

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (the “Agreement”) is executed as of the ___ day of January, 2022, by and among Blue Devil Properties, Inc., an Indiana corporation duly registered with the Indiana Secretary of State’s Office (“Company”), and the City of Fishers Redevelopment Commission, a commission of the City of Fishers authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq.* (“RDC”), on the following terms and conditions:

Recitals

WHEREAS, founded in 2016, Company is the sister company of Metazoa Brewing, an Indiana brewery with a mission to serve quality beverages and support animal welfare organizations;

WHEREAS, Company has advised the RDC that it desires to open a Metazoa Brewing location on the Project Site, if the RDC will provide the incentives included in this Agreement; and

WHEREAS, to stimulate and induce the development of the Project on the Project Site, the RDC has agreed, subject to further proceedings required by law, to provide the economic development incentives described herein.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the RDC and Company agree as follows:

1. Defined Terms.

City Deed shall mean, a limited warranty deed by which the RDC shall convey its interest in the Project Site to Company, which City Deed shall be subject only to: (a) the Permitted Exceptions; (b) the Power of Termination; and (c) matters created or consented to by Company.

Claims shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.

Closing shall mean the RDCS conveyance of the Project Site to Company.

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with a commercial real estate closing.

Closing Date shall mean the date on which the Closing occurs.

Construction Commencement shall mean material and substantial work on the Project Site related to the construction of the Project such as installation of footings, foundations, and infrastructure and shall not be deemed to occur as a result of mere excavation work.

Cure Period shall mean a period of: (a) ten (10) days after written notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such

cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of the default.

Diligence Period shall mean the period: (a) commencing on the Execution Date; and (b) ending not later than one hundred sixty(160) days thereafter.

Divestiture Payment shall mean Eight Hundred Thousand and no/100 Dollars (\$800,000.00).

Earnest Money shall mean Fifteen Thousand and no/100 Dollars (\$15,000.00).

Effective Date shall mean the date set forth in the opening paragraph of this Agreement.

Event of Default shall have the meaning set forth in Section 8.

Extended Diligence Period 1 shall mean one hundred twenty (12090) days from expiration of the Diligence Period.

Extended Diligence Period 2 shall mean ninety (90) days from expiration of the Extended Diligence Period 1.

Force Majeure shall mean any cause that is not within the reasonable control of Company or RDC, respectively, including, without limitation: (a) unusually inclement weather but not cold, ice, sleet, snow or hail in amounts typical in Indiana; (b) the unusual unavailability of materials, equipment, services, or labor; and (c) utility or energy shortages or acts or omissions of public utility providers; provided that a party's failure to anticipate normal and customary delays due to weather or normal and customary time periods to obtain Required Permits shall not be deemed Force Majeure.

Laws shall mean all applicable laws, statutes, and/or ordinances, building codes, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City's Unified Development Ordinance and all applicable environmental laws.

Permitted Exception shall mean (a) real property taxes and assessments for the year in which Closing occurs and thereafter, not yet due and payable; (b) zoning and other regulatory laws and ordinances affecting the Project Site; (c) any easement, right of way, limitation, encroachment, conflict, discrepancy, overlapping of improvements, protrusion, lien, encumbrance, restriction, condition, covenant, exception or other matter with respect to the Project Site that is reflected or addressed on the Survey or the Title Commitment to which Company fails to timely object pursuant to Section 6.

Power of Termination shall mean the right, which shall be included in the City Deed, permitting the RDC to enter the Project Site and, upon payment of the Divestiture Payment, divest the Company of title thereto and cause title to the Project Site to vest in the RDC in the event of a default described in Section 9, which vesting shall be free and clear of all matters; provided, however, any revesting of the Project Site may be subject to those matters (a) to which title was subject upon the RDC's delivery of the City Deed to the Company; and (b) easements provided for or required by the Project. The Power of Termination shall lapse and expire by its own terms upon Construction Commencement, and upon request, from Company, RDC shall record a release of the power of termination in the Hamilton County Recorder's Office.

Project shall mean the development and construction of a brewery and retail establishment approximately _____ square feet (___ sq. ft.) in size on the Project Site.

Project Site shall mean real property generally known as 11593 Allisonville Road, Fishers, Indiana 46038 and depicted on Exhibit A.

Property Inspections shall mean surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments and financial feasibility studies and inspections of the Project Site.

Purchase Price shall mean Eight Hundred Thousand and no/100 Dollars (\$800,000.00).

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for construction, occupancy, and use of the Project.

Right of Entry shall mean the right of attached as Exhibit B.

Substantial Completion shall mean, with respect to the Project, the later of the date that: (a) that Company receives the final certificate of occupancy for such project; and (b) the date that the Company's architect certifies, per AIA Form G704, that the construction of such Project is substantially complete in compliance with all Laws subject only minor punchlist items that do not interfere with the use or operation thereof.

Survey shall mean an ALTA survey of the Project Site, certified as of a current date by a reputable licensed surveyor; which Survey does not show any matters that would: (a) materially and adversely will interfere with the construction and/or use of the Project; or (b) render construction of the Project unusually costly.

Title Commitment shall mean, as applicable, a commitment for an owner's policy of title insurance with respect to the Project Site, that: (a) is issued by the Title Insurer; and (b) commits to insure marketable, indefeasible fee simple title in the name of the Company.

Title Insurer shall mean First American Title Insurance Company (Gina Longere and/or Monica Chavez).

2. **RDC's Obligations.** • Subject to the terms and conditions of this Agreement, the RDC shall: (a) at Closing, transfer the Project Site to Company pursuant to the City Deed; (b) execute the Right of Entry; (c) provide copies of all surveys, commitments, and other documents relating to the Project Site that are in the possession of the RDC; and (d) perform its other obligations set forth herein.

3. **Company's Obligations.** Subject to the terms and conditions of this Agreement, Company shall: (a) pay the Purchase Price at Closing; (b) at Closing accept transfer and conveyance of the Project Site pursuant to the City Deed; (c) obtain the Required Permits; (d) complete the Project by or before August 31, 2023; and (e) perform its other obligations set forth herein.

4. **Earnest Money and Diligence Period.** Within five (5) business days of the Effective Date, Company shall deposit the Earnest Money with the Title Insurer. Prior to conclusion of Diligence Period, Company may terminate this Agreement for any reason by providing written notice (the "Termination Notice") to the RDC, and the Earnest Money shall be paid to Company. If Company fails to provide the Termination Notice prior to expiration of the Diligence Period, the Earnest Money shall be paid to the RDC.

Company may exercise its right to Extended Diligence Period 1 by providing notice to the RDC (the "Extension Notice") prior to conclusion of the Diligence Period. Upon Buyer's issuance of the Extension Notice, Ten Thousand and no/100 Dollars (\$10,000.00) of the Earnest Money shall become non-refundable to Buyer and shall be applied to the Purchase Price at Closing. Additionally, Company may exercise its right to Extended Diligence Period 2 by providing notice to the RDC (the "Extension Notice 2") prior to conclusion of Extended Diligence Period 1. Upon Buyer's issuance of the Extension Notice 2, the remaining Five Thousand and no/100 Dollars (\$5,000.00) of the Earnest Money shall become non-refundable to Buyer and shall be applied to the Purchase Price at Closing. If Closing does not occur as provided for herein, any portion of the Earnest Money that is non-refundable pursuant to this Section 4 shall be paid to the RDC.

5. Closing. Subject to the terms and conditions of this Agreement,

(a) Closing. Closing shall occur: (i) on or before the date that is thirty (30) days after the expiration of the Diligence Period, Extended Diligence Period 1 or Extended Diligence Period 2, if applicable, but in no event later than October 31, 2022, and (ii) at the office of the Title Insurer or at such other place as RDC and Company mutually may agree.

(b) Deliveries. At the Closing, unless another time is specifically stated:

(i) Company and RDC shall each pay one-half (1/2) of shall pay all Closing Costs associated with the conveyance of the Project Site; provided, however, Company shall be solely responsible for the cost of the Title Commitment and Survey.

(ii) Each party shall be responsible for its own legal fees incurred in connection with negotiation of this Agreement and the Closing of this Agreement.

(iii) RDC shall be liable for brokerage commissions paid to CBRE in the amount of Thirty-Two Thousand and no/100 Dollars (\$32,000.00).

(iv) Company shall pay the Purchase Price in immediately available funds.

(v) A mutually acceptable memo of this Agreement to be recorded in the chain of title.

(vi) The RDC and/or Company, as applicable, shall execute and deliver the following:

(A) the City Deed conveying to Company fee simple title to the Project Site;

(B) a vendor's affidavit, from the RDC for the Project Site, in form and substance such that the Title Insurer agrees to delete the standard exceptions for non-survey matters for the Project Site;

(C) an affidavit that Company is not a "foreign person", in form and substance required by the Internal Revenue Code of 1986, as amended;

(D) a certification by the RDC and Company that all representations and warranties set forth in Section 7(a) and (b), respectively, remain true and accurate in all material respects;

(E) copies of such resolutions, consents of members, partners, officers and/or

shareholders and other evidence as RDC, Company, or the Title Insurer reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents, and the conveyance of the Project Site to Company has been properly authorized by the signatories thereto; and

(F) such other customary documents or instruments as RDC, Company or the Title Insurer may request in connection with the Closing (including, for example, a sales disclosure form and a closing statement).

6. Conditions to Company's Obligations. Company's obligations under this Agreement are subject to the timely and complete satisfaction of each of the following conditions, unless waived in writing by Company:

(a) **Survey.** Within ninety (90) days of the Effective Date, Company shall have obtained the Survey.

(b) **Title Insurance.** Within ninety (90) days of the Effective Date, Company shall obtain the Title Commitment and provide a copy of such Title Commitment to the RDC. Company may, on or before the expiration of the Diligence Period, notify RDC of any physical or other defects disclosed in the Title Commitment or the Survey that Company deems unacceptable (the "Company's Objections"). RDC shall have ten (10) days after receipt of Company's notice to cure or remove (or agree to cure prior to Closing) any of Company's Objections. If RDC does not cure or remove such Company's Objections (or agree to cure prior Closing) to Company's satisfaction within said period, Company may either (x) terminate this Agreement by written notice to RDC, in which event the Earnest Money shall be refunded to Company and neither party shall have any further obligations hereunder, or (y) waive such Company's Objections and continue the transactions contemplated by this Agreement. Notwithstanding anything to the contrary herein, RDC shall be required to obtain releases of any and all mortgages, other security agreements, UCC financing statements and monetary liens ("Mandatory Cure Items") at or before the Closing and no Mandatory Cure Items shall be deemed a Permitted Exception.

(c) **Environmental Report.** Company, at its cost and expense and prior to the expiration of the Diligence Period, Extended Diligence Period 1, or Extended Diligence Period 2, as applicable, shall have obtained an environmental assessment prepared by an environmental engineer designated by Company which does not disclose any evidence of any asbestos-containing materials or any contamination of the Project Site by any hazardous or special wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations) or conditions existing on or near the Project Site that may give rise to any future civil, criminal or administrative environmental proceedings or investigations with respect to the Project Site or RDC's use thereof or which require remediation or other curative actions, and which is in all other respects acceptable to Company in its sole discretion.

(d) **Litigation and Representations.** As of the Closing Date, no action or proceeding before a court or other governmental agency or officer shall be pending (and to the best of either RDC's or Company's knowledge, no such action or proceeding shall be threatened) that materially impairs the value of the Project Site or prevents Company from undertaking and completing Company's intended use and development of the Project Site.

(e) **No Breach.** As of the Closing Date there shall be no breach of this Agreement by RDC that the RDC has failed to cure within the Cure Period.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and

completely satisfied, then, as its sole and exclusive remedy, the Company either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement by a written notice to the RDC.

7. Representations and Warranties

(a) RDC. RDC represents and warrants to Company that: (i) it shall not enter into any agreements or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) is the governing body of the City of Fishers Redevelopment Department organized and existing under the laws of the State of Indiana; (iii) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (iv) this Agreement is the legal, valid, and binding obligation of it; and (v) other than CBRE, it has not engaged or dealt with any real estate broker or agent in connection with the Project Site or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of RDC.

(b) Company. Company represents and warrants to RDC that: (i) it is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana; (ii) it shall not enter into any Agreements or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (v) this Agreement is the legal, valid, and binding obligation of Company; (vi) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, the Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Company or any party affiliated with Company; (vii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Company will state, in all solicitations or advertisements for employees placed by or on behalf of Company, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin.

8. Default

(a) Events of Default. It shall be an “Event of Default” if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it, if such default or failure is not cured within the applicable Cure Period.

(b) General Remedies. During the continuance of an Event of Default, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then, within 30 days after receipt of a written invoice, the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 4% above the applicable per annum prime rate of interest as set forth in the *Wall Street Journal*.

(c) **No Remedy Exclusive; Limitation.** No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Agreement or by the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages as a consequence of an Event of Default by such party. In the event either party hereto employs an attorney in connection with Claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such Claims. The term "prevailing party" as used in this Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

9. Failure to Commence. Company shall satisfy the Construction Commencement obligation within ninety (90) days of the Closing Date. If Company fails to satisfy the Construction Commencement obligation, then, at any time until Company satisfies the Construction Commencement obligation, the RDC may elect, in addition to any other legal and equitable remedies available to the RDC, to, upon payment of the Divestiture Payment, (i) terminate this Agreement; and (ii) re-enter the Project Site and exercise its Power of Termination and cause title to the Project Site to vest in the RDC. For the avoidance of doubt, the Power of Termination requires the Company to reconvey the Project Site to the RDC. No delay or failure by RDC to enforce its rights pursuant to this Section 9 shall under any circumstances be deemed or held to be a waiver by any RDC of the right to do so thereafter, or an estoppel of any RDC to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

Any conveyance of the Project Site back to the RDC pursuant to Section 9, shall be subject to the following: Company shall execute and deliver closing documents to RDC that are substantially the same in form and substance as those received by Company in connection with its acquisition of the Project Site, including, without limitation, that the deed shall be subject, provided that the RDC has paid the Divestiture Payment, only to: (A) the exceptions to which Company's title was subject at Closing; (B) current Real Estate Taxes and Assessments not delinquent; (C) any utility easements granted by Company; and/or (D) such other exceptions as reasonably are acceptable to the RDC. Company shall be responsible for all real estate taxes and assessments, assessed, due and/or payable prior to the conveyance of the Project Site and for all costs of conveyance.

10. Assignment. Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion, no party hereto shall assign this Agreement without the prior written approval of the other party.

11. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to the RDC at City of Fishers Redevelopment Commission, 1 Municipal Drive, Fishers, Indiana 46038, Attn: Megan Baumgartner, with a copy to Jennifer C. Messer (via email)

at jennifercmesserlaw@gmail.com; and to Company at _____, Attn: _____. Each of the parties may change its address for notice from time to time by delivering notice to the other party as provided above.

12. Authority. Each undersigned person executing this Agreement on behalf of RDC and Company represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the RDC or Company, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by RDC and Company, respectively; provided, however, each of RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which RDC agrees to undertake with diligence and in good faith.

13. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. The parties acknowledge the ongoing COVID-19 pandemic, and agree: (a) to exercise commercially reasonable, good-faith efforts to: (i) consider all then-current information with respect to; and (ii) adjust for shortages that reasonably can be anticipated with respect to materials, equipment, services, and/or labor that reasonably are likely to occur as a result of; the COVID-19 pandemic; and (b) that, notwithstanding that the COVID-19 pandemic falls within the definition of "Force Majeure", the protections of this Section shall not apply to a claim of Force Majeure based on COVID-19 if the applicable party fails to comply with the foregoing requirement.

14. Merger. All prior agreements, understandings, and commitments with respect to the transaction contemplated herein are hereby superseded, terminated, and merged herein, and shall be of no further force or effect. Absent an amendment to, or modification of, this Agreement in accordance with this section, in no event shall the RDC be obligated to perform any work, incur any expenses, or provide any incentives (whether with respect to the Project Site, the Project, or any site or improvements adjacent to, or in the vicinity of, the Project Site) other than as specifically set forth in this Agreement. This Agreement may be amended or modified only by written instrument executed by the RDC and Company.

15. Miscellaneous. Subject to Section 10, this Agreement shall inure to the benefit of, and be binding upon, RDC, Company, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Company waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Company may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by RDC and Company. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still

be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Company and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Fishers, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

Index of Exhibits:

Exhibit A: Project Site

Exhibit B: Right of Entry

IN WITNESS WHEREOF, the RDC and Company have executed this Project Agreement as of the day and year first written above.

“RDC”

City Of Fishers Redevelopment Commission

Dan Canan, President

Attest: _____
Damon Grothe, Secretary

“COMPANY”

Blue Devil Properties, Inc.

By: _____

Its: _____