CITY OF FISHERS AGENDA

BOARD/COMMISSION: Town Hall Building Corporation Meeting
DATE: 12/11/2023, at 4:00 PM
DIRECTIONS: Pavilion Conference Room, 10 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. **Call to Order**
2. **Confirmation of Quorum and Proper Notice of Meeting**
3. **Consent of Previous Meeting Minutes**
    a. 10-23-23
4. **Union/Crossing Project Agreement**
    a. Agreement & Exhibits
5. **Lease agreement for Rebar Techway, LLC**
    a. License Agreement
6. **Amended Agreement with ASM for FF&E procurement**
    a. Amended Agreement & Exhibit C-2
7. **New Business - Fishers Event Center Update**

8. Adjournment

MEETING OF THE FISHERS TOWN HALL BUILDING CORPORATION
THBC 10/23/23

Commenced at 4:00
Quorum Confirmed and Notice Confirmed
In attendance:
Jay Bangert
Rich Block
Troy Woodruff
Josh Richardson
Joe Eaton and Ben Jefferis were not present.

Also in attendance: Megan Baumgartner, Jennifer Messer, Dustin Meeks, Jordan Willy, Mitch List, Chris Whittemore, Lisa Bradford, Lawrence Summers, Kay Prange

Approval of minutes:
Minutes from 9-18-23 meeting approved by consent 4-0

Resolution approving form of Lease, Loan Agreement, and Funding for District South TIF Bonds

Dustin Meeks from Barnes & Thornburg presented the Lease and Loan Agreement for Bond Financing to fund the Rebar Project in District South.

Mr. Bangert asked for a Motion. Mr. Woodruff made a motion to approve the Lease, seconded by Mr. Block. The Motion was approved, 4-0. Mr. Woodruff made a motion to approve the Loan Agreement, seconded by Mr. Block. The Motion was approved, 4-0.

MJC Amendment

Jordan Willy presented the Amendment to the MJC Agreement, which now includes site design revisions for the additional sea wall.

Mr. Bangert asked for a Motion. Mr. Block made a Motion to approve, seconded by Mr. Richardson. The Motion was approved, 4-0.

Norfolk Southern PSA

Megan Baumgartner presented the Agreement which will connect trail gaps in Crosspoint.

Mr. Bangert asked for a Motion. Mr. Woodruff made a Motion to approve, seconded by Mr. Richardson. The Motion was approved, 4-0.

New Business –

a. **Fishers Event Center Update**

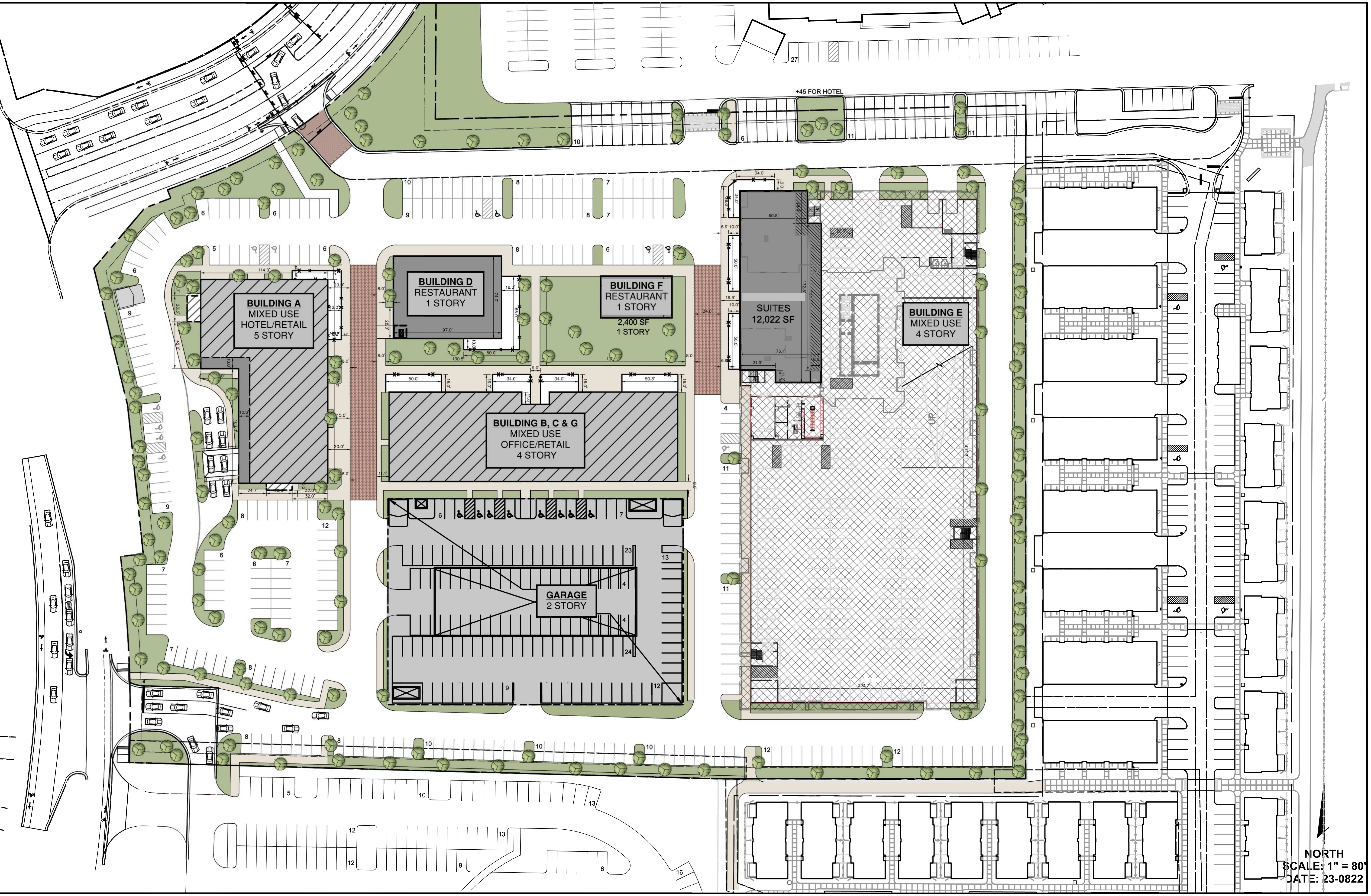
Mitch List of ASM gave updates on booking, parking, social media, the website, hiring, the IFL team, Suites, and Chris Whittemore gave an update on construction.

Meeting Adjourned at 4:25.

Exhibit A
Yard Allocation Area

Exhibit B
Additional Crossing Allocation Areas

Exhibit C-1
Concept Plan (Union Project)



SITE RENDERING

THE UNION | FISHERS, IN | AUGUST 2023

Exhibit C-2
Concept Plan (Crossing Project)

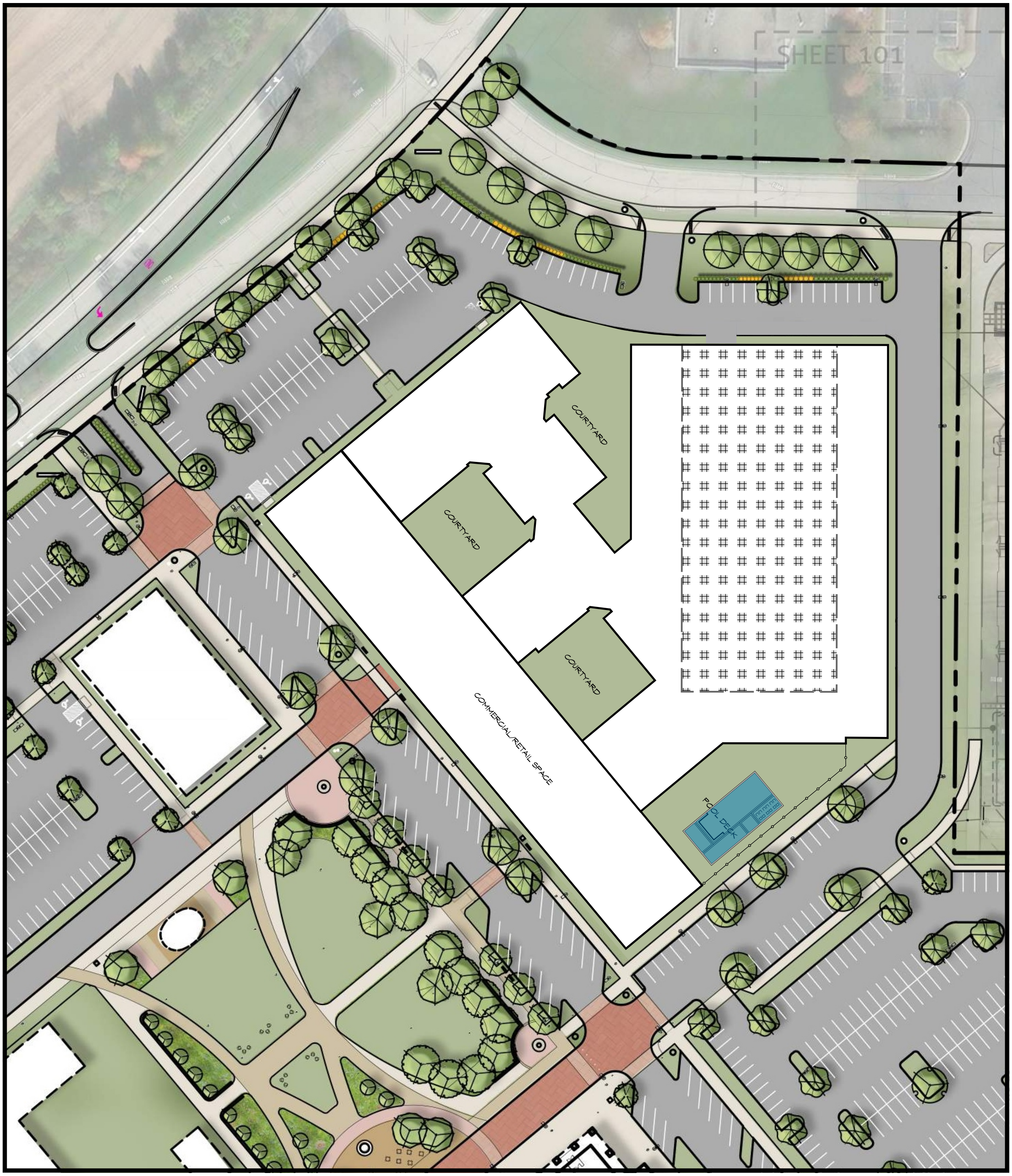


Exhibit D
Project Site (Crossing Project)

Exhibit E
Project Site (Union Project)

Exhibit G
Development Land

PROJECT AGREEMENT

This Project Agreement (the "**Agreement**") is executed as of the ______ day of ________ 2023, 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**") on the following terms and conditions:

Recitals

WHEREAS, since 2012, the City has been working to fulfill its 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) incented 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. <u>Defined Terms</u>. The following capitalized terms are used throughout this Agreement with the meaning set forth in this <u>Section 1</u>:

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.

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 Agreement (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.

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, Junior Subordinate 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 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 of 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 to be generated from the Projects together with the AV Increases and shall be payable solely from the applicable Pledged Increment. Except as stated herein with respect to the Yard 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 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, (iii) payment of debt service on the Subordinate Bonds, (iv) reimbursement to the Developer for any Shortfall (as defined in Section 11(b)), (v) replenishment of reserve funds for the Subordinate Bonds, (vi) payment of Continuing Bond Costs and (vii) payment of debt service on the Junior 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).

Junior Subordinate Bonds shall mean Bonds issued for the Union Public Project Garage payable from the Pledged Increment on a junior subordinate basis, following payment from the Pledged Increment of the Senior Bonds and the Subordinate Bonds.

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) Senior Bonds, (i) the Project Increment, and (ii) the Yard TIF (if available and needed to pay debt service on the Senior Bonds); (b) Subordinate Bonds, (i) the Project Increment following payment of the Senior Bonds, and (ii) the Yard TIF (if available and needed to pay debt service on the Subordinate Bonds and following payment of the Senior Bonds); and (c) the Junior Subordinate Bonds, the Project Increment following payment of the Senior Bonds and the Subordinate 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 that the City and Developer mutually determine in their commercially reasonable discretion (collectively, or for each parcel, the "**Additional Estimated Taxes**"), will be generated by each of the parcels within the Additional Crossing Allocation Areas and the annual, aggregate tax increment actually generated by such Additional Crossing Allocation Areas. For example, in the event the City and Developer determine the Additional Crossing Allocation Area will annually generate One Hundred Dollars ($100.00), but only Seventy-Five Dollars ($75.00) is generated, the Reimbursement Amount for such year would equal Twenty-Five Dollars ($25.00).

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

Senior Bonds shall mean Bonds issued for the Projects (but not including the Union Project Public Garage) and payable from the Pledged Increment on a senior basis.

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".

Subordinate Bonds shall means Bonds issued for the Union Project Public Garage and payable from the Pledged Increment on a subordinate basis, following payment on the Senior Bonds and prior to the payment of the Junior Subordinate Bonds. The Subordinate Bonds will also be secured by the Taxpayer Payments.

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 Subordinate Bonds, a developer obligations agreement and consent to real property tax lien imposing a lien against the real property included in the Union 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.

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 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. 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. Notwithstanding the foregoing or anything contained herein, when used herein in relation to the allocation of the Subordinate Bonds and Junior Subordinate Bonds proceeds to the Union Project, the Union Project shall mean only the Union Project Public Garage.

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

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

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 shall mean for the Yard TIF Term, excess tax increment (any amount not required to pay debt service and other typical administrative costs associated with the Yard Bonds), in an amount not to exceed Five Hundred Thousand and no/100 Dollars, annually from the Yard Allocation Area (as depicted on **Exhibit A**).

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 Area 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 Revenue Procedure 2017-13 compliant 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 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 Revenue Procedure 2017-13 compliant management agreement which will not result in private use with respect to the Subordinate Bonds; and (iv) own the Union Project and the Union Project Site, with the exception of the Union Project Public Garage.

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 [D. Potter?].

(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 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, the Subordinate Bonds and the Junior Subordinate Bonds; (ii) capitalized interest to the Bonds, as applicable; and (iii) the Taxpayer Payments to the repayment of the Subordinate Bonds. The foregoing pledges will remain effective for the respective Bond Terms.

(b) Payment Order. Pledged Increment will be utilized in the following order: (i) to make current payments of interest and principal on the Senior Bonds, (ii) to replenish reserves for the Senior Bonds, (iii) to make current payments of interest and principal on the Subordinate Bonds, (iv) to remedy any prior shortfalls with respect to payments of interest and principal on the Subordinate Bonds pursuant to the 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 Subordinate Bonds (including its carrying costs for such payments), (v) to replenish reserves for the Subordinate Bonds, (vi) to pay Continuing Bond Costs, and (vii) to make payments of interest and principal on the Junior 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 10th and November 10th of each year of the Reimbursement Term. The "Reimbursement Term" is defined as the earlier of either (i) twenty-five (25) years, or (ii) the date on which owners of the parcels within the Additional Crossing Allocation Area are liable for making a taxpayer payment pursuant to a developer obligations agreement that requires such owners to guarantee tax payments in an amount not less than the Additional Estimated Taxes for such parcel. For the avoidance of doubt, the Reimbursement Term may vary for each parcel within the Additional Crossing Allocation Area depending on when an owner of a parcel within the Additional Crossing Allocation Area is liable for making a payment pursuant to a developer obligations agreement. 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 a Taxpayer Payment is required to be made under a Taxpayer Agreement for such period. Notwithstanding the foregoing with respect to the order of uses of Pledged Increment, the Yard TIF shall be used only to pay debt service on the Senior Bonds and the Subordinate Bonds. The Yard TIF, if available and needed to pay debt service on the Senior Bonds or the Subordinate Bonds will be utilized for debt service on the Senior Bonds before being applied to the Subordinate Bonds.

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

(d) 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.

(e) 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.

(f) 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.

(g) 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 Yard TIF), with the lien of the Pledged Increment being pledged on a senior basis to the Subordinate Bonds and Junior Subordinate Bonds, (ii) be issued on a tax-exempt 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 (but not the Union Project Public Garage). 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 or have other rights with respect to the Union Project Public Garage that would cause interest on the Subordinate Bonds to be taxable) and the Union Project Site. It is currently anticipated that the Subordinate Bonds will (i) be payable from (A) the Pledged Increment (including the Yard TIF), with the lien of the Pledged Increment pledged to the Subordinate Bonds being subject to the prior payment of the

Senior Bonds and senior to the payment of the Junior Subordinate Bonds, and, to the extent the Pledged Increment is insufficient, from the Taxpayer Payments, (ii) be issued on a tax-exempt basis, and (iii) be utilized to finance the Union Project Public Garage. It is currently anticipated that the Junior Subordinate Bonds will (i) be payable from the Pledged Increment, with the lien of the Project Increment pledged to the Junior Subordinate Bonds being subject to the prior payment of the Senior Bonds and the Subordinate Bonds, (ii) be issued on a taxable basis, and (iii) be utilized to finance the Union Project Public Garage. In connection with the issuance of the Subordinate Bonds and Junior Subordinate Bonds it is anticipated that the City will ultimately own and operate the Union Project Public Garage, but that the Union Project Public Garage will be managed by the Developer pursuant to a Revenue Procedure 2017-13 compliant management agreement. Notwithstanding anything contained herein, the parties acknowledge that the proceeds of: (i) the Subordinate Bonds and Junior Subordinate Bonds will be allocated to the Union Project Public Garage portion of the Union Project; and (ii) the Senior Bonds will be allocated to the Crossing Project and the Union Project but excluding the Union Project Public Garage portion of the Union Project. Notwithstanding anything contained herein, including as set forth in Sections 3, 4(a) and 7(h), Bonds may be issued in conjunction with either Project Closing, or on one or more dates separate from and after the Project Closing dates, and there is no requirement that Bonds be issued in conjunction with a Project Closing; provided, however, the Bonds shall not be issued prior to the Union 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 Subordinate Bonds, to the extent determined necessary for the Subordinate Bonds by the Developer, Developer and the City and the RDC agree to enter into a mutually acceptable Taxpayer Agreement for the Subordinate Bonds, covering the Union Allocation Area, that (a) states that beginning in the calendar year following the first January 1 after Substantial Completion of the Union Project continuing through each calendar year of the applicable 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 Subordinate Bonds) pay RDC the positive difference, if any, between: (A) the amount of the required debt service payment on the Subordinate Bonds; and (B) the Pledged Increment distributable to RDC for the applicable year available for payment on the Subordinate Bonds, following payment of the Senior Bonds; (b) provides that the payments due by Developer thereunder are secured by an annually renewable lien against the Union 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 Union 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 Union 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 Union Project Site regardless of when payable or assessed. The Taxpayer Payments shall only secure payment of the Subordinate Bonds and shall only be required to the extent the Pledged Increment, following payment of the Senior Bonds is insufficient to make payment on the Subordinate Bonds. The Taxpayer Agreement shall be drafted as a guarantee of payments on the Subordinate Bonds and in a manner that does not endanger the tax-exempt status of the Senior Bonds. In the event developer obligations agreements are entered into for the Additional Crossing Allocation Areas, such agreements shall be drafted as guarantees on the Subordinate Bonds and in a manner that does not endanger the tax-exempt status of the Senior and Subordinate Bonds.

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. On the Effective Date, 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.

24. 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.

25. 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

[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, President

Date: ______________________________

ATTEST:

By:______________________________
Anderson Schoenrock, Secretary

Date: _________________________

"BUILDING CORP."

FISHERS TOWN HALL BUILDING CORPORATION

By: ________________________________
Jay Bangert, President

Attest: ________________________________

Secretary

“DEVELOPER”

THOMPSON THRIFT DEVELOPMENT, INC.

By: ___________________________________
_______________, _______________

Date: _______________________

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
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 (*TBD*)	*TBD*
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 (*TBD*)	*TBD*
Loan Fees and Costs (*not to exceed $75K)*	$75,000.00
Additional Due Diligence	$40,000.00
Attorneys' Fees (*not to exceed $55K*)	$55,000.00
Property Taxes (*Assume $60K AV/acre*)	$14,748.30
LAA and Carry Costs	**$4,789,548.30**
Approximate Carry Costs @ 6.0%	$1,005,805.14
Estimated Land Acquisition Cost	**$5,795,353.44**

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.

LICENSE FOR USE

This License For Use ("License") is entered into this ________ day of December, 2023, by and between Rebar Techway, LLC, an Indiana limited liability company ("Company") and the City of Fishers Town Hall Building Corporation, an Indiana non-profit corporation ("City") pursuant to the following terms and conditions:

RECITALS

1. **Consideration**. For and in consideration of Corporation's satisfaction of its obligations included herein, Company hereby provides Corporation an exclusive right to access and use the Premises during the Term. For purposes of this License, "Premises" shall mean, (a) 8933 Technology Drive Fishers, Indiana, Suite C comprised of approximately 1,835 sf (the "Original Premises), (b) 8933 Technology Drive Fishers, Indiana, Suite __ comprised of approximately 2,630 sf; (c) six (6) surface parking spaces within the Parcel that are marked for the exclusive use of patients of the Fishers Health Department; and (d) the portions of parcel no. 15-11-31-00-01-005.000 (the "Parcel") generally designed as common areas including, without limitation, green spaces, lobbies, corridors, stairways, parking lot, ramps, elevators, restrooms and other areas of ingress and egress to the Building (individually or collectively, "Common Area").

2. **Term**. The Initial Term of this License shall commence on January 1, 2024 and continue for twenty-four (24) consecutive months thereafter, subject to early termination (in either instance, the "Initial Term"). Thereafter, any continued use shall be on a month-to-month basis (up to ________ months)(for any time period after the Initial Term, the "Monthly Term", and together with the Initial Term, the "Term"); provided, however, if the Corporation occupies the Premises after the expiration of the Initial Term, to terminate this License, Corporation shall provide not less than _______ days written notice of termination to Company (for example, and without limitation, if Corporation desires to terminate this License on February 1, 2026, the Corporation shall provide notice of the intent to terminate on or before _____________). Upon conclusion of the Term, Corporation shall immediately surrender the Premises to Company, together with all alterations, improvements and other property as provided elsewhere herein, in vacuum-clean condition and in good order, condition and repair, except for ordinary wear and tear.

3. **License Fee**. On or before the fifth (5th) day of each month of the Term, Corporation shall pay Company Eight Thousand, Nine Hundred Thirty and no/100 Dollars ($8,930.00), ($24.00, sq. ft. or $107160.00, annually).

4. **Improvements**. On or before January 1, 2024, Landlord shall cause to be completed the improvement to the Premises described on **Exhibit C** (the "Landlord Improvements"). The Commencement Date shall not occur unless and until Landlord completes the Landlord Improvements to the reasonably satisfaction of Corporation. For any partial month in which Landlord completes the Landlord Improvements, the license fee owed shall be prorated on a daily basis.

5. **Access to Premises**. Corporation shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week during the Term, subject to Company's reasonable restrictions for repair, maintenance, alterations or special events that do not unreasonably impair Corporation's use of the Premises for the Permitted Use (as defined in Section 4 below). Moreover, upon providing the Certificate of Insurance (as defined in Section 9), Corporation and the Contractors shall be granted access to the Premises to cause to be completed the Improvements (as defined in Section 10).

6. **Corporation's Permitted Use**. Corporation and its Authorized Users (as defined in this Section 4) may access and use the Premises for office and clinical spaces for the Fishers Health Department (individually or collectively, the "Permitted Use"). For purposes of this License "Authorized Users" shall mean invitees of the Corporation, members of the Fishers Health Department and their invitees. Corporation shall not use the Premises other than for the Permitted Use without the prior written consent of Company. Further, Corporation shall:

A. use the Premises and conduct its business thereon in a safe, careful, reputable and lawful manner;

B. not use the Premises for any unlawful purpose or act; shall not commit or permit any waste or damage to the Premises; and shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other Corporation's or occupants of the Building or injure or annoy them. Corporation shall comply with and obey all laws, regulations and orders of any governmental authority or agency including, without limitation, environmental laws, regulations and orders, and all reasonable directions of the Company, including the rules attached as Exhibit B (the "Rules");

C. not overload the floors of the Premises beyond their designed weight-bearing capacity. Company reserves the right to direct the positioning of all heavy equipment, furniture and fixtures so as to distribute properly the weight thereof and to require the removal of any equipment or furniture which exceeds the weight limit specified herein.

D. not use the Premises, or allow the Premises to be used, for any purpose or in any manner which would, in Company's reasonable opinion, invalidate any policy of insurance or increase the rate of premiums payable on any such insurance policy. Should Corporation fail to comply with this covenant, Company may, at its option, require Corporation to stop engaging in such activity or to reimburse Company as additional rent for any increase in premiums charged during the Term;

E. not inscribe, paint, affix or display any signs, advertisements or notices on the Building, except for such Corporation identification information as Company permits to be included or shown on the entry sign and near or adjacent to the access door or doors to the Premises; provided however, such prohibition shall not include wayfinding signage located on the Premises or the signage depicted in Exhibit D that Company previously approved for placement on the Building.

7. **Company's Rights Regarding Use.** Notwithstanding this License, Company shall have the following rights to:

A. install signs, advertisements, notices or identification information as it shall deem necessary;

B. reasonably approve or disapprove, prior to installation, all types of drapes, shades and other window coverings used in the Premises', and Company may control all internal lighting that may be visible from outside the Premises; and

C. control the Common Area in such manner as it deems necessary or proper, including by way of illustration and not limitation: requiring all persons entering or leaving the Building to identify themselves and their business in the Building to a security guard, if provided by Company; excluding or expelling any peddler, solicitor or loud or unruly person from the Building and closing or limiting access to the Building or any part thereof (including entrances, corridors and doors) during times of emergency, repairs or after regular business hours.

8. **Termination For Default & Removal of Property**. The occurrence of any of the following shall be a Default for which Company may terminate this License and cause the Corporation to immediately vacate the Premises upon five (5) day's prior written notice:

A. Corporation fails to pay any amount owed hereunder within ten (10) days after due;

B. Corporation fails to comply with Company's Rules and Regulations; or

C. Corporation otherwise fails to comply with the terms of this License.

(each, a "Default"). Corporation shall have five (5) days from the date of notice to cure any Default. If Company terminates this License for Default, Corporation shall not be entitled to reimbursement of any amounts previously paid. Upon conclusion of the Term or earlier termination of this License, Corporation shall immediately remove Corporation's Property (as defined in Section 7 below) from the Premises. Corporation's Property that is not removed within ten (10) days following termination or expiration of the License shall be conclusively deemed to have been abandoned, and Company shall be entitled to dispose of such property without incurring any liability to Corporation. This Section 6 shall survive the expiration or any earlier termination of this License.

9. **Limitation of Liability; Release and Hold Harmless**. Corporation hereby agrees to release, hold harmless and indemnify Company from and against any and all claims arising or incurred as a result of, or in connection with Corporation's use of the Premises. Corporation hereby accepts and voluntarily incurs and assumes the risk of any injuries, damages, or harm, including, without limitation, to Personal Property (for purposes of this License "Personal Property" shall include, without limitation, computers, equipment, devices, vehicles, electronics, software, sensors, data in any form, documents and all other forms of personal property in or about the Premises) that results from Corporation's or its Authorized User's use of the Premises, except to the extent caused by the willful misconduct of Company, its employees, officers, agents or insurers ("Released Parties"). Corporation waives all claims against any of the Released Parties for any injuries, damages, liabilities, losses or claims that result, directly or indirectly, from Corporation's or Authorized User's use of the Premises, except to the extent caused by the willful misconduct of the Released Parties.

10. **Indemnification by Corporation**. Corporation shall protect, defend, indemnify and hold Company, its agents, employees and contractors harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and reasonable and documented expenses at the trial and appellate levels) to the extent (a) arising out of or relating to Corporation's use of the Premises or (b) arising out of or relating to Corporation's Property. This Section 8 shall survive the expiration or earlier termination of this License.

11. **Corporation Insurance**. At all times during the Term, Corporation shall maintain the insurance coverage specifically described in Exhibit A attached hereto and incorporated herein. Upon request by Company, Corporation shall promptly and within forty-eight (48) hours of such request provide Company certificates evidencing such insurance coverage ("Certificate of Insurance") Failure to provide Certificate of Insurance as required herein shall be deemed an event of Default pursuant to Section 6.

12. **Parking**. Subject to the Rules and Regulations, the Corporation shall have the exclusive right to use not less than ____________ parking spaces in front of the Building and shall be entitled to mark or sign such spaces as patients of the Fishers Health Department.

13. **Utilities, Maintenance, Repair & CAM**. Corporation shall obtain and be responsible for the costs of all utilities and services required for Corporation's Permitted Use, including, without limitation, electricity, water, sanitary sewer, natural gas and janitorial services (individually or collectively, the "Services"). Moreover, Company, at its sole cost and expense, shall maintain the Premises in good condition and repair and shall be responsible for providing all routine and capital maintenance and repairs.

During the Term and for one (1) month thereafter, Corporation shall reimburse Company for its proportionate share (calculated as follows: ((a) Original Premises: 1835/total sq. ft. of the building; and (b) 2,630/ total sq. ft. of the building) x Expenses (as defined herein)) of all Expenses. For purpose of the Agreement, "Expenses" shall mean real estate taxes, insurance and deductibles, snow removal, lawn services, and general repair and maintenance; provided, however, Expenses shall not include repairs to the roof or other repairs generally considered capital repairs. Corporation shall reimburse Company on a month-to-month basis, by or before the fifth (5^{th}) day of the month immediately following the month in which such Expenses were incurred.

14. **License for Use**. Corporation hereby acknowledges and agree that this License provides Corporation a license for use of the Premises and does not convey or confer a property right, including, without limitation, a leasehold interest, in the Premises to Corporation.

15. **Governing Law**. This License shall be governed in accordance with the laws of the State of Indiana.

16. **Notices**. Any notice required or permitted to be given under this License or by law shall be deemed to have been given if it is written and delivered in person or by overnight courier or mailed by certified mail, postage prepaid, to the other party.

17. **Partial Invalidity; Complete License**. If any provision of this License is held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect. This License represents the entire License between Company and Corporation covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this License except by a written License executed by Company and Corporation.

[*signatures on following page*]

IN WITNESS WHEREOF, the parties hereto have executed this License as of the day and year first above written.

CORPORATION	Company
Fishers Town Hall Building Corporation	Rebar Techway, LLC
___________________________	__________________________
Jay Bangert, President	Shelby Bowen, General Manager

EXHIBIT A – REQUIRED INSURANCE

Prior to accessing the Premises and throughout the Term, City shall maintain the following types of insurance, in the amounts specified below:

- Liability Insurance. Commercial General Liability Insurance, ISO Form CG 00 01, or its equivalent covering City's use of or occupancy at the Premises against claims for bodily injury or death or property damage, which insurance shall be primary and non-contributory and shall provide coverage on an occurrence basis with a per occurrence limit of not less than $2,000,000 for each policy year, which limit may be satisfied by any combination of primary and excess or umbrella per occurrence policies.
- Property Insurance. Special Cause of Loss Form Insurance, ISO Form CP-10-30, in the amount of the full replacement cost of City's Personal Property, which insurance shall waive coinsurance limitations.
- Worker's Compensation and Employer's Liability Insurance. Worker's Compensation insurance in amounts required by applicable laws.

All insurance required to be carried by City shall (i) be issued by one or more insurance companies, licensed to do business in the State in which the Premises is located and having an AM Best's rating of A IX or better, and (ii) provide that said insurance shall not be materially changed, canceled or permitted to lapse on less than thirty (30) days' prior written notice to Company; and (iii) name Company as an additional insured.

EXHIBIT B - RULES AND REGULATIONS

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or used for any purpose other than ingress and egress.

2. The sashes, sash doors, windows, and doors that reflect or admit light and air into halls, passageways or other public places in the Building shall not be covered or obstructed by City.

3. The sinks and toilets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the City who, or whose Authorized User caused the same.

4. The Building shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the Permitted Use. No City shall occupy or permit any portion of the Building to be occupied as an office for the manufacture or sale of liquor, narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or a dance, exercise or music studio. The Building shall not be used for lodging or sleeping or for any immoral or illegal purpose.

5. No City shall make, or permit to be made any unseemly, excessive or disturbing displays, including written displays, noises or disturb or interfere with occupants of the Building, including those occupying co-working spaces, or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No City shall throw anything out of doors, windows or down the passageways.

6. No City, Authorized User or assignee nor any of its servants, employees, agents, visitors or licensees, shall at any time bring or keep upon the Premises any flammable, combustible or explosive fluid, chemical or substance.

7. No City shall overload the floors of the Premises. All damage to the floor, structure or foundation of the Building due to improper positioning or storage items or materials by a City shall be repaired by Company at the sole cost and expense of City, who shall reimburse Company immediately therefor upon demand. All removals or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must take place during the hours that Company shall reasonably determines from time to time. The moving of safes or other fixtures or bulky matter of any kind must be done upon previous notice to Company and under Company's supervision, and the persons employed by any City for such work must be acceptable to Company. Company reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles that violate any of these Rules and Regulations. Company reserves the right to prescribe the weight and position of all safes, which must be placed upon supports approved by Company to distribute the weight.

8. Company shall have the right to prohibit any advertising, posting, sign or other display by any City that, in Company's sole discretion, tends to impair the reputation of the Building or its desirability as an office location, and upon written notice from Company any City shall refrain from or discontinue such advertising or posting.

9. City shall be responsible for all persons entering the Building at City's invitation, express or implied. Company shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of an invasion, mob riot, public excitement or other circumstances rendering such action advisable in Company's opinion, Company reserves the right without any abatement of rent to require all persons to vacate the Building and to prevent access to the Building during the continuance of the same for the safety of the City and the protection of the Building and the property in the Building.

10. Canvassing, soliciting and peddling in the Building are prohibited, and each City shall report and otherwise cooperate to prevent the same.

11. The Building is a smoke-free Building. Smoking is strictly prohibited within the Building. Smoking shall only be allowed in areas designated as a smoking area by Company. City and its employees, representatives, contractors or invitees shall not smoke within the Building or throw cigar or cigarette butts or other substances or litter of any kind in or about the Building, except in receptacles for that purpose. Company may, at its sole discretion, impose a charge rent of $50.00 per violation by City or any of its employees, representatives, contractors or invitees, of this smoking policy.

12. City will ensure that all doors are securely locked, and water faucets, electric lights and electric machinery are turned off before leaving the Building.

13. Parking spaces associated with the Building are intended for the exclusive use of passenger automobiles. Except for intermittent deliveries, no vehicles other than passenger automobiles may be parked in a parking space without the express written permission of Company. City, its employees, customers, invitees and guests shall, when using the parking facilities in and around the Building, observe and obey all signs regarding fire lanes and no-parking and driving speed zones and designated handicapped and visitor spaces, and when parking always park between the designated lines. Company reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a no-parking zone or in a designated handicapped area, and any vehicle which is left in any parking lot in violation of the foregoing regulation. All vehicles shall be parked at the sole risk of the owner, and Company assumes no responsibility for any damage to or loss of vehicles.

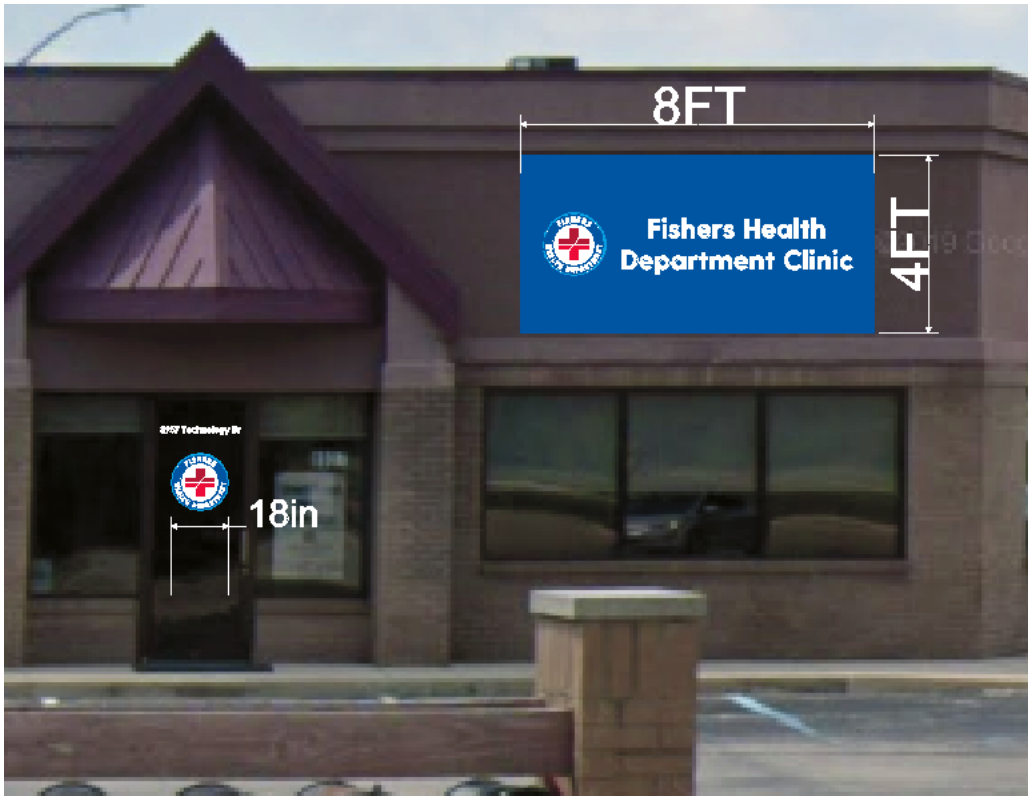
14. It is Company's desire to maintain in the Building and Common Area the highest standard of dignity and good taste consistent with comfort and convenience for City. Any action or condition not meeting this high standard should be reported directly to Company. Company reserves the right to make such other and further rules and regulations as in its judgment may

from time to time be necessary for the safety, care and cleanliness of the Building and Common Area, and for the preservation of good order therein.

EXHIBIT C
LANDLORD IMPROVEMENTS

- Build out all new ceiling throughout, including in the back “garage area,” and including putting in brand new tiles the offices that already have drop ceilings.
- New lighting throughout, new HVAC throughout, including in the back “garage area.”
- Removing the “bolt-a-block” product from the back corner area, leaving it open.
- Removing the rolling garage door and replacing with a glass storefront finish.
- Removing the steel entry door in the garage and replacing with a glass door.

EXHIBIT D--PERMISSIBLE SIGNAGE



ASM GLOBAL

FISHERS, IN MULT-PURPOSE EVENT CENTER

PRE-OPENING BUDGET

MARCH 1, 2023 TO DECEMBER 31, 2024

September 15, 2023

Draft v2

THIS REPORT IS BASED ON PROJECTIONS, ESTIMATES, ASSUMPTIONS AND INFORMATION FROM SUPPLEMENTAL RESEARCH. CHANGES IN THE MARKET, ITS ENVIRONMENT AND THE NATIONAL MARKETPLACE, ALONG WITH ASSUMPTIONS THAT DO NOT MATERIALIZE COULD DICTATE VARIATIONS IN THE ESTIMATED RESULTS. THEREFORE, ACTUAL RESULTS ACHIEVED MAY VARY FROM THE ESTIMATES.

ASM GLOBAL
FISHERS, IN MULT-PURPOSE EVENT CENTER
PRE-OPENING BUDGET
FOR PERIOD TO FACILITY OPENING - (MARCH 1, 2023 - DECEMBER 31, 2024)

NOT INCLUSIVE OF FF&E PURCHASES

	PREOPENING GRAND TOTAL	Period Ending 12/31/23	Period Ending 12/31/24
PERSONNEL	2,295,970	300,107	1,995,863
WEBSITE DEVELOPMENT & MAINTENANCE	18,500	-	18,500
BOOKING SOFTWARE (INFOR)	25,000	-	25,000
ADVERTISING & MARKETING	143,750	31,250	112,500
EMERGENCY REPONSE / BUSINESS CONTINUITY PLAN	30,000	30,000	-
LEGAL FEES	23,000	5,000	18,000
TELEPHONE	22,200	3,150	19,050
OFFICE SUPPLIES	14,000	2,000	12,000
COMPUTER EXPENSE/SOFTWARE	11,700	1,575	10,125
PAYROLL/HUMAN CAPITAL MANAGEMENT (WORKDAY)	55,000	-	55,000
TRAVEL & ENT./ MTGS. & CONV.	10,000	2,500	7,500
LICENSES & FEES	30,000	5,000	25,000
RELOCATION EXPENSES	32,790	22,790	10,000
POSTAGE EXPENSE	6,000	-	6,000
WORKERS COMP INSURANCE	37,195	4,862	32,333
PRINTING & STATIONERY	4,000	1,000	3,000
BUILDING OPS AND PATRON SERVICES SUPPLIES	40,000	-	40,000
BANK FEES AND CREDIT CARD PROCESSING	6,000	-	6,000
DUES & SUBSCRIPTIONS	16,000	1,000	15,000
TRAINING - FT STAFF	15,000	-	15,000
REGIONAL/CORPORATE SUPPORT TRAVEL	30,856	5,320	25,536
ASM GLOBAL MANAGEMENT FEES	145,000	55,000	90,000
TRAINING EXPENSE - PT STAFF	15,000	-	15,000
GRAND OPENING WEEK EXPENSES	862,000	-	862,000
TIME AND ATTENDANCE SOFTWARE	4,000	-	4,000
EVENT SUPPLIES	12,500	-	12,500
JANITORIAL SUPPLIES	12,500	-	12,500
FINAL CONSTRUCTION CLEAN	20,000	-	20,000
CONTRACTED SERVICES (WASTE, PEST CONTROL)	10,000	-	10,000
WATER	6,000	-	6,000
GAS	20,000	-	20,000
ELECTRIC	40,000	-	40,000
ACCOUNTING SOFTWARE	20,000	-	20,000
F & B START-UP COSTS	35,000	-	35,000
OFFICE RENT	-	-	-
ALTUM MAINTENANCE SOFTWARE PROGRAM	7,500	-	7,500
TOTAL EXPENSES	**4,076,461**	**470,554**	**3,605,907**
	-	-	-

ASM GLOBAL
FISHERS, IN MULT-PURPOSE EVENT CENTER
PRE-OPENING BUDGET
STAFFING TIMELINE

	HIRE MONTH	FTE
EXECUTIVE		
General Manager	Jun-23	1.00
Director, Booking	Nov-23	1.00
HR Manager	Jul-23	1.00
Manager, IT	Sep-24	1.00
		4.00
FINANCE AND TICKETING		
Director, Finance & Accounting	Jan-24	1.00
Accounting Manager	Sep-24	1.00
Accounting Clerk/AP	Sep-24	1.00
Box Office Manager	Jan-24	1.00
F & B Accountant	Sep-24	1.00
		5.00
Sales & Marketing		
Director, Marketing & Communications	Jan-24	1.00
Manager, Social Media & Digital Marketing	Aug-24	1.00
Director, Sales	Mar-24	1.00
		3.00
EVENT SERVICES		
Manager, Events	Aug-24	1.00
Manager, Guest Services & Security	Aug-24	1.00
		2.00
OPERATIONS		
AGM / Director, Operations	Jul-23	1.00
Housekeeping Manager	Aug-24	1.00
Engineer	Aug-24	1.00
		3.00
FOOD & BEVERAGE		
F&B Director	Nov-23	1.00
F&B Manager (Concessions)	May-24	1.00
Head Chef	May-24	1.00
Director of Premium	Mar-24	1.00
Purchasing Warehouse Manager	Jun-24	1.00
Assistant F&B Manager	Jul-24	1.00
Assistant Premium Manager	Jul-24	1.00
Sous Chef	Jul-24	1.00
		8.00
Total		25.00

AMENDED AND RESTATED PRE-OPENING CONSULTING AND MANAGEMENT AGREEMENT

BETWEEN

City of Fishers, Indiana

AND

ASM Global Arena Management, LLC

Dated as of ___________, 2023

AMENDED AND RESTATED PRE-OPENING CONSULTING AND MANAGEMENT AGREEMENT

THIS AMENDED AND RESTATE PRE-OPENING CONSULTING AND MANAGEMENT AGREEMENT (this "Agreement") dated as of the ____ day of December, 2023 (the "Effective Date"), by the City of Fishers, Indiana, One Municipal Drive, Fishers, Indiana 46038, a municipal corporation organized and existing pursuant to the laws of the State of Indiana (the "City") and ASM Global Arena Management, LLC, a Delaware limited liability company, whose current address is 800 Olympic Boulevard, 3rd Floor, Los Angeles, CA 90015 ("ASM Global", and with the City, the "Parties" and individually each a "Party").

RECITALS

WHEREAS, on or about August 1, 2023, the Parties entered into that certain Pre-Opening And Management Agreement pursuant to which the City engaged ASM Global to provide pre-opening consulting and management services for the Facility (the "Original Agreement");

WHREEAS, since that time, ASM and the City have worked closely on a myriad of deliverables concerning the Facility, including, without limitation, construction timelines, budgets, event scheduling and potential end users;

WHERAS, the City and ASM have also identified several areas of potential cost-savings regarding the Facility, and have worked together to achieve cost savings, where possible, including, without limitation, how and when the FF&E Inventory is procured for the Facility;

WHEREAS, the City and ASM now desire to amend the Original Agreement to provide that ASM will be responsible for procuring certain FF&E for the Event Center;

WHEREAS, the City intends to work with ASM Global to ensure high quality pre-opening and management services that enhance the use and enjoyment of the Facility; and

WHEREAS, the City and ASM Global intend that this Agreement constitute, and this Agreement shall constitute, a "Qualified Management Agreement" in compliance with applicable requirements of section 141 of the Internal Revenue Code, as amended, and Rev. Proc. 2017-13 (IRB 2017-6), and shall be interpreted in accordance with such requirements.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"ADA" – the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation.

"AGI" – Operating Revenues realized from Events and other operations, including the Facility's portion of event revenues.

"Affiliate" – a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests which represent more than 40% of the voting power in the controlled Person.

"Agreement" – this Pre-Opening Consulting and Management Agreement dated to be effective as of the Effective Date, as this Agreement may be further amended, supplemented or modified in accordance with the terms hereof.

"Approved Budget" – any budget submitted by ASM Global and approved by the City pursuant to Section 5 hereof.

"ASM Global" – as defined in the first paragraph of this Agreement, together with its permitted successors and assigns.

"ASM Global Fee" – as defined in Section 4.3 hereof.

"Bonus" – annual compensation paid to designated ASM Global employees that is based upon the performance of the Facility, whether discretionary or based on a pre-determined formula (and excluding, for the avoidance of doubt, (1) base salary, (2) participation in employee benefit plans and programs and (3) relocation and severance payments).

"Budget Review Standard" - a standard to be mutually agreed to by ASM Global and the City establishing when budget line items can be reallocated to other budget items.

"CERCLA" – the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act.

"Capital Equipment" – any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of $5,000 or more or an expected useful life of more than one year.

"Capital Improvements" – any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than $5,000 per project.

"City" – as defined in the first paragraph of this Agreement, together with its permitted successors and assigns.

"City Reserved Right" – the reserved right of the City to enter into ongoing licenses, occupancy agreements, or rental agreements for the Facility in its sole discretion.

"Code" – the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations proposed or in effect with respect thereto.

"Commercial Rights"—sponsorship, advertising, naming, pouring and any similar rights that can be sold, leased or licensed to third parties except for the Indy Fuel Rights.

"Community Events" – those events described in Section 13.1(b) hereof.

"Confidential Information" – as defined in Section 2.6(iii) hereof.

"Consulting Services" – as defined in Section 2.5(a) hereof.

"Contract Administrator" – the administrative official(s) of the City as from time to time appointed by the City, or such individual person as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement. The initial Contract Administrator on behalf of the City is each of Elliott Hultgren and Jennifer Messer.

"Corporation" – as defined in the Recitals of this Agreement.

"Corrective Action Plan" – as defined in Section 5.12.

"CPI" – the "Consumer Price Index" (Annual Average) for all urban consumers, U.S. city average, prepared by the Bureau of Labor Statistics, United States Department of Labor, or its successor or, if the index is discontinued, an equivalent index reported by a federal authority.

"Direct or Indirect Profit" – any monetary compensation, other than for reasonable and actual costs of providing goods, services, supplies, products or equipment (including carrying costs of facilities), whether in the form of a payment, credit, rebate, refund, kick-back, revenue sharing, royalty, profit participation, equity participation, barter consideration in the form of goods or services, or any other device, however denominated, and whether similar or dissimilar to any of the foregoing, received by ASM Global and/or any of its Affiliates, directly or indirectly, in any calendar year from or on account of the Net Operating Profit of the Facility.

"Effective Date" – as defined in the first paragraph of this Agreement.

"Event Expenses – any and all expenses incurred or payments made by ASM Global in connection with the occurrence of events at the Facility, including but not limited to costs for event staffing including ushers, ticket takers, security and other event staff, and costs relating to setup and cleanup.

"Events" – all events occurring at the Facility except for (a) Indy Fuel Events; and (b) Community Events.

"Facility" – the Fishers Event Center and adjacent pedestrian mall to be located on the Facility Site.

"Facility Fee" – a fee assessed on the sale of tickets for the benefit of the Facility, presently in an amount equal to Three and no/100 Dollars ($3.00) for every ticket that is sold for an Event or Indy Fuel Event (if ASM Global is selling the tickets). The City shall be entitled to waive the Facility Fee for Community Events.

"Facility Site" - the area depicted in "Exhibit F" attached hereto and incorporated herein.

"Fiscal Year" – a one year period beginning January 1st and ending December 31st; provided, however, the first Fiscal Year will begin on the date determined by the City and ASM Global and continue until December 31st of that calendar year.

"Food and Beverage Services" – all catering and concession services, including the sale of beverages including alcoholic beverages at the Facility.

"GAAP" - those conventions, rules, procedures and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States. If the City and ASM Global cannot agree on what constitutes GAAP, then the accounting firm then most recently engaged to prepare the annual financial report of the City shall make the determination on the request of either Party, unless such accounting firm is also the auditing firm for ASM Global, in which case a different nationally recognized accounting firm shall make such determination.

"Goodwill Obligation" – with respect to the Facility, the obligation not to contract with or otherwise enter into an agreement with a Person to hold events or provide services that (a) reasonably may be considered immoral, deceptive or obscene, or (b) injure or damage the reputation and goodwill of the City.

"Indy Fuel" - Indiana Hockey Club, LLC, an Indiana limited liability company, or its permitted successors or assigns.

"Indy Fuel Events" – Indy Fuel's hockey events, including set-up, pre-game activities, pre-season/regular season/post-season/playoff games and intermissions, and post-game activities as specifically described in the Indy Fuel License.

"Indy Fuel License" – that certain May 23, 2023, Event Center License Agreement by and between the Corporation and the Indiana Hockey Club, LLC.

"Indy Fuel Rights" – those certain rights allocated to Indy Fuel and attached hereto as Exhibit "H".

"Initial Contribution" - as defined in Section 4.4.

"Laws" – all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions, and summary of covenants included as Exhibit "I" ("Facility Covenants") concerning the use of the Facility and the Facility Site, as amended.

"Losses" – any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees); provided, however, such term shall not include consequential or punitive damages.

"Management Term" – the term of this Agreement, as defined in Section 3 hereof.

"Material Contract" – any contract (a) resulting in an Operating Expense greater than $300,000.00 (excluding reimbursed end-of-show costs) (b) constituting a lease agreement or sublease agreement for real property; (c) with a concessionaire or security provider for a term in excess of one (1) month; (d) between ASM Global and any Affiliate; or (e) that is a license (for occupancy), other form of occupancy agreement, or rental agreement containing a term exceeding a duration of six (6) months.

"Minimum Event Amount" – as defined in Section 5.11(i).

"Minimum Event Failure" – as defined in Section 5.11(i).

"Minimum Event Failure Notice" – as defined in Section 5.11(i).

"Net Operating Loss/Profit" – with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.

"Operating Expenses" – commercially reasonable expenses paid or incurred by ASM Global in connection with the performance of its obligations under this Agreement, including, but not limited to: (i) all expenses incurred by ASM Global in the operation of the Facility at any time during the Management Term; (ii) all Facility personnel costs incurred by ASM Global or any of its Affiliates; (iii) all costs of ASM Global corporate personnel to the extent engaged solely in activities solely for the benefit of the Facility; (iv) the reasonable and equitable *per diem* charge for personnel of ASM Global or any of its Affiliates assigned to special projects for the Facility; (v) all costs incurred by ASM Global or any of its Affiliates in performing its services under this Agreement, including without limitation air and ground transportation, meals, lodging, taxis, gratuities, document reproduction, printing, promotional materials, stationery, postage, long distance telephone calls and facsimiles; (vi) payments made or incurred by ASM Global or any of its Affiliates, or their respective employees to any third party for goods and services in the ordinary course of business in the operation of the Facility; (vii) insurance premiums and insurance broker fees, insurance retentions/deductibles, insurance adjusting fees and related expenses, and the costs of procuring, administering and maintaining the insurance referred to in Section 8.2; (viii) the cost of compliance with the Laws, and legal and accounting expenses (including, without limitation, audits) and attorneys' fees and costs (including insurance retentions/deductibles); and (ix) all taxes imposed by any governmental entity against any reimbursements payable to ASM Global under this Agreement for expenses incurred for the City's account, including the other Operating Expenses listed in this definition. Notwithstanding the foregoing, any expense incurred and paid by ASM Global that is not specifically included in an Approved Budget, shall be preapproved in writing by the City to qualify as an Operating Expense.

Moreover, Operating Expenses shall exclude the following, which expenses City shall be solely responsible for: (A) property taxes or similar charges levied on the Facility; (B) the cost of any Capital Equipment and Capital Improvements; (C) any reserve for (x) the replacement of furniture, fixtures and equipment or (y) any future capital expenditures; (D) principal, interest or any other amounts payable by City in connection with any financing secured by or in connection with the Facility; (E) depreciation and amortization expenses (determined in accordance with

GAAP); (F) emergency repairs, as set forth in Section 5.10; (G) pre-existing obligations, including legal liabilities, pending or future liabilities that arose from claims occurring prior to the Effective Date; (H) costs and expenses incurred by City for legal and accounting services in the ordinary course of business; (I) costs and expenses associated with any improvement, alteration, addition or change to the Facility; (J) the ASM Global Fee; and (K) any other costs and expenses of City that are not directly related to ASM Global's operation of the Facility. Notwithstanding anything herein to the contrary, if included within an Approved Budget or upon the written request or written approval of the City if any Affiliate of ASM Global provides certain corporate overhead-type services on behalf of ASM Global and its Affiliates, including without limitation services related to information technology (i.e., IT), finance, legal, payroll or human resources, ASM Global shall be permitted to include within the definition of "Operating Expenses" an expense equal to the reasonable cost of such expenses incurred by ASM Global or its Affiliates. Except to the extent contrary to the express terms of such definition, Operating Expenses shall be determined in accordance with GAAP.

"Operating Revenues" – except for those sources of revenue resulting from the Indy Fuel Rights and the Facility Fee, (a) any and all revenues and income of every kind or nature derived directly or indirectly from owning, operating, managing or promoting the Facility, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising and sponsorship sales and renewals (including without limitation revenues from the sale of naming rights), event sponsorship revenues, equipment rentals, utility revenues, box office revenues, ticket surcharges (if any), ticket service fees, parking revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues owed by the concessionaire to the Facility shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues owed by such contractors to the Facility shall be included as Operating Revenues), and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. For the sake of clarity, the parties acknowledge that revenues from the sale of tickets for events at the Facility are not Operating Revenues, but are instead revenues of the promoter and/or performer of each such event; to the extent that ASM Global collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue shall be the source of funds from which ASM Global collects the rental charges and other event/Facility reimbursements due by such promoter and/or performer for use of the Facility, which such charges and reimbursements are Operating Revenues hereunder.

"Operational Year" – a year during which the Facility is operational.

"Person" – any individual, general partnership, limited partnership, limited liability partnership, partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, county, district, authority, municipality, political subdivision or other entity of the State or United States of America, or association, and the successors and assigns of any of the foregoing and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and vice versa.

"Pre-Existing Agreements" – the Indy Fuel License.

"Pre-Opening Budget" – as defined in Section 2.5(g)(i) hereof.

"Pre-Opening Consulting Period" – the period commencing on the Effective Date and ending upon the opening of the Facility to the public.

"Pre-Opening Fund" – an interest-bearing account in the name of ASM Global established with an Indiana banking institution mutually agreed upon by the parties and as further defined in Section 2.5(g)(ii) hereof; the interest earned on such account accruing to the benefit of the City and used for pre-opening expenses and/or FF&E Inventory as directed in writing by the Contract Administrator; provided ASM Global shall be authorized to transfer such funds to an operating account for the Facility to ensure adequate funding and liquidity of operations.

"Qualified Management Agreement" – an agreement that complies with the applicable requirements of section 141 of the Code and Rev. Proc. 2017-13 (IRB 2017-6).

"Related Party" – any Person who is a "related person" within the meaning of Section 144(a)(3) of the Code.

"Renewal Contribution" – as defined in Section 4.4.

"Renewal Term" – the additional period for which this Agreement may be renewed in accordance with Section 3 hereof beyond the initial Management Term.

"Scheduling Goals" – the Scheduling Goals submitted by ASM Global to the City in response to the RFP and attached hereto as "Exhibit G".

"State" – the State of Indiana.

"Tax-Exempt Bonds" – as defined in Section 2.8.

"Third Party Report" – as defined in Section 5.12(i).

"Third Party Review" – as defined in Section 5.12(i).

"Ticketing Surcharge" - the Facility's portion of any fees imposed by the ticketing provider for Events, which Ticketing Surcharge shall not be interpreted to include any amount retained by the promoter or sales or distribution company.

2. Engagement of ASM Global; Scope of Services.

2.1 Engagement.

(a) General Scope. The City hereby engages ASM Global to provide the Consulting Services for the Facility during the Pre-Opening Consulting Period and, subject to the City Reserved Right and Indy Fuel Rights, promote, operate and manage the Facility during the Management Term and the Renewal Term, if any, and ASM Global hereby accepts such engagement, all upon the terms and conditions hereinafter set forth.

(b) Manager of the Facility. Subject to the terms of this Agreement, ASM

Global shall be the sole and exclusive manager of the Facility to manage, operate and promote the Facility during the Management Term and the Renewal Term, if any; provided, however, the City reserves the right to concurrently promote and advertise the Facility. In such capacity, ASM Global shall have exclusive authority over the day-to-day operation of the Facility and all activities therein; provided that ASM Global shall (i) follow (y) the Laws, and (z) all policies and guidelines of the City hereafter established or modified by the City that the City notifies ASM Global in writing are applicable to the Facility (including without limitation any methodology pertaining to the allocation of any costs and expenses by the City to the Facility as permitted herein) and (ii) operate the Facility in compliance with this Agreement; provided further that to the extent that such policies or guidelines hereafter established or modified by the City adversely affect revenues or expenses at the Facility, then and in that event, the ASM Global Fee set forth in Section 4.3 below shall be appropriately adjusted, subject to Section 2.7, so that it reflects the additional costs or reduced revenues resulting from such established or modified policies or guidelines such that ASM Global is compensated from the ASM Global Fee in the same fashion as herein set forth had such policies or guidelines not been implemented.

(c) Approval of the City. To the extent that the approval of the City is required under the terms of this Agreement, the approval of the Contract Administrator shall constitute the approval of the City, except to the extent the approval of another Party is expressly required by the terms of this Agreement.

(d) City Reserved Right. To the extent the City exercises the City Reserved Right and such exercise directly results in reduced Operating Revenues, the City and ASM Global shall, in good faith, negotiate an adjustment to the ASM Global Fee set forth in Section 4.3 below, subject to Section 2.7, so that it reflects the reduced Operating Revenues resulting from the City's exercise of the City Reserved Right such that ASM Global is compensated from the ASM Global Fee in the same fashion as herein set forth had such City Reserved Right not been exercised.

2.2 Scope of Services – Generally.

ASM Global shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Facility in a manner consistent with ASM Global's policies and procedures and the operations of other similar first-class facilities.

2.3 Specific Services.

Without limiting the generality of the foregoing, and subject to the terms of this Agreement and the Pre-Existing Agreements, ASM Global shall have, without (except as otherwise expressly noted below) any prior approval by the City, sole right and authority to:

(a) employ, supervise and direct employees and personnel consistent with the provisions of this Agreement; provided, however, the City shall have the right to preapprove the hire of any Person serving in the position of General Manager for the Facility;

(b) negotiate, execute in ASM Global's name as agent for the City, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Facility, provided that (i) if any such license, agreement, commitment or contract other than those involving the license or rental of the Facility in the ordinary course has a term that extends beyond the remaining Management Term or Renewal Term, as the case may be, such license, agreement, commitment or contract shall be approved and executed by the City (which approval shall not be unreasonably withheld), and (ii) if any such license, occupancy agreement, or rental agreement constitutes a Material Contract, such agreement, commitment, or contract shall be approved in writing by the City. In connection with any licenses, agreements, commitments or contracts for the Facility, ASM Global will use best efforts to include in such documents the right of ASM Global to assign all of its rights and obligations under such licenses, agreements, commitments and contracts to the City (or to any successor management company retained by the City) upon the expiration or termination of this Agreement, and upon such expiration or termination, such assignment and assumption shall automatically occur as provided in Section 12.2(iii) hereof;

(c) maintain the Facility in the condition received, reasonable wear and tear excepted; provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

(d) rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facility; provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 5.8;

(e) in consultation with the City, establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facility to be negotiated by ASM Global in the course of its management, operation and promotion of the Facility. All rates charged by ASM Global for the use, operation or services related to the Facility shall be (i) expressly approved by City, or (ii) the rates and a general description of the methodology for setting such rates shall be reviewed and approved by the City during the annual budget review process as further described in Section 5.3, or (iii) the rates charged shall be reasonably and customary as specifically determined by, or negotiated with, an independent third party with experience in determining such rates based upon facilities similar to the Facility;

(f) pay, when due, on behalf of the City, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;

(g) after consultation with the Contract Administrator or her or his designee, institute as agent for the City and at the reasonable expense of the City, with counsel selected by ASM Global, such legal actions or proceedings as ASM Global shall deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due to the City or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

(h) maintain a master set of all booking records and schedules for the Facility;

(i) provide day-to-day administrative services in support of its management activities pursuant to the Approved Budget and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services;

(j) engage in such advertising, solicitation, and promotional activities as ASM Global deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Facility). ASM Global shall work with the City, its local convention and tourism bureau(s) to market the Facility for conventions, trade shows and public entertainment shows. In connection with its activities under this Agreement, including without limitation advertising relating to the Facility, ASM Global shall be permitted to use those marks, terms, and logos provided to ASM Global by the City in its advertising;

(k) exclusively provide all Food and Beverage Services;

(l) exclusively manage the sale and use of all Commercial Rights; and

(m) promote the Facility and seek and schedule agreements with performers and promoters that (i) are within the Approved Budget (except for those deemed "Outlying Performance Agreements" within the terms of the Approved Budget); (ii) meet or exceed the Scheduling Goals; and (iii) satisfy the Goodwill Obligation.

2.4 Right of Entry Reserved.

Representatives of the City designated in writing by the Contract Administrator shall have the right to enter all portions of the Facility to inspect same, to observe the performance of ASM Global of its obligations under this Agreement, and upon reasonable advance notice to ASM Global and at appropriate times, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall not interfere with the activities of ASM Global hereunder, and the City's actions shall be conducted such that disruption of ASM Global's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

2.5 Consulting Services.

(a) During the Pre-Opening Consulting Period, ASM Global will provide to the City (i) the pre-opening operational consulting and management services described in Exhibit "A" hereto, (ii) the pre-opening design, development and construction consulting services described in Exhibit "B" hereto and (iii) the consulting services relating to furniture, fixtures and equipment for the Facility described in Exhibit "C" hereto (collectively, the "Consulting Services").

(b) In rendering the Consulting Services, ASM Global will work with representatives, consultants and agents of the City as set forth in Exhibits "A", "B" and "C" hereto (including, without limitation, the architectural and engineering firm selected by the City for the design and construction of the Facility). ASM Global will make appropriate ASM Global personnel available to such firm on a reasonable basis from time to time to consult with and provide periodic reports regarding the performance of the Consulting Services.

(c) In rendering the Consulting Services, ASM Global expects to utilize its existing personnel; it is acknowledged that (unless ASM Global determines otherwise) no ASM Global personnel will be located full-time at the project site; ASM Global personnel will from time to time visit the site and participate in meetings with other agents, representatives and consultants of the City as necessary or appropriate in connection with the performance of the Consulting Services.

(d) As specified in Exhibit "A" hereto, ASM Global will, among other things, be authorized to execute in its name as agent for the City booking commitments, tenant/user agreements and licenses for use of the Facility following its opening to the public.

(e) The City acknowledges that ASM Global is not an architect, an engineer, or a legal advisor, and its consulting services provided under this Agreement with respect to the Facility are based on its operational knowledge and should not be construed as a representation of architectural or engineering practices or a legal representation or interpretation of any Laws, including, but not limited to, the ADA. Neither the City nor any of their respective agents, consultants or representatives will rely upon ASM Global as having architectural, engineering, or legal expertise. Accordingly, notwithstanding anything to the contrary contained herein, ASM Global shall have no liability to the City with respect to architectural, engineering, or legal matters relating to the foregoing.

(f) ASM Global personnel assigned by ASM Global to perform the Consulting Services shall be available on a reasonable basis in order to perform the Consulting Services.

(g) (i) ASM Global has submitted to the City, for the City's approval, a pre-opening operating budget (the "Pre-Opening Budget"), a current draft of which is attached as Exhibit "D". The City shall review such proposed Pre-Opening Budget and shall submit any comments to ASM Global as promptly as possible so that the Pre-Opening Budget can be finalized, approved and funded by the City in the amount and on the deposit dates included therein. ASM Global shall be entitled from time to time to revise and update such Pre-Opening Budget to reflect changed circumstances, provided that, prior to effectiveness, any revised Pre-Opening Budget shall require the re-approval of the Contract Administrator. During the Pre-Opening Consulting Period, ASM Global's aggregate expenditures (subject to Budget Review Standard, when taken as a whole relative to the total Pre-Opening Budget and not on a per line-item basis) shall not exceed the aggregate Pre-Opening Budget, without the consent of the City. In the event that at any time during the Pre-Opening Consulting Period, ASM Global reasonably believes that its expenditures to date would indicate that it is either (i) likely to exceed budgeted amounts or (ii) there are insufficient funds to perform the Pre-Opening Services, ASM Global shall promptly give notice to the City.

(ii) In order to provide funding for the expenses set forth in the Pre-Opening Budget, the City shall deposit into the Pre-Opening Fund the amount equal to or greater than the amount required on each deposit date as provided in the Pre-Opening Budget. If, at the end of the Pre-Opening Consulting Period, there is a balance in the Pre-Opening Fund in an amount in excess of the then accrued expenses set forth in the Pre-Opening Budget, ASM Global shall disburse such excess to account or accounts established pursuant to Section 5.6 below. If, after the first day of any month, the amount of moneys on deposit in the Pre-Opening Fund shall be insufficient for the payment of (A) pre-opening expenses set forth in the Pre-Opening Budget then due or budgeted to become due during such month or (B) emergency expenditures to which the Contract Administrator has consented, ASM Global may, but shall not be required to, advance the amount of such insufficiency out of its funds. In that event, ASM Global shall immediately notify the City of any such advance, and the City shall promptly, but in no event later than the tenth (10th) day following the receipt such notice, reimburse ASM Global in an amount equal to such advance.

(iii) In addition to the amount required by the Pre-Opening Budget, City shall, by or before **_________**, deposit into the Pre-Opening Fund $4,400,000.00 (the "FF&E Funds") for the sole purpose of acquiring the items of FF&E included in the FF&E Inventory (as hereinafter defined in Exhibit C-1 and listed in Exhibit -2).

2.6 Confidentiality/Nondisclosure.

(a) Confidentiality/Nondisclosure. In connection with the performance of ASM Global's services hereunder, the City acknowledges that ASM Global may provide the City and its employees, agents and subcontractors (including without limitation the architectural and engineering firm retained for the Facility) with Confidential Information (as defined below). In addition, in connection with the performance of the services hereunder, ASM Global may provide to the City and its employees, agents and subcontractors with materials that are protected by copyright of ASM Global.

(i) The City agrees that, subject to applicable law, including, without limitation Ind. Code 5-14-1.5 *et. seq*. ("IN Public Access Act"), it shall keep secret and confidential any and all Confidential Information already disclosed and/or to be disclosed to it by ASM Global, and the City shall not divulge any such information, in whole or in part, to any third party except as is expressly permitted below in this Section 2.6.

(ii) The City shall not use any such information, except for the express purpose of utilizing it in connection with the management of the Facility. The City shall not directly or indirectly disclose or discuss any such information with any Person, other than employees, agents and subcontractors of the City who are directly concerned with the management of the Facility, provided, however, that in the event of any such disclosure to its employees, agents and subcontractors, the City (i) shall first inform ASM Global of its desire to make such disclosure, (ii) if requested by ASM Global, shall require such employees, agents or subcontractors to execute and deliver to ASM Global prior to any disclosure by the City to him/her/it, an agreement acknowledging a receipt of a copy of the provisions of this Section 2.6 and agreeing to be bound by such provisions to the same extent as the City, and (iii) in any event, shall advise in writing all such Persons of the existence of the provisions of this Section 2.6 and of their responsibility to comply with such provisions.

(iii) "Confidential Information" means any and all information disclosed (orally, in writing, by inspection or otherwise) to the City by ASM Global pursuant to this Agreement and any information developed by the City and based upon the information disclosed to the City pursuant to this Agreement. Such information includes, but is not limited to, plans, proposals, and lists of furniture, fixtures and equipment. The restrictions upon confidentiality and use of Confidential Information set forth in this Section 2.6 do not apply to information which the City can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to the City by ASM Global; however, Confidential Information shall not be deemed in the City's possession or publicly known simply because it is embraced by more general information in the City's possession.

(iv) With respect to any information or material which is protected by copyright of ASM Global, no part of such materials may be reproduced, stored in a data base and retrieval system or transmitted in any form or by any means - graphic, electronic, photocopying, recording, mechanical or otherwise - without the prior written permission of ASM Global.

(v) ASM Global acknowledges and agrees that, notwithstanding the provisions of this Section 2.6, the City shall fully and promptly comply with the IN Public Access Act, and, to the extent the IN Public Access Act conflicts with this Section 2.6, the IN Public Access Act shall supersede the terms and requirements hereof. To the extent that the City determines in its reasonable discretion that it must disclose Confidential Information pursuant to the IN Public Access Act, it shall provide ASM Global notice of such disclosure not less than five (5) days prior to disclosing such Confidential Information.

(b) Specific Performance. The City agrees that the provisions of this Section 2.6 are reasonable and necessary to protect the interests of ASM Global and that ASM Global's remedies of law for a breach of any of the provisions of this Section 2.6 will be inadequate and that, in connection with any such breach, ASM Global will be entitled, in addition to any other remedies (whether at law or in equity), to temporary and permanent injunctive relief without the necessity of proving actual damage or immediate or irreparable harm, or of the posting of a bond. Notwithstanding the foregoing, if a court of competent jurisdiction shall determine any of the provisions of this Section 2.6 to be unreasonable, ASM Global agrees to a reaffirmation of such provisions by such court to any limits which such court finds to be reasonable and the City will not assert that such provision shall be eliminated in their entirety by such court.

2.7 Qualified Management Agreement. The City and ASM Global intend that this Agreement shall constitute a "Qualified Management Agreement" in compliance with applicable requirements of Sec. 141 of the Code and Rev. Proc. 2017-13(IRB 2017-6) and shall be interpreted in accordance with such requirements. With respect to any provisions of the Agreement relating to an adjustment to the ASM Global Fee for any reason, the Parties agree that any such adjustment shall be subject to and comply with the requirements of Rev. Proc. 2017-13.

2.8 Tax Covenant. ASM Global agrees that it will operate and manage the Facility in a manner which, to the extent of its rights and authority under this Agreement and as otherwise authorized by the City in writing, preserves the exemption from federal income tax interest on any federally tax-exempt bonds issued by, or on behalf of (including by the Corporation), the City in respect of the Facility (the "Tax-Exempt Bonds") and, in particular, to the extent of its rights and authority under this Agreement and as otherwise authorized by the City in writing, will comply with the requirements of Section 141(b) of the Code, Section 1.141-3 of the Treasury Regulations and Rev. Proc. 2017-13 relating to conditions under which Tax-Exempt Bond financed property will be considered used for an impermissible private use; provided, however that the foregoing shall not require ASM Global to breach any of the provisions of this Agreement unless such action is authorized and such breach is waived in writing by the City and the trustee, if any, for any Tax-Exempt Bonds. In the event that such requirements impose a material adverse financial burden on ASM Global not otherwise contemplated by this Agreement, or if it becomes necessary to amend this Agreement in order to preserve the exemption from federal income tax of interest on the Tax-Exempt Bonds, ASM Global and the City agree to negotiate in good faith and amend this Agreement, including the compensation to be paid to ASM Global, in a manner that maintains or restores to ASM Global the benefits expected to be received by it pursuant to the original terms of this Agreement.

2.9. Contracts with Related Parties. Notwithstanding anything to the contrary herein contained, ASM Global shall not enter into any contracts, as a result of which it, or any of its Affiliates or Related Parties to ASM Global, receives, directly or indirectly, any direct or indirect benefit (other than the receipt by the vendor of the stated contract consideration), including without limitation any rebate, kick-back, revenue sharing, royalty, profit participation, equity participation, barter consideration in the form of goods or services, or any other device, however, denominated and whether similar or dissimilar to any of the foregoing.

3. Term and Renewal.

The Management Term of this Agreement shall commence upon expiration of the Pre-Opening Consulting Period and end sixty (60) months thereafter, unless earlier terminated pursuant to the provisions of this Agreement. The City may, in its sole discretion, extend the Management Term on the same terms and conditions for one or more additional five-year periods (a "Renewal Term"). Notwithstanding the foregoing, the Management Term and any Renewal Term or Renewal Terms may not collectively in event exceed the lesser of (i) thirty (30) years or (ii) eighty-percent (80%) of the weighted average reasonably expected economic life of the Facility. With respect to each Renewal Term, the City shall first obtain an opinion of Bond Counsel that the Management Term, together with any Renewal Terms, comports with the provisions hereof and of Rev. Proc. 2017-13 (IRB 2017-6).

4. ASM Global's Compensation/Capital Contribution.

4.1 Pre-Opening Consulting Period.

As total compensation to ASM Global for its services during the Pre-Opening Consulting Period, the City shall pay ASM Global a fixed fee of (i) $5,000.00, per month during the Initial Construction Period; (ii) $7,500.00, per month for the twelve (12) months immediately prior to the Facility opening to the general public, which amount shall be pro rated with respect to partial months during the Initial Construction Period; and (iii) $91,000.00 paid by or before _________ in one (1) lump sum. The monthly fixed fee described in subsections (i) and (ii) shall be payable prior to the end of each month during the Pre-Opening Consulting Period.

4.2 [*Intentionally Omitted*].

4.3 ASM Global Fee.

(a) Amount. ASM Global shall be entitled to the ASM Global Fee (as defined herein below) with respect to each Fiscal Year during the Management Term or Renewal Term which shall be equal to the amount calculated in accordance with (i) below:

(i) The ASM Global Fee shall be an amount calculated with respect to each Fiscal Year equal to (y) six percent (6%) of AGI of the Facility up to $5 Million and no/100 Dollars, and (z) for each dollar over $5 Million and no/100 Dollars, seven percent (7%) of AGI of the Facility; and

(ii) Thirty percent (30%) of the Ticketing Surcharge

(jointly, the "ASM Global Fee").

The Parties hereto confirm and agree that based upon comparable industry standards the ASM Global Fee constitutes reasonable compensation to ASM Global for its services rendered under this Agreement for the Agreement Term and any Renewal Term. The Parties hereto further confirm and agree that for the avoidance of doubt that the ASM Global Fee is not based upon in any part the Net Operating Loss/Profit of the Facility.

(b) Payment. The ASM Global Fee determined pursuant to Section 4.3(a) above shall be payable to ASM Global within 30 days after the City's receipt of an invoice from ASM Global setting forth the ASM Global Fee owed for the previous Fiscal Year and the calculation therefor. The calculation of and amount of ASM Global Fee shall be subject to audit and review in the manner described in Section 6.1 hereof for a Fiscal Year. If the ASM Global Fee that was paid based on ASM Global's invoice differs from such recalculated amount, ASM Global shall promptly remit to the City any excess amount which was paid, or the City shall promptly pay the shortfall, as the case may be.

4.4 Capital Contribution. ASM Global shall pay to the City a capital contribution of (a) $1,000,000.00 (the "Initial Contribution") on or before September 1, 2023, and (b) $1,000,000.00 (the "Renewal Contribution") at the beginning of the first Renewal Term, each of which shall be a grant to the City, amortized on a straight-line, non-interest-bearing basis over ten (10) years. For the avoidance of doubt, ASM Global shall not be liable for the Renewal Contribution, if this Agreement is not renewed for a Renewal Term. In the event of the expiration or termination of this Agreement for any reason, the City shall pay, or cause any successor management company to pay, to ASM Global unconditionally and without set-off the unamortized amount of the SMG Capital Contribution existing as of such expiration or termination. The payment of any such unamortized amounts shall be made to ASM Global no later than thirty (30) days following the effective date of such expiration or termination.

5. Funding; Budget; Bank Accounts.

5.1 Operating Funds.

Subject to Section 5.2, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the term hereof), the City shall notify ASM Global of the appropriation of all funds necessary to pay all Operating Expenses incurred or accrued in such Fiscal Year. To the extent that Operating Revenues during a calendar quarter period are insufficient, or expected to be insufficient, to cover Operating Expenses plus, with respect to the first quarter of a Fiscal Year, the amount of the projected ASM Global Fee payable pursuant to Section 4.3(b) for the prior Fiscal Year ("Cash Flow Shortfall") for such period, the City shall advance funds to ASM Global as follows. Thirty (30) days prior to the beginning of each calendar quarter during the Management Term and any Renewal Term, ASM Global will submit to the City an invoice for the projected Cash Flow Shortfall for such quarter and the City will transfer such funds to ASM Global within five (5) days after the start of such calendar quarter. Such funds shall be deposited by ASM Global in the operating account(s) established pursuant to Section 5.6 and used to pay Operating Expenses.

5.2 Non-Funding.

(a) The City shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date ASM Global receives written notice (an "Appropriation Deficiency Notice") of the fact that insufficient funds or no funds have been appropriated for the Facility.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the City shall pay all Operating Expenses incurred or committed for (i) prior to ASM Global's receipt of the Appropriation Deficiency Notice; or (ii) that are within the aggregate level of funds previously appropriated. The City shall pay all Operating Expenses incurred or committed for prior to the date ASM Global receives the Appropriation Deficiency Notice. Any failure by the City to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after ASM Global receives an Appropriations Deficiency Notice shall not be a breach of or default under this Agreement by the City. Any failure by ASM Global to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default results from the City's failure to appropriate sufficient funds for the management, operation and promotion of the Facility.

(c) If the City appropriates funds at (or reduces appropriated funds to) a level that, in ASM Global's commercially reasonable judgment, renders the management of the Facility not feasible, including payment of the ASM Global Fee, ASM Global may, at its option, either (i) continue management of the Facility at a reduced level consistent with anticipated Operating Revenues and available funding or (ii) terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3). Following such termination, ASM Global shall have the right to resume management of the Facility at such time as the City shall first restore appropriated funds to reasonable levels.

5.3 Annual Budget.

(a) On or before the June 1st of each year of the Term or any Renewal Term, ASM Global will prepare a proposed annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for Operating Revenues and Operating Expenses, and the projected net operating deficit or surplus. Subject to the Budget Review Standard, ASM Global shall be entitled to reallocate money from one line of the annual budget to another line of such budget; provided, in any event, such reallocation shall not result in a modification of the ASM Global Fee. The Annual Budget shall also include a line-item showing the projected ASM Global Fee, which ASM Global Fee shall be (i) calculated as set forth in Section 4.3, and (b) subject to review pursuant to Sections 4.3(b) and 6.1 hereof.

(b) The annual budget referred to in subparagraph (a) above shall be reviewed and is subject to approval by the City. On or before thirty (30) days prior to the end of each Fiscal Year, the City shall notify ASM Global of any changes to the annual operating budget for the succeeding Fiscal Year proposed by ASM Global and with such changes, if any, as are made by the City on or before thirty (30) days prior to the end of each Fiscal Year, such budget shall be the Approved Budget for the following Fiscal Year, provided that if the annual operating budget as proposed by ASM Global is modified by the City in a manner which, in ASM Global's judgment, could materially interfere, impede or impair the ability of ASM Global to manage, operate or promote the Facility, ASM Global shall have the right to terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3), and provided further that if the approved annual operating budget departs from the budget proposed by ASM Global, ASM Global shall not be construed to have breached its obligations under this Agreement if the alleged breach has been caused by the limitations in the Fiscal Year's budget.

(c) On or prior to (i) August 1st of 2023, ASM Global will submit a budget for (i) pre-opening services, and (ii) management services, to be provided during 2024; such proposed budget shall be treated in the same manner and create the same rights as the annual budget described in subparagraph (b) above, provided that the City shall notify ASM Global of any changes to such proposed budget by September 1, 2023

(d) Beginning in 2024, on or before June 1st of the Management Term or any Renewal Term, ASM Global will submit to the Contract Administrator its proposed operating budget for the upcoming Fiscal Year hereof; such proposed budget shall be treated in the same manner and create the same rights as the annual budget described in subparagraph (b) above, provided that the City shall notify ASM Global of any changes to such proposed budget by July 1st.

(e) The operating budget for each Fiscal Year shall contain a line item for a "Senior Executive Personnel Bonus Pool" from which Bonuses to Senior Executive Personnel (as agreed by the Parties) may be paid by ASM Global subject to terms agreed to by the City and ASM Global; provided, however, that the amount of Bonuses that may be paid in any Fiscal Year during the Management Term shall not exceed a fixed amount to be agreed to by the Parties; provided further, that such fixed amount for each Fiscal Year after the initial Fiscal Year shall be increased by a percentage equal to the amount, if any, by which the CPI for the last month of the prior Fiscal Year exceeds the CPI for the first month of such Fiscal Year. For any partial year, such amount shall be prorated to reflect the actual number of days for the applicable Fiscal Year. The Senior Executive Bonus Pool shall be treated as an Operating Expense.

(f) Notwithstanding the budget review process described in this Section 5.3, the formula used to determine the ASM Global Fee shall not change, except as specifically provided in this Agreement, in which instance, any adjustment to the formula for the ASM Global Fee shall be subject to Section 2.7 for and compliance with the requirements of Rev. Proc. 2017-13.

5.4 Budget Modifications Initiated by ASM Global.

ASM Global may submit to the Contract Administrator at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget for such Fiscal Year. Upon the written approval of the City of such supplemental or revised budget, the Approved Budget for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budget may only be amended as set forth in Section 5.5 below or in the two preceding sentences except that ASM Global shall have the right to amend the Approved Budget as may be necessary or appropriate as the result of the scheduling by ASM Global of additional events or activities at the Facility (and the incurrence of additional Operating Expenses arising from the scheduling of additional events or activities at the Facility) as long as prior to the scheduling of such events or activities, ASM Global had a good faith belief that the projected Net Operating Loss/Profit for the Fiscal Year as set forth in the Approved Budget would not be increased as a result of such additional events or activities. Notwithstanding the foregoing, the formula used to calculate the ASM Global Fee shall not change pursuant to this Section 5.4.

5.5 Budget Modifications Initiated by the City.

In the event that it appears reasonably likely, in any year during the term hereof, that the actual Net Operating Loss/Profit for such Fiscal Year will be larger than projected in the annual operating budget for such Fiscal Year, the City may request from ASM Global a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amount. ASM Global shall forthwith comply with any such expense reduction requested by the City and the approved budget for such Fiscal Year shall be modified accordingly, provided that if the annual operating budget is modified in a manner which, in ASM Global's commercially reasonable judgment, could materially interfere, impede or impair the ability of ASM Global to manage, operate or promote the Facility, ASM Global shall have the right to terminate this

Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3) and provided further that ASM Global shall not be construed to have breached its obligations under this Agreement if such alleged breach has been caused by the limitations in the Fiscal Year's budget and such Net Operating Loss/Profit is not a result of any material default or breach by ASM Global of its obligations specified herein. Notwithstanding the foregoing, the formula used to calculate the ASM Global Fee shall not change pursuant to this Section 5.5.

5.6 Receipts and Disbursements.

ASM Global shall establish and maintain in one or more depositories designated by the City one or more operating, payroll and other bank accounts for the promotion, operation and management of the Facility, with signature authority in such employees of ASM Global as ASM Global shall determine. All Operating Revenues collected by ASM Global from the operation of the Facility shall be deposited into such accounts and Operating Expenses shall be paid by ASM Global from such accounts. All Operating Revenues collected by ASM Global arising from operation of the Facility, including revenues from box office sales (but excluding ticket sales revenues which shall be deposited as set forth in Section 5.7 below), facility or equipment rentals, utility rental agreements, food and beverage concessions, or any other source, are the sole property of the City, held in trust by ASM Global for the City for application as provided herein. Any amounts remaining in such accounts upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by ASM Global to the City. In the event of any reimbursements to ASM Global for the payment of Operating Expenses that may be incurred by it, if any, ASM Global hereby certifies that any such reimbursements shall not include any Direct or Indirect Profit to ASM Global or its Affiliates.

5.7 Ticket Sales Revenues.

ASM Global shall hold in one or more separate interest-bearing account or accounts in a banking institution depository designated by the City any ticket sales revenues which it receives with respect to an event to be held at the Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the City and ASM Global, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, ASM Global shall make a deposit into the operating account established pursuant to Section 5.6 above of the amount in such account from such event and shall pay from the operating account Event Expenses for such event, such other amounts that are due in respect of the event, if any, and any balance shall be retained in the operating account for payment of other Operating Expenses. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.6 and the ticket sales revenue account referred to above shall be considered Operating Revenues. For the avoidance of doubt, actual ticket sales revenues deposited to the ticket sales revenue account shall not be considered Operating Revenues.

5.8 Capital Improvements; Capital Equipment.

The annual plan submitted pursuant to Section 6.2 shall include ASM Global's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefor. The City shall retain the discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facility. On a case-by-case basis, ASM Global and the City shall mutually determine whether the City or ASM Global shall cause to be completed such Capital Improvements or cause to procured such Capital Equipment approved by the City (in either instance, "Approved Procurement"). The City shall be solely responsible for the cost of such Approved Procurement notwithstanding whether the cost exceeds the estimate approved by the City.

5.9 Limitation of ASM Global Liability.

Notwithstanding any provision herein to the contrary and except for ASM Global's express indemnification undertakings in Section 8.1 and its express reimbursement undertakings in Section 6.1(b), ASM Global shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Facility, including, specifically, any pre-opening expenses incurred during the Pre-Opening Consulting Period as set forth in the Pre-Opening Budget, from its own funds and all such costs, expenses and liabilities shall be funded from revenues, including Operating Revenues, deposited to the funds and accounts established under Sections 5.6 and 5.7 hereof or as otherwise funded by the City. Notwithstanding anything to the contrary set forth in this Agreement, the City recognizes and agrees that performance by ASM Global of its responsibilities under this Agreement is in all respects subject to and conditioned upon the timely provision of funds to ASM Global for such purposes as herein provided.

5.10 Funds for Emergency Repairs.

Upon approval of the Contract Administrator, ASM Global shall have the right to act, with the consent of the City, in situations which ASM Global commercially reasonably determines to be an emergency with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the operating account(s) of the Facility, even if such expenses are not budgeted; provided, however, ASM Global shall have no obligation under any circumstance to spend or commit funds other than funds then available in such accounts for any such purpose. Immediately following such action, ASM Global shall inform the City of the situation and the action(s) taken, and the City shall pay into such account(s) the amount of funds, if any, spent or committed by ASM Global pursuant to this Section 5.10 in excess of budgeted amounts.

5.11 Pre-Existing Conditions and External Events.

Notwithstanding anything to the contrary in this Agreement, unless agreed to in writing in advance by the Parties, ASM Global shall have no responsibility whatsoever for the remediation, abatement, correction, cure or administration of any environmental, construction, personnel, real property or other problems that arise at the Facility during the Management Term that (a) relate to the operation or condition of the Facility, or activities undertaken at the Facility or on the underlying real property, prior to the Management Term, except for those issues that directly arise from ASM Global's Pre-Opening services provided hereunder, or (b) are caused by or arise from sources outside of the Facility and are unrelated to the services provided by ASM

Global hereunder, and the City shall retain full managerial and financial responsibility and liability for and control over the remediation, abatement, correction, cure and administration of such problems, and shall take such actions in a timely manner with as little disturbance or interruption of the use and enjoyment of the Facility as practicable. Notwithstanding the foregoing, if agreed to by the Parties, ASM Global shall take appropriate steps, at the City's expense, to (i) comply with, or cure or prevent the violation of, any applicable Laws and (ii) avoid or minimize any actual or potential injury to persons or damage to the Facility or other property.

5.12 Operating Covenants of ASM Global. In consideration of, and as a condition to the performance of the services hereunder and the rights granted to ASM Global herein, ASM Global, during the Management Term, makes the following covenants in favor of the City:

i. Minimum Events. Subject to Force Majeure, during the Management Term, ASM Global shall produce no fewer than: (A) 120 Events in each of Operational Years 1-2; (B) 130 Events in each of Operational Years 3-4, (C) and 150 Events in Operational Year 5 and any Operational Year in any Extended Term (each referred to as a "Minimum Event Amount"). Subject to Force Majeure, in the event ASM Global is unable to produce Seventy-Five percent (75%) of the Minimum Event Amount for the applicable Operational Year (a "Minimum Event Failure"), City shall have the right, but not the obligation, to hire an independent third-party of national or regional reputation with subject matter expertise on managing and operating sports facilities, at its sole cost, to review ASM Global's performance and management of the Facility (the "Third Party Review"), whose findings shall be produced in a written report (the "Third Party Report"). In the event the City does not engage a third party to conduct the Third Party Review and/or produce the Third Party Report, City shall provide ASM Global with written notice of its declaration of a Minimum Event Failure and recommendations for addressing any identified deficiencies (the "Minimum Event Failure Notice"). ASM Global shall have ninety (90) days from its receipt of the Third Party Report or Minimum Event Failure Notice to provide City with a plan generally demonstrating the actions ASM Global would take to address any deficiencies outlined in the Third Party Report or the Minimum Event Failure Notice (the "Corrective Action Plan"). Subject to Force Majeure, should more than two (2) Minimum Event Failures occur in any five (5) consecutive Operational Year period and, as a result thereof, ASM Global fails to adequately address the identified deficiencies in the Corrective Action Plan to the reasonable satisfaction of the City, the City shall have the right to terminate this Agreement. Notwithstanding anything to the contrary in this Agreement, such termination right shall be the sole and exclusive remedy of the City for any failure of ASM Global to produce a Minimum Event Amount pursuant to this Agreement and, upon any such termination, all of ASM Global's duties and obligations under this Agreement shall immediately and automatically be terminated.

ii. City Suites. During the Management Term, City reserves for itself the use of one (1) suite, at no charge, for the exclusive use of the City and its invitees, for all Events and Indy Fuel Events; provided however, City shall be responsible for any charges for food and beverages. The location of the suite described herein is more particularly depicted in Exhibit F attached hereto and incorporated herein.

iii. Facility Fee. ASM Global shall charge the Facility Fee for every ticket that meets the following criteria: (1) such ticket is sold for an Event or Indy Fuel Event (if ASM Global is selling such tickets), (2) ASM Global actually collects the applicable funds with respect to such ticket, and (3) ASM Global retains the collected funds with respect to such ticket (e.g., such funds are not refunded). The Parties acknowledge and agree that: (x) the ultimate Facility Fee paid pursuant to this Agreement will not be based on the actual attendance at events given that most events have at least some complimentary tickets, including without limitation those provided for promotions, contests, players and their guests, opposing teams, and other, and (y) the Facility Fee may exclude, at City's sole discretion, any tickets related to, and whether sold or otherwise, for events hosted by City. Notwithstanding the foregoing, City reserves the right to implement a policy regarding the use of complimentary tickets. The Facility Fee with respect to an Event or Indy Fuel Event (if ASM Global is selling such tickets) shall be due and payable by ASM Global to the City no later than thirty (30) days after the date on which the applicable Event or Indy Fuel Event (if ASM Global is selling such tickets) occurs.

6. Records, Audits and Reports.

6.1 Records and Audits.

(a) ASM Global shall keep full and accurate accounting records relating to its activities at the Facility in accordance with GAAP. ASM Global shall maintain a system of bookkeeping adequate for its operations hereunder. ASM Global shall give the City's authorized representatives access to such books and records maintained at the Facility during reasonable business hours and upon three (3) business days' notice. ASM Global shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, on or before one hundred twenty (120) days following each Fiscal Year for which ASM Global is managing the Facility hereunder, ASM Global shall furnish to the City a balance sheet, a statement of profit or loss and a statement of cash flows for the Facility for the preceding Fiscal Year, prepared in accordance with GAAP and accompanied by an independent auditor's report of a nationally recognized, independent certified public accountant. The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by ASM Global and of amounts due to the City. The audit shall also provide a certification of Operating Revenues and Operating Expenses as defined in this Agreement for such Fiscal Year. The audit shall be conducted by a reputable firm selected by ASM Global with City approval. The City shall not withhold or delay such consent or approval unreasonably. Notwithstanding anything to the contrary herein, the costs of such audit shall be deemed Operating Expenses.

(b) The City shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of ASM Global relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the City in conducting such audit shall be considered an Operating Expense. If any such audit demonstrates that the Operating Revenues or Operating Expenditures reflected in any financial statements prepared by ASM Global and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), in either case by more than five percent (5%), ASM Global shall pay to the City the reasonable cost of such audit and shall promptly refund to the City any portion of the ASM Global Fee paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be, and which bears upon the calculation of the ASM Global Fee for such Fiscal Year (for the avoidance of doubt, payment shall only be due to the extent the audit demonstrates a five percent (5%) or more deviation from the calculation of the ASM Global Fee). The City's right to have such an audit made with respect to any Fiscal Year and ASM Global's obligation to retain the above records shall expire three (3) years after ASM Global's statement for such Fiscal Year has been delivered to the City.

6.2 Annual Plan.

ASM Global shall provide to the City on or before ninety (90) days prior to the end of each Fiscal Year, an annual management plan, for the next Fiscal Year. The annual plan shall include information regarding ASM Global's anticipated operations for such Fiscal Year, including planned operating and maintenance activities by ASM Global, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at the Facility, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the City. Following review and revision by the City, ASM Global shall have thirty (30) days to incorporate the City's revisions into its plan. Upon approval by the City, such annual plan shall constitute the operating program for ASM Global for the following Fiscal Year.

6.3 Monthly Reports.

By the twenty-fifth day of each month, ASM Global shall provide to the City a written monthly report in a form approved by the City and similar to that used in other ASM Global-managed facilities setting out the Facility's anticipated activities for the upcoming month and reporting on the prior month's activities and finances. ASM Global shall include in such report a detailed balance sheet showing Operating Revenues and Operating Expenses, a report showing the ASM Global Fee earned and other financial reports, including, without limitation, a departmental expense report and event accounting report and the ASM Global Fee.

7. Employees.

7.1 ASM Global Employees.

(a) ASM Global shall select, train and employ at the Facility such number of employees as ASM Global deems necessary or appropriate to satisfy its responsibilities hereunder; ASM Global shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and ASM Global shall have authority to hire, terminate and discipline any and all personnel working at the Facility.

(b) ASM Global shall assign to the Facility a competent, full-time general manager that is pre-approved by the City in writing prior to such appointment. From time to time the general manager may provide assistance in connection with the consulting and/or management services provided by ASM Global or any of its Affiliates at other facilities managed, owned or leased by ASM Global or any of its Affiliates, provided that (i) such assistance does not affect in any material respect the responsibilities and duties of the general manager to the Facility, (ii) the cost of the salary and benefits of the general manager for the time spent in connection with providing such assistance shall be reimbursed by ASM Global from the operating account of the Facility as an Operating Expense; and (iii) the Contract Administrator preapproves in writing the general manager's outside consulting and management services,

(c) ASM Global employees at the Facility shall not for any purpose be considered employees of the City, and ASM Global shall be solely responsible for their supervision and daily direction and control and for setting, and paying as an Operating Expense, their compensation (and federal income tax withholding) and any employee benefits, and all costs related to their employment shall be an Operating Expense.

7.2 [*Intentionally Omitted*].

7.3 No Solicitation or Employment by City.

During the period commencing on the date hereof and ending one (l) year after the termination of this Agreement, except with ASM Global's prior written consent, the City will not, for any reason, solicit for employment, or hire, any of the senior management personnel employed by ASM Global at the Facility, including, without limitation, the general manager, director-level employees and department heads. In addition to any other remedies which ASM Global may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

8. Indemnification and Insurance.

8.1 Indemnification.

(a) ASM Global shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all Losses arising from any material default or breach by ASM Global of its obligations specified herein; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses (i) arise from any breach or default by the City of its obligations under Section 8.1(b) below, (ii) are covered by the commercial insurance procured by ASM Global pursuant to Section 8.2 covering (A) the Facility and its premises for physical damage or other Loss and (B) business interruption and extra expenses, irrespective of the decision of the City to carry or not to carry such insurance, or (iii) are caused by or arise out of the services provided by the architects, engineers and other agents (other than ASM Global) retained by the City in connection with Capital Improvements or Capital Equipment purchases at the Facility.

(b) The City shall indemnify, defend and hold harmless ASM Global, its partners, officers, agents and employees from and against any and all Losses arising from (i) any material default or breach by the City of its obligations specified herein, (ii) the fact that at any time prior to the Management Term hereunder the Facility has not been operated, or the Facility and its premises have not been, in compliance with all Laws, including, but not limited to, the

ADA, (iii) as of, or after the Management Term hereunder the Facility and its premises are not in compliance with the Laws, (iv) the fact that prior to, as of, or after the commencement of the Management Term hereunder there is any condition on, above, beneath or arising from the premises occupied by the Facility which might, under any Law, give rise to liability or which would or may require any "response," "removal" or "remedial action" (as such terms are defined under CERCLA), (v) any structural defect with respect to the Facility or the premises occupied by the Facility prior to, as of or after the commencement of the Management Term hereunder, (vi) any non-compliance with any Pre-Existing Agreement on or prior to the commencement of the Management Term, or (vii) any act or omission carried out by ASM Global at or pursuant to the direction or instruction of the City, its agents or employees, or the City's failure to provide sufficient funding.

(c) The provisions set forth in subparagraphs (a) and (b) above shall survive termination of this Agreement; provided, however, that except for indemnification based upon Section 8.1(b) (ii), (iii), (iv), (v), (vi) or (vii) above, a claim for indemnification pursuant to Section 8.1 shall be valid only if the Party entitled to such indemnification provides written notice thereof to the other Party prior to three (3) years following the date of termination of this Agreement.

(d) The terms of all insurance referred to in Section 8, including without limitation the policies of any independent contractors retained by the City or hired by ASM Global, shall preclude subrogation claims against ASM Global, its partners, the City and their respective officers, directors, employees and agents.

(E) IN NO EVENT SHALL EITHER PARTY BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), WHETHER BASED UPON BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT TORT LIABILITY OR OTHERWISE, AND EACH PARTY'S LIABILITY FOR DAMAGES OR LOSSES HEREUNDER SHALL BE STRICTLY LIMITED TO DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY THE OTHER PARTY.

8.2 Liability Insurance.

(a) ASM Global shall secure prior to the commencement of the Management Term hereunder and shall keep in force at all times during the term of this Agreement, (i) commercial liability insurance, including public liability and property damage, covering premises liability, and ASM Global operations hereunder, in the amount of One Million Dollars ($1,000,000.00) for bodily injury and One Million Dollars ($1,000,000.00) for property damage, including products and completed operations. ASM Global shall also maintain Umbrella liability insurance with a limit of Five Million Dollars ($5,000,000.00); and (ii) liquor liability insurance in the amount of One Million Dollars ($1,000,000.00).

(b) ASM Global shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles operated by ASM Global officers, agents and employees in connection with the Facility, whether owned by ASM Global, the City, or otherwise, with a combined single limit of not less than One Million Dollars ($1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) Commencing with the Management Term and continuing thereafter during the term hereof, ASM Global shall also maintain:

(i) professional liability insurance with coverage of at least One Million Dollars $1,000,000.00) for claims of negligent errors, acts or omissions by ASM Global; and

(ii) employment practices liability insurance with coverage of at least One Million Dollars $1,000,000.00) for claims relating to the employment practices of ASM Global at the Facility pertaining to its employees.

(d) ASM Global shall be the named insured under all such insurance. The City shall be an additional insured under the insurance described in Sections 8.2(a) and (b), as its interests may appear, and such insurance in Sections 8.2(a) and (b) shall contain a provision covering the Parties' indemnification liabilities to each other.

(e) Certificates evidencing the existence of the above insurance shall be delivered to the Contract Administrator prior to the commencement of the Management Term. Notwithstanding the provisions of this Section 8.2, the Parties hereto acknowledge that the above insurance may contain exclusions from coverage which are reasonable and customary for insurance of such type.

(f) With respect to insurance procured by it, ASM Global shall deliver to the Contract Administrator satisfactory evidence of such renewal of such insurance at least twenty (20) days after such insurance's expiration date except for any insurance expiring on the termination date of this Agreement or thereafter.

(g) Except as provided in Section 8.5, all insurance procured by ASM Global in accordance with the requirements of this Agreement shall be primary over any insurance carried by the City and not require contribution by the City.

8.3 Workers Compensation Insurance.

ASM Global shall at all times maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the Indiana State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Indiana, insuring its employees at the Facility in amounts equal to or greater than required under law.

8.4 Fidelity Insurance.

ASM Global shall maintain during the term of this Agreement Fidelity Insurance covering all of ASM Global's personnel under this Agreement in the amount of Five Hundred Thousand Dollars ($500,000.00) for each loss, to reimburse the City for losses experienced due to the dishonest acts of ASM Global's employees.

8.5 Certain Other Insurance.

If any of the Pre-Existing Agreements consist of agreements with independent contractors to provide services in respect of the Facility, the City shall use its best efforts to cause such contractors to name ASM Global as an additional insured under any insurance maintained by such contractors pursuant to the terms of such Pre-Existing Agreements and in such event to deliver to ASM Global promptly after request therefor a certificate of such insurance evidencing the existence thereof. In addition, if ASM Global enters into any agreements during the term of this Agreement with any independent contractors for the provision of services hereunder, ASM Global shall require such contractors to name ASM Global and the City as additional insureds under any insurance required by ASM Global thereunder.

9. Ownership of Assets.

9.1 Ownership.

The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facility shall remain with the City. Ownership of and title to all intellectual property rights of whatsoever value, held in the City's name shall remain in the name of the City. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or City funds shall remain with the City, but such assets may be utilized and consumed by ASM Global in the performance of services under this Agreement. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and Software owned by ASM Global shall remain with ASM Global. ASM Global shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the City for the use of the Facility, unless written consent is granted by the City. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by ASM Global with City funds for use at and for the Facility shall vest in the City automatically and immediately upon purchase or acquisition. The assets of the City as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned other than in the ordinary course of business of the Facility without the prior approval of the City.

9.2 City Obligations.

The City shall repair and maintain in such order and condition as necessary to avoid any limitation on the normal operation of the Facility or any interruption or interference with the operation of the Facility or safety issue in connection with the operation of the Facility, and in compliance with the Laws, and all covenants, restrictions, and conditions now or hereafter of record which may be applicable to the Facility, at its sole cost and expense. The City shall be responsible for funding and making all Capital Expenditures and Capital Improvements. No expenditures made by the City pursuant to this Section shall be deducted as an Operating Expense or otherwise deducted in determining Net Operating Loss/Profit.

10. Assignment.

10.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either Party hereto without the prior written consent of the other Party hereto. Notwithstanding the foregoing, (a) ASM Global may assign all or any part of its rights hereunder to an Affiliate, provided that (i) such Affiliate possesses substantially the same degree of expertise and quality of personnel as originally provided under this Agreement, and (ii) such assignment shall be at no increased cost to the City; and (b) the City may assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder. For sake of clarity, the Parties acknowledge that the foregoing does not preclude the assignment by ASM Global of its rights to receive its consulting fee and the ASM Global Fee hereunder to its lender(s) as collateral security for ASM Global's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover ASM Global's rights to manage, promote or operate the Facility hereunder.

10.2 ASM Global Transactions With Affiliates/Material Contracts.

In connection with its management responsibilities hereunder relating to the purchase and/or procurement of equipment, materials, supplies, inventories, and services for the Facility, ASM Global shall have the right, but not the obligation, to purchase and/or procure from, or otherwise transact business with, an Affiliate of ASM Global on commercially reasonable terms subject to the terms of this Agreement, including Section 2.9 hereof. Notwithstanding the foregoing, prior to transacting business with an Affiliate or entering into a Material Contract, ASM shall seek the written approval of the Contract Administrator, which approval shall not be unreasonably withheld.

11. Laws and Permits.

11.1 Permits, Licenses, Taxes and Liens.

ASM Global shall use reasonable efforts to procure or cause to be procured any permits and licenses required by the Laws for the business to be conducted by it hereunder, except for alcohol permit(s) which shall be obtained by the City in its name. The City shall cooperate with ASM Global in applying for such permits and licenses. ASM Global shall deliver copies of all such permits and licenses to the Contract Administrator. ASM Global shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Facility. ASM Global shall use reasonable efforts to prevent mechanic's or materialman's or any other lien from becoming attached to the premises or improvements at the Facility, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at ASM Global's direction and the City has supplied funds for the payment of charges therefor in accordance with this Agreement.

11.2 Governmental Compliance.

The City shall have the obligation to provide such funding as set forth in the Approved Budget and necessary for ASM Global, its officers, agents and employees to comply with Laws applicable to ASM Global's management of the Facility hereunder, and ASM Global, its officers, agents and employees shall comply with Laws applicable to ASM Global's management of the Facility hereunder. Without limiting the foregoing, with respect to the ADA, ASM Global will comply with Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require ASM Global to undertake any of the foregoing compliance activity, nor shall ASM Global have any liability under this Agreement therefor, if (a) such activity requires any Capital Improvements or Capital Equipment purchases, unless the City provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof, or (b) any Pre-Existing Agreement fails to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities. Furthermore, ASM Global shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Facility to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facility.

11.3 No Discrimination in Employment.

In connection with the performance of work under this Agreement, ASM Global shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any Person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability.

11.4 E-Verify.

All terms defined in Ind. Code § 22-5-1.7 *et seq*. are adopted and incorporated into this Section 11.4. Pursuant to Ind. Code § 22-5-1.7 *et seq*., ASM Global 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. Within ten (10) days after the Effective Date, ASM Global 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, ASM Global shall provide the City with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by ASM Global and delivered to the Contract Administrator.

12. Termination.

12.1 Termination Upon Default.

(a) Default. Either Party may terminate this Agreement upon a default by the other Party hereunder. A Party shall be in default hereunder if (i) such Party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such Party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the other Party, provided, however, if such default (other than a default in the payment of money) 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.

(b) Gross Misconduct. The City may immediately terminate this Agreement upon notice to ASM Global if (i) it or any of the employees identified in Section 7.1 engages in gross misconduct (notwithstanding whether such conduct concerns the subject of this Agreement or ASM Global's contractual relationship with the City); or (ii) it becomes generally known that ASM Global is insolvent, plans to make a general assignment for the benefit of creditors, is expected to file a voluntary petition of bankruptcy, suffers or permits the appointment of the receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, dissolved or liquidated, voluntarily or otherwise.

12.2. Termination Other than Upon Default.

(a) ASM Global shall have the right to terminate this Agreement upon sixty (60) days written notice to the City (i) under the circumstances described in Sections 5.2, 5.3 or 5.5 hereof, or (ii) if the City fails to make Capital Improvements or Capital Equipment purchases at the Facility to the extent that such omission, in ASM Global's judgment, materially interferes with, impedes or impairs the ability of ASM Global to manage the Facility effectively.

(b) Either Party shall have the right to terminate this Agreement under the circumstances specified in Exhibit "E", paragraph (d).

12.3 Effect of Termination.

In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the City shall pay all such Operating Expenses and shall indemnify and hold ASM Global harmless therefrom, (ii) the City shall promptly pay ASM Global all fees earned to the date of expiration or termination (the consulting fee and/or ASM Global Fee described in Section 4.3 hereof being subject to proration), provided that the City shall be entitled to offset against such unpaid fees any damages (actual, not consequential) directly incurred by the City in remedying any default by ASM Global hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facility), and (iii) without any further action on the part of ASM Global or the City, the City shall, or shall cause another management company retained by it to, accept the assignment of ASM Global's rights, and assume and perform all of ASM Global's obligations, arising from contracts entered into by ASM Global prior to such expiration or termination including, without limitation any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the Facility which have been executed by ASM Global hereunder, except (A) to the extent that any such license, agreement, commitment or contract was executed by ASM Global in violation of any of the restrictions applicable to ASM Global's right to execute such licenses, agreements, commitments or contracts contained in this Agreement and (B) for any such license, agreement, commitment or contract to which the consent of the other Party thereto is required for such assignment and assumption unless such consent is obtained (in the case of any such consent, ASM Global will use commercially reasonable efforts to obtain such consent and the City will cooperate in any reasonable manner with ASM Global to obtain such consent). Upon the expiration of this Agreement or a termination pursuant to Section 12.1 or 12.2, all further obligations of the Parties hereunder shall terminate except for the obligations in this Section 12.3 and in Sections 7.3, 8.1 and 12.4; provided, however, that if such termination is the result of a willful default, the nondefaulting Party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default.

12.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration of the term hereof), ASM Global shall surrender and vacate the Facility upon the effective date of such termination. The Facility and all equipment and furnishings shall be returned to the City in good repair, reasonable wear and tear excepted, to the extent funds were made available therefor by the City. All reports, records, including financial records, and documents maintained by ASM Global at the Facility relating to this Agreement other than materials containing ASM Global's proprietary information shall be immediately surrendered to the City by ASM Global upon termination.

13. Miscellaneous.

13.1 Use of Facility at Direction of City.

(a) At the direction of the Contract Administrator, upon reasonable advance notice and subject to availability, ASM Global shall provide use of the Facility or any part thereof to civic and nonprofit organizations at reduced rates. All event-related expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the use of the Facility by such organizations, if not reimbursed to ASM Global by the organization using the Facility, shall be reimbursed by the City to ASM Global for deposit into the operating accounts specified in Section 5.6.

(b) The City shall have the right to use the Facility or any part thereof, upon reasonable advance notice and subject to availability, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee (or at a reduced fee), except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City, including, without limitation for not less than six (6) events each Fiscal Year

(c) The City shall not schedule use of the Facility pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by ASM Global. In all instances when the Facility, or part thereof, is to be used at the City's request or by the City pursuant to subparagraph (a) or (b) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Operating Revenues.

13.2 Cooperation/Mediation.

Any dispute arising under or in connection with this Agreement will be resolved by the Parties in accordance with the procedures set forth on Exhibit "E" attached hereto.

13.3 Tax Treatment. The Parties intend that ASM Global act as an independent contractor of City. The Parties expressly do not intend to form a partnership, joint venture or any other similar joint ownership arrangement (i) between ASM Global, on the one hand, and any of City Bodies, on the other hand, or (ii) the Parties hereto, on the one hand, and any third party, on the other hand. ASM Global hereby expressly agrees that it (nor any Affiliate, Related Party, subcontractor, licensees or other party with which it contracts) is not entitled to and will not take any tax position that is inconsistent with being a service provider to City with respect to the Facility. For example, and without limitation, ASM Global (nor any Affiliate, Related Party, subcontractor, licensees or other party with which it contracts) hereby agrees not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the Facility.

13.4 No Partnership or Joint Venture; Limitation on Fiduciary Duties.

Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and ASM Global. None of the officers, agents or employees of ASM Global shall be or be deemed to be employees of the City for any purpose whatsoever.

LIMITATION ON FIDUCIARY DUTIES. TO THE EXTENT ANY FIDUCIARY DUTIES THAT MAY EXIST AS A RESULT OF THE RELATIONSHIP OF THE PARTIES ARE INCONSISTENT WITH, OR WOULD HAVE THE EFFECT OF EXPANDING, MODIFYING, LIMITING OR RESTRICTING ANY OF THE TERMS OF THIS AGREEMENT, (I) THE EXPRESS TERMS OF THIS AGREEMENT SHALL CONTROL, (II) THIS AGREEMENT SHALL BE INTERPRETED IN ACCORDANCE WITH GENERAL PRINCIPLES OF CONTRACT INTERPRETATION WITHOUT REGARD TO THE COMMON LAW PRINCIPLES OF AGENCY, AND (III) ANY LIABILITY OF THE PARTIES SHALL BE BASED SOLELY ON PRINCIPLES OF CONTRACT LAW AND THE EXPRESS TERMS OF THIS AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT FOR THE PURPOSES OF DETERMINING THE NATURE AND SCOPE OF ASM GLOBAL'S FIDUCIARY DUTIES UNDER THIS AGREEMENT, THE TERMS OF THIS AGREEMENT, AND THE DUTIES AND OBLIGATIONS SET FORTH HEREIN, ARE INTENDED TO SATISFY ALL FIDUCIARY DUTIES THAT MAY EXIST AS A RESULT OF THE RELATIONSHIP BETWEEN THE PARTIES, INCLUDING ALL DUTIES OF LOYALTY, GOOD FAITH, FAIR DEALING AND FULL DISCLOSURE, AND ANY OTHER DUTY DEEMED TO EXIST UNDER THE COMMON LAW PRINCIPLES OF AGENCY OR OTHERWISE (OTHER THAN THE DUTY OF GOOD FAITH AND FAIR DEALING

IMPLIED UNDER GENERAL CONTRACT PRINCIPLES, INDEPENDENT OF THE COMMON LAW PRINCIPLES OF AGENCY). ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE PARTIES HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE AND DISCLAIM ANY FIDUCIARY OR OTHER SIMILAR COMMON LAW RIGHTS THAT ARE NOT EXPRESSLY IDENTIFIED, DESCRIBED AND SET FORTH IN THIS AGREEMENT, AND THUS UNCONDITIONALLY AND IRREVOCABLY WAIVE AND DISCLAIM ANY RIGHT TO RECOVER OR OBTAIN ANY MONETARY, EQUITABLE OR OTHER RELIEF OR REMEDIES FOR ANY ALLEGED BREACH OR VIOLATION OF ANY ALLEGED FIDUCIARY OR OTHER SIMILAR COMMON LAW RIGHT OR OBLIGATIONS. THE CITY ACKNOWLEDGES AND AGREES THAT ITS CONSENT TO THE TRANSACTIONS AND CONDUCT BY ASM GLOBAL DESCRIBED IN THIS AGREEMENT AND ITS WAIVER OF ANY FIDUCIARY OR OTHER SIMILAR COMMON LAW RIGHTS OTHERWISE OWED BY ASM GLOBAL: (I) HAS BEEN OBTAINED BY ASM GLOBAL IN GOOD FAITH; (II) IS MADE KNOWINGLY BY THE CITY BASED ON ITS ADEQUATE INFORMED JUDGMENT AS A SOPHISTICATED PARTY AFTER SEEKING THE ADVICE OF COMPETENT AND INFORMED COUNSEL; AND (III) ARISES FROM CITY'S KNOWLEDGE AND UNDERSTANDING OF THE SPECIFIC TRANSACTIONS AND ACTIONS OR INACTIONS OF OPERATORS THAT ARE NORMAL, CUSTOMARY, AND REASONABLY EXPECTED IN THE FACILITY MANAGEMENT INDUSTRY.

13.5 Entire Agreement.

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the Parties hereto with respect to the subject matter hereof.

13.6 Written Amendments.

This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the Parties hereto.

13.7 Force Majeure.

(a) No Party will be liable or responsible to the other Party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other Party within ten (10) days of date on which such Party gains actual knowledge of the event of "Force Majeure" that such Party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, fire, storm, flood, explosions, inability to obtain materials, epidemics, landslides, lightning storms, earthquakes, floods, washouts, civil disturbances, explosions, breakage or accident to machinery or lines of equipment, terrorist acts, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the Party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

(b) Neither Party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefor shall be prohibited or rationed by any Law.

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to ASM Global shall be claimed by the City or charged against ASM Global, nor shall ASM Global be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future Laws, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing.

(d) In the event of damage to or destruction of the Facility by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render the Facility materially untenantable, notwithstanding the City's reasonable efforts to remedy such situation, for a period estimated by an architect selected by the City at the request of ASM Global of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either Party may terminate this Agreement upon written notice to the other. In the event that the Facility becomes either wholly or partially untenantable as a result of any of the foregoing, appropriate adjustments to the Agreement shall be made. In no event shall City be responsible for (i) repairing, restoring or replacing (A) any damage or destruction to the Facility if available insurance proceeds are inadequate to perform such restoration or repair, or (B) any damage to or destruction of ASM Global's trade fixtures, personal property or equipment, or (ii) any business interruption of ASM Global caused by the damage, destruction, or casualty of the Facility.

(e) ASM Global or City may suspend performance required under this Agreement, without any further liability, in the event of any act of Force Majeure that is of such effect and duration as to effectively curtail the use of the Facility so as effect a substantial reduction in the need for the services provided by ASM Global for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, ASM Global shall have the right to suspend performance retroactively effective as of the date of the use of the Facility was effectively curtailed. "Substantial reduction in the need for these services provided by ASM Global" shall mean such a reduction as shall make the provision of any services by ASM Global economically impractical. No payments of the management fees otherwise due and payable to ASM Global shall be made by the City during the period of suspension. In lieu thereof, the City and ASM Global may agree to a reduced management fee payment for the period of reduction in services required.

(f) In the event of a material increase in any Operating Expense not reasonably within the control of either Party (including, by way of example and not by limitation, an increase in the cost of insurance or utilities), the Parties shall mutually negotiate and agree upon in good faith an adjustment to the compensation structure set forth herein, subject to Section 2.9, to take into account such increased cost.

13.8 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the Parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any Person, other than the Parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such Parties and their successors and permitted assigns and for the benefit of no other Person.

13.9 Notices.

Any notice, consent or other communication given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the Party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such Party as set forth below or as a Party may designate by written notice given to the other Party in accordance herewith.

To the City:

City of Fishers
Attn: Kari Adriano
3 Municipal Drive
Fishers, Indiana 46038
With a copy (which shall not constitute notice) to:

Jennifer C. Messer (via email, only) at jennifercmesserlaw@gmail.com

To ASM Global:

ASM Global
800 West Olympic Blvd., 3rd Floor
Los Angeles, CA 90015
Attn: President

With a copy (which shall not constitute notice) to:

ASM Global
300 Conshohocken State Rd., Suite 770
West Conshohocken, PA 19428
Attn: General Counsel

Notwithstanding the foregoing, for any approval required from the Contract Administrator, such approval may be provided via email to bhanson@asmglobal.com

13.10 Section Headings and Defined Terms.

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

13.11 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

13.12 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

13.13 Non-Waiver.

A failure by either Party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such Party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

13.14 Consent.

Wherever the consent or approval of a Party is required under the terms of this Agreement, the Party whose consent or approval is required shall not unreasonably withhold or delay such consent or approval.

13.15 Certain Representations and Warranties.

(a) The City represents and warrants to ASM Global the following: (i) all required approvals have been obtained, and the City has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) ASM Global represents and warrants to the City the following: (i) all required approvals have been obtained, and ASM Global has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by ASM Global and constitutes a valid and binding obligation of ASM Global, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

13.16 Governing Law.

This Agreement will be governed by and construed in accordance with the internal laws of the State, without giving effect to otherwise applicable principles of conflicts of law.

13.17 Indy Fuel License. ASM Global acknowledges and agrees that it has reviewed the Indy Fuel License, and that such License is a Pre-Existing Agreement hereunder. Moreover, ASM Global acknowledges and agrees that it has reviewed the Indy Fuel Rights and that such Indy Fuel Rights are exclusive to the Indy Fuel.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto as of the day and year first above written.

ATTEST: CITY of FISHERS, INDIANA

_______________________________ By:__________________________________

Name:

Title:

ASM GLOBAL ARENA MANAGEMENT, LLC

By:__________________________________

Name:

Title:

EXHIBIT "A"

PRE-OPENING OPERATIONAL TASKS

A. As a consultant for the City, ASM Global will, during the Pre-Opening Consulting Period:

1. ASM Global's personnel who serve as the Facility's Regional Vice President and General Manager shall routinely and on an ongoing basis participate in discussions with the City or the City's architectural and engineering firm and the other consultants, representatives and agents of the City, and provide recommendations relating to operational aspects of the Facility referred to in this Exhibit "A".

2. Submit to the City proposals regarding pre-opening marketing, advertising and sponsorship plans.

3. Submit to the City recommendations regarding appropriate Policies and Procedures to be implemented in operating the Facility.

4. Recommend marketing and event booking strategies and relationships with planners, promoters and regional marketing/sales agencies such as the Convention and Visitors Bureau and area hotels.

5. Prepare a list of operating supplies to be procured by the City for the start-up of the Facility.

6. Recommend and implement strategies and relationships to solicit primary third-party vendor service programs such as food and beverage, parking, ticketing, etc.

B. As the manager, to operate, manage and promote the Facility during the Pre-Opening Consulting Period, ASM Global will:

1. Represent the Facility's interests, as necessary or appropriate, with City departments.

2. Implement booking and rental rate policies for the Facility proposed by ASM Global and approved by the City.

3. Negotiate, execute and deliver, in ASM Global's name as agent for the City tenant/user agreements, booking commitments and licenses.

4. Negotiate, execute and deliver, in ASM Global's name as agent for the City service contracts and vendor agreements, provided that to the extent that any such contract or agreement will extend beyond the management term

of any full-service management agreement or the renewal term, if any, the City will approve and execute such contract or agreement.

5. Implement as manager all advertising and sponsorship sales for the Facility consistent with the advertising plan approved by the City.

6. Maintain accurate accounting records relating to its activities on behalf of the Facility.

7. Issue to the City periodic financial reports reflecting ASM Global's activities on behalf of the Facility.

EXHIBIT "B"

DESIGN, DEVELOPMENT AND CONSTRUCTION TASKS

A. As a consultant for the City, ASM Global will during the Pre-Opening Consulting Period:

1. Designate an ASM Global employee who will serve as senior design development and construction consulting executive for ASM Global, through whom all communications among ASM Global, the City, its architectural and engineering firm, and the other consultants, representatives and agents of the City relating to the consulting responsibilities referred to in this Exhibit "B" will be channeled.

2. Prior to the issuance of construction documents (Final Design Phase), a "Plan Design Review" team consisting of ASM Global operations executives representing various disciplines from within ASM Global will review the following components of the overall design and will make recommendations to the City and its other consultants, agents and representatives with respect thereto prior to issuance of construction documents.

The Plan Design Review tasks will encompass the following:

(a) Utility Review - review electrical lighting and audio/visual plans, with a focus on the adequacy of utility service in light of projected user and facility needs.

(b) Telecommunications Review - formulate anticipated end user requirements for reference in system design. Develop equipment list in consultation with telecommunications consultant, and develop administrative telecommunications plan in light of facility needs.

(c) Keying System Review - review master key and hardware schedules. Develop keying plan for contractor to follow, with emphasis on developing long-term focus on promoting building security/safety needs.

(d) Interior Finish Review - review interior finish components, including public furniture, carpet, etc. with a focus on desire for cost-efficient long-term care and upkeep; make recommendations regarding the purchase of proper maintenance equipment and initial procurement of durable fixtures.

(e) Security System/CCTV Review - review of planned security/CCTV system with a focus on desire to identify, with prioritization, security needs.

(f) Directional Signage Review - review signage specifications in design plans with a focus on desire that signage meet the needs of anticipated event schedule and related vehicle/patron traffic patterns. Assist the graphics designers in the selection of interior graphics communication needs and locational plans.

(g) Kitchen/Concession Review - review both permanent and portable kitchen specifications and equipment and, together with any proposed concessionaire, recommend layout of facilities and procurement of small wares.

(h) HVAC Review - review HVAC specifications with view to control of appropriate zones in the facility that will tend to optimize energy conservation.

(i) Load In/Load Out - review ingress and egress with a view to event participation and production, including ceiling heights, storage availability and truck accessibility.

(j) Rigging/Hanging Point Analysis -- develop specifications and guidelines together with project designer and structural consultants with a view to safety and load-in and load-out efficiency considerations.

(k) Staging and Seating -- recommend seating and staging types and provide specifications with a view to set-up, maintenance, storage and labor efficiency considerations.

3. Will review and comment on reports and studies provided by the City's other consultants which are required for the design of the project and which affect operations (i.e., acoustical study, vertical transportation study etc.).

4. Make recommendations regarding layout for administrative and box offices and back-of-house areas for incorporation into the design documents.

5. Review proposed locations, types and sizes of the exterior and interior signage.

6. Review design documents at predetermined intervals to identify whether comments resulting from previous design reviews have been incorporated. Attend planning construction meetings on an on-going, as needed basis until the general construction of the Facility commences.

EXHIBIT "C"

FF&E CONSULTING TASKS

A. ASM Global will provide during the Pre-Opening Consulting Period the following FF&E consulting services:

1. Develop and submit to the City, after having obtained input with respect thereto from the City's architectural firm, a proposed inventory of fixture, furniture and equipment ("FF&E") components which ASM Global recommends be adopted and approved by the City (as listed in Exhibit C-2 and as modified by written approval of the Contract Administrator, the "FF&E Inventory"). Such proposed inventory will be based on ASM Global's judgments about the size and specific needs of the Facility and ASM Global's experience as to which equipment is necessary to operate the Facility effectively.

2. Be available to recommend to the City modifications to the working budget for the construction and equipping of the Facility based upon an analysis of hard and soft costs for FF&E reflected in the FF&E Inventory. These modifications would reflect anticipated cost savings due to ASM Global's volume buying power, negotiating experience and expertise in purchasing the proper equipment for the application.

3. Propose modifications to the FF&E Inventory based upon programmatic changes to the City's working budget for the construction and equipping of the Facility.

4. Provide general parameters and general information to the City to assist in the design of the technical systems for the Facility, including the telecommunications system and radio communications.

5. Procure and provide to the Facility the FF&E Inventory at a price not greater than that budgeted on Exhibit C-2 (per individual item), unless otherwise directed in writing by the Contract Administrator.

Exhibit “C-2”

FF&E INVENTORY & BUDGET

EXHIBIT “D”

PRE-OPENING BUDGET

[INCLUDED ON FOLLOWING PAGES]

ASM GLOBAL
FISHERS, IN MULT-PURPOSE EVENT CENTER
PRE-OPENING BUDGET
FOR PERIOD TO FACILITY OPENING - (MARCH 1, 2023 - OCTOBER 31, 2024)

NOT INCLUSIVE OF FFE PURCHASES OR GRAND OPENING EXPENSES

	PREOPENING GRAND TOTAL	Period Ending 12/31/23	Period Ending 10/31/24
PERSONNEL	1,829,704	297,531	1,532,173
WEBSITE DEVELOPMENT & MAINTENANCE	16,500	-	16,500
BOOKING SOFTWARE (INFOR)	25,000	-	25,000
ADVERTISING & MARKETING	125,000	31,250	93,750
EMERGENCY REPONSE / BUSINESS CONTINUITY PLAN	30,000	30,000	-
LEGAL FEES	20,000	5,000	15,000
TELEPHONE	18,000	3,150	14,850
OFFICE SUPPLIES	11,000	2,000	9,000
COMPUTER EXPENSE/SOFTWARE	9,150	1,575	7,575
PAYROLL/HUMAN CAPITAL MANAGEMENT (WORKDAY)	45,833	-	45,833
TRAVEL & ENT./MTGS. & CONV.	10,000	2,500	7,500
LICENSES & FEES	20,000	5,000	15,000
RELOCATION EXPENSES	32,790	22,790	10,000
POSTAGE EXPENSE	5,000	-	5,000
WORKERS COMP INSURANCE	28,641	4,020	24,621
PRINTING & STATIONERY	3,500	1,000	2,500
BUILDING OPS AND PATRON SERVICES SUPPLIES	20,000	-	20,000
BANK FEES AND CREDIT CARD PROCESSING	5,000	-	5,000
DUES & SUBSCRIPTIONS	6,000	1,000	5,000
TRAINING - FT STAFF	5,000	-	5,000
REGIONAL/CORPORATE SUPPORT TRAVEL	26,600	5,320	21,280
ASM GLOBAL MANAGEMENT FEES	130,000	55,000	75,000
TRAINING EXPENSE - FT STAFF	15,000	-	15,000
GRAND OPENING EXPENSES - INCLUDED IN SEPARATE BUDGET	-	-	-
TIME AND ATTENDANCE SOFTWARE	3,000	-	3,000
EVENT SUPPLIES	7,500	-	7,500
JANITORIAL SUPPLIES	7,500	-	7,500
FINAL CONSTRUCTION CLEAN	10,000	-	10,000
CONTRACTED SERVICES (WASTE, PEST CONTROL)	5,000	-	5,000
WATER	3,000	-	3,000
GAS	10,000	-	10,000
ELECTRIC	20,000	-	20,000
ACCOUNTING SOFTWARE	16,667	-	16,667
P & L START-UP COSTS	25,000	-	25,000
OFFICE RENT	-	-	-
ALTER MAINTENANCE SOFTWARE PROGRAM	7,500	-	7,500
TOTAL EXPENSES	2,553,085	467,136	2,085,949
	-	-	-

ASM GLOBAL
FISHERS, IN MULT-PURPOSE EVENT CENTER
PRE-OPENING BUDGET
STAFFING TIMELINE

	HIRE MONTH	FTE
EXECUTIVE		
General Manager	Jun-23	1.00
Director, Booking	Nov-23	1.00
HR Manager	Jul-23	1.00
Executive Assistant/HR	Sep-24	0.00
Manager, IT	Sep-24	1.00
		4.00
FINANCE AND TICKETING		
Director, Finance & Accounting	Jan-24	1.00
Accounting Manager	Sep-24	1.00
Accounting Clerk/AP	Sep-24	1.00
Box Office Manager	Jan-24	1.00
F & B Accountant	Sep-24	1.00
		5.00
Sales & Marketing		
Director, Marketing & Communications	Jan-24	1.00
Manager, Social Media & Digital Marketin	Aug-24	1.00
Director, Sales	Mar-24	1.00
		3.00
EVENT SERVICES		
Manager, Events	Aug-24	1.00
Manager, Guest Services & Security	Aug-24	1.00
		2.00
OPERATIONS		
Director, Operations	Jul-23	1.00
Ops Manager	May-24	0.00
Housekeeping Manager	Aug-24	1.00
Engineer	Aug-24	1.00
		3.00
FOOD & BEVERAGE		
F&B Director	Nov-23	1.00
F&B Manager (Concessions)	May-24	1.00
Head Chef	May-24	1.00
Director of Premium	Mar-24	1.00
Purchasing Warehouse Manager	Jun-24	1.00
Assistant F&B Manager	Jul-24	1.00
Assistant Premium Manager	Jul-24	1.00
Sous Chef	Jul-24	1.00
		8.00
Total		25.00

EXHIBIT "E"

COOPERATION/MEDIATION

(a) The Parties desire to cooperate with each other in the management and operation of the Facility pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the Parties' respective agents or representatives prior to either Party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within forty-five (45) days after the commencement of such discussions. If and only if any dispute remains unresolved after the Parties have followed the dispute resolution procedure set forth above, the matter will be resolved pursuant to paragraphs (b) and (c) below.

(b) If any dispute between the Parties has not been resolved pursuant to paragraph (a) above, the Parties will endeavor to settle the dispute by mediation under the then current CPR Institute for Dispute Resolution ("CPR") model procedure for mediation of business disputes or, if such model procedure no longer exists, some other mutually agreeable procedure. Within ten (10) business days from the date that the Parties cease direct negotiations pursuant to paragraph (a) above, the City shall provide ASM Global with a list of three (3) individuals then listed on CPR's U.S. Regional Panel of Distinguished Neutrals for the locale in which the Facility is located (or if no such list exists for the locale closest to where the Facility is located), who are available during the time period contained in subparagraph (e) below and who have no unwaived conflict of interest with respect to either Party, and ASM Global shall (within ten (10) business days after receipt of such list) select one (1) of the neutrals from such list. Each Party will bear its own cost of mediation; provided, however, the cost charged by any independent third party mediator will be borne equally by the Parties. In the mediation, each Party may be represented by their own counsel.

(c) The Parties agree that any mediation proceeding (as well as any discussion pursuant to paragraph (a) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential and privileged communication by the Parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers and opinions made in the course of the mediation or such discussion by any Party, its agents, employees, representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the Parties and will not be disclosed to any third Party.

(d) The Parties agree that this mediation procedure will be obligatory and participation therein legally binding upon each of them. In the event that either Party refuses to adhere to the mediation procedure set forth in this Exhibit "E" the other Party may bring an action to seek enforcement of such obligation in any court of competent jurisdiction.

(e) The Parties' efforts to reach a settlement of any dispute will continue until the conclusion of the mediation proceeding. The mediation proceeding will be concluded when: (i) a written settlement agreement is executed by the Parties, or (ii) the mediator concludes and informs the Parties in writing that further efforts to mediate the dispute would not be useful, or (iii) the Parties agree in writing that an impasse has been reached. Notwithstanding the foregoing, either Party may withdraw from the mediation proceeding without liability therefor in the event such proceeding continues for more than forty-five (45) days from the commencement of such proceeding. For purposes of the preceding sentence, the proceeding will be deemed to have commenced following the completion of the selection of a mediator as provided in paragraph (b).

(f) If any dispute has not been resolved pursuant to the foregoing, either Party may terminate this Agreement as provided in Section 12 hereof and each is free to file suit in a court of competent jurisdiction to enforce its rights hereunder.

(g) The procedure specified in this Exhibit "E" shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party, without prejudice to the above procedures, may file a complaint to seek a preliminary injunction or other provisional judicial relief, if in its sole discretion such action is necessary to avoid irreparable damage or to preserve the status quo ("**Equitable Litigation**"). Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Exhibit "E".

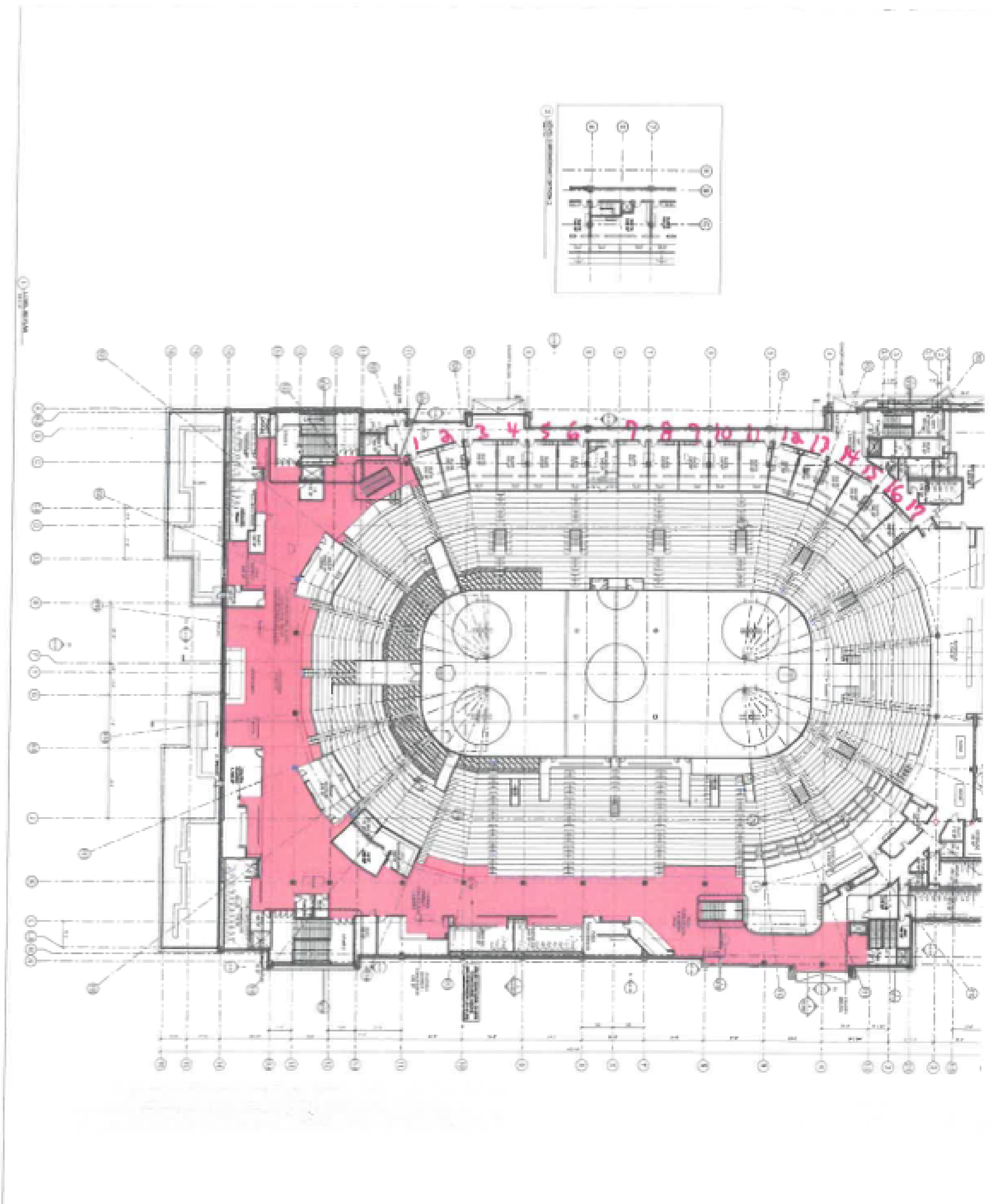
(h) Any interim or appellate relief granted in such Equitable Litigation shall remain in effect until the alternative dispute resolution procedures described in this Exhibit "E" concerning the dispute that is the subject of such Equitable Litigation result in a settlement agreement. Such written settlement agreement shall be the final, binding determination on the merits of such dispute, shall supersede and nullify any decision in the Equitable Litigation, and shall preclude any subsequent litigation on such merits, notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim relief or any appeal therefrom.

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Exhibit "E" are pending. The Parties will take such action, if any, required to effectuate such tolling. Each Party shall be required to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances.

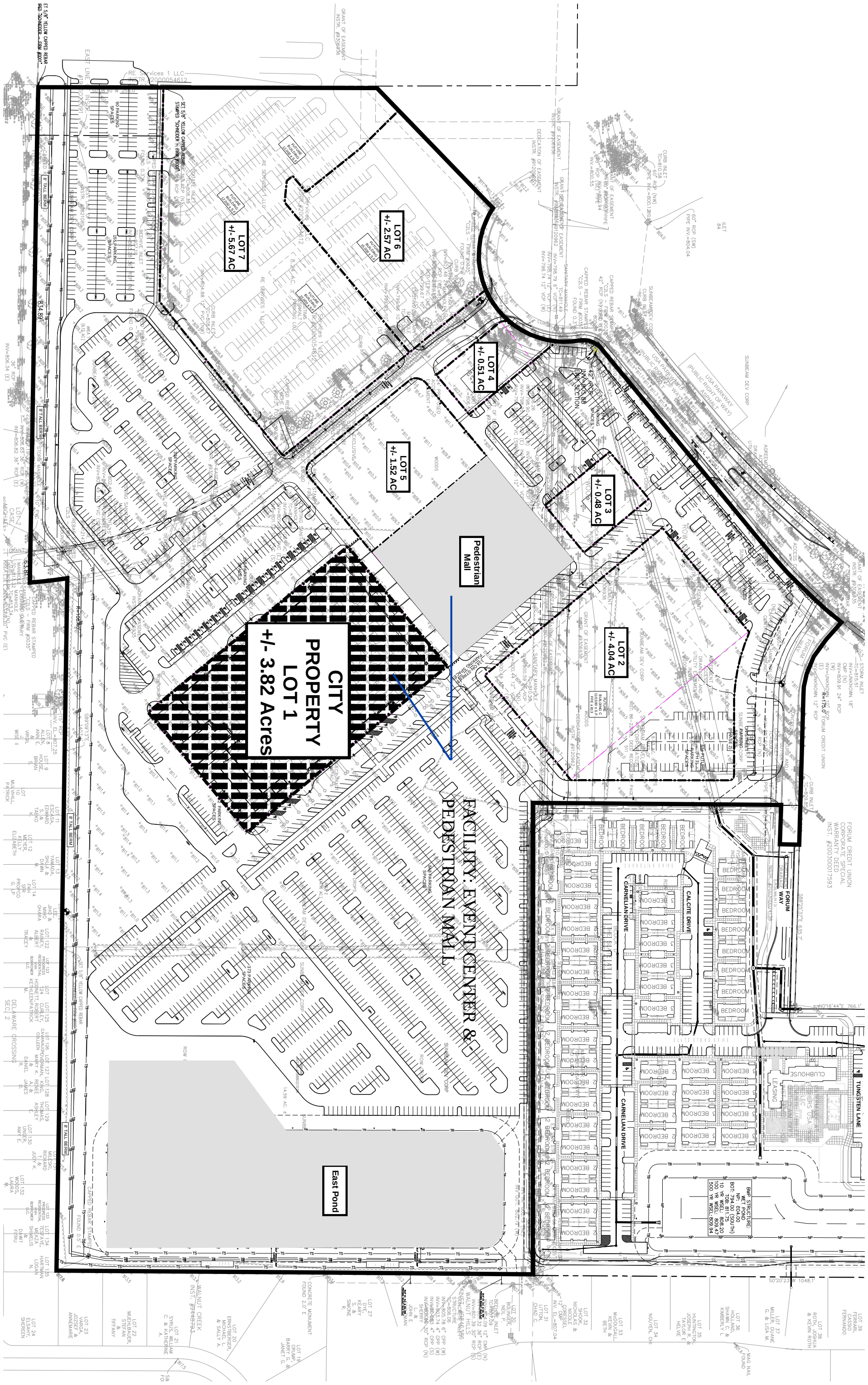
EXHIBIT "F"

FACILITY SITE & CITY SUITE (SUITE 9 ON FOLLOWIN GPAGE)

[INCLUDED ON FOLLOWING PAGES]



F-2


LOT 7
+/- 5.67 AC
LOT 6
+/- 2.57 AC
LOT 4
+/- 0.51 AC
LOT 5
+/- 1.52 AC
LOT 3
+/- 0.48 AC
Pedestrian Mall
LOT 2
+/- 4.04 AC
CITY PROPERTY
LOT 1
+/- 3.82 Acres
FACILITY: EVENT CENTER &
PEDESTRIAN MALL
East Pond

F-3

EXHIBIT “G”

SCHEDULING GOALS

	YEARS 1-2	YEARS 3-4	YEARS 5+
CONCERTS	16	18	19
FUEL HOME GAMES	36	36	36
FAMILY SHOWS	13	15	18
RECREATIONAL SPORTS	8	10	13
OTHER ENTERTAINMENT	8	10	13
TRADESHOWS	6	8	11
COMMUNITY EVENTS	43	45	55
EVENT TOTALS	128	140	163

EXHIBIT "H"

INDY FUEL RIGHTS

[INCLUDED ON FOLLOWING PAGES]

[Indy Fuel Business Terms]

		NOTES
INDY FUEL		
Indy Fuel Rental Payment	$[illegible]	Annual Rent for Indy Fuel Games
City Ticket Surcharge	$[illegible]/ticket	Indy Fuel to remit $[illegible] for every ticket sold
Indy Fuel Suite	$[illegible]	Annual Rent for Indy Fuel Suite. Indy Fuel also responsible for payment of all food & beverage.
Gate Receipt Revenue	100%	Indy Fuel to retain all ticket revenue from Indy Fuel games (net of the City's $3 surcharge)
Attendance Incentive	$[illegible]	Event Center to remit back to Indy Fuel $[illegible] per person for every person over [illegible] each attendance
Ticketmaster and Box Office	100%	Indy Fuel to retain all amounts related to fees/rebates for Ticketmaster and Box Office fees for hockey games
Parking Revenue	0%	Event Center to retain all parking revenue
Concession Revenue	0%	Event Center to retain all concession revenue
Catering Revenue	0%	Event Center to retain all catering revenue
Merchandise Revenue	100%	Indy Fuel to retain all revenues related to Indy Fuel Merchandise
Game Day Expenses	0%	Indy Fuel is not responsible for game day expenses related to operations of Event Center
Arena Operating Expenses	0%	Indy Fuel is not responsible for other facility operating expenses
Capital Repair Expenses	0%	Indy Fuel is not responsible for facility capital repairs and replacement
Merchandise Shop Expenses	0%	Indy Fuel is not responsible for paying rent for Merchandise Shop ([illegible] sq ft space)

SPONSORSHIP SALES		
Naming Rights Revenue (net)	20%	Indy Eleven to retain 20% in title naming rights revenue derived in the Event Center
Advertising Revenue - Temporary (Home Only) Live	100%	Indy Eleven to retain all revenues related to temporary live advertising/signage (Home Only)
Permanent Advertising - Naming Rights	100%	Indy Eleven to retain all commissions related to Naming Rights
Permanent Advertising - Building Signage	100%	Indy Eleven to retain all commissions related to permanent signage within the facility
Permanent Advertising - Outdoor Marquee	100%	Indy Eleven to retain all commissions related to selling time on the marquee(s) on the building
Permanent Sponsorship - 1st Floor East End Club Section (net)	100%	Indy Eleven to retain all commissions related to the East Club
Permanent Sponsorship - 2nd Floor Bar Club Section (net)	100%	Indy Eleven to retain all commissions related to the Bar Club
Permanent Sponsorship - 2nd Floor Lounge Club Section (net)	100%	Indy Eleven to retain all commissions related to the Lounge Club
Premium Seating Sales Revenue	20%	(i) Indy Eleven to retain 20% Commission for Private Suites (ii) Indy Eleven to retain 100% hockey tickets (net of surcharge)
Party Suites	20%	(i) For qualifying events where the Event Center retains 100% of the Party Suite ticket revenue, the Indy Eleven to retain 20% of non-Indy Eleven ticket revenue (net of surcharge) for Party Suites (ii) Indy Eleven to retain 100% hockey tickets (net of surcharge)
Greenspace Lawn	0%	Event Center to retain all sponsorship revenue related to Greenspace Lawn Area in front of Event Center

EXHIBIT “I”

FACILITY COVENANTS

“EVENT CENTER” AS USED IN THIS RESTRICATION SHALL BE INTERPRETED AS A REFERENCE TO THE “FACILITY”

1. <u>Restrictions</u>.

The Event Center shall have a capacity of not more than 8,500 seats. Food and beverage areas shall be limited to ancillary concessions areas (the “F & B Areas”). F & B Areas shall only be allowed to operate when the Event Center is hosting an event (such time referred to herein as an “Open Date”). The only permanent designated retail space permitted at the Event Center shall be a team store (the “Team Store”), which Team Store shall not exceed 15,000 square feet. The Team Store may operate during normal business hours; provided, however, pop-up kiosks and stands shall be permitted to sell event-related items on any Open Date.