

CUSTODIAL AGREEMENT

This Custodial Agreement (the "Agreement") is executed this ___ day of June, 2017, by and between Horizon Bank (the "Custodial Agent") ~~and~~ Franklin Shell Building LLC (the "Company") and the City of Franklin Redevelopment Commission ("FRC").

1. Definitions.

Accounts shall mean the Installment Payment Account and the Project Fund.

Acquisition Property Price shall have the meaning ascribed to such term in the Installment Contract.

Business Day shall mean any weekday that is not a day on which: (a) banks located in the city in which the Designated Office is located are required or authorized to remain closed; (b) The New York Stock Exchange is closed or (c) the Federal Reserve System is closed.

Designated Office shall mean the office of the Custodial Agent at 302 North Alabama Street, Indianapolis, Indiana , or such other office as the Custodial Agent from time to time may designate in writing to Company.

Disbursement Instructions shall mean instructions for disbursement of funds on deposit in the Project Fund to (or for the account of) Company, which instructions shall be substantially in the form attached hereto as Exhibit B.

Disbursement Request shall mean: (a) a request, together with instructions, for disbursement of Purchase Proceeds to (or for the account of) Company, which request shall be substantially in the form attached hereto as Exhibit A; together with (b) copies of inspection reports, AIA forms, or other reports reasonably acceptable to ~~the Custodial Agent~~ FRC showing: (i) the total amount disbursed to date; (ii) the percentage of completion of the Project; and (iii) the anticipated cost to complete the Project.

Event of Default shall have the meaning ascribed to such term in the Participation Agreement.

~~**FRC shall mean the City of Franklin Redevelopment Commission.**~~

FRC Account shall mean an account maintained by FRC with the Custodial Agent.

Installment Contract shall mean that certain Installment Purchase Contract executed by and between Company and FRC, a copy of which has been provided to the Custodial Agent.

Installment Payment Account shall mean the "Installment Payment Account" established pursuant to Section 2.

Installment Payments shall mean the installment payments to be made by FRC pursuant to the Installment Contract.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Money Market Securities shall mean securities of, or interests in, any money market mutual fund (including a money market fund offered by the Custodial Agent) registered under the Investment Company Act of 1940, as amended, the portfolio of which is limited to: (a) direct obligations of the United States; (b) obligations issued by: (i) a federal agency; (ii) a federal instrumentality; or (iii) a federal government sponsored enterprise; or (c) repurchase agreements fully collateralized by obligations described in clause (a) and/or (b) of this

definition; provided that such securities or interests are rated either: (a) "AA+" (or its equivalent) by S&P; or (b) "AAA" (or its equivalent) by Moody's.

Moody's shall mean Moody's Investors Service, Inc., a Delaware corporation, and its successors and assigns; provided that, if the foregoing is dissolved or liquidated, or no longer performs the functions of a securities rating agency, then Moody's shall mean another nationally recognized securities rating agency selected by the Payment Rights Purchaser.

Participation Agreement shall mean that certain Participation and Purchase Agreement executed by and among Company, FRC, and the Payment Rights Purchaser, a copy of which has been provided to the Custodial Agent.

Payment Due Date shall mean each January 15 and July 15 during the Payment Period, commencing on January 15, 2018.

Payment Period shall have the meaning ascribed to such term in the Installment Contract.

Payment Rights shall mean the rights under the Installment Contract with respect to the receipt of the Installment Payments.

Payment Rights Price shall mean the amount of \$2,392,000.00.

Payment Rights Purchaser shall mean Horizon Bank.

Permitted Investments shall mean:

- (a) US Guaranteed Securities;
- (b) Securities fully guaranteed and issued by: (i) a federal agency; (ii) a federal instrumentality; or (iii) a federal government sponsored enterprise;
- (c) Money Market Securities;
- (d) Repurchase agreements involving the purchase and guaranteed resale of any interest-bearing obligations issued, fully insured, or guaranteed by: (i) the United States; (ii) a United States government agency; (iii) an instrumentality of the United States; or (iv) a federal government sponsored enterprise; or
- (e) Deposit accounts or certificates of deposit with domestic commercial banks (including the Custodial Agent), which deposit accounts or certificates of deposit: (i) mature not more

than 360 days after the date of purchase; and (ii) either: (A) are insured by the Federal Deposit Insurance Corporation; or (B) have a rating on their short-term certificates of deposit on the date of purchase of: (1) "A-1" or "A-1+" (or its equivalent) by S&P; or (2) "P-1" (or its equivalent) by Moody's;

in each of the foregoing cases to the extent that funds of FRC are permitted by the Laws to be invested therein.

Project shall mean the project to be constructed by Company pursuant to the Project Agreement. The Project is the "Project" under the Project Agreement.

Project Agreement shall mean that certain Project Agreement of even date herewith executed by and between Company and FRC.

Project Costs shall have the meaning ascribed to such term in the Project Agreement.

Project Fund shall mean the "Project Fund" established pursuant to Section 2.

Project Fund Disbursement shall mean a disbursement and deposit by the Payment Rights Purchaser of the Payment Rights Price, less any amounts thereof disbursed in accordance with Exhibit A to the Participation Agreement, to the Custodial Agent for deposit into the Project Fund. The Project Fund Disbursement subsequently shall be disbursed to (or for the account of) Company as Transaction Proceeds in accordance with the terms and conditions of this Agreement.

S&P shall mean S&P Global Ratings, a division of The McGraw-Hill Companies, Inc., and its successors and assigns; provided that, if the foregoing is dissolved or liquidated, or no longer performs the functions of a securities rating agency, the "S&P" shall mean any other nationally recognized securities rating agency selected by the Payment Right Purchaser.

Transaction Proceeds shall mean the funds on deposit in the Project Fund, which funds shall be disbursed by the Custodial Agent to (or for the account of) Company in accordance with the terms and conditions of this Agreement.

US Guaranteed Securities shall mean securities backed by the full faith and credit of the United States Treasury, or fully guaranteed by the United States, and issued by: (A) the United States Treasury; (b) a federal agency; (c) a federal instrumentality; or (d) a federal government sponsored enterprise.

2. Account Creation.

- (a) Project Fund. As required by the terms of the Participation Agreement, the Custodial

Agent shall establish and maintain the "Project Fund": (i) which shall be separate and distinct from any other account maintained by the Custodial Agent; and (ii) the funds on deposit in which shall be held in trust, and separate from other funds held by the Custodial Agent. The Project Fund shall be dedicated specifically to: (i) receipt of the Project Fund Disbursement; and (ii) subsequent disbursement of Transaction Proceeds in accordance with the terms and conditions of this Agreement.

(b) Installment Payment Account. The Custodial Agent shall establish and maintain the "Installment Payment Account": (i) which shall be separate and distinct from any other account maintained by the Custodial Agent; and (ii) the funds on deposit in which shall be held in trust, and separate from other funds held by the Custodial Agent. The Installment Payment Account shall be dedicated specifically to: (i) the receipt of Installment Payments; and (ii) the payment of the Installment Payments to the Payment Rights Purchaser.

3. Project Fund.

(a) Disbursement. Upon receipt of the Project Fund Disbursement, the Custodial Agent shall deposit the Project Fund Disbursement into the Project Fund. To obtain a disbursement of Transaction Proceeds, Company shall be disbursed by the Custodial Agent to pay Project Costs upon receipt by the Custodial Agent of deliver a Disbursement Request from Company to FRC. Upon approval of such Disbursement Request, FRC shall submit Disbursement Instructions to the Custodial Agent. Upon receipt of Disbursement Instructions from FRC, the Custodial Agent shall disburse, for the payment of Project Costs, Transaction Proceeds in the amount specified in the Disbursement Instructions; provided that the Custodial Agent shall not be obligated to make disbursements from the Project Fund of Transaction Proceeds more frequently than once per month.

(b) Completion. Upon receipt by the Custodial Agent of a statement from Company stating that: (i) the entirety of the Project has been constructed substantially in accordance with the terms and conditions of the Project Agreement; and (ii) all of the Project Costs have been determined and paid (or that: (A) all of the Project Costs have been paid, other than specified claims that are subject to dispute; and (B) there is to be retained in the Project Fund, until resolution of the dispute, the full amount of such specified claims); the Custodial Agent shall transfer to the Installment Payment Account an amount equal to the remaining balance in the Project Fund, less the amount certified by Company as sufficient to cover the full amount of the specified claims that are subject to dispute, which amount shall be applied to the next due Installment Payments.

(c) Responsibility. Except as set forth in this Section, the Custodial Agent shall not have any responsibility with respect to the proper disbursement of the Transaction Proceeds.

4. Installment Payment Account.

(a) Receipts. Pursuant to the Participation Agreement: (i) the Payment Rights Purchaser has purchased the Payment Rights, and the Installment Contract is deemed to be registered in the name of the Payment Rights Purchaser; and (ii) FRC is obligated to pay each Installment Payment directly to the Custodial Agent for deposit into the Installment Payment Account; provided that, FRC shall be deemed to have paid an Installment Payment directly to the Custodial Agent if FRC delivers to the Custodial Agent written notice, at least five business days in advance of the applicable Payment Due Date, authorizing the Custodial Agent to withdraw the amount of the Installment Payment from an FRC Account that has a balance at least equal to the amount of the then due Installment Payment. If FRC pays any Installment Payment to Company instead of to the Custodial Agent, then Company promptly shall deliver such Installment Payment to the Custodial Agent for deposit into the Installment Payment Account. All Installment Payments received by the Custodial Agent shall be deposited into the Installment Payment Account.

(b) Payment. On each Payment Due Date, the Custodial Agent shall transfer from the Installment Payment Account to the Payment Rights Purchaser the full amount of the Installment Payment owed by FRC pursuant to the Installment Contract; provided that, to the extent that there are not sufficient funds on deposit in the Installment Payment Account to pay the full amount owed to the Payment Rights Purchaser (which shortfall is not due to the failure of the Custodial Agent to deposit amounts: (i) received from FRC and/or Company for deposit; or (ii) authorized by FRC pursuant to Subsection 4(a) to be withdrawn from an FRC Account; into the Installment Payment Account), the Custodial Agent shall: (i) deliver written notice of such shortfall to the Company, FRC, and the Payment Rights Purchaser; and (ii) transfer to the Payment Rights Purchaser the full amount of the funds on deposit in the Installment Payment Account. The Custodial Agent shall not be required to transfer to the Payment Rights Purchaser any funds other than the funds on deposit in the Installment Payment Account.

(c) Prepayment. If the Custodial Agent receives from FRC or Company a payment specified to be a prepayment of the Acquisition Property Price, either in full or in part, then the Custodial Agent promptly shall transfer the full amount of such prepayment to the Payment Rights Purchaser.

5. Investment.

(a) Permitted Investments. Upon receipt of written request from FRC, the funds on deposit in the Accounts shall be invested by the Custodial Agent in Permitted Investments that will mature on or before the dates on which the funds on deposit will be needed for payment in accordance with the terms and conditions of this Agreement; provided that, if the request from FRC does not specify the type of Permitted Investment in which the Custodial Agent shall invest the deposited funds, then the Custodial Agent shall invest the deposited funds only in Money Market Securities.

(b) Allocation. For purposes of investing funds in Permitted Investments only, the Custodial Agent may commingle the funds from the Accounts; provided that, notwithstanding any such commingling, all: (i) securities acquired as an investment of funds in a Permitted Investment; and (ii) interest or other income received in connection with an investment of funds in a Permitted Investment; shall be credited to, or deposited by the Custodial Agent in, the Project Fund or the Installment Payment Account to the extent that funds from the Project Fund or the Installment Payment Account, respectively, were invested in the Permitted Investment that resulted in the acquisition of such securities or the receipt of such interest or other income.

(c) Sale. The Custodial Agent may sell, or present for prepayment, any investments in which funds are invested pursuant to this Agreement to the extent necessary such that there are funds available to make any payment required to be made to the Payment Rights Purchaser hereunder. In the event of such a sale or prepayment, the Custodial Agent shall not be liable or responsible for any resulting loss.

(d) Rights. The Custodial Agent or an affiliated entity may act as principal or agent in connection with the investment of any funds in the Permitted Investments and/or the disposition of any investments in which funds are invested pursuant to this Agreement. The Custodial Agent shall not be responsible or liable for any loss suffered in connection with any investment made by the Custodial Agent pursuant to the terms and conditions of this Section.

6. Covenants.

(a) Books. The Custodial Agent shall keep, at the Designated Office, sufficient books and records with respect to all transactions made by the Custodial Agent and relating to: (i) the Accounts; (ii) disbursements from the Project Fund; (iii) the receipt of Installment Payments, prepayments, and any other payments made by FRC or Company pursuant to the Installment Contract and/or the Participation Agreement; (iv) disbursements to the Payment Rights Purchaser from the Installment Payment Account; and (v) the discharge of any of its other obligations under this Agreement. The foregoing books and records shall be open to inspection by Company and FRC upon reasonable prior notice and at all reasonable times. Until such time as the Acquisition Property Price has been paid in full, the Custodial Agent shall deliver to Company and FRC a monthly statement with respect to the receipts, deposits, transfers, disbursements, and payments that have occurred pursuant to this Agreement since delivery of the previous monthly statement.

(b) Laws. Company shall maintain and preserve its existence, including that it shall comply with all Laws necessary in connection with such maintenance and preservation.

(c) Further Assurances. Upon receipt of written request from the Custodial Agent or the Payment Rights Purchaser, Company promptly shall: (i) execute and deliver such additional instruments, documents, or assurances; and (ii) undertake such additional actions; as may

be necessary or reasonably requested to fully vest in the Custodial Agent all rights, interest, powers, benefits, privileges, and advantages to be conferred upon it by this Agreement.

(d) Expenses. Custodial Agent acknowledges that it is not entitled to any fees from Company in connection with this Agreement, and that any fee to which it may have been entitled has been paid in full. If the Custodial Agent is requested to perform any extraordinary services hereunder, then Company shall pay the reasonable fees and expenses (including reasonable attorneys' fees and expenses) incurred by the Custodial Agent in connection with such extraordinary services.

7. Custodial Agent Protections.

(a) The Custodial Agent undertakes to perform only such duties as are expressly set forth herein, and no duties shall be implied.

(b) The Custodial Agent: (i) may accept and rely on the truth and accuracy of; (ii) shall not have any duty to conduct any investigations or inquiries in connection with; and (iii) shall not incur any liability in connection with its reliance on; any written resolution, notice, request, consent, waiver, certification, statement, affidavit, or other instrument (whether received by mail, overnight delivery, facsimile, or email), that it believes in good faith to have been adopted and/or executed by the proper party and/or pursuant to the terms and conditions of this Agreement.

(c) If the Custodial Agent deems it to be necessary or appropriate for a matter to be proved or established prior to the Custodial Agent taking any action under this Agreement, the proving or establishing of which is not otherwise provided for herein, then: (i) such matter shall be deemed to be proved and established upon delivery by Company or FRC of a certificate with respect thereto; and (ii) the Custodial Agent may undertake action under this Agreement based on such certificate, which shall be deemed to be full and complete protection of the Custodial Agent.

(d) The Custodial Agent, either as principal or agent, may: (i) engage, or have an interest, in any financial or other transaction with Company or FRC; and (ii) act as depository, custodial agent, or agent with respect to obligations of Company or FRC.

(e) The Custodial Agent may: (i) discharge its obligations under this Agreement through attorneys, agents or receivers; and (ii) obtain advice of counsel concerning all matters of trust and the discharge of its obligations hereunder; and the Custodial Agent shall not be answerable for the default or misconduct of any such attorney, agent or receiver selected by it with reasonable care.

(f) The Custodial Agent shall not be liable for: (i) the exercise of its discretion; or (ii) the

discharge of its obligations; under this Agreement except in the case of its willful misconduct or negligence. Accordingly, the Custodial Agent shall not be liable for any error in judgment that is made in good faith, unless it is established that the Custodial Agent was negligent in ascertaining the pertinent facts. In no event shall the Custodial Agent be liable for special, indirect, or consequential losses or damages, even if the Custodial Agent has been advised of the likelihood of such losses or damages.

(g) The Custodial Agent does not assume, nor will it bear any responsibility for the truth and accuracy of, the statements and representations made by Company in this Agreement. The Custodial Agent makes no representations or warranties, either express or implied, with respect to the Project.

(h) No term or condition of this Agreement shall require the Custodial Agent to risk or expend its own funds, or otherwise incur any financial liability in connection with the discharge of its obligations hereunder, if the Custodial Agent has reasonable grounds to believe either that: (i) it will not receive repayment; or (ii) an adequate indemnity has not been provided.

(i) In accepting the obligation to act as the "Custodial Agent" under this Agreement, the Custodial Agent is not acting in any capacity other than as a custodial agent. Accordingly, except as provided to the contrary in this Agreement, all persons or entities (including, without limitation, Company and FRC) having any claim against the Custodial Agent in connection with this Agreement shall look only to the funds held by the Custodial Agent hereunder for payment.

(j) The Custodial Agent shall not be accountable for the use or application by Company or FRC of funds that the Custodial Agent has released in accordance with the terms of this Agreement.

8. Notice. Any notice or approval required or permitted to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Company at 8561 N. 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz, with a copy to: Jennifer R. Shoup, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; and to the Custodial Agent at 302 North Alabama Street, Indianapolis, Indiana [REDACTED], Attn: [REDACTED]. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

9. Business Days. If any obligation to be discharged hereunder (including the payment of any amount) is due on a day that is not a Business Day, then such obligation may be discharged on the next succeeding Business Day, in which case such discharge shall have the same effect as if it had been completed on the actual due date, without accrual of any interest from the actual due date to the date of discharge.

10. Miscellaneous. This Agreement shall be binding upon, and shall inure to the benefit of, the Custodial Agent and Company. No person or entity shall be deemed to be a third-party beneficiary of this Agreement. This Agreement: (a) may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute a single instrument; (b) shall be construed in accordance with the laws of the State of Indiana; and (c) may be amended only by a written instrument executed by the Custodial Agent and Company and acknowledged by FRC and the Payment Rights Purchaser. The captions of this Agreement are for convenience only and do not in any way limit or alter the terms and conditions of this Agreement. The invalidity or unenforceability of any term or condition of this Agreement shall not affect the other terms and conditions of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. All exhibits referenced herein are attached hereto and incorporated herein by reference.

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

FRANKLIN SHELL BUILDING LLC

By: GM Development Companies
LLC

By: _____
Gregory W. Martz, Member

HORIZON BANK

By: _____

Printed: _____

Title: _____

CITY OF FRANKLIN REDEVELOPMENT
COMMISSION

By: _____
Bob Heuchan, President

EXHIBIT A
Disbursement Request

The undersigned hereby states and certifies that:

- (a) he is the sole Member of GM Development Companies LLC, which is the sole Member of Franklin Shell Building LLC (the "Company") and, as such, is: (i) familiar with the facts herein certified; and (ii) authorized to make the certifications set forth herein;
- (b) pursuant to Section 3 of the Custodial Agreement by and ~~between~~among Company ~~and Horizon Bank dated June _____, 2017~~, Horizon Bank (the "Custodial Agent"), and the City of Franklin Redevelopment Commission ("FRC") dated June _____, 2017 (the "Custodial Agreement"), the undersigned hereby requests that FRC direct the Custodial Agent to disburse from the Project Fund to the payees set forth on the attached Schedule 1 the amounts set forth on Schedule 1 for the purposes set forth on Schedule 1;
- (c) all amounts being paid pursuant to Schedule 1 are Project Costs;
- (d) the Project Costs being paid pursuant to Schedule 1 have not been paid previously with a disbursement from the Project Fund; and
- (e) it has obtained lien waivers from all parties that otherwise would have the right to claim valid mechanics' or similar liens against all or a portion of the project site through the date of the last Disbursement Request, and, upon disbursement of the requested funds, payment will be made to the parties reflected on Schedule 1.

All capitalized terms used but not defined in this request shall have the meanings ascribed to such terms in the Custodial Agreement.

FRANKLIN SHELL BUILDING LLC

By: GM Development Companies LLC

By: _____
Gregory W. Martz, Member

Date: _____

**Schedule 1
DISBURSEMENTS**

<u>Item Number</u>	<u>Payee Name and Address</u>	<u>Purpose of Obligation</u>	<u>Amount</u>
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EXHIBIT B
Disbursement Instructions

Pursuant to Section 3 of the Custodial Agreement executed by and among Company, the City of Franklin Redevelopment Commission (“FRC”), and Horizon Bank (the “Custodial Agent”) dated June _____, 2017 (the “Custodial Agreement”), FRC hereby directs the Custodial Agent to make a disbursement of funds from the Project Fund to (or for the account of) Company in accordance with: (a) the Disbursement Instructions enclosed with these instructions; and (b) the terms and conditions of the Custodial Agreement.

All capitalized terms used but not defined in these instructions shall have the meanings ascribed to such terms in the Custodial Agreement.

CITY OF FRANKLIN REDEVELOPMENT
COMMISSION

By: _____

Printed: _____

Title: _____

Date: _____