

3 **A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE**  
4 **APPROVING CERTAIN FUNDS AND AGREEMENTS**  
5 **TO PROVIDE FOR THE CONSTRUCTION OF A GROCERY STORE**  
6 **ON THE PONTIAC STREET CORRIDOR**

7 **WHEREAS**, the Fort Wayne Redevelopment Commission ("Commission") owns land and  
8 improvements located at 918 E Pontiac Street, 2709 John Street, and 2701 John Street (the  
9 "Real Estate") which will be developed as a non-profit grocery store (the "Grocery") through a  
10 public-private partnership between the City of Fort Wayne (the "City") and Parkview Hospital,  
11 Inc. ("Parkview"), and operated by Pontiac Street Market, LLC (the "Project"); and

12 **WHEREAS**, establishing a Grocery furthers implementation of the Southeast Strategy  
13 Update, which is a sub-area plan that was created through broad public input and adopted by  
14 the Common Council ("Council") in 2021, which states that the City should "provide economic  
15 incentives to attract a full-service grocery store in areas currently underserved or classified as  
16 food deserts"; and

17 **WHEREAS**, construction of the Grocery is estimated to cost Three Million Four Hundred  
18 Thousand and 0/100 Dollars (\$3,400,000), which is anticipated to be paid through: (i) funds  
19 allocated to the City of Fort Wayne through the American Rescue Plan Act of 2021 (the "ARPA  
20 Funds"), (ii) \$700,000 from the Commission, and (iii) \$700,000 from the Local Income Tax Fund  
21 ("LIT Funds"), which LIT Funds shall be reimbursed to the City, over time, through the charitable  
22 contribution of Parkview, as more particularly described in the Agreement (defined below); and

23 **WHEREAS**, on September 27, 2022, Council adopted Resolution No. R-22-09-11 which  
24 provided approval for the use of ARPA funds for the Project in the amount of Two Million Dollars  
25 (\$2,000,000); and

26 **WHEREAS**, to memorialize the responsibilities pertaining to the development and  
27 operation of the Grocery, the City, Parkview and Pontiac Street Market, LLC, desire to enter into  
28 a Grocery Store Development and Operation Agreement (the "Agreement"), a copy of which is  
29 attached hereto as Exhibit A.

30 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY  
OF FORT WAYNE, INDIANA, AS FOLLOWS:**

**SECTION 1.** Council finds, determines, ratifies and confirms that construction  
of the Grocery is in the best interests of the citizens and taxpayers of the City, aligns with ARPA  
guidelines promoting projects that increase access to healthy foods in Qualified Census Tracts,  
and aligns with the goals and policies set forth in the Southeast Strategy Update.

**SECTION 2.** Council hereby pledges and assigns to the Commission the  
aforesaid Two Million Dollars (\$2,000,000) of ARPA Funds for use in the construction of the  
Project in accordance with all federal, state and local procurement requirements.

**SECTION 3.** Council hereby pledges to the Commission an additional Seven  
Hundred Thousand and 0/100 Dollars (\$700,000) of LIT Funds for use in the construction of the  
Project in accordance with all federal, state and local procurement requirements, which funds  
shall be reimbursed to the City through a charitable contribution from Parkview at a rate of  
approximately One Hundred Forty Thousand Dollars per year, for five (5) years, beginning in  
2022.



Exhibit A  
Grocery Store Development and Operation Agreement (the "Agreement")

*(see following pages)*

## **GROCERY STORE DEVELOPMENT AND OPERATION AGREEMENT**

This **GROCERY STORE DEVELOPMENT AND OPERATION AGREEMENT** is made as of \_\_\_\_\_, 2022 (the “**Effective Date**”), by and among **CITY OF FORT WAYNE, INDIANA**, an Indiana municipal corporation (the “**City Party**”), **PARKVIEW HOSPITAL, INC.**, an Indiana nonprofit corporation (“**Parkview**”) and **PONTIAC STREET MARKET, LLC**, an Indiana limited liability company (the “**Store Operator**”).

### **RECITALS**

**A.** The City of Fort Wayne, Indiana, Department of Redevelopment (“**Redevelopment**”) has acquired or intends to acquire certain real property located at 918 E. Pontiac Street, Fort Wayne, Indiana 46806 and 2701 and 2709 John Street, Fort Wayne, Indiana 46806 and more particularly described in **Exhibit A** attached hereto (collectively, the “**Project Site**”).

**B.** The City Party, in coordination with Redevelopment, intends to use the Project Site for the construction, development, and operation of a grocery store in order to, among other things, improve access to fresh, affordable, and healthy food for the residents of the southeast side of Fort Wayne, Indiana community.

**C.** The City Party and Parkview desire to partner in this endeavor, on the terms and subject to the conditions set forth in this Agreement.

**D.** The parties hereto do now desire to make and enter into this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

#### **ARTICLE I. DEFINITIONS; INTERPRETATION**

**Section 1.01 Definitions.** For purposes of this Agreement:

“**Affiliate**” of a Person (as defined below) means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. As used herein, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise, and “controlled by” and “under common control with” have correlative meanings.

“**Agreement**” means this Grocery Store Development and Operation Agreement by and between the City Party, Parkview and the Store Operator, dated as of the Effective Date, as the same may be amended, restated, supplemented, or otherwise modified, from time to time, in accordance with its terms, together with all Exhibits and Schedules attached hereto.

**“Applicable Laws and Requirements”** shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Governmental Authorities, and all requirements of any insurers. With respect to the construction phase of the Project, Applicable Laws and Requirements shall include, without limitation, the Development Plan.

**“City Indemnified Parties”** means, collectively, the City Party, and all of the various departments, divisions, and commissions of the City Party, the respective governing bodies of each of the foregoing, and their respective members, directors, boards, commissioners, officers, employees, and agents.

**“Fiscal Quarter”** means the Store Operator’s fiscal quarter.

**“Fiscal Year”** means the Store Operator’s fiscal year.

**“Governmental Authorities”** shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence.

**“Grocery Store”** means the grocery store to be constructed, developed, completed and operated as described in this Agreement, as more preliminarily depicted on **Exhibit B** attached hereto.

**“Grocery Store Improvements”** means all fixtures, improvements and equipment procured by the City Party or its assignee pursuant to the Development Plan for the benefit of the Grocery Store, and/or in connection with the construction and operation of the Grocery Store. Any fixtures, machinery, equipment, and/or any other property purchased directly by Parkview or the Store Operator for the benefit of the Grocery Store, and/or in connection with the construction and operation of the Grocery Store, shall not be considered Grocery Store Improvements under this Agreement.

**“Gross Revenues”** means all cash and receipts generated by and in the Grocery Store, and the total amount of sales of goods made by the Store Operator, in, at or from the Grocery Store, at wholesale or retail, or delivered from the Grocery Store. Without limiting the generality of the foregoing, Gross Revenues shall include: (a) the entire amount of the price charged, whether wholly or partially in cash or on credit, or otherwise, for all goods, wares, merchandise and chattels of any kind sold, leased, licensed or delivered; and (b) all gross income of the Store Operator and any other party from any operations in, at, upon or from the Grocery Store which are neither included in nor excluded from Gross Revenues by other provisions of this Agreement, but without duplication. Notwithstanding the foregoing or anything contained in the other provisions of this Agreement to the contrary, Gross Revenues shall exclude, or there shall be deducted from Gross Revenues if previously included therein, the following: (i) returns to vendors, shippers or manufacturers; (ii) cash or credit refunds to customers on transactions theretofore included in Gross Revenues; (iii) proceeds of sales of fixtures, machinery, equipment, and any other property after use thereof in the conduct of the Store Operator’s business; (iv) amounts collected by the Store Operator and paid to any Governmental Authority as sales or excise taxes on sales; (v) any insurance proceeds received by the Store Operator as a result of damage to the Grocery Store inventory, fixtures, machinery, equipment and/or any other property used by the Store Operator in

the conduct of its business; (vi) any and all finance charges, service charges, credit card charges and fees paid by the Store Operator to any credit card company; and (vii) the cash value of any gift certificate at the time such certificate is purchased; provided, however, that the purchase price of any merchandise purchased at the Grocery Store with a gift certificate shall be included in Gross Revenues at the time of such purchase.

**“Infrastructure”** means the utilities to benefit the Project and necessary improvements to the Project Site for sufficient parking to service the Grocery Store.

**“Lease”** means that certain Lease Agreement between Redevelopment and the Store Operator, dated as of the date hereof, providing for the lease by Redevelopment to the Store Operator of the Leased Premises (as defined therein) on the terms and conditions set forth in the Lease Agreement, as the same may be amended, restated, supplemented, or otherwise modified, from time to time, in accordance with its terms.

**“Losses”** means, collectively, damages, losses, liabilities, deficiencies, claims, actions, judgments, fines, amounts paid in settlement, settlements, interest, awards, penalties, costs, and expenses of whatever kind (including the reasonable costs and expenses of attorneys and other professionals, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers).

**“Operating Budget”** means, with respect to any applicable period, a detailed budget setting forth in reasonable detail the Store Operator’s best estimate of the Gross Revenues and Operating Expenses for such period.

**“Operational Deficit”** means, with respect to any applicable period, the amount by which the sum of the Operating Expenses for such period and the working capital funds advanced by Parkview during such period pursuant to Section 6.04(b) exceeds the Gross Revenues for such period.

**“Parkview Indemnified Parties”** means, collectively, Parkview and each of its Affiliates, and each of its and their respective directors, officers, employees, and agents.

**“Person”** means any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body or government or other entity.

**“Plans and Specifications”** has the meaning set forth in the Development Plan.

**“Project”** means the development, construction, and operation on the Project Site of a grocery store in order to, among other things, improve access to fresh, affordable, and healthy food for the residents of the southeast side of Fort Wayne, Indiana community. Without limiting the generality of the foregoing, the Project shall include the following to be undertaken by the respective parties hereto in accordance with the Development Plan and this Agreement: (a) designing the Project utilizing the services of outside contractors and consultants, including Hoch Associates; (b) renovating or demolishing existing structures, grading and installing site and utility Infrastructure, all in accordance with the approved Plans and Specifications; and (c) constructing the Grocery Store in accordance with the approved Plans and Specifications.

**“Stabilization Period”** means the period commencing on the Opening Date and expiring on the third anniversary thereof.

**“Substantial Completion”** means the stage in the progress of the construction of the Infrastructure and Grocery Store Improvements, or as to any particular portion thereof, when said

construction is sufficiently complete so that the Grocery Store Improvements or such particular portion can be occupied or utilized for their intended use.

“**Total Cost**” has the meaning set forth in the Development Plan.

**Section 1.02 Interpretation.** In this Agreement, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any Person includes such Person’s successors and assigns, but, if applicable, only if such successors and assigns are permitted by this Agreement; (c) reference to any gender includes each other gender; (d) reference to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; (e) references in this Agreement to Articles, Sections, Appendixes, Annexes, Schedules, or Exhibits refer to the Articles or Sections of, and Appendixes, Annexes, Schedules, or Exhibits attached to, this Agreement; (f) “hereunder”, “hereof”, “hereto”, “hereby”, “hereunder” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof; (g) the word “or” is not exclusive; and (h) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”. This Agreement was negotiated by the parties hereto with the benefit of legal representation and shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Any Exhibits and Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

## **ARTICLE II. PURPOSE**

### **Section 2.01 Purpose; Collaborative Efforts.**

(a) The parties hereto have entered into this Agreement to jointly and collaboratively construct, develop, and operate the Grocery Store on the Project Site as set forth in this Agreement.

(b) The parties hereto agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the City Party, to use its commercially reasonable efforts to adopt, or to cause to adopt, such ordinances and/or resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**Section 2.02 Public Communications.** The parties hereto acknowledge and agree that the development of the Project shall be enhanced by consistent and coordinated public communications regarding the Project. The parties hereto further agree to coordinate and jointly approve all public communications regarding the Project and the Grocery Store, including, but not limited to, all public press releases, all public press conferences and all similar communications and/or communication activities regarding the Project and/or the Grocery Store.

### **Section 2.03 Governance.**

(a) The City Party, Parkview and the Store Operator agree that the business and affairs of the Store Operator shall be managed, operated, and controlled by or under the direction of a

board of managers (the “**Board**”) established in accordance with the provisions of the Operating Agreement of the Store Operator (the “**Operating Agreement**”) and in compliance with the requirements set forth in this Section 2.03. The Board shall be comprised of natural Persons (each, a “**Manager**”), and the number of Managers constituting the Board shall at all times be six, with three of the Managers to be designated and appointed by the City Party, and the other three of the Managers to be designated and appointed by Parkview. The Operating Agreement shall specify that: (i) a Manager may be removed only by the party that appointed such Manager to the Board; (ii) any vacancy on the Board resulting from the resignation, removal, death, or disability of a Manager shall be filled by the same party that appointed such Manager, with such appointment to become effective immediately upon delivery of written notice of such appointment to the Store Operator; (iii) each Manager shall have one vote on all matters submitted to the Board; (iv) the Board president/chair shall be appointed by Parkview; (v) any rights provided to the City Party shall terminate upon termination of this Agreement, excepting those which may be necessary to wind-down the business of the Store Operator, if applicable; and (vi) the affirmative vote of a majority of the Managers in attendance at any meeting of the Board at which a quorum is present shall be required to authorize any action by the Board and shall constitute the action of the Board for all purposes. The Store Operator shall take such actions as may be required to ensure that the Operating Agreement is compliant at all times with the requirements set forth in this Section 2.03, and the Operating Agreement shall not be amended, restated, or otherwise modified, without the prior written consent of the City and Parkview, which consent shall not be unreasonably withheld, conditioned, or delayed.

(b) Notwithstanding anything to the contrary, the parties hereto shall retain the rights, powers and discretion granted to them under this Agreement, and no such rights, powers, or discretion shall be delegated to or vested in the Board unless such delegation or vesting of rights is expressly provided for in this Agreement, the Operating Agreement, or the parties expressly so agree in writing. Without limiting the generality of the foregoing, the Board shall have no authority or jurisdiction to: (i) amend, modify, or waive compliance with this Agreement, any of which shall require written agreement of the parties hereto; (ii) interpret this Agreement, or determine whether or not a party hereto has met its obligations under this Agreement or whether or not a breach of this Agreement has occurred; (iii) make any decision on any matter that this Agreement expressly states is an option or election to be made by a party hereto; or (iv) such other matters as are reserved to the consent, approval, agreement or other decision-making authority of one or all of the parties hereto in this Agreement and that are not required by this Agreement to be considered by the Board prior to the exercise of such consent, approval or other decision-making authority. Notwithstanding the foregoing, no party hereto shall be restricted from bringing before the Board for discussion any matter relating to the Project that such party believes warrants discussion between the parties hereto through the Board; provided, that the consideration of any such matter by the Board shall not infringe or limit the exercise of a party’s right of consent or approval or other decision-making authority granted to it by this Agreement.

### **ARTICLE III. TERM; TERMINATION**

**Section 3.01 Term.** This Agreement is effective as of the Effective Date (subject to Section 9.03) and will continue in full force and effect until it is terminated in accordance with this Article III or as expressly provided elsewhere in this Agreement (including in the Development Plan) (the “**Term**”).

**Section 3.02 Termination by Mutual Consent.** This Agreement may be terminated at any time by mutual written consent of the parties hereto.

**Section 3.03 Termination for Failure to Obtain Approvals.** Either the City Party or Parkview may terminate this Agreement if this Agreement and the transactions contemplated hereby, including the Development Plan, the respective commitments of the parties hereunder, and the financial aspects of the Project, including the Total Cost, are not approved by all necessary action of all applicable governing bodies of each party hereto on or before December 15, 2022. In the event of any such termination, and except as expressly set forth in this Agreement, (a) Parkview shall be liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby, and the City Party shall have no duty or responsibility of any type or nature to reimburse or otherwise pay any such costs or expenses; except that, in the event Parkview has paid a portion of the Parkview Contribution, as such term is defined in Section 5.2 of the Development Plan, and the City Party is unable to obtain all of the necessary approvals from the City Party's applicable governing bodies, the City Party shall reimburse Parkview that portion of the Parkview Contribution paid by Parkview prior to the termination of this Agreement under Section 3.03 hereof; and (b) the City Party shall be liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby, and Parkview shall have no duty or responsibility of any type or nature to reimburse or otherwise pay any such costs or expenses.

**Section 3.04 Termination for Insolvency.** Any party hereto may terminate this Agreement in its entirety immediately upon notice to the other party hereto if such other party: (a) is dissolved or liquidated or takes any corporate action for such purpose; (b) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (c) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (d) makes or seeks to make a general assignment for the benefit of creditors; or (e) applies for or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**Section 3.05 Termination upon Termination of the Lease.** This Agreement shall automatically terminate upon the termination or expiration of the Lease.

**Section 3.06 Termination for Commercial Failure.** Parkview or the City Party may terminate this Agreement in its entirety, without the Store Operator's consent, on notice to the other parties if, for a period of four (4) consecutive Fiscal Years beginning on the first day of the first Fiscal Year of the Store Operator, the Grocery Store experiences an Operational Deficit for each such Fiscal Year ("**Commercial Failure**"); provided that if a Commercial Failure arises from a party's material breach of this Agreement, the breaching party may not terminate this Agreement under this Section 3.06 on the basis of such Commercial Failure.

**Section 3.07 Termination for Convenience.** At any time after the expiration of the Stabilization Period, Parkview or the City Party may terminate this Agreement in its entirety, without the Store Operator's consent, on one hundred eighty (180) days' prior written notice.

**Section 3.08 Effect of Termination.** Upon any termination of this Agreement, the following will apply:

(a) **Lease.** The Lease will automatically terminate, except those provisions intended to survive termination pursuant to the terms of the Lease.

(b) **Transition Assistance.** If this Agreement is terminated for any of the reasons enumerated herein, the following shall apply:

(i) Intentionally Deleted.

(ii) If the City Party determines, in its sole discretion, to continue the operation of the Grocery Store following the termination of this Agreement, the City Party may do so at its expense, and in such event the Store Operator and Parkview shall provide to the City Party and its designees such assistance and cooperation as may be necessary or useful for the City Party (or its designee) to continue the operation of the Grocery Store, including, at the City Party's request, (1) transferring to the City Party or its designee all of the Store Operator's rights, title, and interest in and to all equipment, fixed assets, trade equipment, fixtures, machinery, and other personal property (other than the inventory) located at or about the Grocery Store, purchased by the Store Operator<sup>1</sup>, and used or held for use in the operation of the Grocery Store, (2) assigning to the City Party or its designee all then-existing permits, licenses, and other approvals, authorizations, consents, and certificates issued or granted by the Governmental Authorities to the Store Operator in connection with the ownership and/or operation of the Grocery Store, including liquor, tobacco, and similar licenses and permits (collectively, the "**Licenses**"), and all then-existing agreements and arrangements between the Store Operator and any third party entered into in connection with the operation and/or management of the Grocery Store or the use of the Grocery Store Improvements, including contracts with suppliers, vendors, and service providers (to the extent that any such agreement or arrangement is not assignable, but is reasonably necessary or useful for the City Party (or its designee) to continue the operation of the Grocery Store, the Store Operator shall provide the City Party or its designee with contact information for said supplier, vendor or service provider<sup>2</sup>, (3) transferring to the City Party, at no cost, any product inventory held by the Store Operator as of the effective date of any termination, except that in the case where this Agreement is terminated after the Stabilization Period, the City Party shall be required to pay Parkview, in cash, fifty (50%) percent of the procurement cost of any such product inventory transferred to the City Party hereunder, (4) delivering to the City Party, at the Store Operator's expense, all samples, demonstration equipment, sales literature, catalogs, and other promotional materials relating to the Grocery Store in the Store Operator's possession or control and if the Store Operation has the authority or right to transfer such items, and (5) executing and delivering any and all deeds, bills of sale, assignments,

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<sup>1</sup> For avoidance of doubt, and notwithstanding anything contained herein to the contrary, any equipment, fixed assets, trade equipment, fixtures, machinery or other personal property used in connection with the Grocery Store and owned by Parkview shall remain Parkview's property after termination of this Agreement.

<sup>2</sup> To the extent the Grocery Store is receiving supplies or services pursuant to a master agreement held by Parkview or an Affiliate of Parkview and a supplier, vendor or service provider, such contracts shall not be assignable to the City Party or any designee of the City Party and the City Party shall be required to independently obtain such supplies and/or services should the City Party elect to continue the operation of the Grocery Store after termination of this Agreement.

agreements, certificates, instruments, and other documents necessary, desirable, advisable, or appropriate to consummate, effectuate, carry out, or further the transactions contemplated by and the intent and purposes of this Section 3.08(b)(ii).

- (iii) If the City Party determines, in its sole discretion, to not continue the operation of the Grocery Store following the termination of this Agreement, then the Store Operator shall for a period not to exceed three (3) months following such termination: (1) wind up the business, affairs, and operation of the Grocery Store, (2) liquidate all equipment, inventory, and other personal property used in the operation of the Grocery Store excepting any Grocery Store Improvements, and (3) distribute the proceeds of such liquidation in accordance with applicable laws.

The Store Operator and the City Party shall execute and deliver any and all agreements, certificates, instruments, and other documents necessary, desirable, advisable, or appropriate to consummate, effectuate, carry out, or further the transactions contemplated by and the intent and purposes of this Section 3.08(b)(iii).

#### **ARTICLE IV. CONSTRUCTION AND DEVELOPMENT PLAN**

**Section 4.01 Development Plan.** The Grocery Store is to be developed pursuant to and in accordance with the development plan attached hereto as **Exhibit C** (the “**Development Plan**”). The parties hereto covenant and agree that the Grocery Store Improvements shall be developed, constructed, and completed in substantial accordance and compliance with the Development Plan.

**Section 4.02 Amendment of the Development Plan.** The Development Plan may only be amended, modified, or supplemented by an agreement in writing signed by each of the parties hereto.

**Section 4.03 Additional Obligations.** The City Party and Parkview agree to use their respective good faith efforts to employ qualified, price competitive contractors from businesses located within Northeast Indiana, and to use their respective good faith efforts to utilize qualified and competitive contractors and trade organizations located within Northeast Indiana in the construction of the Project, including minority owned and women owned business enterprises.

#### **ARTICLE V. OPERATION OF GROCERY STORE**

**Section 5.01 Undertaking to Manage and Operate the Grocery Store.** Under the direction of the Board, the Store Operator is charged with the sole and exclusive management and operation of the Grocery Store and shall provide the services customarily provided for in such instances, and the Store Operator shall do and perform any and all lawful acts reasonably necessary for the pleasure, comfort, service, and convenience of the customers and users of the Grocery Store consistent with profitable utilization and sound business practices and consistent with the practices used in the operation of other grocery stores in Fort Wayne, Indiana. It shall be the duty of the Store Operator to operate and maintain the Grocery Store according to high standards for similar

facilities and in accordance with all Applicable Laws and Requirements. The Store Operator may, in its discretion, perform services or fulfill obligations outlined herein directly or through contracted third parties.

**Section 5.02 Specific Requirements.** Without limiting the generality of Section 5.01 hereof, and notwithstanding anything contained in the Operating Agreement to the contrary, the Store Operator shall in the operation of the Grocery Store adhere to the requirements of Sections 5.02(a) – 5.02(e) hereof.

(a) **Grand Opening.** The Store Operator shall use its best efforts to have the Grocery Store opened for business by no later than October 1, 2023 (the “**Opening Date**”).

(b) **Operating Covenant; Trade Name; Permitted Use.** The Store Operator shall cause the Grocery Store to be continuously and exclusively operated during the hours approved by the Board.

(c) **Employees.**

(i) The Store Operator shall make commercially reasonable efforts to have in its employ or under contract sufficient personnel to enable it to properly, adequately, and safely manage, operate, maintain and account for the Grocery Store, as reasonably determined by the Store Operator from time to time. All matters pertaining to the selection, direction, employment, supervision, training, compensation, promotion and discharge of such personnel are the sole responsibility of the Store Operator, which shall be in all respects the employer of such personnel.

(ii) As it relates to the Store Operator’s personnel arrangements, this Agreement is not one of agency by the Store Operator for the City Party or Parkview, but one with the Store Operator engaged independently in the business of employing individuals on its own behalf or as an independent contractor, and neither the City Party, nor Parkview, nor any other City Indemnified Party or Parkview Indemnified Party shall have any liability with respect thereto.

(iii) The Store Operator shall, in accordance with I.C. § 22-5-1.7, enroll and verify work eligibility status of all newly hired employees of the Store Operator through the E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security. The Store Operator further understands that it is not required to verify work eligibility status of newly hired employees of the Store Operator through the E-Verify program if the E-Verify program no longer exists. The Store Operator certifies that it does not knowingly employ any individual who is ineligible for employment under applicable statutes, rules and regulations.

(d) **Compliance.** The Store Operator shall conduct its affairs and carry on its business and operations in, on, or about the Project Site in such a manner as to comply with any and all Applicable Laws and Requirements, procure and maintain all certifications, credentials, authorizations, licenses, and permits, including the Licenses, and observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and

health) of any Governmental Authorities applicable to the Project Site, the Grocery Store Improvements, and/or the Grocery Store or its operation, and ensure that the Store Operator and its employees, agents, and independent contractors (including subcontractors) otherwise comply with all Applicable Laws and Requirements in the exercise of its rights and performance of its obligations under this Agreement and the Lease.

(e) **Payment of Obligations.** During the Term, the Store Operator shall promptly pay or otherwise satisfy and discharge all of the Store Operator's obligations and all demands and claims against it as and when the same become due and payable, unless the validity, amount or collectability thereof is being contested in good faith or unless the failure to comply would not materially impair its ability to perform its obligations under this Agreement nor subject any part of the Project Site or the Grocery Store Improvements to loss or forfeiture.

## **ARTICLE VI. ANNUAL BUDGET; OPERATING EXPENSES**

**Section 6.01 Payment of Operating Expenses.** The Store Operator shall be responsible for payment of all expenses incurred in the management, operation, and maintenance of the Grocery Store pursuant hereto (the "**Operating Expenses**"), including, without limitation, the following: (a) purchases of grocery inventory; (b) purchases and rentals of trade equipment and fixtures, and maintenance charges incurred with respect thereto; (c) media advertising and other business promotion, with newspaper and other print medium advertising charges; (d) cleaning services and supplies; (e) uniforms and laundry; (f) legal and accounting services specific to the operation of the Grocery Store; (g) office supplies and expenses; (h) trade association dues; (i) inspections and any recalls; (j) utilities necessary to operate and manage the Grocery Store, including electricity, gas, water, sewage, trash, landscaping, and telephone; (k) personnel employed at or in connection with the Grocery Store by or on behalf of the Store Operator, including the direct cost of all salaries and wages, payroll taxes, unemployment compensation contributions, or other fringe benefits to which such personnel may be entitled as employees or contractors of the Store Operator; (l) ordinary maintenance and repairs of the Grocery Store Improvements pursuant to this Agreement and/or the Lease; (m) insurance secured and maintained by the Store Operator pursuant to this Agreement and/or the Lease; (n) all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Project Site or Grocery Store Improvements or on the sales or otherwise in connection with the ownership or operation of the Grocery Store or the use or ownership of any equipment, inventory, or other property used in connection with the Grocery Store; (o) purchased services provided by either the City Party or Parkview, which services are subject to Board approval; and (p) any and all other direct costs and expenses reasonably necessary for the operation and/or management of the Grocery Store.

**Section 6.02 Budget.** The Store Operator shall submit to the Board for its approval, at least ninety (90) days prior to the Opening Date (the "**First Operating Budget**"), and at least ninety (90) days prior to the beginning of each Fiscal Year thereafter, a proposed Operating Budget for the Grocery Store for such Fiscal Year (or, in the case of the First Operating Budget, a proposed Operating Budget for the Grocery Store for the period between the Opening Date and the remainder of the Fiscal Year within which the Opening Date falls). Any such approved Operating Budget shall be implemented by the Store Operator in accordance with its terms. The Store

Operator shall be authorized, subject to the limitations set forth in this Agreement and in the Operating Agreement, without the need for approval by the Board or the City Party, to make the expenditures and incur the obligations reasonably anticipated by the relevant Operating Budget or which are necessary to maintain current levels of service and inventory even if such expenses are not anticipated by the Operating Budget; provided, however, costs attributable to new programming, services and/or product lines shall require approval of the Board. The Store Operator acknowledges and agrees that the obligations of the City Party under Section 6.04(c) are conditioned upon the Store Operator's performance of its obligations pursuant to this Section 6.02.

### **Section 6.03 Financial Reports.**

(a) Within thirty (30) days after the end of each Fiscal Quarter, the Store Operator shall furnish to the City Party (i) a statement of income, showing the results of operation of the Grocery Store for such period, including the Gross Revenues and Operating Expenses for such period, a balance sheet of the Store Operator as of the end of such Fiscal Quarter, and a statement of cash flow for such period, which statements shall be in a form mutually and reasonably agreed upon between the parties hereto and shall be certified as true and accurate by a duly authorized officer of the Store Operator, and (ii) a detailed statement, in form acceptable to the City Party, setting forth the amount of the Operational Deficit for such period, if any (a "**Quarterly Operational Deficit Statement**").

(b) Within ninety (90) days after the end of each Fiscal Year, the Store Operator shall furnish to the City Party the Store Operator's financial statements, showing the results of operation of the Grocery Store for such period, including the Gross Revenues and Operating Expenses for such period, a balance sheet of the Store Operator as of the end of such Fiscal Year, and a statement of cash flow for such period.

### **Section 6.04 Operational Deficit.**

(a) On or before the Opening Date, the Store Operator shall open a deposit account with a federally insured bank (the "**Reserve Account**").

(b) Parkview shall advance to the Store Operator funds in an amount sufficient to maintain its working capital during each Fiscal Quarter at levels required for the uninterrupted and efficient operation of the Grocery Store during such Fiscal Quarter in accordance with this Agreement and the then-current Operating Budget, including, without limitation, funds sufficient to timely pay all Operating Expenses and other current liabilities of the Store Operator related to the operation of the Grocery Store during such Fiscal Quarter. Within ten (10) days after the end of each Fiscal Quarter, commencing with the Fiscal Quarter during which the Opening Date falls, the Store Operator shall provide to Parkview and the City Party cash flow forecasts of the Grocery Store's financial needs for the following Fiscal Quarter as part of the regular updates of the then-current Operating Budget. The Store Operator shall manage accounts receivable and inventories as would a prudent operator of a grocery store similar to the Grocery Store. For the avoidance of doubt and notwithstanding anything to the contrary, the funds advanced by Parkview during any Fiscal Quarter pursuant to this Section 6.04(b) shall be subject to reimbursement from the Reserve Account in accordance with the procedures set forth in Section 6.04(c) hereof.

(c) For any **Fiscal Quarter** during the Stabilization Period in which there is an Operational Deficit, within thirty (30) days after the City Party's receipt of a Quarterly Operational

Deficit Statement for such Fiscal Quarter, the City Party shall deposit (or shall cause to be deposited) into the Reserve Account cash in the amount equal to 100% of such Operational Deficit. For any Fiscal Quarter after the expiration of the Stabilization Period, through and including the end of the Fiscal Quarter immediately following the expiration or termination of this Agreement, within thirty (30) days after the City Party's and Parkview's receipt of a Quarterly Operational Deficit Statement for any such Fiscal Quarter, the City Party shall deposit into the Reserve Account cash in the amount equal to fifty percent (50%) of the Operational Deficit and Parkview shall deposit into the Reserve Account cash in the amount equal to fifty percent (50%) of such Operational Deficit.

(d) The Reserve Account may be drawn on by the Store Operator from time to time strictly for the purpose of paying (or reimbursing the Store Operator for) the Operating Expenses or reimbursing Parkview for the funds advanced by it pursuant to Section 6.04(b).

## ARTICLE VII. REPRESENTATIONS AND WARRANTIES

**Section 7.01 Representations and Warranties of the Store Operator.** The Store Operator represents and warrants as follows:

(a) **Organization.** The Store Operator is a limited liability company, duly organized and validly existing under the laws of the State of Indiana. The Store Operator is duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. The Store Operator shall (i) preserve and keep in full force and effect its separate legal existence and (ii) remain qualified to do business and conduct its affairs in the State of Indiana and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(b) **Authority.** The execution, delivery and performance by the Store Operator of this Agreement and the Lease are within its powers and have been duly authorized by all necessary action of such party.

(c) **No Conflicts.** Neither the execution and delivery of this Agreement or the Lease, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of the Store Operator or any provision of law, statute, rule or regulation to which the Store Operator or any of its assets or properties are subject, or any judgment, decree, license, order or permit applicable to the Store Operator, or will conflict or be inconsistent with, or will result in any breach of any of the terms, covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which the Store Operator is a party, by which the Store Operator or any of its assets or properties are bound, or to which the Store Operator or any of its assets or properties are subject.

(d) **No Consents.** No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by the Store Operator of this Agreement or the Lease.

(e) **Valid and Binding Obligation.** This Agreement and the Lease, each is the legal, valid and binding obligation of the Store Operator, enforceable against the Store Operator in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency,

receivership, fraudulent transfer, fraudulent conveyance, moratorium or other similar laws relating to or affecting creditors' rights generally and the enforcement thereof, and subject to general principles of law and equity and the availability of specific legal and equitable remedies, including, but not limited to, the remedy of specific performance or similar relief, and the discretion of the court (regardless of whether enforcement is sought in equity or at law), and subject to standards of commercial reasonableness.

**Section 7.02 Representations and Warranties of the City Party.** The City Party represents and warrants as follows:

(a) **Authority.** The execution, delivery and performance by the City Party of this Agreement are within its powers and have been duly authorized by all necessary action.

(b) **No Conflicts.** Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the ordinances, rules, regulations of the City Party or the laws of the State of Indiana, or will conflict or result in any breach of any of the terms, covenants, conditions, or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which the City Party is a party, by which the City Party or any of its assets or properties are bound, or to which the City Party or any of its assets or properties are subject.

(c) **Valid and Binding Obligation.** This Agreement is the legal, valid and binding obligation of the City Party enforceable against the City Party in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, receivership, fraudulent transfer, fraudulent conveyance, moratorium or other similar laws relating to or affecting creditors' rights generally and the enforcement thereof, and subject to general principles of law and equity and the availability of specific legal and equitable remedies, including but not limited to the remedy of specific performance or similar relief, and the discretion of the court (regardless of whether enforcement is sought in equity or at law), and subject to standards of commercial reasonableness.

**Section 7.03 Representations and Warranties of Parkview.** Parkview represents and warrants as follows:

(a) **Authority.** The execution, delivery and performance by Parkview of this Agreement are within its powers and have been duly authorized by all necessary action.

(b) **No Conflicts.** Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the ordinances, rules, regulations of Parkview or the laws of the State of Indiana, or will conflict or result in any breach of any of the terms, covenants, conditions, or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which the Parkview is a party, by which Parkview or any of its assets or properties are bound, or to which Parkview or any of its assets or properties are subject.

(c) **No Consents.** No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by Parkview of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by Parkview of this Agreement or the consummation of the transactions contemplated hereby.

(d) **Valid and Binding Obligation.** This Agreement is the legal, valid and binding obligation of Parkview enforceable against Parkview in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, receivership, fraudulent transfer, fraudulent conveyance, moratorium or other similar laws relating to or affecting creditors' rights generally and the enforcement thereof, and subject to general principles of law and equity and the availability of specific legal and equitable remedies, including but not limited to the remedy of specific performance or similar relief, and the discretion of the court (regardless of whether enforcement is sought in equity or at law), and subject to standards of commercial reasonableness.

## **ARTICLE VIII. INDEMNIFICATION; LIMITATION OF LIABILITY**

**Section 8.01 Indemnification by the Store Operator.** Subject to the terms and conditions of this Agreement, the Store Operator shall defend, indemnify and hold harmless the City Indemnified Parties and the Parkview Indemnified Parties from and against any and all Losses based upon or arising out of:

(a) the breach by the Store Operator of any of its covenants or obligations set forth herein or in the Lease or any other default of the Store Operator hereunder or thereunder;

(b) the failure of any of the representations or warranties made by the Store Operator in this Agreement or in the Lease to be true and correct in any material respect;

(c) any negligent or more culpable act or omission of the Store Operator in connection with the Store Operator's performance under this Agreement;

(d) any claim, action, or proceeding brought or initiated by a third party, including any Governmental Authority (a "**Third-Party Claim**"), against or involving a City Indemnified Party or Parkview Indemnified Party in connection with or otherwise related to the Project (including the operation of the Grocery Store), the Project Site, the Grocery Store Improvements, the Grocery Store (including products sold at the Grocery Store), this Agreement (including the Development Plan), the Lease, and/or the transactions contemplated hereby or thereby, including any Third-Party Claims for damage or injury, actual or claimed, of whatsoever kind or character, to third parties or the property of third parties occurring or allegedly occurring in, on, or about the Project Site, the Grocery Store Improvements, and/or the Grocery Store and any product liability or similar claim for injury to a Person or property;

(e) the Store Operator's ownership, use, management, or operation, as applicable, of the Grocery Store, the Project Site, or the Grocery Store Improvements; or

(f) any violation of, or failure to comply with, any Applicable Laws and Requirements by the Store Operator, any of its Affiliates, or any other Parkview Indemnified Party.

## **ARTICLE IX. MISCELLANEOUS**

**Section 9.01 Force Majeure.** Neither the City Party, Parkview nor the Store Operator will be liable or responsible to the other, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when

and to the extent such failure or delay is caused by or results from events beyond the affected party's reasonable control, including acts of God, flood, fire, or explosion, war, terrorism, invasion, riot, or other civil unrest, embargoes, or blockades in effect on or after the Effective Date, national or regional emergency, strikes, labor stoppages or slowdowns, or other industrial disturbances, any passage of law or governmental order, rule, regulation, or direction, or any action taken by a Governmental Authority, including imposing any restriction or prohibition, or any other similar event (each, a "**Force Majeure Event**"). For the avoidance of doubt, delays resulting from the inability of a party hereto to obtain financing or to proceed with its obligations under this Agreement due to lack of funds or any other financial inability of such party, changes in cost or availability of materials, components or services, market conditions or supplier actions or contract disputes will not constitute a Force Majeure Event. The affected party shall promptly give notice after the beginning of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The affected party shall use commercially reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The affected party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the affected party's failure or delay remains uncured for a period of 60 days following notice given by it under this Section 9.01, either party hereto may terminate this Agreement upon 30 days' notice. Unless either party hereto terminates this Agreement pursuant to the preceding sentence, all timelines in the Development Plan will automatically be extended for a period up to the duration of the Force Majeure Event.

**Section 9.02 Time of the Essence.** Time is of the essence of this Agreement. The parties hereto shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**Section 9.03 Effective Date.** Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the City Party has approved or ratified this Agreement at the appropriate public meeting(s).

**Section 9.04 Disclosure of Confidential Information.** The parties hereto acknowledge that the City Party is subject to the Indiana Access to Public Records Act (the "**APRA**"). The APRA generally provides that written documents retained by the City Party are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the APRA. The Store Operator shall designate as "Confidential" any information which the Store Operator provides to the City Party, the City, or any other City Indemnified Party which the Store Operator desires to keep confidential. If a request for disclosure of any information designated as "Confidential" by the Store Operator is made under the APRA, the City Party shall notify the Store Operator and the Store Operator shall have the opportunity, at its sole cost and risk, to object to the release of such information and seek protection from disclosure by a court of competent jurisdiction.

**Section 9.05 Relationship of the Parties.** The relationship between the parties hereto is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties hereto, and neither party hereto will have authority to contract for or bind the other party in any manner whatsoever.

**Section 9.06 Notices.** Each party hereto shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a “**Notice**”) in writing and addressed to the other party hereto at its address set forth below (or to any other address the receiving party may designate from time to time in accordance with this Section 9.06). Each party hereto shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party; and (b) if the party giving the Notice has complied with the requirements of this Section 9.06.

If to the City:

City of Fort Wayne, Indiana  
Citizens Square  
200 East Berry Street, Suite 320  
Fort Wayne, IN 46802  
Attention: Nancy Townsend  
Email: nancy.townsend@cityoffortwayne.org

If to Parkview:

Parkview Hospital, Inc.  
11109 Parkview Plaza Drive  
Fort Wayne, IN 46845  
Attn: Hospital President  
Email: \_\_\_\_\_

With a copy to:

Parkview Health System, Inc.  
1450 Production Road  
Fort Wayne, IN 46808  
Attn: General Counsel  
Email: \_\_\_\_\_

If to the Store Operator:

Pontiac Street Market, LLC  
918 E. Pontiac Street  
Fort Wayne, IN 46806  
Attn: Board President  
Email: \_\_\_\_\_

**Section 9.07 Assignment.** Except as otherwise expressly provided in this Agreement, the Store Operator may not assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations, hereunder without the prior written consent of the City Party and Parkview (which consent may not be unreasonably withheld, conditioned, or delayed); provided, however, that the Store Operator may make such an assignment, delegation, or other transfer, in whole or in part, without the City Party’s or Parkview’s consent to an Affiliate; provided that the Store Operator shall remain liable and responsible for the performance of all obligations and compliance with all other terms and conditions of this Agreement by such Affiliate. No delegation or other transfer by the Store Operator will relieve such party of any of its

obligations under this Agreement. Any purported assignment or other transfer in violation of this Section 9.07 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

**Section 9.08 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**Section 9.09 Entire Agreement.** This Agreement, together with the Lease and any other documents incorporated herein by reference and all Exhibits and Schedules attached hereto, constitutes the sole and entire agreement of the parties hereto with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in any Exhibit or Schedule hereto, the statements in the body of this Agreement shall govern and control, unless otherwise expressly provided in such Exhibit or Schedule.

**Section 9.10 Expenses.** Except as otherwise expressly provided herein, in the Development Plan, or in the Lease, each party hereto is responsible for all of its own costs and expenses in performing its obligations under this Agreement and neither party hereto is obligated to reimburse the other party hereto for any costs or expenses a party hereto incurs in performing such obligations.

**Section 9.11 No Third-Party Beneficiaries.** Except for any Indemnified Party, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or because of this Agreement.

**Section 9.12 Amendment; Modification; Waiver.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each of the parties hereto. No waiver by any party hereto of any of the provisions hereof will be effective unless expressly set forth in writing and signed by the waiving party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**Section 9.13 Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive and are in addition to and not in substitution for any other rights or remedies that may now or subsequently be available at law or in equity or otherwise. The City Party shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Failure of the City Party to enforce any such rights shall not be deemed a waiver thereof.

**Section 9.14 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or other provision is

invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 9.15 Governing Law.** This Agreement (including all exhibits, schedules, attachments and appendices attached hereto) and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Indiana, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Indiana.

**Section 9.16 Dispute Resolution.** The parties hereto shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation. Each party hereto may give to the other party written notice of any dispute not resolved in the normal course of business. Within thirty (30) days after delivery of such notice, the receiving party shall submit to the other party a written response. The notice and the response shall include a statement of each party's respective position and a summary of arguments supporting that position. Within thirty (30) days after delivery of the disputing party's notice, the designated representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations pursuant to this Section 9.16 are confidential and shall be treated as aimed exclusively at finding a compromise and an amicable solution, but without this being regarded as an admission of liability of whatsoever nature. If the dispute cannot be settled through negotiation within thirty (30) days of the initial meeting of the parties hereto provided for above, then either party hereto may file suit in an Agreed Court (as defined below) in accordance with the provisions of Section 9.17 and Section 9.18.

**Section 9.17 Choice of Forum.** Each party hereto irrevocably and unconditionally agrees that it shall not commence any action, litigation or proceeding of any kind whatsoever against the other party hereto in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached hereto, and all contemplated transactions, including contract, equity, tort, fraud, and statutory claims, in any forum other than the courts sitting in the City of Fort Wayne, Allen County, Indiana, and any appellate court from any thereof (the "**Agreed Courts**"). Each party hereto irrevocably and unconditionally submits to the exclusive jurisdiction of the Agreed Courts and agrees to bring any such action, litigation or proceeding only in the Agreed Courts. Each party hereto agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**Section 9.18 Waiver of Jury Trial.** Each party hereto acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, or the transactions contemplated hereby. Each party hereto certifies and acknowledges that (a) no representative of the other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such party has considered the implications of this waiver, (c) such party makes this waiver voluntarily, and (d)

such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 9.18.

**Section 9.19 No Waiver.** No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement: any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement or any act, omission or course of dealing between the parties.

**Section 9.20 Understanding of Agreement.** The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received such competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein.

**Section 9.21 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission (to which a PDF copy is attached) will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE  
FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

**CITY OF FORT WAYNE, INDIANA**

By \_\_\_\_\_

Name:

Title:

**PONTIAC STREET MARKET, LLC**

By \_\_\_\_\_

Name:

Title:

**PARKVIEW HOSPITAL, INC.**

By \_\_\_\_\_

Name:

Title:

**EXHIBIT A**  
**PROJECT SITE**

Parcel I:

The North 7 1/2 feet of Lot Number 52 and all of Lot Number 51 in Industrial Park Addition to the City of Fort Wayne, as recorded in Plat Record 1, page 49, in the Office of the Recorder of Allen County, Indiana.

Parcel II:

The South 32.5 feet of Lot Number 52 in Industrial Park Addition to the City of Fort Wayne, as recorded in Plat Record 1, page 49, in the Office of the Recorder of Allen County, Indiana.

**EXHIBIT B**  
**GROCERY STORE**



**EXHIBIT C  
DEVELOPMENT PLAN**

- 1. Conflicts; Terms.** If there is any conflict or inconsistency between the provisions of the Agreement and those of this Development Plan, the provisions of this Development Plan will control. Except for those terms expressly defined in this Development Plan, all initially capitalized terms will have the meaning ascribed to such terms in the Agreement. The following terms, which are not defined in the Agreement, have the meanings indicated:

“**Hoch**” means Hoch Associates.

“**Outside Completion Date**” means [\_\_\_\_\_], 2023.

“**Plans and Specifications**” means complete and final construction plans and specifications for the Project, including the Grocery Store Improvements and Infrastructure.

“**Preliminary Plans**” means the space plans and general specifications for the Project (including the Grocery Store Improvements and Infrastructure), including the Schematic Design Documents.

“**Schematic Design Documents**” means, collectively, the site plan for the Grocery Store on the Project Site and exterior rendering of the same prepared by Hoch and attached hereto as **Exhibit 1**.

“**Total Cost**” means the total cost of preparing the Preliminary Plans and the Plans and Specifications, obtaining all necessary permits, completing the Project, and constructing and installing the Grocery Store Improvements and Infrastructure.

**2. Cooperation on Design; Preliminary Plans.**

2.1. Subject to the terms and conditions contained herein, the City Party and Parkview shall jointly develop, finance, and construct the Project, and the Store Operator shall operate the Grocery Store, upon the Project Site, all as provided in this Development Plan and in the Agreement.

2.2. The City Party and Parkview have engaged the services of Hoch to develop the Schematic Design Documents and the other Preliminary Plans, copies of which are attached hereto as **Exhibit 1** and all of which are hereby approved by both the City Party and Parkview.

2.3. From the Effective Date until the date of the Substantial Completion of the Grocery Store Improvements, Parkview and the City Party shall meet with each other and/or such other parties as either party shall reasonably designate at such intervals as the City Party and Parkview shall mutually agree on or reasonably request, and not less frequently than once per month, to review and discuss the design, development, and construction of the Project. The Plans and Specifications shall contemplate: (x) the design, development, construction, equipping, and completion of the Project in accordance with the Preliminary Plans, this Development Plan, and all Applicable Laws and Requirements, (y) a guaranteed maximum price with respect to the Total Cost, and (z) a guaranteed Substantial Completion not later than the Outside Completion Date.

- 3. Plans and Specifications.** As soon as possible, but in no event later than sixty (60) days after the Effective Date, the City Party and Parkview will cause Hoch to prepare the Plans and Specifications based on the Preliminary Plans. The Plans and Specifications will be subject to

the review and approval by both the City Party and Parkview, which approval (or rejection) shall be provided by the City Party and Parkview within ten (10) business days after their receipt thereof; provided that, if the City Party or Parkview rejects all or any portion of the Plans and Specifications, then: (a) such party shall provide written notice to the other party and Hoch, identifying with specificity the reason for such rejection; and (b) Hoch shall promptly submit revisions to the City Party and Parkview for their approval. The foregoing process shall continue until such time as both the City Party and Parkview have approved all of the Plans and Specifications. Notwithstanding the foregoing, but subject to Section 8 of this Development Plan, the City Party and Parkview hereby agree to not unreasonably withhold, condition, or delay their approval of the Plans and Specifications as long as the same are substantially consistent in all material respects with the Preliminary Plans. Once approved in accordance with this Section 3, the Plans and Specifications will replace the Preliminary Plans.

#### **4. Initial Cost Estimate; Cost Proposal**

- 4.1. The estimated total cost of developing, constructing and equipping the Project, based on the approved Preliminary Plans, is \$3,039,344.17 (the “**Initial Cost Estimate**”), which Initial Cost Estimate is hereby approved by both the City Party and Parkview.
- 4.2. At such time as the Plans and Specifications have been so approved by both the City Party and Parkview, the City Party, through the services of a Construction Manager as Constructor (a “**CMC**”), procured according to applicable law, will obtain bids for the construction or installation of the Project subject to applicable law and according to the Plans and Specifications and will notify Parkview of the proposed Total Cost based on such bids (the “**Cost Proposal**”). If the Cost Proposal is less than or equal to the Initial Cost Estimate, then Parkview will be deemed to have each approved the Cost Proposal. If the Cost Proposal is greater than the Initial Costs Estimate, then the City Party or Parkview, upon consultation with each other and mutual agreement, may (a) approve the Cost Proposal in writing; or (b) elect to value engineer portions of the Project, or eliminate or revise one or more items shown on the Plans and Specifications so as to reduce the Cost Proposal to be within the Initial Cost Estimate; or (c) elect to terminate the Agreement. Upon any termination of the Agreement pursuant to this Section 4.2, the Agreement shall terminate, and, except as specifically set forth herein (including in Section 0 below), the parties hereto shall have no further duty or obligation hereunder, and, without limiting the generality of the foregoing, each party shall be liable and responsible for all costs and expenses incurred by it with respect to the Agreement and the transactions contemplated hereby, and the other party shall have no duty or responsibility of any type or nature to reimburse or otherwise pay any such costs or expenses.

#### **5. Total Cost/Charitable Contribution.**

- 5.1. Except as otherwise provided in Section 5.3 below, the City Party shall bear the Total Cost of constructing the Project.
- 5.2. Parkview, for its part, shall make a charitable contribution to the City Party in the amount of \$1,520,000.00 in support of the Grocery Store (the “**Parkview Contribution**”), to be paid in five (5) equal, annual installments of \$304,000.00, the first installment of which shall be paid within thirty (30) days of the Effective Date (as defined in Section 9.03 of the Agreement). Parkview has elected to provide the Parkview Contribution as a community benefit to promote quality community health in the City of Fort Wayne and,

accordingly, the Parkview Contribution shall be deemed as being made by Parkview for the community's benefit. The parties hereto recognize that the provision of services by Parkview and the Store Operator pursuant to this Agreement promotes the quality of health in the community and that such services are valued as a significant benefit to the community.

5.3. In addition, all fees and expenses of Hoch in connection with preparing the Schematic Design Documents in the amount of \$46,600.00, shall be borne equally by Parkview, on the one hand, and the City Party, on the other hand.

## 6. Construction of the Project.

6.1. At such time as the City Party and Parkview both have approved (or are deemed to have approved) the Cost Proposal, the City Party, through a CMC, will proceed with the public bidding of the Project and thereafter with the construction of the Project.

6.2. The City Party shall diligently pursue, commencing on the Effective Date, and shall obtain all applicable legal and/or regulatory permits, licenses or approvals (including all zoning, development plan and land subdivision approvals) as are legally required to commence construction of the Project from any federal, state or local commission or authority having jurisdiction over the Project. The City Party shall obtain (or cause to be obtained) all building permits necessary to construct the Project in accordance with the Plans and Specifications. Parkview agrees to provide assistance and guidance to the City Party in the preparation of such petitions and applications as are necessary for the construction of the Project. Parkview also agrees to support the Project before public bodies reviewing such petitions and applications based upon the Preliminary Plans and Plans and Specifications approved by the City Party.

6.3. The City Party agree to cause the construction of the Project to be commenced as soon as possible after the Effective Date, but no later than sixty (60) days after the Effective Date (the "**Construction Commencement Date**").

6.4. During construction of the Grocery Store Improvements, either Parkview or the City Party may request changes in the work by preparing and delivering to the other party, for its approval, a change order (a "**Change Order**"), identifying, among other things, the total cost of such change, which will include associated architectural, engineering, and construction contractor's fees, and, if applicable, an amount sufficient to reimburse the other party for overhead and related expenses incurred in connection with such Change Order. All Change Orders will be subject to the other party's prior written approval in accordance with Section 8 below.

6.5. The City Party shall use its best efforts to cause the Project to be constructed in a good and workmanlike manner and according to the Plans and Specifications and all Applicable Laws and Requirements.

6.6. Subject to any permitted delays pursuant to Section 9 below, the City Party shall use its best efforts to cause the Substantial Completion of the Project to be achieved on or before the Outside Completion Date.

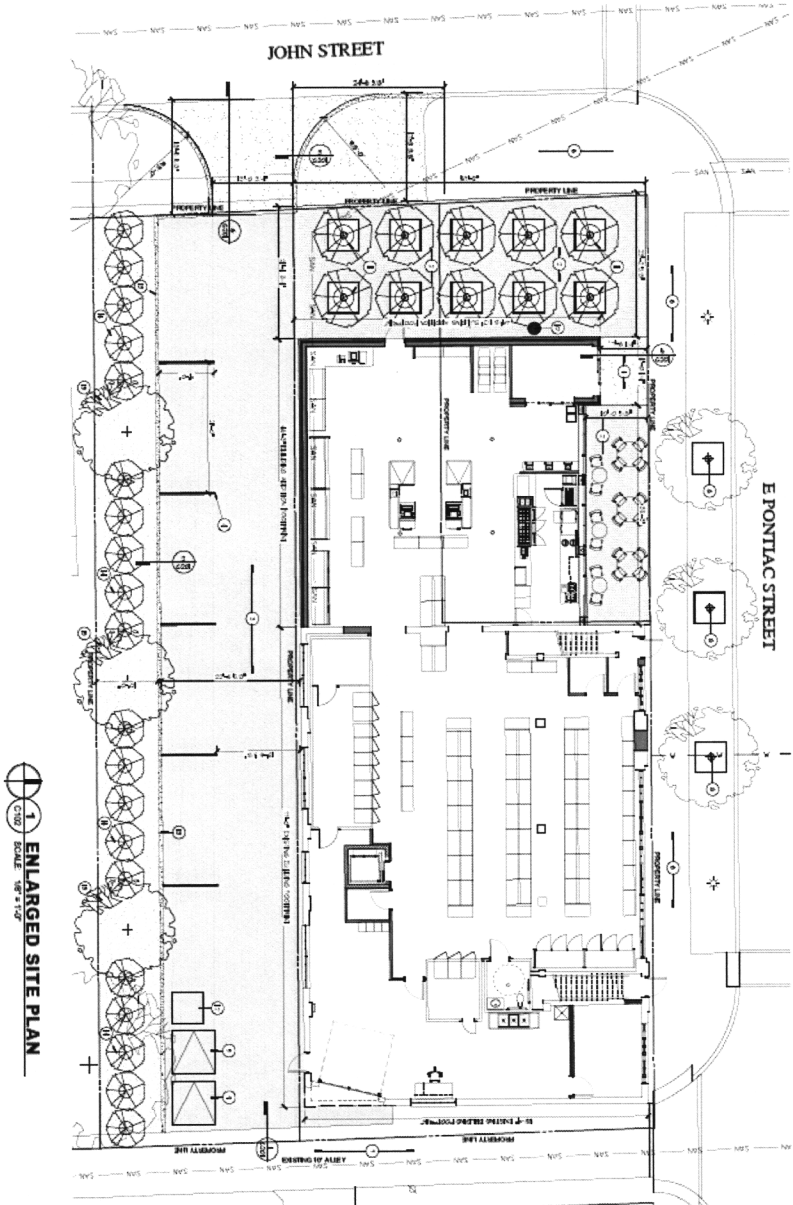
6.7. The City Party and Parkview agree that all Grocery Store Improvements shall be and remain the City Party's property after the procurement thereof.

7. **Punch List.** The Store Operator's taking possession of any portion of the Grocery Store Improvements will be conclusive evidence that such portion of the Grocery Store was in good order and satisfactory condition when the Store Operator took possession, except as to any patent defects identified on a punch list prepared and signed by the City Party's and the Store Operator's respective representatives after an inspection of the Grocery Store by both such parties when the Store Operator takes possession. Neither the City Party, nor any other City Indemnified Parties will be responsible for any items of damage caused by the Store Operator, its agents, independent contractors, or suppliers.
8. **Approval.** The Plans and Specifications and all Change Orders are expressly subject to the prior written approval of both the City Party and Parkview. Either the City Party or Parkview may withhold its approval of any such item that:
  - (a) Exceeds the Initial Cost Estimate;
  - (b) Violates any agreement which affects the Project Site or binds such party;
  - (c) Such party reasonably believes will increase the cost of operating or maintaining the Project;
  - (d) Such party reasonably believes will reduce the market value of the Project at the end of the Term; or
  - (e) Does not conform to the applicable building code or is not approved by any applicable Governmental Authority.
9. **Permitted Delays.** If the Substantial Completion of the Project is delayed as a result of:
  - (a) any Change Orders or changes in any drawings, plans or specifications requested by the City Party or Parkview;
  - (b) the City Party's or Parkview's failure to review or approve in a timely manner any item requiring such party's review or approval; or
  - (c) a Force Majeure Event,

then the Outside Completion Date will be extended one day for each day of delay.







**1 ENLARGED SITE PLAN**  
SCALE: 1/8" = 1'-0"

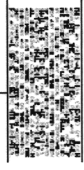
- STREET LIGHT LOCATIONS:**
- 1 NEW CONCRET WALK
  - 2 IMPROVED CONCRET FROM EXIST. - SEE SHEET C101 FOR DETAILS
  - 3 NEW ASP. STRENGTH CONCRT. FINISH AREA - APPROX. 3,200 S.F.
  - 4 FILLION FINISHED LOT SETTING - 7%.
  - 5 TRAIL LIGHTS
  - 6 SETTING SIGNALLS TO REMAIN
  - 7 SETTING SIGNALLS TO BE DEMAN
  - 8 REMOVE SIGNALLS TO BE DEMAN
  - 9 REMOVE SIGNALLS TO BE DEMAN
  - 10 MATCH EXISTING WALKED OUT WITH TREE
  - 11 MATCH EXISTING WALKED OUT WITH TREE
  - 12 MATCH EXISTING WALKED OUT WITH TREE
  - 13 MATCH EXISTING WALKED OUT WITH TREE
  - 14 MATCH EXISTING WALKED OUT WITH TREE
  - 15 MATCH EXISTING WALKED OUT WITH TREE
  - 16 MATCH EXISTING WALKED OUT WITH TREE
  - 17 MATCH EXISTING WALKED OUT WITH TREE
  - 18 MATCH EXISTING WALKED OUT WITH TREE
  - 19 MATCH EXISTING WALKED OUT WITH TREE
  - 20 MATCH EXISTING WALKED OUT WITH TREE

**ENLARGED SITE PLAN**  
DATE: 10/15/10  
DRAWN BY: [Name]  
CHECKED BY: [Name]  
SCALE: 1/8" = 1'-0"

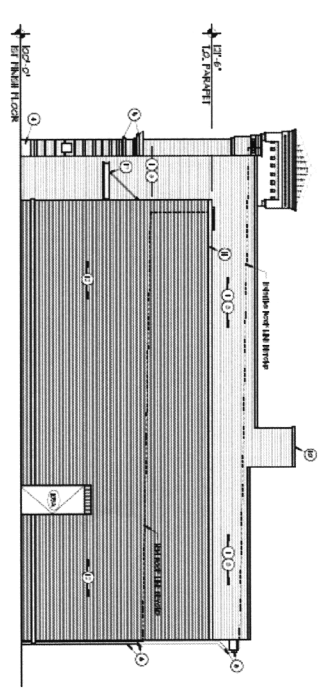
**PRELIMINARY**  
CONSTRUCTION

NO. 1	NO. 2	NO. 3	NO. 4	NO. 5	NO. 6	NO. 7	NO. 8	NO. 9	NO. 10	NO. 11	NO. 12	NO. 13	NO. 14	NO. 15	NO. 16	NO. 17	NO. 18	NO. 19	NO. 20	

**CITY OF FORT WAYNE**  
**URBAN GROCERY STORE**  
918 E Pontiac Street  
Fort Wayne, IN 46806

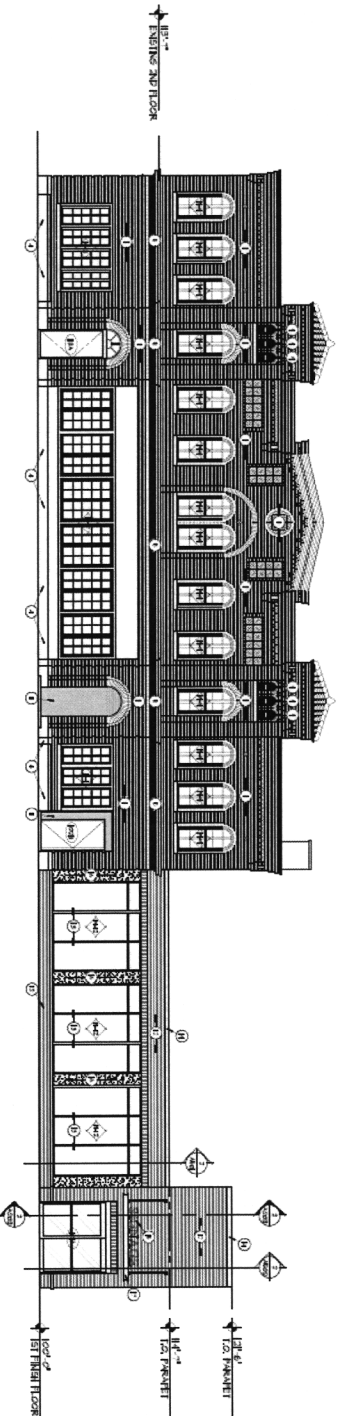


**HOCH**  
Powerful Ideas.  
HOCH Architecture & Planning  
1000 N. College Ave.  
Fort Wayne, IN 46806  
734.266.1100  
www.hoch.com



2 WEST ELEVATION  
SCALE 3/8" = 1'-0"

- NOTES TO BE REVIEWED BY OWNER:**
1. MATERIALS TO BE USED IN CONSTRUCTION OF THE BUILDING SHALL BE AS SHOWN ON THE DRAWINGS AND APPROVED BY THE ARCHITECT. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AGENCIES.
  2. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AGENCIES.
  3. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AGENCIES.
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  9. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AGENCIES.
  10. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AGENCIES.



1 NORTH ELEVATION  
SCALE 3/8" = 1'-0"

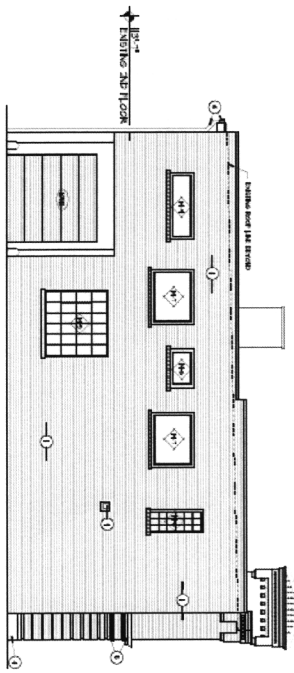


CITY OF FORT WAYNE  
**URBAN GROCERY STORE**  
 918 E Pontiac Street  
 Fort Wayne, IN 46806

PRELIMINARY  
 2020 FOR  
 CONSULTATION

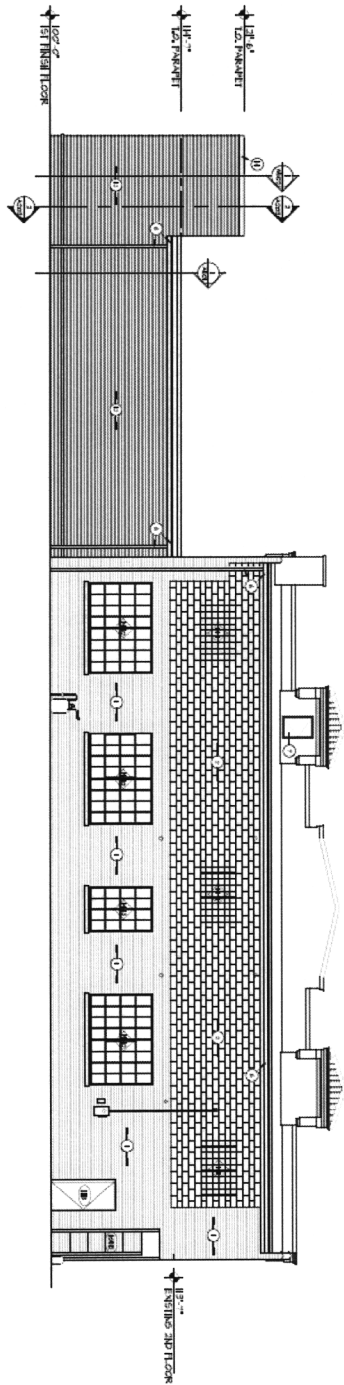
DATE: 12-15-2019  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT NUMBER: [Number]

**A201**



**2 EAST ELEVATION**  
SCALE: 3/8" = 1'-0"

- EXISTING ELEVATION NOTES:**
1. REPAIR, REPAIR AND CLEAN EXISTING BRICK SURFACES. THE REPAIRS SHOULD BE MATCHED TO THE EXISTING BRICK.
  2. REPAIR, REPAIR AND CLEAN EXISTING CONCRETE. THE REPAIRS SHOULD BE MATCHED TO THE EXISTING CONCRETE.
  3. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  4. CLEAN EXISTING CONCRETE FLOOR SURFACES. REPAIR LOCAL SPALLS.
  5. REPAIR AND PATCH ALL DAMAGED CORNERS AND COMPARTMENTS AND PATCH ALL DAMAGED ROOF ACCESS DOORS.
  6. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  7. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  8. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  9. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  10. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  11. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
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  17. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  18. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  19. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.
  20. EXTERIOR WALLS SHALL BE FINISHED WITH BRICK.



**1 SOUTH ELEVATION**  
SCALE: 3/8" = 1'-0"



**CITY OF FORT WAYNE**  
**URBAN GROCERY STORE**  
918 E Pontiac Street  
Fort Wayne, IN 46806

**A202**

PRELIMINARY  
FOR  
CONSTRUCTION

DATE: 10/15/2014  
DRAWN BY: [Name]  
CHECKED BY: [Name]  
SCALE: 1/8" = 1'-0"

## **DIGEST SHEET**

**TITLE OF RESOLUTION.** Resolution of the Common Council of the City of Fort Wayne Approving Certain Funds and Agreements to Provide for the Construction of a Grocery Store on the Pontiac Street Corridor.

**DEPARTMENT REQUESTING RESOLUTION.** Community Development.

**SYNOPSIS OF RESOLUTION.** This Resolution contains the approvals necessary to commence construction and operation of a grocery store on the Pontiac Street Corridor in Southeast Fort Wayne. Specifically, the Resolution: (i) approves the use of \$2,000,000 of ARPA funds for construction (note that preliminary approval was given in September 2022), (ii) allocates \$700,000 from LIT Funds toward construction, and provides for the reimbursement of such funds, (iii) approves a Grocery Store Development and Operation Agreement between the City of Fort Wayne, Parkview Hospital, Inc., and the non-profit entity created to operate the Grocery, and (iv) assigns certain responsibilities to the Redevelopment Commission, including development and construction of the grocery and the City's right, title, and interest in the Grocery Store Improvements.

**EFFECT OF PASSAGE.** Development of a full-service grocery is a key component of the recently-adopted Southeast Strategy Update. The project would rehabilitate and expand an existing building on the Pontiac Street Corridor into a 6,500 sq ft full-service grocery. The grocery is being developed in partnership with Parkview, and would be operated by a non-profit entity controlled by a board of City and Parkview representatives. An advisory committee of community members would provide feedback to the Board to ensure that the grocery continued to meet the needs of the community.

The grocery will improve food access and food security for a portion of the city that is currently designated as a "food desert" due to low median household income, lack of fresh food options, and limited transportation. Access to fresh, healthy, and affordable food will address health challenges such as diabetes, heart disease, high blood pressure, and obesity. Improved food security will also alleviate childhood hunger and improve maternal health and infant mortality. The grocery will serve as a community hub that will catalyze additional business growth and investment.

Upon passage, Community Development, by and through the Redevelopment Commission, will be in a position to enter into a construction management contract with Hagerman. It is anticipated that construction will begin in February 2023 and be completed in September, with a grand opening in October.

**EFFECT OF NON-PASSAGE.** This Resolution approves the primary source of funding and the terms of the public-private partnership. Non-passage would effectively end the project.

**MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS).** This is a not to exceed contract amount of \$3.4 million. Sources of funding include: \$2,000,000 from ARPA; \$700,00 from LIT; \$700,000 to be considered by Redevelopment Commission.

**ASSIGNED TO COMMITTEE (PRESIDENT).** \_\_\_\_\_



## COMMUNITY DEVELOPMENT REDEVELOPMENT

Thomas C. Henry, Mayor

City of Fort Wayne  
Community Development  
200 East Berry Street, Suite 320  
Fort Wayne, IN 46802

260-427-2150 [fwcommunitydevelopment.org](http://fwcommunitydevelopment.org)

December 8, 2022

### MEMO

**To:** City of Fort Wayne Common Council

**From:** Nancy Townsend, Community Development Director, 427-2323

**Re:** Resolution of the Common Council of the City of Fort Wayne Approving Certain Funds and Agreements to Provide for the Construction of a Grocery Store on the Pontiac Street Corridor.

Community Development hereby requests that the Common Council consider and approve certain items related to the development, construction and operation of a full-service grocery store on the Pontiac Street Corridor in Southeast Fort Wayne.

The project fulfills a key component of the recently-adopted Southeast Development Strategy and addresses food access and food security challenges present in the community. It is being developed in partnership with Parkview Hospital, Inc., and would be operated by a non-profit entity controlled by a board of representatives from the City and Parkview.

City Council approval is required for the use of ARPA funds and LIT funds, which are critical sources of construction financing. City Council approval is also required for the Grocery Store Development and Operation Agreement between the City, Parkview, and the non-profit store operator.

Accordingly, please find enclosed herewith a Resolution, supporting materials describing the project, and the Operating Agreement.

Please contact me if you have any questions.

Sincerely,

**Nancy Townsend**

Division Director

City of Fort Wayne

Community Development

260-427-2323

[Nancy.Townsend@cityoffortwayne.org](mailto:Nancy.Townsend@cityoffortwayne.org)

***Vibrant. Prosperous. Growing.***



**BILL NO. R-22-12-15**

**REPORT OF COMMITTEE ON FINANCE**

*JANUARY 24, 2023*

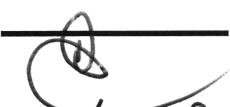
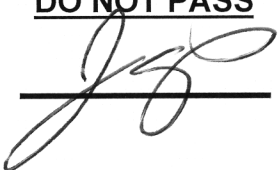







**Jason Arp Chair**

**Geoff Paddock Co-Chair**

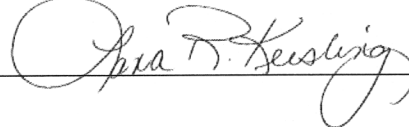
**All Council Members**

A Resolution of the Common Council of the City of Fort Wayne approving certain funds and agreements to provide for the construction of a grocery store on the Pontiac Street Corridor

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Jehl.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilperson Arp, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: January 24, 2023

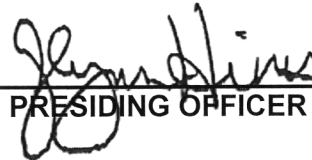
  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. R-22-12-15 on the 24th day of January, 2023

ATTEST:

  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

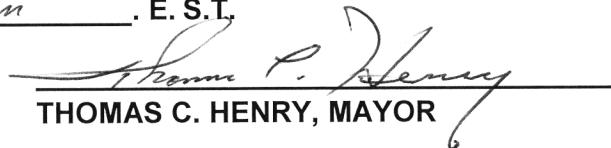
  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 26th of January 2023, at the hour of 8:40 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 26<sup>th</sup> day of JANUARY 2022, at the

hour of 3:30 o'clock PM E. S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR

