

3 AN ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE, INDIANA,
4 TO ISSUE ITS TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS
5 (FOX AND MAIN LLC PROJECT), AND APPROVING OTHER ACTIONS IN
6 RESPECT THERETO

7 WHEREAS, the Common Council of the City of Fort Wayne, Indiana (the
8 "Common Council") has previously adopted a resolution on May 8, 2018 (the
9 "Inducement Resolution"), finding that the proposed economic development facilities
10 project to be owned and operated by Fox and Main LLC (the "Company"), consisting of
11 the acquisition, construction, installation and equipping of a 125-room hotel with
12 restaurant, lounge and retail areas, including a rooftop reception and amenity space, to be
13 located at 204 and 226 West Main Street in the City (the "Project"), will not have an
14 adverse competitive impact on other facilities of the same or similar kind already
15 constructed or operating in the City of Fort Wayne, Indiana (the "City"); and

16 WHEREAS, the Fort Wayne Economic Development Commission (the
17 "Commission") has rendered a Report of the Commission (the "Report") concerning the
18 proposed financing of a portion of the costs of the Project; and

19 WHEREAS, the Commission after a public hearing conducted on May 17, 2018,
20 adopted a resolution on that date, which resolution has been transmitted hereto, finding
21 that the financing of a portion of the costs of the Project of the Company complies with
22 the purposes and provisions of Indiana Code 36-7-11.9 and Indiana Code 36-7-12, as
23 amended (collectively, the "Act"), and that such financing will be of benefit to the health,
24 prosperity, economic stability and general welfare and public interest of the City and its
25 citizens; and
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1 WHEREAS, the Commission has approved in substantially final form, subject to
2 changes by the Mayor, City Clerk and City Controller, the Financing Agreement by and
3 between the Company and the City (the "Financing Agreement") and approved in
4 substantially final form, subject to changes by the Mayor, City Clerk and City Controller,
5 the Bond Purchase Agreements by and between the purchasers of the Bonds and the
6 Commission (the "Bond Agreement") and the form of the City of Fort Wayne, Indiana,
7 Taxable Economic Development Revenue Bond (Fox and Main LLC Project), by such
8 resolution; and
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10 WHEREAS, the Commission has heretofore approved and recommended the
11 adoption of this form of Ordinance by the Common Council, has considered the issue of
12 adverse competitive effect; and
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14 WHEREAS, no member of the Common Council has any pecuniary interest in
15 any employment, financing agreement or other contract made under the provisions of the
16 Act and relating to the Project or to the issuance of the Bonds, which pecuniary interest
17 has not been fully disclosed to the Common Council and no such member has voted on
18 any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16;
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20 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
21 THE CITY OF FORT WAYNE, INDIANA:

22 SECTION 1. The Common Council hereby ratifies and confirms its findings
23 and determinations contained in the Inducement Resolution that the Project will not have
24 an adverse competitive impact on other facilities of the same or similar kind already
25 constructed or operating in the City.

26 SECTION 2. The Common Council hereby finds that the financing of a portion
27 of Project previously approved by the Commission and presented to the Common
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1 Council, the issuance and sale of the Fort Wayne, Indiana, Economic Development
2 Revenue Bonds (Fox and Main LLC Project) (the "Bonds"), the provision of the net
3 proceeds of the Bonds to the Company for the financing of a portion of the costs of the
4 Project, the payment of the Bonds from TIF Revenues (as defined in the Financing
5 Agreement), and the securing of said Bonds under the Bond Purchase Agreements
6 complies with the purposes and provisions of the Act and will be of benefit to the health,
7 prosperity, economic stability, general welfare and public interest of the City and its
8 citizens and complies with the purposes and provisions of the Act.
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10 SECTION 3. The proposed financing and the Financing Agreement and the
11 form of Bond Purchase Agreements approved by the Commission are hereby approved
12 and all such documents shall be incorporated herein by reference and shall be inserted in
13 the minutes of the Common Council and kept on file by the Clerk. In accordance with the
14 provisions of Indiana Code 36-1-5-4, two (2) copies of each of the Financing Agreement
15 and Bond Purchase Agreements are on file in the office of the Clerk for public
16 inspection.
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18 SECTION 4. The City shall issue its Bonds in an aggregate principal amount
19 not to exceed Five Million Four Hundred Ninety-Four Thousand Fifty and No/100
20 Dollars (\$5,494,050.00) for the purpose of procuring funds to pay the costs of a portion
21 of the acquisition, construction, installation and equipping of the Project, as more
22 particularly set out in the Financing Agreement and the Bond Purchase Agreements,
23 incorporated herein by reference, which Bonds will be payable as to principal and
24 interest solely from TIF Revenues or as otherwise provided in the above-described Bond
25 Purchase Agreements. The Bonds shall be issued in fully registered form in
26 denominations of One Hundred Thousand Dollars (\$100,000) and integral multiples of
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1 Five Thousand Dollars (\$5,000) in excess thereof or as otherwise provided in the Bond
2 Purchase Agreements, and shall be subject to redemption or prepayment as provided in
3 the Bond Purchase Agreements. Payments of principal and interest are payable in lawful
4 money of the United States of America by check mailed or delivered to the registered
5 owners as provided in the Bond Purchase Agreements. The Bonds shall never constitute
6 a general obligation of, an indebtedness of, or a charge against the general credit of the
7 City nor are the Bonds payable in any manner from revenues raised by taxation (except
8 to the extent of the pledge of TIF Revenues).
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10 SECTION 5. The Mayor of the City (the "Mayor") and the Controller are
11 authorized and directed to sell the Bonds upon such terms as are set forth in the Bond
12 Purchase Agreements with a maximum term of not to exceed twenty (20) years, at a rate
13 of interest on the Bonds which shall not exceed 3% per annum, and at a price equal to not
14 less than the principal amount thereof.
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16 SECTION 6. The Mayor, the Controller and the Clerk are, and each of them is,
17 authorized and directed to execute, attest and affix or imprint by any means the seal of
18 the City to the documents constituting the Financing Agreement and Bond Purchase
19 Agreements approved herein on behalf of the City and any other document which may be
20 necessary or desirable prior to, on or after the date hereof to consummate or facilitate the
21 transaction, including the Bonds authorized herein. The Mayor and the Controller are,
22 and each of them is, hereby expressly authorized to approve any modifications or
23 additions to the documents constituting the Financing Agreement and Bond Purchase
24 Agreements which take place after the date of this Ordinance with the review and advice
25 of counsel to the City, it being the express understanding of the Common Council that
26 said Financing Agreement and Bond Purchase Agreements are in substantially final form
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1 as of the date of this Ordinance. The approval of said modifications or additions shall be
2 conclusively evidenced by the execution and attestation thereof and the affixing of the
3 seal thereto or the imprinting of the seal thereon; provided, however, that no such
4 modification or addition shall change the maximum principal amount of, maximum
5 interest rate on, or terms of the Bonds described in Indiana Code 36-7-12-27 as approved
6 by the Common Council by this Ordinance without further consideration by the Common
7 Council. The signatures of the Mayor, Controller and the Clerk on the Bonds may be
8 either manual or facsimile signatures. The Controller is authorized to arrange for
9 delivery of such Bonds to the purchaser or purchasers of the Bonds as set forth in the
10 Bond Purchase Agreements after receipt of payment for the Bonds made to the
11 Controller. The Bonds shall be originally dated the date of issuance and delivery thereof.
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14 SECTION 7. The provisions of this Ordinance, the Financing Agreement and
15 the Bond Purchase Agreements securing the Bonds shall constitute a contract binding
16 between the City and the holders of the Bonds, and after the issuance of said Bonds, this
17 Ordinance shall not be repealed or amended in any respect which would adversely affect
18 the rights of such holders so long as said Bonds or the interest thereon remains unpaid.
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20 SECTION 8. No recourse under or upon any obligation, covenant, acceptance
21 or agreement contained in this Ordinance, or in the Bonds, the Financing Agreement, the
22 Bond Purchase Agreements or under any judgment obtained against the City or by the
23 enforcement of any assessment or by any legal or equitable proceeding by virtue of any
24 constitution or statute or otherwise, or under any circumstances, under or independent of
25 the Financing Agreement or the Bond Purchase Agreements, shall be had against any
26 member, director, or officer or attorney, as such, past, present, or future, of the City,
27 either directly or through the City, or otherwise, for the payment for or to the City or any
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1 receiver thereof, or for or to any holder of the Bonds secured thereby, or otherwise, of
2 any sum that may be due and unpaid by the City upon any of such Bonds. Any and all
3 personal liability of every nature, whether at common law or in equity, or by statute or by
4 constitution or otherwise, of any such member, director, or officer or attorney, as such, to
5 respond by reason of any act or omission on his or her part, or otherwise, for, directly or
6 indirectly, the payment for or to the City or any receiver thereof, or for or to any owner
7 or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon
8 the Bonds hereby secured or any of them, shall be expressly waived and released as a
9 condition of and consideration for the execution and delivery of the Financing
10 Agreement and Bond Purchase Agreements and the issuance of the Bonds.
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12 SECTION 9. The Bonds shall not constitute a debt or pledge of the faith and
13 credit of the City, the State or any political subdivision thereof, and the holders, or
14 owners thereof shall have no right to have taxes levied by the City, the State or of any
15 political subdivision, for the payment of the principal thereof or interest thereon. Except
16 for the TIF Revenues as set forth herein, moneys raised by taxation shall not be
17 obligated or pledged for the payment of principal of or interest on the Bonds, and the
18 Bonds shall be payable solely from the revenues and security interests pledged for their
19 payment.
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1 SECTION 10. This Ordinance shall be in full force and effect from and after the
2 time it has been adopted by the Common Council, approved by the Mayor, and otherwise
3 executed and delivered in accordance with any and all laws pertaining thereto.
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5 _____
6 Council Member

7 APPROVED AS TO FORM AND LEGALITY:

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9 _____
10 Carol Helton, City Attorney
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FORM OF
BOND PURCHASE AGREEMENT

BOND PURCHASE AGREEMENT, dated as of the ____ day of _____, 2018 (the "Purchase Agreement"), by and between the City of Fort Wayne, Indiana, a municipal corporation organized and existing under the laws of the State of Indiana ("City" or "Issuer") and _____ ("Purchaser").

WITNESSETH:

WHEREAS, the City has duly authorized the issuance of its bonds designated "Taxable Economic Development Revenue Bonds, Series 2018 (Fox and Main Project)" ("2018 Bonds"), in the aggregate principal amount of \$5,494,050.00 by the adoption of its Bond Ordinance on _____, 2018, a true and correct copy of which is incorporated herein by reference ("Bond Ordinance"); and

WHEREAS, _____ has on _____, 2018, adopted Resolution No. _____ authorizing the purchase of the 2018 Bonds;

NOW, THEREFORE, THE CITY AND THE PURCHASER AGREE AS FOLLOWS:

1. The Purchaser hereby agrees to purchase the 2018 Bonds and the City hereby agrees to use its best efforts to issue the 2018 Bonds and to sell the 2018 Bonds to the Purchaser at par. The 2018 Bonds shall be dated their date of issuance and shall bear interest and shall mature on the dates and in the amounts set forth on Exhibit A, attached hereto and made a part hereof. The other terms of the 2018 Bonds are set forth in the form of the 2018 Bonds. The 2018 Bonds shall constitute a contract between the City and the Purchaser, as the owner of the 2018 Bonds.

2. The City has taken or will take prior to closing all actions required by law to enable it to issue the 2018 Bonds and the Purchaser has taken or will take prior to closing all actions required by law to enable it to purchase the 2018 Bonds.

3. If any provision of this Purchase Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Purchase Agreement and this Purchase Agreement shall be construed and be in force as if such invalid or unenforceable provision had not been contained herein.

4. This Purchase Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. The City and the Purchaser each agree that they will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Purchase Agreement.

5. No waiver by either the City or the Purchaser of any term or condition of this Purchase Agreement shall be deemed to be or construed to be a waiver of any other terms or

conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Purchase Agreement.

6. This Purchase Agreement is an integrated contract, constitutes the entire agreement between the Purchaser and the Issuer relating to the subject matter hereof, and merges and supersedes all earlier agreements, prior negotiations, representations and agreements of the Purchaser or Issuer relating to the same subject matter. This Purchase Agreement is made without reliance on any representations or promises by any of the Purchaser and Issuer, or their representatives, other than those made herein. The parties hereto intend that this Purchase Agreement shall supersede any and all previous discussions written or otherwise regarding the 2018 Bonds. This Purchase Agreement may not be modified except in writing, signed by Purchaser and Issuer hereto.

[Remainder intentionally blank. Signature pages follow.]

IN WITNESS WHEREOF, we have hereunto set our hands as of the day first above written.

By: _____

Printed: _____

Its: _____

“Purchaser”

IN WITNESS WHEREOF, I have hereunto set my hand as of the day first above written.

CITY OF FORT WAYNE, INDIANA

By: _____
Tom Henry, Mayor

(SEAL)

ATTEST

EXHIBIT A

Maturity Schedule

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
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Exhibit A

FINANCING AGREEMENT

This FINANCING AGREEMENT (the "Financing Agreement") dated as of _____, 2019, between FOX AND MAIN LLC, a Delaware limited liability company (the "Company"), and the CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the "Issuer"),

PRELIMINARY STATEMENT

WHEREAS, Indiana Code 36-7-11.9 and 36-7-12, each as supplemented and amended (collectively, the "Act"), authorizes and empowers the Issuer to issue revenue bonds and enter into agreements with companies to allow companies to construct economic development facilities and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and Indiana Code 5-3-1, the City of Fort Wayne Economic Development Commission held a public hearing and the Issuer, upon finding that the Project (as defined herein) and the proposed financing of a portion of the acquisition, construction, installation and equipping thereof (the "Financed Portion") will create additional employment opportunities in the City of Fort Wayne, Indiana; will benefit the health, safety, morals and general welfare of the citizens of the City of Fort Wayne and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, the Issuer intends to issue its Taxable Economic Development Revenue Bond, Series 2019 (Fox and Main Project), in the aggregate principal amount of Five Million Four Hundred Ninety-Four Thousand Fifty and No/100 Dollars (\$5,494,050.00) (the "2019 Bonds") to provide the proceeds of the 2019 Bonds pursuant to the provisions of this Financing Agreement to the Company to finance a portion of the Project to be located in the Riverfront 1 – Columbia Street EDA within the City of Fort Wayne, Indiana (the "Allocation Area"), which is an "allocation area" as described in Indiana Code 36-7-14-39; and

WHEREAS, this Financing Agreement provides for the use by the Company of the proceeds of the 2019 Bonds to finance the Financed Portion of the Project; and

WHEREAS, the City of Fort Wayne, Indiana, Department of Redevelopment and the Company entered into an Economic Development Agreement dated October ____, 2018 (the "Development Agreement") providing for the development of the Project and other related matters; and

WHEREAS, the 2019 Bonds issued pursuant to this Financing Agreement will be payable solely out of Project TIF Revenues (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises, the representations, warranties and commitments given by the Company to the Issuer, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Issuer hereby further covenant and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Financing Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“2019 Bondholder” or “owner of a 2019 Bond” or any similar term means the owner of a 2019 Bond.

“2019 Bonds” means the City of Fort Wayne, Indiana, Taxable Economic Development Revenue Bonds, Series 2019 (Fox and Main Project), in the aggregate principal amount of Five Million Four Hundred Ninety-Four Thousand Fifty and No/100 Dollars (\$5,494,050.00).

“Allocation Area” shall have the meaning set forth in the Preamble hereof.

“Company” means Fox and Main LLC, an Indiana limited liability company, or any successors thereto permitted under Section 3.2 hereof.

“Development Agreement” means the Economic Development Agreement dated October __, 2018, among the City of Fort Wayne, Department of Redevelopment, and the Company.

“Financed Portion” means that portion of the Project financed from the proceeds of the 2019 Bonds.

“Issuer” means the City of Fort Wayne, Indiana, a municipal corporation duly organized and validly existing under the laws of the State.

“Project” means the acquisition, construction, installation and equipping of an economic development facility, as more particularly in the Development Agreement, which is located in the Allocation Area.

“Project TIF Revenues” means the property tax proceeds received by the Redevelopment Commission and pledged to the Issuer pursuant to a resolution adopted by the Redevelopment Commission from the assessed valuation of the real property and improvements included in the Project located in the Allocation Area in excess of the assessed valuation described in Indiana Code 36-7-14-39(b)(1), as such statutory provision exists on the date of execution of this Financing Agreement or may be amended from time to time, provided, however, that such Project TIF Revenues shall be subject to the terms and provisions of the Development Agreement.

“Redevelopment Commission” means the City of Fort Wayne Redevelopment Commission.

“State” means the State of Indiana.

Section 1.2. Rules of Interpretation. For all purposes of this Financing Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) “This Financing Agreement” means this instrument as originally executed and as it may from time to time be supplemented, modified or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied in the United States of America.

(e) The terms defined elsewhere in this Financing Agreement shall have the meanings therein prescribed for them.

ARTICLE II

REPRESENTATIONS; USE OF 2019 BOND PROCEEDS

Section 2.1. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State.

(b) Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder.

(c) The Issuer has been duly authorized to execute and deliver this Financing Agreement.

(d) The Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(e) Pursuant to the Development Agreement, the Issuer agrees to provide funds from the issuance of the 2019 Bonds in the amount of Five Million Four Hundred Ninety-Four Thousand Fifty and No/100 Dollars (\$5,494,050.00) to the Company for the costs associated with the acquisition, construction, installation and equipping of the Financed Portion of the Project, subject to the execution and delivery of this Financing Agreement, all for the benefit of the holders of the 2019 Bonds, to create additional employment opportunities in the City of Fort Wayne, Indiana and to benefit the health, safety, morals and general welfare of the citizens of the City of Fort Wayne and the State.

Section 2.2. Representations by Company. The Company represents and warrants that:

(a) It is a limited liability company validly existing under the laws of the State of Delaware and authorized to do business in the State, is not in violation of any laws in any manner material to its ability to perform its obligations under the Development Agreement and this Financing Agreement, and has full power to enter into and by proper action has duly authorized the execution and delivery of this Financing Agreement.

(b) All of the proceeds from the 2019 Bonds provided to the Company hereunder (including any income earned on the investment of such proceeds) will be used to finance the Financed Portion of the Project.

(c) The provision of financial assistance to be made available to it under this Financing Agreement from the proceeds of the 2019 Bonds and the commitments therefor made by the Issuer have induced the Company to undertake the Project and such Project will preserve and create additional jobs and employment opportunities within the boundaries of the City of Fort Wayne, Indiana. Further, the Company intends to operate or cause the Project to be operated for commercial business purposes (which operation may not include facilities described in Indiana Code 36-7-11.9-3(a)(2)(A) through (N)), until the expiration or earlier termination of this Financing Agreement as provided herein.

(d) Neither the execution and delivery of this Financing Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, conflicts with or results in a breach of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any restriction or any agreement or instrument to which the Company is now a party or by which it is bound or to which any of its property or assets is subject or (except in such manner as will not materially impair the ability of the Company to perform its obligations hereunder) of any statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or its property, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement.

(e) The execution, delivery and performance by the Company of this Financing Agreement do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(f) This Financing Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization or other similar laws affecting the enforcement of creditors' rights in general.

(g) There are no actions, suits or proceedings pending, or, to the knowledge of the Company, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might impair the ability of the Company to perform its obligations under this Financing Agreement.

(h) The Company represents that it will perform its obligations and covenants under the Development Agreement.

ARTICLE III

PARTICULAR COVENANTS OF THE COMPANY

Section 3.1. Payment of Principal; Payment of Project TIF Revenues. The 2019 Bonds are payable solely and only from Project TIF Revenues as pledged to the Issuer by the Redevelopment Commission pursuant to a resolution adopted by the Redevelopment Commission. Under no circumstances shall the Company be liable for making any payments due under the 2019 Bonds, including any payment of the principal of or premium, if any, or interest on the 2019 Bonds. In addition, under no circumstances shall the Company be liable for payment of any other costs or expenses under or in connection with this Financing Agreement or the transactions contemplated by this Financing Agreement or the 2019 Bonds. The Issuer shall transfer Project TIF Revenues to the Bond Fund for payment to the 2019 Bondholders as and when Project TIF Revenues are received in the amounts set forth herein.

Section 3.2. Maintenance of Existence. The Company agrees that it will maintain its existence as a limited liability company, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit one or more other entities to consolidate or merge with it; provided, that the Company may, without violating the agreement contained in this Section 3.2, consolidate or merge with another entity, permit one or more other entities to consolidate or merge into it, or transfer to another entity organized under the laws of one of the states of the United States all or substantially all of its assets as an entirety and thereafter dissolve provided (a) the surviving, resulting or transferee entity, as the case may be, is organized under the laws of one of the states of the United States, and (b) to the extent that the Company is not the surviving entity, such entity assumes in writing all of the obligations of the Company herein, including the obligations of the Company under the Development Agreement.

Section 3.3. Development Agreement. The Company agrees to perform all material matters provided by the Development Agreement to be performed by the Company and to comply with all material provisions of the Development Agreement applicable to the Company, in each case to the extent that a failure to so perform or comply is expressly provided under the terms of the Development Agreement to be an "Event of Default" by the Company or, with the

passage of time or the giving of notice, or both, would constitute an "Event of Default" on the part of the Company under the Development Agreement.

Section 3.4. Payment of Costs of Issuance of 2019 Bonds, Other Fees and Expenses. The Issuer shall pay from the Project TIF Revenues, as necessary, the costs of issuance of the 2019 Bonds after the payment in full of the 2019 Bonds. The Company shall be responsible for any application fees and expenses for the financing described herein and Company shall be responsible for its own costs and expenses incurred in connection with the 2019 Bonds. The Company is not obligated to pay any costs of issuance of the 2019 Bonds or any related costs, fees or expenses in connection with the issuance, sale or offering of the 2019 Bonds; nor is the Company obligated to pay any fees, charges or expenses in connection with or related to the 2019 Bonds after the 2019 Bonds have been issued, which fees, charges and expenses include financial advisory and/or accounting fees, charges and expenses, fiduciary fees and expenses and Issuer fees and expenses (including in each instance legal fees and expenses), all of which are obligations of the Issuer.

Section 3.5. Completion and Use of Project. The Company agrees that it will make, execute, acknowledge and deliver contracts, orders, receipts, writings and instructions with any other persons, firms or corporations in connection with the Project and in general do all things reasonably within its power which may be requisite or proper, for the acquisition, construction, installation and equipping of the Project and, upon completion, the Company will operate and maintain the Project in such manner as reasonably within the Company's power so as to conform with all applicable zoning, planning, building, environmental and other applicable governmental regulations and so as to be consistent with the Act.

The Issuer does not make any warranty, either express or implied, that the moneys, which under the provisions of this Financing Agreement will be available for payment of the costs of the Financed Portion of the Project, will be sufficient to pay all the costs which will be incurred with respect to the Financed Portion. The Company agrees that if, after exhaustion of such moneys, the Company should pay the costs of completing the Financed Portion, it shall not be entitled to any reimbursement therefor from the Issuer.

Section 3.6. Sale, Substitution or Lease of Facilities. Subject to Section 6.4 hereof, the Company may sell, lease or transfer or otherwise dispose of the Project or any portion thereof only if the sale, lease or transfer or other disposition shall require the purchaser, lessee, transferee or other party, as the case may be, to assume all of the obligations of the Company under the Development Agreement and this Financing Agreement.

Section 3.7. Fees and Expenses of Company. The Company hereby covenants and agrees to pay any and all fees, charges and expenses, including legal counsel fees, of the Company incurred in connection with this Financing Agreement and the Development Agreement.

ARTICLE IV

IMMUNITY

Section 4.1. Extent of Covenants of the Issuer; No Personal Liability. No recourse shall be had for the payment of the principal of or interest on any of the 2019 Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the 2019 Bonds or this Financing Agreement against any past, present or future member, director, officer, agent, attorney or employee of the Issuer, or any incorporator, member, director, officer, employee, agent, attorney or trustee of any successor thereto, as such, either directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, director, officer, employee, agent, attorney or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of this Financing Agreement (and any other agreement entered into by the Issuer with respect thereto) and the issuance of the 2019 Bonds.

Section 4.2. Liability of Issuer. Any and all obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the Project TIF Revenues and as otherwise provided under this Financing Agreement. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision or taxing authority thereof within the purview of any constitution limitation or provision, or a pledge of the faith and credit or a charge against the credit or general taxing powers, if any, of the Issuer, the State or any political subdivision or taxing authority thereof.

ARTICLE V

SUPPLEMENTS AND AMENDMENTS TO THIS FINANCING AGREEMENT

Section 5.1. Supplements and Amendments to this Financing Agreement. The Company and the Issuer may from time to time enter into such supplements and amendments to this Financing Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof; provided, that to the extent that such supplements and amendments materially adversely affect the rights of the holders of the 2019 Bonds, any such supplement or amendment shall require the consent of the holders of one hundred percent (100%) of the principal amount of the 2019 Bonds.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1. Financing Agreement for Benefit of Parties Hereto. Nothing in this Financing Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns, any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or

stipulation hereof; and the covenants, stipulations and agreements in this Financing Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, and their successors and assigns.

Section 6.2. Severability. In case any one or more of the provisions contained in this Financing Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 6.3. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, or delivered to a nationally recognized overnight carrier, prepaid, with proper address as indicated below. The Issuer and the Company may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Financing Agreement. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer: The City of Fort Wayne, Indiana
Department of Redevelopment
Attention: Executive Director
Citizen's Square
200 East Berry Street, Room 320
Fort Wayne, IN 46802
Telephone: 260-427-2323
Facsimile: 260-427-1375

With a copy to: The City of Fort Wayne, Indiana
Attention: Lawrence E. Shine
Citizen's Square
200 East Berry Street, Suite 430
Fort Wayne, IN 46802
Telephone: 260-427-1190
Facsimile: 260-427-5678

With a copy to: Jon A. Bomberger
Faegre Baker Daniels LLP
110 W. Berry Street, Suite 2400
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700
Email: jon.bomberger@faegrebd.com

To the Company: Fox and Main LLC
Attn: Bashar Wali
808 SW Alder Street, Suite 300
Portland, Oregon 97205
Telephone: 503-548-2607
Facsimile: 503-593-3973
Email: Bashar@provenancehotels.com

With a copy to: Thomas B. Trent
Rothberg Logan Warsco LLP
505 East Washington Boulevard
P.O. Box 11647
Fort Wayne, Indiana 46859
Telephone: 260-422-9454
Facsimile: 260-422-1622
Email: ttrent@rlwlawfirm.com

Section 6.4. Successors and Assigns. Whenever in this Financing Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Financing Agreement contained by or on behalf of the Company, or by or on behalf of the Issuer, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not; provided, however, that the Company may not assign the Project or its rights and obligations under this Financing Agreement if the successors and assigns do not intend to utilize the Project for manufacturing, warehousing, distribution, processing, commercial, business or health care purposes (which use may not include facilities described in Indiana Code 36-7-11.9-3(a)(2)(A) through (N))

Section 6.5. Counterparts. Facsimile or emailed signatures appearing hereon shall be deemed an original and this Financing Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 6.6. Governing Law. It is the intention of the parties hereto that this Financing Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and enforced in accordance with, the laws of Indiana.

Section 6.7. Condition. The rights and obligations of the Issuer and the Company pursuant to this Financing Agreement are expressly conditioned upon the due authorization of the issuance of the 2019 Bonds pursuant to all required legal proceedings.

[Remainder intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the Issuer and the Company have caused this Financing Agreement to be executed in their respective names, and attested by their duly authorized officers, all as of the date first above written.

FOX AND MAIN LLC,
an Indiana limited liability company

By: _____

Printed: _____

Its: _____

“Company”

THE CITY OF FORT WAYNE, INDIANA

By: _____

Thomas C. Henry, Mayor

“Issuer”

Lana R. Keesling,
Clerk of the City of Fort Wayne