CITY OF FISHERS AGENDA

BOARD/COMMISSION: Redevelopment Commission Meeting
DATE: 3/21/2024, at 4:15 PM
DIRECTIONS: Fishers Pavilion Conference Room, 10 Municipal Drive, Fishers, IN 46038

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

Executive Session:
To conduct interviews and negotiations with industrial and commercial prospects or agents for industrial or commercial prospects under Indiana Code § 5-14-1.5-6.1(b)(4)

1. **Executive Session**
   a. To conduct interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects under Indiana Code § 5-14-1.5-6.1(b)(4)
2. **Call to Order**
3. **Confirmation of Quorum and Proper Notice of Meeting**
4. **Approval of Previous Minutes**
   a. 2-22-24
5. **Consent Agenda**
   a. 3-21-24
6. **Public Hearings**

a. FRC 01R032124 - Declaratory Resolution for the CityView Allocation Area

b. Maple Del

c. Gray Eagle

d. Thompson Thrift Amended LAA

7. New Business

8. Meeting Adjournment

CITY OF FISHERS REDEVELOPMENT COMMISSION (FRC) MEETING MINUTES
February 22, 2024

EXECUTIVE SESSION – Executive Session was not held.
REGULAR MEETING:
Mr. Grothe called the Regular meeting to order at 4:00 p.m. A quorum and proper notice of the meeting were confirmed.
FRC members present: Damon Grothe, Brad Johnson, Tony Bonacuse, Anderson Schoenrock. Dawn Lang was also present and welcomed to the RDC as representative from HSE. Dan Canan was not present.
Others present: Megan Baumgartner, Lawrence Summers, Jennifer Messer, Jordan Willy.

Election of Officers:
Mr. Grothe asked for a Nomination for President of the RDC. Mr. Bonacuse nominated Brad Johnson, seconded by Mr. Schoenrock. The Nomination was approved, 4-0.
Mr. Grothe nominated Anderson Schoenrock as Vice-President of the RDC, seconded by Mr. Johnson. The Nomination was approved, 4-0.
Mr. Grothe asked for a Nomination for Secretary of the RDC. Mr. Johnson nominated Tony Bonacuse, seconded by Mr. Schoenrock. The Nomination was approved, 4-0.

Meeting Minutes: Mr. Bonacuse made a motion to approve the minutes of the January 9, 2024 meeting, seconded by Mr. Schoenrock. Motion approved, 4-0.

Approval of Claims: Mr. Johnson made a motion to approve the February 22, 2024 claims, seconded by Mr. Bonacuse. Motion approved, 4-0.

First Amendment to Land Acquisition Agreement (CityView)

Consent to Collateral Assignment (CityView)

Jennifer Messer presented the Amendment and Consent docs to the Commission. It was noted that the original agenda referenced these documents for District South, but they are for another Rebar project, CityView.

In December, 2023, the Commission approved a CityView Land Acquisition Agreement (LAA). Since that time, the developer's lender has requested a collateral assignment of the LAA. The lender, however, would not accept the assignment without a cure period that is not included in the underlying LAA. Accordingly, the First Amendment provides for a 30 day cure (up to 90 if the default cannot be cured within 30 days), and the consent to assignment is the document by which the Commission consents to the collateral assignment to the lender. No other changes are included in the amendment, and the collateral assignment does not provide any rights to the lender greater than those provided to the developer in the LAA.

Mr. Grothe asked for a Motion for the Land Acquisition Agreement amendment. Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion was approved, 3-0-1, with Mr. Johnson abstaining.

Mr. Grothe asked for a Motion for the Collateral Assignment. Mr. Schoenrock made a Motion to approve, seconded by Mr. Bonacuse. The Motion was approved, 3-0-1, with Mr. Johnson abstaining.

The Thompson Thrift item was pulled from the agenda.
There was no Old Business.
The meeting adjourned at 4:20 p.m.

Fishers Redevelopment Commission
Claim Docket 3/20/24

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

Total **$0.00**

3/20/2024
President, Redevelopment Commission **Date**

3/20/2024
Secretary, Redevelopment Commission **Date**

3/20/2024
Lisa Bradford, City Controller **Date**

Fishers Redevelopment Commission
Consent Agenda 3/20/24

Kimley-Horn and Associates	Pond Work	$	1,657.50
Switch Offices	3/24 Vacant Space Rent	$	911.48
CVK LLC	Meyer Najem 4/24 Rent	$	36,216.93
First Amerian Title	8145 East 146th St	$	373,362.65
		$	**412,148.56**

RESOLUTION NO. FRC 01R032124

RESOLUTION OF THE CITY OF FISHERS REDEVELOPMENT COMMISSION AMENDING THE DECLARATORY RESOLUTION FOR THE CONSOLIDATED FISHERS/I-69 ECONOMIC DEVELOPMENT AREA AND APPROVING AN AMENDMENT TO THE DEVELOPMENT PLAN FOR SAID AREA

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

WHEREAS, the Commission now desires to further amend the Declaratory Resolution, pursuant to Sections 15-17.5 of the Act, to (i) remove the area described on Exhibit A attached hereto from the Downtown Allocation Area, (ii) designate the area described on Exhibit A attached hereto as a separate allocation area pursuant to Section 39 of the Act to be known as the CityView Allocation Area (the "CityView Allocation Area"), and (iii) amend the Plan as described in Exhibit B attached hereto (the "Plan Amendment") (clauses (i), (ii), and (iii), collectively, the "Amendments"); and

WHEREAS, the Commission has thoroughly studied that portion of the City of Fishers, Indiana (the "City") described on Exhibit A attached hereto; and

WHEREAS, the Commission has caused to be prepared maps and plats showing the boundaries of the CityView Allocation Area, the location of various parcels of property, streets, alleys, and other features affecting the acquisition, clearance, remediation, replatting, replanning, rezoning, or redevelopment of the CityView Allocation Area, the parts of the CityView Allocation Area to be devoted to public ways, levees, sewerage, and other public purposes under the Plan as amended herein, and lists of the owners of any parcels proposed to be acquired, together with an estimate of the cost of acquisition and redevelopment; and

WHEREAS, the Amendments and supporting data were reviewed and considered at this meeting; and

WHEREAS, Sections 41 and 43 of the Act have been created to permit the creation of "economic development areas" and to provide that all of the rights, powers, privileges and immunities that may be exercised by this Commission in a redevelopment area or urban renewal area may be exercised in an economic development area, subject to the conditions set forth in the Act; and

WHEREAS, Section 39 of the Act has been created and amended to permit the creation and expansion of "allocation areas" to provide for the allocation and distribution of property taxes for the purposes and in the manner provided in said Section; and

WHEREAS, this Commission deems it advisable to apply the provisions of said Sections 15-17.5, 39, 41, and 43 of the Act to the Amendments.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FISHERS, INDIANA REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Amendments promote significant opportunities for the gainful employment of its citizens, attract major new business enterprises to the City, retain and expand significant business enterprises existing in the boundaries of the City, and meet other purposes of Sections 2.5, 41 and 43 of the Act, including without limitation benefiting public health, safety and welfare, increasing the economic well-being of the City and the State of Indiana (the "State"), and serving to protect and increase property values in the City and the State.

2. The Amendments cannot be achieved by regulatory processes or by the ordinary operation of private enterprise without resort to the powers allowed under Sections 2.5, 41 and 43 of the Act because of lack of local public improvements, existence of conditions that lower the value of the land below that of nearby land, lack of development, age, and other similar conditions, including without limitation the cost of the projects contemplated by the Amendments.

3. The public health and welfare will be benefited by accomplishment of the Amendments, and it will be of public utility and benefit to amend the Declaratory Resolution and the Plan as set forth herein.

4. The accomplishment of the Amendments will be a public utility and benefit as measured by the attraction or retention of permanent jobs, an increase in the property tax base, improved diversity of the economic base and other similar public benefits.

5. The Plan Amendment conforms to the plan of development for the City.

6. The Plan Amendment does not contemplate the acquisition of property as a part of the economic development strategy, and the Department does not at this time propose to acquire any specific parcel of land or interests in land within the boundaries of the CityView Allocation Area. If in the future, the Department proposes to acquire specific parcels of land, the required procedures under the Act will be followed.

7. The Commission finds that no residents of the Area will be displaced by any project resulting from the Plan Amendment, and therefore finds that it does not need to give consideration to transitional and permanent provisions for adequate housing for the residents.

8. The Commission hereby adopts the specific findings set forth in the Plan Amendment, and the Plan Amendment is hereby in all respects approved. The secretary of this Commission is hereby directed to file a copy of the Plan Amendment with the minutes of this meeting.

9. The area described on Exhibit A hereto is hereby removed from the Downtown Allocation Area effective as of the assessment date of January 1, 2024.

10. The Declaratory Resolution is hereby amended to hereby designate the area described in Exhibit A hereto as a separate "allocation area" pursuant to Section 39 of the Act, to be known as the "CityView Allocation Area," for purposes of the allocation and distribution of property taxes for the purposes and in the manner provided by said Section. Any taxes imposed under IC 6-1.1 on real property subsequently levied by or for the benefit of any public body entitled to a distribution of property taxes on taxable property in said allocation area shall be allocated and distributed as follows:

> Except as otherwise provided in said Section 39, the proceeds of taxes attributable to the lesser of the assessed value of the property for the assessment date with respect to which the allocation and distribution is made, or the base assessed value, shall be allocated to and when collected paid into the funds of the respective taxing units. Except as otherwise provided in said Section 39, property tax proceeds in excess of those described in the previous sentence shall be allocated to the redevelopment district and when collected paid into an allocation fund for the CityView Allocation Area hereby designated as the "CityView Allocation Fund" and may be used by the redevelopment district to do one or more of the things specified in Section 39(b)(3) of the Act, as the same may be amended from time to time. Said allocation fund may not be used for operating expenses of the Commission. Except as otherwise provided in the Act, before June 15 of each year, the Commission shall take the actions set forth in Section 39(b)(4) of the Act.

11. The allocation provisions in Section 10 hereof shall apply to all of the CityView Allocation Area. The Commission hereby finds that the adoption of this allocation provision will result in new property taxes in the CityView Allocation Area that would not have been generated but for the adoption of the allocation provision, as specifically evidenced by the findings set forth in Exhibit B hereto. The base assessment date for the CityView Allocation Area is January 1, 2024.

12. The provisions of this Resolution shall be subject in all respects to the Act and any amendments thereto, and subject to the Act, the allocation provisions herein shall expire on the date that is twenty-five (25) years from the date on which the first obligation is incurred to pay principal and interest on bonds or lease rentals on leases payable from tax increment revenues derived from the CityView Allocation Area.

13. The Commission hereby finds and determines that the foregoing Amendments to the Declaratory Resolution and the Plan (as described in Sections 1-12 above) are reasonable and appropriate when considered in relation to the original Declaratory Resolution and Plan and the purposes of the Act, and that the Declaratory Resolution and Plan, with the proposed Amendments, conform to the comprehensive plan for the City.

14. Except as set forth above, the terms of the Declaratory Resolution remain in full force and effect.

15. This Resolution, together with any supporting data and together with the Plan Amendment, shall be submitted to the Plan Commission and the Common Council as provided in the Act, and if approved by the Plan Commission and the Common Council shall be submitted to a public hearing and remonstrance as provided by the Act, after public notice as required by the Act.

16. The officers of the Commission are hereby authorized to publish notice of such meetings and hearings as are necessary to carry out the purposes of this Resolution and the Plan, and to make all filings necessary or desirable to carry out the purposes and intent of this Resolution.

17. The provisions of this Resolution shall be subject in all respects to the Act and any amendments thereto.

Adopted the 21st day of March, 2024.

CITY OF FISHERS REDEVELOPMENT COMMISSION

____
President

____
Vice President

____
Secretary

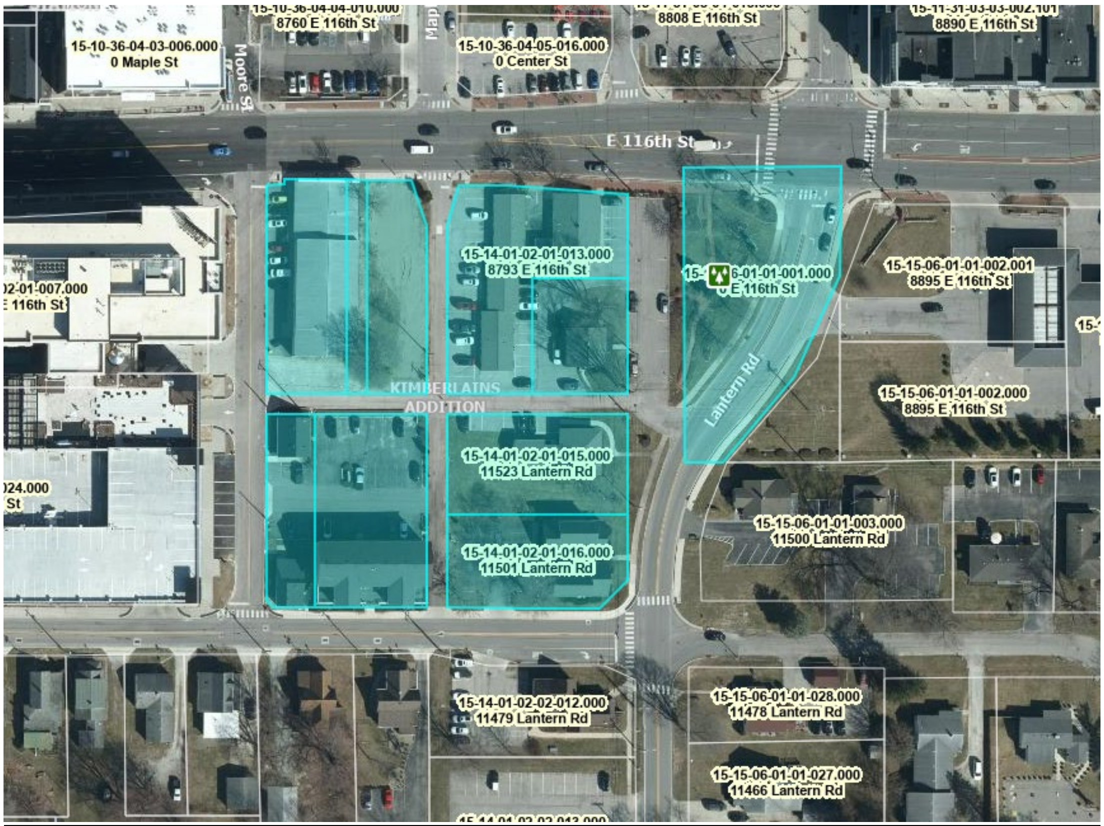
____
Member

____
Member

<u>EXHIBIT A</u>

<u>Area to be Removed from the Downtown Allocation Area
and Designated as the CityView Allocation Area</u>

The area identified in light blue in the below map is to be removed from the Downtown Allocation Area and is to be designated as the CityView Allocation Area.



Parcel No.	15-14-01-02-01-010.000
	15-14-01-02-01-011.000
	15-14-01-02-01-012.000
	15-14-01-02-01-013.000
	15-14-01-02-01-014.000
	15-15-06-01-01-001.000
	15-14-01-02-01-015.000
	15-14-01-02-01-016.000
	15-14-01-02-01-019.000
	15-14-01-02-01-020.000

EXHIBIT B

Plan Amendment

To foster economic development in the City, the City of Fishers, Indiana, the Fishers Economic Development Commission, the City of Fishers Redevelopment Commission, and, HighGround Fishers I, LLC (the "Developer") entered into a Project Agreement (the "Project Agreement"), with respect to the development of the CityView Allocation Area. Pursuant to the Project Agreement, the Developer has committed to invest approximately $89,000,000 to pay the costs of the acquisition, construction, renovation and equipping of a new mixed-use development, including age restricted, active adult (55 and over in conformance with the Housing for Older Persons Act, as amended from time to time) multi-family housing, commercial, retail, and restaurant space along 116th Street, and a parking facility all to be located in the CityView Allocation Area (the "Project"). The Project will be constructed on land owned by the Developer and the City. The City and the Commission have agreed to assist the completion of the Project through the payment of certain costs of the Project from the proceeds of bonds payable from the tax increment revenues from the CityView Allocation Area and other legally available revenues (the "Bonds"). Based on the findings below, the Amendments to the Plan provide for creation of the CityView Allocation Area, the completion of the Project, and the issuance of the Bonds, all as further described in the Project Agreement.

Statutory Findings.

The Amendments meet the following required findings under the Act:

(i) *The Amendments promote significant opportunities for the gainful employment of the citizens of the City, attract new business enterprise to the City, retain or expand a business enterprise existing in the City, or meet other purposes of Sections 2.5, 41 and 43 of the Act.*

The Amendments allow for the completion of a mix of residential, commercial and parking uses, which will add needed infill density in the downtown area of the City. Additional density and available parking will promote the overall vitality of the City's downtown business district. The Project is anticipated to include over sixteen thousand square feet of commercial, retail and restaurant space which will provide additional employment opportunities in the City. The construction of age restricted housing fills a currently unfilled niche in the City's downtown business district and will allow residents to take advantage of the downtown business district's walkability.

(ii) *Amendments cannot be achieved by regulatory processes or by the ordinary operation of private enterprise without resort to the powers allowed under Sections 2.5, 41 and 43 of the Act because of a lack of local public improvements, the existence of improvements or conditions that lower the value of the land below that of nearby land, multiple ownership of land, or other similar conditions.*

The land in the CityView Allocation Area has lagged behind surrounding properties in scale and quality of development as the downtown area of the City has rapidly developed to more intensive uses. By facilitating the Project under the Project Agreement, the Amendments enable the use of land in the CityView Allocation Area that was previously underdeveloped and provide the required incentives which are necessary for development commensurate to the surrounding area.

(iii) The public health and welfare will be benefited by accomplishment of the Amendments.

By providing required support of the Project, the Amendments create new opportunities for employment through new commercial development in the Project and enhanced traffic to businesses in the downtown business district through added parking and residential housing, and as a result will also benefit the public health and welfare for the citizens of the City.

(iv) The Amendments will be a public utility and benefit as measured by public benefits similar to the attraction or retention of permanent jobs, an increase in the property tax base, improved diversity of the economic base, or other similar public benefits.

As described above, the Project contemplated by the Amendments will be of public utility and benefit by creating jobs through new commercial development and enhancement of the value of surrounding commercial development, and the new development created by the Project will increase the property tax base.

(v) The Plan, as amended by the Amendments conforms to other development and redevelopment plans for the City.

The Plan, as amended by the Amendments, conforms with the intended development of the Area as prescribed by the City of Fishers Plan Commission.

(vi) The Amendments are reasonable and appropriate when considered in relation to the original Declaratory Resolution and Plan and the purposes of the Act.

The Amendments and the completion of the Project are consistent with the existing Plan which contemplates residential and commercial development in the area of the CityView Allocation Area and the use of tax increment allocation areas and bonds to finance infrastructure, real property acquisition, real property improvements, and equipment throughout the Economic Development Area.

(vii) The designation of the CityView Allocation Area will result in new property taxes that would not have been generated but for the adoption of the allocation provision.

The designation of the CityView Allocation Area allows for the capture of tax increment revenues from the Project, and the use of those revenues to pay debt service on one or more series of Bonds, which finance portions of the Project. The Developer has expressed to the Commission that without such use of the tax increment revenues, the Project would not be completed and the additional tax revenue resulting from the Project would not be generated.

OFFER IN RESPONSE TO NOTICE OF PUBLIC SALE OF REAL PROPERTY (FORMER MAPLE DELL SUBDIVISION, FISHERS INDIANA)

To: The city of Fishers, Redevelopment Commission ("Commission")

Attention: Jennifer Messer at jennifercmesserlaw@gmail.com and Megan Baumgartner at baumgartnerm@fishers.in.us.

From: Steve Zinkan
Corby Thompson
Mithra Development, LLC (Mithra)

Date: February 15, 2024

Mithra hereby submits this offer to the Commission in connection with the Notice of Public Sale of Real Property by which the commission is offering property generally located at 8145 E. 116th Street, Fishers, Indiana, south of 116th Street and west of Fishers Pointe Boulevard in Fishers, Indiana and identified by property identification nos. as 14-14-01-01-03-002.000, 14-14-01-01-03-005.000, 14-14-01-01-03-011.000, 15-14-01-01-14-003.000, and 15-14-01-01-14-002.001 ("Property") for public sale.

Pursuant to and consistent with Ind. Code 36-7-14 *et. seq.*, Mithra hereby offers to purchase the Property in accordance with, and subject to, the terms and conditions hereinafter set forth.

Offer Terms and Conditions:

A. Mithra offers to purchase the Property consisting of 9.6 +/- acres, (the "Mithra Parcel") as outlined on Exhibit A attached hereto and by reference made a part thereof.

B. The purchase price for the Mithra Parcel shall be One Million One Hundred Thousand Dollars ($ 1,100,000.00). The purchase price shall be paid in cash at a closing scheduled no later than after thirty days of the execution of the Agreement as defined in Paragraph C. below, and the approvals contemplated herein. Mithra shall begin development immediately upon receipt of necessary approvals as defined in Paragraph E.

C. Mithra's purchase of the Mithra Parcel is subject to the execution by Mithra; Fishers, Indiana, an Indiana municipal corporation ("City"); and the Commission of a definitive agreement setting forth the terms, conditions and timing of the acquisition of the Mithra Parcel (the "Agreement").

D. In consideration of sale of the Mithra Parcel, Mithra has committed to make an investment in a for sale residential project to be developed on the Mithra Parcel with Four Million Five Hundred Thousand Dollars ($ 4,500,000.00) budgeted to design, develop and construct residential lots, substantially as depicted on the attached development plan as Exhibit B with a subsequent investment of Twenty-Eight Million Dollars ($ 28,000,000.00) to construct ten single family homes as well as fifty-six townhomes, the characteristics of which will be similar to the attached Exhibit C, comprising therein the Mithra Project. Mithra has placed considerable concern relative to the contiguous parcels in relation to the design of the development plan.

E. The proposed Mithra Project shall follow the usual and customary policies, programs and regulations as administered by the Fishers Department of Planning and Zoning and be subject to review and approval by the Fishers Plan Commission, Fishers Redevelopment Commission and the Fishers Common Council.

______________________________, Member

Mithra Development, LLC

Corby D. Thompson

EXHIBIT A

Maple Del

2/20/2024, 9:50:02 AM

1:2,229

0	0.01	0.03	0.05 mi	
0	0.02	0.04		0.09 km

Author: Hamilton County

EXHIBIT B


116th Street
116th Street
116th Street
Holland Drive
Public Street
Private Street
Alley
1
2
3
4
5
6
7
8
9
10
CIVIL SITE GROUP, INC.
CivilSite GROUP, INC.
BOOMERANG DEVELOPMENT
MAPLE DEL
116th Street
Fishers, IN 46038
NORTH

EXHIBIT C

EXHIBIT C

EXHIBIT C

EXHIBIT C

EXHIBIT C

EXHIBIT C


EXHBIT C

RESOLUTION APPROVING REAL PROPERTY ACQUISITION OFFER

WHEREAS, for the last several years, the City of Fishers Redevelopment Commission (the "Commission") has worked with a developer and entertained proposals to redevelop the former Maple Del neighborhood depicted on **Exhibit A** attached hereto and incorporated herein (the "Property");

WHEREAS, the Commission, pursuant to a land acquisition agreement, has now acquired the Property;

WHEREAS, on February 5, 2024, and again on February 12, 2024, in accordance with Ind. Code § 36-7-14 *et. seq*., the Commission caused the public notice attached hereto as **Exhibit B** to be published (the "Notice"), which Notice advertises the Property for sale;

WHEREAS, in addition to publishing the Notice, consistent with Ind. Code § 36-7-14 *et. seq*., the Commission prepared the offering sheet attached hereto as **Exhibit C**;

WHEREAS, on February 15, 2024, Steve Zinkan, Corby Thompson and Mithra Development, LLC, (collectively, "Mithra") submitted the Offer In Response To Notice Of Public Sale Of Real Property (Former Maple Del Subdivision, Fishers Indiana) attached hereto as **Exhibit D** (the "Offer"), which Offer was submitted in compliance with the Notice; and

WHEREAS, the Commission now desires to accept the Offer, subject to entering into an agreement with Mithra that incorporates the terms in the Offer and other commercially reasonable terms.

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

Section 1. The Commission accepts the Offer subject to entering into an agreement with Mithra that incorporates the terms in the Offer and other commercially reasonable terms.

Section 2. This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this _____ day of March, 2024

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

YAY		NAY
	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

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

EXHIBIT A
THE PROPERTY

MAPLE DEL PROPERTIES

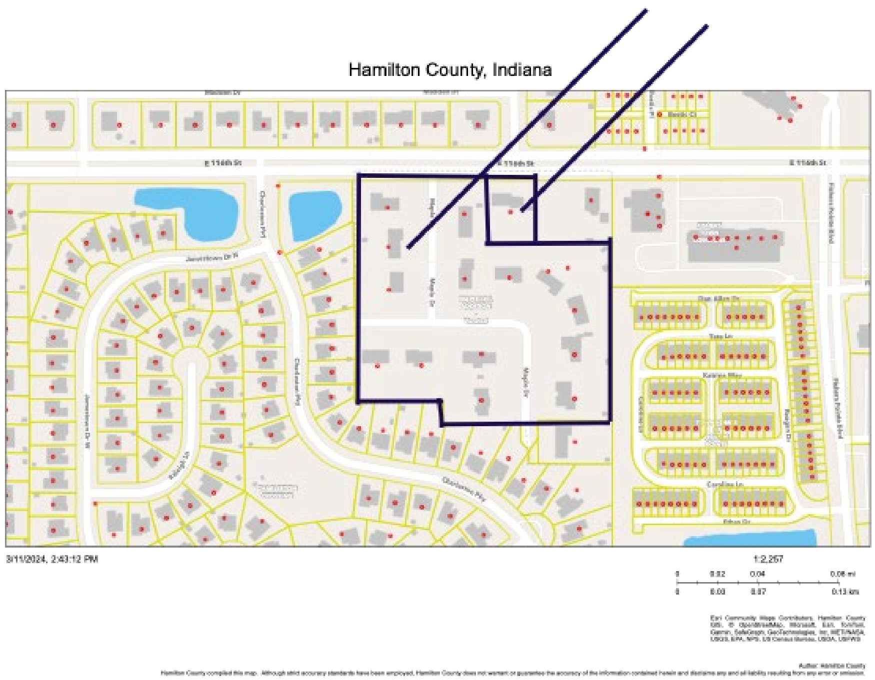


EXHIBIT B
NOTICE

NOTICE OF PUBLIC SALE OF REAL PROPERTY
(FORMER MAPLE DEL SUBDIVISION)

The City of Fishers Redevelopment Commission, a commission of the City of Fishers authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "Commission") hereby provides NOTICE that the Commission is offering property formerly known as the Maple Del subdivision, generally located south of 116th Street and west of Fishers Pointe Boulevard in Fishers, Indiana and identified by property identification nos. 14-14-01-01-03-002.000 and 14-14-01-01-03-005.000 (the "Property") for public sale. Pursuant to and consistent with Ind. Code § 36-7-14 *et. seq*., the Commission prepared an offering sheet for the Property, including the offering price, which offering sheet is available to prospective buyers on request. Maps and plats showing the size and location of Property is available for inspection at the City of Fishers.

General Information:

1) Date and Time Offers Due: By or Before March 5, 2024 at 10:00 a.m. Offers must be provided in writing, in pdf format, via email at the following: jennifercmesserlaw@gmail.com and baumgartnerm@fishers.in.us. All offers shall be addressed to the attention of the Commission and must be sent to both email addresses. The Commission, at a designated time properly noticed, will open and consider written offers for the Property during the week of March 11, 2024.
2) Location of Property: generally located south of 116th Street and west of Fishers Pointe Boulevard in Fishers, Indiana and identified by property identification nos. 14-14-01-01-03-002.000 and 14-14-01-01-03-005.000. Offers must be submitted for the entire Property. The City will not consider offers for portions of the Property.
3) Bids submitted by a trust (as defined in Ind Code § 30-4-1-1(a)) must identify each:
   (A) beneficiary of the trust; and
   (B) settlor empowered to revoke or modify the trust.
4) Offers: May consist of consideration in the form of cash, other property, or a combination of cash and other property. If offering other property, the offer must be accompanied by evidence of the property's fair market value that is satisfactory to the Commission, in its sole discretion.
5) Commission Discretion: The Commission reserves the right to reject any bids and may make awards to the highest and best bidders.
6) In determining the best bids, the Commission will consider the following factors:

a) The size and character of the improvements proposed to be made on the Property.
b) The plans and ability to improve the Property with reasonable promptness.
c) Whether the Property when improved will be sold or rented.
d) The price offered.

e) Factors that will assure the Commission that the sale will further the execution of the redevelopment plan and best serve the interest of the community, from the standpoint of both human and economic welfare.
f) Any other factors permissible under Ind. Code 36-7-14 *et. seq*.

7) Availability: the Property is available for immediate conveyance.

EXHIBIT C
OFFERING SHEET
PROPERTY OFFERING SHEET

LOCATION: Former Maple Del Subdivision; 8145 E. 116th Street and 0 E. 116th Street

PROPERTY ID.: 14-14-01-01-03-002.000 *and* 14-14-01-01-03-005.000

PRICE: $3,046,000.00

Parcel 1: 8145 E. 116th Street; Property Identification No. 14-14-01-01-03-005.000

LEGAL DESCRIPTION

BEGINNING AT A POINT 208.71 FEET SOUTH AND 208.71 FEET WEST OF THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 17 NORTH, RANGE 4 EAST IN HAMILTON COUNTY, INDIANA; THENCE WEST 120 FEET TO A POINT; THENCE NORTH 208.71 FEET TO A POINT; THENCE EAST 120 FEET TO A POINT; THENCE SOUTH 208.71 FEET TO THE PLACE OF BEGINNING.

EXCEPT THAT PART CONVEYED TO THE TOWN OF FISHERS BY WARRANTY DEED RECORDED OCTOBER 22, 1997 AS INSTRUMENT NO. 9745098 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.

PARCEL 2: 0 E. 116th Street; Property Identification No. 14-14-01-01-03-002.000

LEGAL DESCRIPTION AFTER REPLAT

Township 17, Range 4; Acreage 8.63 Section 1,

LEGAL DESCRIPTION PRIOR TO REPLAT

A PART OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 17 NORTH, RANGE 4 EAST, IN DELAWARE TOWNSHIP, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:
BEGINNING 673.71 FEET SOUTH OF THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 17 NORTH, RANGE 4 EAST ON THE LINE THEREOF, THENCE WEST PARALLEL TO THE NORTH LINE OF SAID QUARTER SECTION A DISTANCE OF 200 FEET TO A POINT; THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION A DISTANCE OF 115 FEET TO A PONT; THENCE EAST PARALLEL TO THE NORTH LINE OF SAID QUARTER SECTION A DISTANCE OF 200 FEET TO THE EAST LINE OF SAID QUARTER SECTION; THENCE NORTH ON AND ALONG THE EAST LINE OF SAID QUARTER SECTION A DISTANCE OF 115 FEET TO THE PLACE OF BEGINNING.

and

PART OF LOT NUMBERED 74 IN CHARLESTON CROSSING SECTION 4, THE PLAT OF WHICH IS RECORDED AS INSTRUMENT #89-12292 IN PLAT CABINET 1, SLIDE 32, IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 00 DEGREES 15 MINUTES 23 SECONDS WEST ALONG THE EAST LINE OF SAID LOT A DISTANCE OF 59.20 FEET TO THE NORTHERNMOST CORNER OF LOT NUMBERED 75; THENCE SOUTH 36 DEGREES 10 MINUTES 55 SECONDS WEST ALONG THE SOUTHEAST LINE OF AFORESAID LOT NUMBERED 74 A DISTANCE OF 34.09 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 23 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID LOT A DISTANCE OF 5.02 FEET; THENCE NORTH 44 DEGREES 44 MINUTES 37 SECONDS WEST A DISTANCE OF 35.36 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 23 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID LOT A DISTANCE OF 56.50 FEET TO THE NORTH LINE OF SAID LOT; THENCE NORTH 89 DEGREES 53 MINUTES 27 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 45.00 FEET TO THE POINT OF BEGINNING. CONTAINING 3186 SQUARE FEET, MORE OR LESS.

and

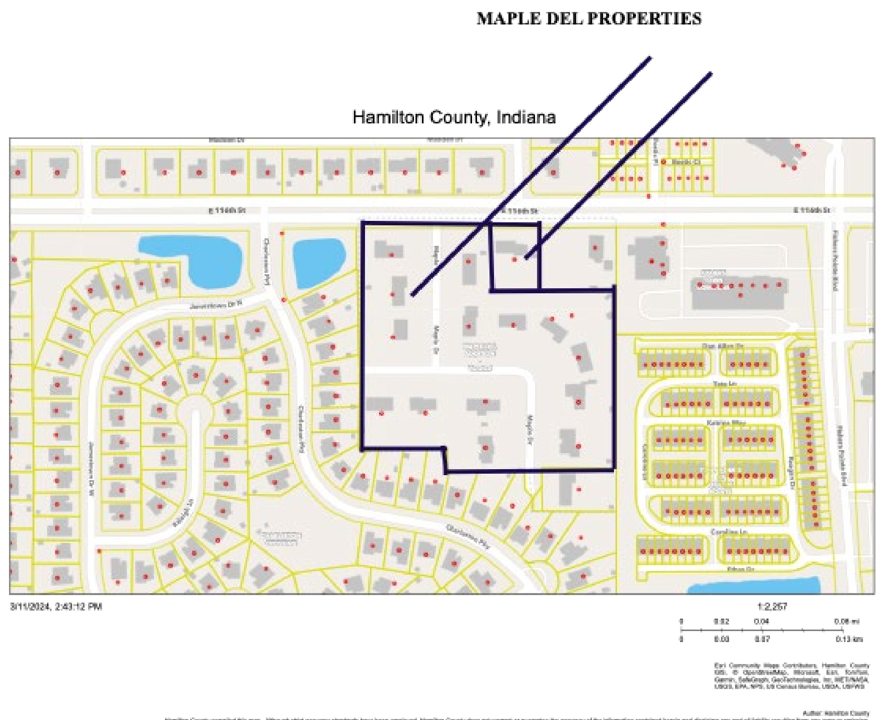
PART OF LOT NUMBERED 75 IN CHARLESTON CROSSING SECTION 4, THE PLAT OF WHICH IS RECORDED AS INSTRUMENT #89-12292 IN PLAT CABINET 1, SLIDE 32 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHERNMOST CORNER OF SAID LOT; THENCE SOUTH 00 DEGREES 15 MINUTES 23 SECONDS WEST ALONG THE EAST LINE OF SAID LOT A DISTANCE OF 55.80 FEET TO A CORNER OF SAID LOT; THENCE SOUTH 89 DEGREES 53 MINUTES 27 SECONDS WEST ALONG THE WESTERLY EXTENSION OF A NORTH LINE OF SAID LOT A DISTANCE OF 20.00 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 23 SECONDS EAST PARALLEL WITH THE EAST LINE OF SAID LOT A DISTANCE OF 28.33 FEET TO THE NORTHWEST LINE OF SAID LOT; THENCE NORTH 36 DEGREES 10 MINUTES 55 SECONDS EAST ALONG SAID NORTHWEST LINE A DISTANCE OF 34.09 FEET TO THE POINT OF BEGINNING. CONTAINING 841 SQUARE FEET, MORE OR LESS.

and

LOT NUMBERED ONE (1) IN MAPLE DEL ADDITION, FIRST SECTION, AN ADDITION IN HAMILTON COUNTY, INDIANA AS PER PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 116 AND AMENDED IN MISCELLANEOUS RECORD 161, PAGE 707 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.
EXCEPT: A PART OF LOT 1 IN MAPLE-DEL ADDITION, 1ST SECTION, AN ADDITION TO THE TOWN OF FISHERS, INDIANA, THE PLAT OF WHICH ADDITION IS RECORDED IN PLAT BOOK 2, PAGES 116-117, IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS: BEGINNING AT THE

NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 0 DEGREES 16 MINUTES 40 SECONDS WEST (ASSUMED BEARING) 20.00 FEET ALONG THE EAST LINE OF SAID LOT; THENCE SOUTH 89 DEGREES 54 MINUTES 44 SECONDS WEST 120.00 FEET TO THE WEST LINE OF SAID LOT; THENCE NORTH 0 DEGREES 16 MINUTES 40 SECONDS EAST 0.13 FEET ALONG SAID WEST LINE TO THE CORNER OF SAID LOT; THENCE ALONG THE NORTHWESTERN LINE OF SAID LOT NORTHEASTERLY 31.29 FEET ALONG AN ARC TO THE RIGHT AND HA YING A RADIUS OF 20.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 45 DEGREES 05 MINUTES 42 SECONDS EAST AND A LENGTH OF 28.19 FEET TO THE CORNER OF SAID LOT; THENCE NORTH 89 DEGREES 54 MINUTES 44 SECONDS EAST 100.13 FEET ALONG THE NORTH LINE OF SAID LOT TO THE POINT OF BEGINNING.

DEPICTION: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Hamilton County, Indiana
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0.03
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Author: Hamilton County

EXHIBIT D
OFFER
[*separately provided*]

RESOLUTION APPROVING PROJECT AGREEMENT

WHEREAS, for the last several years, the City of Fishers, Hamilton County, Indiana ("City") has been involved in conversations with the owners of the Gray Eagle Golf Course ("Golf Course"), Gray Eagle Golf L.L.C., an Indiana limited liability company ("Course Owner"), the Gray Eagle subdivision homeowners' association, and the Graystone community about preserving the Golf Course as an amenity for City residents;

WHEREAS, the City of Fishers Redevelopment Commission (the "Commission") now desires to help preserve and enhance the Golf Course as a recreational amenity for City residents using the tax increment that will be generated by a Multi-Family Project developed and constructed by J.C. Hart Company, Inc;

WHEREAS, the Multi-Family Developer, Course Owner or entity on their behalf will buy the Bonds issued for the Project, and the City will pledge tax increment to the payment of the Bonds;

WHEREAS, the Commission has determined that it is in the best interest of the City and Commission to induce the Course Owner and the Multi-Family Developer to complete the Project pursuant to a project agreement substantially similar to the Project Agreement attached hereto and incorporated herein as **Exhibit A** (the "Project Agreement"); and

WHEREAS, capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Project Agreement.

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

Section 1. The Project Agreement is hereby approved.

Section 2. The President and Secretary of the Commission are authorized to execute the Project Agreement and any other documents necessary to effect the intent of the Project Agreement.

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

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this _____ day of March, 2024

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

YAY **NAY**

YAY		NAY
	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

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

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 effecuate 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 effecuate 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 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 limition 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 te 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. **<u>City's Obligations</u>**. Subject to <u>Section 10</u>, 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 <u>Section 16</u>, 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

By: Charlie Kurtz
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 EXHIBITS[2]

[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.	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: (i) $1,000,000.00 Each Occurrence (BI & PD Combined Single Limit); (ii) $2,000,000.00 General Occurrence (subject to per project general aggregate provision); and (iii) $1,000,000.00 Personal Injury Liability to include coverage for employee-related claims.
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.

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.

TO BE UPDATED AT EACH LAND PARCEL SALE

As of February 29, 2024

Land Parcel Value Per Balance Sheet		
Parcel price	$	19,219,122
Fishers Event Center lot sale		(1,206,394)
Chicken & Pickle lot Sale		(823,106)
Remaining Land Value	$	17,189,622

Unpaid Reimbursable Costs		
Interest paid from line	$	1,690,830
Closing costs paid from line		201,330
Other costs approved but not paid including civil and design costs		6,868
Total Unpaid Reimbursable Costs		1,899,028
Total Outstanding Land and Reimbursable Costs	$	19,088,650

Reimbursed Costs from Prior Period		To Date
Interest paid from line	$	-
Survey		50,607
Environmentals		11,145
Geotechnical		47,540
Title Costs		15,124
Civil Engineering		210,221
Civil Reimbursables		2,429
Civil Miscellaneous		4,425
Architectural Design		1,570
Drafting		1,137
Landscape Design		98,940
Permits		5,829
Misc. Costs		124
Signage		14,689
Total Reimbursed Costs to Date	$	463,780

Bank Debt		
Parcel loan amount	$	19,219,122
Reallocation between NBI land loan and LOC		355
Loan amount per settlement statement		19,219,477
Fishers Event Center lot sale debt paydown		(1,206,394)
Chicken & Pickle lot sale debt paydown		(823,106)
Remaining Debt Outstanding	$	17,189,977

Line of Credit		
Accrued Interest from closing until current	$	1,690,830
Closing costs (approved on settlement statement)		201,330
Total Line of Credit Balance	$	1,892,160

Development Fee		
Total Developer Fee	$	3,405,840
Developer Fee Paid - Fishers Event Center		(1,277,190)
Developer Fee Paid - Chicken & Pickle		-
Remaining Developer Fee to be Paid	$	2,128,650

Excess Sale Proceeds Escrow		
Fishers Event Center lot sale	$	-
Chicken & Pickle lot sale		174,146
Total Escrow Balance	$	174,146

Note: The monthly interest due on the outstanding loan balance (as well as the line of credit) is paid from the line of credit as carried interest. The interest is the only item paid from the line unless preapproved by the City of Fishers.

AMENDED AND RESTATED LAND ACQUISITION AGREEMENT

This Amended And Restated Land Acquisition Agreement (this "Amendment") is executed as of the ___ day of ____________, 2024 (the "Effective Date"), by and among TTRG IN Fishers Swordfish, LLC, a Delaware limited liability company ("Developer"), the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "Commission"), and the City of Fishers, Hamilton County, Indiana (the "City" and together with the Commission and the Developer, the "Parties" or each a "Party"), on the following terms and conditions:

Recitals

WHEREAS, on or about January __, 2023, the Parties entered into that certain Land Acquisition Agreement pursuant to which Developer agreed to acquire the Parcel, act as a master developer for the City and market for development the Commercial Property for commercial purposes consistent with the City's vision for related Event Center arena amenities, if the City agreed to pay the Master Developer Fee and Land Acquisition Price (the "Agreement"); and

WHEREAS, since entering into the Agreement, the Parties have determined to achieve the highest and best development for the remaining portions of the Parcel, the Parties must restructure provisions of the Agreement concerning the Commission's obligation to pay taxes while also inducing Developer to complete its Union Project; and

WHEREAS, capitalized terms used but not defined herein are used with the meaning set forth in the Project Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

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.

2. Mutual Assistance. The Parties agree, subject to further proceedings required by the Laws, 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.

3. Defined Terms. The following capitalized terms used in this Agreement are used with meaning ascribed to such terms in this Section 3.

Additional Crossing Project Site: Development anticipated by the Parties to include a mixed-use building, Chicken N Pickle restaurant and hotel with approximately 150 keys on the parcels labeled as Parcels 3, 5, and 6 on Exhibit L, respectively.

Related Entity: an entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Developer. As used herein, the term "controls" or "controlled by" means possessing power to direct the management and policies of Developer whether through ownership of voting securities, by contract or otherwise.

Applicable Rate: the prime interest rate published in the *Wall Street Journal* plus three percent (3%) per annum.

Assignment and Assumption Agreement: the general form of the agreement attached as Exhibit A, pursuant to which the Commission assigns its right to acquire the City Property or any portion thereof to a Third-Party Assignee.

BOT: A build, operate, transfer agreement between the City and the Contractor for construction of the (a) Master Infrastructure Improvements throughout the Parcel, (b) Event Center on the City Property, and the (c) parking spaces within the Parking Property.

Broker Fee: The fee or commission (a) charged by a third-party listing broker representing Developer or buyer's broker at a Commercial Property Closing for representing a buyer of Commercial Property; and (b) pre-approved in writing by the Commission (via a City Contact); provided, however, the Commission shall not unreasonably withhold or delay such pre-approval if the third-party listing brokerage agreement charges then industry standard rates.

City: The City of Fishers, Hamilton County, Indiana, or, in its sole discretion, one of its related bodies and commissions.

City Contact: Any of one of the following: Scott Fadness (fadnesss@fishers.in.us), Jennifer Messer (jennifercmesserlaw@gmail.com), Elliott Hultgren (hultgrene@fishers.in.us) or Megan Baumgartner (baumgartnerm@fishers.in.us) or their successors.

City Preconstruction Fee: An amount equal to (a) City's reimbursement of Developer for third-party, pre-construction costs incurred by Developer (or on behalf of Developer) as documented in the Cost Report, and (b) .75% of the Master Development Fee.

City Property: Approximately 3.81 acres shown and crosshatched on Exhibit B. The City Property includes all the improvements, personal property, and related rights and interests.

City Property Closing: Developer's transfer and conveyance of the City Property to the Contractor.

City Property Closing Date: The date on which the City Property Closing occurs, which date shall be the same as the Parcel Closing Date.

City Purchase Price: $1,203,236.10, together with all Closing Costs associated with the City Property Closing, which amount, in the aggregate is $1,205,857.18.

Claims: The 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 Costs: All recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with a commercial real estate closing including any commissions approved by the Commission.

Commercial Property: The Parcel minus the (a) City Property; (b) Parking Property and (c) Crossing Project Site upon Closing of the Crossing Project pursuant to the Project Agreement (for the avoidance of doubt, prior to such Closing, the Crossing Project Site shall be deemed part of the Commercial Property).

Commercial Property Closing: Developer's transfer and conveyance of any portion of the Commercial Property to a Third-Party or a Related Entity.

Commitment: A title insurance commitment for an owner's policy of title insurance that: (a) is issued by the Title Insurer; and (b) commits to insure marketable fee simple title to the Remaining Commercial Property or City Property, as applicable.

Contractor: Hunt Construction Group, Inc.

Cost Report: A consolidated job cost report that provides a line-item summary of Developer's third-party expenses incurred from performing the Master Developer Services prior to the City Property Closing, which Cost Report shall be provided to the Commission on the Effective Date and updated and provided to the City Contact not less five (5) days prior to the City Property Closing Date.

Crossing Project: collectively, the development and construction of mixed-use project envisioned to a mixed-use building comprised of approximately 275 multifamily units and 20,000 square feet of retail and restaurant space. Notwithstanding the foregoing, the Crossing Project may change in use and scope during the Due Diligence Period and shall ultimately be developed based on the Approved Plans. The Project shall culminate in approximately $60_Million to $85 Million in private investment in the City, which is subject to change based upon the Approved Plan and corresponding uses.

Crossing Project Site shall mean the approximately ___ acres of real property labeled as the Crossing Site on **Exhibit M**.

Current Year Taxes and Assessment: The Real Estate Taxes and assessments assessed for, and first becoming a lien against, the Remaining Commercial Property, as applicable, during the year in which the Remaining Commercial Property Closing Date occurs.

Deed: A special warranty deed by which the Developer shall convey its interest in the (a) City Property to the Contractor; and (b) Remaining Commercial Property to the Commission and Third-Party Assignee, if applicable, together with all improvements thereon, which Deed shall be subject only to (y) the Permitted Exceptions; and (z) matters created or consented to by the Commission or the Third-Party Assignee, as applicable.

Developer Price: Except for the Crossing Site which shall be conveyed to Developer or a related entity pursuant to the Project Agreement for the Crossing Site Purchase Price, a price equal to the average of two (2) appraisals for any portion of the Commercial Property, with one appraiser to be selected by the City and the other appraiser to be selected by the Developer (with each party paying the cost for its appraisal). The appraisals shall be performed within sixty (60) days of Developer providing the City notice of its intent to transfer any portion of the Commercial Property to a Related Entity to self-develop, and the effective date of the appraisal shall be as of the date such notice is provided by Developer to the City. If the Developer does not close on the portion of the Commercial Property subject to the appraisals within one (1) year of the determination of the Developer Price, then Developer and City will obtain two (2) new appraisals (with each party paying the cost for its appraisal) to determine the Developer Price if Developer subsequently decides to develop the same portion of the Commercial Property.

Disbursement Request shall mean a written request and certification for payment submitted by the Developer to the City in the form attached hereto as Exhibit K, which request and certification for payment shall: (a) be prepared by the Developer; and (b) be accompanied by: (i) a description of the work therein, (ii) a detailed summary of the costs included in such Disbursement Request, and (iii) all related invoices, lien releases, and/or other information reasonably necessary to establish the accuracy of the information set forth in the request and certification.

Easement Agreement: An easement agreement between Developer and City for the operation of the Parking Property, which easement shall contain the minimum terms included in Exhibit C and shall initially create an easement area for the Original Parking Area. In addition, as described in Exhibit C, the City shall provide (or arrange for the BOT to provide) or reimburse Developer for adequate insurance (as mutually determined by City and Developer) associated with Developer's risk of owning the Parking Property operated under the BOT that Developer does not operate or control (with the Project Lender to be named an additional insured), and all such cost of insurance (whether procured by City or Developer) will be paid directly by the City within thirty (30) days of such premium being due.

Event Center shall mean an event center with a footprint of up to 140,000 square feet, approximately 8,000-person capacity and developed and constructed on the City Property.

Event of Default: The meaning set forth in Section 10.

Force Majeure shall mean any cause that is not within the reasonable control of the Parties, 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.

Land Acquisition Price: The price calculated pursuant to Exhibit D for any portion of the Remaining Commercial Property, which price shall be continuously updated by Addendum each time (a) Parking Property, Commercial Property or Remaining Commercial Property is transferred and/or (b) any portion of the Payments are made.

Laws: All applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City's Unified Development Ordinance, as applicable.

Line of Credit: That certain revolving line of credit by and between Project Lender and Developer in the maximum principal amount of $5,780,523.00 that is exclusively used for (a) pursuit costs in the maximum amount of $500,000.00, and (b) paying interest on the Project Loan in the maximum principal amount of $5,270,523.00.

Master Developer Fee: 2% of the total amount of the total budget for the Event Center as set forth on Exhibit I to this Agreement, .75 of the Master Developer Fee to be paid to Developer by Contractor at the City Property Closing. The remaining 1.25% of the Master Developer Fee shall be paid proportionately based on the per square foot basis of the Remaining Commercial Property (excluding the Parking Property) and shall be paid to Developer at each closing of a portion of the Commercial Property (but as a separate reimbursement and not as part of the settlement statement for such closing). Any remaining portion of the Master Development Fee left unpaid, shall be paid to the Developer at the Remaining Commercial Property Closing. Notwithstanding when the Master Developer Fee is paid, Developer shall be responsible for completing all Master Developer Services.

Master Developer Services: (a) Prior to the City Property Closing, all services necessary to acquire the Parcel, including, without limitation, (i) causing the completion of all Property Inspections, (ii) obtaining the Owner approvals and (iii) consulting with the City; and (b) after the City Property Closing, all services described on **Exhibit H**.

Master Development Plan: The design of vertical improvements throughout the Parcel to serve the Event Center and maximize use of the Commercial Property, including, without limitation, the design of water, sewer, stormwater detention, utilities and roads.

Master Infrastructure Improvements: The horizontal improvements to be constructed pursuant to the Master Development Plan.

MPA: The Multi-Party Agreement of even date herewith and executed by Developer, City, the Commission and the Project Lender.

Original Parking Area: The Parking Property as depicted on Exhibit E.

Owner: Sunbeam Development Corporation and G&I X MJW 11100 USA PARKWAY LLC (each owning a portion of the Parcel).

Parcel: Approximately 62.208 acres as depicted on Exhibit F.

Parcel Closing Date: The date on which Developer acquires the Parcel, which date shall be mutually determined by Developer, Contractor and the Commission after the Commission has approved the Commitment for the Parcel.

Parcel Price: The amount set forth on Exhibit D as the total amount paid for the Parcel, including any closing costs.

Parking Property: The Parking Property depicted on **Exhibit N** and labeled as Block A and Block B, which Parking Property will accommodate not less than 2,900 parking spaces and shall be configured in a manner to maximize development and use of the Commercial Property. The land comprising the Parking Property (and subject to the Easement Agreement) may change from time-to-time, in the sole discretion of the City, and each time the City acquires Parking Property, an addendum shall be attached to Exhibit N (each consecutively labeled as N-1, N-2, etc.) depicting the updated, remaining Parking Property. Block B may also contain Commercial Property and the final acreage of Parking Property in Block B may shift as the final design of Block B is determined.

Parking Property Closing: The transfer and conveyance of real property used for parking for the Event Center from the Developer to the Commission, (a) which Parking Property Closing shall occur upon within (30) days written notice from the Commission to the Developer; and (b) at which the Commission shall pay (i) the Parking Property Price, (ii) Closing Costs, (iii) fees charged by the Project Lender, if any.

Parking Property Price: $206,019.00, per acre for any portion of Parking Property.

Payments: any payment from or on behalf of the City to Developer as set forth on **Exhibit D**, as the same may be updated from time to time.

Permitted Exceptions: (a) the lien of Current Year Taxes and Assessments not delinquent; (b) any exceptions to title reflected in the Commitment (i) at the time that Developer acquires the Parcel, or (ii) to which the Commission or Third Party Assignee, as applicable, does not object; and (c) such other matters that are accepted by the Commission and Third Party Assignee, if applicable, in writing or which Commission and Third Party Assignee, if applicable, is deemed to have waived pursuant to the terms and conditions of this Agreement.

Post-Closing MDS Costs: Third-party costs and expenses pre-approved by a City Contact and incurred by Developer.

Project Agreement: That certain October ___, 2023 Project Agreement by and among Thompson Thrift Development, Inc. the City, Fishers Town Hall Building Corporation, the Commission, and City of Fishers Economic Development Commission.

Project Lender: The National Bank of Indianapolis.

Project Loan: A loan issued by Project Lender to Developer in the maximum amount of $19,219,477.00 for the sole purpose of acquiring the Parcel on the Parcel Closing Date.

Property Inspections: The studies, inspections and assessments listed on <u>Exhibit J</u>.

Purchase Agreement: Both the (i) December 14, 2021 Purchase Agreement by and between Sunbeam Development Corporation and Developer, as amended by that certain First Amendment to Purchase Agreement dated March 14, 2022, and (ii) the Purchase and Sale Agreement by and between G&I X MJW 11100 USA PARKWAY LLC and Developer, and any other amendments to either Purchase and Sale Agreement approved by the City.

Real Estate Taxes and Insurance: From the Effective Date until (a) Closing on the Union Project all real estate taxes levied on, against, or with respect to the Commercial Property not including the Additional Crossing Project Site, and (b) Closing for the Crossing Project, all real estate taxes levied on, against, or with respect to the Crossing Project Site.

Related Entity: A third party controlled by or under common control with Developer.

Remaining Commercial Property: Any portion of the Commercial Property not previously transferred and conveyed to Developer, a Related Entity or third party prior to the Remaining Commercial Property Closing Date.

Remaining Commercial Property Closing Date: The date on which (a) the Commission pays the Land Acquisition Price, to the extent such number is a positive number; and (b) the Remaining Commercial Property is transferred and conveyed to the Commission and/or any Third-Party Assignee pursuant to a Deed. Notwithstanding anything to the contrary included herein, unless the Parties mutually agree in writing, the Remaining Commercial Property Closing Date shall not occur (y) sooner than forty-eight (48) months from the Effective Date, or (z) later than eighty-four (84) months from the Effective Date. The Commission shall provide Developer sixty (60) days written notice of the Remaining Commercial Property Closing Date; provided, however, if Developer is under contract for the sale of a portion of the Commercial Property to a third-party purchaser, the Developer shall have the option of closing on such sale to a third-party purchaser or assigning its rights as seller under such contract to the City as part of the City's closing on the Remaining Commercial Property.

Required Permits: All permits, licenses, approvals, and consents required by the Laws for construction of the Master Infrastructure Improvements.

Third-Party Assignee: shall mean one or more entities to which the Commission assigns its right and obligation to acquire the Remaining Commercial Property or portion thereof pursuant to the Assignment and Assumption Agreement.

Title Insurer: shall mean First American Title Insurance Company (Gina Longere).

4. **Developer Obligations**. For and in consideration of the Commission satisfying in full the Commission Obligations (as defined herein below), the Developer shall:

a) complete all Master Developer Services;
b) obtain all necessary approvals of the Owner as required under the Purchase Agreement;
c) regularly update the City Contact on the progress of the (i) Developer acquiring the approvals needed from the Owner under the Purchase Agreement; and (ii) easements needed from property owners adjacent to the Parcel or as otherwise required by Owner;

d) upon written approval of the City, acquire the Parcel pursuant to the Purchase Agreement;
e) transfer the City Property to the Contractor on the City Property Closing Date pursuant to the Deed;
f) on the City Property Closing Date, enter into the assignment and assumption agreement with Contractor attached hereto and incorporated herein as Exhibit G (the "Contractor Assignment");
g) contemporaneously with acquisition of the Parcel, enter into an Easement Agreement with the City;
h) prior to developing or leasing for development (which lease shall be subject to an approval similar to that described in Section 6(a)), any portion of the Commercial Property, pay the Project Lender the Developer Price;
i) contract or continue to contract with Kimley Horn for design of the Master Improvements, including paying the costs associated with such contract and applying to the City for reimbursement of such costs as such costs are incurred pursuant to Disbursement Requests;
j) market the Commercial Property for commercial development and upon obtaining the City's approval (as described in Section 6), enter into agreements for the sale or lease of the Commercial Property (or portions thereof), which agreement(s) shall, at a minimum, include the information provided by Developer to the City to obtain the City Approval;
k) transfer the Commercial Property to third parties;
l) promptly, using commercially reasonable care and expertise, satisfy the requirements included in Exhibit H.
m) on the Remaining Commercial Property Closing Date, transfer and convey the Remaining Commercial Property to the Commission and/or to a Third-Party Assignee, if applicable;
n) strictly adhere to the Laws;
o) to the extent necessary to comply with this Agreement, obtain all Required Permits;
p) otherwise satisfy the terms of this Agreement; and
q) enter into and cause the Project Lender to enter into the MPA on the City Property Closing Date.

(individually or collectively, the "Developer Obligations")

5. **Commission and/or City Obligations**. For and in consideration of the Developer satisfying in full the Developer Obligations, the Commission shall:

a) contemporaneously with Developer's acquisition of the Parcel, (i) cause the Contractor to pay the City Purchase Price to Developer and acquire the City Property pursuant to the Deed; and (ii) pay the Developer the City Preconstruction Fee;
b) contemporaneously with Developer's acquisition of the Parcel, enter into the Easement Agreement;
c) pay Developer the Master Developer Fee as follows: .75 at the City Property Closing (as part of the City Pre-Construction Fee), with 1.25% of the Master Developer Fee paid proportionately based on the per square foot basis of (i) Commercial Property transferred and conveyed at any Commercial Property Closing; and/or (ii) Remaining Commercial Property transferred and conveyed at any Remaining Commercial Property Closing. Any of the remaining portion of the Master Development Fee left unpaid shall be paid at

to the Developer at the Remaining Commercial Property Closing. Moreover, for conveyances described in foregoing subsections (i) and (ii), "proportionally based" shall mean acreage transferred divided by the total amount of Commercial Property estimated at 14.798.

d) contemporaneously with Developer's acquisition of the Parcel, cause the Contractor to enter into the Contractor Assignment;
e) promptly review all results of the Property Inspections and provide comment on such results, any Owner approvals and easement acquisitions;
f) on the Remaining Commercial Property Closing Date, pay or cause to be paid to Developer the Land Acquisition Price and accept transfer and conveyance, and if applicable, cause a Third-Party Assignee to accept transfer and conveyance of such Remaining Commercial Property pursuant to the Assignment and Assumption Agreement;
g) at the Parking Property Closing, transfer and convey the Parking Property to the Commission; and
h) reimburse Developer for all Post-Closing Master Developer Services Costs within thirty (30) days after Developer properly submits a Disbursement Request, which requests shall not be submitted more frequently than monthly).

(individually or collectively, the "Commission Obligations")

6. <u>Commercial Property Transfers</u>.

(a) <u>Third Party Transfers</u>. Prior to the Remaining Commercial Property Closing Date, Developer shall control the Commercial Property for purposes of development, subject to this <u>Section 6(a).</u> Prior to transferring and conveying any portion of the Commercial Property to a third party (except a Third-Party Assignee) or a Related Entity (in either instance, an "End User") or developing or leasing for development any portion of the Commercial Property, Developer shall: (a) seek the written approval of a City Contact (the "Commission Approval"); by providing, at a minimum, the following information (i) price to be paid for the Commercial Property; (ii) amount of Commercial Property to be transferred to an End User; (iii) proposed use of the Commercial Property; (iv) the amount of the Broker Fee, if any; and (v) any additional information requested by the City Contact; (b) if the City Contact provides such Commission Approval, provide Commission a draft a purchase agreement between Developer and any End User, which purchase agreement shall be subject to the Commission's written approval, in its sole discretion, prior to becoming effective; (c) provide the closing statement for any such transaction to the City Contact prior to the Commercial Property Closing; and (d) transfer and convey the Commercial Property to the End User pursuant to the purchase agreement approved by the Commission. Until the Project Loan and Line of Credit are satisfied in full, after payment of the amounts owed to the Project Lender in 6(b), all proceeds received from the transfer and conveyance of Commercial Property to any End User shall be, at the Commercial Property Closing, paid to the Project Lender for application to the Project Loan or Line of Credit, in the discretion of the Commission.

(b) <u>Cost Allocation</u>. For any conveyance of the Commercial Property (whether to a third-party or a Related Entity of Developer), the purchase and sale agreement for such portion of the Commercial Property shall provide the purchase price (the "Purchase Price"), and state that such Purchase Price shall be divided between Developer and the City at the Commercial Closing. At the Commercial Closing, the closing statement shall include,(i) a grossed-up sales price to include an allocation of land and unreimbursed costs comprising the Land Acquisition Price on a per acre basis (or as approved by the City and Developer to maximize savings), and (ii) Closing Costs including any Broker Fee and attorneys' fees (the "Base Purchase Price"). The Base Purchase Price shall be remitted to Developer and used be to pay down debt on the Project Loan. The positive difference, if any, between the Purchase Price and the Base Purchase Price shall be remitted to the City and set aside and maintained in an escrow account in the City's name (or the City shall pull the amount within the escrow account as soon as it is funded to reduce any potential gain) (a) for the City to pay Developer its pro rata portion of its Master Development Fee and any other fees outside the closing statement for such property, (b) for City purchase of the Parking Property; or (c) as collateral for the outstanding Project Loan until the earlier of the Remaining Commercial Property Closing or the balance of the Project Loan being repaid in full. Any amount escrowed shall be listed on Addenda to Exhibit D. Developer will ensure the Project Lender agrees to any and all release prices for the Parking Price or Commercial Property to pay down the Project Loan or the Line of Credit.

7. Representations And Warranties.

(a) Commission. The Commission 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) it is the governing body of the City of Fishers Redevelopment Department organized and existing under the laws of the State of Indiana; (iii) 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, (iv) this Agreement is the legal, valid, and binding obligation of it; and (v) it has not engaged or dealt with any real estate broker or agent in connection with the Parcel, or the acquisitions, transfers and conveyances described herein 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 the Commission.

(b) Developer. Developer represents and warrants to the Commission that: (i) Developer is an Indiana corporation duly existing and validly formed under the laws of the State of Indiana; (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (iv) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (v) this Agreement is the legal, valid, and binding obligation of Developer; (vi) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, 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; (vii) Developer shall not, without the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned, enter into a loan, mortgage, note or other encumbrance that provides any third-party an interest in the Commercial Property; and (viii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and 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, or national origin.

(c) E-Verify. All terms defined in IND. CODE § 22-5-1.7 et seq. are adopted and incorporated into this Section 8. Pursuant to IND. CODE § 22-5-1.7 *et seq*., Developer covenants to enroll in and verify the work eligibility status of all its employees using the E-Verify program, if it has not already done so as of the Execution Date. 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 Contact 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 Developer and delivered to the City Contact.

8. [Intentionally Omitted.]

9. Remaining Commercial Property Closing Date—Purchase & Sale.

(a) Purchase and Sale. Subject to the terms and conditions of this Agreement, Developer hereby agrees to sell and convey to Commission, and Commission hereby agrees to purchase and acquire from Developer, all of the Developer's assignable and transferable right, title and interest in and to the Remaining Commercial Property.

(b) Purchase Price. The Land Acquisition Price shall be paid in immediately available funds by Commission at the City Closing by wire transfer in accordance with wire transfer instructions to be provided by Title Insurer.

(c) Remaining Commercial Property Closing. The Commission's obligation to acquire the Remaining Commercial Property from the Developer is absolute and unconditional; provided, however, the Parties acknowledge and agree that (a) the Commission may assign the right to acquire the Remaining Commercial Property (or a portion thereof), pursuant to the Assignment and Assumption Agreement to the Third-Party Assignee. Notwithstanding transfers to any Third-Party Assignee, unless and until the Project Loan and Line of Credit are paid in full, the Commission shall be liable for any amount owed on the Project Loan and/or Line of Credit so long as such amount was incurred strictly pursuant to and consistent with this Agreement, including, without limitation, any amount paid by Developer to replenish the Line of Credit (each, a "Developer Interest Payment"), which Developer Interest Payment shall incur interest at the applicable rate for the Line of Credit. For the avoidance of doubt, (i) neither the Commission nor City shall be liable for payment of any portion of the Project Loan or Line of Credit other than those amounts specifically accruing pursuant to the terms of this Agreement; and (ii) penalties or fees incurred and/or accruing on the Project Loan or Line of Credit as a result of Developer's default under the Loan Documents shall be, in the absence of default hereunder by the Commission, the sole liability of Developer.

(d) Possession. Possession of the Remaining Commercial Property or any portion thereof shall be delivered to Commission, and if applicable, to the Third-Party Assignee at the Remaining Commercial Property Closing, subject only to the Permitted Exceptions.

(e) Closing Costs. Commission, and if applicable, the Third-Party Assignee, shall pay or cause to be paid, on the Remaining Commercial Property Closing Date, the Land Acquisition Price; provided, however, the Parties acknowledge and agree that the Closing Costs resulting from acquisition of the Parcel have been paid by the City pursuant to a Disbursement Request.

(f) Closing Deliveries.

i. Developer shall deliver the (1) Deed; (2) a vendor's affidavit from in form and substance such that the Title Insurer will issue the Commitment; (3) a certification that all the representations and warranties set forth in Section 7 remain true and accurate in all respects as of the Remaining Commercial Property Closing Date;

ii. Commission, and if applicable, the Third-Party Assignee, shall cause to be paid the Closing Costs by wire transfer of immediately available funds;

iii. Commission, and if applicable, the Third-Party Assignee shall cause to be paid the cost of the owner's policy of title insurance for the Remaining Commercial Property;

iv. Such other customary documents or instruments as required to be delivered in connection with any closing under this Agreement (whether required by the other Party or the Title Insurer); and

10. 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.

(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; which right, in the Event of Default by Commission, is specifically intended to give Developer the right to seek specific performance of Commission's obligation to cause the purchase of the Commercial Property hereunder); 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. Any past due payments due under this Agreement (specifically including the payment of the Land Acquisition

Price) shall bear interest at the Applicable Rate until paid in full. Moreover, 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 Applicable Rate 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, 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 Party's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

11. 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, addressed as follows: to the Commission at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Chris Greisl, City Attorney, 1 Municipal Drive, Fishers, Indiana 46038 and Jennifer Messer (via email) at jennifercmesserlaw@gmail.com; and to Developer at 111 Monument Circle, Suite 1500, Indianapolis, Indiana 46204, Attn: Ashlee Boyd, Managing Partner and Attn: Brian C. Fritts, General Counsel; National Bank of Indianapolis, 107 N. Pennsylvania Street, Suite 200, Indianapolis, Indiana 46204, Attn: Graham E. Danielson, Vice President and Commercial Real Estate Officer. Each of the Parties may change its address for notice from time to time by delivering notice to the other Party as provided above.

12. Indemnification. Developer shall indemnify and hold harmless the Commission from and against any and all Claims arising from or connected with: (i) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Parcel 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 Parcel 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; (iv) Developer suffering or causing the filing of any mechanic's or materialmen's lien against the Site or Project; or (v) the breach by Developer of any term or condition of this Agreement.

13. **Assignment**. Developer shall have the right to assign this agreement to any affiliate or special purpose entity created for purposes of completing its responsibilities and shall have the right to enter into the Collateral Assignment as a guarantee for the Project Loan and/or Line of Credit. Without the prior written approval of Developer, the Commission may (a) assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder; and (b) assign, partially or in its entirety, the rights and obligations included herein regarding the City Closing, to a Third-Party Assignee and cause Developer to convey the Remaining Commercial Property, or any portion thereof, to such Third-Party Assignee. If the Commission assigns this Agreement to any Third-Party Assignee, the Commission shall not be released from its obligations hereunder until such time as all portions of the Remaining Commercial Property have been conveyed to the Commission and/or a Third-Party Assignee and the Total Land Acquisition Price has been paid in full.

14. **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 May 10, 2022 Professional Services Agreement by and between Developer and the Commission.

15. **Force Majeure**. Notwithstanding anything to the contrary set forth herein, 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 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.

16. **Miscellaneous**. This Agreement shall inure to the benefit of and be binding upon the Commission, 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 Commission and 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 an employment relationship, partnership or joint venture between Developer the Commission or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Parcel is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

17. Exhibits:

Exhibit A	Assignment and Assumption Agreement
Exhibit B	City Property
Exhibit C	Easement Agreement
Exhibit D	Land Acquisition Price
Exhibit E	Original Parking Area
Exhibit F	Parcel
Exhibit G	Contractor Assignment
Exhibit H	Post-Closing Master Development Services
Exhibit I	Project Budget
Exhibit J	Property Inspections
Exhibit K	Disbursement Request
Exhibit L	Additional Crossing Project Site
Exhibit M	Crossing Project Site
Exhibit N	Parking Property Blocks A and B

[*signatures on following pages*]

IN WITNESS WHEREOF, the Commission, the City and Developer have executed this Land Acquisition Agreement as of the day and year first written above.

"**Commission**"

CITY OF FISHERS REDEVELOPMENT COMMISSION

By:_________________________________
Damon Grothe, Vice-President

ATTEST:

By:______________________________
Anderson Schoenrock, Secretary

“**The City**”

CITY OF FISHERS,
HAMILTON COUNTY, INDIANA

____
Scott Fadness, Mayor

“DEVELOPER”

TTRG IN FISHERS SWORDFISH, LLC

By: ______________________________________

Its: ______________________________________

EXHIBIT A
FORM ASSIGNMENT & ASSUMPTION AGREEMENT

[FOLLOWING PAGES]

ASSIGNMENT AND ASSUMPTION OF RIGHT TO ACQUIRE REMAINING COMMERCIAL PROPERTY

THIS ASSIGNMENT AND ASSUMPTION OF RIGHT TO ACQUIRE REMAINING COMMERCIAL PROPERTY ("Assignment Agreement") is made this _____ day of _____________, 202__, by and between the City of Fishers Redevelopment Commission, a commission of the City of Fishers ("City") authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "Assignor") and _______________ ("Assignee") as follows:

RECITALS

WHEREAS, Assignor is a party to that certain _______ ___, 202_ Land Acquisition Agreement (the "LAA Agreement") by and among Thompson Thrift Development, Inc., an Indiana corporation ("Developer"), the Commission and the City;

WHEREAS, pursuant to the LAA Agreement, Assignor has the right to assign to a Third-Party Assignee certain rights and obligations concerning Remaining Commercial Property or a portion thereof;

WHEREAS, Assignor desires to assign to Assignee and Assignee, who is a Third-Party Assignee, desires to assume certain rights and obligations included in the LAA Agreement pursuant to this Assignment Agreement;

WHEREAS, Developer has consented to this Assignment Agreement pursuant to the Consent attached hereto; and

WHEREAS, capitalized terms used but not defined herein are used with the meaning set forth in the LAA Agreement.

AGREEMENT

NOW THEREFORE, the foregoing recitals are incorporated into this Assignment Agreement by reference to such recitals and in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. **Assignment**. Assignor hereby assigns, transfers, sets over and conveys to Assignee, all of Assignor's rights, obligations and interests to acquire the portion of the Remaining Commercial Property described and depicted on **Exhibit A** (the "RCP"), including, without limitation (a) the obligation to pay the Land Acquisition Price for the RCP on the Remaining Commercial Property Closing Date, and (b) the right to acquire the RCP on the Remaining Commercial Property Closing Date (jointly, the "Assigned Rights & Obligations").

2. **Assumption**. Assignee hereby assumes the Assigned Rights & Obligations.

3. **Project Loan Payment**. On the Remaining Commercial Property Closing Date, if a

balance remains on the Project Loan or Line of Credit, the Land Acquisition Price shall be, at the Remaining Commercial Property Closing, paid to the Project Lender for application to the Project Loan or Line of Credit. Assignor shall be responsible for ensuring such payment toward the Project Loan or Line of Credit; provided, however, if the Project Loan and Line of Credit do not have a remaining balance, the Purchase Price shall be paid to the City.

4. **Indemnity**. Assignor shall indemnify, hold harmless and defend Assignee from and against all Claims that may be incurred by Assignee as a result of this Assignment Agreement and that arise prior to the Effective Date of this Assignment Agreement. Assignee shall indemnify, hold harmless and defend Assignor from and against all Claims that may be incurred by Assignor as a result of this Assignment Agreement and that arise on or after the Effective Date of this Assignment Agreement.

5. **Miscellaneous**. This Assignment Agreement shall inure to the benefit of and be binding upon the Assignor, Assignee, and their respective successors and assigns. This Assignment Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Assignment Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Assignment 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. Assignee waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Assignee may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Assignment Agreement may be modified only by a written agreement signed by the Assignor and Assignee. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Assignment Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Assignment Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Assignment Agreement. If any provision of this Assignment Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable, the remainder of this Assignment 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 Assignment 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 Assignment Agreement are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope of this Assignment Agreement or the scope or content of any of its provisions. Nothing contained in this Assignment Agreement shall be construed to create an employment relationship, partnership or joint venture between Assignee the Assignor or their successors in interest. 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 RCP is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date and year first above written.

Assignor

City of Fishers Redevelopment Commission

____
__________________, President

Attest: ______________________________
___________________, Secretary

Assignee:

____
__________________, _________________

EXHIBIT A
Remaining Commercial Property

CONSENT

Thompson Thrift Development, Inc. hereby CONSENTS to the Assignment Agreement dated __________________ by and between the City of Fishers Redevelopment Commission and _______________________.

Thompson Thrift Development, Inc.

____

EXHIBIT B
CITY PROPERTY

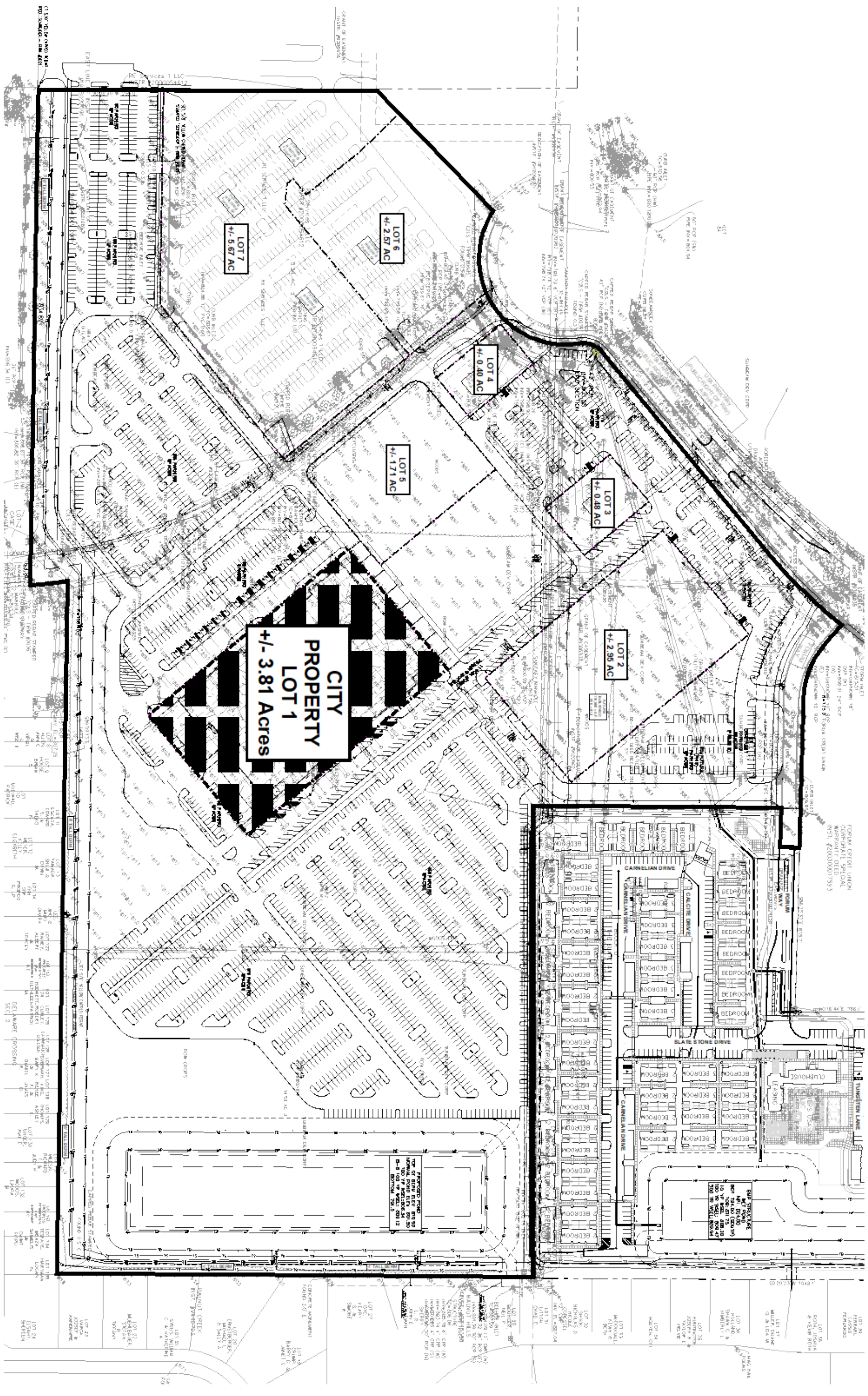

EXHIBIT C
EASEMENT AGREEMENT – MINIMUM TERMS

- Perpetual, non-exclusive easement in gross in favor of the City and the public for parking vehicles and pedestrian access to the parking spaces.
- City's right to limit the use of, charge for, or otherwise regulate the use of City Parking Spaces
- City's rights to assign its rights under the easement
- City's right to maintain and operate the parking spaces and the Parking Property
- The Party's right to mutually determine and change the areas encompassed by the easement
- Not less than 2900 parking spaces to be included within the easement area
- City's right to operate and control the easement area
- City to provide an indemnity agreement satisfactory to Developer, including, without limitation, a waiver of all defenses available to the City under the Indiana Tort Claims Act or similar statutes (as well as all time limitations on filing under such acts) which might abrogate or limit City's indemnity obligations to Developer.
- City's obligation to either carry insurance, or require the BOT to carry insurance, with limits acceptable to Developer in its sole discretion, or to reimburse Developer for all such insurance related to the Parking Property that Developer will not control.
- Extinguishment of such easement at the time of the Parking Property Closing Date.

EXHIBIT D
LAND ACQUISITION PRICE CALCULATION

The Land Acquisition Price shall be calculated and updated per the attached Excel Spreadsheet with carry costs (interest) exclusively applied to the following: the Parcel Price, closing costs, real estate taxes, and Developer Interest Payments, if any. The Spreadsheet shall be updated at any closing of Parking Property or Commercial Property to accurately show the remaining Land Acquisition Price to be paid at the end of the term of this Agreement.

[PROVIDE SPREADSHEET AS SEPARATE DOCUMENT]

EXHIBIT E
ORIGINAL PARKING AREA

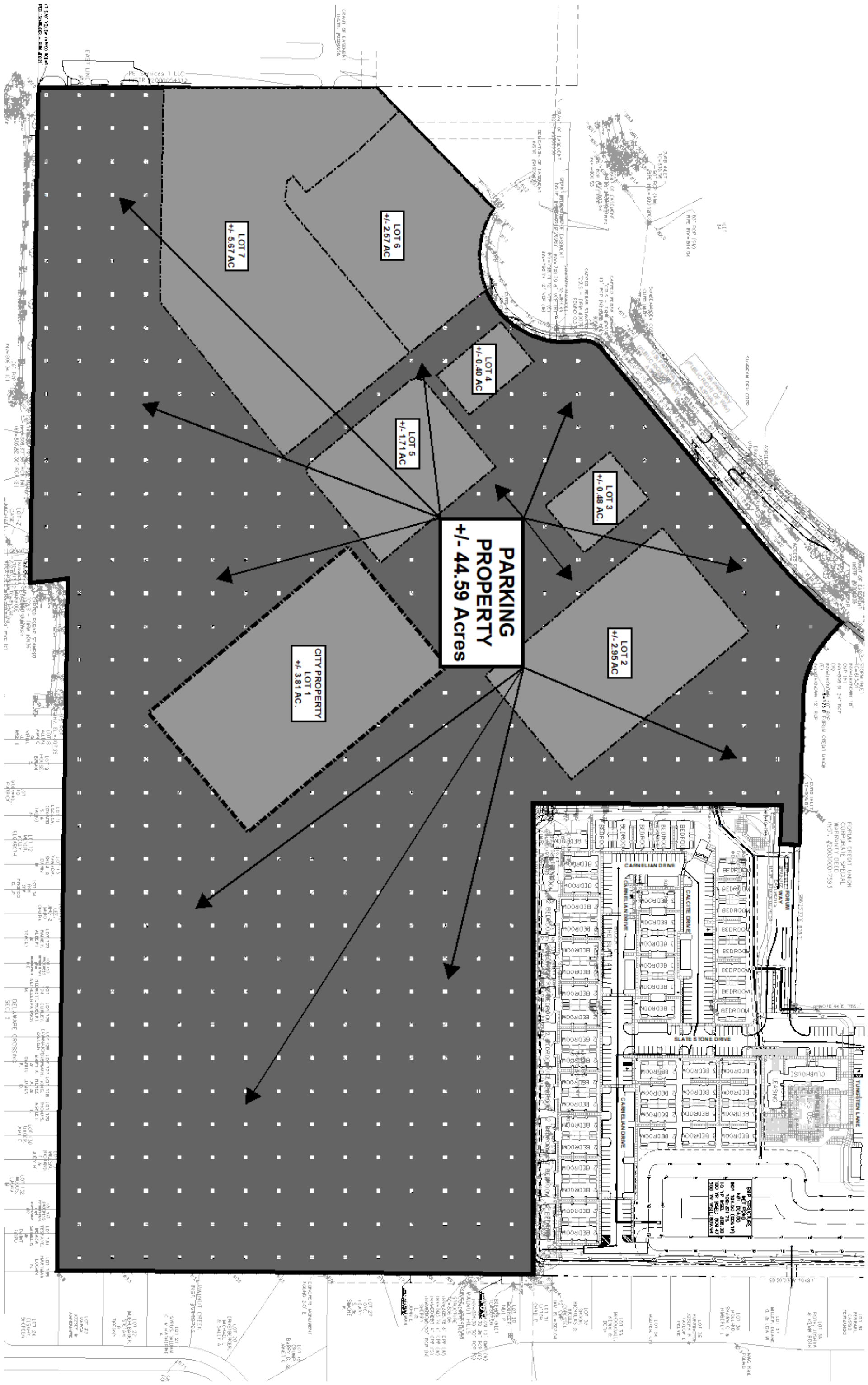
PARKING PROPERTY
+/- 44.59 Acres
LOT 7
+/- 5.67 AC
LOT 6
+/- 2.57 AC
LOT 4
+/- 0.40 AC
LOT 5
+/- 1.71 AC
LOT 3
+/- 0.48 AC.
LOT 2
+/- 2.95 AC
CITY PROPERTY
LOT 1
+/- 3.81 AC.

EXHIBIT F
PARCEL
[Included on Following Page]

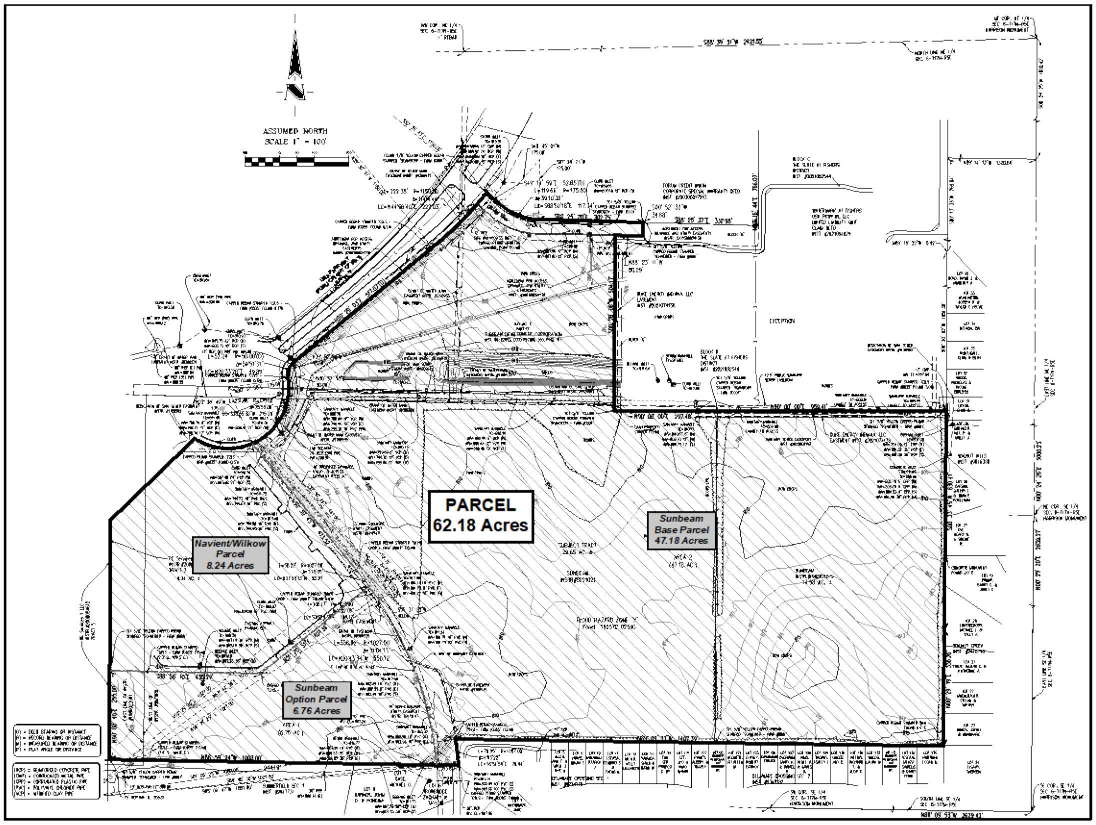
ASSUMED NORTH
SCALE 1" = 100'
PARCEL
62.18 Acres
Navient/Wilkow
Parcel
8.24 Acres
Sunbeam
Base Parcel
47.18 Acres
Sunbeam
Option Parcel
6.76 Acres

EXHIBIT G
CONTRACTOR ASSIGNMENT

[FOLLOWING PAGES]

ASSIGNMENT AND ASSUMPTION OF RIGHT TO ACQUIRE REMAINING COMMERCIAL PROPERTY

THIS ASSIGNMENT AND ASSUMPTION OF RIGHT TO ACQUIRE REMAINING COMMERCIAL PROPERTY ("Assignment Agreement") is made this _____ day of _____________, 2023, by and between Thompson Thrift Development, Inc., an Indiana corporation (the "Assignor") and Hunt Construction Group, Inc., an Indiana corporation ("Assignee") as follows:

RECITALS

WHEREAS, Assignor is a party to that certain _______ ___, 202_ Land Acquisition Agreement (the "LAA Agreement") by and among Thompson Thrift Development, Inc., an Indiana corporation ("Developer"), the City of Fishers Redevelopment Commission and the City of Fishers;

WHEREAS, Assignee is a party to that certain ___________, 202_ Public-Private Agreement For The Development And Construction Of The Fishers Event Center And Related Master Improvements (the "BOT");

WHEREAS, the LAA Agreement and the BOT contemplate that Assignor will assign to Assignee and Assignee will assume from Assignor the contracts and work product listed on Exhibit A to Assignee (the "Contracts and Work Product");

WHEREAS, the Assignment Agreement is and shall be deemed the (a) Contract Assignment described in the LAA Agreement and (b) the Assignment and Assumption Agreement described in the BOT;

WHEREAS, pursuant to this Assignment Agreement, Assignor desires to assign to Assignee and Assignee desires to assume from Assignor the Contracts and Work Product; and

WHEREAS, capitalized terms used but not defined herein are used with the meaning set forth in the LAA Agreement or BOT, as applicable.

AGREEMENT

NOW THEREFORE, the foregoing recitals are incorporated into this Assignment Agreement by reference to such recitals and in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. **Assignment**. Assignor hereby assigns, transfers, sets over and conveys to Assignee, all of Assignor's rights, obligations and interests in the Contracts and Work Product (the "Assigned Rights & Obligations").

2. **Assumption**. Assignee hereby assumes the Assigned Rights & Obligations.

3. **Indemnity**. Assignor shall indemnify, hold harmless and defend Assignee from and against all Claims that may be incurred by Assignee as a result of this Assignment Agreement and that arise prior to the Effective Date of this Assignment Agreement. Assignee shall indemnify, hold harmless and defend Assignor from and against all Claims that may be incurred by Assignor as a result of this Assignment Agreement and that arise on or after the Effective Date of this Assignment Agreement.

4. **Miscellaneous**. This Assignment Agreement shall inure to the benefit of and be binding upon the Assignor, Assignee, and their respective successors and assigns. This Assignment Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Assignment Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Assignment 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. Assignee waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Assignee may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Assignment Agreement may be modified only by a written agreement signed by the Assignor and Assignee. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Assignment Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Assignment Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Assignment Agreement. If any provision of this Assignment 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 Assignment 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 Assignment 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 Assignment Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Assignment Agreement or the scope or content of any of its provisions. Nothing contained in this Assignment Agreement shall be construed to create an employment relationship, partnership or joint venture between Assignee the Assignor or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the RCP is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date and year first above written.

Assignor

Thompson Thrift Development, Inc.

____

__________________, President

Assignee:

Hunt Construction Group, Inc

____

__________________, __________________

<u>EXHIBIT A</u>
<u>Contracts & Work Product</u>

EXHIIBIT H
POST-CITY CLOSING MASTER DEVELOPMENT SERVICES

- Market and/or develop the Commercial Property for its highest and best use
- Meet and discuss development concepts and potential end users with the City
- Take reasonable, necessary steps to transfer and convey the Commercial Property pursuant to Section 6
- Contract with and oversee Kimley Horn as it works to design the Master Improvements necessary to serve the Commercial Property; provided however, Kimley Horn shall maintain its own SCI shall maintain its own errors and omissions policy for the design of the Master Improvements
- Oversee construction of the Master Improvements serving the Commercial Property
- Coordinate with Kimley Horn and the Contractor concerning any changes necessary to the most current design of the Master Improvements serving the Event Center
- Seek City preapproval of any third-party costs to complete the Master Development Services

EXHIBIT I

PROJECT BUDGET

Changes to the Project Budget will be provided by Developer to City at any point in time prior to the Remaining Land Closing, and the City shall review and approve any such changes, with such approval to not be unreasonably withheld or delayed.

EXHIBIT J

LIST OF PROPERTY INSPECTIONS COMPLETED BY DEVELOPER PRIOR TO THE PARCEL CLOSING DATE

EXHIBIT K
DISBURSEMENT REQUEST

Disbursement No.: ___________________

Date: ___________________

Disbursement Amount: $______________________

_________________ (the "Developer"), pursuant to a Land Acquisition Agreement ("LAA") between Developer and ______________ (the "City"), hereby requests the disbursement of funds in the Disbursement Amount stated above and certifies that such amount is in accordance with the attached invoices, lien releases and other documentation provided in support of this Disbursement Request.

This Disbursement Request shall also constitute representations to the City that, to the best of the Developer's knowledge, information, and belief based on adequate on-site inspections to check the quality or quantity of the work, the work has progressed in accordance with the LAA The issuance of an application for payment also shall constitute a representation that the recap of the expenses summarized in Schedule I attached hereto accurately reflects such expenses and that the entities associated with such expenses are entitled to payment in the amount certified, or that the Developer has already paid such entities and is entitled to reimbursement in the amount certified.

By:

Printed: ___________________________________

Title: ____________________________________

Schedule I

[Narrative summary of expenses included in Disbursement Request]

Exhibit L
Additional Crossing Project Site

RESOLUTION APPROVING AMENDED AND RESTATED LAND ACQUISITION AGREEMENT

WHEREAS, as part of the City of Fishers' (the "City") larger event center project, the City previously approved a certain Land Acquisition Agreement with TTRG IN Fishers Swordfish, LLC ("Developer") to acquire Real Property (the "Event Center Property"), and if not developed, the Commercial Property (the "Original LAA");

WHEREAS, since entering in the Original LAA, Developer has agreed to invest or cause to be invested approximately $60 to $80 Million completing the Crossing Project, a project that is anticipated to include approximately 275 multifamily units and 20,000 square feet of retail and restaurant space on property that is part of the Commercial Property;

WHEREAS, as a result, the terms of the Original LAA must be amended to contemplate the new Crossing Project, clarify that the City of Fishers Redevelopment Commission is responsible for all carry costs until Closing and align the obligation to pay Real Estate Taxes with the Project Agreement, all pursuant to an agreement substantially similar to the Amended And Restated Land Acquisition Agreement attached hereto and incorporated herein as **Exhibit A** (the "Agreement");

WHEREAS, additionally, as the City acquires portions of the Parking Property, Developer and the Commission have determined that the price for the Parking Property shall be reduced to $206,019.00, per acre; provided, however, the Commission will continue to be responsible for the difference in the amount owed (as outlined in Exhibit D to the Agreement) and the amount paid at the Remaining Commercial Property Closing.

WHEREAS, all capitalized terms used but not defined herein are used with the meaning ascribed to such terms in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission meeting in a duly noticed and regularly scheduled meeting as follows:

Section 1. The Commission hereby approves an agreement substantially similar to the Agreement.

Section 2. The President or Vice-President and Secretary of the Commission are hereby authorized to execute an agreement substantially similar to the Agreement.

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

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this ___ day of March, 2024.

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

YAY		NAY
	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

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