

# **AMENDED AGENDA**

## **MONTHLY MEETING OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA, TENNESSEE**

**Monday, November 6, 2023 @ 11:00 AM**

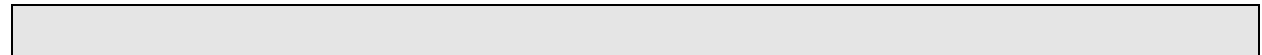
1. Call meeting to order.
2. Confirmation of Meeting Advertisement and Quorum Present.
3. Minutes approval for the October 2, 2023, regular monthly meeting.
4. Recognition of any person wishing to address the Board.
5. **Resolutions**
  - (a) A resolution authorizing the award of a Growing Small Business Incentive Grant to The Daily Ration, LLC, in the amount of \$10,000.00. **(SBI-26)**
  - (b) A resolution authorizing the award of a Growing Small Business Incentive Grant to The Bitter Alibi, LLC, in the amount of \$10,000.00. **(SBI-27)**
  - (c) A resolution authorizing the award of a Growing Small Business Incentive Grant to Datably, Inc., in the amount of \$10,000.00. **(SBI-28)**
6. Other Business.  
**Resolution**
  - (a) A resolution authorizing the execution of a Temporary Crane Swing Easement Agreement with RiverCity Company with regard to the PILOT agreement for the new Embassy Suites Hotel construction next to the Majestic 12 property where construction work will begin in December 2023.
7. Adjournment.



**INDUSTRIAL DEVELOPMENT BOARD  
MONTHLY MEETING MINUTES  
John P. Franklin Sr. City Council Building  
Chattanooga, Tennessee  
for  
October 2, 2023  
11:00 AM**

Present were Kerry Hayes (Chair), Althea Jones (Vice-Chair), Gordon Parker (Secretary), Jim Floyd (Assistant Secretary), Ray Adkins, Jimmy F. Rodgers, Jr., and Nadia Kain.

Also Present were: Attorney for the Board, Phillip A. Noblett; Jermaine Freeman (Interim Chief of Staff and Senior Advisor for Economic Development); Adam Myers (Chattanooga Area Chamber); Janice Gooden and Joseph Peden (CALEB); Helen Burns Sharp (ATM); Eleanor Liu (City Finance); Mike Pare (Times-Free Press); Lindsay Parker (VW); Richard Beeland (Economic Development); and Brent Taber (MAP Engineering).



Chairman Hayes called the meeting to order, confirmed the meeting was duly advertised, and established that a quorum was present to conduct business.



**MONTHLY MEETING OF SEPTEMBER 11, 2023 – MINUTES APPROVAL**

On motion of Mr. Parker, seconded by Mr. Floyd, the minutes of the September 11, 2023, monthly meeting were unanimously approved.



There was no one present wishing to make any comments.



**PRESENTATION OF VW FUNDING PROGRESS SUMMARY  
AND ECD PROGRAMS SUMMARY**

Ms. Eleanor Liu gave an overview of the summaries. The first MOU we have spent 99.98% and have a balance of \$53,257. The second MOU we have spent 99.82% and have a balance of \$394,570. The third MOU we have spent zero. Total to date, we spent 89.42%.

Mr. Parker asked, on the third MOU, is there any upcoming expenditures? Ms. Liu is not aware of anything, and Bill Payne told Ms. Liu that most likely the \$15 million state grant might get one single invoice from them, and that was months ago Mr. Payne told Ms. Liu that. Ms. Liu assumes it is on the way. The third MOU will probably expire in another year.

On the ECD Programs Summary the most interesting number would be the cash balance on the NR14 columns at \$1.6 million. In total we have \$2.3 million, but the cash balance has already been designated.

On the TIF Summary, we have three ongoing TIFs we regularly receive payment from Hamilton County and the City and remit the payment to the developer. The Sports Authority and The Bend do not have any action as of yet.



**RESOLUTION**

On motion of Mr. Floyd, seconded by Ms. Kain,

**A RESOLUTION AUTHORIZING THE CHAIR OR VICE-  
CHAIR TO EXECUTE A TERMINATION OF SLOPE  
EASEMENT RELATIVE TO THE PLASTIC OMNIUM  
AUTO EXTERIORS, LLC PILOT AS AMENDED.**

Mr. Jermaine Freeman stated this easement is related to the construction of Plastic Omnium which is an automotive supplier for Volkswagen and is part of an existing PILOT agreement. The reason Mr. Taber is here today is to give a little background of how the easement came into place, why it needs to be removed, and the reason the IDB has to be a signatory is because the Plastic Omnium property is held by the IDB because of the existing PILOT.

Mr. Brent Taber with MAP Engineering was present. With regard to the slope easement of Plastic Omnium Tract 30, at the time of their development our tract and adjoining tract has a much lower grade, and the slope easement language that has been terminated when the adjoining site was filled on top the slope. However, that was assuming that our tract would need to be filled to that elevation. Our design does not require that much fill, and they did install a retaining wall approximately 450 feet in length from zero to 10-12 feet and varies in distance off the property line from 10-60 feet or so and allows the access drive to come in to service the new construction. It has been completed approximately 6-7 months.

The retaining wall is an engineered wall designed by the geotech engineering firm. The location is Hickory Valley Road Tract 33, Plastic Omnium is Tract 30. It is a secure, stable site and a portion of the existing slope still remains. The slope easement is enacted to protect the slope from when future development occurs and does not undermine the current tenant's development. Our design has maintained that integrity of the slope.

The wall pulls away from the slope as the grades allow so you have portions where the wall comes back in and ties into the existing slope. It ranges from zero elevation to approximately 10-12 feet but just depends on the location of the wall.

Attorney Noblett stated that this particular request would be a termination of a slope easement where the last paragraph has a provision that says based upon \$10 that is paid, the IDB and tenant are forever terminated, released, and cancel the slope easement with the effective date filed and neither tenant nor any of his affiliated companies will be liable in contract to any person direct or indirect for damages, costs, expenses of any nature. Does the Board have a problem with adding neither the tenant nor the IDB nor any of those companies will be responsible? This would protect the IDB as well that we be released from liability.

Mr. Floyd made the motion to approve the termination of the slope easement but with the wording which releases liability of the IDB as suggested, seconded by Ms. Kain, and the resolution was approved as amended. The motion carried.

**ADOPTED-10/2/2023 AS AMENDED**

**RESOLUTION**

On motion of Mr. Parker, seconded by Ms. Jones,

**A RESOLUTION ADOPTING THE INDUSTRIAL DEVELOPMENT BOARD'S PILOT POLICIES AND PROCEDURES.**

Mr. Freeman stated that when we last met three weeks ago on Monday, September 11<sup>th</sup>, we advised this Board that we would continue to work with some of our community partners and members on developing a sound PILOT policy. What we wanted to do today is give you just an overview of the existing PILOT policy draft prepared by the Chamber of Commerce so we could at least start to have some formal discussion and we will talk about next steps once we get to the end of today's slides.

Mr. Freeman introduced Mr. Adam Myers who is the new Vice-President of Economic Development for the Chamber of Commerce. Charles Wood is now the CEO of the Chamber of Commerce and is very excited to have some help. Mr. Myers went through the slides.

Mr. Myers has been in economic development for the past 11 years and most recently in Tampa, Florida, and is excited to be in Chattanooga. Mr. Myers has been here about three weeks but will be spearheading this process on behalf of the Chamber and looking forward to working with the Board.

There was some discussion at the last meeting but with the policy review the goals of the policy we want to continue to be a steward of public resources while also creating a clear, predictable process in the policy, improving transparency, increasing Chattanooga's competitiveness in terms of how we compete against other communities in Tennessee as well as across the entire United States, and growing jobs investment in Chattanooga. We feel like these goals are in line with the IDB initiative in terms of growing investment and high quality jobs in Chattanooga and improving our competitive position as we compete against communities.

When we talk about being a steward of public resources, we really want to make sure that it is aware that within the policy it will hold all taxes associated with schools harmless. That means none of the taxes associated with the schools will be impacted by the City policy. It also codifies inclusions of the economic development fee, outlines for the reporting process, implements a conflict of interest requirement, requires an economic impact analysis prior to approval, it protects stormwater fees as part of this process, and institutes a public hearing as part of the approval process. Lastly, it will require an affidavit from the company stating that the project will not happen in Chattanooga but for these incentives. Meaning that but for the incentive, this project wouldn't (inaudible) locate elsewhere.

In terms of creating a clear and predictable process, in the policy really defines the eligibility projects based on minimum thresholds, including 100 new full-time jobs, \$20 million in capital investment for manufacturing projects, and \$5 million for office projects. It also focuses on specific industry sectors, including manufacturing, office, distribution, and in non-retail commercial, and requires a minimum wage of at least 80% of Hamilton County's average wage, but there is also a scoring matrix which is in the appendix of the policy.

The policy does delegate the authority to the IDB which is the same as Knoxville, Clarksville, Memphis, Nashville, and other markets across Tennessee and how they currently operate these policies. It codifies the standard percentages of the PILOT with 100% year one, 75% year two, 60% year three, and 50% for years four and beyond. With that clear and predictable process, it does codify the number of years for the PILOT to be based on job creation, wages, capital investment, the location if it is in a distressed or disadvantaged area, leadership meaning that is proven beyond community benefits with a commitment of corporate responsibility and safety, as well as environmental commitments in terms of LEED certification, Brownfield redevelopments. It outlines the approval process within that policy and also provides flexibility for projects that do not meet the policy or are seeking a PILOT for a longer term greater than 10 years that would have to be approved by City Council prior to the IDB.

Mr. Freeman stated that at some point the IDB will need to adopt a policy similar to the way we did with the revision of our TIF policies. Whatever policy the Board adopts we will also ask the City Council to also adopt and the City Council may have their own ideas or edits they may want to make. At this point what we would like to do given the fact that we had some

conversations with community members with CALEB and community partners like the County, we would like to ask from the Administration that instead of adopting the policy today, we would ask for more time to continue to engage with the community members and that we bring the Board back a policy in 90 days for this body to consider voting on. We had a great conversation with CALEB as well as Mark Mamantov (outside TIF attorney), and those conversations were very productive and helpful and set a tone to unpack some of the issues addressed in the policy. Mr. Freeman would like for them to continue the conversations but will need more time and if it is okay with the Board ask that the resolution be deferred 90 days until the January meeting on January 8<sup>th</sup>. That will give more time to continue to work with the community partners, continue to engage with Mark Mamantov, and continue towards putting together a group of community members that will obviously will include friends from CALEB and also the Chamber, County, City, and also give us an opportunity to engage with other community partners that have not been at the table so far, for example, the home builders and contractors.

Chair Hayes asked if January the board is considering a final draft ready for passage and given the complexities of the holiday, what is a realistic date that the Board would get the final draft? Mr. Freeman stated based on this new timeline, the Board would get the final draft in time for the December meeting and the Board can vote in January. The December meeting would be the last discussion point and January would be the vote. Assuming the Board votes on this policy, it will then go to City Council for vote.

Mr. Freeman stated that the Chamber's particular concerns are whether or not there are types of projects that meet with the IDB that do not have to be elevated to City Council. In terms of making sure our community members who are concerned about tax incentives and transparency understand what we are thinking, if there is a type of project that we all agree on, let's have a policy that basically says this type of project can go ahead and be accelerated through the IDB approval without the politicization that comes with taking every project to City Council. If there are projects that we all agree on as being good for the community, then we would like to see if those projects have a simpler path to approval through the IDB. If there are projects that do not meet those qualifications, then let us continue to bring those projects both to the IDB and to the City Council for approval. That is where the Administration ultimately wants to go in partnership with the Chamber, but we also want to make sure that whatever we are doing is something that everyone understands that the IDB can be supportive of and friends of the community.

After further discussion, Mr. Rodgers asked if there would be any PILOTs being envisioned that would be presented to the Board within the 90 day time period. Mr. Freeman said no. Ms. Jones asked, how can the Board prepare for the December meeting? Mr. Freeman stated that he and Mr. Myers will prepare a slide with the final presentation but between now and December we will continue to have meetings with the community and other community or labor groups that need to be engaged and continue to work with Mark Mamantov (outside counsel) to help us work through to develop a policy that meets the Administration's goals but is also mindful and respectful. There will be a presentation in December and have interested parties here and is always happy to take suggestions from interested stakeholders.

Chair Hayes needed clarity on three language points. The Hamilton County average annual wage what is that number? The scoring of disadvantaged areas was another point. It would be qualified census tracts based on HUD definition and opportunities in areas as well. One of the ways HUD defines qualified census tracts is based on census tracts would be to look at new market tax credits. Chair Hayes would like that spelled out. Another point is the community benefits definition.

After further discussion, the resolution was deferred 90 days to the January 8, 2024, meeting. The motion carried.

**DEFERRED 90 DAYS – JANUARY 8, 2024**

There being no further business, Mr. Adkins made a motion to adjourn the meeting at 11:30 AM.

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**GORDON PARKER, *Secretary***

APPROVED:

\_\_\_\_\_  
**KERRY HAYES, *Chair***

RESOLUTION

A RESOLUTION AUTHORIZING AN AWARD OF A GROWING SMALL BUSINESS INCENTIVE GRANT TO THE DAILY RATION, LLC, IN THE AMOUNT OF TEN THOUSAND DOLLARS (\$10,000.00).

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BE IT RESOLVED, that the Industrial Development Board be and is hereby authorizing the award of a Growing Small Business Incentive Grant to The Daily Ration, LLC, in the amount of \$10,000.00.

ADOPTED: November 6, 2023

THE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF CHATTANOOGA

Attest:

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KERRY HAYES, *Chair*

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GORDON PARKER, *Secretary*

**SBI-(26)**



RESOLUTION

A RESOLUTION AUTHORIZING AN AWARD OF A GROWING SMALL BUSINESS INCENTIVE GRANT TO THE BITTER ALIBI, LLC, IN THE AMOUNT OF TEN THOUSAND DOLLARS (\$10,000.00).

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BE IT RESOLVED, that the Industrial Development Board be and is hereby authorizing the award of a Growing Small Business Incentive Grant to The Bitter Alibi, LLC, in the amount of \$10,000.00.

ADOPTED: November 6, 2023

THE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF CHATTANOOGA

Attest:

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KERRY HAYES, *Chair*

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GORDON PARKER, *Secretary*

**SBI-(27)**

RESOLUTION

A RESOLUTION AUTHORIZING AN AWARD OF A GROWING SMALL BUSINESS INCENTIVE GRANT TO DATABLY, INC., IN THE AMOUNT OF TEN THOUSAND DOLLARS (\$10,000.00).

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BE IT RESOLVED, that the Industrial Development Board be and is hereby authorizing the award of a Growing Small Business Incentive Grant to Datably, Inc., in the amount of \$10,000.00.

ADOPTED: November 6, 2023

THE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF CHATTANOOGA

Attest:

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KERRY HAYES, *Chair*

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GORDON PARKER, *Secretary*

**SBI-(28)**

RESOLUTION

A RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY CRANE SWING EASEMENT AGREEMENT WITH RIVERCITY COMPANY WITH REGARD TO THE PILOT AGREEMENT FOR THE NEW EMBASSY SUITES HOTEL CONSTRUCTION NEXT TO THE MAJESTIC 12 PROPERTY WHERE CONSTRUCTION WORK WILL BEGIN IN DECEMBER 2023.

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BE IT RESOLVED, that the Industrial Development Board of the City of Chattanooga is hereby authorizing the execution of a Temporary Crane Swing Easement Agreement with RiverCity Company with regard to the PILOT agreement for the new Embassy Suites Hotel construction next to the Majestic 12 property where construction work will begin in December 2023.

ADOPTED: November 6, 2023

THE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF CHATTANOOGA

Attest:

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Kerry Hayes, Chair

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Gordon Parker, Secretary

This instrument is prepared by  
and return to:  
Samir C. Patel  
Kumar, Prabhu, Patel & Banerjee, LLC  
990 Hammond Drive  
One Lakeside Commons, Ste. 800  
Atlanta, Georgia 30328  
KPPB File 2567.000

**TEMPORARY CRANE SWING  
EASEMENT AGREEMENT**

**THIS TEMPORARY CRANE SWING EASEMENT AGREEMENT ("Agreement")** is entered into on October \_\_\_\_, 2023 and effective as of \_\_\_\_\_, 2023, by, **VISIONRCC, LLC**, a Tennessee limited liability company ("**Grantee**"), and **LIFESTYLE CENTER LLC**, a Tennessee limited liability company ("**Grantor 1**"), **INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA**, a Tennessee nonprofit corporation and **329 MARKET, LLC**, a Tennessee limited liability company (collectively, "**Grantor 2**"), **LINCOLN PARTNERS, LLC**, a Tennessee limited liability company ("**Grantor 3**"), **RIVER CITY COMPANY**, a Tennessee nonprofit corporation ("**Grantor 4**", together with Grantor 1, Grantor 2, Grantor 3, and Grantor 4 being collectively, "**Grantor**").

**RECITALS:**

**WHEREAS**, Grantee is the owner of that certain real property located in the City of Chattanooga, Hamilton County, Tennessee, as more particularly described in **Exhibit A** attached hereto and made a part hereof (the "**Grantee Property**").

**WHEREAS**, Grantor is the owner of those certain parcels of real property located in City of Chattanooga, Hamilton County, Tennessee, located immediately adjacent or South of the Grantee Property, as more particularly described in **Exhibit B** attached hereto and made a part hereof (the "**Grantor Property**").

**WHEREAS**, Grantee desires to develop certain building improvements on the Grantee Property ("**Development**"), and such construction will require the use of one of more overhead tower cranes (the "**Cranes**" whether one or more).

**WHEREAS**, to enhance efficiency in the use of the Cranes, Grantee desires a temporary easement in certain air space above Grantor Property as approximately depicted on **Exhibit C**

attached hereto through which the horizontal arm of the Cranes may swing in a free swing mode for safety purposes and not for construction purposes (the “**Crane Swing Easement**”).

**WHEREAS**, Grantor has agreed to grant the Crane Swing Easement to Grantee to facilitate such development work as more particularly hereinafter set forth and in accordance with the terms and provisions set forth herein.

**NOW, THEREFORE**, for Ten and 00/100 Dollars (\$10.00) cash to be paid as set forth herein, and other good and valuable consideration, the parties hereby agree as follows:

1. Temporary Easement for Crane Swing. As an appurtenance to the Grantee Property, Grantor, hereby grants, conveys, declares, imposes and establishes a non-exclusive, temporary Crane Swing Easement for the benefit of Grantee with respect to the Crane Swing Easement Area (as defined below) for the booms and associated tackle of construction cranes (“**Cranes**”) located on and operating from the Grantee Property to enter and encroach into, onto, and/or through the air space located above the Grantor Property and any improvements located thereon. The travel paths of such construction crane arms in and through the air space above the Grantor Property (“**Air Space**”) are shown and described on Exhibit C attached hereto and made a part hereof (the “**Crane Swing Easement Area**”). The Crane Swing Easement shall begin on the date designated by Grantee in writing to Grantor (the “**Commencement Date**”), and shall automatically terminate without further action by Grantor or Grantee upon the earlier of November 30, 2024, or at such time as Grantee completes construction and removes the crane, unless extended as set forth hereinafter (the “**Termination Date**”). The term of the easement may be extended (without additional compensation) for any construction delays caused by events not within the control of Grantee. Upon the Termination Date, Grantor may, but without limiting the self-effecting nature of such termination, file a written notice of termination of this Temporary Crane Swing Easement Agreement in the Register’s Office of Hamilton County, Tennessee.

2. Safety and Use Requirements. During the construction of the improvements on the Development, Grantee shall exercise its easement rights under this Agreement in accordance with the following requirements:

A. Compliance with Laws and Safety Requirements. The Cranes shall at all times be erected and operated, in accordance with all applicable safety laws, rules, federal, state and local regulations and ordinances.

B. Crane Operations. The Cranes utilized by or on behalf of Grantee shall be erected within the Development. While in operation, the height of the working Arm and the machinery Arm of the crane, or any attachment thereto, shall be no lower than one hundred feet (100’) above any structures or other improvements located on the Grantor Property as of the date of this Agreement.

C. No Construction Loads in Air Space. At no time shall the Cranes carry construction materials, supplies, equipment, machinery and/or any other loads in the Air Space, it being intended that the Agreement is limited solely to the swing of the unloaded portion of the boom of the Crane over the Air Space. The Crane shall be operated within

the Air Space only during those hours and the days and times (the “**Permitted Hours**”) that are not prohibited by Hamilton County, Tennessee, or any other governmental authority (until termination of the Agreement pursuant to this Agreement). As indicated above, in no event shall this Agreement include the right to suspend any load over the Grantor Property, and the third and any subsequent occurrence of such breach as to which Grantee receives written notice shall constitute an immediate violation of this Agreement.

D. Special Provisions. Grantee and its employees, agents, contractors, and subcontractors, as applicable, also shall operate the Crane in a safe manner, and shall comply with all federal regulations, as amended from time to time, regarding crane operation and safety, including, but not limited to, the following:

(1) Grantee, and its employees, agents, contractors, and subcontractors, as applicable, shall use commercially reasonable efforts to comply with the manufacturer's specifications and limitations applicable to the operation of the Crane and its related equipment, where manufacturer's specifications are not available, the limitations assigned to the equipment shall be based on the commercially reasonable determinations of a qualified engineer competent in the field and such determinations will be appropriately documented. Attachments used with the Crane shall not exceed the capacity, rating, or scope recommended by the manufacturer;

(2) Grantee, or its employees, agents, contractors, and subcontractors, as applicable, shall designate a competent person who shall inspect the Crane and all related machinery and equipment as is reasonably necessary during use, to make sure it is in safe operating condition. Any deficiencies shall be repaired, or defective parts replaced, before resuming or continued use;

(3) Grantee shall restrict operation of the Crane to professional and experienced operators familiar with the particular model and type of the Crane;

(4) Grantee shall use commercially reasonable efforts to minimize noise and vibrations from the Crane operations that emanate onto the Air Space or the ground underneath the Grantor's property, which are in excess of the normal and customary construction noise and vibrations for construction of such Development and operation of a similar crane; and

(5) In no event shall Grantee transport, discharge or dispose of any flammable materials, explosive materials, radioactive materials, asbestos-containing materials, any hazardous, toxic or dangerous waste, substance or material or any other hazardous materials or hazardous substances (as defined under the broadest definition of any and all applicable state and federal statutes and regulations) (collectively, “**Hazardous Substances**”) on or over Air Space or permit any such transport, discharge or disposal on or over the Air Space. Grantee shall not take any action, cause or suffer any contractor or subcontractor to take any

action, or cause or allow any omission that would result in the presence on, in, under, or above the Air Space of any Hazardous Substances.

3. Duty to Restore. Grantee shall promptly and at its sole cost and expense restore the Grantor Property (as well as the property of any tenant of Grantor) damaged or disturbed by Grantee to the condition in which it existed prior to Grantee's exercise of its rights hereunder, but in any event commence restoration activities within ten (10) business days following written notice from Grantor.

4. Default by Grantee; Additional Remedies.

A. Defaults Generally. In the event Grantee fails for any reason to satisfy any monetary or non-monetary obligation required under this Agreement (“**Obligation**”) in accordance with and within the time required pursuant to this Agreement, Grantor shall deliver written notice (“**Default Notice**”) to Grantee describing the nature of, and curative steps reasonably required to satisfy, such Obligation. Grantee shall have five (5) business days after receipt of a Default Notice in which to satisfy the Obligation specified therein, unless the cure period takes longer than five (5) business days and Grantee has commenced the cure within such five (5) business day period and continues thereafter to prosecute the completion of the cure matter, then the initial five (5) business day period shall be reasonably extended. In the event that, after receipt of a Default Notice, Grantee fails, within the foregoing five (5) business day period, or longer as provided above, to satisfy the Obligation specified in the Default Notice, Grantor shall have the right to take such steps as shall be reasonably required or desired to satisfy the outstanding Obligations as long as such Obligation does not involve Grantor's operation of the Crane or performance of any construction activity on the Development. In the event that Grantor undertakes the satisfaction of an Obligation on behalf of Grantee pursuant to this Section 4.A. or any other provision of this Agreement, Grantee shall reimburse Grantor, within ten (10) days after receipt of written demand therefor, any and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Grantor in connection with the satisfaction of such Obligation, together with interest thereon from ten (10) days after demand until paid at the lessor of (i) ten (10%) percent annum or (ii) the maximum lawful interest rate (the “**Default Rate**”).

B. Remedies. If Grantee is in default under this Agreement beyond all applicable notice and cure periods, Grantor shall have the right to (i) sue for damages, or (ii) sue to enjoin the Grantee from continuing the existing default and any future default(s); provided, however, Grantor shall not have the right to terminate the Agreement. If, in order to prevent Grantee from continuing to default under this Agreement, it is necessary to enjoin the operation of the Crane over the Air Space, an injunction to such effect shall not constitute the termination of the Agreement.

5. No Responsibility for Costs. Grantor shall not bear any costs or expenses of or associated with the rights exercised by Grantee under or pursuant to this Agreement. Grantee shall be responsible for all of the reasonable and necessary costs and expenses of the Development.

6. Indemnification. To the maximum extent permitted by law, Grantee hereby agrees to indemnify, defend, and hold harmless Grantor and its officers, employees, agents, contractors, attorneys, consultants and any successors or assigns of the foregoing and their respective officers, directors, agents, employees, and representatives (collectively, the “**Indemnified Parties**”) from and against any and all liens, claims, or damages of any kind or nature, including any demands, actions or causes of action, assessments, costs, expenses, liabilities, interest and penalties, and attorneys' fees suffered, incurred, or sustained by any of the Indemnified Parties caused in whole or in part by Grantee or Grantee's contractors and/or consultants, or their respective agents or representatives with respect to any acts or omissions of the Grantee, Grantee's contractors or consultants or their respective agents or representatives which arises out of or is, in any manner connected with the use of the Crane and maintenance or repair of the Crane within the Air Space or any other activities of Grantee or its contractors or consultants or their respective agents or representatives on or affecting the Air Space pursuant to this Agreement or otherwise with respect to the Development. In the event any Indemnified Party is made a party to any litigation, Grantee shall defend (with counsel reasonably satisfactory to Grantor) the Indemnified Parties with respect to any “Action” (hereafter defined) and shall pay all judgments, claims, damages, liabilities and expenses (including, without limitation, attorneys' fees and disbursements) in connection with the litigation. Grantee shall advise the applicable Indemnified Party promptly, in writing of the service upon Grantee of any summons, notices, letters or other communications alleging any claim or liability against the applicable Indemnified Party or with respect to the Development or Air Space upon which Grantee is using the Crane. Grantee and the applicable Indemnified Parties (as caused by Grantor where applicable) agree to reasonably cooperate in the event that any such summons or claim as aforesaid is filed or delivered alleging liability on the part of the applicable Indemnified Party, and Grantee agrees that it shall not admit any liability without Grantor's approval.

Additionally, the applicable Indemnified Parties agree that if any third party claims are made or any action or proceeding (each, an “**Action**”) is instituted against any of the Indemnified Parties for which indemnity is sought pursuant to this Agreement, the applicable Indemnified Party will promptly notify Grantee in writing and will thereafter continue to give Grantee reasonably prompt written notice of all developments in connection therewith within the applicable Indemnified Party's actual knowledge. With respect to any Action, Grantee shall defend the Action, at Grantee's sole cost and expense, in the name of the applicable Indemnified Party, and will have the right to designate any counsel reasonably acceptable to the applicable Indemnified Party to defend such action. Grantee will conduct all proceedings with respect to the Action with due diligence. Grantee shall not agree to any settlement or admission of liability that adversely affects the applicable Indemnified Party without the prior written consent of such applicable Indemnified Party which may be withheld at such Indemnified Party's sole discretion. Grantee will arrange to provide such information to the applicable Indemnified Party as is necessary to keep the applicable Indemnified Party fully informed of all proceedings. The applicable Indemnified Party will cooperate in all reasonable respects with Grantee and Grantee's attorney at all stages of the Action at no cost or expense to the applicable Indemnified Party. The applicable Indemnified Party agrees to promptly supply to Grantee and Grantee's attorneys, upon written request, all papers, documents and evidence in the applicable Indemnified Party's possession or control and such other information with the applicable Indemnified Party's knowledge pertinent to the Action. In the event that Grantee does not timely notify the applicable Indemnified Party of Grantee's defense of each Action or fails to continue to discharge such defense obligation in accordance with this Agreement,



the applicable Indemnified Party may elect to defend the Action at Grantee's cost and expense and Grantee shall be bound by the results obtained by the applicable Indemnified Party. Notwithstanding anything set forth herein to the contrary, the indemnification and restoration obligations of Grantee in this Agreement shall survive the termination of this Agreement.

This indemnification obligation of Grantee shall not apply only in the case of a willful act or gross negligence of the Indemnified Parties; provided that for the purposes of the foregoing, the Grantor's act of entering into this Agreement cannot be deemed to be a "willful act".

7. Insurance. Grantee shall carry and maintain throughout the Term, or will cause its contractor to carry and maintain throughout the Term, the following insurance policies:

A. Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Tennessee Workers' Compensation Act and minimum policy limits for employers liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

B. Commercial General Liability policy with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, including designated location general aggregate limit and \$2,000,000 products-completed operations aggregate, and \$1,000,000 Personal and Advertising Injury. The policy shall provide "insured contract" coverage and independent contractors coverage. To the extent commercially reasonably available, such coverage will include:

- (1) Products/Completed Operations will be extended or renewed to remain in force for a minimum of three (3) years after substantial Development completion;
- (2) Air Space in Grantee's care, custody, control or possession;
- (3) Per Location General Aggregate; and
- (4) No exclusion for explosion, collapse, and underground hazard;

C. Commercial Automobile Liability with minimum Combined Single Limits of \$1,000,000 Each Accident. Coverage will include: Owned (if applicable), hired and non-owned vehicles (or 'Any Auto'); and any vehicle required to be used under the applicable vehicle code.

D. Commercial Umbrella/Excess Liability with minimum limits of \$25,000,000. Each Occurrence and \$25,000,000 Aggregate, with a Per Location General Aggregate. Coverage will include terms and conditions on a following form basis in excess of the underlying coverage for Commercial General Liability, Commercial Automobile Liability and Employer's Liability. The Excess Liability coverage required under this Section may be met with more than one layer of insurance provided that such insurance remains available in the case of a claim.

Insurance coverage is to be written by companies duly authorized to do business in the State of Tennessee at the time the policies are issued and must be written by companies with an A. M. Best rating of B+VIII or better. The workers' compensation/employer's liability, commercial general liability, automobile liability and commercial umbrella/excess liability policies will contain a provision in favor of the Indemnified Parties (defined below) waiving subrogation or other rights of recovery against any of the Indemnified Parties. In addition, (i) the commercial general liability policy, including the umbrella/excess liability policies, must be endorsed to include the Grantor (and Grantor's lenders) as an additional insured and to provide that its coverage is primary and non-contributing with regard to any insurance of Grantor, (ii) contain a "separation of insureds" provision; and (iii) to the extent commercially reasonably available, all policies must be endorsed to provide that such policy will not be canceled without 30 days prior written notice to Grantor (10 days prior written notice in the event of cancellation for non-payment of premium). Grantee shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in the policies it maintains. In no event shall the deductible or self retention amount exceed \$25,000.00 without Grantor's prior written consent which may be withheld at its sole discretion. If Grantee desires a deductible or self retention in excess of \$25,000.00 upon request Grantee shall provide audited financials for Grantor's review in deciding whether to allow a greater deductible/self retention. The insurance coverage required under this Agreement are required minimums and are not intended to limit the responsibility or liability of Grantee. For the avoidance of doubt, Grantee's liability shall not be affected or limited by the amount of insurance it is required to carry. Upon written request, Grantee shall also cause true and correct copies of the required insurance policies (including endorsements) to be promptly delivered to Grantor.

A certificate of insurance evidencing coverage required hereunder must be provided and delivered to Grantor prior to the exercise of the Crane Swing Easement.

All insurance certificates must include a clause stating that the insurance policy must not be canceled, not renewed, reduced, restricted, or otherwise limited until 30 days after Grantor has received (a) written notice as evidenced by a return receipt of certified mail and (b) substitute certificates of insurance evidencing equivalent substitute insurance. All insurance certificates must affirmatively show that Grantor is named as additional insured.

8. No Waiver or Assumption of Risk. Grantor's permitting the Crane shall not constitute or be construed as creating or otherwise imposing upon Grantor or any of the Indemnified Parties any duty of care to Grantee, which party enters above or on the Air Space at its own risk and waives any claim against Grantor and the Indemnified Parties in connection therewith.

9. Easement Payment. Within five (5) days of the Effective Date, Grantee shall deliver to Grantor an amount equal to Ten Dollars (\$10.00) (the "**Easement Payment**").

10. Runs with the Land. All provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors, successors-in-title, assigns, personal representatives, lessees, permittees, agents and licensees. The terms and provisions hereof shall be binding upon the parties hereto only with respect to the periods of time such party is the owner of title to the Grantor Property or the Grantee Property, as the case may be. Accordingly, from and after such time as either party hereto shall transfer title to its respective property, it shall have no further obligations hereunder except for obligations which accrued prior to the time of such transfer, it being specifically understood that from and after the date of such transfer such party shall have no further rights hereunder nor responsible for any obligations hereunder which rights and obligations shall, thereafter, be deemed rights and obligations of the party to whom title has been transferred and such transferee shall, by virtue of its acceptance of such transfer be deemed to have assumed and agreed to perform all obligations of the transferor thereafter accruing under this Agreement.

11. Reservation of Rights. Grantor reserves the right to make any use of the Grantor Property which may not be inconsistent with the rights herein conveyed or interfere with the use of the Crane Swing Easement Area for the purposes herein named.

12. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as be given by (i) the deposit of the same with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage and addressed as hereinafter provided or (ii) delivery by a reputable commercial courier with receipt for delivery obtained by courier properly addressed to the property owner to which such notice is sent or (iii) by email or facsimile if that information is provided below. For purposes of notice, the addresses of the parties shall be the addresses set forth below or such other address in the continental United States as may be specified by such party in written notice to the other parties given in the manner hereinabove set forth.

**GRANTOR:** Lifestyle Center LLC  
Attn: Todd Phillips  
715 Market Street, Suite 203  
Chattanooga TN 37402  
[todd.phillips@noonmanagementllc.com](mailto:todd.phillips@noonmanagementllc.com)

329 Market, LLC  
Attn: Todd Phillips  
715 Market Street, Suite 203  
Chattanooga TN 37402  
[Todd.phillips@noonmanagementllc.com](mailto:Todd.phillips@noonmanagementllc.com)

with copy to:

Noon Management, LLC  
Attn: Allison Cromie  
715 Market Street, Suite 203

Chattanooga TN 37402  
[allison.cromie@noonmanagementllc.com](mailto:allison.cromie@noonmanagementllc.com)

Lincoln Partners, LLC  
Attn: John Clark

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[jclarktdr@gmail.com](mailto:jclarktdr@gmail.com)

Industrial Development Board of the City of Chattanooga  
Attn: Phillip A. Noblett  
100 East 11<sup>th</sup> Street, Suite 200  
Chattanooga, TN 37402

River City Company  
Attn: Jim Williamson  
850 Market Street, Suite 200  
Chattanooga, TN 37402  
[jwilliamson@rivercitycompany.com](mailto:jwilliamson@rivercitycompany.com)

**GRANTEE:** VisionRCC, LLC  
Attn: Brian Hennessy  
411 Broad St., Ste. 401  
Chattanooga, TN 37402  
[bhennessy@vhghotels.com](mailto:bhennessy@vhghotels.com)

**With Copy To:**

KPPB Law  
Attn: Samir Patel, Esq.  
9890 Hammond Drive NE, Suite 800  
Atlanta, GA 30328  
Phone: 678-443-2237  
spatel@kppblaw.com

13. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Tennessee without regard to principles of conflicts of laws. Exclusive venue for enforcement or disputes arising out of this Agreement shall lie in a court of competent jurisdiction located in Hamilton County, Tennessee.

14. Authority. Each party hereto represents and warrants to the other party hereto that it is duly authorized to enter into this Agreement and that the person executing this Agreement on its behalf has been duly authorized to execute this Agreement and has the right and authority to grant the easements created hereby.

15. Miscellaneous. Time is of the essence of this Agreement. The headings and titles of the sections and subscriptions of this Agreement are for descriptive purposes only and shall have no effect upon the construction or interpretation of any part of this Agreement. This Agreement may not be amended except by an instrument in writing duly executed by the party to be bound thereby. This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

16. No Further Agreement. This Agreement contains a complete expression of the agreement between the Parties, and there are no promises, representations or inducements, verbal or written except such as are herein provided, and the terms of this Agreement cannot be varied or terminated except by the written agreement of the Parties.

17. Legal Fees/General Reimbursements. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements, representations or warranties on the part of the other party arising out of this Agreement, then, in that event, notwithstanding anything in this Agreement to the contrary, the prevailing party in such action or dispute, whether by judgment or out of court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including actual attorney's fees. In the event Grantee is liable to Grantor for reimbursement of any expenses as provided in this Agreement, such reimbursement shall be promptly paid by Grantee when due, and all such amounts payable herein by Grantee to Grantor shall bear interest from thirty (30) days after demand until paid at the Default Rate.

18. Grantee shall reimburse Grantor for any reasonable fees for consultants of Grantor, including, without limitation, any "Owner Representative" (defined herein as a construction consultant or engineer advising Grantor with respect to Grantee's and/or its contractor's operation of the Crane and related matters) and any attorney's fee incurred in negotiating this Agreement.

**(Signature Pages Follow)**

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement to be effective on the date stated above.

**GRANTOR 1:**  
**LIFESTYLE CENTER LLC,**  
a Tennessee limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF TENNESSEE     )  
  )  
COUNTY OF HAMILTON    )

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself being the \_\_\_\_\_ of LIFESTYLE CENTER LLC, a Tennessee limited liability company, within named bargainor, and that he as such officer executed the foregoing instrument for the purposes therein contained by signing the name of LIFESTYLE CENTER LLC by himself as such officer.

WITNESS my hand and seal this \_\_\_\_\_ day of February, 2023.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**(Signatures Continued on Following Page)**

**[SIGNATURE PAGE TO TEMPORARY CRANE  
SWING EASEMENT AGREEMENT]**

**GRANTOR 2:**  
**329 MARKET, LLC,**  
a Tennessee limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF TENNESSEE     )  
  )  
COUNTY OF HAMILTON    )

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the \_\_\_\_\_ of 329 Market, LLC, a Tennessee limited liability company, within named bargainor, and that he as such officer executed the foregoing instrument for the purposes therein contained by signing the name 329 Market, LLC by himself as such officer.

WITNESS my hand and seal this \_\_\_\_\_ day of October, 2023.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**(Signatures Continued on Following Page)**

**[SIGNATURE PAGE TO TEMPORARY CRANE  
SWING EASEMENT AGREEMENT]**

**GRANTOR 2:  
INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF CHATTANOOGA,  
a Tennessee nonprofit corporation**

By: \_\_\_\_\_  
Name: Kerry Hayes  
Its: Chair

STATE OF TENNESSEE     )  
  )  
COUNTY OF HAMILTON    )

Before me, a Notary Public of the State and County aforesaid, personally appeared, Kerry Hayes, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chair of INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA, a Tennessee nonprofit corporation, within named bargainor, and that he as such officer executed the foregoing instrument for the purposes therein contained by signing the name of INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA by himself as such officer.

WITNESS my hand and seal this \_\_\_\_\_ day of November, 2023.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**(Signatures Continued on Following Page)**



**[SIGNATURE PAGE TO TEMPORARY CRANE  
SWING EASEMENT AGREEMENT]**

**GRANTOR 3:**  
**LINCOLN PARTNERS, LLC,**  
a Tennessee limited liability company

By: \_\_\_\_\_  
Name: John Clark  
Its: \_\_\_\_\_

STATE OF TENNESSEE     )  
  )  
COUNTY OF HAMILTON    )

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the \_\_\_\_\_ of LINCOLN PARTNERS, LLC, a Tennessee limited liability company, within named bargainor, and that he as such officer executed the foregoing instrument for the purposes therein contained by signing the name of LINCOLN PARTNERS, LLC by himself as such officer.

WITNESS my hand and seal this \_\_\_\_\_ day of February, 2023.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**(Signatures Continued on Following Page)**

**[SIGNATURE PAGE TO TEMPORARY CRANE  
SWING EASEMENT AGREEMENT]**

**GRANTOR 4:  
RIVER CITY COMPANY,  
a Tennessee nonprofit corporation**

By: \_\_\_\_\_  
Name: Jim Williamson  
Its: \_\_\_\_\_

STATE OF TENNESSEE     )  
  )  
COUNTY OF HAMILTON    )

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the \_\_\_\_\_ of RIVER CITY COMPANY, a Tennessee nonprofit corporation, within named bargainor, and that he as such officer executed the foregoing instrument for the purposes therein contained by signing the name of RIVER CITY COMPANY by himself as such officer.

WITNESS my hand and seal this \_\_\_\_\_ day of October, 2023.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**(Signatures Continued on Following Page)**

**[SIGNATURE PAGE TO TEMPORARY CRANE  
SWING EASEMENT AGREEMENT]**

**GRANTEE:**  
**VISIONRCC, LLC,**  
a Tennessee limited liability company

By: \_\_\_\_\_  
Name: Mitul I. Patel  
Its: Manager

STATE OF TENNESSEE     )  
  )  
COUNTY OF HAMILTON    )

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the \_\_\_\_\_ of VISIONRCC, LLC, a Tennessee limited liability company, within named bargainor, and that he as such officer executed the foregoing instrument for the purposes therein contained by signing the name of VISIONRCC, LLC by himself as such officer.

WITNESS my hand and seal this \_\_\_\_\_ day of October, 2023.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_



**EXHIBIT B**  
**GRANTOR PROPERTY**

1. Lifestyle Center LLC, being Grantor 1, dba Lifestyle Center, owner of 325 Market St., Chattanooga, TN 37402, Parcel ID: 135MA\_A\_002
2. 329 Market, LLC, being the ground lessee and Industrial Development Board of the City of Chattanooga, owner of the fee, collectively Grantor 2, 329 Market Street, Chattanooga, TN 37402, Parcel ID: 135MA\_A\_003
3. Lincoln Partners, LLC, being Grantor 3, dba Five Guy's, owner of 401 Broad St., Chattanooga, TN 37402, Parcel ID: 135NC\_A\_002
4. River City Company, being Grantor 4, owner of 311 Broad St., Chattanooga, TN 37402, Parcel ID: 135NB\_A\_003\_L000

**EXHIBIT C**  
**CRANE EASEMENT AREA**

