CITY OF FISHERS AGENDA

BOARD/COMMISSION: Town Hall Building Corporation Meeting
DATE: 7/10/2023, at 4:00 PM
DIRECTIONS: Fishers 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. 5-8-23
4. **Approval of Event Center Sponsorship/Suite Agreement templates**
   a. Sponsorship & Suite Agreement
5. **Proforma**
6. **Project Agreement – CityView**
   a. Project Agreement
7. **Project Agreement – District South**
   a. Project Agreement

8. New Business

a. Fishers Event Center Update

9. Adjournment

MEETING OF THE FISHERS TOWN HALL BUILDING CORPORATION

THBC 5/8/23

Ben Jefferis, Vice-President, brought the meeting to order at 4:00
In attendance:
Josh Richardson
Rich Block
Troy Woodruff
Joe Eaton
Ben Jefferis
Jay Bangert not present.
Also attending: Jim Hallett- Indy Fuel Managing Director, Larry Gingerich of Ginovus, Elliott Hultgren, Megan Baumgartner, Jordan Willy, Jennifer Messer, Lawrence Summers, Kay Prange

Approval of minutes:
Quorum and Notice of Meeting were confirmed.
Minutes from 4-10-23 meeting were approved by consent 5-0

Indy Fuel License for Event Center-

Jim Hallett thanked the Mayor and City Council for this transformative partnership. The Indy fuel is a family entertainment company and minor league team for Chicago Blackhawks. He spoke about the partnership with Fishers and his role as an Ambassador for the partnership. He will be a watchdog on investment, hold focus groups to determine what the community wants.

In discussion, Rich Block spoke about defining the role of the THBC. Elliott Hultgren spoke about the financials and candidates for General Manager, an HR director, and a Director of Facility Operations. Mr. Hallett confirmed that the THBC will own the Event Center. Other topics included ASM's role, the financing BAN, disability access, rights for termination, naming rights, sponsorship, suites, risk.

Mr. Jefferis asked for a Motion to approve the Indy Fuel License for use of the Event Center. Mr. Block made a Motion to approve, seconded by Mr. Eaton. The Motion was approved, 5-0.

Meeting Adjourned at 4:49.

SPONSORSHIP AGREEMENT

This Sponsorship Agreement (this "**Agreement**") is entered into this ______ day of ________, 2023 (the "**Effective Date**") by and between the Indiana Hockey Club, LLC, an Indiana limited liability company ("**IHC**") and _________________, a(n) ___________________ ("**Sponsor**") as follows:

Recitals

WHEREAS, the City of Fishers ("**City**") is constructing an event center on property generally located Southeast of USA Parkway and Ikea Way Roundabout in Fishers, Indiana; (the "Event Center");

WHEREAS, IHC owns and operates a professional hockey team competing in the ECHL operating under the name "**Indy Fuel**";

WHEREAS, the Event Center will host the Indy Fuel's home games and other entertainment and cultural events;

WHEREAS, IHC, the City and the Fishers Town Hall Building Corporation ("**Building Corp**.") are parties to that certain May __, 2023 Event Center License Agreement, pursuant to which IHC is authorized to sell sponsorships that includes certain benefits related to the Event Center like the benefits described herein;

WHEREAS, Sponsor desires to become a sponsor of IHC's hockey games and to obtain certain other benefits from IHC as hereinafter provided; and

NOW THEREFORE, in consideration of the covenants and agreements herein expressed and of the faithful performance of all such covenants and agreements, IHC and Sponsor hereby agree as follows:

1. **SPONSORSHIP PACKAGE**. Sponsor hereby purchases from IHC and IHC sells to Sponsor the sponsorship package described in **Exhibit A** (the "**Sponsorship Package**"). Sponsor acknowledges and agrees that IHC, Building Corp., sponsors, promoters and their successors and assigns are entitled to sell additional advertising and sponsorships for their games and/or other events at the Event Center, which advertising or sponsorships may be within the same business category as Sponsor. This Agreement shall not be interpreted to include (a) any rights unless specifically listed in the Sponsorship Package, or (b) any food and beverage concessions within the Event Center. Moreover, to the extent the Sponsorship Package includes signage, IHC expressly reserves the right to cover and/or remove signage during events other than Indy Fuel hockey games ("Other Events"); provided, however, any such signage shall be displayed consistent with the Sponsorship Package during hockey games.

2. **TERM AND PAYMENT SCHEDULE**.

2.01. *Term*. This Agreement shall be in full force and effect on the Effective Date, however, the term of the Sponsorship Package shall be for a period of _____ (___) months commencing on ____________and terminating on _________, unless earlier terminated pursuant to the provisions hereof (the "**Term**").

2.02. *Payment*. Sponsor agrees to timely pay to IHC the sums detailed in **Exhibit B** (the "**Sponsorship Fee**"), which Sponsorship Fee shall be due in accordance with Exhibit B.

3. **ADVERTISING**. Any advertising copy and/or radio and television spots that are expressly provided within the Sponsorship Package shall be produced by Sponsor at Sponsor's sole cost. The design, layout and content of all advertising copy shall be subject to approval by IHC, in its sole discretion.

4. **TRADEMARKS**.

4.01 *Indy Fuel and Event Center Marks*. Subject to the provisions of this Agreement, IHC hereby grants to Sponsor the right to use the trademarks, trade names, logos, service marks, designs, identifications and other symbols and devices (individually or collectively, "**Marks**") associated with the Indy Fuel hockey team (the "**Indy Fuel Marks**") in its advertising copy. Additionally, in advertising copy using the Indy Fuel Marks, Sponsor shall be entitled to use the Event Center's Marks. Notwithstanding the foregoing or anything included herein to the contrary, Sponsor shall (a) only be permitted to use the Indy Fuel Marks and Event Center's Marks for the activities comprising the Sponsorship Package; (b) only use the Event Center's Marks if using the Indy Fuel Marks in the same copy or item; and (c) sumibt any proposed use of the Indy Fuel Marks and Event Center's Marks to IHC for its approval prior to use, which approval may be withheld in IHC's sole discretion. Upon termination of this Agreement, Sponsor shall immediately cease using Indy Fuel Marks and the Event Center's Marks.

4.02 *Sponsor's Marks*. Subject to the provisions of this Agreement, Sponsor hereby grants to IHC the right to use Sponsor's Marks solely for the activities expressly contemplated in the Sponsorship Package. Sponsor shall have the opportunity to review and pre-approve any use of its Sponsor Marks, which approval may be withheld in Sponsor's sole discretion. Upon termination of this Agreement, IHC shall immediately cease using Sponsor's Marks.

4.03 *Reservation*. The Sponsor's Marks, Indy Fuel Marks and Event's Center Marks shall remain the property of Sponsor, IHC and the Event Center, respectively. Any and all rights under trademark or copyright law or otherwise relating to such Marks shall inure to the benefit of the Marks respective owner. The contingent right to use the Marks, as permitted under this Agreement, is non-assignable, nonexclusive, and nontransferable by the parties.

Except as expressly provided in this Section 4 neither party shall have the right to use in any way the of the other party or its affiliates without the other party's prior written consent.

5. **DEFAULT**.

5.01 In the event either party defaults in the performance of any of its obligations hereunder and if such default is not cured within thirty (30) days after the other party gives written notice thereof to the defaulting party (except regarding the payment of money which shall not be subject to the right to cure), the other party shall be entitled to terminate this agreement upon five (5) days' written notice.

5.02 If this Agreement is terminated because of the default of IHC prior to the end of a period for which Sponsor has paid IHC, then IHC's sole liability shall be to refund to Sponsor any payment made for obligations not yet performed by IHC.

6. **ASSIGNMENT**. Neither party may assign any of its rights under this Agreement without the prior written consent of the other, which consent shall not be withheld unreasonably. Nothing herein set forth shall in any way prohibit the assignment of this Agreement by either party to a subsidiary, parent or affiliated company.

7. **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. Notice shall be provided as follows: if to (x) IHC: Indy Fuel, 1202 East 38th Street, Indianapolis, Indiana 46205, Attn: Mr. Larry McQueary, President; and (z) Sponsor at ______________, Attn: ____________. Each party may change its address for notice from time to time by delivering notice to the other party as provided above.

8. **AUTHORITY**. Each undersigned person executing this Agreement on behalf of Sponsor and IHC represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Sponsor or IHC, 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 IHC and Sponsor, respectively.

9. **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, which shall not be subject to Force Majeure) 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.

10. **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. This Agreement may be amended or modify only by written instrument executed by IHC and Sponsor.

11. **CONFIDENTIALITY**. Each party acknowledges and agrees that any and all information concerning the other party's business, including the terms and conditions of this Agreement, is "**Confidential and Proprietary**" information. Each party agrees that it will not permit the duplication, use or disclosure of any such Confidential and Proprietary information to any person, unless such duplication, use or disclosure is specifically authorized in writing by the other party or otherwise required by law.

12. **MISCELLANEOUS**. Subject to Section 6, this Agreement shall inure to the benefit of, and be binding upon, IHC and Sponsor, 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. Sponsor waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Sponsor 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 IHC and Sponsor. 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 Sponsor and IHC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Fishers, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Any amounts due or to be paid hereunder shall bear interest at the prime rate as published in *The Wall Street Journal* plus ten percent (10%) per annum from the date due until paid.

13. INDEX OF EXHIBITS

Exhibit A: Sponsorship Package
Exhibit B: Fees

[Remainder of Page Left intentionally Blank]

In Witness whereof, IHC and Sponsor have entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

IHC	**SPONSOR**
Indiana Hockey Club, LLC	Sponsor Name
___________________________	___________________________
___________________________ Printed	___________________________ Printed
___________________________ Date	___________________________ Date

EXHIBIT A

EXAMPLES

Mid-Level Signage (approximately 18’ x 3’)

One (1) Dasher Board Sign (12’ x 3’)

360 LED Ribbon Board :15 Feature (at least 3 times per game)

Two (2) Games, Roster Inserts

Social Media, Internet, CBS 1430 AM Radio Broadcast mentions and listing and link on corporate partner page

Four (4) Lewis and Wilkins IHC Season Tickets

25 Silver Level, Single-Game Tickets (games to be determined)

Exclusivity Status: “Official & Exclusive Printer of the Indy Fuel”

EXHIBIT B

EXAMPLES

Pricing:

Mid-Level Sign		$8,500
Dasher Board		$6,000
Ribbon Board		Included
Roster Inserts (2 games)		$504
Mentions, link & listing		Included
(4) LAW IHC Season Tickets		$4,596
(25) Silver, single-game tickets		$400
Official Printer of the Indy Fuel		Included
	Total	$20,000
	Less Trade	($10,000)
	Total Cash	$10,000

Payment Due Dates:

YEAR 1 (20__-20__):
$7,500 due ____________

YEAR 2 (20__-20__):
$10,000 due ____________

YEAR 3 (20__-20__):
$10,000 due ____________

EVENT CENTER
SUITE LICENSE & USE AGREEMENT

This EVENT CENTER LICENSE & USE AGREEMENT (this "**Agreement**") is entered into this ______ day of ________, 2023 (the "**Effective Date**") by and among the Indiana Hockey Club, LLC, an Indiana limited liability company ("**IHC**") and _________________, a(n) ____________________ ("**User**") as follows:

Recitals

WHEREAS, the City of Fishers ("**City**") is constructing an event center on property generally located Southeast of the USA Parkway and Ikea Way Roundabout in Fishers, Indiana, as further depicted on **Exhibit A** (the "**Event Center**");

WHEREAS, IHC owns and operates a professional hockey team competing in the ECHL operating under the name "**Indy Fuel**";

WHEREAS, the Event Center will host the Indy Fuel's home games and other entertainment and cultural events;

WHEREAS, IHC, the City and the Fishers Town Hall Building Corporation ("**Building Corp**.") are parties to that certain May __, 2023 Event Center License Agreement, pursuant to which IHC is authorized to sell and license suites within Event Center for use; and

WHEREAS, User desires to enter into this Agreement with IHC to use the Suite (as defined in Section 2) for the Term (as defined Section 1).

NOW THEREFORE, in consideration of the covenants and agreements herein expressed and of the faithful performance of all such covenants and agreements, IHC and User hereby agree as follows:

1. TERM. This Agreement shall be in full force and effect on the Effective Date, however, the term of the right to use the Suite shall be for a period of _____ (___) months commencing on _____________and terminating on _________, unless this Agreement is earlier terminated pursuant to the provisions hereof (the "**Term**").

2. RIGHT TO USE SUITE. Subject to the terms and conditions set forth herein and upon payment of the User Fees (as defined in Section 4), Security Deposit (as defined in Section 4) and any other amounts due hereunder, User shall be entitled, during the Term, to the privilege and right to use Suite # _____ in Event Center (generally located as shown on **Exhibit B)** (the "Suite") during Event Center events for which User has received, as a part of the Suite Benefits (as defined in Section 3), tickets authorizing admission to the Suite. User acknowledges and agrees that the Suite will generally consist of seats facing the playing surface of Event Center and a furnished, climate-controlled seating and common area. User also acknowledges and agrees (a) that all rights and privileges granted to User with respect to the Suite pursuant to this Agreement relate and pertain only to Event Center events for which User has tickets authorizing admission to the Suite, and (b) IHC shall be entitled to authorize and permit persons other than User (each, an "**Additional**

User") to use the Suite during Event Center events for which User does not have tickets authorizing admission to the Suite. Any such use of the Suite by Additional User(s) will be governed by a separate agreement; it being understood and agreed that User is not and shall not authorize, permit or enter into a sub-license, sub-lease or sub-use agreement for the Suite of any kind. IHC agrees to defend, indemnify and hold harmless User, from and against any Claims arising out of use of the Suite by an Additional User. For purposes of this Agreement, the term "**Claims**" means 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.

3. <u>SUITE BENEFITS & EXCLUSIONS</u>.

(a) *Suite Benefits*. The benefits granted pursuant to this Agreement including, but not limited to, ticket availability for Event Center events, parking passes, suite amenities and other opportunities (the "**Suite Benefits**") are listed in **<u>Exhibit C</u>**, and amenities and rights not included in the Suite Benefits are specifically excluded from this Agreement.

(b) *Excluded Events*. User acknowledges and agrees that there may be certain events for which the Suite is unavailable for User's use ("**Excluded Event(s)**"). For purposes of this Agreement, "**Excluded Events"** include any events whose organizers require, as a condition of using the Event Center, exclusive control of all or substantially all suites, including, without limitation, events like NCAA tournaments, NFL events, private events, conventions, trade shows, political events, charitable events, graduations and other non-recurring events. IHC shall not be required to provide notice or obtain consent from User prior to using the Suite for Excluded Events. Notwithstanding the foregoing, if an Excluded Event is held in the Event Center, IHC shall, to the extent reasonably possible, offer User an opportunity to purchase tickets, if sold, for seating elsewhere in the Event Center to such Excluded Activity.

(c) *Other Events*. Tickets for events other than hockey games ("**Other Event(s)**") are included among the Suite Benefits. User acknowledges and agrees that User shall, at least one hundred twenty (120) days prior to any such Other Event (the "**Ticket Request Deadline**"), request tickets to such Other Event by ______________________. To the extent that User does not request tickets for any such Other Event by the Ticket Request Deadline, automatically and without further action of IHC or User, User shall be deemed to have relinquished use of the Suite during and the rights to tickets for such Other Event.

(d) *Advertising*. User acknowledges and agrees that IHC, Building Corp., sponsors, promoters and their successors and assigns are entitled to sell advertising for their games and/or Other Events at the Event Center, which advertising may be within the same business category as User. This Agreement shall not be interpreted to include (i) any advertising rights, exclusives or other rights for the benefit of User unless specifically listed in the Suite Benefits; or (ii) any food or beverage concessions within the Event Center.

4. <u>PAYMENTS</u>.

(a) *Security Deposit*. User shall submit to IHC with this executed Agreement a security deposit made payable to IHC in the amount of _________ Thousand and no/100 Dollars ($__,000.00) (the "**Security Deposit**"). The Security Deposit shall be used as security for the prompt and full payment of all fees, including User Fees (as defined in Section 4(b)), and User's good faith performance of its obligations hereunder. Application of said Security Deposit is more particularly described in Section 12 herein.

(b) *User Fees*. User shall pay to IHC an annual use fee for the Suite Rights as set forth in **Exhibit D** (the "**User Fees**").

(c) *Brokerage*. User represents and warrants to IHC that it has not entered into and is not subject to any agreement, arrangement or understanding pursuant to which an individual or entity is entitled to a fee or commission with respect to any amount payable under this Agreement. User shall indemnify IHC for any Claims resulting from a brokerage-type agreement.

5. FURNISHINGS, FIXTURES AND ALTERATIONS.

(a) *FF&E*. The Suite shall be furnished and equipped with such fixtures, furnishings and equipment as set forth in **Exhibit E**.

(b) *Design*. IHC intends to establish and maintain a basic color scheme and a uniform design and aesthetic for the Suites in Event Center. User shall not make any additions or alterations in the interior or exterior of the Suite or to the fixtures, furnishings and equipment therein without the prior written consent of IHC, which consent may be withheld in IHC's sole discretion. Any approved changes, alterations or additions authorized by IHC shall be made at User's sole cost and expense, free of any liens, in a good and workmanlike manner and in compliance with the Laws (as defined in Section 18(b)). Any fixtures or materials incorporated in or attached to the Suite by User shall become the property of IHC, unless User has received IHC's written consent to remove those fixtures or materials on or before the expiration of the Term, in which case User shall, subject to normal wear and tear, restore the Suite to its original condition at User's sole cost and expense.

(c) *Repair*. In the event that the Suite falls into a state of disrepair or substandard condition not attributable to (i) normal wear and tear, (ii) use by an Additional User or (iii) use for an Excluded Event, IHC shall notify User in writing of such required repairs. IHC will then complete necessary repairs and refurbishments and deduct the cost of same from User's Security Deposit. IHC shall invoice User for the cost of the repairs and refurbishments to the extent that such cost exceeds the balance of User's Security Deposit. User's failure to pay IHC within thirty (30) days of receipt of said bill shall constitute a default of this Agreement.

(d) *Custom Décor*. For any day of event décor set-up inside User's Suite, User shall seek approval from IHC. This includes any additional decorations used to celebrate birthday parties, special occasions or theme nights. If day of event décor is not properly cleaned and removed by User at the conclusion of the event, User may be subject to a cleaning fee as deemed necessary by IHC in its commercially reasonable discretion.

6. ADMISSION TICKETS.

(a) *Hockey Games*. For all pre-season, regular season and post-season Indy Fuel games held in Event Center, User shall be entitled to receive _________ (___) admission tickets and _____________ guest passes that allows a patron holding a ticket for other seating in Event Center access to the Suite (each, a "**Guest Pass**").

(b) *Other Event Tickets*. Except as provided below, User shall also be entitled to receive ________ admission tickets and _______ () Guest Passes to Other Events at Event Center for which User desires to use the Suite. User acknowledges and agrees that it forfeits the right to use the Suite for Other Events, if it does not request tickets for any such Other Event by the Ticket Request Deadline.

(c) *Non-Ticketed Users*. Except as otherwise set forth herein, User shall have no right to admit any person to the Suite during any event for which User does not purchase or receive admission tickets.

(d) *Other Professional Leagues*. User understands, acknowledges and agrees that (i) in the event that any professional sport league after the Effective Date of the this Agreement should award a franchise authorizing a men's or women's professional sports team to play its home games in the Event Center, User shall have no right under this Agreement to use the Suite or to enjoy the Suite Benefits or any other admission privileges for any pre-season, regular season or post-season playoff game of such team unless and until such time as IHC and User renegotiate and amend this Agreement in writing to provide for tickets authorizing admission to the Suite for such games and (ii) IHC, in its sole discretion and without consent of User, may from time to time enter into an agreement with an Additional User authorizing admission to and use of the Suite by such Additional User during the home games and events of such team in Event Center. Notwithstanding the foregoing or anything included herein to the contrary, this Section 6(d) shall only apply to Agreements with a Term extending beyond January 1, 2025 and shall not apply until January 1, 2025.

7. TICKET RESALE POLICIES. User represents that under this Agreement any event tickets received by User as part of this Agreement may not be re-sold above the face value of the respective event ticket. Under no circumstances is User allowed to resell the entire Suite to another party for an event without approval from IHC. Violation of this Section 7 shall be deemed a default hereunder and shall subject this Agreement to immediate termination.

8. POSSESSION AND USE.

(a) *Access*. User shall be entitled to the exclusive use and possession of the Suite during the Term, subject to the terms, conditions and other provisions of the Agreement. User and User's guests shall be entitled to use the Suite at all times for which appropriate tickets for admission to the Suite have been obtained. During dates on which events occur, access to the Suite and the Suite area, as well as any private lounge facilities, shall require the presentation by each person using such area of a ticket for admission to such event. In addition to the benefits described in **Exhibit C**, User shall be given access to the Suite on other dates upon such terms and conditions as IHC, in its sole discretion, may permit or designate. User and User's guests shall be bound by and shall observe the terms and conditions upon which tickets for admission to Event Center have been issued by IHC or by any event sponsor, including, without limitation, the policy adopted by the issuer of such tickets with respect to the cancellation or postponement of any event.

(b) *Access to the Suite shall be from a separate level of Event Center*. Access to the Suite shall be shared only by persons holding appropriate tickets for admission to the Suite. The Suite door shall be provided with a lock system.

(c) *Suite Benefits - Exclusivity*. The Agreement provides User only with the right and privilege to possess and use the Suite in the manner set forth in the Agreement, and, except as it pertains to any special right and privilege specifically listed within the Suite Benefits, the Agreement does not confer upon User any greater or lesser rights and privileges with respect to admission to the Event Center than that afforded to other holders of tickets for admission thereto.

9. PARKING. IHC shall provide User, at no additional cost, for all events at the Event Center for which User holds tickets pursuant to the Agreement authorizing admission to the Suite, four (4) parking passes for non-valet parking in lots designated by IHC. User agrees and acknowledges that the location of parking spaces is subject to change at IHC's discretion; however, at no time during the Term of this Agreement shall the number of parking passes change.

10. FOOD AND BEVERAGE SERVICES. Food and beverage service shall be provided by the Event Center, at prevailing rates established by the Event Center, to be billed directly to User. User shall pay by the conclusion of each event day all charges and expenses, including applicable taxes for catering and other services incurred by User in connection with the use of the Suite by User. No food or beverages other than those purchased from the Event Center concessionaire may be brought into, prepared in or consumed within the Suite. Moreover, this Agreement shall not be interpreted to include any food or beverages as part of the Suite Benefits.

11. REPAIRS AND MAINTENANCE. IHC will be responsible for ordinary repairs and maintenance to the interior and exterior of the Suite, including ordinary cleaning, sweeping, vacuuming, trash removal and dusting. IHC reserves the right to charge User for, and User agrees to pay for, the cost of extraordinary repairs, maintenance, replacements or cleaning of the Suite resulting from any act or omission of User or its guests. User agrees and acknowledges that IHC may designate the catering, cleaning, restroom, trash removal, Suite supply and repair functions to any third party. IHC will be responsible for the periodic replacement of wall coverings, furnishings, carpeting and equipment in the Suite as IHC determines is necessary due to normal wear and tear. IHC shall be responsible for, and will immediately complete, without any cost or expense to User (and for the avoidance of doubt without deduction of the Security Deposit), any repairs, maintenance, replacements or cleaning of the Suite (whether ordinary or extraordinary) resulting from (i) any act or omission of any Additional User or its guests, or (ii) an Excluded Event. IHC agrees to inspect the Suite before and within twenty-four (24) hours after each Event Center event in which the Suite is used and promptly notify User if it is liable

for costs resulting from IHC's maintenance or repair pursuant to this Section 11, all of which shall be determined and completed in IHC's sole, commercially reasonable discretion.

12. APPLICATION OF SECURITY DEPOSIT.

(a) *Accounts*. The Security Deposit may be commingled with other IHC funds in a noninterest-bearing account and may be used by IHC for any business purpose. If User complies with the terms and conditions of this Agreement and chooses not to renew the right to use the Suite granted pursuant to the Agreement, then the Security Deposit shall be used to repair any damages to the Suite, to satisfy any unpaid obligations of User under this Agreement and the balance shall be refunded to User within thirty (30) days of termination of the Agreement.

(b) *Application to Amounts Due*. If, at any time during the Term, any portion of the User Fees or any other amount payable by User to IHC is not promptly paid when due, IHC may, without prior notice and without waiving any other remedy, appropriate and apply all or any portion of the Security Deposit to the payment of such amount. User shall, upon written demand of IHC, remit to IHC an amount sufficient to restore the Security Deposit to the original sum deposited. User's failure to do so within five (5) business days after receipt of such demand shall constitute a breach of the Agreement.

(c) *Use Terminated*. If User's right to use the Suite is terminated, IHC may, at its option, appropriate and apply the Security Deposit, or so much thereof as may be necessary, to compensate IHC for any loss or damage sustained or suffered by IHC due to User's breach of this Agreement and the balance shall be refunded to User within thirty (30) days of termination of the Agreement.

(d) *User Termination*. Beginning in year _____ of the Term, User may terminate this Agreement upon one hundred twenty (120) days' written notice to IHC. If User terminates this Agreement pursuant to this Section 12(d), no money will be refunded to User, and User shall forfeit the (i) Security Deposit and (ii) full amount of the current contract year's payment. User also understands that any tickets already received by User for shows and/or events occurring after the date of early termination will be made null and void by IHC. Any tickets purchased by User for events occurring after the date of early termination will be refunded to User.

13. OBLIGATION TO PAY.

(a) *Liability for Payment*. Except as otherwise set forth herein, the obligation of User to pay the Security Deposit, the User Fees, food and beverage concessions charges or other sums due to Event Center, the Event Center's caterers and concessionaires, or any event sponsor is absolute. User shall promptly make all such payments without any deductions, setoffs or counterclaims against such payments on account of any breach or default by or Claims against IHC or otherwise, or any breach or default by or Claims against any caterer or concessionaire or any event sponsor.

(b) *No Deduction or Set-Off*. IHC shall not be liable for, and User shall not assert any deduction, setoff or claim of any nature against IHC for any act or omission of or any breach or default by any caterer or concessionaire or event sponsor. User shall be bound by the terms and conditions established by IHC or the Event Center for cancellation or postponement of an event. Except as otherwise set forth in this Agreement, neither IHC, the Event Center, the City nor Building Corp. shall be liable to User on account of any such cancellation or postponement or other failure or deficiency in the conduct of such event.

(c) *Payment as Condition Precedent*. User's rights under the Agreement, including, without limitation, the rights to access and use the Suite, are subject to the condition precedent of payment by User of all sums due, including the User Fees, and User's continued compliance with the Agreement.

14. NONOCCURRENCE OF EVENTS. The Agreement shall not operate as or constitute any warranty, representation, covenant or guarantee by IHC to User that any number of events or particular event(s), sports team(s), individual(s) or group(s) shall occur, play or appear at Event Center during the Term.

15. FORCE MAJEURE.

(a) *Temporary*. If IHC is temporarily prevented, in whole or in part, from performing its obligations hereunder by virtue of any cause beyond its reasonable control (including, without limitation, any act of God, fires, floods, epidemics, quarantine restrictions imposed by government officials, emergency, war, act of terrorism, accident, player strike, referee strike, labor difficulty, pandemic, legal restriction, government action or mechanical difficulty, each such cause being a "**Force Majeure Event**"), then IHC's obligations under this Agreement shall be excused for a period of time equal to the period during which it shall have been prevented from performing. In no event shall User be entitled to any damages, payment or remedy hereunder as a result of any such Force Majeure Event.

(b) *Extended*. If any Force Majeure Event makes it permanently impractical or impossible for IHC to fulfill its obligations under this Agreement, IHC shall give prompt written notice thereof to User, and, as of the date of such written notice, this Agreement shall terminate, and the parties hereto shall be relieved from further performance hereunder. If this Agreement is so terminated, User shall be entitled to an adjustment of the User Fees previously paid for that portion of the Term that remains.

16. LATE FEE. Any User Fees or other monetary obligation of User under this Agreement not paid by the date specified in the Agreement shall bear interest accruing from such date at the rate of fifteen percent (15%) per year or the highest rate permitted by the Laws whichever is less.

17. RIGHT OF FIRST REFUSAL TO RENEW.

(a) *Right*. If not in default in the performance of its obligations under this Agreement, User shall have the right of first refusal to renew this Agreement by providing notice to IHC within ________ days of expiration of the Term, which renewal shall be at such fees and on such other terms and conditions as IHC may, in its sole discretion, determine. For the avoidance of doubt, this Section 17(a) shall not obligate IHC to renew this Agreement on the same terms.

(b) *Non-Renewal/Tickets*. If User does not renew this Agreement, User acknowledges, understands and agrees that it shall not be entitled to tickets for any Event Center events that have been announced but have an event date that occurs after expiration of the Agreement. If User has received tickets for any events occurring after the expiration of the Agreement, User acknowledges, understands and agrees that such tickets will be made null and void. Any tickets purchased by User for events occurring after the expiration of this Agreement will be refunded to User.

18. COVENANTS OF USER. User covenants and agrees as follows:

(a) *Good Repair*. User shall keep and maintain the Suite in good repair, order and condition. Except for ordinary wear and tear, User shall reimburse IHC for the repair of any damage caused to the Suite or property in the Suite by User or any of User's guests or invitees.

(b) *Rules*. User shall abide by and require its guests to abide by the Laws and such rules, regulations and policies as IHC or the Event Center shall establish, in their sole discretion, concerning the use and occupancy of the Suite and attendance at Event Center events, including any modifications to such rules, regulations and policies that may be adopted or administered by IHC, the Event Center or their designee(s) from time to time. For purposes of this Agreement, the term "**Laws**" shall mean all Event Center rules, applicable federal, state and local statutes, ordinances, laws, rules, regulations, covenants and declarations, including but not limited to those relating to the environment, safety, security, occupancy, sanitary, and health requirements, fire and safety codes, as amended.

(c) *Decorum*. User and User's guests shall at all times maintain proper decorum while using the Suite. User shall be responsible for its actions as well as those of its guests, including, but not limited to, actions arising from the consumption of alcoholic beverages. If User or its guests create a disturbance or cause objects to be thrown or dropped from the Suite, IHC, the Event Center or their designees shall have the right to eject the parties responsible for such action, or all the persons in the Suite, from the Event Center. User's and its guests' failure to exercise property Decorum shall be deemed a default under this Agreement.

19. DEFAULT.

(a) *Payments & Cure*. If User fails to pay when due any amounts to be paid by User pursuant to the Agreement or otherwise defaults in the performance or observation of its duties and obligations under the Agreement, IHC may, at its option: (i) withhold distribution to User of tickets for games and Other Events held at Event Center and parking and Guest Passes until such time as such default is cured; and/or (ii) terminate the rights of User under the Agreement upon twenty (20) days prior written notice of such default or breach. If User does not cure the default or breach specified in said notice by the date specified in said notice, IHC may terminate the right of User to the use and possession of the Suite and all other rights and privileges of User under the Agreement and declare the entire unpaid balance of the User Fees (which for purposes hereof shall include the total aggregate unpaid balance of the User Fees for the remainder of the Term) immediately due and payable, whereupon IHC shall have no further obligation of any kind to User. Notwithstanding the foregoing or anything included herein to the contrary, User shall not be entitled to the right to cure any (a) monetary default; or (b) default resulting from User's or its guests' gross misconduct, and IHC shall be entitled to immediately terminate this Agreement without notice.

(b) *Mitigation*. IHC shall use reasonable efforts to re-market the Suite to another party provided that, if there are any other suites in Event Center available to be marketed, then IHC may give priority to marketing such other suites. User shall remain liable for all payments due or becoming due under the Agreement, provided, however, if IHC enters into an agreement with another party to use the Suite, then all amounts received from such other party, applicable to the remaining period of the Agreement, shall be applied first to the expense of re-marketing and then to the reduction of any obligations of User to IHC under this Agreement. If the consideration collected by IHC upon any such re-marketing is not sufficient to pay the full amount of all such obligations of User, User shall pay such deficiency upon demand.

20. DAMAGE OR DESTRUCTION TO SUITE. If the Suite is rendered unusable without fault of User or by a cause attributable to User or User's guests or invitees, then, an equitable adjustment to User will be made, unless a reasonably comparable Suite is made available to User. No adjustment will be made if the unavailability of the Suite is caused by the fault or negligence of User or User's guests or invitees. If, in the event of any damage to or destruction of the Suite, IHC elects not to repair or restore the same, this Agreement shall terminate as of the date of such damage or destruction, and a prorated portion of the prepaid annual User Fees shall be refunded to User. Upon payment of such refund, IHC shall have no further liability under the Agreement.

21. ACCESS BY IHC. Each of IHC and the Building Corp. and their respective agents and employees shall have access to the Suite to the extent deemed necessary (a) for the performance of its obligations under the Agreement and for any and all purposes related thereto, (b) to investigate any suspected violations of the terms and conditions of this Agreement, or (c) in the event of an emergency, by use of a master key or forcible entry. User shall not interfere with the right of access described herein by installing or changing locks. Unless the emergency necessitating the forcible entry is caused by the fault or negligence of User or User's guests or User has interfered with IHC's right of access by installing additional or changed locks or otherwise, IHC shall repair any property damage to the door or entryway caused by forcible entry and shall have no other liability for entry into the Suite.

22. DISCLAIMER OF LIABILITY.

(a) *Disclaimer*. Neither IHC, City, Building Corp. nor any of their officers, employees or agents shall be liable or responsible for any loss, damage or injury to any person or to any property of User or User's guests in or upon Event Center, resulting from any cause whatsoever, including, but not limited to, theft and vandalism.

(b) *Assumption of Risk*. User and its guests and invitees hereby assume all risks and danger incidental to the games and events from time to hosted in the Event Center, including without limitation, basketball, arena football and hockey and events generally (whether sporting or otherwise), whether occurring prior to, during or subsequent to, the actual playing of the game or conducting of the event, including specifically (but not exclusively) the danger of being injured by balls, pucks, sticks or other missiles, and agree that IHC, any sports league, the City, Building Corp. and each of their respective, officers, agents, employees and players and other individuals performing or participating in events (the "**Event Center Parties**") shall not be liable for injuries from such causes.

(c) *Indemnification*. In addition, User agrees to indemnify and hold harmless the Event Center Parties from and against any Claims, arising out of any personal injury or property damage occurring in or upon the Event Center in connection with User's use or occupancy of the Suite or due to the contravention of the provisions of this Agreement or of any applicable Laws.

23. INSURANCE. User shall, at its sole cost and expense, obtain and maintain throughout the Term, a comprehensive general liability insurance policy (including, without limitation, host liquor liability coverage), with a single limit of at least $1,000,000, including coverage for bodily injury or death, property damage and personal injury liability, and for the performance by User of the indemnity provisions of the Agreement. The limits of this insurance shall not, however, limit the liability of User under the Agreement. Prior to User receiving tickets for any event at the Event Center, User shall deliver to IHC a certificate evidencing the issuance of such insurance policy. Annual renewal certificates shall be delivered to IHC upon expiration of the insurance policy. User's comprehensive general liability insurance policy shall (i) name IHC, the City and Building Corp. as additional insureds, (ii) contain a provision that the general liability insurance policy is primary and non-contributory to any insurance carried by IHC, the City and Building Corp,, (iii) contain a provision that host liquor liability coverage is included and (iv) be issued by an insurance company reasonably satisfactory to IHC and qualified to do business in the State of Indiana. Each insurance certificate shall be accompanied by an endorsement indicating that the insurer agrees that the policy shall not be cancelled except after thirty (30) days written notice to IHC.

24. ASSIGNMENT: WHEN PERMITTED.

(a) *Assignment*. User hereby acknowledges and agrees that the identity of User is of crucial importance to IHC. Accordingly, User hereby agrees that, unless User has obtained IHC's prior written consent, it shall not assign, sell, transfer, mortgage or otherwise alienate or encumber (any such act being to "**assign**" and to result in an "**assignment**") this Agreement or any interest herein; provided, however, that User may distribute tickets or passes for use of parking spaces to its guests and invitees for use in the manner permitted herein. As outlined in Section 7 of this Agreement, User further agrees not to sell any tickets or any rights to admission to the Suite, the parking spaces, or any private club lounge or otherwise permit any person to occupy the same for hire, it being expressly understood that the use of the tickets, the Suite and any private lounge shall be solely and exclusively for the use, enjoyment and entertainment of User and User's guests and invitees. User agrees not to solicit or accept any direct or indirect payment or income from any person for the use and enjoyment of tickets (above the face value of the respective event ticket), the Suite, parking spaces or any private lounge. Violation of this Section 24 shall be deemed a default hereunder. Additionally, User shall be liable for continued payment of User Fees throughout the remainder of the Term. The provisions of this Section shall not prohibit User from requiring its guests and invitees, pursuant to User's company or internal policy and procedures, to pay or reimburse User for the use of tickets.

(b) *Consent.* If User desires to assign its interest in this Agreement to any person or entity, User shall notify IHC in writing of such desire, setting forth the identity of the proposed assignee and the name, address and telephone number of the individual representing the proposed assignee so that IHC may communicate with the proposed assignee regarding the assignment. IHC shall have the right to contact the proposed assignee and conduct such investigation of the creditworthiness of such proposed assignee as IHC shall deem necessary, including requiring the proposed assignee to submit to IHC such financial and other information as IHC deems advisable. IHC shall have the right, in the exercise of its sole discretion, to refuse to consent to any such proposed assignment. If IHC consents to the proposed assignment, it shall not be effective until IHC has received an instrument executed by the proposed assignee by which it agrees to be bound by this Agreement, and an instrument of assignment satisfactory to IHC executed by User. Upon IHC's written consent to the assignment of this Agreement and receipt of such instruments, User shall be released from any further obligations under this Agreement. Any consent by IHC to any assignment or other transfer by User shall not be deemed to be consent by IHC to any further assignment or other transfer by User's successor. Any attempted assignment, sale, transfer, mortgage or other alienation or encumbrance of this Agreement or any interest herein in contravention of this Agreement shall be null and void, and further shall constitute a default in the performance and observance of User's duties and obligations under this Agreement.

(c) *Suite not to be Mortgaged or Used as Collateral or Security*. User acknowledges and agrees that User's interest in the Suite shall not be used as collateral or security for User to support, finance or underwrite any other financial obligation of User, nor shall User use its interest in the Suite to obtain any mortgage or monies related to a mortgage.

(d) *Assignment by IHC*. IHC shall be entitled to assign its rights and obligations hereunder to the City or Building Corp. or to any management company retained by City or Building Corp. to manage the Event Center, and in such event, IHC shall have no further liability to User hereunder for the performance of any obligations or duties arising after the date of such assignment.

25. COST-SHARING ARRANGEMENTS. User hereby covenants, represents and warrants that User has not entered into, nor will it enter into, any agreements or arrangements by which User and any other party or parties share the costs attributable to the Suite, including, but not limited to, the User Fees provided for hereunder, in consideration for the use of the Suite during the Term (a "**Cost-Sharing Arrangement**"). A Cost-Sharing Arrangement shall include any and all agreements to transfer, for any consideration whatsoever, one or more Suite tickets. In the event that User desires to enter into a Cost-Sharing Arrangement after execution of this Agreement, User shall provide IHC the identity of the party(s) to the proposed Cost-Sharing Arrangement, and the address and phone number of such party(s), so that IHC may contact them

to obtain such financial or other information as IHC deems advisable. If approved in writing by IHC, an amendment outlining the elements of the Cost-Sharing Arrangement will be added to this Agreement. No Cost-Sharing Arrangement shall relieve User from being fully liable for all obligations under this Agreement, including all User Fees. IHC shall have the right, exercisable in IHC's sole and absolute discretion, to prohibit and to reject any proposed Cost-Sharing Arrangement or to limit the number of parties to a Cost-Sharing Arrangement.

26. ADMINISTRATIVE MATTERS. User shall provide to IHC on or before the Effective Date the following information:

(a) The name and address of the person to whom all correspondence, including but not limited to tickets and parking passes, relating to the Suite shall be sent.

(b) Unless User is an individual, the name and address of the person who is authorized to receive notices sent to User and generally bind User with respect to all matters relating to the Suite and this Agreement.

IHC may from time to time provide a form on which User shall provide such information as required herein, and User shall notify IHC in writing of any changes in such information.

27. 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.

28. LICENSE FOR USE. User hereby acknowledges and agree that this Agreement provides User a license for use of the Suite and does not convey or confer a property right, including, without limitation, a leasehold interest, in the Suite or Event Center to User.

29. MISCELLANEOUS. Subject to Section 24, this Agreement shall inure to the benefit of, and be binding upon, IHC, User 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. User waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right User 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 User and IHC and approved by Building Corp. 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. Any breach of this Agreement by the parties shall be deemed a default hereunder, notwithstanding whether a specific provision or term herein refers to a default caused by such breach. Nothing contained in this Agreement shall be construed to create a partnership, employment relationship or joint venture between IHC and User or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Fishers, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

30. INDEX OF EXHIBITS:

Exhibit A: Event Center
Exhibit B: Suite
Exhibit C: Suite Benefits
Exhibit D: User Fees
Exhibit E: Suite FF&E

[signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below to be effective on the Effective Date.

USER

Signature: ______________________________ Date:_______________________________

Name Printed: __________________________

Signature: ______________________________

Name Printed: ___________________________

Address: ____________________________

____

____

IHC

Signature: ____________________________ Date:_______________________________

Exhibit A

Event Center

Exhibit B

Suite

Exhibit C
Suite Benefits

Subject to the Agreement, User shall be entitled to the following benefits (collectively referred to in the Agreement as the "**Suite Benefits**"):

1. ______ (__) tickets authorizing admission to the Suite for all hockey games.

2. ______ (__) tickets authorizing admission to the Suite for all Other Events.

2. Parking Passes. Four (4) parking passes.

3. Suite Features. The Suite is designed, as of the Effective Date, to provide:

- ________ (___) exterior seats
- Drink rail inside Suite with _____ (__) bar stools
- Professionally finished interior with upscale furnishings
- Under-counter refrigerator
- Storage cabinets
- Buffet counter
- Wet bar
- Television with in-house feed and cable
- Coat & storage closet
- Company identification placard at concourse entrance to Suite (optional)
    - First placard installment will be paid by IHC. Any changes or subsequent placard installment(s) shall be paid for by User.

4. Suite Amenities. User shall be entitled to the following amenities:

- Access to private lounge on the _________ Premium Level
- Access to restrooms on the ___________Premium Level
- Private elevator to ___________Premium Level
- Suite attendant
- Day use of Suite during normal Monday – Friday business hours; such use to be permitted at IHC's discretion, building scheduling permitting, and advance reservations required; upon such terms and conditions as IHC may set. User acknowledges, understands and agrees that any fixed costs incurred through the use of the suite such as food and beverage charges, set-up, cleaning, AV/Electrical needs or any other miscellaneous fixed costs will be billed back to User at the conclusion of the day use.

5. IHC shall use its best efforts to assure that the foregoing amenities will be included with the Suite; but IHC does not guarantee that changes to the amenities will not be made from time to time during the Term of the Agreement.

Exhibit D
User Fees

Payment Schedule

____ Year Private Suite Use Agreement

1. ANNUAL USER FEES. The "User Fees" payable annually by User to IHC pursuant to the Private Suite Use Agreement to which this exhibit pertains and constitutes a part of shall be the amount set forth below for each year of the Agreement:

- $ for Year 1
- $ for Year 2
- $ for Year 3

The annual amount for Year 1 of the Agreement shall be due and payable upon execution of this Agreement. The annual amount payable for each subsequent year shall be due and payable on of each year beginning , and continuing to , .

Exhibit E

Suite FF&E

PROJECT AGREEMENT

This Project Agreement (the "Agreement") is executed as of the ___ day of ____, 2023, by and among HighGround Fishers I, LLC, an Indiana limited liability company ("Developer"), HighGround Fishers I, Inc., an Indiana corporation ("Owner" and together with the Developer, the "Company"), the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation ("City"), the City of Fishers Economic Development Commission, the Economic Development Authority for the City of Fishers (the "EDC"), the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "RDC"), and the Fishers Town Hall Building Corporation, an Indiana nonprofit corporation (the "Building Corp."), on the following terms and conditions:

Recitals

WHEREAS, Company is an Indiana real estate development company with a reputation of delivering complex multi-family, office, retail and community amenities across Indiana, including large, multi-use developments such as the Spark in Fishers,IN, the Barlow in Plainfield, IN, the Levinson in Noblesville, IN and the Linc in Valparaiso,IN among others;

WHEREAS, the City continues to work to fulfill its master development plan, first set out in the City's Nickel Plat District Code, originally adopted February 17, 2014, to create a sustainable, pedestrian friendly downtown district where residents live, work and play and that drives jobs and investment in the City (the "Plan");

WHEREAS, as part of the Plan, the City has (a) worked with companies to develop multiple mixed-use developments that include apartments, condominiums, townhomes, office space and retail; (b) incented multiple high-growth, high-technology businesses to locate to the City; and (c) developed a life sciences corridor;

WHEREAS, as part of its Plan, the City desires to incentivize the development of age restricted, multi-family and higher density development within its downtown Nickel Plate District;

WHEREAS, Company submitted a proposal to City Bodies for a mixed-use development consisting of (i) approximately one hundred eighty-four (184) luxury, age restricted, active adult (55 and over in conformance with the Housing for Older Persons Act, as amended from time to time) residential units and (ii) approximately sixteen thousand, five hundred square feet (16,500 sq. ft.) of commercial/retail and restaurant space along 116th Street adjacent to the First Internet Bank building;

WHEREAS, Company has submitted a proposal to City Bodies for the development of the Project on the Project Site, and the City Bodies have determined that Company's proposal was submitted pursuant to and consistent with the Plan;

WHEREAS, as a result, City Bodies have agreed to provide certain incentives to assist Company in the construction of the Project pursuant to this Agreement;

WHEREAS, Company expects that its total investment in the Project will be approximately

Eighty-Nine Million and no/100 Dollars ($89,000,000.00); and

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

Agreement

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

1. Defined Terms.

Additional Bond(s) shall mean one or more series of taxable economic development revenue bonds to be issued under Ind. Code § 36-7-12 *et. seq*., the sale of such Additional Bonds shall be solely the responsibility of City, and Company shall not guaranty the repayment of the Bonds.

Additional Bond Proceeds shall mean that portion of the net proceeds of the Additional Bonds in an amount that is the lesser of (a) Seventeen Million, One Hundred Fifty-Nine Thousand, Four Hundred Sixty-Four and no/100 Dollars ($17,159,464.00); or (b) an amount that, when added to the TIF Bond Proceeds, makes the sum of the Bonds Proceeds Twenty-Three Thousand, Six Hundred Nineteen, Five Hundred Forty-Seven and no/100 Dollars ($23,619,547.00), which Additional Bond Proceeds shall be made available to Company for Approved Costs, pursuant to the Funding Agreement.

Allocation Area shall mean a separate and distinct tax allocation area established by City Bodies pursuant to Ind. Code § 36-7-14 *et seq*. for the Project Site, which Allocation Area shall be established prior to Closing.

Ancillary Agreements shall mean, individually or collectively, the instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement, Taxpayer Agreement, Bond Documents, Garage Lease, and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement.

Approved Costs shall mean all Hard Costs and Soft Costs (including capitalized interest on the Bonds) related to the Project.

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

Bonds shall mean, jointly, the Additional Bonds and the TIF Bonds.

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

Bond Proceeds shall mean, jointly, the TIF Bond Proceeds and Additional Bond Proceeds.

Bond Term shall mean, with respect to the Additional Bonds and the TIF Bonds, twenty-five (25) years from the date of issuance of such Additional Bonds or TIF Bonds.

Change Order shall mean a change order executed by the City (or its designee) and Company finalizing the inclusion into the Final Documents of a change proposed in a Change Order Request by Company that is approved by the City (or its designee); provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Company.

Change Order Request shall mean a written request for a change to the Final Documents.

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

City Parcel shall mean the real property depicted in Exhibit A, which City Parcel shall not be included as collateral for the Project Loan and shall not be subject to the Project Loan Documents.

City Parking Spaces shall mean parking spaces in the Garage that shall be available for the City to hold open as public parking free of charge on weekdays (Monday – Friday) 8:00a.m. - 5:00p.m. The number of City Parking Spaces shall equal the final total number of parking spaces in the garage less the final total number of residential units in the Mixed-Use Building. The City shall not be entitled to charge for use of the City Parking Spaces or grant and record easements or provide licenses to other entities for use of the City Parking Spaces. Use of the City Parking Spaces shall be governed by the Garage Lease and the Declaration.

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

Closing shall mean the completion of the following: (a) Company's acquisition of all parcels comprising the Project Site; (b) recordation of the Construction Phase Plat (if such recordation has not previously occurred); (c) execution (if such execution has not previously occurred) of all Ancillary Agreements; (d) the City's issuance of the TIF Bonds and the purchase of the TIF Bonds by the Company or a related entity; and (d) Project Lender issuing the Project Loan to Company (and Company authorized to draw upon such Project Loan subject to the satisfaction of customary draw conditions).

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with closing of the TIF Bonds.

Closing Date shall mean, the date on which the Closing occurs, which date shall be by or before the Outside Closing Date.

Company Parcel shall mean the portion of the Project Site depicted on **Exhibit B**, on which the Company will construct that portion of the Project that does not sit atop the Garage.

Concept Plan shall mean the plan for the Project. The Concept Plan is attached as **Exhibit C** and may be updated from time to time upon mutual agreement of Company and the City.

Construction Schedule shall mean, for the Project, the portion of the Final Documents comprised of the scheduled date for Substantial Completion of such Project.

Construction Drawings shall mean construction drawings with respect to the construction of the exterior components of the Project that are approved pursuant to the Plan Refinement Process.

Construction Phase Plat shall mean the plat of the land prepared by Company 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, at a minimum creates the Garage Parcel and Company Parcel.

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 extent more than ninety (90) days after the date of default.

Declaration shall mean the “Declaration” described in Section 13(c) that governs the Project, creates the HPR and is recorded contemporaneously with the HPR Plat, all as consistent with the FORM HPR Agreement attached hereto as Exhibit I . The Declaration shall, among other obligations and commitments (a) establish standards and responsibility for maintenance and repair of the Garage; (b) state that Company is exclusively responsible for the (i) management, (ii) maintenance, (iii) operation, (iv) insurance, (v) utilities, (vi) taxes, to the extent owed, and (vii) repair and reconstruction of the Garage; and (c) address the following with respect to the Garage: (i) use and operation of the City Parking Spaces, (ii) required signage, and (iii) such other terms as may be agreed upon by the parties.

Design Development Drawings shall mean the design development drawings for the exterior components of the Project that are approved pursuant to the Plan Refinement Process.

Diligence Period shall mean one hundred twenty (120) days commencing on the Execution Date and terminating one hundred twenty (120) days thereafter.

Event of Default shall have the meaning set forth in Section 15.

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

Final Document(s) shall mean the final Construction Schedule and the final Construction Drawings for the Project, as each is finalized and approved or reviewed by the City in accordance with the Plan Refinement Process described in Section 12 and, as each may be amended, by Permitted Changes and Change Orders.

Final Inspection shall mean an inspection of the Project after Substantial Completion thereof.

Force Majeure shall mean, with respect to Company or City Bodies, any cause that is not within the reasonable control of Company or City Bodies, respectively, including, without limitation: (a) an act or omission of one of the other parties hereto who is not the party claiming force majeure;

(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 pursuant to which the Bond Proceeds and Public Infrastructure Proceeds shall be disbursed to Company in a commercially reasonable manner for Approved Costs. Company shall be responsible for all costs to design and construct the Project in excess of the Bond Proceeds and Public Infrastructure Proceeds.

Garage shall mean: (a) the parking facility to be constructed by Company within the Garage Parcel as shown on **Exhibit D** containing approximately two hundred eighty (280) total parking spaces, including the City Parking Spaces, to be constructed by Company; (b) garage entrances and exits, ramps, elevators, stairwells, elevator lobbies, and all related facilities; and (c) all facades, exterior walls, roofs, foundations and other structural and aesthetic components thereof (but not including the connectors between the Garage and the Mixed-Use Building), as shown generally on the Concept Plan.

Garage Condominium Unit shall mean that certain condominium unit, which shall be created by the Declaration and HPR Plat, within which the Garage is to be constructed, which Garage Condominium Unit shall be identified by a property identification number separate and distinct from the Retail Condominium Unit and from the Multi-Family Condominium Unit.

Garage Condominium Unit Deed shall mean a limited warranty deed by which the Building Corp. takes title to the Garage Condominium Unit, together with all improvements thereon, which deed shall be subject only to (a) the Permitted Exceptions; and (b) matters created or consented to by City Bodies or its successor or contemplated herein.

Garage Lease shall mean the lease by and among Building Corp., RDC, and Company pursuant to which Building Corp. (a) shall lease the Garage Parcel to Company effective upon Closing and continuing through the date the Declaration and HPR Plat are recorded and the Garage Condominium Unit is transferred to the City pursuant to the Garage Condominium Unit Deed, and (b) after creation of the Garage Condominium Unit, shall lease the Garage Condominium Unit to Company for the Lease Term, and which lease shall: (x) be subject only to the Permitted Exceptions; and (y) include (i) an environmental indemnity from Company; and (ii) such other terms as are consistent with this Agreement and the Ancillary Agreements. The rental payments under the Garage Lease shall be the sole liability and obligation of RDC. The Garage Lease shall be further subject to the terms and conditions of the Declaration to be executed on or before Closing.

Garage Owner shall mean the owner of the Garage Condominium Unit.

Garage Parcel shall mean that portion of the Project Site generally depicted on **Exhibit D** on which the Garage is to be constructed.

Garage Parcel Deed shall mean a limited warranty deed by which Developer shall convey its interest in the Garage Parcel to Building Corp. at Closing, together with all improvements thereon, which deed shall be subject only to (a) Permitted Exceptions; and (b) matters created or consented to by City Bodies at Closing.

Hard Costs shall mean the costs incurred in connection with construction of the Project, which costs are customarily known in the industry as "hard costs".

HPR shall mean a horizontal property regime established pursuant to and consistent with Ind. Code §32-25 *et. seq*.

HPR Plat shall mean the plat prepared by Company that has received all final approvals and is recorded in the Office of the Recorder of Hamilton County, Indiana, which, at a minimum creates the Garage Condominium Unit, Retail Condominium Unit and Multi-Family Condominium Unit.

Incurred Costs shall mean, if this Agreement is terminated (a) after expiration of the Diligence Period; (b) prior to the Closing, or (c) after the Outside Closing Date, 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 $100,000.00).

Inspector shall mean such party designated by the City as its inspector.

Latent Defect shall mean a Material Defect with respect to the Project that: (a) is not discovered, and reasonably is not discoverable, by the City or Inspector during a Permitted Inspection and/or the Final Inspection; and (b) has a material and adverse effect on the use, operation, structure, or longevity of the Project.

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 Nickel Plate Code and all applicable environmental laws.

Lease Term shall mean a period of time running concurrently with the Bond Term of the Additional Bond.

Material Defect(s) shall mean any item or component of the exterior of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Documents; or (c) has not been performed materially in accordance with the terms and conditions of this Agreement.

Mixed-Use Building shall mean a mixed-use building that consists of the (a) Multi-Family Condominium Unit; (b) Retail Condominium Unit; and (c) Garage Condominium Unit.

Multi-Family Condominium Unit shall mean that certain condominium unit, which shall be created by the Declaration and HPR Plat, within which approximately one hundred eighty-four (184) upscale, luxury, active adult (55 and over) residential units are located, which Multi-Family Condominium Unit is identified by a property identification number separate and distinct from the Retail Condominium Unit and Garage Condominium Unit.

Non-Compliance Notice shall mean a written notice identifying any Material Defect discovered during a Permitted Inspection or a Final Inspection.

Outside Closing Date shall mean June 30, 2024.

Permitted Change shall mean a change to a Final Document for the Project that: (a) is not material in the overall scope and design of the Project; (b) is in conformity with the Laws; (c) does not result in the Final Document containing a Material Defect; and (d) does not make it unlikely, impracticable, or impossible for Company to complete and open the Project, or any component thereof, by the applicable date set forth in a Construction Schedule. In addition to the foregoing, any change required by the Laws shall constitute a Permitted Change.

Permitted Exceptions shall mean: (a) the lien of Current Year Taxes and Assessments not delinquent; (b) this Agreement, together with any Ancillary Agreements including, without limitation, the Declaration and the Taxpayer Agreement; and (c) such other matters as are accepted by the City Bodies (as applicable) in writing or which Company or City Bodies (as applicable) is deemed to have waived pursuant to the terms and conditions of this Agreement.

Plan Refinement Process shall mean the process described in Section 12 hereof.

Plan Review Panel shall mean a plan review panel comprised of the City's Economic Development Director and such other parties as may hereafter be designated by the City in a written notice to Company.

Pledged Increment shall mean one hundred (100%) of the tax increment revenue generated within the Allocation Area.

Project shall mean the development and construction of the (a) Mixed-Use Building on the Project Site; and (b) the Public Infrastructure, which Project is expected to represent an aggregate investment of approximately Eighty-Nine Million and no/100 Dollars ($89,000,000.00) in the City.

Project Lender shall mean a financial institution that is not affiliated with Company making the Project Loan, and any successor or assignee thereof.

Project Loan(s) shall mean one (1) or more construction loans to Company, the proceeds of which, along with the Bond Proceeds and Public Infrastructure Proceeds shall be used to fund development and construction of the Project. The Project Loan shall be disbursed pursuant to the Project Loan Documents (and not pursuant to the Funding Agreement), and the proceeds available at Closing (subject to the satisfaction of customary draw conditions).

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

Property Inspections shall mean surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments.

Project Site shall mean the six (6_) parcels of real property identified on **Exhibit E** .

Public Infrastructure Improvements shall mean, individually or collectively, (a) Public Streetscape Improvements; and (b) the Utility Relocation.

Public Infrastructure Proceeds shall mean not more than ________________ Thousand and no/100 Dollars ($______________) disbursed to Company to pay for a portion of the Public Infrastructure Improvements pursuant to the Funding Agreement.

Public Streetscape Improvements shall mean all streetscape and other infrastructure improvements required by and consistent with the Laws (including the Nickel Plate Code) for the Project that shall be constructed by Company and generally (but not always) are located in the areas between the curb (not including the curb) and the Multi-Family Building as shown on **Exhibit F**.

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

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

Retail Condominium Unit shall mean a condominium unit, which shall be created by the Declaration and the HPR Plat, within the Mixed-Use Building containing approximately sixteen thousand, five hundred square feet (16,500 sq. ft.) of commercial and/or retail and restaurant space along 116th Street adjacent to the First Internet Bank building, which Retail Condominium Unit shall be identified by a property identification number separate and distinct from the Multi-Family Condominium Unit and the Garage Condominium Unit.

Schematic Design Drawings shall mean for the Project the schematic design drawings for the exterior components of the Project that are approved as a result of the Plan Refinement Process.

Site Plan shall mean the site plan for the Project that is approved pursuant to the Plan Refinement Process.

Soft Costs shall mean costs incurred in connection with the Project, which costs are customarily known in the industry as “soft costs”.

Substantial Completion shall mean, with respect to the Project, the later of the date that: (a) Company receives a final or temporary certificate of occupancy for such Project; and (b) the date that Company’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 (subject to Permitted Changes and Change Orders), 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 the Project Site, certified as of a current date by a reputable licensed surveyor; which Survey does not show any matters that would: (a) materially and adversely interfere with the construction and/or use of the Project; or (b) render construction of the Project unusually difficult or costly.

Taxpayer Agreement shall mean the agreement described in Section 14 hereof.

TIF Bond(s) shall mean one or more series of taxable or tax exempt (as determined by the City Bodies, in their sole reasonable discretion) economic development revenue bonds to be issued under Ind. Code § 36-7-12 *et. seq*. in a maximum par amount that Company and City Bodies jointly determine will ensure that, including a three percent (3%) annual increase in Real Estate Taxes for the Project Site during each year of the Bond Term, one hundred percent (100%) of all tax increment revenue generated in the Allocation Area is utilized to pay debt service on the TIF Bonds. The TIF Bonds shall be payable solely from the Pledged Increment, and City Bodies shall not be obligated to provide any other source of payment or security for the TIF Bonds. The TIF Bonds are estimated to be issued in the par amount of __________ and no/100 Dollars ($__________.00) and produce the net Bond Proceeds as set forth and described on **Exhibit G** attached hereto; provided, however, such amounts are subject to change based on the date on which the structures on the Project Site are demolished, the date on which the Bonds are issued and other relevant variables.

TIF Bond Proceeds shall mean the proceeds of the TIF Bond(s), which TIF 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 TIF Bond.

TIF Bond Interest Rate shall have the meaning ascribed to such term in Section 11(d).

Title Insurer shall mean First American Title Insurance Company, Gina Longere.

Utility Relocation shall mean the location and/or relocation of utilities serving, or that 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.

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.

(c) The term of this Agreement shall be for the period commencing on the Execution Date and continuing through the first to occur of (i) Substantial Completion of the Project, or (ii) termination of this Agreement. Except as expressly set forth otherwise herein, this Agreement shall terminate upon the expiration of this term of this Agreement; provided, however, the obligation of the Parties (i) to pay any money owed pursuant to this Agreement, or (ii) pursuant to Section 12(l) (for a period of ten (10) years from Substantial Completion), shall survive termination of this Agreement.

3. City's Obligations. Subject to the terms and conditions of this Agreement, the applicable City Body shall: (a) in connection with Company, jointly submit the Construction Phase Plat for final approval and recordation at or prior to Closing; (b) execute and perform (or cause the applicable City Bodies to execute and perform) the Ancillary Agreements; (c) at Closing, issue the TIF Bonds and, consistent with the Funding Agreement, make available the TIF Bond Proceeds for Approved Costs together with Closing Costs (thereafter, disbursement of TIF Bond Proceeds shall not be made more frequently than monthly); (d) within thirty (30) days of the Closing Date, (i) issue the Additional Bond, and (ii) consistent with the Funding Agreement, make available the Additional Bond Proceeds for Approved Costs (disbursement of Additional Bond Proceeds shall not be made more frequently than monthly); (e) prior to Closing, create the Allocation Area and pledge the Pledged Increment to repayment of the TIF Bonds; (f) beginning at Closing and consistent with the Funding Agreement make available the Public Infrastructure Proceeds for Company's cost to complete the Public Infrastructure (disbursement of Public Infrastructure Proceeds shall not be made more frequently than monthly); (g) provide all stormwater improvements necessary to allow the Project to connect into a stormwater system at one or more points in the right-of-way immediately adjacent to the Project Site so that no stormwater detention or stormwater quality infrastructure is required to be constructed on the Project Site; (h) immediately after the recording of the Declaration and the HPR Plat, transfer and convey any and all of its title, rights and interests in the Multi-Family Condominium Unit to Company by Limited Warranty Deed: (i) provide reasonable assistance to Company in connection with any zoning changes or variances determined to be necessary or appropriate by Company for the construction and use of the Project in accordance with the Final Documents (subject to Permitted Changes and Change Orders); provided, however, City Bodies shall not be obligated to incur any expenses in connection with such assistance; (j) convey all title, rights and interests in its property parcel to Company known as "Rotary Park" and having the Parcel ID: 15-15-06-01-01-001.000, and (k) execute or have executed the Garage Lease which includes, but is not limited to, construction phase easements benefitting the Company, and (l) 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 Project on the Project Site, including, whenever reasonably possible, coordinating with Company to lower the Project's 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. Company's Obligations. Subject to the terms and conditions of this Agreement, Company shall: (a) at or before Closing, acquire (either by purchase by the Company or by contribution by the current owner(s) to the Company) all parcels of the Project Site to the extent not currently owned by Company; (b) in connection with the City, jointly submit the Construction Phase Plat for final approval and recordation; (c) at Closing, transfer the Garage Parcel to the City; (d) at Closing, acquire or cause a related entity to acquire the TIF Bond; (e) complete the Project, including, without limitation, the Public Infrastructure, substantially in accordance with the Final Documents (subject to Change Orders and Permitted Changes); (f) at it sole cost and expense, complete the HPR; (g) if applicable, within thirty (30) days of the recording of the Declaration and the HPR Plat, transfer and convey any and all of its title, rights and interests in the Garage Condominium Unit to the Building Corp. by a Limited Warranty Deed; (h) pay, when due, all

Real Estate Taxes and Assessments on the Project and the Project Site; (i) make or cause to be made the payments required by the Taxpayer Agreement; (j) obtain the Project Loan and ensure that proceeds of the Project Loans are available on the Closing Date (subject to the satisfaction of customary draw conditions); and (k) execute and perform the Ancillary Agreements.

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

(a) Closing. Subject to the terms and conditions of this Agreement, Closing shall occur (i) on a date designated by Company that is by or before the Outside Closing Date, and (ii) at the office of the Title Insurer or at such other place as the City and Company mutually may agree.

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

(i) Company 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 the Company shall execute and deliver the Ancillary Agreements;

(iii) The applicable City Bodies and the Company shall execute and deliver the Bond Documents for the TIF Bonds;

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

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

(vi) The Company shall deliver certificates of policies of insurance required pursuant to **Exhibit H**;

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

(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.

6. Taxes. At all times during Company's ownership of the Project and the Project Site, Company assumes and agrees to pay or cause to be paid all Real Estate Taxes and Assessments becoming a lien against the Project Site whenever due and payable without challenging or appealing the assessed value of the Project, the applicable tax rate, or the application of the tax rate to the assessed value provided, however, the foregoing shall not operate to prohibit an appeal based upon:

(a) the application of the incorrect tax rate; (b) mathematical error or (c) after the Project has been fully assessed, the taxes billed for any calendar year have (i) increased by more than five percent (5%) over the taxes billed for the prior calendar year, and (ii) the assessment for the Project in the year of such increase is inconsistent with assessment of other real property similar to the Project in age, size, use and other relevant factors.

7. Conditions to Company Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of Company with respect to the Project Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 7:

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

(b) Physical Condition. Prior to expiration of the Diligence Period, Company 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 the Closing, Company shall determine that the Project Site is appropriately zoned for the Project.

(d) Utility Availability. Prior to the expiration of the Diligence Period, Company 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 the Closing, Company shall have (i) obtained; or (ii) determined that it shall be able to obtain, all Required Permits then available for the Project;

(f) Financial Ability. Prior to the Closing, Company shall have determined that it has adequate funds (Project Loan proceeds, Bond Proceeds, Public Infrastructure 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 Company, each exercising commercially reasonable discretion, shall have approved and executed (or execute at the Closing) the Ancillary Agreements.

(h) Bond Proceeds/Public Infrastructure 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 (1) Bond Proceeds, and (2) Public

Infrastructure Proceeds, shall be made available to Company 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 Company without Company's satisfaction of any additional conditions (except for the satisfaction of customary draw conditions).

(j) Construction Phase Plat. On or before the Closing Date, the Construction Phase 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 shall 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 the representations in Section 10(a) shall be true and accurate in all material respects.

Subject to Section 9, 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, Company 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, Company shall have all of the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, Company shall (1) work diligently and in good faith to satisfy the conditions set forth in this Section, and (2) if Company fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, Company 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 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 Closing, Company shall have obtained, or City Bodies shall have determined that Company shall be able to obtain, all Required Permits then available for the Project.

(b) Financial Ability. Prior to Closing, Company shall have demonstrated to City Bodies that it has adequate funds (Project Loan proceeds, Bond Proceeds, Public Infrastructure Proceeds and/or cash on hand) to construct the Project.

(c) Environmental Condition. Prior to the expiration of the Diligence Period, Company shall have demonstrated 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. Prior to Closing, the City (or the applicable City Bodies) and Company, 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 Company without Company's satisfaction of any additional conditions (except for the satisfaction of customary draw conditions).

(g) Procedure. Prior to the expiration of the Diligence Period, 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 all recommendations, approvals, authorizations, resolutions, and/or ordinances required to be completed, obtained, and/or adopted in connection with: (i) the issuance and sale of the Bonds on the terms to which the Parties have agreed; (ii) the use of the Bond Proceeds to pay Approved Costs incurred in connection with the Project; (iii) the pledging of the Pledged Increment to the payment of debt service on the TIF Bonds; (iv) the Allocation Area has been established; and (v) the City has available the Public Infrastructure Proceeds.

(h) Construction Phase 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) Company Approvals. On or before the Closing Date, Company 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. 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.

(k) No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by Company that Company 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.

Subject to Section 9, 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 Company; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Company, City Bodies shall have all of the rights and remedies set forth in Section 15. If City Bodies terminate pursuant to this Section, City shall pay Company its Public Infrustructure Improvement costs expended and committed. 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 Company is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other party will proceed to Closing on or before the Outside Closing Date, unless otherwise mutually agreed in writing by the Company and City. Accordingly, if, after expiration of the Diligence Period, Closing does not occur on or before the Outside Closing Date:

(a) due to (i) a continuing Event of Default by one of the City Bodies, (ii) failure of the applicable City Body to satisfy the condition included in Sections 8(e), (g) or (j) (provided that, in any instance, the parties have agreed on the terms) or (iii) failure of any City Body to comply with the representations and warranties included in Section 10(a), then City Bodies shall reimburse Company for its Incurred Costs.

(b) due to (i) a continuing Event of Default by Company, (ii) failure of Company to satisfy the conditions included in Section 7(a), (b), (c), (d), (e), (f), (g) (i), (j) or (l), or (iii) failure of Company to comply with the representations and warranties included in Sections 10(b) or (c), then Company 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 Company 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) Building Corp., is an Indiana nonprofit corporation; (vi) 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; (vii) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (viii) this Agreement is the legal, valid, and binding obligation of it; and (ix) 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) Company. Company represents and warrants to each City Body that: (i) Developer is an Indiana limited liability company, duly existing and validly formed under the laws of the State of Indiana; (ii) Owner is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana; (iii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iv) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (v) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (vi) this Agreement is the legal, valid, and binding obligation of Company; (vii) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, the Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Company or any party affiliated with Company; and (viii) 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 Company has employees, Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Company has employees, Company will state, in all solicitations or advertisements for employees placed by or on behalf of Company, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin. Company 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 Company has employees, Company covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Execution Date. If Company has employees, within ten (10) days after the Execution Date, Company 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, Company 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 Company and delivered to the City's authorized representative if Company has employees. Company states that it does not currently have employees.

11. Allocation Area and Pledged Increment.

(a) Allocation Area. Subject to (i) all procedures required by the Laws, and (ii) the terms and conditions of this Agreement, prior to Closing, City Bodies shall establish the Allocation Area, and RDC shall pledge the Pledged Increment to the repayment of the TIF Bonds for the Bond Term. Pledged Increment will be utilized first to make current payments of interest and principal on the Bonds, second, to remedy any prior shortfalls with respect to payments of interest and principal on the TIF Bonds, and third, to redeem the TIF Bonds prior to their maturity. City Bodies shall not pledge to the repayment of the TIF 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. Any amounts due and owing on the TIF Bonds at the expiration of the Bond Term shall be forgiven. For the avoidance of doubt, the Allocation Area shall be established prior to Closing.

(b) TIF Revenue Shortfalls. In the event Pledged Increment is, in any given period, insufficient to make payment on the TIF Bonds, such shortfall shall accrue and be payable from future Pledged Increment during the Bond Term and no other source of City Bodies. In the event and to the extent Company or any affiliate makes any payment on the TIF Bonds, Company or such affiliate will be subrogated to the rights of City Bodies to receive Pledged Increment in excess of current amounts payable on the Bonds in any subsequent time period. Such amounts payable to Company or such affiliate will bear interest at the same rate or rates as the TIF Bond.

(c) Excess Pledged TIF Revenue. To the extent Pledged Increment is available in amounts in excess of the amount to make the then due or past due payments on the TIF Bonds (pursuant to Subsection 11(b) above), such excess Pledged Increment shall be used to redeem the TIF Bonds prior to their maturity. Thereafter, any tax increment revenue generated within the Allocation Area shall be used for any purpose determined by the RDC, in its sole discretion.

(d) Interest During Construction. At the option and discretion of Company, the TIF Bonds may bear interest (i) at zero percent from their date of issuance until Substantial Completion (and, thereafter, at the TIF Bond Interest Rate (as hereinafter defined)); 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 TIF Bonds will (i) bear interest at the Bond Interest Rate and (ii) be in accordance with the City authorizations relating to the TIF Bonds. For purposes of this Agreement, the "TIF Bond Interest Rate" shall mean a rate intended to be equal to or less than eight percent (8.0%) (except for the potential of a zero percent (0%) rate until Substantial Completion), as determined jointly by the Parties, each in the exercise of its reasonable discretion.

(e) Costs of Issuance and Administrative Fees. Company shall be solely liable for all bond issuance costs and administrative fees, including bond and other counsel fees for both City Bodies and Company, which amounts shall be paid from Bond Proceeds.

(f) Bond Structuring. The TIF Bonds may be structured in one or more series to support the multi-component and phased nature of the Project.

(g) Garage Tax-Exempt. It is the Parties intent in structuring the transactions contemplated by this Agreement that the Garage shall be exempt from real property taxes during the Bond Term. If at any time during the Bond Term real property taxes related to the Garage are due and are paid by Company pursuant to Section 13(c)(ii), prior to such payment by the Company, the City Bodies shall (i) provide reasonable assistance to Company in its request to Hamilton County to recognize the Garage as tax exempt; 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 such request; and (ii) reimburse Company for any money actually received by City Bodies as a result of the Garage being taxes, which amount will not include any referenda or taxable amounts resulting from the base assessment for the Project Site.

12. Plan Refinement Process.

This Plan Refinement Process shall govern development and construction of the Project. At its sole cost and expense, Company shall submit for review and approval the following documents, which documents shall be submitted to the City in the order listed below, with respect to the Project:

(a) Site Plan.

(b) Schematic Design Drawings.

(c) Design Development Drawings.

(d) Construction Drawings and Construction Schedule.

(e) Approval of Submitted Document. Within fourteen (14) days after the City receives each of the Site Plan, the Schematic Design Drawings, the Design Development Drawings, the Construction Drawings and the Construction Schedule (each, a "Submitted Document"), the City shall deliver to Company written notice that it approves or rejects the Submitted Document; provided that, if the City rejects all or any part of a Submitted Document, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon the City's approval of a Submitted Document, or if the City fails to respond within the time period provided above, any such Submitted Document shall be deemed approved. Provided that a Submitted Document complies with the Laws, the City shall approve each Submitted Document if it is materially consistent with the immediately preceding Submitted Document approved by the City. For example, and without limitation, if the Design Development Drawings comply with the Laws and are materially consistent with the Schematic Design Drawings, the City shall approve the Design Development Drawings.

(f) Resubmitted Documents. If, at any stage of the Plan Refinement Process, the City, rather than approving any Submitted Document, instead notifies Company that it rejects a Submitted Document (each, a "Rejected Document"), then Company shall promptly: (i) revise the Rejected Document; and (ii) resubmit the foregoing to the City. The City shall follow the review procedure described in foregoing Subsection (e), and Company shall revise and resubmit any Rejected Document in accordance with the preceding sentence until such Rejected Document is approved (each, a "Resubmitted Document"). Upon approval of any Resubmitted Document or if the City fails to respond within the time period provided above, the Resubmitted Document shall become final and part of the Project, subject to modifications by Change Order approved by the City and

Permitted Changes. Notwithstanding the involvement of the City in the Plan Refinement Process, Company shall be responsible for ensuring that Resubmitted Documents and Change Orders approved by the City in writing are implemented in design for the Project.

(g) Change Orders and Permitted Changes.

(i) If Company desires to make changes to the Final Documents (that are not a Permitted Change), then Company shall submit a Change Order Request to the City for review and approval. Within fourteen (14) days after the City receives the Change Order Request, the City shall deliver to Company written notice that it approves or rejects the Change Order Request; provided that, if the City rejects all or any part of a Change Order Request, then such notice shall: (A) specify the part or parts that City is rejecting; and (B) include the specific basis for such rejection. Upon the City's approval of a Change Order Request, or if the City fails to respond within the time period provided above, any such Change Order Request (and the Change Order) shall be deemed approved. Change Order Requests shall be deemed to be Submitted Documents.

(ii) Company shall not be required to obtain the approval of the City with respect to a Permitted Change.

(h) Permits. Company acknowledges that the Plan Refinement Process is in addition to, and not in lieu of, any plan review or Required Permits required under applicable Laws, and it shall not be deemed a warranty or representation of any kind by City Bodies that Submitted Documents or Resubmitted Documents comply with, or are approved under, applicable Laws. Prior to commencing construction, Company shall obtain Required Permits for the Project that are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. The City shall use reasonable efforts to assist Company in its efforts to obtain the Required Permits. Company acknowledges that City Bodies cannot (and do not) guarantee that it will be able to obtain the Required Permits.

(i) Review Panel. Consistent with the Laws and notwithstanding anything to the contrary set forth herein, the City, at its option, may delegate all or any part of its review, approval, or rejection obligations pursuant to this Section 12 to the Plan Review Panel; provided, that no such delegation shall extend any of the timing deadlines set forth in this Section 12. Any determination by the Plan Review Panel shall be binding on City Bodies.

(j) Permitted Inspection. Upon reasonable written notice delivered to Company, which notice shall specify the portion of the construction to be inspected, the City may perform a Permitted Inspection; provided, however, Permitted Inspections shall not typically occur more than one (1) time per calendar month. Within seven (7) business days after a Permitted Inspection, the City may deliver to Company, a Non-Compliance Notice. If the City timely delivers a Non-Compliance Notice, then Company shall correct, or cause to be corrected, as soon as is commercially practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defect previously have been accepted, or deemed to have been accepted, by the City. Notwithstanding anything to the contrary set forth herein, all items or components of the Project with respect to which no Material Defect is identified in a timely Non-Compliance Notice shall be deemed to be accepted by the City.

(k) Final Inspection. If Company delivers to the City a written request for a Final Inspection, then, on or before the later of the date that is ten (10) business days after: (i) receipt of such request; or (ii) the date specified in such request as the Substantial Completion date; the City shall: (A) conduct the Final Inspection; and (B) deliver a Non-Compliance Notice (if applicable) to Company; provided that: (1) upon receipt of a Non-Compliance Notice, Company shall correct, or cause to be corrected, as soon as is commercially practicable, all Material Defects identified in the Non-Compliance Notice; and (2) all then-completed items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by the City. If the City fails to conduct a Final Inspection within the time period provided above, the Project shall be deemed to be accepted by the City. All Material Defects shall be completed as soon as commercially practicable; and, upon correction of all Material Defect identified in the Non-Compliance Notice, the applicable work shall be deemed completed. Upon: (y) correction of all Material Defects identified in the Non-Compliance Notice; or (z) deemed acceptance pursuant to this Subsection; the City shall have no further inspection rights except to ensure compliance by Company with the Required Permits and as permitted by the Laws.

(l) Failure to Cure. If Company fails to cure any item in a Non-Compliance Notice or any Latent Defect identified in writing by the City, within forty-five (45) days of the receipt of such notice, then the City, in addition to any other right or remedy provided herein (and regardless of any Cure Period provided herein), shall be entitled to Two Hundred Fifty and no/100 Dollars ($250.00) per day from Company for each day after the expiration of such 45-day period that any items in any (i) Non-Compliance Notice remain incomplete; or (ii) other notice of any Latent Defect remain incomplete; provided that, if such Material Defect or Latent Defect is of such a nature that it cannot be remedied within forty-five (45) days, despite reasonably diligent efforts, then the forty-five (45) day period shall be extended as may be reasonably necessary for Company to remedy such Material Defect or Latent Defect (not to exceed ninety (90) days) so long as Company commences to remedy such Material Defect or Latent Defect within the forty-five (45) day period and thereafter continuously and diligently pursues such remedy to completion.

(m) General. In the case of a Permitted Inspection or the Final Inspection, the Parties shall: (i) comply with all health and safety rules of which such party has been informed that have been established for personnel present on the construction site; and (ii) coordinate the inspections so that the inspections do not interfere with the performance of construction. The City and Company each shall have the right to accompany, and/or have its construction manager accompany, the inspecting party during any Permitted Inspection and/or the Final Inspection.

(n) No Waiver of Police Power. The foregoing rights in favor of the City shall be addition to, and not in lieu of, any rights and remedies the City may have under this Agreement or applicable Laws; and nothing set forth herein shall be deemed to waive any authority, right, remedy, or power vested in any City Bodies under applicable Laws.

(o) Information Review. Upon City's request, Company agrees to permit the the City to review and inspect copies of the following: (i) any third-party inspections and reports related to the construction of the Project; or (ii) receipts, invoices or other financial documents related to construction of the Project.

13. <u>Garage Condominium Unit Conveyance & Declaration</u>.

(a) So long as there is no default by Company under the Garage Lease that has not been cured within the applicable cure period thereunder, then upon expiration of the Garage Lease, City shall execute and deliver (or cause Building Corp. to execute and deliver): (i) a limited warranty deed conveying the Garage Condominium Unit and all improvements to Company or its designee (subject to any matters existing as of the Closing Date; any matters created by, caused by, consented to, or suffered by, Company or contemplated hereby, including any security interests for the Project Loan and any subsequent loans on the Project obtained by Company (or its successors hereunder); the Declaration; and any liens arising in due course under any Ancillary Agreements or from any labor or materials provided to the Project for or on behalf of Company or any party acting for, or on behalf of, Company; and (ii) such other instruments with respect to the Garage Condominium Unit as City and Company reasonably agree are necessary.

(b) Whether concerning the conveyance of the Garage Condominium Unit from Company to the Building Corp. pursuant to <u>Section 4(f)</u> or from the Building Corp. to the Company pursuant to <u>Section 13(a)</u>, the City Bodies shall bear no costs or expenses in connection with the closing of the conveyances of the Garage Condominium Unit, including, without limitation, any obligation with regard to any expenses associated with the Garage Condominium Unit, survey costs, closing costs, or the payment of any Real Estate Taxes or Assessments; provided that, City shall be responsible for payment of its legal fees and expenses and any title insurance (in the instance of the conveyance under <u>Section 4(f)</u>).

(c) Declaration.

(i) Pursuant to the Declaration and consistent with completing the HPR, City Bodies and Company shall make, create, or reserve easements for: (1) vertical and horizontal support with respect to Garage and the other portions of the Mixed-Use Building; (2) vehicular access, ingress, and egress; (3) parking (including, without limitation, that the Declaration shall address the use of the City Parking Spaces); (4) use of vertical transportation facilities (such as stairs and elevators); (5) pedestrian access; (6) venting, utility, drainage, control and communications facilities; (7) maintenance obligations, including the Company's obligation to maintain the Garage and the other portions of the Mixed-Use Building in a structurally sound condition such that they provide the support that they are intended and designed to provide; (8) amenities that are located in the Garage and benefit the Mixed-Use occupants and (9) such necessary utility easements across each condominium unit to the extent not addressed by the Plat; provided that the Declaration also may include such other easements as the parties may deem to be necessary or appropriate.

(ii) The Declaration shall also include provisions requiring Company, at its sole cost and expense, to (1) manage and operate the Garage (or its agent) subject to customary City standards; (2) provide routine and capital maintenance and repair (including that the applicable standard for maintenance by Company (or its agent) of the Garage shall be at least as high as the standards for maintenance by City of other public areas and amenities); (3) provide insurance and utilities; and (4) if applicable, pay all Real Estate Taxes and Assessments when due.

(iii) The Declaration shall include provisions governing casualty and damage events if the Project is partially or totally destroyed.

For the avoidance of doubt, the Parties acknowledge and agree that Declaration will be completed as part of the HPR process; provided, however, the Declaration shall include the terms included in this Section 13 or terms to which the Parties mutually agree that have the same effect as the terms included herein. The City Bodies and owner of the Garage Condominium Unit will not be a part of the future Project Association formed by the Declaration as a) it is not contemplated by this Agreement that the City Bodies would have assessments for any Project-related expenses and costs and b) all rights and obligations between the parties will flow from the easements created therein to the burdened and benefitted parties; however, if there should be any contradiction in terms between this Agreement and the Declaration, then the terms of this Agreement shall control.

14. Taxpayer Agreement Company agrees to enter into a Taxpayer Agreement for the TIF Bonds mutually acceptable to the City Bodies that (a) states that beginning the calendar year following the first January 1 after Substantial Completion of the Project and continuing through each calendar year of the Bond Term, Company agrees to (i) annually (in semi-annual payments on the dates that are five days prior to the next-due payment of debt service on the Bonds) pay RDC the positive difference, if any, between: (1) the amount required to satisfy debt service on the TIF Bonds and (2) the Real Estate Taxes due and owing for the Project and Project Site for the applicable year; (b) provides that the payments due by Company thereunder are secured by an annually renewable lien against the 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 such 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 Project Site. City Bodies and Company shall execute and record the Taxpayer Agreement at the Closing. Nothing in this Agreement or the Taxpayer Agreement shall be deemed to release Company from any obligation to pay Real Estate Taxes on the Project Site regardless of when payable or assessed.

15. Default.

(h) 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.

(i) 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.

(j) 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, 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. Mutual Indemnification.

(k) City Bodies. To the extent permitted by applicable Laws, City Bodies shall indemnify and hold harmless Company from and against all Claims arising from the breach by City Bodies of any term or condition of this Agreement.

(l) Company. Company shall indemnify and hold harmless City Bodies from and against any and all Claims arising from: (i) breaches by Company under contracts to which Company is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Company or any party acting by, under, through or on behalf of Company; (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 Company or any party acting by, under, through or on behalf of Company; (iii) the negligence or willful misconduct of Company or any party acting by, under, through, or on behalf of Company; or (iv) the breach by Company of any term or condition of this Agreement.

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

17. Assignment.

(m) Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion of the Project, Company 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 the Company; provided that: (i) without the prior written approval of Company, 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, Company may assign, partially or in its entirety, this Agreement to (A) a third party controlling, controlled by or under common control with Company, or (B) collaterally assign this Agreement (or portion hereof) to a Project Lender.

(n) Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Company, 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 Company, 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.

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. Notice shall be provided as follows: if to (x) the City Bodies: City of Fishers, Attn: Lindsey Bennett, City Attorney, 3 Municipal Drive, Fishers, Indiana 46038, with copies (via email, only) to: Jennifer Messer, jennifercmesserlaw@gmail.com, and (z) Company at Hageman Group, 12821 East New Market Street, Suite 200, Carmel, Indiana 46032 Attn: Tom Dickey, with copies (via email, only) to: Steph Kilpatrick steph.kilpatrick@hagemangroup.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, EDC, RDC, Building Corp. and Company represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City, EDC RDC, Building Corp. or Company, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by the City, RDC, EDC, Building Corp. and Company, respectively; provided, however, each of the City's, EDC's, Building Corp.'s RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which the City, EDC, Building Corp. 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 Company) 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 Site, the Project, or any site or improvements adjacent to, or in the vicinity of, the Project Site) other than as specifically set forth in this Agreement. This Agreement may be amended or modify only by written instrument executed by City Bodies and Company.

22. Miscellaneous. Subject to Section 17, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Company, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Company waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Company may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by the City, EDC, Building Corp., RDC, and Company. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, employment relationship or joint venture between Company, the City, EDC, Building Corp., and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Fishers, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Any amounts due or to be paid hereunder shall bear interest at the prime rate as published in *The Wall Street Journal* plus five percent (5%) per annum from the date due until paid.

23. Execution of Agreement. Upon City Bodies' approval and execution of this Agreement, the City shall provide to Company the executed Agreement (the "City-Executed Agreement"). Within ten (10) days of Company's receipt of the City-Executed Agreement , Company 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.

Index of Exhibits:

Exhibit A:	City Parcel
Exhibit B	Company Parcel
Exhibit C:	Concept Plan
Exhibit D:	Garage Parcel
Exhibit E:	Project Site
Exhibit F:	Public Streetscape Improvements
Exhibit G:	TIF Bond Summary/Financials
Exhibit H:	Insurance
Exhibit I:	FORM HPR Agreement

[signatures on following pages]

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

"CITY"

CITY OF FISHERS, INDIANA

By: ______________________________________
Scott Fadness, Mayor

“EDC”

CITY OF FISHERS ECONOMIC DEVELOPMENT COMMISSION

By: ______________________________________

“**RDC**”

FISHERS REDEVELOPMENT COMMISSION

By:__________________________________
Damon Grothe, President

ATTEST:

By:_______________________________
Brad Johnson, Secretary

“**BUILDING CORP**.”

FISHERS TOWN HALL BUILDING CORPORATION

By: ______________________________________

Its: ______________________________

“**OWNER**”

By: ______________________________

Its: ____________________________

“**DEVELOPER**”

By: ______________________________

Its: ____________________________

Exhibit A
City Parcel

Exhibit B
Company Parcel

Exhibit C
Concept Plan

Exhibit D
Garage Parcel

Exhibit E
Project Site

Exhibit F
Public Streetscape Improvements

Exhibit G
TIF Bond Summary

Exhibit H
Company Insurance Requirements

Company shall obtain and maintain and require any general contractor or subcontractor(s) to obtain and maintain the below listed policies of insurance written by a Company reasonably acceptable to the City and for which certificates of insurance shall be provided to the City prior to commencement of any work on the Project. The City and the Redevelopment Commission shall be named as additional insureds on Company'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 the Company 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.

PROJECT AGREEMENT

This Project Agreement (the "Agreement") is executed as of the ___ day of ____, 2023, by and among Rebar South Street, LLC, an Indiana limited liability company ("Developer"), Rebar South Street, Inc., an Indiana corporation ("Owner" and together with the Developer, the "Company"), the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation ("City"), the City of Fishers Economic Development Commission, the Economic Development Authority for the City of Fishers (the "EDC"), the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "RDC"), and the Fishers Town Hall Building Corporation, an Indiana nonprofit corporation (the "Building Corp."), on the following terms and conditions:

Recitals

WHEREAS, Company is an Indiana real estate development company with a reputation of delivering complicated multi-family, office, retail and community amenities across Indiana, including large, multi-use developments like the Levinson in Noblesville, Founders Square in Speedway, the Barlow in Plainfield and the Ellsworth in Lafayette, Indiana, among others;

WHEREAS, the City continues to work to fulfill its master development plan, first included in the City's Nickel Plat District Code, originally adopted February 17, 2014, to create a sustainable, pedestrian friendly downtown district where residents live, work and play and that drives jobs and investment in the City (the "Plan");

WHEREAS, as part of the Plan, the City has (a) worked with companies to develop multiple mixed-use developments that include apartments, condominiums, townhomes, office space and retail; (b) incented multiple high-growth, high-technology businesses to locate to the City; and (c) developed a life sciences corridor;

WHEREAS, as part of its Plan, the City desires to incent the development of additional multi-family and commercial and office spaces within the City's Nickel Plate District;

WHEREAS, Company has assembled seven (7) properties on South Street and has submitted a proposal to City Bodies to redevelop the Project Site (as defined herein) as five (5) buildings that are, collectively, approximately 133,320 sq. ft., in size and include approximately (a) 82 multifamily units, and (b) 28,760 sq. ft of commercial and office space;

WHEREAS, the Project (as defined herein) will result in (a) The Annex Group and additional proposed office tenants (i) relocating approximately eighty-three (83) FTEs (as defined herein) with an average annual salary of Ninety-Four Thousand and no/100 Dollars ($94,000.00) to the Project Site, and (ii) those companies hiring an additional approximately forty (40) new FTEs by January 1, 2028; (b) seven (7) small business units for local companies; and (c) the Company's investment of $23 Million in the City's Nickel Plate District;

WHEREAS, the City Bodies have determined that Company's proposal was submitted pursuant to and consistent with the Plan;

WHEREAS, as a result, City Bodies have agreed to provide certain incentives to assist Company in the construction of the Project pursuant to this Agreement; and

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

Agreement

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

1. Defined Terms.

Ancillary Agreements shall mean, individually or collectively, the instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement, Multi-Party Agreement, Taxpayer Agreement, Bond Documents and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement.

Approved Costs shall mean all Hard Costs and Soft Costs (including capitalized interest on the Bonds) related to the Project.

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

Bond(s) shall mean one or more series of taxable economic development revenue bonds to be issued under Ind. Code § 36-7-12 *et. seq*., the sale of such Bonds shall be solely the responsibility of City, and Company shall not guaranty the repayment of the Bonds.

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

Bond Proceeds shall mean that portion of the net proceeds of the Bonds in the amount of Nine Million, Four Hundred Thousand and no/100 Dollars ($9,400,000.00), which Bond Proceeds shall be made available to Company for Approved Costs, pursuant to the Funding Agreement.

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

Buildings shall mean five (5) multi-use buildings that are each three (3) stories or four (4) stories tall and collectively include (a) eighty-two (82) multi-family units, (b) approximately 8,244 sq. ft. of small business units, and (c) 20,516 sq. ft. of additional commercial office space.

Change Order shall mean a change order executed by the City (or its designee) and Company finalizing the inclusion into the Final Documents of a change proposed in a Change Order Request by Company that is approved by the City (or its designee); provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Company.

Change Order Request shall mean a written request for a change to the Final Documents.

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

City Fees shall mean all local fees assessed by City in connection with Company's development and construction of the Projects on the Project Site, including but not limited to inspection fees, impact fees, improvement location fees, permit fees, sign permit fees, sewer and stormwater fees (such as capacity, connection, impact, and tap fees associated with initial construction, but not including post-occupancy monthly user fees, variance requests, and inspection fees).

City Parcel shall mean the real property depicted in **Exhibit A**.

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

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

Closing shall mean the completion of the following: (a) Company's acquisition of all parcels comprising the Project Site; (b) execution (if such execution has not previously occurred) of all Ancillary Agreements; (c) the RDC conveying the City Parcel to the Company; and (d) Project Lender issuing the Project Loan to Company (and Company authorized to draw upon such Project Loan subject to the satisfaction of customary draw conditions), which Closing shall occur by or before the Outside Closing Date.

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with the transfer of real property.

Closing Date shall mean, the date on which the Closing occurs, which date shall be by or before the Outside Closing Date.

Concept Plan shall mean the plan for the Project. The Concept Plan is attached as **Exhibit B** and may be updated from time to time upon mutual agreement of Company and the City.

Construction Schedule shall mean, for the Project, the portion of the Final Documents comprised of the scheduled date for Substantial Completion of such Project.

Construction Drawings shall mean construction drawings with respect to the construction of the exterior components of the Project that are approved pursuant to the Plan Refinement Process.

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 extent more than ninety (90) days after the date of default.

Current Year Taxes shall mean, with respect to the applicable parcel of real estate, the Real Estate Taxes assessed for, and first becoming a lien against, the applicable real estate during the year in which such real estate is acquired by the applicable party.

Design Development Drawings shall mean the design development drawings for the exterior components of the Project that are approved pursuant to the Plan Refinement Process.

Diligence Period shall mean one hundred twenty (120) days commencing on the Execution Date and terminating one hundred twenty (120) days thereafter.

Divestiture Payment shall mean in the case of the exercise of the Power of Termination as a result of (a) a default by Developer under Section 16(a), One Dollar ($1.00); and/or (b) a default by Developer under Section 16(b), an amount equal to the sum of (i) Project Loan proceeds disbursed by the Project Lender for construction and development of the Project, plus (ii) Company's actual purchase price to acquire the parcels comprising the Project Site, if Project Lender has not reimbursed Company for such land acquisition costs. For the avoidance of doubt, the Divestiture Payment pursuant to Section16(b) shall solely include the purchase price for each of the parcels comprising the Project Site and shall not include closing costs, fees or any other costs to acquire the parcels.

Event of Default shall have the meaning set forth in Section 14.

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

Final Document(s) shall mean the final Construction Schedule and the final Construction Drawings for the Project, as each is finalized and approved or reviewed by the City in accordance with the Plan Refinement Process described in Section 12 and, as each may be amended, by Permitted Changes and Change Orders.

Final Inspection shall mean an inspection of the Project after Substantial Completion thereof.

Force Majeure shall mean, with respect to Company or City Bodies, any cause that is not within the reasonable control of Company or City Bodies, respectively, including, without limitation: (a) an act or omission of one of the other parties hereto who is not the party claiming force majeure; (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.

FTEs shall mean full time employees.

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

Proceeds.

Hard Costs shall mean the costs incurred in connection with construction of the Project, 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 Diligence Period and prior to the Closing, or (b) after the Outside Closing Date, 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 $100,000.00).

Inspector shall mean such party designated by the City as its inspector.

Latent Defect shall mean a Material Defect with respect to the Project that: (a) is not discovered, and reasonably is not discoverable, by the City or Inspector during a Permitted Inspection and/or the Final Inspection; and (b) has a material and adverse effect on the use, operation, structure, or longevity of the Project.

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 Nickel Plate Code and all applicable environmental laws.

Material Defect(s) shall mean any item or component of the exterior of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Documents; or (c) has not been performed materially in accordance with the terms and conditions of this Agreement.

Multi-Party Agreement shall mean an agreement by and among the applicable City Bodies and the Project Lender pursuant to which (a) the Project Lender agrees to give to the City Bodes: (i) notices of material defaults by Company under the Project Loan Documents; and (ii) the right (but not obligation) to cure defaults by Company under the Project Loan Documents; (b) provides for the release of the Project Loan in the event of the exercise of the Power of Termination and upon payment of the Divestiture Payment under <u>Sections 16(a) and 16(b)</u>; and (c) the City Bodies agree to give the Project Lender notices of any defaults by Developer under this Project Agreement and any Ancillary Agreements with the right (but not obligation) to cure such defaults. The Multi-Party Agreement shall be in form and substance reasonably acceptable to the City Bodies, Company and Project Lender and shall specifically state that in the event of conflict between any term or provision of the Multi-Party Agreement and any term or provision included in the Project Loan Documents, the terms of the Multi-Party Agreement shall control.

Non-Compliance Notice shall mean a written notice identifying any Material Defect discovered during a Permitted Inspection or a Final Inspection.

Notice shall mean a notice given pursuant to <u>Section 18</u> hereof.

Outside Closing Date shall mean December 1, 2023.

Permitted Change shall mean a change to a Final Document for the Project that: (a) is not material in the overall scope and design of the Project; (b) is in conformity with the Laws; (c) does not result in the Final Document containing a Material Defect; and (d) does not make it unlikely, impracticable, or impossible for Company to complete and open the Project, or any component thereof, by the applicable date set forth in a Construction Schedule. In addition to the foregoing, any change required by the Laws shall constitute a Permitted Change.

Permitted Exceptions shall mean: (a) the lien of Current Year Taxes and Assessments not delinquent; (b) this Agreement, together with any Ancillary Agreements including, without limitation, the Taxpayer Agreement; and (c) such other matters as are accepted by or that are deemed to have waived by Company or City Bodies, as applicable, pursuant to the terms and conditions of this Agreement.

Permitted Inspection shall mean, as applicable, an inspection by the Inspector of any item or component of the Projects when reasonably deemed to be necessary or appropriate by any City Bodies and/or the Inspector.

Plan Refinement Process shall mean the process described in Section 12 hereof.

Plan Review Panel shall mean a plan review panel comprised of the City's Economic Development Director and such other parties as may hereafter be designated by the City in a written notice to Company.

Plat shall mean the plat that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hamilton County, Indiana contemporaneous with other documents needed for Closing, which Plat shall, at a minimum, create three (3) Parcels. The parties acknowledge that the final parcels as platted may vary from the current boundaries of the parcels.

Power of Termination shall mean the right, which shall be included in the City Deed, permitting the RDC to enter the Project Site and, upon payment of the Divestiture Payment. divest the Company of title thereto and cause title to the City Parcel to vest in the RDC in the event of a default described in Section 16(a) or (b), which vesting shall be free and clear of all matters; provided, however, any revesting of the City Parcel may be subject to those matters (a) to which title was subject upon the RDC's delivery of the City Parcel Deed to the Company; and (b) easements provided for or required by the Project. The Power of Termination shall lapse and expire by its own terms upon Substantial Completion of the Project, and, upon request from Company, the City Bodies shall cause a mutually acceptable release of the Power of Termination to be recorded in the Office of the Hamilton County Recorder.

Project shall mean (a) development and construction of (i) the Buildings on the Project Site, (ii) the Public Streetscape Improvements; and (c) making a good faith effort to work with Heritage Meadows and adjacent property owners on open-green space programming and design, which Project is expected to represent Company's aggregate investment of approximately Twenty-Three Million and no/100 Dollars ($23,000,000.00) in the City.

Project Lender shall mean a financial institution that is not affiliated with Company making the Project Loan, and any successor or assignee thereof.

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

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

Property Inspections shall mean surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments.

Project Site shall mean the eight (8) parcels of real property identified on **Exhibit C**.

Public Streetscape Improvements shall mean all streetscape and other infrastructure improvements required by and consistent with the Laws, including, without limitation, the Nickel Plate Code, for the Project that shall be constructed by Company and generally (but not always) are located in the areas between the curb (not including the curb) and Buildings as shown on **Exhibit D**.

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

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

Schematic Design Drawings shall mean for the Project the schematic design drawings for the exterior components of the Project that are approved as a result of the Plan Refinement Process.

Site Plan shall mean the site plan for the Project that is approved pursuant to the Plan Refinement Process.

Soft Costs shall mean costs incurred in connection with the Project, which costs are customarily known in the industry as “soft costs”.

Substantial Completion shall mean, with respect to the Project, the later of the date that: (a) Company receives a final or temporary certificate of occupancy for such Project; and (b) the date that Company’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 (subject to Permitted Changes and Change Orders), 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 the Project Site, certified as of a current date by a reputable licensed surveyor; which Survey does not show any matters that would: (a) materially and adversely interfere with the construction and/or use of the Project; or (b) render construction of the Project unusually difficult or costly.

Taxpayer Agreement shall mean the agreement described in Section 13 hereof.

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

Title Defects shall mean conditions disclosed in the Title Commitment or by the Survey that, in the reasonable determination of Company that: (a) materially and adversely will interfere with the construction and/or use of the Projects; or (b) will render construction of the Projects unusually difficult or costly.

Title Insurer shall mean First American Title Insurance Company, Gina Longere.

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.

(c) The term of this Agreement shall be for the period commencing on the Execution Date and continuing through the first to occur of (i) Substantial Completion of the Project, or (ii) termination of this Agreement. Except as expressly set forth otherwise herein, this Agreement shall terminate upon the expiration of this term of this Agreement; provided, however, the obligation of the Parties (i) to pay any money owed pursuant to this Agreement, or (ii) pursuant to Section 12(l) (for a period of ten (10) years from Substantial Completion), shall survive termination of this Agreement.

3. City's Obligations. Subject to the terms and conditions of this Agreement, the applicable City Body shall: (a) in connection with Company, jointly submit the Plat for final approval and recordation at or prior to Closing; (b) execute and perform (or cause the applicable City Bodies to execute and perform) the Ancillary Agreements; (c) within thirty (30) days of the Closing Date, (i) issue the Bond, and (ii) consistent with the Funding Agreement, make available the Bond Proceeds for Approved Costs (disbursement of Bond Proceeds shall not be made more frequently than monthly); (d) at Closing, transfer the City Parcel to the Company; (e) provide reasonable assistance to Company in connection with any zoning changes or variances determined to be necessary or appropriate by Company for the construction and use of the Project in accordance with the Final Documents (subject to Permitted Changes and Change Orders); provided, however, City Bodies shall not be obligated to incur any expenses in connection with such assistance; and (f) 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 Project on the Project Site, including, whenever reasonably possible, coordinating with Company to lower the Project's 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. Company's Obligations. Subject to the terms and conditions of this Agreement, Company shall: (a) at or before Closing, acquire all parcels of the Project Site (with the City Parcel to be conveyed at Closing) to the extent not currently owned by Company; (b) in connection with the City, jointly submit the Plat for final approval and recordation; (c) complete the Project, including, without limitation, the Public Streetscape Improvements and make a good faith effort to work with Heritage Meadows and adjacent neighbors to design and program the open green space, substantially in accordance with the Final Documents (subject to Change Orders and Permitted Changes); (d) pay, when due, all Real Estate Taxes and Assessments on the Project and the Project Site; (e) make or cause to be made the payments required by the Taxpayer Agreement; (f) obtain the Project Loan and ensure that proceeds of the Project Loans are available on the Closing Date (subject to the satisfaction of customary draw conditions); (g) pay all City Fees; and (h) execute and perform the Ancillary Agreements.

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

(a) Closing. Closing shall occur (i) on a date mutually determined by the Parties that is by or before the Outside Closing Date, and (ii) at the office of the Title Insurer or at such other place as the City and Company mutually may agree.

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

(i) Company 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 the Closing Date (subject to the satisfaction of customary draw conditions);

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

(iii) [*intentionally omitted*]

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

(v) The applicable City Body or Company, as applicable shall execute and deliver the following:

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

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

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

(D) a certification by the City Bodies and Company that all representations and warranties set forth in Subsection 10(a) and (b), respectively, remain true and accurate in all material respects as of the Closing Date.

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

(vii) Company shall be exclusively responsible for all Closing Costs; and

(viii) Each Party shall be responsible for its own legal fees and/or broker fees incurred in connection with negotiation of this Agreement and the Closing contemplated hereby.

6. Taxes. At all times during Company's ownership of the Project and the Project Site, Company assumes and agrees to pay or cause to be paid all Real Estate Taxes and Assessments becoming a lien against the Project Site whenever due and payable without challenging or appealing the assessed value of the Project, the applicable tax rate, or the application of the tax rate to the assessed value provided, however, the foregoing shall not operate to prohibit an appeal based upon: (a) the application of the incorrect tax rate; (b) mathematical error or (c) after the Project has been fully assessed, the taxes billed for any calendar year have (i) increased by more than five percent (5%) over the taxes billed for the prior calendar year, and (ii) the assessment for the Project in the year of such increase is inconsistent with assessment of other real property similar to the Project in age, size, use and other relevant factors.

7. Conditions to Company Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of Company with respect to the Project Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 7:

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

(b) Physical Condition. Prior to expiration of the Diligence Period, Company 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 the Closing, Company shall determine that the Project Site is appropriately zoned for the Project.

(d) Utility Availability. Prior to the expiration of the Diligence Period, Company 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 the Closing, Company shall have (i) obtained; or (ii) determined that it shall be able to obtain, all Required Permits then available for the Project;

(f) Financial Ability. Prior to the Closing, Company 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 Company, 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 Company 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 Company without Company'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 shall 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 the representations in Section 10(a) shall be true and accurate in all material respects.

Subject to Section 9, 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, Company 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, Company shall have all of the rights and remedies set forth in Section 14. Notwithstanding anything to the contrary set forth herein, Company shall (1) work diligently and in good faith to satisfy the conditions set forth in this Section, and (2) if Company fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, Company 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 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 Closing, Company shall have obtained, or City Bodies shall have determined that Company shall be able to obtain, all Required Permits then available for the Project.

(b) Financial Ability. Prior to Closing, Company shall have demonstrated to City Bodies that it has 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, Company shall have demonstrated 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. Prior to Closing, the City (or the applicable City Bodies) and Company, 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 Company without Company's satisfaction of any additional conditions (except for the satisfaction of customary draw conditions).

(g) Procedure. Prior to the expiration of the Diligence Period, 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 all recommendations, approvals, authorizations, resolutions, and/or ordinances required to be completed, obtained, and/or adopted in connection with: (i) the issuance and sale of the Bonds on the terms to which the Parties have agreed; and (ii) the use of the Bond Proceeds to pay Approved Costs incurred in connection with the Project.

(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) Company Approvals. On or before the Closing Date, Company 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. 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.

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

Subject to Section 9, 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 Company; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Company, City Bodies shall have all of the rights and remedies set forth in Section 14. 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 Company is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other party will proceed to Closing on or before the Outside Closing Date, unless otherwise mutually agreed in writing by the Company and City. Accordingly, if, after expiration of the Diligence Period, Closing does not occur on or before the Outside Closing Date:

(a) due to (i) a continuing Event of Default by one of the City Bodies, (ii) failure of the applicable City Body to satisfy the condition included in Sections 8(e), (g) or (j) (provided that, in any instance, the parties have agreed on the terms) or (iii) failure of any City Body to comply with the representations and warranties included in Section 10(a), then City Bodies shall reimburse Company for its Incurred Costs.

(b) due to (i) a continuing Event of Default by Company, (ii) failure of Company to satisfy the conditions included in Section 7(a), (b), (c), (d), (e), (f), (g) (i), (j) or (l), or (iii) failure of Company to comply with the representations and warranties included in Sections 10(b) or (c), then Company 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 Company 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) Building Corp., is an Indiana nonprofit corporation; (vi) 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; (vii) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (viii) this Agreement is the legal, valid, and binding obligation of it; and (ix) 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) Company. Company represents and warrants to each City Body that: (i) Developer is an Indiana limited liability company, duly existing and validly formed under the laws of the State of Indiana; (ii) Owner is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana; (iii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iv) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (v) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (vi) this Agreement is the legal, valid, and binding obligation of Company; (vii) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, the Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Company or any party affiliated with Company; and (viii) 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 Company has employees, Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Company has employees, Company will state, in all solicitations or advertisements for employees placed by or on behalf of Company, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin. Company 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 Company has employees, Company covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Execution Date. If Company has employees, within ten (10) days after the Execution Date, Company 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, Company 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 Company and delivered to the City's authorized representative if Company has employees. Company states that it does not currently have employees.

11. [*Intentionally Omitted*].

12. Plan Refinement Process.

This Plan Refinement Process shall govern development and construction of the Project. At its sole cost and expense, Company shall submit for review and approval the following documents, which documents shall be submitted to the City in the order listed below, with respect to the Project:

(a) Site Plan.

(b) Schematic Design Drawings.

(c) Design Development Drawings.

(d) Construction Drawings and Construction Schedule.

(e) Approval of Submitted Document. Within fourteen (14) days after the City receives each of the Site Plan, the Schematic Design Drawings, the Design Development Drawings, the Construction Drawings and the Construction Schedule (each, a "Submitted Document"), the City shall deliver to Company written notice that it approves or rejects the Submitted Document; provided that, if the City rejects all or any part of a Submitted Document, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon the City's approval of a Submitted Document, or if the City fails to respond within the time period provided above, any such Submitted Document shall be deemed approved. Provided that a Submitted Document complies with the Laws, the City shall approve each Submitted Document if it is materially consistent with the immediately preceding Submitted Document approved by the City. For example, and without limitation, if the Design Development Drawings comply with the Laws and are materially consistent with the Schematic Design Drawings, the City shall approve the Design Development Drawings.

(f) Resubmitted Documents. If, at any stage of the Plan Refinement Process, the City, rather than approving any Submitted Document, instead notifies Company that it rejects a Submitted Document (each, a "Rejected Document"), then Company shall promptly: (i) revise the Rejected Document; and (ii) resubmit the foregoing to the City. The City shall follow the review procedure described in foregoing Subsection (e), and Company shall revise and resubmit any Rejected Document in accordance with the preceding sentence until such Rejected Document is approved (each, a "Resubmitted Document"). Upon approval of any Resubmitted Document or if the City fails to respond within the time period provided above, the Resubmitted Document shall become final and part of the Project, subject to modifications by Change Order approved by the City and Permitted Changes. Notwithstanding the involvement of the City in the Plan Refinement Process, Company shall be responsible for ensuring that Resubmitted Documents and Change Orders approved by the City in writing are implemented in design for the Project.

(g) Change Orders and Permitted Changes.

(i) If Company desires to make changes to the Final Documents (that are not a Permitted Change), then Company shall submit a Change Order Request to the City for review and approval. Within fourteen (14) days after the City receives the Change Order Request, the City shall deliver to Company written notice that it approves or rejects the Change Order Request; provided that, if the City rejects all or any part of a Change Order Request, then such notice shall: (A) specify the part or parts that City is rejecting; and (B) include the specific basis for such rejection. Upon the City's approval of a Change Order Request, or if the City fails to respond within the time period provided above, any such Change Order Request (and the Change Order) shall be deemed approved. Change Order Requests shall be deemed to be Submitted Documents.

(ii) Company shall not be required to obtain the approval of the City with respect to a Permitted Change.

(h) Permits. Company acknowledges that the Plan Refinement Process is in addition to, and not in lieu of, any plan review or Required Permits required under applicable Laws, and it shall not be deemed a warranty or representation of any kind by City Bodies that Submitted Documents or Resubmitted Documents comply with, or are approved under, applicable Laws. Prior to commencing construction, Company shall obtain Required Permits for the Project that are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. The City shall use reasonable efforts to assist Company in its efforts to obtain the Required Permits. Company acknowledges that City Bodies cannot (and do not) guarantee that it will be able to obtain the Required Permits.

(i) Review Panel. Consistent with the Laws and notwithstanding anything to the contrary set forth herein, the City, at its option, may delegate all or any part of its review, approval, or rejection obligations pursuant to this Section 12 to the Plan Review Panel; provided, that no such delegation shall extend any of the timing deadlines set forth in this Section 12. Any determination by the Plan Review Panel shall be binding on City Bodies.

(j) Permitted Inspection. Upon reasonable written notice delivered to Company, which notice shall specify the portion of the construction to be inspected, the City may perform a Permitted Inspection; provided, however, Permitted Inspections shall not typically occur more than one (1) time per calendar month. Within seven (7) business days after a Permitted Inspection, the City may deliver to Company, a Non-Compliance Notice. If the City timely delivers a Non-Compliance Notice, then Company shall correct, or cause to be corrected, as soon as is commercially practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defect previously have been accepted, or deemed to have been accepted, by the City. Notwithstanding anything to the contrary set forth herein, all items or components of the Project with respect to which no Material Defect is identified in a timely Non-Compliance Notice shall be deemed to be accepted by the City.

(k) Final Inspection. If Company delivers to the City a written request for a Final Inspection, then, on or before the later of the date that is ten (10) business days after: (i) receipt of such request; or (ii) the date specified in such request as the Substantial Completion date; the City shall: (A) conduct the Final Inspection; and (B) deliver a Non-Compliance Notice (if applicable) to Company; provided that: (1) upon receipt of a Non-Compliance Notice, Company shall correct, or cause to be corrected, as soon as is commercially practicable, all Material Defects identified in the Non-Compliance Notice; and (2) all then-completed items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by the City. If the City fails to conduct a Final Inspection within the time period provided above, the Project shall be deemed to be accepted by the City. All Material Defects shall be completed as soon as commercially practicable; and, upon correction of all Material Defect identified in the Non-Compliance Notice, the applicable work shall be deemed completed. Upon: (y) correction of all Material Defects identified in the Non-Compliance Notice; or (z) deemed acceptance pursuant to this Subsection; the City shall have no further inspection rights except to ensure compliance by Company with the Required Permits and as permitted by the Laws.

(l) Failure to Cure. If Company fails to cure any item in a Non-Compliance Notice or any Latent Defect identified in writing by the City, within forty-five (45) days of the receipt of such notice, then the City, in addition to any other right or remedy provided herein (and regardless of any Cure Period provided herein), shall be entitled to Two Hundred Fifty and no/100 Dollars ($250.00) per day from Company for each day after the expiration of such 45-day period that any items in any (i) Non-Compliance Notice remain incomplete; or (ii) other notice of any Latent Defect remain incomplete; provided that, if such Material Defect or Latent Defect is of such a nature that it cannot be remedied within forty-five (45) days, despite reasonably diligent efforts, then the forty-five (45) day period shall be extended as may be reasonably necessary for Company to remedy such Material Defect or Latent Defect (not to exceed ninety (90) days) so long as Company commences to remedy such Material Defect or Latent Defect within the forty-five (45) day period and thereafter continuously and diligently pursues such remedy to completion.

(m) General. In the case of a Permitted Inspection or the Final Inspection, the Parties shall: (i) comply with all health and safety rules of which such party has been informed that have been established for personnel present on the construction site; and (ii) coordinate the inspections so that the inspections do not interfere with the performance of construction. The City and Company each shall have the right to accompany, and/or have its construction manager accompany, the inspecting party during any Permitted Inspection and/or the Final Inspection.

(n) No Waiver of Police Power. The foregoing rights in favor of the City shall be addition to, and not in lieu of, any rights and remedies the City may have under this Agreement or applicable Laws; and nothing set forth herein shall be deemed to waive any authority, right, remedy, or power vested in any City Bodies under applicable Laws.

(o) Information Review. Upon City's request, Company agrees to permit the the City to review and inspect copies of the following: (i) any third-party inspections and reports related to the construction of the Project; or (ii) receipts, invoices or other financial documents related to construction of the Project.

13. **Taxpayer Agreement**. Company agrees to enter into a Taxpayer Agreement with the RDC that, among other general terms and provisions, (a) states that beginning the calendar year following the first January 1 after Substantial Completion of the Project and continuing through each calendar year of the Bond Term, Company agrees to (i) annually (in semi-annual payments on the dates that real estate taxes are due in Indiana (currently May and November 10th)) pay RDC the positive difference, if any, between: (1) Three Hundred Fifty-Six Thousand and no/100 Dollars ($356,000.00)(annually, and $178,000.00, semi-annually) minus (2) the Real Estate Taxes due and owing for the Project and Project Site for the applicable year; (b) provides that the payments due by Company thereunder are secured by an annually renewable lien against the 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 such 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 Project Site. City Bodies and Company shall execute and record the Taxpayer Agreement at the Closing. Nothing in this Agreement or the Taxpayer Agreement shall be deemed to release Company from any obligation to pay Real Estate Taxes on the Project Site regardless of when payable or assessed.

14. 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.
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.

(b) 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, 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.

15. Mutual Indemnification.

(a) City Bodies. To the extent permitted by applicable Laws, City Bodies shall indemnify and hold harmless Company from and against all Claims arising from the breach by City Bodies of any term or condition of this Agreement.
Company.

(b) Company. Company shall indemnify and hold harmless City Bodies from and against any and all Claims arising from: (i) breaches by Company under contracts to which Company is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Company or any party acting by, under, through or on behalf of Company; (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 Company or any party acting by, under, through or on behalf of Company; (iii) the negligence or willful misconduct of Company or any party acting by, under, through, or on behalf of Company; or (iv) the breach by Company of any term or condition of this Agreement.

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

16. Special Remedies.

(a) No Commencement. Subject to Force Majeure and after offering in writing to meet with Company to discuss Company's failure to commence, if Company has not commenced construction of the Project within ninety (90) days after the Closing Date, then, at any time until Company commences construction of the Project, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement; and (ii) re-enter the Project Site and exercise its Power of Termination and cause title to the City Parcel to vest in the RDC, without any liability or obligation to Company. The Power of Termination and foregoing rights shall be deemed exercised upon delivery to Company of Notice delivered at any time after such ninety (90) day period but prior to Commencement of Construction (as defined herein below) of the Project. Upon delivery of such Notice to Company, Company shall surrender possession of the City Parcel to the RDC and title to the City Parcel shall automatically, and without further action, vest in the RDC; provided, however, if title to the property cannot automatically vest in the RDC, Company acknowledges and agrees that it shall execute a limited warranty deed and take all other required action under the Laws or by the Title Insurer to reconvey the City Parcel to the RDC. Any such re-vesting shall be free and clear of all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than those existing immediately prior to Closing. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this Section 16(a) or to invoke any available remedy with respect to an Event of Default by Company shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder. For purposes of this Section 16(a), "Commencement of Construction" shall mean material and substantial work on the Project pursuant to Required Permits such as installation of footings and foundations and shall not be deemed to occur as a result of (1) mere excavation work, or (2) work related to working with Heritage Meadows and adjacent property owners on open-green space programming and design.

(b) Work Stop. After Commencement of Construction, subject to Force Majeure, if all construction work of a material nature ceases with respect to the Project for a period of at least one hundred twenty (120) consecutive days or for more than a total of two hundred (200) days during any three hundred sixty (360) day period, then, at any time until construction work of a material nature resumes and is continuing, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement; (ii) re-enter the Project Site and exercise its Power of Termination and cause title to the Project Site to vest in the RDC, without any liability or obligation to Company. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to Company of Notice prior to material resumption of the construction work. Such Notice together with evidence of remittance of the Divestiture Payment to Project Lender and Company, if applicable, may be recorded by the RDC contemporaneously with, or at any time after, its delivery of such Notice and payment to Project Lender. Upon delivery of such Notice and payment, if applicable, Company shall surrender possession of the Project Site to the RDC and title to the Project Site shall automatically and without further action of the parties' vest in the RDC; provided, however, if title to the property cannot automatically vest in the RDC, Company acknowledges and agrees that it shall execute a limited warranty deed and take all other required action under the Laws or by the Title Insurer to convey the Project Site to the RDC. Any such vesting of shall be free and clear of any, and all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than existing immediately prior to Closing. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this Section 16(b), or to invoke any available remedy with respect to an Event of Default by Company shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

If this Agreement is terminated pursuant to Sections 16(a) or 16(b), the Ancillary Documents shall likewise terminate.

17. Assignment. Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion of the Project, Company 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 the Company; provided that: (i) without the prior written approval of Company, 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, Company may assign, partially or in its entirety, this Agreement to (A) a third party controlling, controlled by or under common control with Company, or (B) collaterally assign this Agreement (or portion hereof) to a Project Lender. Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Company, 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 Company, 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.

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. Notice shall be provided as follows: if to (x) the City Bodies: City of Fishers, Attn: Lindsey Bennett, City Attorney, 3 Municipal Drive, Fishers, Indiana 46038, with copies (via email, only) to: Jennifer Messer, jennifercmesserlaw@gmail.com, and (z) Company at Rebar Development, 8700 North Street, Suite 120, Fishers, Indiana 46032 Attn: Shelby Bowen, with copies (via email, only) to: Liz Bowen (liz@rebardev.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, EDC, RDC, Building Corp. and Company represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City, EDC RDC, Building Corp. or Company, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by the City, RDC, EDC, Building Corp. and Company, respectively; provided, however, each of the City's, EDC's, Building Corp.'s RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which the City, EDC, Building Corp. 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 Company) 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.

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 Site, the Project, or any site or improvements adjacent to, or in the vicinity of, the Project Site) other than as specifically set forth in this Agreement. This Agreement may be amended or modify only by written instrument executed by City Bodies and Company.

22. Miscellaneous. Subject to Section 17, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Company, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Company waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Company may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by the City, EDC, Building Corp., RDC, and Company. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, employment relationship or joint venture between Company, the City, EDC, Building Corp., and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Fishers, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Any amounts due or to be paid hereunder shall bear interest at the prime rate as published in *The Wall Street Journal* plus five percent (5%) per annum from the date due until paid.

23. Execution of Agreement. Upon City Bodies' approval and execution of this Agreement, the City shall provide to Company the executed Agreement (the "City-Executed Agreement"). Within ten (10) days of Company receiving the City-Executed Agreement, Company 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.

Index of Exhibits:

Exhibit A: City Parcel
Exhibit B: Concept Plan
Exhibit C: Project Site
Exhibit D: Public Streetscape Improvements
Exhibit E: Insurance

[signatures on following pages]

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

"CITY"

CITY OF FISHERS, INDIANA

By: ____________________________________
Scott Fadness, Mayor

"EDC"

CITY OF FISHERS ECONOMIC DEVELOPMENT COMMISSION

By: ______________________________________

“**RDC**”

FISHERS REDEVELOPMENT COMMISSION

By:_________________________________
Damon Grothe, President

ATTEST:

By:______________________________
Brad Johnson, Secretary

"**BUILDING CORP**."

FISHERS TOWN HALL BUILDING CORPORATION

By: ____________________________________

Its: _____________________________

“**OWNER**”
REBAR SOUTH STREET, INC.

By: ______________________________________
Shelby M. Bowen, President

“**DEVELOPER**”
REBAR SOUTH STREET, LLC

By: ______________________________________
Shelby M. Bowen, Manager

Exhibit A
City Parcel

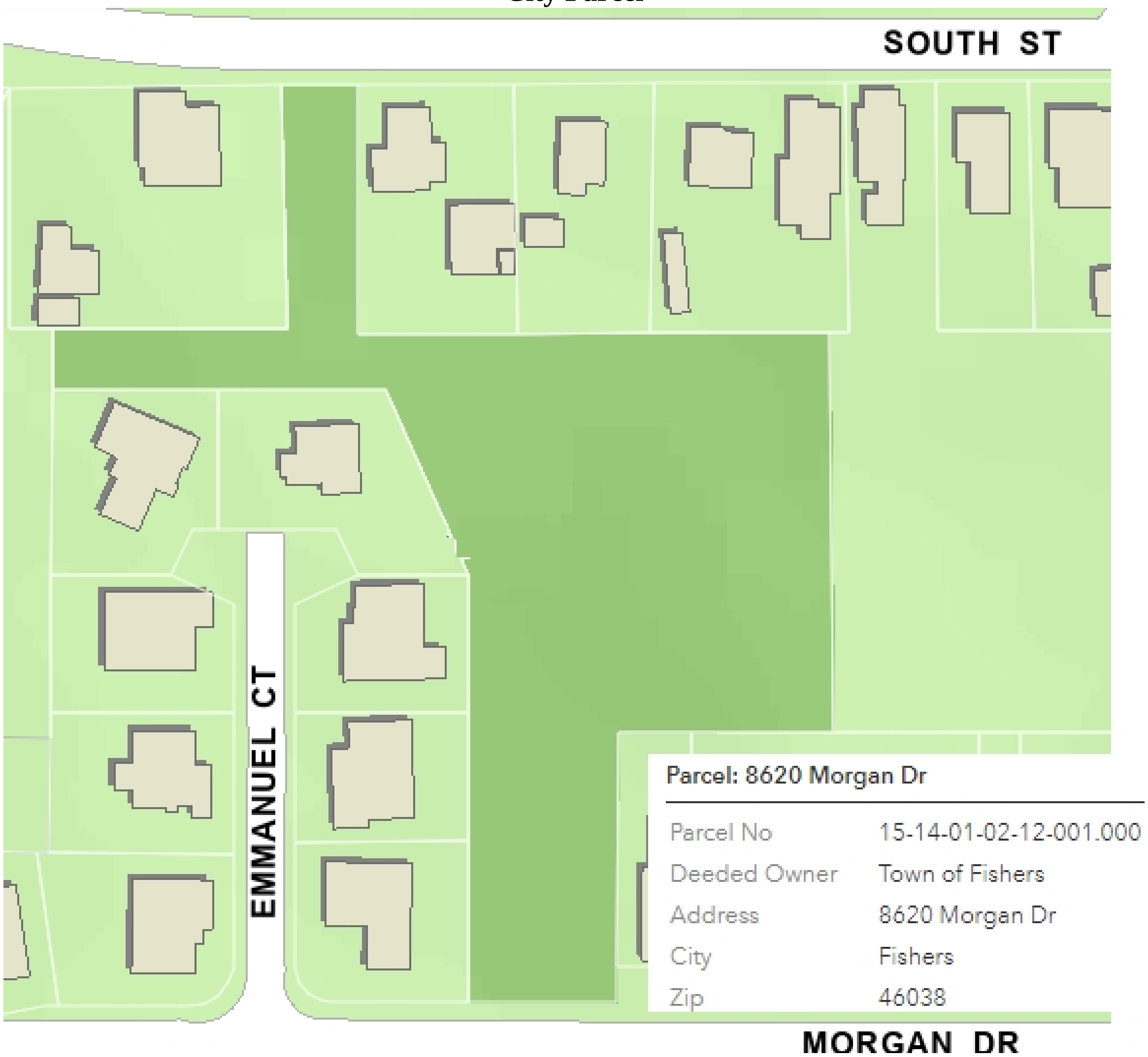

Exhibit B
Company Parcel

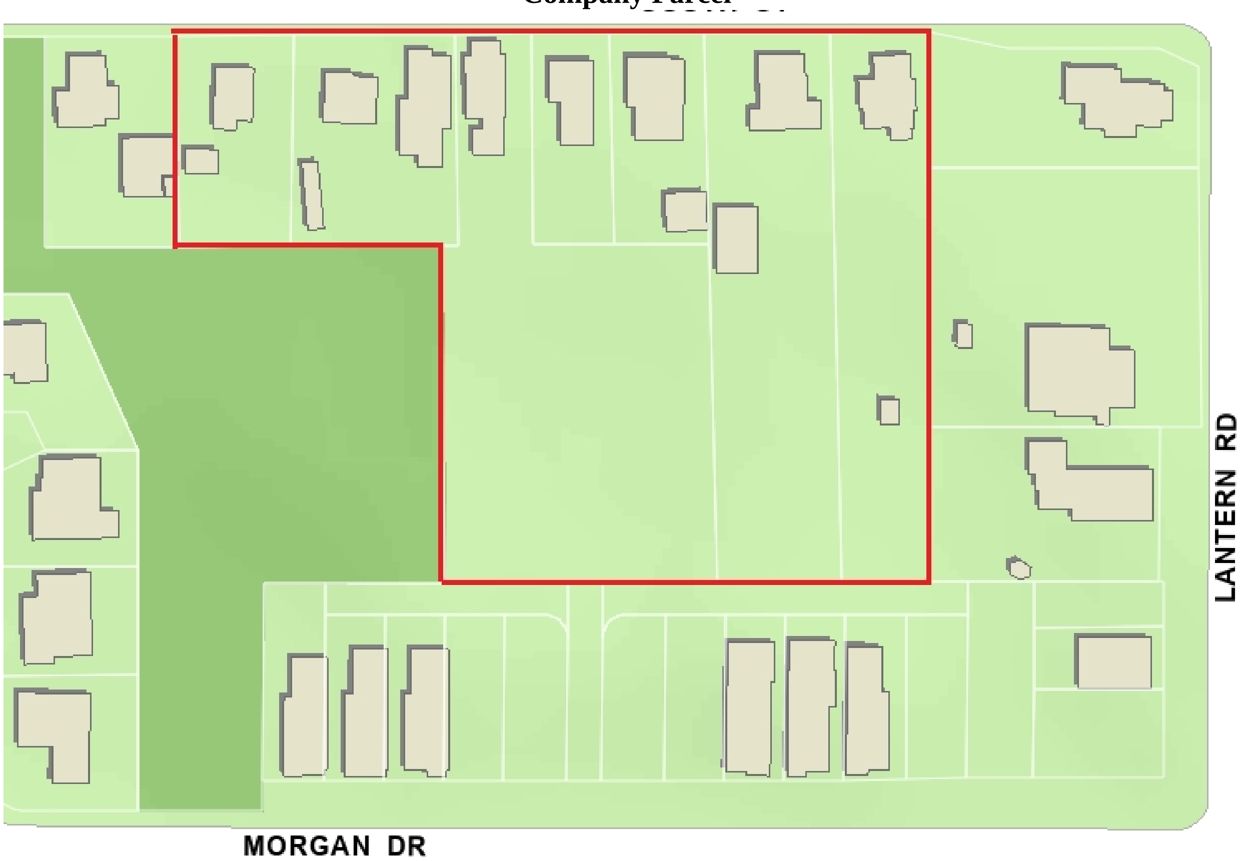

Exhibit C
Project Site

- 8767 South Street
- 8745 South Street
- 8723 South Street
- 8713 South Street
- 8705 South Street
- 8697 South Street
- 8667 South Street
- 8620 Morgan Drive (City Property)

Exhibit D
Public Streetscape Improvements

Exhibit E

Company Insurance Requirements

Company shall obtain and maintain and require any general contractor or subcontractor(s) to obtain and maintain the below listed policies of insurance written by a Company reasonably acceptable to the City and for which certificates of insurance shall be provided to the City prior to commencement of any work on the Project. The City Bodies shall be named as additional insureds on Company'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 the Company 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 Bodies as additional insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City Bodies 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 Bodies as additional insureds.
5.	Umbrella Liability: $2,000,000.00.