

## EXHIBIT 20

### FORM OF DIRECT AGREEMENT

**THIS DIRECT AGREEMENT** dated as of [\_\_\_\_\_] (this "**Direct Agreement**"), is made by and [between]/[among] the Indiana Finance Authority, a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the state of Indiana ("**IFA**"), I-69 Development Partners LLC, a Delaware limited liability company ("**Developer**") [, [\_\_\_\_\_] a [\_\_\_\_\_] ("**Lender**") [and Lender's Collateral Agent or indenture trustee], as trustee or Collateral Agent (in such capacity, together with its successors in such capacity, the "**Collateral Agent**") for the purpose of facilitating Lender's financing or Refinancing of the Project (as such term is defined below)].

### **RECITALS**

- A. IFA and Developer have entered into that Public-Private Agreement (the "**PPA**") for the I-69 Section 5 Project (the "**Project**"), which PPA contemplates Developer obtaining financing or Refinancing for the Project from third parties.
- B. In order to enable Developer, and to induce [Lender]/[Collateral Agent], to provide certain [collateral agency services relating to the] financing or Refinancing necessary for the Project, Lender requires certain assurances from IFA regarding Lender's and Collateral Agent's rights in the event of a Default by Developer.
- C. IFA and Developer have previously set forth such assurances in the PPA for the benefit of Lender as an express third-party beneficiary of such assurances.
- D. In reliance on such assurances, and on this Direct Agreement, Lender has agreed to make available such financing or Refinancing facilities for the purpose of financing or Refinancing all or part of the Project.
- E. The execution of this Direct Agreement by IFA in favor of the Collateral Agent is a condition precedent to such financing or Refinancing facilities being made available to Developer by Lender.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual terms and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, each of IFA, Developer[, Lender] and Collateral Agent hereby agree as follows:

#### **1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.** Capitalized terms used and not otherwise defined and references used but not construed in this Direct Agreement have the respective meanings and constructions assigned to such terms in the PPA. In addition, the following terms have the meanings specified below:

**Collateral Agent** has the meaning given to it in the Preamble.

**Cure Period** means:

- (a) With respect to a Developer Default set forth in an IFA Notice that is curable by the payment of money to IFA, a period starting on the date of the receipt of such IFA Notice and ending 60 days after the later of (i) Collateral Agent's receipt of such IFA Notice or (ii) expiration of Developer's cure period (if any) under the PPA;
- (b) With respect to a Developer Default set forth in an IFA Notice, other than Incurable Developer Defaults and those under clauses (a) above and (c) below, a period starting on the date of the receipt by Collateral Agent of such IFA Notice and ending 60 days after the later of (i) receipt by Collateral Agent of such IFA Notice or (ii) expiration of Developer's cure period (if any) under the PPA; and
- (c) With respect to a Developer Default set forth in an IFA Notice, other than Incurable Developer Defaults, which Developer Default by its nature is not capable of cure unless and until the Step-in Party, the Collateral Agent or a court receiver has possession, custody and control of the Project, a period starting on the date of the receipt by Collateral Agent of such IFA Notice and ending 180 days after the later of (i) receipt by Collateral Agent of such IFA Notice or (ii) expiration of Developer's cure period (if any) under the PPA; provided, however, that (A) during such cure period the Step-in Party cures all Developer Defaults which may be cured by the payment of money within the Cure Period under clause (a) above, (B) during such cure period the Step-in Party cures all Developer Defaults governed by clause (b) above within the Cure Period available under clause (b) above, and (C) within the later of (1) five days after expiration of Developer's cure period, if any, and (2) 30 days after the Collateral Agent receives such IFA Notice, the Step-in Party initiates and thereafter pursues with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project. This Cure Period is subject to extension in accordance with Section 6.4 below.

Notwithstanding the foregoing, neither a Notice nor opportunity to cure shall be required for a Developer Default under Sections 19.1.1.3(a), 19.1.1.16 or 19.1.1.17 of the PPA.

To the extent that the Collateral Agent is prohibited from curing any Developer Default by any Governmental Entity, the Cure Periods above shall be extended for the period of such prohibition. In no case, however, shall a Cure Period extend beyond the expiration of the Term.

**Default** means an Event of Default or any other event or circumstance specified in any Funding Agreement that would (with the expiration of a grace period, the giving of notice, the lapse of time, the making of any determination under the Funding Agreement or any combination of any of the foregoing) be an Event of Default.

**Developer** has the meaning given to it in the Preamble.

**Direct Agreement** has the meaning given to it in the Preamble.

**Discharge Date** means the date on which all of the obligations of Developer under all Funding Agreements have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

**Event of Default** means an "Event of Default" (or its terminological equivalent) as defined in the Funding Agreement for senior Project Debt.

***Incurable Developer Default*** means:

- (a) A Developer Default under Section 19.1.1.11 of the PPA (wrongful transfer or attempted transfer of Developer's Interest; wrongful Equity Transfer or wrongful Change of Control);
- (b) A Developer Default under Section 19.1.1.3(a) of the PPA (missed Long Stop Date); and
- (c) A Developer Default under Section 19.1.1.16 or 19.1.1.17 of the PPA (bankruptcy-type events).

***IFA*** has the meaning given to it in the Preamble.

***IFA Notice*** has the meaning given to it in Section 4.1 below.

***[Lender*** has the meaning given to it in the Preamble.]

***Lender Notice*** has the meaning given to it in Section 5.1 below.

***PPA*** has the meaning given to it in the recitals to this Direct Agreement.

***Project*** has the meaning given to it in the recitals to this Direct Agreement.

***Revival Date*** has the meaning given to it in Section 12.1 below.

***Step-in Date*** has the meaning given to it in Section 8 below.

***Step-in Notice*** has the meaning given to it in Section 7.1 below.

***Step-in Party*** has the meaning given to it in Section 7.2 below.

***Step-in Period*** means the period from and including the Step-in Date until the earliest of:

- (a) The Substitution Effective Date;
- (b) The Step-out Date;
- (c) The date of termination of the PPA by IFA in accordance with the PPA and this Direct Agreement);
- (d) The date of the expiration or early termination of the Term under the PPA;
- (e) Expiration of the applicable Cure Period without cure of the Developer Default to which it relates, and
- (f) The date an Incurable Developer Default occurs.

provided, however, that if there occurs a preceding Incurable Developer Default, there shall be no Step-in Period; provided further, that to the extent that the Collateral Agent is prohibited from exercising its step-in rights by any Governmental Entity, the Step-in Periods above shall be extended for the period of such prohibition.

**Step-out Date** means the effective date a Step-in Party designates for ceasing its step-in as set forth in any Step-out Notice served by the Step-in Party pursuant to Section 9 below.

**Step-out Notice** has the meaning given to it in Section 9 below.

**Substitute Accession Agreement** means the agreement to be entered into by a Substituted Entity pursuant to Section 11.1 below.

**Substitution Effective Date** has the meaning given to it in Section 11.1 below.

**Substitution Notice** has the meaning given to it in Section 10.1 below.

## 1.2 Interpretation

Unless the context otherwise clearly requires:

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;
- (b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
- (c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";
- (d) The word "will" shall be construed to have the same meaning and affect as the word "shall";
- (e) Any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and permitted assigns or such Person's successors in such capacity, as the case may be;
- (f) The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Direct Agreement in its entirety and not to any particular provision hereof;
- (g) All references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Direct Agreement, unless otherwise specified herein. Any Schedules to this Direct Agreement are an integral part hereof. The provisions of this Direct Agreement shall prevail over the provisions of any Schedules to the extent of any inconsistency;
- (h) The headings used in this Direct Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Direct Agreement;
- (i) References herein to this Direct Agreement or to any other agreement or document relating to the Project includes a reference to this Direct Agreement, or, as the case may be, such other agreement or document as amended from time to time;
- (j) "Winding-up", "liquidation", "dissolution", "insolvency", "adjustment" or

"reorganization" of a Person and references to the "liquidator", "assignee", "administrator", "receiver", "custodian", "conservator" "sequestrator" or "trustee" of a Person shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Person is incorporated, organized or constituted or any jurisdiction in which such Person or, as the case may be, insolvency representative or officer carries on business including the seeking of winding-up, liquidation, dissolution, reorganization, administration, arrangement, adjustment or relief of debtors; and

- (k) Any definition or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in such agreement, instrument or other document).

## 2. REPRESENTATIONS AND WARRANTIES

### 2.1 IFA represents and warrants to the Collateral Agent that:

- (a) **Organization; Power and Authority.** IFA is a body corporate and politic, not a state agency but an instrumentality exercising essential public functions, of the State of Indiana, and IFA has the power and authority to execute this Direct Agreement and the PPA, and to perform the provisions hereof and thereof.
- (b) **Authorizations, Enforceability.** This Direct Agreement, the PPA, Milestone Agreement, Use Agreement and Continuing Disclosure Agreement have been duly authorized by IFA, and constitute legal, valid and binding obligations of IFA enforceable against IFA in accordance with their respective terms, except, in each case, as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (c) **No Default.** As of the date of the execution of this Direct Agreement, there is no IFA Default; IFA is not aware of any Developer Default, and there exists no event or condition of which IFA is aware that would, with the giving of notice or passage of time or both, constitute such a Developer Default or IFA Default.
- (d) **Initial Funding Agreements; Initial Security Documents.** IFA acknowledges and agrees that the documents referred to in Schedule B attached hereto are deemed to constitute Initial Funding Agreements and Initial Security Documents for purposes of the PPA.
- (e) **No Conflicts.** The execution and delivery by IFA of this Direct Agreement, and the performance by IFA of its obligations hereunder, will not conflict with any Laws applicable to IFA that are valid and in effect on the date of execution and delivery.

- (f) **No Litigation.** As of the date of the execution of this Direct Agreement, there is no action, suit, proceeding, investigation or litigation pending and served on IFA which challenges IFA's authority to execute, deliver or perform, or the validity or enforceability of, this Direct Agreement.

2.2 Developer represents and warrants to IFA and the Collateral Agent that:

- (a) **Organization: Power and Authority.** The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is registered to transact business in the State of Indiana, and has all requisite power and authority to conduct, execute, deliver and perform its obligations under the PPA and this Direct Agreement.
- (b) **Authorization: No Conflicts.** The execution, delivery and performance by the Developer of this Direct Agreement has been duly authorized by all necessary organizational action, and does not and will not (i) require any consent or approval of the Developer's board of directors, shareholders, managers, members, as applicable, or any other person or entity that has not been obtained, (ii) violate any provision of the Developer's organizational documents or any Law having applicability to the Developer, or (iii) result in a breach of or constitute a default under any agreement to which the Developer is a party.
- (c) **Enforceability.** This Direct Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Developer enforceable against Developer in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.
- (d) **No Default.** As of the date of the execution of this Direct Agreement, there is no Developer Default, the Developer is not aware of any IFA Default, and there exists no event or condition of which the Developer is aware that would, with the giving of notice or passage of time or both, constitute a Developer Default or an IFA Default.
- (e) **Purpose of Loan.** The purposes of the Project Debt evidenced and secured by the Funding Agreements are exclusively to (a) fund Developer's costs of acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing and replacing the Project, (b) fund reserves relating to the Project, and (c) pay closing costs with respect to the Initial Project Debt, financing costs and fees, the costs of financial advisors, technical advisors, legal advisors, and the collateral agent/trustee and interest costs.
- (f) **Initial Funding Agreements; Initial Security Documents.** Schedule B lists all the Initial Funding Agreements and all the Initial Security Documents.
- (g) **Compliance with Mandatory Requirements.** The Funding Agreements and Security Documents comply with the provisions of Section 13.3 of the PPA.

2.3 The Collateral Agent represents and warrants to IFA and Developer that:

- (a) The Collateral Agent is a [ ] duly organized, validly existing and in good standing under the laws of the [State]/[Commonwealth of ], and has all requisite power and authority to conduct, execute, deliver and perform its obligations under this Direct Agreement.
- (b) This Direct Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of the Collateral Agent enforceable against the Collateral Agent in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.

### 3. AGREEMENTS AND CONSENT TO SECURITY; NOTICES TO IFA

3.1 IFA acknowledges notice and receipt of the Funding Agreements and Security Documents, and, notwithstanding anything in the PPA to the contrary but in reliance on Developer's and Collateral Agent's representations and warranties set forth in Sections 2.2 and 2.3 above, consents to the assignment by Developer to the Collateral Agent of all of Developer's Interests pursuant to the terms and provisions of, the Security Documents.

3.2 If the Security Documents listed in Schedule B include a pledge of equity interests in Developer held by the Equity Members, IFA acknowledges notice and receipt of such Security Documents, and in reliance on Developer's and Collateral Agent's representations and warranties, consents to the granting by each of such Equity Members to the Collateral Agent of a security interest in such equity interests in Developer pursuant to the terms and provisions of such Security Documents.

3.3 In reliance on Developer's and Collateral Agent's representations and warranties, IFA agrees that the assignment of, and the grant of the security interest in and first lien over, all of the Developer's Interest pursuant to the Security Documents, the grant of the security interest by each Equity Member in its equity interests in Developer pursuant to the Security Documents, the execution by Developer, Lender, Collateral Agent and IFA of this Direct Agreement and the performance of their respective obligations hereunder and the enforcement by the Collateral Agent of its rights under the Security Documents, in each case, shall neither constitute a Developer Default, Default Termination Event or any other default by Developer of the PPA Documents nor would, with the giving of notice or lapse of time or both, constitute a Developer Default, Default Termination Event or any other default by Developer of the PPA Documents, nor require the consent of IFA, other than as provided herein.

3.4 Collateral Agent shall deliver to IFA together with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice under any requirement of Law or of any Funding Agreement in connection with the exercise of remedies under this Direct Agreement or any other Funding Agreement. The Collateral Agent agrees to be bound by the provisions of Section 13.3.8 of the PPA.

### 4. IFA NOTICE OF TERMINATION AND EXERCISE OF REMEDIES

4.1 Except as provided otherwise in Section 12.2 below, IFA shall give the Collateral Agent written notice (an "IFA Notice") promptly upon giving Notice to Developer of:

- (a) A Developer Default (other than an Incurable Developer Default under clause (c) of the definition thereof);
- (b) IFA's right to terminate, or IFA's election to terminate, the PPA under Sections 19.2.1 and 20.3 of the PPA;
- (c) IFA's exercise of any rights under Sections 19.2.3 (except under Section 19.2.3.5), 19.2.4 or 19.2.8.1 of the PPA; or
- (d) IFA's right to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the PPA.

**4.2** An IFA Notice shall specify:

- (a) The unperformed obligations of Developer under the PPA that are the grounds for termination of the PPA, or for suspension of performance or for exercise of the other rights all as referred to in Sections 19.2.8.1, 19.2.3 (except Section 19.2.3.5), 19.2.4 and 19.2.1 of the PPA in detail sufficient to enable the Collateral Agent to assess the scope and amount of any liability of Developer resulting therefrom;
- (b) To the extent known to IFA, all amounts due and payable by Developer to IFA under the PPA on or before the date of such IFA Notice and which amounts remain unpaid at such date and the basis for Developer's obligation to pay such amounts;
- (c) The estimated amount of Developer's payment obligation to IFA that IFA reasonably foresees will arise during the applicable Cure Period, if any; and
- (d) Any other unperformed obligations of Developer of which IFA is aware as of the date of such IFA Notice.

**4.3** Upon the Collateral Agent's request (made not more frequently than monthly), IFA shall update the statements and information in its IFA Notice.

**4.4** Following receipt of an IFA Notice, the Collateral Agent shall have the rights set forth in Section 6.2 and the right to deliver to IFA a Step-in Notice as provided in Section 7 below.

**5. LENDER NOTICE; PAYMENTS TO COLLATERAL AGENT**

**5.1** The Collateral Agent shall give IFA written notice (a "**Lender Notice**"), by certified mail (with return receipt) or registered mail, with a copy to Developer, promptly upon the occurrence of any Default or Event of Default (whether or not an IFA Notice has been served relating to the same event).

**5.2** The Collateral Agent shall specify in any Lender Notice the circumstances and nature of the Default or Event of Default to which the Lender Notice relates.

**5.3** IFA shall, following receipt of a Lender Notice relating to a Default or an Event of Default and until further notification from the Collateral Agent, pay to an account designated by the

Collateral Agent in the Lender Notice any payments required to be made by IFA to Developer under the PPA as of the date of receipt by IFA of such Lender Notice including any termination compensation required to be paid to Developer under the PPA, but subject to all rights, defenses, adjustments, deductions and offsets respecting payment available to IFA under the PPA. The Collateral Agent shall provide to IFA the following information: (a) the individual responsible for administering the account, including his or her position; (b) the mailing address of such individual; and (c) the telephone, fax and e-mail address of such individual. The Collateral Agent has a continuing obligation to IFA to ensure that the individual's information required in the preceding sentence is true and correct and to give subsequent Notice to IFA of any changes thereto.

**5.4** All sums paid as provided in Section 5.3 above shall be deemed paid to Developer under the PPA. Developer and the Collateral Agent agree that any payment made in accordance with Section 5.3 above shall constitute a complete discharge of IFA's relevant payment obligations to Developer. IFA shall have no liability to Developer, any Lender, Collateral Agent or any third party, whatsoever, for any delay in processing any payment request pursuant to Section 5.3 above, provided that such delay does not extend 14 Business Days beyond the date of IFA's certified, return-receipt or registered mail receipt of the Lender Notice. In no event shall any payment be due to the Collateral Agent earlier than it is due under the PPA.

**5.5** IFA shall have the unconditional right to rely upon any Lender Notice purported to be signed and delivered by or for the Collateral Agent, without IFA obligation or liability to Developer, any Lender, Collateral Agent or any third party to ascertain or investigate its authenticity, truth or accuracy.

**5.6** The Collateral Agent shall promptly provide Notice to IFA of any decision to accelerate amounts outstanding under the Funding Agreements or to exercise any enforcement remedies under the Funding Agreements.

**5.7** The Collateral Agent's or Lender's exercise of any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents shall be subject to compliance with the requirements of Section 13.4 of the PPA if such exercise of rights would constitute a Refinancing.

## **6. LIMITATIONS ON IFA REMEDIES DURING CURE PERIOD; CURE PERIOD EXTENSION**

**6.1** Prior to the expiration of any applicable Cure Period (except if there exists an Incurable Developer Default) and provided IFA has given an IFA Notice relating to a Developer Default if required under this Direct Agreement, IFA agrees not to terminate the PPA under Section 20.3 of the PPA or take or support any legal action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding-up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Interest; provided that IFA shall not be prevented from (i) taking any such action on a Revival Date in respect of any prior Developer Default, or (ii) exercising any other rights and remedies available to IFA under the PPA Documents with respect to the subject Developer Default or any other default by the Developer of the PPA Documents. If IFA is an additional obligee under a Payment Bond or

bond for Performance Security, or is a transferee beneficiary under any letter of credit, or is a guaranteed party (or has elected to become a guaranteed party pursuant to Section 17.4.1 of the PPA), then IFA shall forbear from exercising remedies as additional obligee or transferee beneficiary or guaranteed party, as applicable, as against any bond, letter of credit or guaranty against or under which Collateral Agent is actively pursuing remedies, in each case, only so long as (a) Developer or the Collateral Agent as provided herein commences the good faith, diligent exercise of remedies pursuant to the terms, and subject to the conditions, hereunder and (b) Developer or the Collateral Agent thereafter continues such good faith, diligent exercise of remedies until the Developer Default is cured. The foregoing obligation of IFA to forbear shall not apply, however, where access to a bond, letter of credit, guaranty or other payment or performance security is to satisfy damages owing to IFA, in which case IFA shall be entitled to make demand, draw, enforce and collect regardless of whether the Developer Default is subsequently cured. For purposes of clarity, the foregoing obligation of IFA to forbear reaches all placed Payment Bond(s), Performance Security (bond(s) and letter(s) of credit) and guarantee(s), if any, so long as Developer or Collateral Agent is entitled to pursue and is/are actively pursuing remedies under any of the Payment Bond(s), Performance Security or guarantee(s), if any.

**6.2** If:

- (a) IFA exercises any step-in rights under Section 19.2.4 or suspension rights under Section 19.2.8.1 of the PPA,
- (b) The Collateral Agent delivers a Step-in Notice; and
- (c) There does not exist and does not occur any Incurable Developer Default;

then, IFA shall cease exercising its step-in and suspension rights at such time as:

- (i) The Step-in Party obtains possession, custody and control of the Project from Developer;
- (ii) The Collateral Agent notifies IFA that the Step-in Party stands ready to immediately commence good faith, diligent curative action; and
- (iii) IFA is fully reimbursed for IFA's Recoverable Costs in connection with IFA's performance of any act or Work authorized by Section 19.2.4 of the PPA.

**6.3** Except if there exists an Incurable Developer Default, during any Cure Period, without giving a Step-in Notice, the Collateral Agent shall have the right (but shall have no obligation), at its sole option and discretion, to perform or arrange for the performance of any act, duty, or obligation required of Developer under the PPA in accordance with the PPA Documents, or to cure any default of Developer thereunder at any time (whether or not a Default Termination Event has occurred or been declared), which complete, conforming and compliant performance by, or on behalf of, the Collateral Agent shall be accepted by IFA in lieu of performance by Developer and in satisfaction of Developer's obligations under the PPA. To the extent that any default of Developer under the PPA is cured and/or any payment liabilities or performance obligations of Developer are performed in accordance with the PPA Documents by, or on behalf of, the Collateral Agent during the Cure Period, such action shall discharge the relevant liabilities or obligations of Developer to IFA. No such performance by the Collateral Agent or

any other Person under this Section 6.3 shall be deemed or construed to be an assumption by the Collateral Agent or such Person of any of the covenants, agreements, or obligations of Developer under the PPA. For purposes of this Section 6.3, such cure or discharge of payment liabilities or performance obligations shall include payment of such additional costs as may have been incurred by IFA arising out of or relating to such Developer Default.

**6.4** If the Collateral Agent or another Step-in Party (i) shall have succeeded to the Developer's Interest and obtained possession, custody and control of the Project in accordance with the terms of this Direct Agreement, (ii) shall have delivered to IFA within 15 days after obtaining such possession, custody and control a Substitute Accession Agreement in accordance with Section 11 below, and (iii) shall have thereafter diligently and with continuity cured all Developer Defaults which are capable of being cured through possession, then the Collateral Agent or other Step-in Party shall have time after it obtains possession, custody and control of the Project as may be necessary with exercise of good faith, diligence and continuity to cure such Developer Default or perform such condition, in any event not to exceed 120 days after the date it obtains possession, custody and control of the Project, and the Cure Period shall be extended accordingly; provided that in no event shall the Term be extended beyond the expiration of the Term.

## **7. STEP-IN NOTICE**

**7.1** Upon the issuance of a Lender Notice or an IFA Notice, except for an Incurable Developer Default, the Collateral Agent may give a written notice (a "**Step-in Notice**") under this Section 7 to IFA at any time during the Cure Period in the case of the issuance of an IFA Notice or at any time following the receipt by IFA of a Lender Notice.

**7.2** The Collateral Agent shall nominate, in the Step-in Notice, (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders; or (b) any Person approved by IFA as a Substituted Entity in accordance with Section 21.6 of the PPA and Section 10 below, and the person so nominated being referred to as the "**Step-in Party**."

**7.3** IFA shall have the unconditional right to rely upon any Step-in Notice purported to be signed and delivered by or for the Collateral Agent, without IFA obligation or liability to Developer, any Lender, Collateral Agent or any third party to ascertain or investigate its authenticity, truth or accuracy.

## **8. RIGHTS AND OBLIGATIONS ON STEP-IN**

**8.1** On and from the later of the date of the receipt of the Step-in Notice and date of the approval of IFA to the appointment of the Step-in Party (if required by Section 7.2 above), and subject to Section 8.3(d), ("**Step-in Date**") and during the Step-in Period, the Step-in Party shall be entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Party under this Direct Agreement.

**8.2** Without prejudice to Section 12 below (Revival of Remedies), unless there exists an Incurable Developer Default, from and after commencement of any applicable Cure Period and during the applicable Step-in Period, IFA shall:

- (a) Not terminate or give Notice terminating the PPA under Sections 19.2.1 or 20.3 (Termination for Developer Default) of the PPA unless such Cure Period shall expire without cure of the Developer Default to which it relates or the grounds for

termination or giving Notice of termination or otherwise exercising its rights under Section 20.3 of the PPA in accordance with such section are a subsequent Developer Default, subject to the Cure Period applicable to such subsequent Developer Default;

- (b) Not suspend IFA's performance (including in connection with any insolvency, bankruptcy or similar proceeding in relation to Developer) under the PPA, unless such Cure Period shall expire without cure of the Developer Default to which it relates or the grounds for suspension of performance are failure by the Step-in Party to perform Developer's obligations under the PPA (other than the Developer Default to which such Cure Period relates), subject to the Cure Period applicable to such failure, or unless the PPA has been rejected;
- (c) Not take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding-up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Interest;
- (d) Continue to make payments pursuant to Section 5.3 above; and
- (e) Endorse over as may be directed by the Collateral Agent any checks received by IFA with respect to the Performance Security if, in each case, such security is in the form of a surety bond; provided that the Collateral Agent reimburse IFA for any Losses incurred by IFA in attempting to cure the Developer Default as and to the extent: (i) IFA is entitled to such reimbursement pursuant to the PPA; (ii) IFA has promptly notified the Collateral Agent of such Losses at or prior to the time of endorsement and (iii) the Collateral Agent's obligation to reimburse IFA for such Losses do not exceed the proceeds from any such security.

**8.3** IFA, Collateral Agent and Developer agree that:

- (a) The performance by IFA in favor of either the Step-in Party or Developer shall be a good and effective discharge of IFA's obligations under this Direct Agreement and the PPA;
- (b) IFA's receipt of complete, conforming and compliant performance in accordance with the PPA Documents from either the Step-in Party or Developer shall be a good and effective discharge of Developer's corresponding obligations under the PPA;
- (c) The Collateral Agent shall be entitled at any time by Notice to IFA to direct (such direction being binding on the Collateral Agent, IFA and Developer) that, at all times during the Step-in Period, the Step-in Party shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with IFA in place of Developer under the PPA. IFA shall be entitled to conclusively rely on any such decisions, directions, approvals or consents, without any duty whatsoever to ascertain or investigate the validity thereof, and any such decisions, directions, approvals or consents shall be as binding on Developer as if made or given by Developer itself;

- (d) Any amount due from Developer to IFA under the PPA or this Direct Agreement as of the Step-in Date and notified to such Step-in Party prior to the Step-in Date, including IFA's reasonable costs and expenses incurred in connection with (a) Developer's default and termination, (b) IFA's activities with respect to the Project during any period IFA was in possession, custody and control of the Project, and (c) the approval of the Step-in Party, all as of the effective date of the Step-in Notice and notified to such Step-in Party prior to the Step-in Date. shall be paid to IFA on the Step-in Date, failing which IFA shall be entitled to exercise its rights under the PPA in respect of the amount so due and unpaid; IFA's receipt of the payment pursuant to this Section 8.3(d) shall be a condition precedent to the Step-in Date; and
- (e) Developer shall not be relieved from any of its obligations under the PPA, whether arising before or after the Step-in Date, by reason of the Step-in Party exercising the rights provided herein, except to the extent provided in Section 6.3 above and Section 9 below.

## 9. STEP-OUT

A Step-in Party may, at any time, by giving not less than 30 days' prior written notice ("**Step-out Notice**") to IFA, terminate its obligations to IFA under this Direct Agreement respecting the event giving rise to the Step-in Notice, in which event such Step-in Party shall be released from all obligations under this Direct Agreement respecting the event giving rise to the Step-in Notice, except for any related obligations or liabilities of the Step-in Party arising on or before the effective date of such Step-out Notice and as otherwise set forth in the Step-out Notice. The obligations of IFA to the Step-in Party under this Direct Agreement respecting the event giving rise to the Step-in Notice shall also terminate upon the effective date of such Step-out Notice as set forth in the Step-out Notice. If the Step-in Party giving the Step-out Notice is a Substituted Entity that is not the Collateral Agent or a Lender, then such Step-in Party shall be released from all obligations under this Direct Agreement arising from and after the effective date of such Step-out Notice as set forth in the Step-out Notice and its relinquishment of possession, custody and control of the Project.

## 10. SUBSTITUTION PROPOSAL BY THE LENDERS

**10.1** The Collateral Agent may give a notice ("**Substitution Notice**") under this Section 10 in writing to IFA at any time:

- (a) During any Cure Period;
- (b) During any Step-in Period; or
- (c) After delivery of a Lender Notice.

**10.2** In any Substitution Notice, the Collateral Agent shall provide Notice to IFA that it intends to designate a Substituted Entity.

**10.3** The Collateral Agent shall, as soon as practicable thereafter, provide to IFA the information, evidence and supporting documentation regarding the proposed Substituted Entity and any third party entering into a material subcontract with such Substituted Entity, including:

- (a) The name and address of the proposed Substituted Entity and its proposed Key Contractors;
- (b) The names of the proposed Substituted Entity's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) The manner in which it is proposed to finance the proposed Substituted Entity in its performance of the balance of the Work and the extent to which such financing is committed;
- (d) Copies of the proposed Substituted Entity's and its proposed Key Contractors' most recent financial statements (and if available the financial statements for the last three financial years) or in the case of a newly-formed special purpose entity its opening balance sheet;
- (e) A copy of the proposed Substituted Entity's and its proposed Key Contractors' formation documents, and other evidence of each of their organization and authority, including organizational documents, resolutions and incumbency certificates;
- (f) Details of the resources available to the proposed Substituted Entity and its proposed Key Contractors, and the appropriate qualifications, experience and technical competence available to the proposed Substituted Entity and its proposed Key Contractors to enable the proposed Substituted Entity to perform the obligations of Developer under the PPA;
- (g) The names of the proposed Substituted Entity's and its proposed Key Contractors' directors/managers/members/partners and any key personnel who will assume substantially-similar roles as the Key Personnel and otherwise have responsibility for the day-to-day management of its participation in the Project;
- (h) Disclosure of any actual or potential conflicts of interest of the proposed Substituted Entity and its proposed Key Contractors; and
- (i) All certificates, including certificates regarding debarment or suspension, forms, statements, representations and warranties and opinion(s) of counsel that IFA may reasonably request, signed by the proposed Substituted Entity and, where applicable, proposed Key Contractors, in each case not at IFA's cost or expense.

**10.4** IFA shall not be required to give its approval to the proposed Substituted Entity if:

- (a) There are unremedied defaults under the PPA and there is no rectification plan reasonably acceptable to IFA with respect to the defaults which are capable of being cured by the Substituted Entity; or
- (b) Any proposed security interests to be granted by the proposed Substituted Entity to the Collateral Agent and/or Lender in addition to (or substantially different from) the security interests granted to the Collateral Agent and/or Lender under the Initial Funding Agreements or Initial Security Documents materially and adversely affect the ability of the Substituted Entity to perform Developer's

obligations under the PPA Documents or have the effect of increasing any liability of IFA, whether actual or potential (unless a Rescue Refinancing is concurrently proposed, in which case the Project Debt Termination Amount may increase by up to 10%).

**10.5** If IFA fails to give its approval within 45 days of the date on which IFA has confirmed it has received the information specified in Section 10.3 above in respect of any proposed Substituted Entity, or any extension thereof by mutual agreement of IFA and the Collateral Agent, then the approval of IFA shall be deemed to have been given.

## **11. SUBSTITUTION**

**11.1** If IFA approves (or is deemed to have approved) a Substitution Notice pursuant to Section 10 above, then the Substituted Entity named therein shall execute a duly completed "**Substitute Accession Agreement**" substantially in the form attached hereto as Schedule A and submit it to IFA (with a copy thereof to the other parties to this Direct Agreement). The assignment set forth in the Substitute Accession Agreement shall become effective on and from the earlier of (a) the latest of the date on which (i) the Collateral Agent or the Substituted Entity lawfully succeeds to all the Developer's Interest through exercise of foreclosure rights and actions on security interests or through transfer from Developer in lieu of foreclosure, (ii) IFA receives all payments described in Section 11.4 below and (ii) IFA countersigns the Substitute Accession Agreement (the "**Substitution Effective Date**"), or (b) the date that is ten days after the date IFA receives the completed Substitute Accession Agreement if IFA fails to sign the Substitute Accession Agreement.

**11.2** As of the Substitution Effective Date:

- (a) Such Substituted Entity shall become a party to the PPA Documents and this Direct Agreement in place of Developer;
- (b) All of Developer's obligations and liabilities under the PPA Documents and under this Direct Agreement arising from and after the Substitution Effective Date shall be immediately and automatically transferred to the Substituted Entity, without release of Developer from any such obligations and liabilities to IFA. Notwithstanding the foreclosure or other enforcement of any security interest created or perfected by any Funding Agreement, and notwithstanding occurrence of the Substitution Effective Date, Developer shall remain liable to IFA for the payment of all sums owing to IFA under the PPA and for the performance and observance of all of Developer's covenants and obligations under the PPA;
- (c) Such Substituted Entity shall exercise and enjoy the rights and perform the obligations of Developer under the PPA Documents and this Direct Agreement; and
- (d) IFA shall owe its obligations (including any undischarged liability with respect to any loss or damage suffered or incurred by Developer prior to the Substitution Effective Date) under the PPA Documents and this Direct Agreement to such Substituted Entity in place of Developer, subject to IFA's right to offset any losses or damages suffered or incurred by IFA as provided under the PPA, which when such obligations are performed by IFA shall be, and be deemed to be, a release by Developer of its entitlement to such performance.

**11.3** IFA shall use its reasonable efforts to facilitate the transfer to the Substituted Entity of Developer's obligations under the PPA and this Direct Agreement.

**11.4** The Substituted Entity shall pay to IFA on the Substitution Effective Date any amount due to IFA under the PPA and this Direct Agreement, including IFA's reasonable costs and expenses incurred in connection with (a) Developer's default and termination, (b) IFA's activities with respect to the Project during any period IFA was in possession, custody and control of the Project, and (c) the approval of the Substituted Entity, all as of the Substitution Effective Date and notified to such Substituted Entity prior to the Substitution Effective Date. IFA's receipt of the payment pursuant to this Section 11.4 shall be a condition precedent to the Substitution Effective Date.

**11.5** The occurrence of the Substitution Effective Date shall not extinguish prior Developer Defaults that remain uncured, and IFA shall continue to have all rights and remedies available under the PPA with respect to such Developer Defaults, including any applicable termination rights, subject to (a) the limitations on IFA's exercise of such rights and remedies set forth in this Direct Agreement during any applicable Cure Period that continues after the Substitution Effective Date (b) the limitations on termination due to accumulation of Noncompliance Points prior to the Substitution Effective Date to the extent provided in Section 21.4.5 of the PPA and (c) Section 13 below.

**11.6** As of the Substitute Effective Date, IFA shall enter into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer shall be replaced as a party by the Substituted Entity.

## **12. REVIVAL OF REMEDIES; INCURABLE DEVELOPER DEFAULT**

**12.1** If:

- (a) An IFA Notice has been given;
- (b) The grounds for such IFA Notice are continuing and have not been remedied or waived; and
- (c) Subject to Section 11.5, the Step-in Period ends without cure of the Developer Defaults that were the subject of IFA Notice,

then, from and after the date such Step-in Period expires (the "**Revival Date**"), IFA shall be entitled:

- (i) Except as provided otherwise in Section 6.4 above, to act upon any and all grounds for termination or suspension available to it under the PPA in respect of defaults under the PPA not remedied or waived;
- (ii) To pursue any and all claims and exercise any and all remedies against Developer; and
- (iii) To take or support any action of the type referred to in Section 20.7 of the PPA if and to the extent that it is then entitled to do so under the PPA.

**12.2** IFA may terminate the PPA without providing an IFA Notice, Step-in Period or Cure

Period to the Collateral Agent in the event of an Incurable Developer Default. Upon the occurrence of an Incurable Developer Default, IFA's termination rights shall be effective without regard to any limitations set forth in this Direct Agreement, subject to and except to the extent provided otherwise in Section 13 below.

### **13. NEW AGREEMENTS**

**13.1** The provisions of this Section 13 shall apply only if:

- (a) There occurs an Incurable Developer Default under clause (a) or (c) of the definition of Incurable Developer Default; or
- (b) (i) there occurs a Developer Default governed by clause (c) of the definition of Cure Period, (ii) the Collateral Agent pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the Project and possession, custody and control of the Project, (iii) despite such efforts the Collateral Agent is unable to obtain such possession, custody and control of the Project within the 180-day Cure Period set forth in clause (c) of the definition of Cure Period and (iv) no Step-out Notice has been given.

**13.2** If this Section 13 is applicable and either (i) IFA terminates the PPA or (ii) IFA receives notice that the PPA is otherwise terminated, rejected, invalidated or rendered null and void by order of a bankruptcy court, then (a) IFA shall deliver to the Collateral Agent Notice of such event, and (b) the Collateral Agent or other Step-in Party, to the extent then permitted by Law, shall have the option to obtain from IFA agreements to replace the PPA Documents, and, to the extent necessary, new ancillary agreements (e.g. escrow agreements) (together the "**New Agreements**") in accordance with and upon the terms and conditions of this Section 13.

**13.3** In order to exercise such option, the Collateral Agent or other Step-in Party must deliver to IFA, within 60 days (or 90 days, in the case of an Incurable Developer Default of the type contemplated under subclause (a) of the definition thereof) after IFA delivers its Notice of termination, (a) a request for New Agreements, (b) a written commitment that the Collateral Agent or other Step-in Party will enter into the New Agreements and pay all the amounts described in Sections 13.5(a) and (c) below, and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent or other Step-in Party. If any of the foregoing is not delivered within such 60-day (or, as applicable, 90-day) period, the option set forth in Section 13.2 in favor of the Collateral Agent and all other Step-in Parties shall automatically expire.

**13.4** Within 30 days after timely receipt of the Notice, written commitment and New Agreements duly executed, IFA shall enter into the New Agreements to which IFA is a party with the Collateral Agent or other Step-in Party, subject to any extension of such 30-day period as IFA deems necessary to clear any claims of Developer to continued rights and possession, custody or control of the Project, or otherwise.

**13.5** Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or other Step-in Party shall perform all of the following:

- (a) Pay to IFA:

- (i) Any and all sums which would, at the time of the execution of the New Agreements, be due under the PPA Documents but for such termination; and
  - (ii) The amount of any Termination Compensation previously paid by IFA under the PPA, with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points from the date the termination compensation was paid until so reimbursed;
- (b) Otherwise fully remedy any existing Developer Defaults under the PPA Documents (provided, however, that Incurable Developer Defaults need not be remedied and with respect to any Developer Default which cannot be cured until the Collateral Agent or other Step-in Party obtains possession, custody and control of the Project, it shall have such time, after it obtains such possession, custody and control as is necessary with the exercise of good faith, diligence and continuity to cure such Developer Default, in any event not to exceed 120 days after the date it obtains possession, custody and control of the Project);
- (c) Without duplication of amounts previously paid by Developer, pay to IFA all reasonable costs and expenses, including IFA's Recoverable Costs, incurred by IFA in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy or related proceeding, (iii) the recovery of possession, custody and control of the Project, (iv) all IFA activities during its period of possession, custody and control of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, minus the lesser of (A) the foregoing clause (iv) amount and (B) the amount of Availability Payments, if any, that would have been paid during such period had the PPA not been terminated and had there been no adjustments to such Availability Payments, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or other Step-in Party, IFA will provide a written, documented statement of such costs and expenses; and
- (d) Deliver to IFA a new Payment Bond and Performance Security and new letters of credit and guarantees to the extent then required under the PPA.

**13.6** Upon execution of the New Agreements and payment of all sums due IFA, IFA shall:

- (a) Assign and deliver to the Collateral Agent or other Step-in Party, without warranty or representation, all the property, contracts, documents and information that Developer may have assigned and delivered to IFA upon termination of the PPA; and
- (b) If applicable, transfer into a new Handback Requirements Reserve Account established by the Collateral Agent or other Step-in Party in accordance with the PPA, all funds IFA received from the Handback Requirements Reserve Account pursuant to Section 6.13.4 of the PPA (or from draw on a Handback Requirements Letter of Credit) less so much thereof that IFA spent or is entitled to as reimbursement for costs of Rehabilitation Work IFA performed prior to the effectiveness of the New Agreements.

**13.7** The New Agreements shall be effective as of the date of termination of the PPA and shall run for the remainder of the Term. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as the PPA Documents and ancillary agreements and documents that were binding on IFA and Developer (except for any requirements which have been fulfilled by Developer prior to termination and except that Section 18.1 of the PPA (and any equivalent provisions of the other PPA Documents) shall be revised to be particular to the Collateral Agent or other Step-in Party).

**13.8** If the holders of more than one Security Document make written requests upon IFA for New Agreements in accordance with this Section 13, IFA shall grant the New Agreements to, as applicable, the holder whose Security Documents have the most senior priority of record. Priority shall be established as follows.

- (a) IFA shall submit a written request to the Collateral Agent to designate the Security Documents having the most senior priority of record. IFA shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by IFA and without liability to any Lender; and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.
- (b) If IFA does not receive the Collateral Agent's written designation within ten days after delivering written request, then IFA may conclusively rely, without further inquiry and without liability to any Lender or Collateral Agent, on the seniority indicated by a then-current title report that IFA obtains from one of the four largest title insurance companies doing business in the State of Indiana (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.
- (c) If the holders of more than one Security Document share *pari passu* senior lien priority as indicated pursuant to clause (a) or (b) above and make written requests upon IFA for New Agreements in accordance with this Section 13, IFA shall grant the New Agreement to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other Security Documents shall be deemed to be void.

## **14 GENERAL**

**14.1** Neither Lender nor the Collateral Agent shall have any obligation hereunder to extend credit to IFA or any contractor to IFA at any time, for any purpose.

**14.2** For so long as any amount under the Funding Agreements is outstanding, IFA shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the PPA or any interest therein by Developer, other than as specified in the PPA or this Direct Agreement.

**14.3** Notwithstanding anything to the contrary contained herein, the Collateral Agent is acting hereunder, not in its individual capacity but solely as collateral agent, on behalf of the secured parties identified in the Security Documents. The Collateral Agent shall not be required to take any action whatsoever hereunder unless and until it is specifically directed to do so in writing as specified in the Security Documents. The Collateral Agent shall not be liable for acting in

accordance with such directions or for failing to act if it does receive any such written directions. Under no circumstances (other than in respect of gross negligence or willful misconduct of the Collateral Agent) shall the Collateral Agent be liable for any and all claims, liabilities, obligations, losses, damages, penalties, costs and expenses that may be imposed on, incurred by, or asserted against the Collateral Agent at any time or in any way relating to or arising out of the execution, delivery and performance of this Direct Agreement by the Collateral Agent. Under no circumstances shall the Collateral Agent be liable for any indirect, special, consequential or punitive damages arising out of the execution, delivery or performance of this Direct Agreement or for any action it takes pursuant to the authority or directions given under the Security Documents. For the avoidance of doubt, under no circumstances shall the Collateral Agent be required to perform any activity related to the development, design, construction, operation or maintenance of the Project including, without limitation, directing or supervising any portion of the construction of the Project. Nothing contained herein shall require the Collateral Agent to advance or risk its own funds.

#### **15. TERMINATION**

This Direct Agreement shall remain in effect until the earlier to occur of (a) the Discharge Date; (b) the time at which all of IFA's obligations and liabilities have expired or have been satisfied in accordance with the terms of the PPA Documents and this Direct Agreement; and (c) any assignment to a Substituted Entity has occurred under Section 11 above and IFA shall have entered into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer has been replaced as a party by the Substituted Entity.

#### **16. EFFECT OF BREACH**

Without prejudice to any rights a party may otherwise have, a breach of this Direct Agreement shall not of itself give rise to a right to terminate the PPA.

#### **17. NO PARTNERSHIP**

Nothing contained in this Direct Agreement shall be deemed to constitute a partnership between the parties hereto. None of the parties shall hold itself out contrary to the terms of this Section 17.

#### **18. REMEDIES CUMULATIVE**

No failure or delay by IFA[, Lender] or the Collateral Agent (or their designee) in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by [Lender, ]the Collateral Agent or any designee, transferee or permitted assignee thereof from time to time.

#### **19. AMENDMENT AND WAIVER**

No amendment, modification or waiver of any provision of this Direct Agreement shall be effective against any party hereto unless the same shall be in writing and signed by the party against whom enforcement is sought, and then such amendment, modification or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

## 20. SUCCESSORS AND ASSIGNS

20.1 No party to this Direct Agreement may assign or transfer any part of its rights or obligations hereunder without the consent of the other parties, save that (a) the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Funding Agreements, and (b) IFA may assign or transfer its rights and obligations hereunder as provided in Section 22.4.1 of the PPA.

20.2 This Direct Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

## 21. COUNTERPARTS

This Direct Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, taken together, shall constitute one and the same instrument, and the parties may execute this Direct Agreement by signing any such counterpart. Transmission by facsimile or electronic ("e-mail") delivery of an executed counterpart of this Direct Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart.

## 22. SEVERABILITY

If, at any time, any provision of this Direct Agreement is or becomes illegal, invalid or unenforceable, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in any way be affected or impaired. The illegal, invalid or unenforceable provision shall be deemed replaced by such provisions as shall be legal, valid and enforceable in the relevant jurisdiction.

## 23. NOTICES

23.1 Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Direct Agreement (each, a "Notice") to a party must be given in writing (including by fax or electronic mail, except as otherwise explicitly set forth in this Direct Agreement). All Notices will be validly given if on a Business Day to each party at the following address:

To IFA:

Public Finance Director  
Indiana Finance Authority  
One North Capitol, Suite 900  
Indianapolis, IN 46204  
Telephone: (317) 233-4332  
Fax: (317) 232-6786  
E-mail: ifa@ifa.in.gov

with copy to:

General Counsel  
Indiana Finance Authority  
One North Capitol, Suite 900  
Indianapolis, IN 46204

Telephone. (317) 233-4332  
Fax: (317) 232-6786  
E-mail: ifa@ifa.in.gov

**To Developer:**

with copies to:

**[To Lender:**

with copies to:]

*and*

**To the Collateral Agent:**

[Collateral Agent's name]  
[Office or department (e.g., Corporate Trust  
Administration)]  
[Street number]  
[City, State, zip code]  
Telephone: [ \_\_\_\_\_ ]  
Fax: [ \_\_\_\_\_ ]  
E-Mail:[ \_\_\_\_\_ ]

**23.2** A Notice shall be deemed to have been given:

- (a) Upon receipt, if delivered in person;
- (b) Upon receipt (confirmed by automatic answer back or equivalent evidence of receipt), if validly transmitted electronically before 3:00 p.m. (local time at the place of receipt) on a Business Day;
- (c) One Business Day after delivery to the courier properly addressed, if delivered by overnight courier; or
- (d) Four Business Days after deposit with postage prepaid and properly addressed, if delivered by United States Postal Service certified or registered mail.

**23.3** Each of the parties will provide Notice to each other in writing of any change of address, such Notice to become effective 15 days after dispatch.

**24. GOVERNING LAW AND JURISDICTION**

**24.1** This Direct Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana applicable to contracts to be performed within such State. The Parties consent to exclusive jurisdiction of and venue in the federal and state courts located in Marion County, Indiana.

**24.2** Each of Developer, IFA and the Collateral Agent irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier, and waives any different statutory requirements for service of process. Nothing in this Direct Agreement will affect the right of any party to serve process in any other manner permitted by law.

**24.3** Each of IFA, Developer and the Collateral Agent hereby (a) certifies that no representative, agent or attorney of any other of the aforementioned parties has represented, expressly or otherwise, that the other party would, in the event of a proceeding, seek to attack the enforceability of the foregoing waiver and (b) acknowledges that it has been induced to sign, and to change its position in reliance upon the benefits of, this Direct Agreement by, among other things, the mutual waivers in this Section 24.

**24.4** Each of IFA, Developer and the Collateral Agent hereby irrevocably and unconditionally waive any and all rights they may have to a trial by jury in any legal action or other proceeding under this Direct Agreement and for any counterclaim in any such action or proceeding. The provisions of this Section 24.4 shall survive the termination or expiration of this Direct Agreement.

**25. CONFLICT WITH THE PPA**

In the event of any irreconcilable conflict or inconsistency between the provisions of this Direct Agreement and the PPA, including, without limitation, Sections 13 and 21 of the PPA, the provisions of this Direct Agreement shall control and prevail.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Direct Agreement to be duly executed by its duly authorized officer as of the date first written above.

**INDIANA FINANCE AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**[COLLATERAL AGENT BANK], AS COLLATERAL AGENT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**[[ \_\_\_\_\_ ] [Lender]]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**I-69 DEVELOPMENT PARTNERS LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**SCHEDULE A**  
**Form of Substitute Accession Agreement**

[Date]

To: **Indiana Finance Authority**  
**For the attention of: [\_\_\_\_\_]**  
**[Lender and other parties to Funding Agreements to be listed]**  
**[insert address]**  
**For the attention of: [\_\_\_\_\_]**

From: **[Substituted Entity]**

I-69 SECTION 5 PROJECT  
SUBSTITUTE ACCESSION AGREEMENT

**Ladies and Gentlemen:**

Reference is made to the Public-Private Agreement, dated as of April 8, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Agreement**") between the Indiana Finance Authority (the "**IFA**") and I-69 Development Partners LLC ("**Developer**") and the Direct Agreement, dated as of [\_\_\_\_\_], 20[\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Direct Agreement**") among IFA, Developer[, Lender] and [\_\_\_\_\_] [Collateral Agent Bank or Trustee], as Collateral Agent. Terms defined in the Direct Agreement and not otherwise defined herein have the respective meanings set forth in or incorporated into in the Direct Agreement.

1. The undersigned ("we") hereby confirms that it is a Substituted Entity pursuant to Sections 10 and 11 of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Agreement and the Direct Agreement as a Substituted Entity and, accordingly, shall have the rights, powers and obligations of Developer under the Agreement and the Direct Agreement.

3. We hereby assume all duties, obligations and liabilities of Developer under the PPA Documents.

4. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substituted Entity]

5. This Substitute Accession Agreement shall be governed by, and construed in accordance with, the law of the State of Indiana applicable to contract to be performed within such State.

The terms set forth herein are hereby agreed to:

**[Substituted Entity]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Accepted:

**INDIANA FINANCE AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**SCHEDULE B**  
**Initial Funding Agreements**

**Funding Agreements**

Document	Party 1	Party(ies) 2

**Security Documents**

Document	Party 1	Party(ies) 2