



CITY OF FISHERS AGENDA

BOARD/COMMISSION: Economic Development Commission Meeting

DATE: 4/22/2024, at 4:00 PM

DIRECTIONS: City Services Building - Controller's Conference Room, 3 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](mailto:kelly.lewark@fishers.in.gov), Office Manager, no later than 48 hours before the scheduled event or call at (317) 595-3487.

1. Executive Session

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

2. Call to Order

3. Confirmation of Quorum and Proper Notice of Meeting

4. Elections

- a.
 - President
 - Vice President
 - Secretary

5. Consent of Previous Meeting Minutes

a. 1-10-24

6. Grey Eagle Project Agreement

a. Agreement

7. Old Business

8. New Business

9. Adjournment

MEETING OF THE CITY OF FISHERS ECONOMIC DEVELOPMENT COMMISSION (EDC)

January 10, 2024

EXECUTIVE SESSION – NONE

REGULAR MEETING:

The regular meeting of the Economic Development Commission was called to order at 4:00 p.m. by Ms. Nieves.

EDC Members Present: Jamie Nieves and Lindsey Anderson.

Other Attendees: Megan Baumgartner, Lawrence Summers, Kay Prange

A quorum was confirmed. Proper public notice of the meeting was confirmed.

Consent of Meeting Minutes from the Nov. 20, 2023 meeting was given.

1. Union and Crossing Project Agreement

Megan Baumgartner presented the Agreement for the extension of the Fishers District, 9 acres south of the Hyatt, as a mixed use development. Thompson Thrift will capture TIF.

Ms. Nieves asked for a Motion. Ms. Anderson made a Motion to approve, seconded by Ms. Nieves. The Motion was approved, 2-0.

2. District South – 1st Amendment to Project Agreement

Megan Baumgartner presented the Amendment which extends the closing date to March.

Ms. Nieves asked for a Motion. Ms. Anderson made a Motion to approve, seconded by Ms. Nieves. The Motion was approved, 2-0.

3. City Walk- 1st Amendment to Project Agreement

Megan Baumgartner presented the Amendment which extends the closing date to June.

Ms. Nieves asked for a Motion. Ms. Anderson made a Motion to approve, seconded by Ms. Nieves. The Motion was approved, 2-0.

Old Business: None

Being no other items before the Commission, Ms. Nieves adjourned the meeting at 4:07 pm. .

PROJECT AGREEMENT

This PROJECT AGREEMENT (this “Agreement”) is executed as of the 14th day of March, 2024 (the “Effective Date”), by and among Gray Eagle Golf L.L.C., an Indiana limited liability company (“Course Owner”), J.C. Hart Company, Inc., an Indiana corporation (“Multi-Family Developer”), City of Fishers, Indiana, an Indiana municipal corporation (“City”), City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq.* (“RDC”), and the Fishers Economic Development Commission (“EDC”) (each of City, RDC, EDC, and Course Owner may be referred to herein individually as a “Party” and collectively as the “Parties”) on the following terms and conditions:

Recitals

WHEREAS, since 2012, the City has been working to fulfill its master plan of creating a sustainable, pedestrian friendly, city where City residents and visitors live, work and play (the “Master Development Plan”);

WHEREAS, as part of the Master Development Plan, the City has (a) worked with developers to develop large, mixed-use developments that include apartments, condominiums, office space and retail; (b) incentivized multiple high-growth, high-technology businesses to locate in the City; and (c) in 2016, entered into an agreement with the State of Indiana for a portion of the City’s downtown area to be designated a certified technology park;

WHEREAS, as part of fulfilling its Master Development Plan, the City now desires to help preserve and enhance the Course (as defined herein) as a recreational amenity for City residents using the tax increment generated by the Golf Course Improvement Project and the Multi-Family Project (each as defined herein);

WHEREAS, the City Bodies have determined that the development and construction of the Multi-Family Project and the enhancement and preservation of the Course is in the best interest of the citizens of the City, and, therefore, City Bodies desire to induce Multi-Family Developer to complete the Multi-Family Project and Course Owner to enhance and preserve the Course; and

WHEREAS, to stimulate and induce the development of the Multi-Family Project and the enhancement and preservation of the Course, the City Bodies have agreed, subject to further proceedings required by the Laws, to provide the economic development incentives described herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City Bodies, Course Owner and Multi-Family Developer agree as follows:

Section 1. Recitals. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.

Section 2. Mutual Assistance. The Parties agree, subject to further proceedings required by the Laws (as defined herein), to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

Section 3. Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

(a) **Allocation Areas** shall mean, jointly, the Golf Course Site and the Multi-Family Site, each of which shall be designated by the RDC Commission under Ind. Code § 36-7-14-39 as a separate area for the purpose of the allocation and distribution of property taxes on real property to be used in the manner provided in Ind. Code § 36-7-14-39 and eligible personal property pursuant to Ind. Code §36-7-14-39.3.

(b) **Ancillary Agreements** shall mean with respect to (a) Course Owner, all instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement, and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement; and (b) Multi-Family Developer, all instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement(s) and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement.

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

(d) **Bonds** shall mean certain economic development bonds to be issued under Indiana Code 36-7-12-1, *et. seq.* for the Multi-Family Project and Golf Course Improvement Project: (a) issued for the Bond Term in a maximum par amount that the Parties collectively determine will ensure that one hundred percent (100%) of all TIF Revenues are utilized to pay debt service on the Bonds; (b) issued at a rate equal to or less than eight percent (8%) (except for the potential of a zero percent (0%) rate until Substantial Completion), as determined by Course Owner and Multi-Family Developer, as applicable, in its sole discretion; and (c) issued with reasonable and customary Costs of Issuance. The Bonds may, at the direction of Course Owner and Multi-Family Developer, but in consultation with the City and subject to the approval of the City's bond counsel, be issued in one or more series, on a taxable or tax-exempt basis (provided customary bond counsel opinions are provided), and may be structured as "draw bonds" with the principal amount being drawn incrementally as the Bonds are purchased by Multi-Family Developer, Course Owner and/or a Related Entity of either or both. Moreover, principal amounts of the Bonds may be deemed purchased and disbursed as Project Costs are incurred without actual cash transfers being implemented, all as specifically described and set forth in the respective Funding Agreement. At Course Owner's and Multi-Family Developer's election, disbursements of Bond Proceeds shall be structured as a loan that is deemed repaid as payments are made to Multi-Family Developer,

Course Owner or a Related Party under the Bonds, as applicable. Moreover, in the reasonable discretion of the Parties, the Bonds may be issued in one or more series, with the first three series of the issuance being Series A, B and C, with Multi-Family Developer (or a Related Entity) acquiring the Series A Bonds, and Course Owner (or a Related Entity) acquiring the Series B and C Bonds. If the Bonds are issued in multiple series and acquired by two (2) or more different entities, the Bonds after payment of all Costs of Issuance, shall each be sized in a manner to provide the percentage of funds included in the definition of “Bond Proceeds”.

(e) **Bond Proceeds** shall mean the Net Proceeds of the Bonds attributable to the Multi-Family Project (the “Multi-Family Bond Proceeds”), which Multi-Family Bond Proceeds shall be disbursed to Course Owner and Multi-Family Developer for Project Costs pursuant to their respective Funding Agreement(s) as follows: (a) Course Owner – (i) approximately forty-three percent (43.0%) of the Multi-Family Bond Proceeds; and (ii) the Net Proceeds of the Bonds attributable to the Golf Course Improvement Project; and (b) Multi-Family Developer – fifty-seven percent (57.0%) of the Multi-Family Bond Proceeds.

(f) **Bond Purchase** shall mean, upon mutual agreement of the Parties, (i) Multi-Family Developer’s or a Related Entity’s purchase of Bonds in proportion to its share of the Bond Proceeds and Course Owner’s or a Related Entity’s purchase of Bonds in proportion to its share of the Bond Proceeds; or (ii) purchase of the Bonds by a Related Entity of both Multi-Family Developer and Course Owner. Multi-Family Developer and/or its Related Entity and Course Owner and/or its Related Entity may transfer the Bonds at any time, provided such transfer complies with all applicable Laws, including, without limitation, securities laws; and in connection with such purchase and potential transfer of the Bonds, the Parties shall, if elected by initial Bond purchaser, enter into the DOA.

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

(h) **Change Order** shall mean a change order: (i) between the City and Multi-Family Developer with respect to the Multi-Family Project; (ii) between the City and Course Owner with respect to the Clubhouse Project, in each case that is approved in writing by City (or its designee) finalizing the inclusion into the applicable Final Documents of a change proposed in a Change Order Request by Multi-Family Developer or Course Owner that is approved by City (or its designee), as the case may be, which approval shall not be unreasonably delayed, conditioned or withheld; provided that, in the case of a Permitted Change Order, such Change Order shall be effective if executed only by the Multi-Family Developer or the Course Owner as the case may be.

(i) **Change Order Request** shall mean a written request for a change to the Final Documents.

(j) **City Body or City Bodies** shall mean individually any of City, EDC, and/or RDC, as applicable, or collectively City, EDC and RDC.

(k) **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.

(l) **Closing** shall mean the closing with respect to: (i) Course Owner's or Related Entity's conveyance of the Multi-Family Site to Multi-Family Developer or a Related Entity; (ii) execution (if such execution has not previously occurred) of all Ancillary Agreements; and (iii) demonstration, in City's sole discretion, that Multi-Family Developer and Course Owner have the necessary proceeds, in excess of the Bond Proceeds, to complete the Multi-Family Project and Golf Course Improvement Project, respectively, which closing shall occur not later than October 31, 2025 (the "Outside Closing Date").

(m) **Clubhouse** shall mean a clubhouse on the Course to be comprised of approximately 27,753 square feet upon completion of construction, which is anticipated to include, among other amenities, a restaurant, simulation bays, a practice green, hitting bays and a golf shop as depicted in the Clubhouse Concept Plan.

(n) **Clubhouse Concept Plan** shall mean the illustrative plan attached hereto as **Exhibit B** that: (a) shows the Clubhouse Project's conceptual building layout and other significant site features; and (b) includes conceptual illustrations of the quality and character of the: (i) exterior elevations of the Clubhouse, and (ii) program of landscaping for the area at and near the Clubhouse.

(o) **Clubhouse Project** shall mean development and construction of the new Clubhouse pursuant to the Final Documents.

(p) **Construction Drawings** shall mean construction drawings with respect to the construction of each of the Multi-Family Project and the Golf Course Improvement Project, which drawings shall be consistent with the Design Development Documents, the Schematic Design Drawings, the Site Plan and the Laws.

(q) **Construction Schedule** shall mean a schedule for construction of each of the Multi-Family Project and the Golf Course Improvement Project in accordance with the Final Documents, which schedule shall reflect Substantial Completion of the Multi-Family Project within twenty-four (24) months after the Outside Closing Date and the Golf Course Improvement Project within twenty-four (24) months after the Outside Closing Date.

(r) **Course** shall mean the golf course located on the Golf Course Site, which is commonly known on the Effective Date as "Gray Eagle".

(s) **Course Improvements** shall mean the Course improvements listed in **Exhibit C**, inclusive of certain Course improvements and other capital projects consisting of, without limitation, (i) the Clubhouse Project; (ii) new halfway house including men's and women's bathroom facilities; (iii) new irrigation system; (iv) improved Course drainage; (v) new signage; and (vi) construction of two-tiered driving range with associated netting. **Exhibit C** may be amended from time to time upon written agreement of the City (administratively approved by the Mayor and Executive Director) and Course Owner.

(t) **Cure Period** shall mean a period of: (i) ten (10) days after written notice of such default in the case of any monetary default; and (ii) thirty (30) days after a Party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature

that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (A) commences to cure the default within the thirty (30) day period; and (B) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of the default. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under an Ancillary Agreement, any specific cure periods for such defaults being expressly set forth in such Ancillary Agreement.

(u) **Costs of Issuance** shall mean costs, fees and expenses incurred or to be incurred by the City for the issuance and sale of the Bonds, including placement or other financing fees (including applicable counsel fees), attorney's fees, financial advisor fees, professional fees, the fees and disbursements of bond counsel, fees of the City's municipal or financial advisor, the acceptance fee of a Trustee, if any, and the first year of the Trustee's fees hereunder, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under a Trust Indenture, if any, or to perfect the lien thereof, the out-of-pocket costs of the City, the costs of preparing or printing the Bonds and the documentation supporting the issuance of the Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred in connection with the issuance and delivery of the Bonds, this Agreement or the Ancillary Agreements, and, if determined to be necessary by the Multi-Family Developer or the Course Owner, the fees and expenses incurred or to be incurred by the Multi-Family Developer and/or the Course Owner.

(v) **Design Development Documents** shall mean detailed design development documents for each of the Golf Course Improvement Project and the Multi-Family Project, which documents shall be consistent with the Schematic Design Drawings and the Law.

(w) **Diligence Period** shall mean ninety (90) days after the Effective Date.

(x) **DOA** means the Developer Obligations Agreement and Grant of Real Property Tax Lien attached as **Exhibit A**.

(y) **Effective Date** shall mean the date set forth in the opening paragraph of this Agreement.

(z) **Escrow Agent** shall mean Gina Longere (or her substitute), First American Title Insurance Company.

(aa) **Event of Default** shall have the meaning set forth in Subsection 14(a).

(bb) **Excess TIF** shall mean tax increment from the Allocation Areas in excess of the amount needed to pay debt service on the Bonds, which Excess TIF shall be separately tracked for each Allocation Area, deposited in the Surplus Fund as described and set forth in the Trust Indenture, and (i) used to pay amounts due on the Bonds (including any prior TIF Revenue Shortfall), and (ii) thereafter be disbursed to the Course Owner and Multi-Family Developer as additional interest (above any stated interest rate on the Bonds) in an amount sufficient to cause the total semi-annual payments on the Bonds to equal the full amount of such TIF Revenue. Excess

TIF shall be disbursed pursuant to and in accordance with the Financing Agreement and Trust Indenture.

(cc) **Executive Director** shall mean the Director of Economic Development for the City (currently, Megan Baumgartner) or, in the event of a vacancy in the Director's position, then the Mayor of the City of Fishers.

(dd) **Final Documents** shall mean, for each Project, the final Schematic Design Drawings, the final Design Development Documents, the final Construction Schedule, and the final Construction Drawings, as each is finalized and approved or reviewed by City in accordance with the Plan Refinement Process described in Section 12.

(ee) **Final Inspection** shall mean an inspection of each of the Multi-Family Project and the Golf Course Improvement Project after Substantial Completion thereof.

(ff) **Force Majeure** shall mean, with respect to Course Owner, Multi-Family Developer or City Bodies any cause that is not within the reasonable control of the Parties, respectively, including, without limitation: (a) unusually inclement weather but not prolonged inclement cold, ice, sleet, snow or hail as is typical in Indiana during winter; (b) the unusual unavailability of materials, equipment, services, or labor; (c) utility or energy shortages or acts or omissions of public utility providers; and (d) epidemics, pandemics, and other public health circumstances resulting in a governmental declaration of a public health emergency, provided that a Party's failure to anticipate normal and customary delays due to weather or normal and customary delays in obtaining Required Permits shall not be deemed Force Majeure.

(gg) **Funding Agreement** shall mean the Funding Agreement(s) by and among the City, Course Owner and Multi-Family Developer pursuant to which the City pays or loans to Multi-Family Developer and/or the Course Owner the Bond Proceeds for Project Costs, as applicable.

(hh) **Golf Course Improvement Project** shall mean development and construction of certain improvements and capital projects at the Golf Course Site, including, but not limited to (i) the Clubhouse Project; (ii) new halfway house including men and women bathrooms; (iii) new irrigation system; (iv) improved drainage on the Course; (v) new signage; and (vi) construction of two-tiered driving range with associated netting.

(ii) **Golf Course Site** shall mean the area depicted on Exhibit D.

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

(kk) **Incurred Costs** shall mean all actual and reasonable, out-of-pocket, third-party costs and expenses incurred by a Party through the date of such termination of this Agreement, to the extent not previously paid or reimbursed by the other Party.

(ll) **Inspector** shall mean such party designated by City as its inspector.

(mm) **Latent Defect** shall mean a Material Defect with respect to the Golf Course Improvement Project or the Multi-Family Project, as the case may be, that: (a) is not discovered, and reasonably is not discoverable, by City or Inspector during a Permitted Inspection; and (b) has

a material and adverse effect on the use, operation, structure, or longevity of the Multi-Family Project and/or the Course, as applicable.

(nn) **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, all applicable environmental laws, and the PUD.

(oo) **Material Defect(s)** shall mean any item or component of the Multi-Family Project and/or the Golf Course Improvement Project that: (i) contains a material defect in workmanship or materials; (ii) deviates materially from the Final Documents, other than Permitted Changes; or (iii) has not been performed materially in accordance with the terms and conditions of this Agreement.

(pp) **Multi-Family Concept Plan** shall mean the illustrative plan attached hereto as **Exhibit E** that: (i) shows the Multi-Family Project's conceptual buildings layout and other significant site features; and (ii) includes conceptual illustrations of the quality and character of the: (A) exterior elevations of the Multi-Family buildings, and (B) program of landscaping for the Multi-Family Site.

(qq) **Multi-Family Project** shall mean development and construction of (i) one hundred one (101) Garden Style Units; (ii) twenty-six (26) Master Down Paired Homes; (iii) twenty-two (22) Paired Ranch Style Homes as depicted on the Multi-Family Concept Plan; and (iv) ancillary recreational amenities including but not limited to pickle-ball courts; bocce ball courts and a swimming pool as depicted on the Multi-Family Concept Plan.

(rr) **Multi-Family Site** shall mean the area depicted on **Exhibit F**.

(ss) **Net Proceeds** shall mean the par amount of the Bonds less the (i) Costs of Issuance associated with the Bonds; (ii) capitalized interest, if any, as required by the purchaser of the Bonds; and (iii) any other applicable fees and costs associated with issuance and maintenance of the Bonds.

(tt) **Non-Compliance Notice** shall mean a written notice from City to Multi-Family Developer and/or Course Owner that identifies any Material Defect with respect to the Golf Course Improvement Project or Multi-Family Project, as applicable, discovered by City or the Inspector during a Permitted Inspection and/or the Final Inspection.

(uu) **Off-Site Work** shall mean the improvements reflected in Exhibit G.

(vv) **Permitted Change** shall mean for each of the Multi-Family Project and the Clubhouse Project, any change to that portion of the Final Documents consisting of the final Construction Drawings, so long as such change: (i) does not affect the exterior appearance of the Project, (ii) is not materially inconsistent with the Construction Drawings approved by City, (iii) is in material conformity with the Design Development Documents, Schematic Design Drawings and the Site Plan, (iv) is in conformity with the Required Permits and the Laws; (v) does not result in the Project containing structurally flawed elements; (vi) with respect to the Clubhouse Project, does not cause the Clubhouse Project to be completed later than October 31, 2027; and (vii) with

respect to the Multi-Family Project, does not cause the Multi-Family Project to be completed later than October 31, 2027.

(ww) **Permitted Inspection** shall mean, as applicable, an inspection by the Inspector of any item or component of the Golf Course Improvement Project and/or the Multi-Family Project when reasonably deemed to be necessary or appropriate by any City Bodies and/or the Inspector.

(xx) **Plan Refinement Process** shall mean the process set forth in Section 12 for completion of the Final Documents.

(yy) **Plan Review Panel** shall mean a plan review panel comprised of the Executive Director and such other parties as may hereafter be designated by the City.

(zz) **Project** shall mean, jointly, the Golf Course Improvement Project and the Multi-Family Project.

(aaa) **Project Costs** shall mean all Hard Costs and Soft Costs (including capitalized interest on and reserves for the Bonds) related to the development and construction of the Projects.

(bbb) **Project Site** shall mean, collectively, the Golf Course Site and the Multi-Family Site.

(ccc) **PUD** shall mean the planned unit development ordinance for the Multi-Family Site, which ordinance shall include the language substantially similar to the following: “In its sole discretion, City may administratively determine whether (i) a text amendment is required for any design elements not fully consistent with this PUD; or (ii) such non-fully consistent element is approved pursuant to the Plan Refinement Process included in that certain March 14, 2024 Project Agreement by and among Gray Eagle Golf L.L.C., an Indiana limited liability company, J.C. Hart Company, Inc., an Indiana corporation, City of Fishers, Indiana, City of Fishers Redevelopment Commission, and the Fishers Economic Development Commission.”

(ddd) **Real Estate Taxes** shall mean all real estate taxes levied on, against, or with respect to each of the Multi-Family Site and Golf Course Site.¹

(eee) **Recorder’s Office** shall mean the Office of the Hamilton County, Indiana Recorder.

(fff) **Related Entity** shall mean with respect to (a) Course Owner, a third party controlled by or under common control with Course Owner, and/or any joint venture, subsidiary or affiliate of Course Owner; and (b) Multi-Family Developer, a third party controlled by or under common control with Multi-Family Developer, Gray Eagle Apartments, LLC, an Indiana limited liability company, and/or any joint venture, subsidiary or affiliate of Multi-Family Developer.

(ggg) **Required Permits** shall mean all permits, licenses, approvals, and consents required by the Laws for the Project or any portion thereof.

¹ NTD – not the “Project Site” correct?

(hhh) **Schematic Design Drawings** shall mean, for each of the Clubhouse Project and Multi-Family Project, schematic design drawings that are consistent with the Site Plan and the Laws.

(iii) **Site Plan** shall mean with respect to (a) the Multi-Family Project, a site plan that is consistent with the Multi-Family Concept Plan and the Laws; and (b) the Clubhouse Project, a site plan that is consistent with the Clubhouse Concept Plan and the Laws.

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

(kkk) **Substantial Completion** shall mean with respect to the (i) Multi-Family Project, the later of the date: (A) that Multi-Family Developer receives the final certificate of occupancy for the Multi-Family Project; and (B) the date that the Multi-Family Developer’s architect certifies, per AIA Form G704, that the construction of the Multi-Family Project is substantially complete in compliance with all Laws, this Agreement, and the Required Permits subject only to tenant improvements, certificates of occupancy for individual tenant spaces, and minor punchlist items that do not interfere with the use or operation thereof; and (ii) the Golf Course Improvement Project, the later of the date: (A) that Course Owner receives the final certificate of occupancy for the Clubhouse; and (B) the date that the Course Owner’s architect(s) certifies, per AIA Form G704, that the construction of the Clubhouse and the other Golf Course Improvements is substantially complete in compliance with all Laws, this Agreement, and the Required Permits subject only to minor punchlist items that do not interfere with the use or operation thereof.

(lll) **TIF Revenue** means all real and personal property tax proceeds attributable to the assessed valuation with the Allocation Areas as of each assessment date in excess of the base assessed value as described in Indiana Code 36-7-14-39(b)(1).

(mmm) **TIF Revenue Shortfall** shall mean any amount that TIF Revenue, in any given period, is insufficient to make payment on the Bonds. Any such TIF Revenue Shortfall shall accrue and be payable from future TIF Revenue, including, without limitation, Excess TIF, during the Bond Term. In the event and to the extent Multi-Family Developer, Course Owner or any Related Entity makes any payment on the Bonds, Multi-Family Developer, Course Owner, and/or such Related Entity will be entitled to reimbursement from TIF Revenue in excess of current amounts payable on the Bonds in any subsequent time period, including from the Excess TIF. Such amounts payable to Multi-Family Developer, Course Owner or such Related Entity will bear interest at the same rate or rates as the applicable Bonds.

Section 4. City’s Obligations. Subject to Section 10, the City Bodies shall: (a) on or before Closing, execute and continuously perform (or cause the applicable City Bodies thereto to execute and perform) the Ancillary Agreements; (b) create the Allocation Areas and pledge the TIF Revenue to the payment of the Bonds; (c) consistent with the Funding Agreement(s), reimburse Multi-Family Developer, Course Owner or third parties (at the direction of Multi-Family Developer or Course Owner), as applicable, for Project Costs; (d) issue the Bonds; (e) review and issue the City’s development and permit applications necessary to develop the Project, including, whenever possible, coordinating with the Course Owner and Multi-Family Developer, as applicable to lower costs by issuing 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; (f) provide Excess TIF to Course Owner and Multi-Family Developer in accordance with this Agreement and the Laws; and (g) otherwise satisfy the terms of this Agreement. The City Bodies agree to work with the Course Owner to reset the base assessment date for the allocation area associated with the Golf Course Site if determined to be necessary by the Course Owner following the demolition of the existing clubhouse on the Golf Course Site; provided, however, any such obligation shall not be interpreted to require the City to expend funds related to resetting the base.

Section 5. Course Owner Obligations. Subject to Section 9, Course Owner (or its Related Entity) shall: (a) on or at Closing, transfer the Multi-Family Site to Multi-Family Developer; (b) on or before Closing, execute and continuously perform the Ancillary Agreements; (c) complete the Bond Purchase; (d) on or before October 31, 2027, complete the Course Improvements, subject to delays for Force Majeure; (e) pay, when due, all Real Estate Taxes and Assessments on the Golf Course Site, including for any improvements thereon; (f) on or before Closing demonstrate to the City that it has adequate funds to complete the Clubhouse Project; (g) construct and complete the Clubhouse Project in accordance with the Final Documents, this Agreement and the Laws; (h) obtain all Required Permits; (i) maintain, repair and replace the Clubhouse Project in good condition and repair; and (j) otherwise satisfy the terms of this Agreement.

Section 6. Multi-Family Developer's Obligations. Subject to Section 9, Multi-Family Developer shall: (a) on or at Closing, accept fee simple title to the Multi-Family Site; (b) on or before Closing, execute and continuously perform the Ancillary Agreements; (c) complete the Bond Purchase; (d) on or before October 31, 2027, complete the Multi-Family Project, subject to delays for Force Majeure; (e) pay, when due, all Real Estate Taxes and Assessments on the Multi-Family Site, including for any improvements thereon; (f) on or before Closing demonstrate to the City that it has adequate funds to complete the Multi-Family Project; (g) construct and complete the Multi-Family Project in accordance with the Final Documents, this Agreement and the Laws; (h) obtain all Required Permits; (i) maintain, repair and replace the Multi-Family Project in good condition and repair; and (j) otherwise satisfy the terms of this Agreement.

Section 7. Closing. Subject to the terms and conditions of this Agreement,

(a) Closing. Closing shall occur on or before the date that is thirty (30) days after the conditions in Sections 9 and 10 have been satisfied or waived, but in no event later than the Outside Closing Date. The Closing shall be consummated through escrow with Escrow Agent on the Closing Date through a mail in escrow arrangement with the Escrow Agent, without the parties required to attend the Closing. Closing shall occur as follows:

(b) Deliveries. At the Closing, unless another time is specifically stated, Multi-Family Developer, Course Owner and/or City, as applicable, shall execute and deliver, or cause to be executed and delivered, as applicable, the following:

(A) the limited warranty deed to the Multi-Family Site conveying fee simple title of the Multi-Family Site to the Multi-Family Developer;

(B) a certification by the City Bodies, Course Owner and Multi-Family

Developer that all of the representations and warranties set forth in Subsection 11(a), (b) and (c), as applicable, remain true and accurate in all material respects as of the Closing;

(C) the Ancillary Agreements;

(D) copies of such resolutions, consents of members, partners, officers, and/or shareholders and other evidence as each of RDC, City, EDC, Multi-Family Developer and Course Owner reasonably requests establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents has been properly authorized by the signatories thereto;

(E) such other customary documents or instruments as City, EDC, RDC, Multi-Family Developer and/or Course Owner may request in connection with the Closing; and

(F) certificates of the insurance policies required pursuant to Section 14.

Section 8. Tax Covenant. Each of Multi-Family Developer and Course Owner assumes and agrees to pay or cause to be paid all Real Estate Taxes and Assessments first becoming a lien against the Multi-Family Site and Golf Course Site, respectively, after the Closing and in accordance with Indiana law without challenging or appealing the assessed value of such Real Estate Taxes and Assessments, 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; (c) the initial assessment of the Multi-Family Project, at stabilization, or the Golf Course Improvement Project being more than ten percent (10%) higher than the amount necessary to make the required payments on the Bonds; (d) the taxes billed for any calendar year being increased by more than five percent (5%) over the taxes billed for the prior calendar year; (e) with respect to the Multi-Family Project, Real Estate Taxes and Assessments, in the year of any increase being substantially inconsistent with the assessment of other real property similar to the Multi-Family Project in age, size, use and other relevant factors; or (f) with respect to the Golf Course Site (including the Clubhouse Project), Real Estate Taxes and Assessments, in the year of any increase being substantially inconsistent with the assessment of other real property and improvements similar to the Golf Course Site and Clubhouse Project in age, size, use and other relevant factors or in accordance with Indiana Code § 6-1.1-4-42(e), as amended.

Section 9. Conditions to Development Obligations. The obligations of Multi-Family Developer and Course Owner with respect 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) Multi-Family - Title, Inspections, Surveys and Financing. Prior to the expiration of the Diligence Period, Multi-Family Developer shall have determined that it (i) has obtained or will be able to obtain acceptable (A) title, (B) survey, (C) environmental reports and inspections, (D) physical inspections, studies or investigations, (E) zoning, (F) utility availability, and (G) Required Permits, for the Multi-Family Site; and (ii) can demonstrate to City its financial ability to complete the Multi-Family Project pursuant to the terms and conditions of this Agreement.

(b) Golf Course Improvement Project - Title, Inspections, Surveys and Financing. Prior to the expiration of the Diligence Period, Course Owner shall have determined that it (i) has obtained or will be able to obtain acceptable (A) survey, (B) environmental reports and inspections, (C) physical inspections, studies or investigations, (D) zoning, (E) utility availability, and (F) Required Permits; and (ii) can demonstrate to City its financial ability to complete the Golf Course Improvement Project pursuant to the terms and conditions of this Agreement.

(c) Ancillary Agreements. As of the Closing, City (or the applicable City Bodies), Course Owner and Multi-Family Developer, as applicable, shall have executed all Ancillary Agreements.

(d) Procedures. As of the Closing, the applicable City Bodies shall have completed all procedures required by Laws to undertake the obligations contemplated hereunder; and all requisite public bodies shall have approved the transaction.

(e) Compliance. City Bodies shall confirm that 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.

(f) No Breach. As of the Closing: (i) there shall be no breach of this Agreement by City Bodies that the applicable City Body has failed to cure within the Cure Period; and (ii) all of the representations in Section 11(a) shall be true and accurate in all other respects.

(g) Bond Proceeds. As of the Closing, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary and prudent to authorize the Bonds and pledge the TIF Revenue to the repayment of the Bonds; and (ii) demonstrated that such Bonds shall be issued within thirty (30) days after Closing and the Bond Proceeds shall be made available to the Multi-Family Developer and Course Owner within seven (7) days of the Bonds being issued in accordance with the terms of the Funding Agreement(s); and, as of the Closing, Multi-Family Developer and Course Owner, at their commercially reasonable discretion, shall have determined that the proceeds of the Bonds shall be available to the Multi-Family Developer and Course Owner for the purposes set forth in this Agreement.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, as determined by either Multi-Family Developer and Course Owner, in their commercially reasonable discretion, then, as their sole and exclusive remedy, each of Multi-Family Developer and Course Owner 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 City provided that, with respect to breaches of this Agreement by City, each of the Multi-Family Developer and Course Owner shall have all of the rights and remedies set forth in this Agreement. Notwithstanding anything to the contrary set forth herein, (1) each of the Multi-Family Developer and Course Owner shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if either the Multi-Family Developer and Course Owner fails to terminate this Agreement for any unsatisfied condition on or before the earlier of (i) the Closing; or (ii) two (2) business days after the applicable deadline set forth in each of the foregoing subsections (a) or (b) the Multi-Family Developer or Course Owner Developer shall be deemed to

have waived such condition.

Section 10. Conditions to City Bodies' Obligations. The obligations of City Bodies with respect 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) Intentionally Omitted.

(b) Financial Ability. As of the Closing, each of Multi-Family Developer and Course Owner shall have demonstrated to City, exercising commercially reasonable discretion, that it has adequate funds (e.g., Bond Proceeds, loans and/or cash on hand) to construct the Multi-Family Project and Golf Course Improvement Project, respectively.

(c) Ancillary Agreements. As of the Closing, City (or the applicable City Bodies), Course Owner and Multi-Family Developer, each exercising commercially reasonable discretion, as applicable, shall have executed all Ancillary Agreements. The execution of the DOA shall only occur in the discretion of Multi-Family Developer and at such time as requested by Multi-Family Developer and is not a condition precedent to the effectiveness of this Agreement.

(d) Procedures. As of the Closing, the applicable City Bodies shall have completed all procedures required by Laws to undertake the obligations contemplated hereunder; and all requisite public bodies shall have approved the transaction.

(e) Compliance. City Bodies shall confirm that 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.

(f) No Breach. As of the Closing: (i) there shall be no breach of this Agreement by Multi-Family Developer and/or Course Owner that, as applicable, Multi-Family Developer and/or Course Owner has failed to cure within the Cure Period; and (ii) all of the representations and warranties set forth in Subsections 11(b) and 11(c), respectively, shall be true and accurate in all material respects.

(g) Bond Proceeds. As of the Closing, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary and prudent to authorize the Bonds; and (ii) demonstrated that such Bonds shall be issued within thirty (30) days after Closing and the Bond Proceeds made available to the Multi-Family Developer and Course Owner within seven (7) days of the Bonds being issued; and, as of the Closing, the Multi-Family Developer and Course Owner, exercising commercially reasonable discretion, shall have determined that the proceeds of the Bonds shall be no less than the Bond Proceeds and available to the Multi-Family Developer and Course Owner for the purposes set forth in this Agreement.

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 prior to Closing by a written notice to Multi-Family Developer and

Course Owner; provided that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Multi-Family Developer and/or Course Owner, the City Bodies shall have all of the rights and remedies set forth in this Agreement. Notwithstanding anything to the contrary set forth herein, (1) the City Bodies shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if the City Bodies fail to terminate this Agreement for any unsatisfied condition; on or before the earlier of (i) the Closing; or (ii) two (2) business days after the applicable deadline set forth in each of the foregoing subsections; the City Bodies shall be deemed to have waived such condition.

Section 11. Representations and Warranties.

(a) City Bodies. Each City Body represents and warrants to Multi-Family Developer and Course Owner that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) 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) omitted; (v) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (vi) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (vii) this Agreement is the legal, valid, and binding obligation of it; and (viii) it has not engaged or dealt with any real estate broker or agent in connection with the Project, Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of a City Body.

(b) Multi-Family Developer. Multi-Family Developer represents and warrants to each City Body that: (i) Multi-Family Developer is an Indiana corporation duly existing and validly formed under the laws of the State of Indiana; (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (iv) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (v) this Agreement is the legal, valid, and binding obligation of Multi-Family Developer; (vi) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Multi-Family Project, Multi-Family 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 Multi-Family Developer or any party affiliated with Multi-Family Developer; (vii) [*intentionally omitted*]; and (viii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Multi-Family Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Multi-Family Developer will state, in all solicitations or advertisements for employees placed by or on behalf of Multi-Family Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Course Owner. Course Owner represents and warrants to each City Body that: (i)

Course Owner is an Indiana limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (iv) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (v) this Agreement is the legal, valid, and binding obligation of Course Owner; (vi) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Golf Course Improvement Project, Golf Course 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 Course Owner or any party affiliated with Course Owner; and (vii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Course Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Course Owner will state, in all solicitations or advertisements for employees placed by or on behalf of Course Owner, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(d) E-Verify. All terms defined in IND. CODE § 22-5-1.7 et seq. are adopted and incorporated into this Section 11. Pursuant to IND. CODE § 22-5-1.7 et seq., each of Multi-Family Developer and Course Owner 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 Effective Date. Within ten (10) days after the Effective Date, each of Multi-Family Developer and Course Owner 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, each of Multi-Family Developer and Course Owner shall provide City with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by each of Multi-Family Developer and Course Owner and delivered to City's authorized representative.

Section 12. Plan Refinement Process.

This Plan Refinement Process shall strictly govern development and construction of the Project. The City has reviewed and approved the Clubhouse Concept Plan and the Multi-Family Concept Plan, and those plans are deemed final.

At its sole cost and expense, each of Multi-Developer and Course Owner 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 Multi-Family Project and Golf Course Improvement Project, respectively:

- (a) Site Plan.
- (b) Schematic Design Drawings.
- (c) Design Development Documents.

(d) Construction Drawings.

(e) Approval of Submitted Document. Within ten (10) days after City receives each of the Site Plan, the Schematic Design Drawings, Design Development Documents and Construction Drawings, or a Change Order Request (each, a “Submitted Document”), City shall deliver to Multi-Family Developer or Course Owner, as applicable, written notice that it approves or rejects the Submitted Document; provided that: (A) City shall not withhold its approval unreasonably; and (B) if 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 City’s approval of a Submitted Document, or if the City fails to respond within the time period provided above, such Submitted Document shall be deemed final. Provided that a Submitted Document complies with the Laws, the City shall approve each Submitted Document if it is consistent with the immediately preceding Submitted Document approved by the City. For example, and without limitation, if the Design Development Documents comply with the Laws and are consistent with the Schematic Design Drawings, the City shall approve the Design Development Documents. Notwithstanding the foregoing or anything included herein to the contrary, if a Submitted Document for the Multi-Family Project or the Golf Course Improvement Project does not strictly comply with the PUD, the City, in its sole discretion, may determine whether to accept the Submitted Document in lieu of requiring a text amendment to the PUD pursuant to this Plan Refinement Process.

(f) Resubmitted Documents. If, at any stage of the Plan Refinement Process, City, rather than approving any Submitted Document, instead notifies Multi-Family Developer or Course Owner, as applicable, of its rejection of a Submitted Document then, within ten (10) days after the applicable Party receives written notice from City that it has rejected the Submitted Document (each, a “Rejected Document”), the applicable Party shall promptly: (i) revise the Rejected Document; and (ii) resubmit the foregoing to City. The City shall follow the review procedure described in foregoing subsection (e), and Multi-Family Developer and/or Course Owner, as applicable, shall revise and resubmit any Rejected Submitted Document in accordance with the preceding sentence until such Rejected Document is approved, which approval shall not be unreasonably withheld, conditioned or delayed. Upon approval of any Resubmitted Document, the Resubmitted Document shall become final and part of the Final Documents, subject to modifications by Change Order approved by the City and Permitted Changes. Notwithstanding the involvement of City in the Plan Refinement Process, Multi-Family Developer and/or Course Owner, as applicable, each shall be responsible for ensuring that Resubmitted Documents and Change Orders approved by the City in writing are implemented in the Final Documents; the failure of which shall be a default hereunder by the Multi-Family Developer and/or Course Owner, as applicable. Neither Multi-Family Developer nor Course Owner shall be required to obtain the approval of City with respect to a Permitted Change. Notwithstanding anything to the contrary set forth herein: (A) Multi-Family Developer or Course Owner shall not be required to obtain the approval of the City with respect to a Permitted Change; and (B) a Change Order with respect to a Permitted Change shall be effective if executed only by the Multi-Family Developer or Course Owner, as applicable.

(g) Permits. Each of Multi-Family Developer and Course Owner 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 any City Body that Submitted Documents or Resubmitted Documents comply with, or are approved under, applicable Laws. Prior to commencing construction, each of Multi-Family Developer and Course Owner shall obtain Required Permits for the Multi-Family Project and Golf Course Improvement Project, respectively, that are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. City shall use reasonable efforts to assist Multi-Family Developer and Course Owner in their efforts to obtain the Required Permits. Each of Multi-Family Developer and Course Owner acknowledges that City Bodies cannot (and do not) guarantee that it will be able to obtain the Required Permits.

(h) Review Panel. Consistent with the Laws and notwithstanding anything to the contrary set forth herein, 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.

(i) Permitted Inspection. Upon reasonable written notice delivered to Multi-Family Developer and/or Course Owner, as applicable, which notice shall specify the portion of the construction to be inspected, 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, City may deliver to Multi-Family Developer and/or Course Owner, as applicable, a Non-Compliance Notice. If City timely delivers a Non-Compliance Notice, then the Multi-Family Developer and/or Course Owner, as applicable, shall correct, or cause to be corrected, as soon as is 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 City. Notwithstanding anything to the contrary set forth herein, all items or components of the Multi-Family Project and/or Golf Course Improvement Project with respect to which no Material Defect is identified in a timely Non-Compliance Notice shall be deemed to be accepted by City.

(j) Final Inspection. If Multi-Family Developer and/or Course Owner, as applicable delivers to 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; City shall: (A) conduct the Final Inspection; and (B) deliver a Non-Compliance Notice (if applicable) to Multi-Family Developer and/or Course Owner, as applicable; provided that: (1) upon receipt of a Non-Compliance Notice, Multi-Family Developer and/or Course Owner, as applicable, shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice; and (2) all then-completed items or components of the Multi-Family Project and/or Course Project with respect to which no Material Defect are identified in a timely Non-Compliance Notice shall be deemed to be accepted by City. All Material Defects shall be promptly completed; 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; City shall have no further inspection rights except to ensure compliance by Multi-Family Developer and Course Owner with the Required Permits and as permitted by the Laws.

(k) Failure to Cure. Subject to Section 19, if Multi-Family Developer and/or Course Owner, as applicable, fails to cure any item in a Non-Compliance Notice or any Latent Defect identified in writing by City (but no later than the Final Inspection), in each case, within sixty (60) days of the receipt of such notice, then 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 Multi-Family Developer and/or Course Owner, as applicable, for each day after the expiration of such sixty (60) 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 Multi-Family Developer and/or Course Owner, as applicable, to remedy such Material Defect or Latent Defect (not to exceed ninety (90) days, without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed) so long as Multi-Family Developer and/or Course Owner, as applicable, 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. The foregoing shall accrue interest at the prime rate as published in *The Wall Street Journal* plus five percent (5%) per annum until paid in full.

(l) General; Testing. 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. City and Multi-Family Developer and/or Course Owner, as applicable, 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. Notwithstanding anything to the contrary set forth herein, to the extent City, in the exercise of its reasonable discretion, requires any sampling or testing (e.g., concrete testing) as part of a Permitted Inspection and/or Final Inspection: (i) the deadline for City's issuance of a Non-Compliance Notice shall be deemed extended to five (5) business days following City's receipt of a complete and final set of such test or sample results; and (ii) the applicable dates in the Construction Schedule shall likewise be extended.

(m) No Waiver of Police Power. The foregoing rights in favor of City shall be addition to, and not in lieu of, any rights and remedies 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.

(n) Information Review. Upon Executive Director's request, each of Multi-Family Developer and/or Course Owner, as applicable, agrees to permit the Executive Director to review and inspect copies of the following: (i) any third-party inspections and reports related to the construction of the Project, as applicable; or (ii) receipts, invoices or other financial documents related to construction of the Project.

(o) Certification. If, as applicable, the Multi-Family Project and/or Golf Course Improvement Project has reached Substantial Completion, upon request received by the City from (i) Multi-Family Developer, with respect to the Multi-Family Project; and/or (ii) Course Owner,

with respect to the Golf Course Improvement Project, for a certificate indicating that there are no Material Defects and/or there are no Material Defects identified in any Non-Compliance Notice that have not been remedied, City shall, within ten (10) business days, provide (A) such certification in a form reasonably acceptable to City; or (B) in specific detail identify any Material Defect that Multi-Family Developer and/or Course Owner, as applicable, has not remedied as of the date of any request provided pursuant to this Subsection 12(o). Notwithstanding the foregoing, the certification described herein shall not concern or include representations regarding Latent Defects not previously discovered by the City.

Section 13. Insurance. During the construction of each respective portion of the Project, Course Owner and Multi-Family Developer, respectively, shall maintain the policies of insurance described on Exhibit H. Each such policy shall: (a) be written by a company reasonably acceptable to City; and (b) provide that it shall not be modified or canceled without written notice to City at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by each of Multi-Family Developer and Course Owner shall name City Bodies as additional insureds. Each of Multi-Family Developer and Course Owner shall deliver to City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. Other required coverages may be specified in the Ancillary Agreements.

Section 14. Default.

(a) Events of Default. It shall be an “**Event of Default**” with respect to a Party if the Party fails to perform or observe any term or condition of this Agreement or any of the Ancillary Agreements to be performed or observed by it, if such default or failure is not cured within the applicable Cure Period. No Event of Default with respect to the Course Owner, the Golf Course Improvement Project or the Golf Course Site shall be construed to be an Event of Default with respect to the Multi-Family Developer, the Multi-Family Project or the Multi-Family Site and vice versa.

(b) General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses together with interest at the prime rate as published in *The Wall Street Journal* plus five percent (5%) per annum until paid in full.

(c) No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or

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

(d) No Commencement.

(i) Multi-Family Project. If Multi-Family Developer has not commenced construction of the Multi-Family Project within one hundred fifty (150) days after Closing, then, at any time until Multi-Family Developer commences construction of the Multi-Family Project, City may elect, in addition to any other legal and equitable remedies available to City, to (A) require Multi-Family Developer to pay the Incurred Costs, and (B) terminate Multi-Family Developer's right to receive Bond Proceeds for Project Costs.

(ii) Golf Course Improvement Project. If Course Owner has not commenced construction of the Course Improvements within one hundred fifty (150) days after Closing, then, at any time until Course Owner commences construction of the Course Improvements, City may elect, in addition to any other legal and equitable remedies available to City, to (A) require Course Owner to pay the Incurred Costs, and (B) terminate Course Owner's right to receive Bond Proceeds for Project Costs and/or Excess TIF for Course Improvements.

(e) Injunctive Relief. If an Event of Default occurs, City shall be entitled to seek injunctive relief, and in each case, Multi-Family Developer and/or Course Owner, as applicable, hereby waives any claim or defense that City or any City Bodies have an adequate remedy at law.

Section 15. Indemnification. Each of Multi-Family Developer and Course Owner covenants and agrees at its sole cost and expense to pay and to indemnify and save harmless City, RDC and EDC and their respective officers and agents (the "Indemnitees") harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from Multi-Family Developer's (and/or any affiliate's thereof) or Course Owner's (and/or any affiliate's thereof) use of the Multi-Family Site or Golf Course Site, respectively, unless such claims, damages, demands, expenses or liabilities arise by reason of the grossly negligent act or omission of City, RDC and EDC (or any one of them alone or in combination with others). Course Owner's and Multi-Family Developer's obligations under this Section shall survive the termination of this Agreement.

Section 16. Assignment. Upon Closing, this Agreement shall be binding on successors in title to the applicable portions of the Project Site. Prior to Substantial Completion of the Project, no Party hereto shall assign this Agreement without the prior written approval of the other Parties; provided that: (a) without the prior written approval of Multi-Family Developer or Course Owner, City Bodies may assign this Agreement to another agency or instrumentality of City that legally is able to perform the respective obligations hereunder; and (b) without the prior written approval of City Bodies, each of Multi-Family Developer and/or Course Owner may: (i) assign, partially or in its entirety, this Agreement to a Related Entity; and (ii) execute and deliver the loan documents that provide for collateral assignment of this Agreement. Notwithstanding any assignment permitted under this Section, the applicable City Bodies, Course Owner, and/or Multi-Family Developer, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Body, Course Owner or Multi-Family Developer, as the case may be, from such performance; provided that, if any City Body assigns this Agreement to another agency or instrumentality of City that: (A) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder; and (B) expressly assumes all such obligations in writing; then the applicable City Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

Section 17. 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; (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt; or (d) upon the receipt of an electronic email transmission, followed by delivery by one of the other means identified in (a)-(c), addressed as follows: to City at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Scott Fadness, Mayor, with copies to: Chris Greisl, City Attorney, 1 Municipal Drive, Fishers, Indiana 46038 and Jennifer Messer (via email) at jennifercmesserlaw@gmail.com; to Multi-Family Developer at J.C Hart Company, Inc., 805 City Center Drive, Suite 120, Carmel, Indiana 46032 Email: john@homeisjchart.com, Attn: John C. Hart, Jr., with a copy to Dinsmore & Shohl, LLP, 211 North Pennsylvania Street, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204, Attn: E. Joseph Kremp, Email: Joe.Kremp@Dinsmore.com; and to Course Owner at 234 S. Franklin Street, Indianapolis, IN 46216, Attn: Bobby and Mark Thompson, with a copy to Krieg DeVault LLP, One Indiana Square, Suite 2800, Indianapolis, IN 46204, Attn: David E. Corbitt, Esq. Each of the Parties may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 18. Authority. Each undersigned person executing this Agreement on behalf of City, EDC, RDC, Multi-Family Developer and Course Owner represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of City, EDC, RDC, Course Owner or Multi-Family Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by City, EDC, RDC, Course Owner and Multi-Family Developer, respectively; provided, however, the parties acknowledge that the agreements of the City Bodies under this Agreement are subject to future

actions by such bodies, and by the bodies of the Fisher's Common Council, and compliance with statutory procedures required by Law, including public notice and public hearing requirements. The City Bodies agree to use their best efforts to complete such statutory procedures, and to coordinate with the governing bodies of the Fishers Common Council to complete such statutory procedures, and to take the final actions required to implement such agreements.

Section 19. Force Majeure. Notwithstanding anything to the contrary set forth herein or any Ancillary Agreements, if either Party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement or any Ancillary Agreements 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.

Section 20. Merger. All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect, including, without limitation that certain November 5, 2020 Letter of Intent provided by the City to Course Owner.

Section 21. Miscellaneous. Subject to Section 16, this Agreement shall inure to the benefit of, and be binding upon, City Bodies, Course Owner and Multi-Family Developer, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Multi-Family Developer and Course Owner each waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Multi-Family Developer and/or Course Owner, as applicable, 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 City, RDC, Course Owner and Multi-Family Developer. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership or joint venture

between Course Owner, Multi-Family Developer, City, EDC and RDC or their successors in interest. Each of Multi-Family Developer and Course Owner acknowledge and agree that it is an independent contractor and is not a principal, agent, officer shareholder or employee of any City Body. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Project Site is located, in which event the period shall run until the end of the next day, which is neither a Saturday, Sunday, nor legal holiday. Nothing contained in this Agreement nor any act of the City Bodies, the Multi-Family Developer or the Course Owner, or any other person, shall be deemed or construed by any person to create any relationship of third-party beneficiary, or of principal and agent, limited or general partnership, or joint venture between the City Bodies on the one hand and the Multi-Family Developer or the Course Owner on the other.

Section 22. Execution of Agreement. Upon City Bodies' approval and execution of this Agreement, the City shall provide to Multi-Family Developer and Course Owner the executed Agreement (the "City-Executed Agreement"). Within ten (10) days of each of Multi-Family Developer's and Course Owner's receipt of the City-Executed Agreement, Multi-Family Developer and Course Owner shall execute this Agreement and provide the City a copy of such fully executed Agreement. Failure to strictly comply with this Section 22 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.

[signatures on following pages]

IN WITNESS WHEREOF, City, EDC, RDC, Course Owner and Multi-Family Developer have executed this Project Agreement as of the day and year first written above.

“CITY”

CITY OF FISHERS, INDIANA

By: _____
Scott Fadness, Mayor

“RDC”

FISHERS REDEVELOPMENT
COMMISSION

By: _____
Brad Johnson, President

ATTEST:

By: _____
Tony Bonacuse, Secretary

“EDC”

**CITY OF FISHERS ECONOMIC
DEVELOPMENT COMMISSION**

By: _____
[NAME], President


“MULTI-FAMILY DEVELOPER”
J.C. HART COMPANY, INC., an Indiana
corporation

Charlie Kurtz

By: Charlie Kurtz (Mar 14, 2024 17:16 EDT)

Charlie Kurtz, Chief Executive Officer

“COURSE OWNER”
GRAY EAGLE GOLF L.L.C., an Indiana limited
liability company

By: 
David Compton (Mar 14, 2024 15:59 CDT)
David Compton
Authorized Representative

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INDEX TO EXHIBITS²

Exhibit A	Developer Obligations Agreement
Exhibit B	Clubhouse Concept Plan
Exhibit C	Course Improvements
Exhibit D	Golf Course Site
Exhibit E	Multi-Family Concept Plan
Exhibit F	Multi-Family Site
Exhibit G	Off-Site Work
Exhibit H	Required Insurance Policies (Multi-Family Developer & Course Owner)

² NTD: Verify Index and attached exhibits upon final draft of Project Agreement.

EXHIBIT A
DEVELOPER OBLIGATIONS AGREEMENT

[Included on Following Pages]

EXHIBIT B
CLUBHOUSE CONCEPT PLAN

[Included on Following Pages]

EXHIBIT C
COURSE IMPROVEMENTS

RainBird Irrigation Computer System
RainBird Decoder Interface
Pump House and pumps
Irrigation for Course and Driving Range
Adding Trees and Landscape visible from roads
Well for Irrigation Lake
Repair Bunkers and New Sand
Repair Drainage on Greens
Fountains visible from roads
Restructure and Widen Bridges
Teebox Yardage Markers
Halfway House with Restrooms
Driving Range – turf, ball management system, hitting mats, not poles

All improvements permissible for reimbursement under the Laws shall be reimbursed pursuant to the terms of this Agreement.

EXHIBIT D
GOLF COURSE SITE

[Included on Following Pages]

EXHIBIT E
MULTI-FAMILY CONCEPT PLAN

[Included on Following Pages]

**EXHIBIT F
MULTI-FAMILY SITE**

[Included on Following Pages]

**EXHIBIT G
OFF-SITE WORK**

[Included on Following Pages]

**EXHIBIT H
REQUIRED INSURANCE POLICIES
(MULTI-FAMILY DEVELOPER & COURSE OWNER)**

Each of Multi-Family Developer and Course Owner 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. City shall be named as an additional insured on each of Multi-Family Developer's and Course Owner's, and each of their general contractor's and subcontractor'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.	<p>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 Multi-Family Developer or Course Owner, as applicable, 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 of Fishers as an Additional Insured thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City of Fishers per the follows:</p> <p>(i) \$1,000,000.00 Each Occurrence (BI & PD Combined Single Limit);</p> <p>(ii) \$2,000,000.00 General Occurrence (subject to per project general aggregate provision); and</p> <p>(iii) \$1,000,000.00 Personal Injury Liability to include coverage for employee-related claims.</p>
4.	Business Automobile Liability Insurance: Written in the amount of not less than \$1,000,000.00 each accident to include the City of Fishers as an additional insured.
5.	Umbrella Liability: \$5,000,000.00.
6.	Professional Liability: If the Contract is the subject of any professional services or design work, Multi-Family Developer or Course Owner, as applicable, will use commercially reasonable efforts to cause the party

	rendering those services to maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed for a minimum limit of \$2,000,000.00.
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The general contractor and subcontractors shall obtain from each of its insurers a waiver of subrogation on the General Liability, Automobile and Workers Compensation policies in favor of the City with respect to losses arising out of or in connection with the Project.