



## **CITY OF FISHERS AGENDA**

**BOARD/COMMISSION: Redevelopment Commission**

**DATE: 5/6/2025 at 4:00 PM**

**DIRECTIONS: Fishers Municipal Center, Nickel Plate Conference Room, 3rd floor,  
1 Municipal Drive, Fishers, IN 46038**

In accordance with the Americans with Disabilities Act (ADA), the City of Fishers will, upon request, provide appropriate aid (i.e. interpreters) and/or assistance leading to effective participation for people with disabilities. Anyone who requires such assistance should [email Kelly Lewark](#), Office Manager, no later than 48 hours before the scheduled event or call at (317) 595-3487.

### **1. Executive Session**

- a. To conduct interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects under Indiana Code § 5-14-1.5-6.1(b)(4)

### **2. Call to Order**

### **3. Confirmation of Quorum and Proper Notice of Meeting**

### **4. Approval of Previous Minutes**

- a. RDC Minutes 4-1-25 DRAFT

### **5. Consent Agenda**

- a. FRC Claims 5-6-25

### **6. Public Hearings**

- a. Crossing Lot 3 Allocation Area Confirmatory Resolution FRC 01R050625

### **7. New Business**

- a. Union Pledge Resolution FRC02R050625
- b. Andretti 3rd Amendment
- c. Amended and Restated Project Agreement for Union and Crossing Resolution FRC 03R050625.

**8. Meeting Adjournment**

[MEET\_FOOT]

CITY OF FISHERS REDEVELOPMENT COMMISSION (FRC) MEETING MINUTES  
FISHERS MUNICIPAL CENTER- NICKEL PLATE CONFERENCE ROOM  
April 1, 2025

**EXECUTIVE SESSION** – An Executive Session was held

**REGULAR MEETING:**

Mr. Johnson called the Regular meeting to order at 4:20 p.m. A quorum and proper notice of the meeting were confirmed.

FRC members present: Brad Johnson, Anderson Schoenrock, Tony Bonacuse. Damon Grothe and Dan Canan were not present. Bryan Rausch was also present.

Others present: Megan Baumgartner, Dustin Meeks, Rob Mc Murray, Lawrence Summers, Jennifer Messer, Larry Lannan, Lucas Smith, Kay Prange

**Mr. Johnson opened the meeting to Elections.**

**Mr. Johnson asked for a Nomination for President of the RDC. Anderson Schoenrock nominated Brad Johnson as President, seconded by Mr. Bonacuse. Mr. Johnson was elected, 3-0.**

**Mr. Johnson made a Nomination for Vice-President of the RDC. He nominated Anderson Schoenrock, seconded by Tony Bonacuse. Mr. Schoenrock was elected, 3-0.**

**Mr. Johnson made a Nomination for Secretary of the RDC. He nominated Tony Bonacuse, seconded by Anderson Schoenrock. Mr. Bonacuse was elected, 3-0.**

**Consent Agenda: Mr. Bonacuse made a motion to approve the minutes of the January 21, 2025 meeting, seconded by Mr. Schoenrock. Motion approved, 3-0.**

**Approval of Claims: Anderson Schoenrock made a Motion to approve the claims, seconded by Tony Bonacuse. The Motion was approved, 3-0.**

**PUBLIC HEARING**

**FRC 01R040125 Confirmatory Resolution- Consolidated Fishers I-69 EDA Consolidation with Olio Road I-69 EDA**

Dustin Meeks of Barnes & Thornburg presented the Resolution. This Public Hearing is a step in moving forward with the Consolidation of the Fishers I-69 EDA.

**Mr. Johnson opened the Public Hearing. Seeing no one from the Public to speak, he closed the Public Hearing.**

**Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion passed, 3-0.**

**FRC 02R040125 Confirmatory Resolution - Designation of Andretti and INCOG Taxpayers**

Megan Baumgartner presented the Resolution which identifies personal property for capturing depreciable personal property tax increment revenues. The Andretti organizations for Formula 1 and Cadillac will be headquartered in Fishers. Andretti Global and TWG Motorsports will be located in the old Indy Star building in Indianapolis.

**Mr. Johnson opened the Public Hearing. Seeing no one from the Public to speak, he closed the Public Hearing.**

**Mr. Schoenrock made a Motion to approve, seconded by Mr. Bonacuse. The Motion passed, 3-0.**

**NEW BUSINESS**

**FRC 03R040125 - Amendment to Andretti Pledge Resolution**

Presented by Dustin Meeks of Barnes & Thornburg- related to Bond documents.

**Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion passed, 3-0.**

**FRC 04R040125 - Declaratory Resolution - Crossing Lot 3 Allocation Area**

Presented by Lawrence Summers- the Resolution provides for a new parcel to be included.

**Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion passed, 3-0.**

**FRC 05R040125 - Resolution and Amended and Restated Project Agreement**

Megan Baumgartner presented the Amended Project Agreement for Union + Crossing which reflects the changes in the previous Resolution, FRC 04R040125.

**Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion passed, 3-0.**

**FRC 06R040125 - Resolution and T & H License Agreement**

Megan Baumgartner presented the Agreement with T & H, which makes their property available to be utilized for construction needs for the City View Project.

**Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion passed, 3-0.**

**RDC Annual Report for year-ended 12-31-24**

Lawrence Summers presented The Annual Report, which is available as an attachment to the 4-1-25 Agenda.

**Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion passed, 3-0.**

**FRC 07R040125 Pledge Resolution - Fishers Senior Union Bonds**

Dustin Meeks presented the Resolution which is for a financing incentive for the Union facility by the Event Center- pledging revenues from the Yard (Fishers District)

**Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion passed, 3-0.**

**FRC 08R040125 - Resolution Accepting Property Transfer- Luxhaven**

Jennifer Messer presented the property transfer of City property in Luxhaven to the owner of the neighboring property. The owner wants to purchase 1/10 of an acre. An appraisal was done and fair market value is being paid: \$7000.

**Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion passed, 3-0.**

**FRC 09R040125 Coverdale Resolution and Lease**

Megan Baumgartner presented the Resolution which allows for Coverdale to lease additional space on the 2<sup>nd</sup> floor of the Meyer Najem building from the City.

**Mr. Schoenrock made a Motion to approve, seconded by Mr. Bonacuse. The Motion passed, 3-0.**

Old Business: none

The meeting adjourned at 4:45 p.m.

**Fishers Redevelopment Commission  
Claim Docket 5/6/25**

Voucher #/ (APV#)	Inv. Date	Vendor	Description	Amount

Total      \$0.00

\_\_\_\_\_  
President, Redevelopment Commission      5/6/2025  
Date

\_\_\_\_\_  
Secretary, Redevelopment Commission      5/6/2025  
Date

\_\_\_\_\_  
Lisa Bradford, City Controller      5/6/2025  
Date

**Fishers Redevelopment Commission  
Consent Agenda Claims 5/6/25**

Hamilton County Treasurer	15-14-01-02-01-002.000 24p25 Taxes	\$	24,948.63
Hamilton County Treasurer	15-14-01-02-01-003.000 24p25 Taxes	\$	9,522.38
Frederics Inc	Life Science Sign Work	\$	18,650.00
Hamilton County Treasurer	15-14-12-00-03-001.000 24p25 Taxes	\$	577.42
Hamilton County Treasurer	15-14-01-02-01-010.000 24p25 Taxes	\$	10,637.20
CVK LLC	4/25 Meyer Najem Rent	\$	36,719.15
Visionary Cove LLC	4/25 Launch Rent	\$	61,450.00
Cage Campus	4/25 IoT Rent	\$	14,327.83
CVK LLC	5/25 Meyer Najem Rent	\$	37,773.94
Visionary Cove LLC	5/25 Launch Rent	\$	61,450.00
Cage Campus	5/25 IoT Rent	\$	14,327.83

**\$ 290,384.38**

**RESOLUTION NO. FRC 01R050625**

**RESOLUTION OF CITY OF FISHERS REDEVELOPMENT COMMISSION  
CONFIRMING AN AMENDMENT TO THE DECLARATORY RESOLUTION  
FOR THE CONSOLIDATED FISHERS/I-69 ECONOMIC DEVELOPMENT  
TO EXPAND THE CROSSING LOT 3 ALLOCATION AREA AND REAFFIRMING  
THE DEVELOPMENT PLAN FOR SAID AREA**

WHEREAS, the City of Fishers Redevelopment Commission (the “Commission”), governing body of the City of Fishers Department of Redevelopment, previously adopted and amended resolutions (collectively, the “Declaratory Resolution”) establishing and expanding an economic development area known as the “Consolidated Fishers/I-69 Economic Development Area” (the “Area”), designating certain portions of the Area as “allocation areas” for purposes of Section 39 of the Act (collectively, the “Allocation Areas”), which Allocation Areas include, among others, the Crossing Lot 3 Allocation Area, and approving an economic development plan for the Area (as subsequently amended, the “Plan”), pursuant to Indiana Code 36-7-14, as amended (the “Act”); and

WHEREAS, on October 22, 2024, the Commission approved and adopted Resolution No. FRC 01R102224 which was subsequently confirmed by the Commission’s Resolution No. FRC 03R012125, adopted on January 21, 2025 (the "Prior Resolution"); and

WHEREAS, the Prior Resolution amended the Declaratory Resolution and the Plan to, in part, designate the Crossing Lot 3 Allocation Area within the Area and to incorporate the Projects (as defined in Exhibit H to the Prior Resolution) into the Plan including making certain findings about the Crossing Lot 3 Allocation Area and the Projects (the “Findings”)

Whereas the Commission, on April 1, 2025 approved and adopted Resolution No. FRC 04R040125 (the “Resolution”), which (i) expanded the Crossing Lot 3 Allocation Area to incorporate the area described on Exhibit A to the Resolution (such area, the “Allocation Area Expansion Parcels”) and (ii) reaffirmed the Plan for the Area in its entirety including the Findings which the Commission determined are equally applicable to the Crossing Lot 3 Allocation Area as expanded to include the Allocation Area Expansion Parcels (collectively, the “Amendments”); and

WHEREAS, On April 2, 2025 the Fishers Plan Commission approved and adopted a resolution (the "Approving Order") approving the Resolution and the Amendments and determining that the Resolution and the Amendments conform to the plan of development for the City of Fishers, Indiana (the “City”), and submitted the Approving Order to the Common Council of the City (the “Council”); and

WHEREAS, pursuant to Sections 16 and 41 of the Act, the Council on April 21, 2025 adopted a resolution (the “Council Resolution”) which approved the Resolution, the Amendments, and the Approving Order; and

WHEREAS, the Commission has received the written orders of approval as required by Section 17(a) of the Act; and

WHEREAS, pursuant to Section 17 of the Act, the Commission caused to be published a Notice of Public Hearing with respect to the Resolution, filed a copy of said Notice in the offices of all departments, bodies or officers of the City having to do with City planning, variances from zoning ordinances, land use or the issuance of building permits; and

WHEREAS, pursuant to Section 17 of the Act, the Commission also filed with each taxing unit located wholly or partially within each of the Allocation Areas a copy of the Notice of Public Hearing and a statement disclosing the impact of the creation of the Allocation Areas; and

WHEREAS, at the hearing (the “Public Hearing”) held by the Commission on May 6, 2025, the Commission heard all persons interested in the proceedings and considered any written remonstrances that were filed and all evidence presented; and

WHEREAS, the Commission now desires to take final action determining the public utility and benefit of the proposed development projects in the Amendments and confirming the Resolution, in accordance with Section 17 of the Act;

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission, as follows:

1. After considering the evidence presented at the Public Hearing, the Commission hereby confirms the findings and determinations, designations and approving and adopting actions contained in the Resolution.
2. After considering the evidence presented at the Public Hearing, the Commission hereby finds and determines that it will be of public utility and benefit to proceed with the proposed projects set forth in the Amendments, and the Amendments are hereby approved in all respects.
3. The Resolution, is hereby confirmed.
4. This Resolution constitutes final action, pursuant to Section 17(d) of the Act, by the Commission determining the public utility and benefit of the proposed projects and confirming the Resolution and approving the Amendments, including the designation of the Crossing Allocation Area, the Union Allocation Area, the Crossing Lot 3 Allocation Area, the Crossing Lot 5 Allocation Area, and the Crossing Lot 6 Allocation Area, the amendment of any other affected allocation area, and the amendment of the Area and the Plan.
5. The Secretary of the Commission is directed to record the final action taken by the Commission pursuant to the requirements of Sections 17(d) of the Act.

Adopted the 6th day of May, 2025.

CITY OF FISHERS REDEVELOPMENT  
COMMISSION

---

President

---

Vice President

---

Secretary

---

Member

---

Member

**RESOLUTION NO. FRC 02R050625**

**A RESOLUTION OF THE CITY OF FISHERS REDEVELOPMENT COMMISSION PLEDGING CERTAIN TAX INCREMENT REVENUES FROM EACH OF THE UNION ALLOCATION AREA, THE CROSSING LOT 3 ALLOCATION AREA, THE CROSSING LOT 5 ALLOCATION AREA, THE CROSSING LOT 6 ALLOCATION AREA, AND THE YARD ECONOMIC DEVELOPMENT ALLOCATION AREA TO THE PAYMENT OF ECONOMIC DEVELOPMENT REVENUE BONDS OF THE CITY OF FISHERS**

WHEREAS, the City of Fishers Redevelopment Commission (the “Commission”) previously adopted its Resolution No. 07R040125, on April 1, 2025 (the “Prior Resolution”); and

WHEREAS, the Commission now desires to repeal the Prior Resolution and to replace the Prior Resolution in its entirety with this Resolution; and

WHEREAS, the Commission has previously created the Consolidated Fishers/I-69 Economic Development Area (the “Economic Development Area”), and on June 8, 2017, adopted Resolution No. FRC 01R060817 which was confirmed by Resolution No. FRC 04R080917 adopted by the Commission on August 9, 2017, which designated a portion of the Economic Development Area as the Yard Economic Development Allocation Area (the “Yard Allocation Area”) for purposes of the allocation and distribution of property taxes under IC 36-7-14-39, which Yard Allocation Area was amended by Resolution No. FRC 03R060418 adopted by the Commission on June 4, 2018 which was confirmed by Resolution No. FRC 01R071218 adopted by the Commission on July 12, 2018; and

WHEREAS, the Commission has created the Yard Economic Development Allocation Fund (the “Yard Allocation Fund”), pursuant to IC 36-7-14-39; and

WHEREAS, the Commission on August 26, 2019, adopted Resolution No. FRC 03R082619 which was confirmed by Resolution No. FRC 02R110419 adopted by the Commission on November 4, 2019, which designated a portion of the Economic Development Area as the Stations Economic Development Allocation Area (the “Stations Allocation Area” and collectively with the Yard Allocation Area, the “Adjacent Allocation Areas”) for purposes of the allocation and distribution of property taxes under IC 36-7-14-39; and

WHEREAS, the Commission has created the Stations Economic Development Allocation Fund (the “Stations Allocation Fund” and collectively with the Yard Allocation Fund, the “Adjacent Allocation Funds”), pursuant to IC 36-7-14-39; and

WHEREAS, the Commission on October 22, 2024, adopted Resolution No. FRC 01R102224 which was confirmed by Resolution No. FRC 03R012125 adopted by the Commission on January 21, 2025, which designated certain portions of the Economic Development Area as each of the Union Allocation Area (the “Union Allocation Area”), the Crossing Lot 3 Allocation Area (the “Lot 3 Allocation Area”), the Crossing Lot 5 Allocation Area (the “Lot 5 Allocation Area”), and the Crossing Lot 6 Allocation Area (the “Lot 6 Allocation Area” and collectively with the Union Allocation Area, the Lot 3 Allocation Area, and the Lot 5 Allocation Area, the “Project Allocation Areas,” and the Project Allocation Areas collectively with the Yard Allocation Area,

the “Allocation Areas”) each for purposes of the allocation and distribution of property taxes under IC 36-7-14-39; and

WHEREAS, the Commission on April 1, 2025, adopted Resolution No. FRC 04R040125 which was confirmed by Resolution No. FRC 01R050625, which expanded the Lot 3 Allocation Area for purposes of the allocation and distribution of property taxes under IC 36-7-14-39 (for avoidance of doubt any reference to the Lot 3 Allocation Area herein shall refer to the Lot 3 Allocation Area as so expanded); and

WHEREAS, The Commission has created each of the Union Allocation Fund (the “Union Allocation Fund”), the Crossing Lot 3 Allocation Fund (the “Lot 3 Allocation Fund”), the Crossing Lot 5 Allocation Fund (the “Lot 5 Allocation Fund”), and the Crossing Lot 6 Allocation Fund (the “Lot 6 Allocation Fund” collectively with the Union Allocation Fund, the Lot 3 Allocation Fund, and the Lot 5 Allocation Fund, the “Project Allocation Funds”), respectively, pursuant to IC 36-7-14-39; and

WHEREAS, the City of Fishers, Indiana (the “City”), the Commission, the City of Fishers, Indiana Economic Development Commission (the “EDC”), the Fishers Town Hall Building Corporation, and Thompson Thrift Development, Inc. (together with any affiliates thereof, the “Developer”), entered into an Amended and Restated Project Agreement (the “Project Agreement”), pursuant to which the Developer committed to the acquisition, construction, renovation and equipping of (a) a hotel and approximately 15,500 square feet of retail space; (b) four (4) retail structures totaling approximately thirty-one thousand, square feet (31,000 sq. ft.); (c) approximately eighty-thousand square feet (80,000 sq. ft.) of Class-A office space, of which approximately seventy-thousand square feet (70,000 sq. ft.) will be leasable; (d) a mixed-use building comprised of approximately two hundred fifty (250) units and twelve thousand square feet (12,000 sq. ft.) of retail space; and (e) garages to support other project elements (collectively, the “Project”); and

WHEREAS, in accordance with the Project Agreement, the EDC and the Common Council of the City have approved of the issuance of one or more series of economic development revenue bonds of the City, designated as the “City of Fishers, Indiana Senior Taxable Economic Development Revenue Bonds, Series 2025 (Union Project)” (the “Bonds”) and pursuant to a Trust Indenture, between the City and a trustee (the “Indenture”); and

WHEREAS, the proceeds of the Bonds will be made available to the Developer pursuant to a loan agreement, between the City and the Developer (the “Loan Agreement”) and applied to a portion of the costs of the Project as described in further detail in the Project Agreement, as well as the costs of issuance of the Bonds; and

WHEREAS, pursuant to the Project Agreement, as an inducement to the Developer to complete the Project in the City, the Commission has agreed to pledge (i) certain tax increment revenues generated from the Allocation Areas, (ii) certain payments (the “Union Taxpayer Payments”), if any, made pursuant to those certain taxpayer agreements entered into by the Commission in connection with the construction of the Project pertaining to parcels located within the Union Allocation Area (each a “Union Taxpayer Agreement”), and (iii) certain payments (the “Additional Crossing Taxpayer Payments,” and together with the Union Taxpayer Payments, the

“Taxpayer Payments”), if any, made pursuant to those certain taxpayer agreements entered into by the Commission in connection with the construction of the Project pertaining to parcels located within each of the Lot 3 Allocation Area, the Lot 5 Allocation Area, and the Lot 6 Allocation Area (each an “Additional Crossing Taxpayer Agreement”) to the payment of the Bonds.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission, as follows:

1. The Prior Resolution is hereby repealed and replaced in its entirety with this Resolution.

2. (a) There are hereby created, two accounts of the City of Fishers Redevelopment District (the “District”) designated as the (1) Union 2025 Bond Account (the “Union 2025 Bond Account”), and (2) Union 2025 General Account (the “Union 2025 General Account”).

(b) All real property tax increment revenues generated from the Project Allocation Areas and deposited in the Project Allocation Funds pursuant to IC 36-7-14-39, excluding the Commission’s cost of collection and administration of the tax increment revenues in an amount of \$2,500 for each of the Project Allocation Areas (\$10,000 total) per year (the “Project TIF Revenues”), shall be set aside and used as follows: on each January 15 and July 15, beginning on such date as shall be provided in the Indenture, Project TIF Revenues in an amount which, together with any amounts already on deposit in the Bond Fund created under the Indenture for the Bonds (the “Bond Fund”), is sufficient to pay the maximum debt service coming due on the Bonds during the following six month period together with Bond trustee fees, as well as any overdue principal of and interest on outstanding Bonds, and any other amounts required under the Indenture, shall be deposited into the Union 2025 Bond Account and immediately transferred to the trustee for the Bonds for deposit in the Bond Fund. Provided, however, the deposit of Project TIF Revenues shall be composed of deposits of revenues in the following order of priority; first, from all funds on deposit in the Union Allocation Fund and second, as necessary, from all funds on deposit in the Lot 3 Allocation Fund, Lot 5 Allocation Fund, and Lot 6 Allocation Fund.

(c) On each February 1 and August 1, any Project TIF Revenues remaining in the Project Allocation Funds after making the required deposits under this section shall be deposited in the Union 2025 General Account and shall be used by the Commission (i) to pay debt service on or redeem Bonds, or (ii) for any use permitted by law and approved by the Commission. Notwithstanding the foregoing, if at any time moneys in the Union 2025 Bond Account and the Bond Fund for the Bonds are not sufficient to pay the maximum debt service coming due on the Bonds during the following six month period, any Project TIF Revenues in the Union 2025 General Account shall be immediately transferred to the Union 2025 Bond Account. Upon the defeasance of the Bonds, the Union 2025 Bond Account and the Union 2025 General Account of the District shall be dissolved, and any Project TIF Revenues remaining in such accounts shall revert to the respective Project Allocation Funds from which such Project TIF Revenues were derived and may be used by the Commission for any purpose permitted by law. For purposes of subsection (b) and this subsection (c), the required payments on the Bonds include trustee’s fees

(d) Any requirement that the Commission make any transfer or payment of Project TIF Revenues from the Project Allocation Funds pursuant to this Resolution shall be subject to any additional conditions that may be set forth in the Indenture or the Loan Agreement.

3. (a) An aggregate amount of not more than \$500,000 annually in real property tax increment revenues generated from the Adjacent Allocation Areas and deposited in the Adjacent Allocation Funds pursuant to IC 36-7-14-39, (i) on a subordinate basis, respectively, to (A) the pledge of revenues from the Yard Allocation Fund to the payment of the City of Fishers, Indiana Taxable Economic Development Revenue Bonds, Series 2018A (The Yard Retail Project) and the City of Fishers, Indiana Economic Development Revenue Bonds, Series 2018B (The Yard Garage Project) (collectively, the “Yard Bonds”) pursuant to Resolution No. FRC 05R060418 adopted by the Commission on June 4, 2018 and (B) the pledge of revenues from the Stations Allocation Fund to the payment of the City of Fishers, Indiana Taxable Economic Development Revenue Bonds, Series 2019C (The Stations Project) (the “Stations Bonds”) pursuant to Resolution No. FRC 01R090919 adopted by the Commission on September 9, 2019 and (ii) after the payment of all typical administrative costs associated with each of the Yard Bonds and Stations Bonds, respectively (the “Adjacent Excess TIF Revenues”), shall be set aside and used as follows: on each January 15 and July 15, beginning on such date as shall be provided in the Indenture after the deposit of Project TIF Revenues provided for under Section 1 hereof into the Bond Fund, Adjacent Excess TIF Revenues, as and when available, in an amount which, together with any amounts already on deposit in the Bond Fund, is sufficient to pay the maximum debt service coming due on the Bonds during the following six month period together with Bond trustee fees, as well as any overdue principal of and interest on outstanding Bonds, shall be deposited into the Union 2025 Bond Account and immediately transferred to the trustee for the Bonds for deposit in the Bond Fund.

(b) On each February 1 and August 1, any Adjacent Excess TIF Revenues remaining in the Adjacent Allocation Funds after making the required deposits under this section shall remain in the Adjacent Allocation Funds, respectively and may be used by the Commission for any purpose permitted by law. For purposes of subsection (b), the required payments on the Bonds include trustee’s fees

(c) Any requirement that the Commission make any transfer or payment of Adjacent Excess TIF Revenues from the Adjacent Allocation Funds pursuant to this Resolution shall be subject to any additional conditions that may be set forth in the Indenture or the Loan Agreement.

(d) For so long as the Bonds remain outstanding the Commission shall not make any further pledges of the tax increment revenues generated from the Adjacent Allocation Areas, senior to or on a parity with, the pledge of such tax increment revenues to the Bonds.

4. (a) The Commission has agreed, pursuant to the Project Agreement, that it shall set aside in the Yard Allocation Fund, and shall not use for any other purpose while the Bonds remain outstanding, real property tax increment revenues generated from the Yard Allocation Area already on deposit in the Yard Allocation Fund as of the date of this Resolution in the amount of \$1,000,000 (such funds the “Reserve”).

(b) If, during any year while the Bonds remain outstanding, (i) less than \$500,000 in Adjacent Excess TIF Revenues are deposited in the Union 2025 Bond Account under Section 2 hereof and (ii) after the deposit of (A) all Project TIF Revenues under Section 1 hereof and (B) all Adjacent Excess TIF Revenues under Section 2 hereof, the amount of funds on deposit in the Union 2025 Bond Account together with any amounts already on deposit in the Bond Fund, are not sufficient to pay the maximum debt service coming due on the Bonds during the following six month period together with Bond trustee fees, as well as any overdue principal of and interest on outstanding Bonds, then on the January 15 and July 15 of such year, beginning on such date as shall be provided in the Indenture, a portion of the Reserve, as and when available, in an amount which in combination with the Adjacent Excess TIF Revenues deposited in the relevant year in the Union 2025 Bond Account would amount to \$500,000 in combined deposits of Adjacent Excess TIF Revenues and the funds from the Reserve, shall be deposited into the Union 2025 Bond Account and immediately transferred to the trustee for the Bonds for deposit in the Bond Fund.

(c) For the avoidance of doubt, the City shall have no obligation to replenish any draw upon funds from the Reserve and if the full amount of the Reserve (\$1,000,000) shall have been drawn and deposited in the Union 2025 Bond Account under this Section 3, the Commission shall have no further obligation regarding the Reserve and under no circumstances shall the Commission be obligated to provide any more than \$1,000,000 as funds for the Reserve.

5. Pursuant to IC 36-7-14-39(b)(2)(D) and IC 5-1-14-4, the Commission hereby pledges the Project TIF Revenues deposited into the Union 2025 Bond Account of the District to the payment of the principal of and interest on the Bonds. There are no prior liens, encumbrances or other restrictions on the Commission's ability to pledge the Project TIF Revenues. Upon the defeasance of the Bonds, the pledge of the Project TIF Revenues set forth herein shall terminate.

6. Pursuant to IC 36-7-14-39(b)(2)(D) and IC 5-1-14-4, the Commission hereby pledges the Adjacent Excess TIF Revenues deposited into the Union 2025 Bond Account of the District to the payment of the principal of and interest on the Bonds. Such pledge shall be subordinate to (A) the prior pledge of revenues from the Yard Allocation Fund to the payment of the Yard Bonds and (B) the prior pledge of revenues from the Stations Allocation Fund to the Stations Bonds, respectively. Other than the foregoing pledges, there are no prior liens, encumbrances or other restrictions on the Commission's ability to pledge the Adjacent Excess TIF Revenues. Upon the defeasance of the Bonds, the pledge of the Adjacent Excess TIF Revenues set forth herein shall terminate.

7. The Commission hereby authorizes and approves the execution by the Commission of one or more Union Taxpayer Agreements and Additional Crossing Taxpayer Agreements (collectively, the "Taxpayer Agreements") in connection with the issuance of the Bonds by the City. On behalf of the Commission, the President of the Commission is authorized to execute and deliver and the Secretary of the Commission is authorized to attest, one or more Taxpayer Agreements in such form as they may find acceptable, with advice of counsel and consistent with the terms and provisions of this Resolution. Any Taxpayer Payments made pursuant to any Taxpayer Agreement, if any, to the extent necessary to pay the maximum debt service coming due on the Bonds during the following six month period together with Bond trustee fees, are hereby pledged to the payment of debt service on the Bonds to the extent such Bonds are secured by said Taxpayer Agreements under the Indenture for a term of years not to exceed the date on which the

Bonds are fully paid and no longer outstanding. All Taxpayer Payments received by the Commission shall be deposited in the Bond Fund as provided in the Indenture.

8. For so long as the Bonds remain outstanding the Commission shall not make any further pledges of the tax increment revenues generated from the Project TIF Revenues, other than as set forth in the Section 7.

9. Pursuant to the terms of the Project Agreement, as may be amended, the Commission may issue obligations payable from the Project TIF Revenues from any of the Project Allocation Areas on a junior basis to the Union Senior Bonds in accordance with the terms of the Indenture. Any such junior obligations shall be payable semiannually on February 1 and August

10. The officers of the Commission are hereby authorized to take such further actions and execute such further documents as they deem necessary or appropriate to effectuate (i) the pledge of the Project TIF Revenues and Adjacent Excess TIF Revenues and (ii) the maintenance and deposit of funds from the Reserve under Section 3 hereof (the Project TIF Revenues, Adjacent Excess TIF Revenues, and funds from the Reserve deposited in the Union 2025 Bond Account in accordance with this Resolution, collectively the "Tax Increment") and the Union Taxpayer Payments and Additional Crossing Taxpayer Payments set forth in this resolution.

11. This resolution shall take effect immediately upon adoption by the Commission.

Adopted the 6th day of May, 2025.

CITY OF FISHERS REDEVELOPMENT  
COMMISSION

---

President

---

Vice President

---

Secretary

---

Member

---

Member

DMS 23908783.1

### THIRD AMENDMENT TO PROJECT AGREEMENT

THIS THIRD AMENDMENT TO PROJECT AGREEMENT is executed this \_\_\_\_ day of \_\_\_\_\_, 2025 (“Third Amendment”), by and among Andretti Autosport Holding Company, LLC, an Indiana limited liability company (“Developer”), City of Fishers, Indiana (“City”), Fishers Town Hall Building Corporation (“Building Corp.”), City of Fishers Redevelopment Commission (“RDC”), and City of Fishers Economic Development Commission (“EDC” and together with RDC, Building Corp. City and Developer the “Parties” and each a “Party”) on the following terms and conditions:

#### RECITALS

WHEREAS, Developer and the City Bodies are parties to that certain November 14, 2022 Project Agreement, as amended by that certain First Amendment To Project Agreement dated December \_\_, 2023 and Second Amendment To Project Agreement dated March \_\_, 2025, that provides for Andretti’s development and construction of its corporate headquarters and related commercial development to accommodate Andretti’s racing operation and engineering team, together with development and construction of the Andretti Racing Museum (as amended, the “Agreement”);

WHEREAS, since the Parties entered into the Agreement, the scope of the Project has substantially changed, and the Project (as specifically defined herein) will be a commercial designed and constructed to accommodate a Formula 1® racing team;

WHEREAS, the financial terms of the Agreement are unchanged;

WHEREAS, the Developer’s investment in the Project is unchanged;

WHEREAS, unless specifically stated herein, this Third Amendment does not otherwise change the obligations of the Parties;

WHEREAS, unless otherwise specifically stated, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement; and

WHEREAS, unless specifically amended by reference herein, all remaining terms and conditions of the Agreement shall continue in full force and effect and are hereby ratified and affirmed.

NOW THEREFORE, the foregoing recitals are incorporated into this Third Amendment by reference to such recitals and in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Andretti and City Bodies agree as follows:

1. The following defined term as set forth in Section 1 of the Agreement shall be replaced in full as follows:

**“Project”** shall mean the development and construction of Cadillac Formula 1 and TWG Motorsport's corporate headquarters and related commercial development to accommodate the Cadillac Formula 1 Team's racing operation and manufacturing, together with potential future development and construction of visitor areas. The Project is projected to culminate in approximately three hundred (300) jobs in the City, four hundred thousand square feet (400,000 sq. ft.) of commercial development and private investment of approximately \$200 Million Dollars, inclusive of the Bond Proceeds.”

2. Section 19, Assignment” shall be replaced in full as follows:

**“19. Assignment.**

(a) 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 of the Project, Andretti shall not assign this Agreement without the approval of the City, and the City Bodies shall not assign this Agreement without the prior written approval of Andretti; provided that: (i) without the prior written approval of Andretti, City Bodies may assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder; and (ii) without the prior written approval of City, Andretti may assign, partially or in its entirety, this Agreement to (A) Motorsport Real Estate Ventures, LLC; (B) a third party controlling, controlled by or under common control with Andretti and/or any subsidiary or affiliate of Andretti that has full power, authority, and capability to accept such assignment and perform the obligations of Andretti hereunder; or (C) collaterally assign this Agreement (or portion hereof) to a Project Lender.

(b) Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Andretti, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Bodies or Andretti, as the case may be, from such performance; provided that, if (i) any City Body assigns this Agreement to another agency or instrumentality of the City that: (A) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder, and (B) expressly assumes all such obligations in writing; then the applicable City Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption; and/or (ii) Andretti assigns this Agreement to Motorsport Real Estate Ventures, LLC and Motorsport Real Estate Ventures, LLC expressly assumes all such obligations in writing, then Andretti shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption. Notwithstanding any provision in this Agreement to the contrary, upon an assignment in strict compliance with this Agreement by Andretti of its rights and obligations in respect of the Project no other assignee of Andretti shall have any responsibility for any obligations of Andretti other than those expressly assumed by any such assignee.”

3. The Agreement, as amended by this Third Amendment, constitutes the entire agreement and understanding of Andretti and City Bodies with respect to the Projects and supersedes all prior agreements, understandings, letters, negotiations and discussions, whether oral or written, relating thereto. This Third Amendment may be executed in separate counterparts, and it shall be fully

executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Amendment. Electronic signatures shall have the same force and effect as original signatures. In the event of any conflict or inconsistency between the terms of this Third Amendment and the terms of the Agreement, the terms of this Third Amendment shall govern and control.

*SIGNATURES ON FOLLOWING PAGES*

IN WITNESS HEREOF, the Parties have executed this Third Amendment on the day and year first written above.

Signed by:  
CITY OF FISHERS, INDIANA



By: \_\_\_\_\_  
912C6BBA5C0B42B...  
Scott Fadness, Mayor

**CITY OF FISHERS ECONOMIC  
DEVELOPMENT COMMISSION**

By: Maggie Sedler  
Its: president

**CITY OF FISHERS  
REDEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
Brad Johnson President

ATTEST:

By: \_\_\_\_\_  
Tony Bonacuse, Secretary

**FISHERS TOWN HALL BUILDING  
CORPORTION**

By:   
~~Jay Bangert, President~~

*Ben Jefferis, Vice-President*

**ANDRETTI AUTOSPORT HOLDING  
COMPANY, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**RESOLUTION NO. FRC 03R050625**

**RESOLUTION APPROVING AMENDED AND RESTATED PROJECT AGREEMENT  
(THE UNION & CROSSING PROJECTS)**

**WHEREAS**, Thompson Thrift (“Developer”) is an Indiana-based commercial and residential developer that has designed and constructed mixed-use developments and other residential and commercial amenities throughout the Midwest and in Arizona, Florida and Texas, including, among others, the Fishers District and the Stations, in the City;

**WHEREAS**, on or about January 10, 2023, the Developer and the City Bodies entered into that certain Project Agreement pursuant to which Developer agreed to invest or cause to be invested approximately \$160 to \$180 Million completing the Union Project, a project that is anticipated to include (a) a hotel and 17,500 square feet of retail space; (b) four (4) retail structures totaling approximately twenty-seven thousand, eight hundred square feet (27,800 sq. ft.); (c) approximately sixty thousand square feet (60,000 sq. ft.) of Class-A office space; (d) a mixed-use building comprised of approximately two hundred fifty (250) units and twelve thousand square feet (12,000 sq. ft.) of retail space; and (e) garages to support other project elements (the “Original Agreement”);

**WHEREAS**, pursuant to the Original Agreement, the City agreed to issue a developer-backed bond, utilize excess TIF (if available) from the Yard TIF District to pay any debt service and budget shortfalls and pledge tax increment from the Additional Crossing Allocation Area to the Bonds;

**WHEREAS**, thereafter, Developer determined that it needed to restructure the Bonds, and the City Bodies approved an Amended and Restated Project Agreement to accommodate the changes (the “Amended Agreement”);

**WHEREAS**, since the City Bodies approved the Amended Agreement, the City and Developer have determined that the Yard Allocation Area will likely generate less tax increment than needed to pay debt service on the Bonds a result of a pending appeal of the Yard’s tax assessment;

**WHEREAS**, as a result, the Developer has requested and the City desires to (a) provide more coverage for the Bonds by additionally pledging excess tax increment from the Stations Allocation Area to the Bonds; and (b) specifically order how tax increment is used to pay debt service on the Bonds, all pursuant to an agreement substantially similar to the Amended and Restated Project Agreement attached hereto and incorporated herein as **Exhibit A** (the “Second Amendment Agreement”); and

**WHEREAS**, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Second Amended Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FISHERS REDEVELOPMENT COMMISSION, meeting in regular session as follows:

**Section 1.** The Commission hereby approves an amended and restated project agreement substantially similar to the Second Amended Agreement.

**Section 2.** The President and Secretary of the Commission are hereby authorized to execute an amended and restated project agreement substantially similar to the Second Amended Agreement.

**Section 3.** This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment this \_\_\_\_ day of May, 2025.

**REDEVELOPMENT COMMISSION OF THE CITY OF FISHERS,  
HAMILTON COUNTY, INDIANA**

**YAY**

**NAY**

	Brad Johnson	
	Tony Bonacuse	
	Damon Grothe	
	Dan Canan	
	Anderson Schoenrock	

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038

## AMENDED AND RESTATED PROJECT AGREEMENT

This Amended And Restated Project Agreement (the “**Agreement**”) is executed as of the \_\_\_\_\_ day of \_\_\_\_\_ 2025, by and among **Thompson Thrift Development, Inc.**, an Indiana corporation, (“**Developer**”), **City of Fishers, Indiana** (“**City**”), **Fishers Town Hall Building Corporation** (“**Building Corp.**”), **City of Fishers Redevelopment Commission** (“**RDC**”), and **City of Fishers Economic Development Commission** (“**EDC**” and together with the Developer, City, Building Corp. and RDC, the “**Parties**” and each a “**Party**”) on the following terms and conditions:

### Recitals

WHEREAS, on or about January 10, 2023, the Parties entered into that certain Project Agreement generally concerning the City Obligations and Developer Obligations included herein (the “**Original Agreement**”);

WHEREAS, since entering into the Original Agreement, the Projects and structure of the bonds have slightly changed;

WHEREAS, the Parties now desire to enter into this Agreement that supersedes and replaces in full the Original Agreement;

WHEREAS, this Agreement is entered into pursuant to and consistent with the City’s master plan of creating a sustainable, pedestrian friendly, City where residents live, work and play (the “**Master Development Plan**”);

WHEREAS, as part of the Master Development Plan, the City has (a) worked with developers to develop mixed-use developments that include apartments, condominiums, office space and retail; (b) incited multiple high-growth, high-technology businesses to locate to the City; (c) in 2016, entered into an agreement with the State of Indiana for a portion of the City’s Nickel Plate District to be designated a certified technology park; (d) developed a biosciences corridor; and (e) designed and developed the City’s Nickel Plate pedestrian trail extending throughout the City and serving, among other areas, the Nickel Plate District;

WHEREAS, the City continues to fulfill its Master Development Plan and now desires, in connection with and as a part thereof, to induce the development of additional hotel rooms and commercial amenities in the City;

WHEREAS, Developer is an Indiana-based commercial and residential developer that has designed and constructed mixed-use developments and other residential and commercial amenities throughout the Midwest and in Arizona, Florida and Texas, including, among others, the Fishers District and the Stations, in the City;

WHEREAS, Developer has agreed to invest or cause to be invested approximately \$160 Million to \$180 Million in completing the Union Project and \$60 Million to \$85 Million in completing the Crossing Project, if the City will satisfy the City’s obligations included herein;

WHEREAS, City Bodies have determined that completion of the Projects is in the best interests of the citizens of the City, and, therefore, City Bodies desire to induce Developer to complete the Projects; and

WHEREAS, to stimulate and induce the development of the Projects on each of the Project Sites, City Bodies have 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 Parties agree as follows:

**1. Defined Terms.** The following capitalized terms are used throughout this Agreement with the meaning set forth in this Section 1:

**Additional Crossing Allocation Areas** shall mean separate and distinct tax allocation areas established by City Bodies pursuant to Ind. Code § 36-7-14 *et seq.*, for the following areas: Parcel 3, Parcel 5 and Parcel 6 as depicted on Exhibit B.

**Additional Crossing Area TIF** shall mean 100% of the increment generated in the Additional Crossing Allocation Areas.

**Adjacent Excess TIF** shall mean excess tax increment not to exceed \$500,000 annually, in the aggregate, consisting of: (i) the available excess tax increment from the (a) Yard Allocation Area, and (b) Stations Allocation Area (any amount not required to pay debt service and other typical administrative costs associated with the Yard Bonds or Stations Bonds, respectively).

**Allocation Areas** shall mean collectively, the Additional Crossing Allocation Areas, the Crossing Allocation Area and the Union Allocation Area.

**Ancillary Agreements** shall mean, individually or collectively, for each of the Projects, the instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement, Taxpayer Agreements (if required by Developer and consistent with the Laws based on the tax status of the Bonds) and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement. For the avoidance of doubt there may be two (2) sets of Ancillary Agreements, one (1) for the Union Project and one (1) for the Crossing Project.

**Approved Costs** shall mean all Hard Costs and Soft Costs (including capitalized interest on and reserves for the Bonds) related to the development and construction of the Projects, as well as land allocated for the City Garage for the Union Project.

**Approved Plans** shall mean for each of the Projects, the plans for the Projects on which the financial analysis for the Bonds is based. For the avoidance of doubt there shall be two (2) sets of Approved Plans, one (1) for the Union Project and one (1) for the Crossing Project.

**Assessments** shall mean all general and special governmental and utility assessments.

**Bond(s)** shall mean, for the Projects (and whether referring to the Senior Bonds or Subordinate Bonds), one or more series of taxable or tax exempt (as collaboratively determined by the City Bodies and Developer pursuant to the Laws; provided, however, in the event of differing determinations concerning the status of the Bonds based on the Laws, the City's determination shall prevail) economic development revenue bonds to be issued under Ind. Code § 36-7-12 *et. seq.* in a maximum par amount that Developer and City Bodies jointly determine will ensure that one hundred percent (100%) of all tax increment revenue generated by the Union Project, the Adjacent Excess TIF and Crossing Project, as applicable, is utilized to pay debt service on the Bonds. Such maximum principal amount shall assume that there will be three percent (3%) annual increases in assessed value during the twenty-five (25) year term in each of the Union Allocation Area and Crossing Allocation Area, as applicable (the "AV Increases"). For the avoidance of doubt, the Bonds shall be exclusively based on tax increment (a) to be generated from the Projects together with the AV Increases, (b) the Adjacent Excess TIF and (c) estimated tax increment (as jointly determined by the City Bodies and Developer) to be generated in the Additional Crossing Allocation Areas and shall be payable solely from the applicable Pledged Increment. Except as stated herein with respect to the Adjacent Excess TIF, the City Bodies shall not be obligated to provide any other source of payment or security for the Bonds. Prior to expiration of the applicable Diligence Period, the Parties shall mutually agree to the par amount of the Bonds and the net proceeds resulting therefrom.

**Bond Documents** shall mean the documents evidencing and/or securing the Bonds.

**Bond Interest Rate** shall have the meaning ascribed to such term in Subsection 11(e).

**Bond Proceeds** shall mean the proceeds of the Bonds, which Bond Proceeds shall be used to pay (a) Approved Costs, (b) Closing Costs; and (c) reasonably incurred and documented administrative costs of the City associated with maintaining the Bonds (the "**Continuing Bond Costs**"). The Bond Proceeds shall be exclusively available for the Projects as herein specified.

**Bond Term** shall mean twenty-five (25) years from the date of issuance of each of the Bonds.

**Budget** shall mean, for each of the Projects, a detailed hard and soft cost budget, for (a) the costs of the design and construction of the Project in accordance with the Final Documents and Drawings; (b) the payment of all professional fees and financing fees; and (c) the payment of all other related closing costs and soft costs to be incurred in connection with the development and construction of the Project. The Budget must be in a form and with detail acceptable to Project Lender.

**City Body or City Bodies** shall mean any of City, EDC, Building Corp. and/or RDC, as applicable.

**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, for each of the Projects, to the extent such has not previously occurred, (a) recordation of the Plat; (b) execution of all Ancillary Agreements; (c) the City's approval of the Budget; (d) the City's issuance of the Bonds and the purchase of the Bonds by the Purchaser; (e) Project Lender issuing the Project Loan to Developer (and Developer authorized to draw upon such Project Loan subject to the satisfaction of customary draw conditions); (f) with respect to the Crossing Project, Developer's payment of the Crossing Project Price to the City; and (g) the Parties approval of applicable financial analyses, including, without limitation, the estimated assessed value, estimated tax increment, available Bond Proceeds, reserve requirements and capitalized interest, if applicable, and schedule of initial and continuing debt service payments (for each project, the "**Project Analysis**").

**Closing Costs** shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with closing of the Bonds, including, without limitation bond issuance costs and administrative fees and counsel fees for both City Bodies and Developer.

**Closing Date** shall mean each of the dates on which Closing for the Union Project or Crossing Project occurs.

**Concept Plan** shall mean, for the Union Project, the plan attached hereto as **Exhibit C-1 (Union Project)** and for the Crossing Project the plan attached hereto as **Exhibit C-2 (Crossing Project)**.

**Crossing Allocation Area** shall mean the allocation area established for the Crossing Site.

**Crossing Project** shall mean collectively, the development and construction of a mixed-use project envisioned to include approximately 275 multifamily units and 20,000 square feet of retail and restaurant space). Notwithstanding the foregoing, the Crossing Project may change in use and scope during the Due Diligence Period and shall ultimately be developed based on the Approved Plans. The Crossing Project shall culminate in approximately \$60 Million to \$80 Million in private investment in the City, which is subject to change based upon the Approved Plan and corresponding uses.

**Crossing Project Senior Bonds** shall mean Bonds issued for the Crossing Project and payable on a senior basis from (i) the Project Increment Generated in the Crossing Allocation Area, and the Adjacent Excess TIF (if available and needed to pay debt service on the Crossing Project Senior Bonds).

**Crossing Project Subordinate Bonds** shall mean Bonds issued for the Crossing Project and payable from the Project Increment Generated in the Crossing Allocation Area following payment of the Crossing project Senior Bonds.

**Crossing Purchase Price** shall mean the purchase price agreed to by the Parties based on a shared pro forma, and with such purchase price payable at the time that Developer closes its construction loan and is prepared to commence construction of the Crossing Project.

**Crossing Project Site** shall mean the approximately \_\_\_ acres of real property labeled as the Crossing Site on **Exhibit D**.

**Cure Period** shall mean a period of: (a) ten (10) days after receipt of written notice of such default given 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 commercially reasonable 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 default. Notwithstanding the preceding, a Cure Period shall not be applicable to a default under an Ancillary Agreement, and specific cure periods for such defaults shall be expressly set forth in such Ancillary Agreement.

**Development Land** shall mean the approximately ten and one-half (10.5) acres of real property depicted on Exhibit G.

**Diligence Period** shall mean, for each of the Projects, the time period commencing on the Effective Date and ending thirty (30) days prior to the applicable Outside Closing Date.

**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 15.

**Excess TIF** shall mean any Project Increment remaining, following (i) payment of debt service on the Senior Bonds, (ii) replenishment of reserve funds for the Senior Bonds (if any) , (iii) reimbursement to the Developer for any Shortfall (as defined in Section 11(b)), (iv) payment of Continuing Bond Costs and (v) payment of debt service on the Subordinate Bonds.

**Final Documents and Drawings** shall mean, for each of the Projects, the final design development documents, construction drawings and construction schedule, as each is finalized and approved or reviewed by the City in accordance with City planning and zoning procedure, which Final Documents and Drawings shall strictly comply with the zoning requirements for the Project Site and be materially the same as the Concept Plan.

**Force Majeure** shall mean, with respect to Developer or City Bodies, any cause that is not within the reasonable control of Developer or City Bodies, respectively, including, without limitation: (a) an act or omission of one of the other parties hereto; (b) unusually inclement weather but not cold, ice, sleet, snow or hail in amounts typical in Indiana;; (c) the unusual unavailability of materials, equipment, services, or labor; and (d) 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.

**Funding Agreement** shall mean an agreement for each of the Projects pursuant to which the Bond Proceeds shall be disbursed to Developer in a commercially reasonable manner for Approved Costs. Developer shall be responsible for all costs to design and construct the Projects in excess of the Bond Proceeds.

**Hard Costs** shall mean the costs incurred in connection with construction of each of the Projects, which costs are customarily known in the industry as “hard costs”.

**Incurred Costs** shall mean, if this Agreement is terminated (a) after expiration of the applicable Diligence Period; and (b) prior to the applicable Closing, all actual, out-of-pocket, third-party costs and expenses incurred by a party through the date of such termination, to the extent not previously paid or reimbursed by the other party (not to exceed \$100,000).

**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, the Planned Units Development Ordinance that governs the Project Sites and all applicable environmental laws, as amended.

**Original LAA** shall mean that certain June 1, 2021, Land Acquisition And Economic Development Agreement by and among Thompson Thrift Development, Inc. and the City Bodies concerning the Development Land, among other obligations and commitments of the parties thereto.

**Outside Closing Date** shall mean for the (a) Crossing Project on or before October 31, 2026, if such project on Parcel 2 remains financially viable and Developer proceeds to develop such project on Parcel 2, and (b) Union Project on or before December 31, 2025, unless the Outside Closing Date is extended by the City in its sole discretion. In the event Developer or its affiliate do not close on Parcel 2 of the Crossing Project, such land shall remain Commercial Property subject to the Land Acquisition Agreement.

**Plat** shall mean, for each of the Projects, the plat prepared by Developer that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hamilton County, Indiana prior to or contemporaneous with other documents needed for Closing, which Plat is anticipated to create five (5) parcels and a horizontal property regime with multiple parcels.

**Pledged Increment** shall mean, for the (a) Union Project Senior Bonds, the following in the following order of use: (i) the Project Increment generated in the Union Allocation Area, (ii) Project Increment generated in the Additional Crossing Allocation Areas, (iii) the Adjacent Excess TIF (if available and needed to pay debt service on the Union Project Senior Bonds) and (iv) the Reserve, which shall only be applied in the event Adjacent Excess TIF is needed to pay debt service on the Union Project Senior Bonds and is ever less than \$500,000 in any year; (b) Union Project Subordinate Bonds, the following in the following order of use: (i) the Project Increment generated in the Union Allocation Area, (ii) the Project Increment generated in the Additional Crossing Allocation Areas following payment of the Union Project Senior Bonds; (c) Crossing Project Senior Bonds, the following in the following order of use: (i) the Project Increment generated in the Crossing Allocation Area, (ii) the Project Increment generated in the Adjacent Excess TIF (if available and needed to pay debt service on the Crossing Project Senior Bonds); and (d) Crossing Project Subordinate Bonds, the Project Increment Generated in the Crossing Allocation Area following payment of the Crossing Project Senior Bonds.

**Project(s)** shall mean, individually or collectively, as applicable, the Crossing Project and the Union Project.

**Project Increment** shall mean collectively, one hundred percent (100%) of the tax increment generated from the Union Allocation Area, one hundred percent (100%) of the tax increment generated from the Crossing Allocation Area and one hundred percent (100%) of the tax increment generated from the Additional Crossing Allocation Areas.

**Project Site(s)** shall mean, individually or jointly, as applicable, the Crossing Project Site and the Union Project Site.

**Project Lender** shall mean, for each of the Projects, a financial institution that is not affiliated with Developer making the Project Loan, and any successor or assignee thereof.

**Project Loan(s)** shall mean, for each of the Projects, one (1) or more construction loans by and between the Project Lender and Developer, the proceeds of which, along with the Bond Proceeds shall be used to fund development and construction of each of the Projects. The Project Loans shall be disbursed pursuant to the Project Loan Documents (and not pursuant to the Funding Agreement) and the proceeds shall be available at the applicable Closing (subject to the satisfaction of customary draw conditions).

**Project Loan Documents** shall mean, individually or collectively, the documents evidencing or securing the Project Loan(s).

**Property Inspections** shall mean, for each of the Project Sites, surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments.

**Purchaser** shall mean Developer, an affiliate of Developer or a third party identified by Developer.

**Real Estate Taxes** shall mean all real estate taxes levied on, against, or with respect to all or any specified portion of the Projects and Project Sites.

**Reimbursement Amount** shall mean the positive difference, if any, between the estimated, annual, aggregate amount of tax increment for each parcel in the Additional Crossing Allocation Areas as included in **Exhibit J** (collectively, or for each parcel, the “**Additional Estimated Taxes**”), and the annual, aggregate tax increment actually generated by each parcel within the Additional Crossing Allocation Area. For example, if the Project Increment generated for Lot 6 on May 10, 2028 is \$50,000.00, City shall be liable for a Reimbursement Amount of \$36,035.00 for Lot 6.

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

**Reserve** shall mean not less than One Million and no/100 Dollars (\$1,000,000.00) in excess tax increment from the Yard Allocation Area that is maintained by the City during the Bond Term.

The Reserve shall only be applied to shortfalls in the Adjacent Excess TIF, to the extent Adjacent Excess TIF is ever less than \$500,000 in any year.

**Senior Bonds** shall mean the Union Project Senior Bonds and the Crossing Project Senior Bonds.

**Soft Costs** shall mean costs incurred in connection with the Projects, which costs are customarily known in the real estate development and construction industry as “soft costs”.

**Stations Allocation Area** shall mean The Stations Economic Development Allocation Area, as depicted on Exhibit A-1.

**Stations Bonds** shall mean the City of Fishers, Indiana \$5,000,000.00 Taxable Indiana Economic Development Revenue Bonds 2019C (the Stations Project) and City of Fishers, Indiana \$14,620,000.00 Taxable Indiana Economic Development Revenue Refunding Bonds 2020.

**Stations TIF Term** shall mean the time period remaining under the Laws for the Stations Allocation Area.

**Subordinate Bonds** shall mean the Union Project Subordinate Bonds and the Crossing Project Subordinate Bonds.

**Substantial Completion** shall mean, for each of the Projects, the later of the date that: (a) Developer receives a final or temporary certificate of occupancy for the Project; and (b) the date that Developer’s architect certifies, per AIA Form G704, that the construction of the Project is substantially complete in material compliance with all Laws, this Agreement, the Final Documents and Drawings (subject to Permitted Changes), and the Required Permits subject only to tenant improvements, certificates of occupancy for individual tenant spaces, landscaping and minor punch list items that do not materially interfere with the use or operation thereof.

**Survey** shall mean an ALTA survey of each of the Project Sites, 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 each of the Projects; or (b) render construction of each of the Projects unusually difficult or costly.

**Taxpayer Agreement(s)** shall mean, for the securing of the Senior Bonds, one or more developer obligations agreements and consents to real property tax lien imposing a lien against the real property included in the respective Allocation Area, equal in priority to the property tax lien granted to the State of Indiana under Ind. Code § 6-1.1-22-13 as permitted by Ind. Code § 36-7-25-6. It is anticipated that there will be multiple Taxpayer Agreements which will correspond to one or more parcels in each of the Allocation Areas. All Taxpayer Agreements shall be entered into between the Commission and the owner of the real property against which the taxpayer agreement is recorded.

**Taxpayer Payments** shall mean payments made pursuant to the Taxpayer Agreement(s).

**Title Insurer** shall mean First American Title Insurance Company.

**Union Allocation Area** shall mean the allocation area established for the Union Project Site.

**Union Project** shall mean, collectively, the development and construction of mixed-use project envisioned to include (a) a hotel and 15,500 square feet of retail space; (b) four (4) retail structures totaling approximately thirty-one thousand, eight hundred square feet (31,000 sq. ft.); (c) approximately eighty-thousand square feet (80,000 sq. ft.) of Class-A office space, of which approximately 70,000 square feet will be leasable; (d) a mixed-use building comprised of approximately two hundred fifty (250) units and twelve thousand square feet (12,000 sq. ft.) of retail space; and (e) garages to support other project elements. Notwithstanding the foregoing, the Union Project may change in use and scope during the Diligence Period and shall ultimately be developed based on the Approved Plans. The Union Project shall culminate in approximately \$160 Million to \$180 Million in private investment in the City, which is subject to change based upon the Approved Plan and corresponding uses.

**Union Project Public Garage** shall mean the public parking garage that is part of the Union Project and located on the Union Project Site as depicted on **Exhibit D**.

**Union Project Senior Bonds** shall mean Bonds issued for the Union Project and payable on a senior basis from (i) the Project Increment generated in the Union Allocation Area and the Additional Crossing Allocation Areas, and (ii) the Adjacent Excess TIF (if available and needed to pay debt service on the Union Project Senior Bonds).

**Union Project Site** shall mean the approximately 10.5 acres of real property depicted on **Exhibit E**.

**Union Project Subordinate Bonds** shall mean Bonds issued for the Union Project and payable from the Project Increment generated in the Union Allocation Area and the Additional Crossing Allocation Areas following payment of the Union Project Senior Bonds.

**Yard Allocation Area** shall mean The Yard Economic Development Allocation Area, as depicted on **Exhibit A-2**.

**Yard Bonds** shall mean the City of Fishers, Indiana Taxable Economic Development Revenue Bonds, Series 2018A (The Yard Retail Project) and the City of Fishers, Indiana Economic Development Revenue Bonds, Series 2018B (The Yard Garage Project).

**Yard TIF Term** shall mean the time period remaining under the Laws for the Yard Allocation Area.

## **2. Interpretation; Term and Other General Matters.**

(a) The terms "include", "including" and "such as" shall each be construed as if followed by the phrase "without being limited to".

(b) Whenever a Party's consent, approval, agreement or election is required or permitted by this Agreement, such consent, approval, agreement or election shall not be unreasonably withheld, conditioned or delayed if expressly provided for herein.

(c) The term of this Agreement shall be for the period commencing on the Effective Date and continuing throughout the Bond Term (the “Agreement Term”). Except as expressly set forth otherwise herein, this Agreement shall terminate upon the expiration of the Agreement Term; provided, however, the obligation of the Parties to pay any money owed pursuant to this Agreement, shall survive termination of this Agreement) This Agreement concerns two (2) separate and distinct Projects. As such, the terms and provisions herein, unless otherwise specifically stated, equally and separately apply to each of the Projects. For example, and without limitation Developer shall complete the Closing process described in Section 5 and the Plan Refinement process described in Section 12 for each of the Projects.

**3. City’s Obligations.** Subject to the terms and conditions of this Agreement, the applicable City Body shall: (a) in connection with Developer, jointly submit the Plat for final approval and recordation at or prior to Closing for each Project; (b) execute and perform (or cause the applicable City Bodies to execute and perform) the Ancillary Agreements; (c) issue the Bonds and, consistent with the Funding Agreement, make available the Bond Proceeds for Approved Costs and Closing Costs at each Closing, and thereafter, within thirty (30) days after a completed draw request is approved pursuant to the Funding Agreement (which requests shall not be submitted more frequently than monthly); provided, however, the parties acknowledge and agree that Bonds for each of the Projects will not be issued until Closing for such Project; (d) prior to the Union Closing, create the Allocation Areas and pledge the Pledged Increment to repayment of the Bonds; provided, however, any such pledge shall be contingent on Closing for each of the Projects (for example and without limitation, the pledge of increment from the Crossing Allocation Area, shall be subject to Closing for the Crossing Project; provided further that upon the issuance of the Bonds for the Union Project in conjunction with the Closing of the Union Project, the City shall have pledged the increment from the Union Allocation Area and the Additional Crossing Allocation Areas to the Bonds for the Union Project, with no contingency) (e) [*intentionally omitted*]; (f) provide reasonable assistance to Developer in connection with any zoning changes or variances determined to be necessary or appropriate for construction and use of the Projects in accordance with the Final Documents and Drawings; provided, however, City Bodies shall not be obligated to incur any expenses in connection with such assistance and shall not be liable for the result of any rezone requests; (g) pay to Developer any Reimbursement Amount owed pursuant to Section 11; (h) own the Union Project Public Garage and contract for its operation by the Developer pursuant to a management agreement; provided, however, any such agreement: (i) shall not require the City Bodies to pay or contribute to the cost of operation or maintenance of the Union Project Public Garage, and (ii) shall provide that all revenues generated by the Union Project Public Garage shall be utilized as determined by Developer; and (i) exercise commercially reasonable efforts to cause the review and timely issuance of the City’s development and permit applications necessary to develop and construct the Projects on the Project Sites, including, whenever reasonably possible, coordinating with Developer to lower the Projects’ costs by supporting the issuance of interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving final approval of less critical activities, to the extent allowed by the Laws; provided, however, City Bodies shall not be obligated to incur expenses related to such assistance.

#### **4. Developer's Obligations.**

(a) Subject to the terms and conditions of this Agreement, Developer shall: (1) in connection with the City, jointly submit the Plats for final approval and recordation prior to each of the Closings; (2) complete the Projects (i) substantially in accordance with the applicable Final Documents and Drawings and (ii) with respect to the Union Project, in a manner that results in approximately \$140 Million to \$160 Million Dollars of private investment in the Union Project, and (iii) with respect to the Crossing Project, in a manner that results in approximately \$60 Million to \$80 Million Dollars of private investment in the Crossing Project; (3) pay, when due, all Real Estate Taxes and Assessments on the Projects and the Project Sites; (4) make or cause to be made the payments required by the Taxpayer Agreements; (5) at each Closing, cause the Purchaser to purchase of the Bonds; (6) obtain the Project Loans and ensure that proceeds of such Project Loan are available on the applicable Closing Date (subject to the satisfaction of customary draw conditions); and (7) execute and perform the Ancillary Agreements.

(b) Subject to the terms and conditions of this Agreement, Developer and/or its assigns (subject to Section 16) will: (i) own the Crossing Project and the Crossing Project Site; (ii) construct and transfer the Union Project Public Garage to the City; (iii) operate the Union Project Public Garage for the City pursuant to a management agreement; provided, however, the City shall not be liable for the operation or maintenance of the Union Project Public Garage; and (iv) own the Union Project and the Union Project Site, with the exception of the Union Project Public Garage; provided, however, Developer, or its assigns, shall accept the transfer and conveyance of the Union Project Public Garage upon expiration of the Bond Term.

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

(a) Closing. Subject to the terms and conditions of this Agreement, Closing for the (i) Union Project shall occur on a date designated by Developer that is by or before the Outside Closing Date of July 31, 2025, (ii) Crossing Project shall occur on a date designated by Developer that is by or before the Outside Closing Date of October 31, 2026 (if developed by the Developer and subject to the Land Acquisition Agreement) and (iii) each of the Projects shall occur at the office of the Title Insurer or at such other place as the City and Developer mutually may agree.

(b) Deliveries. At each Closing, unless another time is specifically stated or the required action has previously occurred:

(i) Developer shall execute and deliver to the City evidence reasonably satisfactory to the City that it has closed the Project Loan and is entitled to draw on the Project Loan beginning on such Closing Date (subject to the satisfaction of customary draw conditions);

(ii) The applicable City Bodies and Developer shall execute and deliver the Ancillary Agreements;

(iii) The applicable City Bodies and the Purchaser shall execute and deliver the Bond Documents;

(iv) The applicable City Bodies and Developer shall execute and deliver copies of such resolutions, consents of members, partners, officers and/or shareholders and other evidence as the RDC, EDC, Building Corp., City, Developer, or the Title Insurer reasonably may request;

(v) The applicable City Bodies and Developer shall execute and deliver such other customary documents or instruments as the City, EDC, Building Corp., RDC, Developer or the Title Insurer may request in connection with the Closing;

(vi) Developer shall deliver certificates of policies of insurance required pursuant to **Exhibit F**;

(vii) Developer shall be exclusively responsible for all Closing Costs; provided, however, Bond Proceeds may be used to pay such Closing Costs;

(viii) Each Party shall be responsible for its own legal fees incurred in connection with negotiation of this Agreement and the Closing contemplated by this Agreement; and

(ix) With respect to the Closing for the Crossing Project, Developer shall pay the Crossing Purchase Price to the City.

**6. Taxes.** At all times during Developer's ownership or operation of each of the Projects and the Project Sites, as applicable, Developer assumes and agrees to pay or cause to be paid all Real Estate Taxes and Assessments becoming a lien against such Project Site whenever due and payable.

**7. Conditions to Developer Obligations.** Notwithstanding anything to the contrary set forth herein, the obligations of Developer with respect to each of the Projects and Closings are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 7, each of which shall apply to the Closing for the Union Project and Crossing Project:

(a) Environmental Condition. Prior to expiration of the Diligence Period, Developer shall have conducted all industry standard Property Inspections concluding that there: (i) is no contamination or pollution of the Project Site, or any groundwater thereunder, by any hazardous waste, material, or substance in violation of any Laws, (ii) are no underground storage tanks located on the Project Site, and (iii) are no wetlands on the Project Site.

(b) Physical Condition. Prior to expiration of the Diligence Period, Developer shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project or require unusually costly development techniques, in accordance with the terms and conditions of this Agreement.

(c) Zoning. Prior to expiration of the Diligence Period, Developer shall determine whether the Project Site is or will be zoned for the Project.

(d) Utility Availability. Prior to expiration of the Diligence Period, Developer shall have determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are or will be: (i) in adjoining public rights-of-way or properly granted utility easements, and (ii) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(e) Required Permits. Prior to expiration of the Diligence Period, Developer shall have (i) obtained; or (ii) determined that it shall be able to obtain, all Required Permits then available for the current stage of construction.

(f) Financial Ability. Prior to expiration of the Diligence Period, Developer shall have determined that it has adequate funds (Project Loan proceeds, Bond Proceeds, and/or cash on hand) to construct the Project.

(g) Ancillary Agreements. On or before the Closing Date, the City (or the applicable City Bodies) and Developer, each exercising commercially reasonable discretion, shall have approved and executed (or execute at the Closing) the Ancillary Agreements.

(h) Bond Proceeds. On or before the Closing Date, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary to authorize the Bonds; and (ii) demonstrated that the Bond Proceeds shall be made available to Developer in accordance with the Funding Agreement.

(i) Financing Documents. On or before the Closing Date, the Project Loan shall be closed, and in connection therewith, the Project Loan Documents, and any additional documents relating thereto, shall be fully executed by all parties thereto and the proceeds of the Project Loan shall be immediately available to Developer without Developer's satisfaction of any additional conditions (except for the satisfaction of customary draw conditions).

(j) Plat. On or before the Closing Date, the Plat shall have received final approval from the Transfer and Mapping Department of the office of the Auditor of Hamilton County, Indiana, and be recorded.

(k) City Body Approvals. As of the Closing Date, City Bodies have obtained all consents and approvals, and adopted all resolutions, required to be obtained and/or adopted in connection with the execution of, and the performance of its obligations under, this Agreement, the Ancillary Agreements, and any Bond Documents to which it is a party.

(l) Compliance. As of the Closing Date, this Agreement, and compliance with the terms hereof, are not in violation of any applicable Laws and no claims or causes of action asserting any violation of Laws shall have been asserted or threatened by any third party.

(m) No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by City Bodies that the applicable City Body has failed to cure within the Cure Period; and (ii) all of the representations in Section 10(a) shall be true and accurate in all material respects.

If any of the conditions set forth in this Section are not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer either may elect to: (A) waive in writing satisfaction of the conditions and proceed to the Closing; or (B) terminate this Agreement and any executed Ancillary Agreements by delivery of written notice to City Bodies; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by a City Body, Developer shall have all of the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, (1) Developer shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if Developer fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, then Developer shall be deemed to have waived such condition and shall proceed to Closing.

**8. Conditions to City Bodies' Obligations.** Notwithstanding anything to the contrary set forth herein, the obligations of City Bodies with respect to proceeding to the Closing (unless a specific Closing is stated) with respect to each of the Projects, are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section:

(a) Required Permits. Prior to expiration of the Diligence Period, Developer shall have obtained, or City Bodies or Developer have determined that Developer shall be able to obtain, all Required Permits then available for the current stage of construction.

(b) Financial Ability. On or before the Closing Date, Developer shall have demonstrated to City Bodies that it has/will have adequate funds (Project Loan proceeds, Bond Proceeds, and/or cash on hand) to construct the Project.

(c) Environmental Condition. Prior to the expiration of the Diligence Period, Developer shall provide a copy of its Phase I Environmental Site Assessment to City Bodies that there: (i) is no contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws; (ii) are no underground storage tanks located on the Project Site; and (iii) are no wetlands on the Project Site. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the environmental condition of the Project Site.

(d) Physical Condition. Prior to the expiration of the Diligence Period, City Bodies shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(e) Ancillary Agreements. On or before the Closing Date, the City (or the applicable City Bodies) and Developer, each exercising commercially reasonable discretion, shall have approved and executed (or at Closing will execute) the Ancillary Agreements.

(f) Financing Documents. On or before the Closing Date, the Project Loan shall be closed, and in connection therewith, the Project Loan Documents, and any additional documents relating thereto shall be fully executed by all parties thereto and the proceeds of the Project Loan

shall be immediately available to Developer without Developer's satisfaction of any additional conditions (except for the satisfaction of customary draw conditions).

(g) Procedure. On or before the Closing Date, the Parties have agreed on the terms on which the Bonds will be issued, and each of the City Bodies has completed all procedures required by the Laws in connection with consummating the transaction contemplated herein, including that: (i) all recommendations, approvals, authorizations, resolutions, and/or ordinances required to be completed, obtained, and/or adopted in connection with: (A) the issuance and sale of the Bonds on the terms to which the Parties have agreed; (B) the use of the Bond Proceeds to pay Approved Costs incurred in connection with the Project; (C) the pledging of the Pledged Increment to the payment of debt service on the Bonds and capitalized interest as applicable; and (D) the Allocation Areas have been established.

(h) Plat. On or before the Closing Date, the Plat shall have received final approval from the Transfer and Mapping Department of the office of the Auditor of Hamilton County, Indiana, and be recorded.

(i) Developer Approvals. On or before the Closing Date, Developer has obtained all consents and approvals, and adopted all resolutions, required to be obtained and/or adopted in connection with the execution of, and the performance of its obligations under, this Agreement, the Ancillary Agreements, and any Bond Documents to which it is a party.

(j) Compliance. On or before the Closing Date, this Agreement, and compliance with the terms hereof, are not in violation of any applicable Laws and no claims or causes of action asserting any violation of Laws shall have been asserted or threatened by any third party.

(k) No Breach. On or before the Closing Date: (i) there shall be no breach of this Agreement by Developer that Developer has failed to cure within the Cure Period; and (ii) the representations and warranties set forth in Subsections 10(b) and (c) shall be true and accurate in all material respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, City Bodies either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement and the Ancillary Agreements by a written notice to Developer; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Developer, City Bodies shall have all of the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, (1) City Bodies shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if the applicable City Body fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, such City Body shall be deemed to have waived such condition and shall proceed to Closing.

**9. Incurred Costs and Failure to Close**. Each of the City Bodies and Developer is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other

Parties will proceed to Closing on or before the applicable Outside Closing Date. Accordingly, if this Agreement is terminated:

(a) due to (i) a continuing Event of Default by one of the City Bodies, (ii) after expiration of the Diligence Period, failure of the applicable City Body to satisfy the condition included in Sections 8(e) or (g), or (iii) failure of any City Body to comply with the representations and warranties included in Section 10(a), then City Bodies shall reimburse Developer for its Incurred Costs.

(b) due to (i) a continuing Event of Default by Developer, (ii) after expiration of the Diligence Period, failure of Developer to satisfy the conditions included in Section 7(a) through 7(g) and 7(i), or (iii) failure of Developer to comply with the representations and warranties included in Sections 10(b) or (c), then Developer shall reimburse the City for its Incurred Costs.

(c) If this Agreement is terminated for any reason other than those set forth above, then each party shall be responsible for paying its own costs and expenses.

(d) Any reimbursement or action required under this Section 9 shall be paid or performed, as applicable, by such party within thirty (30) days after receipt of written invoice or notice therefor, together with reasonable evidence supporting the amount set forth in such invoice.

## **10. Representations and Warranties.**

(a) City Bodies. Each City Body represents and warrants to Developer that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement, (ii) the City is a municipal corporation organized and existing under the laws of the State of Indiana, (iii) RDC is the governing body of the City of Fishers Redevelopment Department organized and existing under the laws of the State of Indiana, (iv) EDC is the governing body of the City of Fishers Economic Development Department organized and existing under the laws of the State of Indiana, (v) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (vi) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (vii) this Agreement is the legal, valid, and binding obligation of it, and (viii) it has not engaged or dealt with any real estate broker or agent in connection with the Project, 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 a City Body.

(b) Developer. Developer represents and warrants to each City Body that: (i) Developer is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana, (ii) it shall not enter into any contracts 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 Developer, (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 Developer or any party affiliated with Developer, and (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. If Developer has employees, Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Developer has employees, Developer will state, in all solicitations or advertisements for employees placed by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin. Developer states that it does not currently have employees.

(c) E-Verify. All terms defined in IND. CODE § 22-5-1.7 *et seq.* are adopted and incorporated into this Section. Pursuant to IND. CODE § 22-5-1.7 *et seq.*, if Developer has employees, Developer covenants to enroll in and verify the work eligibility status of its employees using the E-Verify program, if it has not already done so as of the Effective Date. If Developer has employees, within ten (10) days after the Effective Date, Developer shall execute an affidavit affirming that: (i) it is enrolled and is participating in the E-Verify program, and (ii) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Developer shall provide the City with documentation that it has enrolled and is participating in the E-Verify program if it has employees. This Agreement shall not take effect until said affidavit is signed by Developer and delivered to the City's authorized representative if Developer has employees. Developer states that it does not currently have employees.

(d) Master Development Plan. The City represents that the completion of the Projects are consistent with, a part of, and will assist it in fulfilling its Master Development Plan.

## **11. Allocation Areas and Pledged Increment; Bonds Structure.**

(a) Allocation Areas. Subject to all procedures required by the Laws and the terms and conditions of this Agreement and prior to Closing for the Union Project Senior Bonds, the City Bodies shall establish the Allocation Areas. Subject to all procedures required by the Laws the City Bodies shall pledge: (i) the Pledged Increment to the repayment of the Senior Bonds and the Subordinate Bonds as outlined herein; (ii) capitalized interest to the Bonds, as applicable; and (iii) the respective Taxpayer Payments to the repayment of the respective Senior Bonds. The foregoing pledges will remain effective for the respective Bond Terms.

(b) Payment Order. The respective Pledged Increment will be utilized in the following order: (i) to make current payments of interest and principal on the respective Senior Bonds, (ii) to replenish reserves for the respective Senior Bonds, (iii) to remedy any prior shortfalls with respect to payments of interest and principal on the respective Senior Bonds pursuant to the related Taxpayer Agreements (in any instance, a "**Shortfall**") or, in the event of a Shortfall, reimburse Developer or a Developer affiliate if such entity makes a payment on the respective Senior Bonds (including its carrying costs for such payments), (iv) to pay Continuing Bond Costs, and (v) to make payments of interest and principal on the respective Subordinate Bonds. City Bodies shall not pledge to the repayment of the Bonds any tax revenues or other funds of the City, except the

Pledged Increment. City Bodies shall not be liable for any shortfall in the Pledged Increment. Beginning not less than thirty (30) days prior to the initial date for the first (1st) debt service payment on the Union Project (as stated in the Project Analysis) and continuing for each consecutive year thereafter during the Reimbursement Term (as that term is hereinafter defined), the City shall pay to Developer the Reimbursement Amount, if any semi-annually on or before May 10<sup>th</sup> and November 10<sup>th</sup> of each year of the Reimbursement Term. The “**Reimbursement Term**” is defined as the earlier of (i) twenty-five (25) years, or (ii) the date on which owners of the parcels within the Additional Crossing Allocation Areas are issued the initial certificate of occupancy for the project constructed on such parcel. For the avoidance of doubt, the Reimbursement Term may vary for each parcel within the Additional Crossing Allocation Areas depending on when an owner of a parcel receives its certificate of occupancy for the project on the such parcel. Notwithstanding the foregoing or anything included herein to the contrary, the Reimbursement Amount shall only be due from the City to the Developer in any semi-annual period, to the extent that a taxpayer payment is due pursuant to a Taxpayer Agreement on any of the parcels comprising the Additional Crossing Allocation Areas.

(c) The City agrees to provide the Adjacent Excess TIF for payment of debt service on the Bonds and to fund the Reserve as set forth herein.

For so long as the Bonds remain outstanding the City and the RDC shall not pledge the increment generated by the Stations Allocation Area to any additional obligations, without the prior written consent of the Developer.

(d) TIF Revenue Shortfalls. In the event of any Shortfall, such Shortfall shall accrue interest at the respective Senior Bond Interest Rate notwithstanding whether, in the event of a Shortfall, Developer or a Developer affiliate makes a payment on the Senior Bonds.

(e) Excess TIF. To the extent there is Excess TIF, such Excess TIF shall be available to the RDC to use for any purpose under the Laws, in its sole discretion.

(f) Interest During Construction. At the option and discretion of Developer, the Bonds shall bear interest (i) at zero percent from their date of issuance until Substantial Completion (and, thereafter, at the Bond Interest Rate, or (ii) at the Bond Interest Rate from their date of issuance throughout the Bond Term. After the Project has been assessed and is generating increment, the Bonds will (i) bear interest at the Bond Interest Rate and (ii) be in accordance with the City authorizations relating to the Bonds. For purposes of this Agreement, the “Bond Interest Rate” shall mean a rate intended to be equal to or less than eight percent (8%), as determined jointly by the Parties, each in the exercise of its reasonable discretion.

(g) Costs of Issuance and Administrative Fees. Developer shall be solely liable for all Closing Costs, which amounts shall be paid from Bond Proceeds, and, subject to Section 11, Bond Proceeds shall additionally be used to pay Continuing Bond Costs.

(h) Bond Structuring. The Bonds may be structured in one or more series to support the Projects. It is currently anticipated that the Senior Bonds will (i) be payable solely from Pledged Increment (including the Adjacent Excess TIF), with the lien of the Pledged Increment being pledged on a senior basis to the Subordinate Bonds, and to the extent Pledged Increment is

insufficient, from the Taxpayer Payments, (ii) be issued on a tax-exempt or taxable basis, (iii) be issued in multiple separate series on two or more different closing dates, and (iv) be utilized to finance the Crossing Project and the Union Project. In connection with the issuance of the Senior Bonds it is anticipated that the Developer will own and operate the Crossing Project, the Crossing Project Site, the Union Project (but not own the Union Project Public Garage). It is currently anticipated that the Subordinate Bonds will (i) be payable from the Pledged Increment, with the lien of the Project Increment pledged to the Subordinate Bonds being subject to the prior payment of the respective Senior Bonds, (ii) be issued on a taxable basis, and (iii) be utilized to finance the Project. It is currently anticipated that the Union Project Senior Bonds and the Union Project Subordinate Bonds will be issued in conjunction with the Union Project closing and the that Crossing Project Senior Bonds and the Crossing Project Subordinate Bonds will be issued in conjunction with the Crossing Project closing.

**12. Plan Refinement Process.** For each of the Projects, Developer shall prepare and submit the Final Documents and Drawings to the City as part of the Plan Refinement Process. While City may provide written comments to Developer regarding the Final Documents and Drawings, City's rights to approve the Final Documents and Drawings shall be limited to its rights under applicable City process(es) for Zoning and the Required Permits.

**13. Inspections.** City shall have inspection rights to ensure compliance by Developer with Zoning, the Required Permits, and as otherwise permitted by the Laws.

**14. Taxpayer Agreement.** For the Senior Bonds, to the extent determined necessary for the Senior Bonds by the Developer, Developer and the RDC agree to enter into one or more mutually acceptable Taxpayer Agreements for the Senior Bonds, covering the Allocation Areas, that (a) states that beginning in the calendar year following the first January 1 after Substantial Completion of the respective Project continuing through each calendar year of the Bond Term, Developer agrees to (i) annually (in semi-annual payments on the dates that are twenty (20) days prior to the next-due payment of debt service on the respective Senior Bonds) pay RDC the positive difference, if any, between: (A) the amount of the required debt service payment on the respective Senior Bonds; and (B) the Pledged Increment distributable to RDC for the applicable year available for payment on the respective Senior Bonds; (b) provides that the payments due by Developer thereunder are secured by an annually renewable lien against the respective Project Site that is the same in nature and priority to (but different from and in addition to) the lien of Real Estate Taxes and, accordingly, shall: (i) be prior to any mortgage or other lien or encumbrance on the respective Project Site other than the lien of Real Estate Taxes; and (ii) renew automatically every January 1 during the Bond Term in its same priority; and (c) shall be recorded and run with the real property comprising the respective Project Site. Nothing in this Agreement or the Taxpayer Agreement (if required by Developer) shall be deemed to release Developer from any obligation to pay Real Estate Taxes on the respective Project Site regardless of when payable or assessed. The Taxpayer Payments shall only secure payment of the respective Senior Bonds and shall only be required to the extent the Pledged Increment is insufficient to make payment on such Senior Bonds. For clarification, any Taxpayer Agreements covering portions of the Union Allocation Area and the Additional Crossing Allocation Areas will secure the Union Project Senior Bonds to the extent Pledged Increment is insufficient and any Taxpayer Agreements covering portions of the Crossing

Allocation Area will secure the Crossing Project Senior Bonds to the extent Pledged Increment is insufficient.

**15. 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.

(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 result 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.

**16. Indemnification.** Developer shall indemnify and hold harmless City Bodies from and against any and all Claims arising from or connected with: (i) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) the negligence or willful misconduct of Developer or any party

acting by, under, through, or on behalf of Developer; and (iv) the breach by Developer of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, City Bodies' and Developer's obligations under this Section shall survive the termination of this Agreement.

## **17. Assignment.**

(a) Upon Closing, this Agreement shall run with each of the Project Sites and shall be binding on successors in title to the Project Sites. Prior to Substantial Completion of each of the Projects, Developer shall not assign this Agreement without the approval of the City, and the City Bodies shall not assign this Agreement without the prior written approval of Developer; provided that: (i) without the prior written approval of Developer, City Bodies may assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder; and (ii) without the prior written approval of City, Developer may assign, partially or in its entirety, this Agreement to (A) a third party controlling, controlled by or under common control with Developer and/or any subsidiary or affiliate of Developer that has full power, authority, and capability to accept such assignment and perform the obligations of Developer hereunder; or (B) collaterally assign this Agreement (or portion hereof) to a Project Lender.

(b) Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Developer, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Bodies or Developer, as the case may be, from such performance; provided that, if any City Body assigns this Agreement to another agency or instrumentality of the City that: (i) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder, and (ii) expressly assumes all such obligations in writing; then the applicable City Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption. Notwithstanding any provision in this Agreement the contrary, upon an assignment in strict compliance with this Agreement by Developer of its rights and obligations in respect of the Project no other assignee of Developer shall have any responsibility for any obligations of Developer other than those expressly assumed by any such assignee.

**18. 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, Lindsey Bennett, City Attorney with copies (via email, only) to: Jennifer Messer, jennifercmesserlaw@gmail.com; and to Developer, Ashlee Boyd (aboyd@thompsonthrift.com), with copies (via email, only) to: Brian Fritts (bfritts@thompsonthrift.com). Each of the Parties may change its address for notice from time to time by delivering notice to the other party as provided above.

**19. Authority.** Each undersigned person executing this Agreement on behalf of the City, Building Corp., EDC, RDC and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City, Building Corp., EDC RDC, or Developer, 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 the City, Building Corp., RDC, EDC and Developer, respectively; provided, however, each of the City's, Building Corp., EDC and RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which the City, Building Corp., EDC and RDC agree to undertake with diligence and in good faith.

**20. Force Majeure.** Notwithstanding anything to the contrary set forth herein, if any Party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money, including any payment required pursuant to the Taxpayer Agreement (if required by Developer) 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: (y) 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 (z) 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.

**21. 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 City Bodies be obligated to perform any work, incur any expenses, or provide any incentives (whether with respect to the Project Sites, the Projects, or any site or improvements adjacent to, or in the vicinity of, the Project Sites) other than as specifically set forth in this Agreement. This Agreement may be amended or modified only by written instrument executed by City Bodies and Developer.

**22. Original LAA.** The Parties acknowledge and agree that the Original LAA includes certain obligations and rights of the Parties concerning the Development Land. Upon Closing on the Union Project, the Original LAA shall be null, void and of no further force or effect.

**23. Development Land.** If the Closing for the Union Project does not occur prior to December 31, 2025, then Parties agree that within sixty (60) days thereafter, the City Bodies shall purchase (unless the Parties agree otherwise) the Development Land from Developer for the Development

Land Price as calculated pursuant to **Exhibit H** (including, without limitation, the cap of \$5,900,000.00, the “**Development Land Price**”) and pursuant to the terms included in **Exhibit I** (the “**Development Land Closing Terms**”). However, upon Closing on the Union Project, the City Bodies’ right and/or obligation to purchase the Development land shall automatically and without further action of the Parties terminate.

**24. Miscellaneous.** Subject to Section 17, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Developer, 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. Developer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer 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 the City, Building Corp., EDC, RDC, and Developer. 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, employment relationship or joint venture between Developer, the City, Building Corp., EDC, 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 the City, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

**25. Execution of Agreement.** Upon City Bodies’ approval and execution of this Agreement, the City shall provide to Developer the executed Agreement (the “City-Executed Agreement”). Within ten (10) days of Developer’s receipt of the City-Executed Agreement, Developer shall execute this Agreement and provide the City a copy of such fully executed Agreement. Failure to strictly comply with this **Section 23** shall terminate and automatically revoke any offer made by City Bodies herein, and shall, without further action of any of City Bodies, nullify and render of no force or effect City Bodies’ approval of this Agreement.

**26. Index of Exhibits:**

- Exhibit A: Yard Allocation Area
- Exhibit B: Additional Crossing Allocation Areas
- Exhibit C-1: Concept Plan (Union Project)
- Exhibit C-2: Concept Plan (Crossing Project)
- Exhibit D: Crossing Project Site
- Exhibit E: Union Project Site
- Exhibit F: Insurance
- Exhibit G: Development Land
- Exhibit H: Development Land Cost
- Exhibit I: Development Land Closing Terms
- Exhibit J: Estimated Taxes for Each Parcel in the Additional Crossing Allocation Area

*[signatures on following pages]*

IN WITNESS WHEREOF, the City, EDC, Building Corp., RDC and Developer have executed this Project Agreement as of the day and year first written above.

**“CITY”**

**CITY OF FISHERS, INDIANA**

By: \_\_\_\_\_  
Scott Fadness, Mayor

Date: \_\_\_\_\_

**“EDC”**

**CITY OF FISHERS ECONOMIC  
DEVELOPMENT COMMISSION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

“RDC”

FISHERS REDEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
~~Damon Grothe~~, Brad Johnson, President

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
~~Anderson Schoenrock~~, Tony Bonacuse, -Secretary

Date: \_\_\_\_\_

**“BUILDING CORP.”**

FISHERS TOWN HALL BUILDING  
CORPORATION

By: \_\_\_\_\_  
Jay Bangert, President

Attest: \_\_\_\_\_  
Secretary



**EXHIBIT A-1**  
**Stations Allocation Area**



**EXHIBIT A-2**

**Yard Allocation Area**

**EXHIBIT B**  
**Additional Crossing Allocation Areas**

**EXHIBIT C-1**  
**Concept Plan (Union Project)**

**Exhibit C-2**  
**CONCEPT PLAN (CROSSING PROJECT)**

**EXHIBIT D**  
**Project Site (Crossing Project)**

**EXHIBIT E**  
**Project Site (Union Project)**

**EXHIBIT F**

**Developer Insurance Requirements**

Developer shall obtain and maintain and require any general contractor or subcontractor(s) to obtain and maintain the below listed policies of insurance written by Developer reasonably acceptable to the City and for which certificates of insurance shall be provided to the City prior to commencement of any work on each respective Project. The City Bodies shall be named as additional insureds on Developer’s Commercial General Liability policies of insurance.

1.	Workers Compensation insurance coverage in accordance with statutory requirements.
2.	Employers Liability Insurance with limits of not less than \$1,000,000.00 each accident; \$1,000,000.00 Disease- each employee; and \$1,000,000.00 Disease Policy Limit.
3.	Commercial General Liability Insurance on ISO form GC0001 10 01 (or a substitute form providing equivalent coverage) and General Contractor and Subcontractors shall provide Developer with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG2037 10 01 (or substitute forms providing equivalent coverage) naming the City and the Redevelopment Commission as additional insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City and the Redevelopment Commission per the follows:  \$1,000,000.00 Each Occurrence (BI & PD Combined Single Limit);  \$2,000,000.00 General Occurrence (subject to per project general aggregate provision); and
4.	Business Automobile Liability Insurance: Written in the amount of not less than \$1,000,000.00 each accident to include the City and the Redevelopment Commission as additional insureds.
5.	Umbrella Liability: \$2,000,000.00.

## EXHIBIT H Development Land Price

The Parties acknowledge and agree that the following expenses are estimates, and the City Bodies shall be responsible for the actual and documented cost; provided however, such costs shall not exceed Five Million Nine Hundred Thousand and no/100 Dollars (\$5,900,000.00)

Contract Purchase Price	\$4,573,800.00
Title Insurance ( <i>TBD</i> )	<i>TBD</i>
ALTA Survey	\$20,000.00
Geotechnical Investigation	\$9,000.00
Environmental (Phase 1 and Reliance)	\$1,500.00
Development Fee	\$0
Recording Fees	\$500.00
Escrow Fees ( <i>TBD</i> )	<i>TBD</i>
Loan Fees and Costs ( <i>not to exceed \$75K</i> )	\$75,000.00
Additional Due Diligence	\$40,000.00
Attorneys' Fees ( <i>not to exceed \$55K</i> )	\$55,000.00
Property Taxes ( <i>Assume \$60K AV/acre</i> )	\$14,748.30
<b>LAA and Carry Costs</b>	<b>\$4,789,548.30</b>
Approximate Carry Costs @ 6.0%	\$1,005,805.14
<b><i>Estimated Land Acquisition Cost</i></b>	<b>\$5,795,353.44</b>

**EXHIBIT I**  
**Development Land Closing Terms**

- Development Land Price shall be paid in immediately available funds by wire transfer in accordance with wire transfer instructions to be provided by the title insurer.
- City Bodies may assign the right to acquire the Development Land or any portion thereof but shall be liable to acquire the Development Land until closing on a transfer and conveyance to any third-party.
- Possession of the Development Land or any portion thereof shall be delivered at the City Closing, subject only to (a) the lien of current year taxes and assessments not delinquent; (b) any exceptions to title reflected in the commitment at the time of closing to which the City Bodies do not object; and (c) such other matters that are accepted by the City Bodies in writing.
- City Bodies shall pay or cause to be paid, on the closing date, all closing costs, except that each party shall pay its own attorneys' fees related to the city closing.
- Developer shall deliver: (a) the deed; (b) a vendor's affidavit from in form and substance such that the title insurer will issue the commitment; and (c) such other customary documents or instruments as required to be delivered in connection with a commercial real estate closing.

**EXHIBIT J**  
**Additional Crossing Allocation Areas**  
**Minimum Tax Amount (Per Parcel)**