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Judy Swift-Powdrill
Brown County Recorder IN
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AGENCY AGREEMENT (PROJECT CONSTRUCTION)

THIS AGENCY AGREEMENT (PROJECT CONSTRUCTION) is made as of May 16, 2018(this "Agreement"),by and between the BROWN COUNTY MAPLE LEAF MANAGEMENT GROUP, INC.(the "Manager"), BROWN COUNTY, INDIANA (the "County"), and BROWN COUNTY MAPLE LEAF BUILDING CORPORATION (the "Building Corporation").

WITNESSETH:

WHEREAS, the Brown County Maple Leaf Building Corporation (the "Corporation") issuedits first mortgage notes in two series, designated as the Brown County Maple Leaf Building Corporation First Mortgage Note, Series 2017A, issued in the aggregate principal amount of not to exceed Nine Million Dollars ($9,000,000) (the "2017A Note") and the Brown County Maple Leaf Building Corporation First Mortgage Note, Series 2018B, issued in the aggregate principal amount of not to exceed Three Million Five Hundred Thousand Dollars ($3,500,000) (the "2018B Note" and, together with the 2017A Note, the "Notes"), for the purpose of providing funds to pay the cost of the acquisition, design, construction, equipping and furnishing of a new Music Venue and Performing Arts Center (including the acquisition of the real estate therefor) and the payment of the costs of issuance of the Notes and any other fees and charges associated with the issuance of the Notes (collectively, the "Project"); and

WHEREAS, the principal and interest on the Notes are payable by the Corporation solely from the amounts received by the Corporationpursuant toan Installment Purchase Contract, between the Corporation and Brown County, Indiana (the "County"), dated December 28, 2017, and secured by the Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, by the Corporation and in favor of the State Bank of Lizton(the "Lender"); and

WHEREAS, the proceeds from the sale of Notes shall be used by the County to purchase, install, equip, and/or construct the Project, including the preparation of plans and specifications for the Project by Miller Architects (the "Architect").

WHEREAS, the parties hereto desire to enter into this Agreement to implement the construction of the Project;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Manager's Responsibilities.

   (a) The Manager shall provide the services as set forth in this Agreement.

   (b) The Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project. Time limits established for the Project and approved by the County shall not, except for reasonable cause, be exceeded by the Manager. Time is of the essence of this Agreement.

(c) The Manager shall maintain the following insurance for the duration of this Agreement with insurance companies acceptable to the County.

(i) Comprehensive General Liability with policy limits of not less than Two Million Dollars and Zero Cents ($2,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage; and with $1,000,000 coverage for Products/Completed Operations, $1,000,000 coverage for Personal/Advertising Injury, $50,000 coverage for Fire Damage, and $5,000 coverage for Medical Payments (any one person or occurrence).

(ii) Automobile Liability covering owned and rented vehicles operated by the Manager with policy limits of not less than One Million Dollars and Zero Cents ($1,000,000.00) combined single limit and aggregate for bodily injury and property damage.

(iii) Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than One Million Dollars and Zero Cents ($1,000,000.00).

(iv) Professional Liability covering the Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than Two Million Dollars and Zero Cents ($2,000,000.00) per claim and in the aggregate.

(v) The Manager shall provide to the County certificates of insurance evidencing compliance with the requirements in this Section. The certificates will show the County and the Lender as additional insureds on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies and each policy will contain a waiver of subrogation in favor of County and the Lender shall be listed as the loss payee on all applicable policies. The coverage afforded under any insurance policy obtained pursuant to this Agreement by the Manager or its consultants shall be primary to any valid and collectible insurance carried by the County.

(d) The Manager shall also maintain or cause to be maintained any additional insurance required by the Installment Purchase Contract between the Building Corporation and the County, dated December 28, 2017.

(e) No officer, employee, or agent of the County or the Manager or any other party who has any function or responsibility in connection with the planning or execution of this Agreement shall have any personal financial interest, direct or indirect, in this Agreement, or receive any benefit from it, other than regular employment or fees as agreed upon. The Manager shall comply with the limitations, conflict of interest provisions, and disclosure requirements of Ind. Code ch. 5-16-11.

2. Manager's Services.

(a) The Manager shall, subject and pursuant to the terms of this Agreement, assist the County in securing bids and managing the purchase, delivery, installation, and construction of the Project. It shall be the responsibility of the Manager to assure that all bids and bidding procedures comply with all relevant laws and regulations applicable to the County and Corporation. The Manager's agency relationship with the County shall be solely that of an independent contractor. It shall wholly be the responsibility of the Manager to ensure that its notices, meetings, and any acceptance/rejection, and approval of bids comply with all applicable laws and regulations.

(b) The Project shall be constructed in accordance with plans and specifications prepared by the Architect and approved by the County and the Lender.

(c) The Manager, as agent for the Corporation, will cause the Project to be let out for public bidding pursuant to the public bidding laws of the State of Indiana governing the Corporation and the County, specifically including Indiana Code 36-1-12 and the relevant provisions of Title 5 of the Indiana Code and the provisions and procedures detailed therein.

(d) The Manager shall obtain all applicable permits and inspections relating to the construction of the Project, except for such permits and inspections with respect to which the plans and specifications require the contractor awarded the bid for applicable portion of the Project to obtain such necessary permits and inspections.

(e) The Project will comply with all laws applicable to the County, including the minimum performance and minimum payment bond requirements applicable to the County.

(f) The Manager shall manage and supervise the design and construction of the Project. Subject to compliance with any additional legal requirements, change orders modifying the plans and specifications which increase the cost of the Project, in the aggregate by more than $50,000, shall require the approval of the County, the Corporation, and the Lender.

(g) The Manager shall provide administration of the Contract for Construction in cooperation with the Architect as set forth herein and in AIA Document A232-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified.

(h) In managing and supervising the design and construction of the Project, the Manager shall require each contractor to fulfill and comply with all insurance, engineering, construction, and safety requirements of all federal, state, and local codes and the requirements and the plans and specifications of the Project. All liability and Builder's Risk Insurance, applicable to the Project provided by contractors/suppliers, shall name the County, the Corporation, and the Lender as additional insureds. Such policies shall clearly indicate that any proceeds under the policies relative to the Project shall be payable to the Lender, as described in Section 6 of the Mortgage. The Manager shall provide competent and experienced supervision of the work for the Project.

(i) A mutually satisfactory system of accounting and job administration shall be established by the Manager to ensure the correct and expeditious handling of all payments and disbursements required to be paid to each contractor. Prior to payment by the County, each payment must be certified for approval by the Corporation and Architect and submitted with necessary documents for payment, and the County shall not make payments beyond such certification that the amounts are due and payable. Such payment procedures shall also include lien waiver provisions providing that all contractors, subcontractors, materialmen and suppliers furnishing work, labor, materials or equipment waive any right to enforce any mechanic's liens, materialmen's liens or any other liens or claims upon or against the Project. Notwithstanding the foregoing, the County reserves the right to withhold payment to any contractor to protect against any defective work not remedied, third party claims or liens filed, or reasonable evidence indicating probable filing of such claims or liens, failure of any contractor to make timely and proper payment for any labor, materials or equipment, reasonable doubt that the work can be completed for the unpaid balance of the contract price, reasonable indication that the work will not be completed within the contract time, unsatisfactory performance or prosecution of the work upon a contractor, or other claims in favor of the County against any such contractor.

(j) The Manager's certification for payment shall constitute a representation to the County that, to the best of the Manager's knowledge, information and belief after due and reasonable inquiry and investigation, the Project has progressed to the point indicated and the quality of the Project is in accordance with the plans and specifications.

(k) The Manager shall use all commercially reasonably efforts to obtain satisfactory performance from each of the contractors and to guard the County against defects and deficiencies in the Project.

(l) The Manager shall have authority to act on behalf of the County only to the extent provided in this Agreement.

(m) The Manager shall be responsible for coordinating the Lender's, or Lender's agent's, inspection of the plans and specifications or the Project.

3. <u>Compensation</u>. The County shall compensate the Manager for reimbursable expenses as follows:

(a) Postage, handling and delivery;

(b) Manager's expense of liability insurance; and

(c) Other similar Project-related expenditures.

4. Property Insurance. The County shall provide Builder's Risk insurance for the Project in the cumulative amount of one hundred percent (100%) of the insurable value of the Project and property damage insurance of $1,000,000.00 per occurrence and liability insurance of $2,000,000.00 per occurrence, insuring against such loss during the construction and installation of the Project, with the Corporation and the Lender named as additional insureds by Certificates of Insurance and the Lender named as the loss payee.

5. Termination. This Agreement shall terminate when the Project has been purchased, installed, equipped and/or constructed and finally accepted by the Manager, the County and the Corporation. The County may terminate this Agreement upon not less than sixty(60) days' written notice to the Manager for the County's convenience and without cause.

6. Miscellaneous. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Indiana. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement is binding upon the parties hereto and their successors and assigns. Time is of the essence for the performance and payment of each and every covenant and obligation contained in this Agreement. No amendment of this Agreement shall be effective, unless the same is made in writing and signed by all parties hereto.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agency Agreement (Project Construction) as of the date first written above.

COUNTY OF BROWN, INDIANA

Diana Biddle

Diana Biddle, Commissioner

JERRY LEE PITTMAN

Jerry Lee Pittman

DAVE ANDERSON

Dave Anderson

[*County's Signature Page of Agency Agreement (Project Construction)*]

BROWN COUNTY MAPLE LEAF
MANAGEMENT GROUP, INC.

Barry Herring, Co-President

Kevin Ault, Co-President

[*Management Corporation's Signature Page of Agency Agreement (Project Construction)*]

BROWN COUNTY MAPLE LEAF
BUILDING CORPORATION

By: Robyn Rosenberg Pres
Robyn Rosenberg, President

[*Building Corporation's Signature Page of Agency Agreement (Project Construction)*]

Acknowledged and Agreed to:

BROWN COUNTY CONVENTION AND VISITORS COMMISSION

By: ______________________
Kevin Ault, President

[*CVC's Signature Page of Agency Agreement (Project Construction)*]

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