



CITY OF FISHERS AGENDA

BOARD/COMMISSION: Economic Development Commission Meeting

DATE: 7/12/2024, at 6:00 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. Consent of Previous Meeting Minutes

- a. 2-8-23

5. CityWalk

- a. City Walk Project Agreement

6. New Business

7. Adjournment

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

February 8, 2023

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, Kelly Lewark and Jennifer Messer via Teams.

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

Election of Officers -

President: Ms. Nieves asked for a Motion to nominate a President. Ms. Anderson made a Motion to nominate Ms. Nieves as President, seconded by Ms. Nieves. The Motion was approved, 2-0.

Secretary: Ms. Nieves made a motion to nominate Ms. Anderson as Secretary, seconded by Ms. Anderson. The Motion was approved, 2-0.

Consent of Meeting Minutes from the 11/14/22 meeting was given.

CRG 96th St. Investors – First Amendment to Project Agreement - Megan Baumgartner presented the first amendment to the project agreement. **Ms. Nieves asked for a Motion to approve the first amendment to the Project Agreement. 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 4:04 pm.

PROJECT AGREEMENT

This Project Agreement (the "Agreement") is executed as of the ___ day of ____, 2023, by and among The Village Holding Group, LLC, an Indiana limited liability company ("Developer"), the City of Fishers, Indiana, an Indiana municipal corporation ("City"), the City of Fishers Economic Development Commission, the Economic Development Authority for the City of Fishers (the "EDC"), and the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq.* ("RDC" and together with Developer, City and EDC, the "Parties"), on the following terms and conditions:

Recitals

WHEREAS, Developer is an Indiana real estate development company that has successfully delivered complicated multi-family and other high-density residential communities internationally. Developer has most recently completed multi-family, high density projects in the Middle East.

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

WHEREAS, as part of the Master Development Plan, the City has (a) worked with 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 Master Development Plan, the City desires to incent the development of additional multi-family, townhome and higher density development near its downtown Nickel Plate District;

WHEREAS, Developer submitted a proposal to City Bodies for a multi-family, townhome and condominium development on the Project Site, and the City determined that Developer's proposal was submitted pursuant to and consistent with the Master Development Plan, and therefore, City Bodies have agreed to provide certain incentives to assist Developer in the construction of the Project (as specifically defined in Section 1) on the Project Site;

WHEREAS, Developer anticipates investing approximately Seventy-Five Million and no/100 Dollars (\$75,000,000.00) developing the Project; WHEREAS, City Bodies have determined that completion of the Project is in the best interests of the citizens of the City, and, therefore, City Bodies desire to induce Developer to complete the Project; and

WHEREAS, to stimulate and induce the development of the Project on the Project Site, 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.

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 (if required by Developer) 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 Documents shall mean the documents evidencing and/or securing the Bonds.

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

Bond Proceeds shall mean the proceeds of the Bond(s), which Bond Proceeds shall be used to pay (a) Approved Costs, (b) Closing Costs, and (c) reasonably incurred and documented administrative costs of the City associated with maintaining the Bond. The net Bond Proceeds for the Project shall not exceed Thirteen Million and no/100 Dollars (\$13,000,000.00) without approval of the City and Developer.

Bond or Bonds shall mean, for the Project, 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 Developer and City Bodies jointly determine will ensure that one hundred percent (100%) of all tax increment revenue generated in the Allocation Area is utilized to pay debt service on the Bonds. The 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 Bonds. The Bonds are estimated to be issued in the par amount of Sixteen Million, One Hundred Nine Thousand and no/100 Dollars (\$16,109,000.00) and produce the net Bond Proceeds as set forth and described on Exhibit A attached hereto; provided, however, such amounts are subject to change based on the date on which the structures on the Site are demolished, the date on which the Bonds are issued and other relevant variables.

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

Change Order shall mean a change order executed by the City (or its designee) and Developer finalizing the inclusion into the Final Documents of a change proposed in a Change Order Request

by Developer 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 Developer.

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

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

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

Closing shall mean the completion of the following: (a) recordation of the Plat (if such recordation has not previously occurred); (ii) execution (if such execution has not previously occurred) of all Ancillary Agreements; (iii) the City's issuance of the Bonds and the purchase of the Bonds by the Developer; and (iv) Project Lender issuing the Project Loan to Developer (and Developer authorized to draw upon such Project Loan subject to the satisfaction of customary draw conditions).

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

Closing Date shall mean, for the Project, the date on which the Closing occurs.

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

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 sixty (60) days commencing on the Execution Date and terminating sixty (60) days thereafter.

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 Project, the final Construction Schedule and the final Construction Drawings, as each is finalized and approved or reviewed by the City in accordance with the Plan Refinement Process described in Section 12.

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

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

Funding Agreement shall mean an agreement for the Project pursuant to which the Bond Proceeds shall be disbursed to Developer in a commercially reasonable manner for Approved Costs. Developer shall be responsible for all costs to design and construct the 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 (b) prior to the Closing, all actual, out-of-pocket, third-party costs and expenses incurred by a party through the date of such termination, to the extent not previously paid or reimbursed by the other party (not to exceed \$100,000.00).

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 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, other than any Permitted Change or Change Order; or (c) has not been performed materially in accordance with the terms and conditions of this Agreement.

Nickel Plate Rezone shall mean a rezoning of City’s Nickel Plate District that, among other effects, will result in the Site being zoned for certain commercial and residential development like the Project.

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 **October 31, 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 Developer 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 Inspection shall mean, as applicable, an inspection by the Inspector of any exterior item or component of the Project 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 Developer.

Plat shall mean the plat prepared by Developer that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hamilton County, Indiana prior to or contemporaneous with other documents needed for Closing, which Plat, at a minimum creates three (3) lots.

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 a (a) four-story, multifamily building comprised of eighty-seven (87) for-lease multifamily units; (b) six-story, residential building comprised of forty (40) for-sale condominiums; (c) six-story, residential building comprised of sixty-one (61) for-sale condominiums; and (d) forty-one (41), four-story townhomes, which Project is expected to represent an aggregate investment of approximately Seventy-Five Million and no/100 Dollars (\$75,000,000.00) in the City.

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

Project Loan(s) shall mean one (1) or more construction loans to Developer, 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 sixteen (16) parcels of real property identified on **Exhibit B**.

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) Developer receives a final or temporary certificate of occupancy for such Project; and (b) the date that Developer’s architect certifies, per AIA Form G704, that the construction of the Project is substantially complete in material compliance with all Laws, this Agreement, the Final Documents (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 an agreement pursuant to which Developer agrees to pay an amount that, together with the Real Estate Taxes, is not less than the amount required to pay semi-annual debt service on the Bonds, which Taxpayer Agreement shall be required in the sole discretion of Developer, and if Developer elects to require a Taxpayer Agreement, such Taxpayer Agreement shall be executed on or before Closing.

Title Insurer shall mean First American Title Insurance Developer, 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 Developer, 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) issue the Bonds and, consistent with the Funding Agreement, make available the Bond Proceeds for Approved Costs incurred in connection with the Project, together with Closing Costs and fees associated with closing the Bonds at Closing; and, thereafter, within thirty (30) days after a completed draw request is submitted pursuant to the Funding Agreement (which requests shall not be submitted more frequently than monthly); (d) prior to Closing, create the Allocation Area and pledge the Pledged Increment to repayment of the Bonds; (e) provide reasonable assistance to Developer in connection with any zoning changes or variances determined to be necessary or appropriate by Developer 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; (f) endeavor to complete the Nickel Plate Rezone; provided, however, the Parties understand and agree that the City cannot guarantee the result of such planned Nickel Plate Rezone; and (g) 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 Developer 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. Developer's Obligations. Subject to the terms and conditions of this Agreement, Developer shall: (a) voluntarily annex those portions of the Site that are not within the City's corporate boundaries into the City's corporate boundaries, including without limitation, complying with the City's voluntary annexation procedure and providing such documents, materials and other information requested by the City and reasonably necessary to complete the annexation process; (b) in connection with the City, jointly submit the Plat for final approval and recordation; (c) complete the Project 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 (if required by Developer); (f) at Closing, cause the purchase of the Bonds; (g) obtain the Project Loans and ensure that proceeds of the Project Loans are available on the Closing Date (subject to the satisfaction of customary draw conditions); and (h) 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 Developer 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 Developer mutually may agree.

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

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

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

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

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

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

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

(vii) Developer shall be exclusively responsible for all Closing Costs; provided, however, 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 Developer's ownership of the Project and the Project Site, Developer 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.

7. Conditions to Developer Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of Developer 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, Developer 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, Developer shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project or require unusually costly development techniques, in accordance with the terms and conditions of this Agreement.

(c) Zoning. Prior to the Closing, Developer shall determine that the Project Site is appropriately zoned for the Project.

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

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

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

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

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

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

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

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

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

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

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

If any of the conditions set forth in this Section are not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer either may elect to: (A) waive in writing satisfaction of the conditions and proceed to the Closing; or (B) terminate this Agreement and any executed Ancillary Agreements by delivery of written notice to City Bodies; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by a City Body, Developer shall have all of the rights and remedies set forth in Section 14. Notwithstanding anything to the contrary set forth herein, Developer shall (1) work diligently and in good faith to satisfy the conditions set forth in this Section, and (2) if Developer fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, Developer shall be deemed to have waived such condition and shall proceed to Closing.

8. Conditions to City Bodies' Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of City Bodies with respect to proceeding to the Closing 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, Developer shall have obtained, or City Bodies shall have determined that Developer shall be able to obtain, all Required Permits then available for the current stage of construction.

(b) Financial Ability. Prior to Closing, Developer 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, Developer 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 Developer, each exercising commercially reasonable discretion, shall have approved and executed (or at Closing will execute) the Ancillary Agreements.

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

(g) Procedure. 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 Bonds; and (iv) the Allocation Area has been established.

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

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

(j) Compliance. 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 Developer that Developer has failed to cure within the Cure Period; and (ii) the representations and warranties set forth in Subsections 10(b) and (c) shall be true and accurate in all material respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, City Bodies either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement and the Ancillary Agreements by a written notice to Developer; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Developer, City Bodies shall have all of the rights and remedies set forth in Section 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 Developer 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 Developer 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 Developer for its Incurred Costs.

(b) due to (i) a continuing Event of Default by Developer, (ii) failure of Developer to satisfy the conditions included in Section 7(a), (b), (c), (d), (e), (f), (i), (j) or (l), or (iii) failure of Developer to comply with the representations and warranties included in Sections 10(b) or (c), then Developer shall reimburse the City for its Incurred Costs.

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

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

10. Representations and Warranties

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

this Agreement; and (B) to perform its obligations hereunder, (vii) this Agreement is the legal, valid, and binding obligation of it; and (viii) it has not engaged or dealt with any real estate broker or agent in connection with the Project, Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of a City Body.

(b) Developer. Developer represents and warrants to each City Body that: (i) Developer is an Indiana 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 Developer; (vi) (except for brokers or agents engaged to lease space in the Project) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, the Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Developer or any party affiliated with Developer; and (vii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. If Developer has employees, Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Developer has employees, Developer will state, in all solicitations or advertisements for employees placed by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin. Developer states that it does not currently have employees.

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

11. Allocation Area and Pledged Increment.

(a) Allocation Area. Subject to (i) all procedures required by the Laws, (ii) Developer satisfying its obligation to voluntarily annex into the City's corporate boundaries, and (iii) 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 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 Bonds, and third, to redeem Bonds prior to their maturity. City Bodies shall not pledge to the repayment of the Bonds any tax revenues or other funds of the City, except the Pledged Increment. City Bodies shall not be liable for any shortfall in the Pledged Increment. Any amounts due and owing on the 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 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 Developer or any affiliate makes any payment on the Bonds, Developer 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 Developer or such affiliate will bear interest at the same rate or rates as the applicable 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 Bonds (pursuant to Subsection 11(b) above), such excess Pledged Increment shall be used to redeem the Bonds prior to their maturity.

(d) Interest During Construction. At the option and discretion of Developer, the Bonds may bear interest (i) at zero percent from their date of issuance until Substantial Completion (and, thereafter, at the 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 Bonds will (i) bear interest at the Bond Interest Rate and (ii) be in accordance with the City authorizations relating to the Bonds. For purposes of this Agreement, the "Bond Interest Rate" shall mean a rate intended to be equal to or less than seven percent (7.0%) (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. Developer shall be solely liable for all bond issuance costs and administrative fees, including bond and other counsel fees for both City Bodies and Developer, which amounts shall be paid from Bond Proceeds.

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

12. Plan Refinement Process.

This Plan Refinement Process shall govern development and construction of the Project. At its sole cost and expense, Developer 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 Developer 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 Developer that it rejects a Submitted Document (each, a “Rejected Document”), then Developer 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 Developer 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, Developer 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 Developer desires to make changes to the Final Documents (that are not a Permitted Change), then Developer 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 Developer 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) Developer shall not be required to obtain the approval of the City with respect to a Permitted Change.

(h) Permits. Developer 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, Developer 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 Developer in its efforts to obtain the Required Permits. Developer 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 Developer, 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 Developer, a Non-Compliance Notice. If the City timely delivers a Non-Compliance Notice, then Developer 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 Developer 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 Developer; provided that: (1) upon receipt of a Non-Compliance Notice, Developer 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 Developer with the Required Permits and as permitted by the Laws.

(l) Failure to Cure. If Developer 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 Developer 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 Developer to remedy such Material Defect or Latent Defect (not to exceed ninety (90) days) so long as Developer 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 Developer 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, Developer 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 If required by Developer, Developer agrees to enter into a Taxpayer Agreement for the 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 applicable Project and continuing through each calendar year of the Bond Term, Developer 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: (A) the amount of the required debt service payment on the Bonds; and (B) the Pledged Increment distributable to RDC for the applicable year; (b) provides that the payments due by Developer 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 Developer shall execute and record the Taxpayer Agreement at the Closing (if required by Developer). Nothing in this Agreement or the Taxpayer Agreement (if required by Developer) shall be deemed to release

Developer from any obligation to pay Real Estate Taxes on the 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.

(b) General Remedies. During the continuance of an Event of Default, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting Party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it.

(c) No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, 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 Developer from and against all Claims arising from the breach by City Bodies of any term or condition of this Agreement.

(b) Developer. Developer shall indemnify and hold harmless City Bodies from and against any and all Claims arising from: (i) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the

Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (iv) the breach by Developer of any term or condition of this Agreement.

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

16. Assignment.

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

(b) Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Developer, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Bodies or Developer, as the case may be, from such performance; provided that, if any City Body assigns this Agreement to another agency or instrumentality of the City that: (i) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder; and (ii) expressly assumes all such obligations in writing; then the applicable City Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

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; 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) Developer at The Wanas Group, 11205 Governors Ln, Fishers, IN 46037, Attn: Hossam Wanas, CEO, with copies (via email, only) to: J. Murray Clark, murray.clark@faegredrinker.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.

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

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

20. 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 Developer.

21. Miscellaneous. Subject to Section 16, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Developer, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Developer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified

only by a written agreement signed by the City, EDC, RDC, and Developer. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, employment relationship or joint venture between Developer, the City, EDC, and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in 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.

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

Index of Exhibits:

- Exhibit A: Project Proceeds
- Exhibit B: Concept Plan
- Exhibit C: Project Site
- Exhibit D: Insurance

[signatures on following pages]


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

“CITY”

CITY OF FISHERS, INDIANA

DocuSigned by:

By: _____


Scott Fadness, Mayor

A15C9DE0CAAD43F...

“EDC”

**CITY OF FISHERS ECONOMIC
DEVELOPMENT COMMISSION**

By: _____



“RDC”

**FISHERS REDEVELOPMENT
COMMISSION**

By: 
Damon Grothe, President

ATTEST:

By: 
Brad Johnson, Secretary

“DEVELOPER”

The Villages Holding Group, LLC

By: _____

Its: _____

**Exhibit A
Project Proceeds**

CITY OF FISHERS, INDIANA

Proposed Village Project

ILLUSTRATIVE PROJECT COSTS AND FUNDING

Assumes the Bonds are purchased by the Developer with a 7% interest rate

Illustrative Project Costs:

| | |
|---|----------------------------|
| Net proceeds available for project | \$12,020,000 |
| Capitalized interest through and including August 1, 2026 (1) | 3,231,480 |
| Allowance for costs of issuance and contingencies | <u>136,520</u> |
| Total Illustrative Project Costs | <u><u>\$15,388,000</u></u> |

Illustrative Project Funding:

| | |
|---|----------------------------|
| Illustrative Taxable Economic Development Revenue Bonds, Series 2023 (2) | <u><u>\$15,388,000</u></u> |
|---|----------------------------|

- (1) Assumes the Developer will capitalize interest until project completion. The final financing structure will determine the amount of interest that will be capitalized or possibly eliminated.
(2) Assumes the Developer purchases the Bonds.

(Subject to the attached letter dated March 2, 2023)
(Preliminary - Subject to Change)
(For Internal Use Only)

Exhibit B
Concept Plan
[included on following pages]

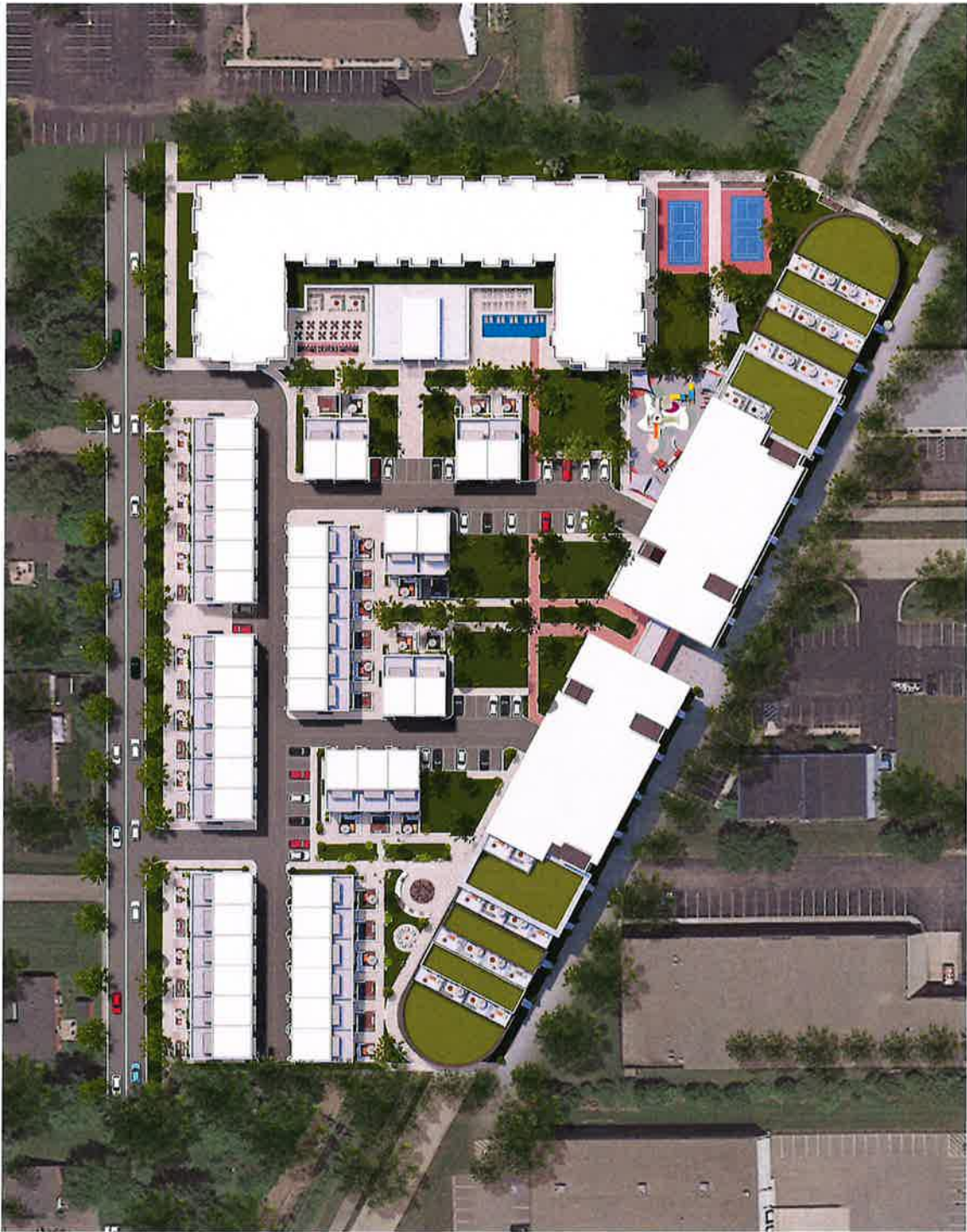


Exhibit C Project Site

Table 1

| Formatted Parcel No | Last Transfer Date | Deeded Owner | Address | House No | Street Dir | Street Name | Street Suffix | City | Zip | Legal Description |
|----------------------------|-------------------------|-------------------------------|------------------|----------|------------|-------------|---------------|---------|-------|---|
| 14-11-31-03-01-01 0.000 | 3/15/2022, 12:00 AM | The Village Holding Group LLC | 12002 Lantern Rd | 12002 | | Lantern Rd | | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 7 |
| 14-11-31-03-01-00 1.000 | 4/1/2022, 12:00 AM | The Village Holding Group LLC | 12162 Lantern Rd | 12162 | | Lantern Rd | | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 17 |
| 14-11-31-03-01-00 9.000 | 7/15/2022, 12:00 AM | The Village Holding Group LLC | 8803 E 121st St | 8803 | E | 121st | St | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 8 |
| 14-11-31-03-01-01 6.000 | 10/19/2021, 12:00 AM | The Village Holding Group LLC | 11968 Lantern Rd | 11968 | | Lantern Rd | | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 1 |
| 14-11-31-03-01-01 5.000 | 7/15/2022, 12:00 AM | The Village Holding Group LLC | 8821 Circle Dr | 8821 | | Circle Dr | | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 2 |
| 15-11-31-03-01-00 5.000 | 7/15/2022, 12:00 AM | The Village Holding Group LLC | 8850 E 121st St | 8850 | E | 121st | St | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 13 |
| 14-11-31-03-01-01 3.000 | 7/15/2022, 12:00 AM | The Village Holding Group LLC | 8830 Circle Dr | 8830 | | Circle Dr | | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 4 Irregular Shape |
| 14-11-31-03-01-01 2.000 | 7/15/2022, 12:00 AM | The Village Holding Group LLC | 8830 Circle Dr | 8830 | | Circle Dr | | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 5 Irregular Shape |
| 14-11-31-03-01-00 2.000 | 7/15/2022, 12:00 AM | The Village Holding Group LLC | 8820 E 121st St | 8820 | E | 121st | St | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 16 |

| Formatted Parcel No | Last Transfer Date | Deeded Owner | Address | House No | Street Dir | Street Name | Street Suffix | City | Zip | Legal Description |
|----------------------------|-------------------------|-------------------------------|-----------------|----------|------------|-------------|---------------|---------|-------|--|
| 14-11-31-03-01-00 6.000 | 7/15/2022, 12:00 AM | The Village Holding Group LLC | 8843 E 121st St | 8843 | E | 121st | St | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 12 & 11 |
| 14-11-31-03-01-00 7.000 | 12/29/2021, 12:00 AM | The Village Holding Group LLC | 8833 E 121st St | 8833 | E | 121st | St | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 10 Irregular Shape |
| 14-11-31-03-01-00 3.000 | 12/29/2021, 12:00 AM | The Village Holding Group LLC | 8830 E 121st St | 8830 | E | 121st | St | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 15 |
| 14-11-31-03-01-00 4.000 | 10/26/2021, 12:00 AM | The Village Holding Group LLC | 8844 E 121st St | 8844 | E | 121st | St | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 14 Irregular Shape |
| 14-11-31-03-01-01 4.000 | 7/15/2022, 12:00 AM | The Village Holding Group LLC | 0 Circle Dr | 0 | | Circle Dr | | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 3 |
| 14-11-31-03-01-00 8.000 | 1/20/2022, 12:00 AM | The Village Holding Group LLC | 8813 E 121st St | 8813 | E | 121st | St | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 9 |
| 14-11-31-03-01-01 1.000 | 10/20/2021, 12:00 AM | Village Holding Group LLC | 8850 Circle Dr | 8850 | | Circle Dr | | Fishers | 46038 | Acreage .00 Section 31, Township 18, Range 5 CIRCLE HEIGHTS Section 1 Lot 6 |
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Exhibit D
Developer Insurance Requirements

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

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| 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 Developer with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG2037 10 01 (or substitute forms providing equivalent coverage) naming the City and the Redevelopment Commission as additional insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City and the Redevelopment Commission per the follows:</p> <p>\$1,000,000.00 Each Occurrence (BI & PD Combined Single Limit);</p> <p>\$2,000,000.00 General Occurrence (subject to per project general aggregate provision); and</p> |
| 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. |