch list items, which certification shall be submitted in writing to and approved by the IEDC, which approval shall not be unreasonably withheld, or (2) a copy of the certificate of occupancy or substantially similar certificate issued by the applicable government agency confirming the completion of construction submitted to and approved by the IEDC, including but not limited temporary certificates of occupancy, which approval shall not be unreasonably withheld. If the Project is not Substantially Complete with a total investment equal to or greater than the Redevelopment Capital Investment Amount before the Redevelopment Project Investment Deadline, the IEDC, in its sole and absolute discretion, may make a determination under Paragraph 8 that the Company is noncompliant with the requirements of this Agreement.
- B. When undertaking the Redevelopment Capital Investment, the Company shall use commercially reasonable efforts to contract for or use services with or purchase goods and/or materials from Indiana-based persons/entities, including contracting with Indiana minority, women’s, and veteran’s business enterprises (the “**Minimum State Investment Percentage**”). The IEDC and the Company acknowledge that the Minimum State Investment Percentage is an aspirational goal and the Company’s failure to meet the Minimum State Investment Percentage shall (i) not constitute an event of default under this Agreement, or (ii) otherwise impact the Company’s ability to earn the Maximum Credit.
- C. The Company shall submit to the IEDC, no later than the forty-fifth (45th) day following the close of each Taxable Year during the Term of this Agreement an annual report (“**Annual Report**”) to the IEDC at reports@iedc.in.gov. The information submitted to the IEDC in the Annual Report must be certified as true and correct by an officer of the Company or similar individual with designated authority. The Annual Report shall contain the information listed below, if applicable:
- 1) The total amount of Redevelopment Capital Investment made during the immediately preceding calendar year, and the cumulative Redevelopment Capital Investment made prior to the Redevelopment Project Investment Deadline.
 - 2) The total amount of Qualified Investment made pursuant to Indiana Code § 6-3.1-34-7 by the Company at the Qualified Redevelopment Site during

the immediately preceding calendar year, certified as true and correct by an officer of the Company and accompanied by a third-party accounting firm report certifying the Qualified Investment (“Accounting Report”); provided however, the Accounting Report shall only be required for years in which a Tax Credit Certification (as defined below) is requested.

- 3) A request for a certification of the Company’s Qualified Investment and the corresponding Tax Credits (“**Tax Credit Certification**”) for a Taxable Year. Notwithstanding the foregoing, the Company may indicate in the Annual Report that the Company is not requesting a Tax Credit Certification for all or part of the Qualified Investment at such time.
- 4) A narrative of progress to date from the Company.
- 5) The total amount, by Taxable Year, of the Tax Credit claimed by the Company under this Agreement (or reported as assigned to Credit Assignee(s)) in its tax filings.
- 6) Any other information required by the IEDC to perform its duties under Indiana Code § 6-3.10-34 and this Agreement, as long as the Company is given notice of such requirements and reasonable time to prepare such information.

The foregoing information is submitted pursuant to Indiana Code § 6-8.1-7-1, and the IEDC shall further treat the above information as confidential, financial information pursuant to Indiana Code § 5-14-3-4(a)(5), unless the IEDC determines that it is prohibited from doing so by law or court order.

- D. As required under Indiana Code § 6-3.1-34-19, the Company shall submit a copy of the Tax Credit Certification to be issued by the IEDC pursuant to this Agreement (or evidence of its assignment to the Credit Assignee(s) if applicable), with its annual State tax return, to the IDOR at the time the Company’s annual State tax return is filed. The Company shall send request for the IEDC’s Tax Credit Certification to reports@iedc.in.gov.
- E. Subject to Paragraphs 8C, the Company, or its successors, assigns, or transferees shall maintain operations at the Qualified Redevelopment Site for at least the Term of this Agreement. In the event the Company exists from the State of Indiana or ceases operations at the Qualified Redevelopment Site prior to the Expiration Date, the IEDC shall make a determination under Paragraph 8 that the Company is noncompliant with the requirements of this Agreement. If the IEDC makes such a determination, pursuant to Indiana Code § 5-28-6-6(4) the Company agrees to repay the sum of any previously allowed Tax Credits under this Agreement plus any outstanding interest due the IEDC under Paragraph 9 less any principal

amounts repaid under this Agreement and any prior assessments paid.

- F. [Reserved]
- G. The Company shall provide written notice to the IEDC not less than thirty (30) days after it makes or receives a proposal that would transfer the Qualified Redevelopment Site or the Company's State Tax Liability obligations to a successor company. The successor company may only receive the Tax Credit pursuant to this Agreement with the prior written consent of the IEDC, which consent shall not be unreasonably withheld.

8. DUTIES AND RESPONSIBILITIES OF THE IEDC.

- A. The IEDC shall review the Company's Annual Report, which shall be provided pursuant to Paragraph 7(C). The IEDC is hereby authorized to verify with the appropriate State agencies the information reported by the Company, as well as any other information submitted by the Company. For Taxable Years for which the Company is seeking the certification of a Tax Credit pursuant to a Tax Credit Certification, the IEDC shall certify the maximum Tax Credit the Company may claim for such Taxable Year as a result of the Qualified Investment previously made by the Company.
- B. Pursuant to Indiana Code § 5-28-6-6, if the IEDC finds the Company may have claimed or assigned a credit under Indiana Code § 6-3.1-34 to which the Company is not entitled to because of the Company's potential failure to satisfy the requirements of this Agreement, or the provisions of Indiana Code § 6-3.1-34, the IEDC shall, after giving the Company at least fourteen (14) days' notice and an opportunity to explain the potential noncompliance, either in person at the IEDC's central office or telephonically at a mutually convenient time (at a closed-door hearing to the extent required by Indiana Code § 5-28-6-6). The Company may submit a written response prior to the meeting. Thereafter, the IEDC may make a final determination of the Company's noncompliance and request the IDOR impose an assessment solely on the Company in an amount that may not exceed the lesser of (i) the sum of any previously allowed credits, together with interest and penalties required or permitted by law and this Agreement less any principal amounts repaid by the Company under the Note (as defined below) or (ii) the Maximum Tax Credit. The IEDC shall also require the Company to forfeit the remaining Tax Credit (not previously allowed or assigned) (collectively referred to as the "Tax Credit Forfeiture"), and, after the IDOR has imposed the assessment set forth above, the IEDC may terminate this Agreement.
- C. At the sole discretion of the IEDC, the IEDC may waive or modify the repayment of the Tax Credit or the Repayment Amount (as defined and provided in Paragraph 9), including any interest and penalties, under the Note (or this Agreement) if the

IEDC determines that the Company failed to satisfy the requirements for receiving the Tax Credit because of circumstances beyond the Company's control, including:

- 1) Natural disaster;
 - 2) Unforeseen industry trends;
 - 3) Lack of available labor force;
 - 4) Loss of a major supplier or market;
 - 5) Adverse market conditions, changes in federal, state or local laws, rules and regulations that have a material and adverse impact on the Company, or the existence of a pandemic or governmental regulations related to the foregoing that have a material and adverse impact on the Company; or
 - 6) Another circumstance beyond the Company's control, as determined by the IEDC.
- D. The amount of any repayment, assessment, interest and/or penalty shall be a matter of public record.
- E. The IEDC may disclose certain information relating to (i) any reduction or repayment of the Tax Credit provided under this Agreement as a result of the Company's noncompliance; (ii) any waivers or modifications of this Agreement; (iii) information describing any hearings or determinations; and (iv) any other Tax Credit information required to be disclosed by law, as determined by the IEDC.
- F. As set forth in Indiana Code § 6-3.1-34-20(b), no assessment or claim shall be made against a Credit Assignee related to any Tax Credit provided under this Agreement unless the Credit Assignee is found to have committed fraud against the IEDC or IDOR in the assignment of the Tax Credit to Credit Assignee (collectively referred to as the "Fraud Assessments").

9. REPAYMENT OF THE MAXIMUM TAX CREDIT

- A. The Company shall repay to the IEDC an amount equal to the total Tax Credit actually earned, certified, and claimed by the Company (or any Credit Assignees) (up to the Maximum Tax Credit) less the initial Tax Credits actually earned, certified, and claimed by the Company (or any Credit Assignees) up to the Non-Repayment Credit (as defined in Exhibit A) (collectively, the "Repayment Amount"). The Repayment Amount shall be reduced from time to time as principal payments are made under the Note (or this Agreement) and

by any Recapture Credit Amounts applied against the Repayment Amount in accordance with Paragraph 9E. Further, the Repayment Amount shall be increased to the extent required by Paragraph 9D. The Company's Repayment Obligations (including any IDOR LSCF Assessment required Paragraph D) shall be subordinate to any existing or contemplated Company obligations (collectively, the "Senior Obligations"), and the IEDC, upon request of the Company or the holders of the Senior Obligations, shall execute documentation reasonably acceptable to the IEDC to evidence such subordination.

- B. Commencing March 1, 2026 and on each March 1 thereafter, the Company shall pay the IEDC a loan service fee equal to one percent (1%) of the Repayment Amount, which fee shall be subordinate to the Note ("Loan Service Convenience Fee"). The Loan Service Convenience Fee shall be subordinate to the Senior Obligations and the Note. To the extent that the Company has insufficient funding available to make the Loan Service Convenience Fee, the Loan Service Convenience Fee shall be deferred, without interest or penalty, until the Company has sufficient funds available to pay all or a portion of any outstanding Loan Service Fees, provided that the IEDC has the opportunity to review the Company's cash flow, all of the Company's financial statements (whether unaudited, reviewed or audited) and the payments related to the Senior Obligations and the Note. If, after reviewing the Company's cash flow, all of the Company's financial statements (whether unaudited, reviewed or audited) and the payments related to the Senior Obligations and the Note, the IEDC determines sufficient funding was available to (i) make the payment required by this Paragraph 9(B) in any single year during the term of this Agreement, or (ii) pay all or a portion of any outstanding Loan Service Fees (if applicable), the IEDC may make a determination under Paragraph 8 that the Company is noncompliant with the requirements of this Agreement and request IDOR impose an assessment equal to the outstanding Loan Service Convenience Fee (collectively referred to as an "IDOR LSCF Assessment").
- C. Interest shall accrue on the Repayment Amount at a rate equal to the Interest Rate (as defined in Exhibit A).
- D. The IEDC and the Company agree that the Repayment Amount shall be increased by the Non-Repayment Credit amount earned, certified and claimed in the event that the Company fails to achieve Substantial Completion of the Redevelopment Project Capital Investment by the Redevelopment Investment Deadline (unless extended for up to six (6) months by the IEDC, in its discretion, upon the Company's written request).
- E. The Repayment Amount, along with any interest and penalties due on the Repayment Amount under this Agreement (collectively, the Repayment Obligations") shall be evidenced further by the Note. The IEDC also agrees to

credit against the Repayment Obligations an amount equal to the aggregate amount of (i) any assessment paid by the Company pursuant to Paragraph 8, (ii) any Tax Credit Forfeiture imposed upon the Company pursuant to Paragraph 8 (iii) any Fraud Assessment paid, and (iv) any Forgiveness Amounts determined by the IEDC pursuant to Paragraph 9(N) below, and (v) any other loss of Tax Credit incurred by the Company or a Credit Assignee or any affiliate, beneficiary or successor (collectively referred to as the “Recapture Credit Amount”). The Recapture Credit Amount shall first be applied to any interest and penalties due on the Repayment Amount and then applied to the Repayment Amount.

- F. Beginning on March 1, 2026 and on each March 1 thereafter, the Company shall make annual payments for interest that accrued during the prior calendar year (“Annual Interest Payments”); provided however, the Annual Interest Payment due March 1, 2026 shall include all interest accrued on the Note from its issuance through December 31, 2025.
- G. After the conclusion of the Interest Only Period, the Company shall make annual payments to the IEDC of principal and interest (“Annual Principal and Interest Payments” and with Annual Interest Payments, referred to as “Annual Payments”) due under the Note (with an estimated amount set forth in Exhibit A), beginning on March 1 in the year following the end of the Interest Only Period and on March 1 of each year thereafter during the term of this Agreement (the “Payment Date”) until the Company has satisfied its Repayment Obligations as provided by this Agreement with principal payments based upon a ten (10) year amortization schedule with a final maturity date of December 31, 2051 (the “Repayment Period”).
- H. If for some reason the Annual Payments are insufficient to satisfy the Company’s Repayment Obligations by the end of the Repayment Period, the Company’s final payment will equal the remaining balance of the Repayment Obligations.
- I. The Company agrees that if an Annual Payment is not received by the IEDC within ten (10) days of the Payment Date, the Company shall immediately pay to the IEDC a late charge in the amount of one half of a percent (0.5%) of the unpaid Annual Payment per month. If the interest and late charges are not paid by the next Payment Date, the amount of the interest and late charge shall be added to the Repayment Amount and shall accrue interest at the same rate set forth in Paragraph 9(B) of this Agreement. Notwithstanding the foregoing, during the Interest Only Period a late charge shall not be assessed to the Company for a failure to fully pay an Annual Interest Payment and the IEDC may not enforce any rights with respect to a payment default under the Note to the extent that such Company payment default is a result of the Company

having insufficient cash flow, after the payment of all Senior Obligations, to fully satisfy make Annual Interest Payments until after the Interest Only Period, provided that the IEDC has the opportunity to review or audit the Company's cash flow and the payments related to the Senior Obligations. If, after reviewing the Company's cash flow, all of the Company's financial statements (whether unaudited, reviewed or audited) and the payments related to the Senior Obligations and the Note, the IEDC determines sufficient funding was available to (i) make the payment required by this Paragraph 9(B) in any single year during the term of this Agreement, or (ii) pay all or a portion of any outstanding Loan Service Fees (if applicable), the IEDC make a determination under Paragraph 8 equal to the outstanding Interest Payment. If the Company fails to make an Annual Payment after the Interest Only Period, the IEDC may, in its sole and absolute discretion, make a determination under Paragraph 8 that the Company is noncompliant with the requirements of this Agreement.

J. The Company may prepay the principal of the Repayment Amount, in whole or in part and without penalty, at any time. Any partial prepayment shall not reduce or postpone the Company's regularly scheduled Annual Payment obligations. A prepayment of principal of the Repayment Amount, in whole or in part, shall be first applied against previously accrued interest or penalties accrued on the Repayment Amount as a result of the Company's failure to make an Annual Payment, and in the following order thereafter:

- (1) On the portion of the increased value of the principal Repayment Amount added as a result of the Company's nonpayment of an Annual Payment;
- (2) On the principal of the Repayment Amount. In the event the Company prepays all or a portion of the principal of the Repayment Amount, any previously accrued interest on that portion of the Repayment Amount will be eliminated.

If Company wishes to pay the Repayment Amount in full prior to Substantial Completion, the Company may claim the Non-Repayment Credit at that time and reduce the Repayment Amount accordingly.

K. The Company may, without the prior written consent of the IEDC, finance (or refinance) with Senior Obligations prior to the first Annual Interest Payment Date. Thereafter, the Company may finance or refinance the Project with Senior Obligations provided that the financing or refinancing with the written consent of the IEDC, which consent shall not be unreasonably withheld, conditioned or delayed, provided the Company's Senior Obligations will not impair the Company's ability to meet its Annual Payment obligations.

L. The IEDC understands and acknowledges that (a) the Company regards the portion of the Tax Credits in an amount equal to the Repayment Amount as

determined in accordance with this Agreement (collectively referred to as the “Purchased Tax Credits”) as having been purchased from the IEDC; (b) the Company considers its obligation to pay the Repayment amount as “true debt”; and (c) the Company’s original basis in the Purchased Tax Credits shall be an amount equal to the Repayment Amount.

- M. Within ten (10) days following the initial certification of Tax Credits in excess of the Non-Repayable Credits, the Company shall execute a Purchase Money Note in substantially the form attached as Exhibit C (the “Note”) to evidence the Company’s obligation to repay the Repayment Obligations, which amortization schedule and note amounts shall be updated from time to time upon the written request of IEDC to accurately reflect the outstanding balance.
- N. After the Interest Only Period, the Company may request that the IEDC forgive any remaining Repayment Obligations due to IEDC (“Company Request”) in their entirety, and the IEDC shall grant such Company Request and forgive the Repayment Obligations if the conditions outlined in Exhibit B of this Agreement are met (the “Repayment Forgiveness Conditions”), as determined by the IEDC in its sole discretion.

The Company Request shall include the information reasonably requested by IEDC to determine whether the Repayment Forgiveness Conditions have been satisfied, and the IEDC shall use best efforts to make its determination within thirty (30) days of receipt of the Company’s Request.

10. ACCESS TO RECORDS.

The Company agrees that the IEDC may elect to engage in monitoring practices independently of, or in conjunction with, other appropriate State agencies or departments at all reasonable times during the Term of this Agreement, and thereafter, until the later of three (3) years following the date of claim or the date on which any State or federal audit has been completed and all audit exceptions cleared. Upon reasonable notice, the Company shall make available to the IEDC, its agents, or other appropriate State agencies or officials, all books or records in its possession or control which pertain to this Agreement and the Project, including tax returns, records of personnel, and conditions of employment. If any site visit is made on the premises of the Company or under this Agreement, the Company shall provide reasonable facilities and assistance for the safety and convenience of the IEDC or its representatives in the performance of their duties. All such inspections are to be performed so as not to unreasonably disrupt or interfere with the normal business operations of the Company.

11. SUBSTANTIAL PERFORMANCE.

This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof. The parties to this

Agreement agree that all terms and conditions to this Agreement are essential.

12. STATUTORY AUTHORITY OF THE COMPANY.

As a condition of receiving a Tax Credit, the Company expressly represents and warrants to the IEDC that it is statutorily eligible to receive the Tax Credit under Indiana Code § 6-3.1-34. The Company expressly agrees to promptly pay all taxes previously credited under this Agreement should a legal determination of the Company's ineligibility be made.

13. COMPLIANCE WITH LAWS.

- A. The Company agrees to comply with all applicable federal, State, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. At the request of either party, the enactment of any relevant State or federal statute or the promulgation of regulations thereunder after execution of this Agreement will be reviewed by the IEDC and the Company to determine whether the provisions of this Agreement require formal modification.
- B. The Company and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6, Indiana Code § 4-2-7, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Company is not familiar with these ethical requirements, the Company should refer any questions to the Indiana State Ethics Commission, or visit Inspector General's website at <http://www.in.gov/ig>. If the Company or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to the Company. In addition, the Company may be subject to penalties under Indiana Code § 4-2-6, Indiana Code § 4-2-7, Indiana Code § 35-44.1-1-4, and under any other applicable laws.
- C. The Company represents and warrants, by entering into this Agreement, that neither it nor any of its shareholders is presently in arrears in payment of its taxes, permit fees, or other statutory, regulatory, or judicially required payments to the IEDC or the State. Further, the Company agrees that any payments in arrears and currently due to the IEDC or the State may be withheld from Tax Credit or refunds due to the Company. Additionally, further Tax Credit or refunds may be withheld, delayed, or denied and/or this Agreement suspended until the Company is current in its payments and has submitted proof of such payment to the IEDC.
- D. The Company represents and warrants that it has no pending, current, or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the IEDC of any such actions, should they arise. During the term of any such actions, the Company agrees that the IEDC, the State, or any State agency or department may delay, withhold, or deny any Tax

Credit issued pursuant to this Agreement or any other agreement with the IEDC, the State, or any State agencies or departments.

- E. If a legitimate dispute exists as to the Company's liability or guilt in any action initiated by the IEDC, the State, or its agencies, and the IEDC decides to delay, withhold, or deny funding or credits to the Company, the Company may request that funding be continued.
- F. The Company represents and warrants that the Company and its subcontractors, if any, will obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, and regulations. Failure to do so is a material breach of this Agreement and is grounds for immediate termination of this Agreement.
- G. The Company represents and warrants that it is properly registered with the Indiana Secretary of State (the "SOS"), and validly existing under Indiana law. The Company also has, if required, registered with the Indiana Department of Workforce Development ("DWD") and has no outstanding workforce issues with DWD. The Company further affirms that if required, it has properly registered with the IDOR and has no outstanding issues with IDOR. The Company also affirms that there are no outstanding enforcement actions against it by agencies of the State. The below named signatory hereby warrants that he/she is authorized to make such affirmations to the IEDC.
- H. The Company agrees that the IEDC may confirm, at any time, that no past due liabilities exist to the IEDC or to the State. If any such liabilities are discovered, the Company agrees that the IEDC or the State may bar the Company from contracting with the IEDC or the State in the future, cancel existing contracts, withhold payments to offset such obligations, and/or withhold further payments or purchases until the Company becomes current in its payments on its liability to the IEDC or to the State and has submitted proof of such payment to the IEDC or to the State, or proof that such liability is not actually owed or past due.
- I. Any payments that the IEDC may delay, withhold, deny, or apply under this Agreement shall not be subject to penalty or interest under Indiana Code § 5-17-5.

14. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT:

- A. As required by Indiana Code § 5-22-3-7 the Company and any principals of the Company certify that:
 - 1) The Company, except for de minimis and nonsystematic violations, has not violated the terms of:

- a. Indiana Code § 24-4.7 [Telephone Solicitation of Consumers];
 - b. Indiana Code § 24-5-12 [Telephone Solicitations]; or
 - c. Indiana Code § 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and
- 2) The Company will not violate the terms of Indiana Code § 24-4.7 for the duration of this Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.
- B. The Company and any principals of the Company certify that an affiliate or principal of the Company and any agent acting on behalf of the Company or on behalf of an affiliate or principal of the Company:
- 1) Except for de minimis and nonsystematic violations, has not violated the terms of Indiana Code § 24-4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and
 - 2) Will not violate the terms of Indiana Code § 24-4.7 for the duration of this Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.

15. DRUG-FREE WORKPLACE CERTIFICATION.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Company hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace at the Qualified Redevelopment Site. The Company will give written notice to the IEDC within ten (10) days after receiving actual notice that the Company, or an employee of the Company in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of payments under this Agreement, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, the Company agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Company's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Company's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the IEDC in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

16. NONDISCRIMINATION.

Pursuant to Indiana Code § 22-9-1-10, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Company shall not discriminate against any employee or applicant for employment related to this Agreement with respect to the hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, disability, national origin, ancestry, or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this Agreement also signifies compliance with applicable federal and state laws and regulations prohibiting the aforementioned discrimination in the provision of services.

17. NOTICE TO PARTIES.

- A. Whenever any notice, statement, or other communication (“**Notice**”) is required under this Agreement, it shall be sent to the following address, unless otherwise advised in writing:
 - 1) Notices to the IEDC shall be sent to:

INDIANA ECONOMIC DEVELOPMENT CORPORATION
Attention: General Counsel
One North Capitol Avenue, Suite 700
Indianapolis, IN 46204-2288
reports@iedc.in.gov

2) Notices to the Company shall be sent to the Company Contract Administrator identified in Exhibit A. It is the responsibility of the Company to keep all contact information properly updated using the IEDC's online system.

B. Notice from the IEDC to the Company may be provided via electronic mail to the Company's electronic mail address specified at **Exhibit A**, or via certified or registered mail at the option of the IEDC.

18. SUCCESSION AND ASSIGNMENT.

A. Agreement. This Agreement binds the Company's successors and assignees to all terms and conditions herein. The Company shall not assign, subgrant, or subcontract the whole or any part of the Project or this Agreement without prior written approval of the IEDC, which consent shall not be unreasonably withheld. In the event of any reorganization, transfer of twenty-five percent (25%) or more of Company's assets, consolidation, merger, or dissolution, the Company must notify the IEDC in writing within thirty (30) days following the reorganization, transfer of 25% or more of Company's assets, consolidation, merger, or dissolution. The parties agree that the Company may assign the rights hereunder to any affiliated entity to facilitate the construction of the Project and recoupment of the Tax Credit in accordance with Section 17(B), below. Notwithstanding the foregoing, the Company shall not, through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, seek to avoid the observance or performance of its obligations to the IEDC under this Agreement.

B. Tax Credit. The Company may elect to assign all or any portion of the Tax Credit due for any Taxable Year, subject to the requirements of Indiana Code § 6-3.1-34. For each Taxable Year the Company makes the election, the Company must notify the IEDC in writing of the election, including:

- 1) the percentage of the Tax Credit that should be assigned,
- 2) each Credit Assignee's contact information,
- 3) each Credit Assignee's federal tax identification number, and
- 4) the Company's representation that it has complied with Indiana Code § 6-

3.1-34 in making the assignment.

The election must be made with or prior to a request for a Tax Credit Certification so that the IEDC may issue the Tax Credit Certification directly to the Credit Assignee(s).

19. INDEMNIFICATION.

The Company agrees to indemnify, defend, and hold harmless the IEDC and the State and their respective agents, officers, employees, and representatives from all third-party claims and suits arising from or relating to this Agreement. The Company shall bear all costs, including court costs, attorney's fees, and other expenses caused by any act or omission of the Company and/or its contractors or invitees, if any. The IEDC shall not provide any indemnification whatsoever to the Company or its employees, contractors, agents, or invitees/licensees.

20. DEBARMENT AND SUSPENSION.

The Company certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, the IEDC, or any agency or political subdivision of the State. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Company.

21. PENALTIES; INTEREST; ATTORNEY'S FEES.

The IEDC will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, including Indiana Code § 5-17-5, Indiana Code § 34-54-8, and Indiana Code § 34-13-1. In the event of legal action or proceedings of any kind, including without limitation enforcement of payment terms, the recapture of Tax Credit, or for an assessment, whether brought by either party, the IEDC shall be entitled to reasonable attorney's fees, court costs, and other related reasonable expenses, plus interest pursuant to Indiana Code § 34-51-4-9 from the Company.

22. MISCELLANEOUS.

- A. The headings in this Agreement are intended solely for reference and will be given no effect in the construction or interpretation of this Agreement.
- B. The parties agree that this Agreement, including any attached exhibits, supersedes all prior oral and written proposals and communications, if any, and sets forth the entire agreement of the parties with respect to the subject matter hereof.
- C. This Agreement may not be altered or amended except in writing, signed by

authorized representatives of the IEDC and the Company. The Maximum Credit Amount may be amended only with the approval of the State Budget Director.

- D. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana. The venue for any court action shall be Marion County, Indiana. The Company hereby consents to the personal jurisdiction of said court.
- E. No waiver of any default, failure to perform, condition, provision, or breach of this Agreement will be deemed to imply or constitute a waiver of any other like default, failure to perform, condition, provision, or breach of this Agreement.
- F. If any paragraph, term, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, or if any paragraph, term, condition, or provision is found to violate or contravene the laws of the State of Indiana, then the paragraph, term, condition, or provision so found will be deemed severed from this Agreement, but all other paragraphs, terms, conditions, and provisions will remain in full force and effect.
- G. The parties to this Agreement, in the performance thereof, will be acting in an individual capacity, and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of any other party for any purposes whatsoever. No party will assume any liability for any injury (including death) to any persons or any damage to any property arising out of the acts or omissions of the agents, employees, or subagents of any other party.
- H. The Company shall be responsible for providing all legally required unemployment and workers' compensation insurance for its employees.
- I. Unless otherwise terminated or modified as expressly permitted hereunder, this Agreement shall remain in force during the Term of this Agreement. Notwithstanding anything contained herein to the contrary, provisions of this Agreement which by their nature contemplate rights and obligations of the parties to be enjoyed or performed after the Expiration Date or termination of this Agreement shall survive until their purposes are fulfilled.
- J. This Agreement may be executed through an original or through an electronic facsimile copy, and in duplicate or through counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same Agreement.
- K. The Company understands that this Agreement is a public record as defined by

the Indiana Access to Public Records Act (Indiana Code § 5-14-3-1, *et seq.*), and, once fully executed, will be posted in accordance with the on the IEDC's transparency portal. Use by the public of the information contained in this Agreement shall not be considered an act of the IEDC or the State of Indiana. Unless the IEDC determines that it is prohibited from doing so by law or court order, the IEDC shall treat the Application as confidential and not subject to public disclosure pursuant to Indiana Code § 5-14-3-4.

- L. If the Company refers to more than one entity, each entity shall be jointly and severally responsible to satisfy the obligations under this Agreement. In the event of a default, all entities are jointly and severally liable for the repayment obligations in this Agreement, irrespective of which entity caused the default and irrespective of which entity actually received or expended the Tax Credit or any funds.
- M. This Agreement was reviewed and/or revised by legal counsel for the IEDC and the Company, and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.
- N. Terms not otherwise defined in this Agreement shall have the meanings set forth in Indiana Code § 6-3.1-34.

23. TERMINATION.

- A. The IEDC may terminate this Agreement, and the Company shall be subject to an immediate tax assessment in the amount of any Tax Credit previously claimed under this Agreement, plus any applicable interest and penalties, less any Recovered Amounts if any one or more of the following events occur:
 - 1) The Company makes an assignment, conveyance, or surrender of the Project facilities for the benefit of creditors;
 - 2) The Company applies to any court for the appointment of a trustee or receiver of any substantial part of the assets of the same or commences any proceedings relating to any of the same under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or other liquidation law of any jurisdiction; or
 - 3) Any application is filed or proceedings are commenced as described above against the Company and the Company indicates its approval, consent, or acquiescence, or an order is entered appointing a trustee or receiver or adjudication of any of the same as a bankrupt or an insolvent or approving the petition in any such proceedings, and such proceedings are not dismissed within ninety (90) days after the filing or commencement of

such proceedings.

- B. Should any of the aforementioned events occur, the Company shall immediately provide written notice to the IEDC. This paragraph shall not be construed to limit the ability of the IEDC or the IDOR to collect, or limit the Company's obligation to repay, any Tax Credit claimed under this Agreement, plus any applicable interest and penalties, should any one or more of the aforementioned events occur.
- C. If the Company has not commenced construction of the Project within 90 days of the execution of this Agreement then, at any time until the Company commences construction of the Project, the IEDC may terminate this Agreement, in which event the Company shall have no further rights with respect to this Agreement and/or the Tax Credit.

24. REPRESENTATIONS CONCERNING APPLICATION.

The Company represents and warrants that all representations, statements, and all other matters contained in the Application submitted by the Company to the IEDC are true and complete, to the best of its knowledge, in all material respects, unless disclosed or made a part of this Agreement. It shall be considered a material breach of this Agreement if such representations, statements, and other matters were known to be untrue and incomplete at the time the Application was made.

25. AUTHORITY TO COMMIT TO THIS AGREEMENT.

Notwithstanding anything in this Agreement to the contrary, the signatory for the Company represents that he/she has been duly authorized to execute contracts on behalf of the Company and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Company when his/her signature is affixed. This Agreement is not subject to further acceptance by the Company once accepted by the IEDC.

26. NON-COLLUSION AND ACCEPTANCE.

The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member, or officer of the Company. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Company, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.


(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Company and the IEDC have, through duly authorized representatives, understood the foregoing terms of this Agreement and do by their respective signatures hereby enter into this Agreement and agree to the terms hereof effective as of the date first set forth above.

BH Pool, LP

By: BH Pool GP, LLC, its General Partner

By: BH Manager, LLC, its Manager



Andrew J. Held, Manager


06/01/2023

Date

INDIANA ECONOMIC DEVELOPMENT CORPORATION

David Rosenberg, Chief Operating Officer

(Digital Signature Stamp Below)

 6.16.2023

APPROVED:

STATE BUDGET AGENCY



Zachary Q. Jackson, Director

7/14/2023

Date

**EXHIBIT A
BH POOL, LP**

1. PROJECT INFORMATION:

- A. The Project shall consist of the Company redeveloping the former Porter Pool and Coca-Cola bottling distribution facility sites in Shelbyville, Indiana into a mixed-use development that will include approximately 168 residential living units and commercial space.
- B. The estimated Company capital investment for the entire Project is anticipated to be **\$31,537,128**.
- C. The Project will be located at the intersection of River Road and Thompson Street and 405 N. Harrison Street, Shelbyville, IN (the “**Qualified Redevelopment Site**,” defined under Indiana Code § 6-3.1-34-6).

2. SCHEDULE OF TERMS:

- A. Time Frames:
 - 1) The term “Application Date” shall mean **August 6, 2021**.
 - 2) The term “Commencement Date” shall mean **June 1, 2023**.
 - 3) “First Eligible Tax Year” shall mean the Taxable Year ending on **December 31, 2023**.
 - 4) “Redevelopment Project Investment Deadline” shall mean **December 31, 2025**.
 - 5) “Expiration Date” shall mean that this Agreement shall end on **December 31, 2051** unless a survival provision set forth in this Agreement provides otherwise.
- B. Financials:
 - 1) “Redevelopment Capital Investment” shall mean **\$31,537,128**.
 - 2) “Qualified Investment” pursuant to Indiana Code § 6-3.1-34-7 shall mean **\$23,905,348**.
 - 3) “Applicable Percentage” shall mean **15%**.
 - 4) “Maximum Credit” shall mean **\$2,393,535**.
 - 5) “Minimum State Investment Percentage” shall mean **90%**.

3. **COMPANY CONTRACT ADMINISTRATOR:**
Corey Stark, Vice President of Finance, Development
Birge & Held
8902 N. Meridian Street, Suite 205
Indianapolis, IN 46260
cstark@birgeandheld.com

EXHIBIT B
BH POOL, LP

TERMS FOR REPAYMENT
OF REDEVELOPMENT TAX CREDITS

1. Repayment Terms:
 - A. “Non-Repayment Credit” shall mean \$215,418.
 - B. “Interest Only Period” shall mean from the issuance of the Note through December 31, 2041.
 - C. “Interest Rate” shall mean 2.00%.
 - D. “Annual Interest and Principal Payment” shall mean the annual principal and interest payments on the Repayment Amount due under the Note and in accordance with the Agreement after the Interest Only Period. The estimated annual amortization payment is \$242,684.80. This assumes the Maximum Tax Credit is earned by the Company and certified by the IEDC and the Non-Repayment Credit is applied. If the Maximum Tax Credit is not earned and certified by the IEDC this Annual Interest and Principal Payment Amount will be reduced. The IEDC shall notify the Company of such reduction in writing.

2. Repayment Forgiveness:

“Repayment Forgiveness Conditions” shall mean:

 - A. The Company has paid any outstanding Loan Service Fees that accrued during the Interest Only Period and any outstanding Annual Interest Payments that accrued during the Interest Only Period (including any interest and penalties that accrued on such Annual Interest Payments regardless of whether added to the Repayment Amount);
 - B. The average of 80% occupancy of units from the issuance of certificates of occupancy through the end of the 12-month period immediately prior to Company Request;
 - C. During the 12-month period immediately prior to the time which the Company Request is being considered, the Project has maintained at least 90% occupancy for at least 90 days; and
 - D. From the commencement of the Project through the date of the Company Request, at least 100 residents (i.e. any household member or person living there pursuant to a lease) have either moved to Indiana from another State to live at the Project or moved into the Project to enable them to either maintain their employment in the area or to fill

an open position, which, but for the Project, could have forced them to seek other employment opportunities outside of the State; provided however, if the Project does not achieve the aforementioned level, the IEDC, in its sole discretion, may waive this requirement. Pursuant to Fair Housing regulations, the Company will not be required to provide favor, benefit, or priority, or otherwise violate Fair Housing regulations, with respect to existing residents or applicants who may qualify to reside at the Property to adhere to aforementioned conditions contained in this subsection.

EXHIBIT C
BH POOL, LP

PURCHASE MONEY NOTE