



CITY OF FISHERS AGENDA

BOARD/COMMISSION: Redevelopment Commission Meeting

DATE: 7/13/2023, at 4:00 PM

DIRECTIONS: City Services Building - Controller's Conference Room, 3 Municipal Drive, Fishers, IN 46038

In accordance with the Americans with Disabilities Act (ADA), the City of Fishers will, upon request, provide appropriate aid (i.e. interpreters) and/or assistance leading to effective participation for people with disabilities. Anyone who requires such assistance should [email Kelly Lewark](#), 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. 6-1-23

5. Approvals of Claims

- a. 7-13-23

6. Public Hearings

- a. FRC 05R071323 - Professional Sports and Convention Development Area
- b. Veridus / Fishers Life Sciences Master Detention
- c. FRC 01R071323 - CityView Project Agreement
- d. FRC 02R071323 - District South Project Agreement
- e. FRC 03R071323 - OnPoint Project Agreement
- f. FRC 04R071323 - SpokeNote EDA

7. Old Business

8. New Business

9. Meeting Adjournment

CITY OF FISHERS REDEVELOPMENT COMMISSION (FRC) MEETING MINUTES

June 1, 2023

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, Anderson Schoenrock, Tony Bonacuse. Not present: Brad Johnson, Dan Canan, Ben Orr.

Others present: Megan Baumgartner, Lawrence Summers, Lisa Bradford, Jennifer Messer, Jordan Willy, Rick Hall

Meeting Minutes: Mr. Schoenrock made a motion to approve the minutes from the April 24, 2023 meeting, seconded by Mr. Bonacuse. Motion approved, 3-0.

Approval of Claims: Mr. Schoenrock made a motion to approve the June 1, 2023 claims, seconded by Mr. Bonacuse. Motion approved, 3-0.

Public Hearing:

Mr. Grothe opened the Public Hearing portion of the meeting.

FRC 01R060123- Stevanato BAN Terms- Rich Hall of Barnes & Thornburg presented the Amendment to Lease for the Stevanato Bonds.

Mr. Grothe closed the Public Hearing.

Mr. Grothe asked for a Motion. Mr. Bonacuse made a Motion to approve, seconded by Mr. Schoenrock. The Motion was approved, 3-0.

FRC 02R060123 – On Point Innovation Project Agreement- Megan Baumgartner presented the Project Agreement for the last 8 acres of the Life Sciences Park. The land is valued at \$250K per acre. The two tenants will be RCS and Certus Medical. This is a tough financing market.

Mr. Grothe asked for a Motion. Mr. Schoenrock made a Motion to approve, seconded by Mr. Bonacuse. The Motion was approved, 3-0.

Old Business / New Business: None

The meeting adjourned at 4:25 p.m.

**Fishers Redevelopment Commission
Claim Docket 7/13/23**

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

Total \$0.00

7/13/2023

President, Redevelopment Commission Date

7/13/2023

Secretary, Redevelopment Commission Date

7/13/2023

Lisa Bradford, City Controller Date

Fishers Redevelopment Commission Consent Agenda 7/13/23

Hamilton County Treasurer	15-11-31-00-00-025.000 S23 Balance	\$	68.39
Baker Tilly	2017B Arbitrage	\$	2,555.00
Onpoint Hub & Spoke	Hub & Spoke CAM Balance	\$	1,470.46
Switch Offices LLC	June 2023 Vacant Rent	\$	911.48
Switch Offices LLC	June 2023 Mojo Up Subsidy	\$	293.75
Hageman Investments	Rebar 7/23 Rent	\$	10,500.00
CVK LLC	Meyer Najem 7/23 Rent	\$	35,675.81
Onpoint Hub & Spoke	Hub & Spoke 7/23 Rent	\$	36,701.57
Hageman Investments	Rebar 8/23 Rent	\$	10,500.00
Onpoint Hub & Spoke	Hub & Spoke 8/23 Rent	\$	38,172.03
CVK LLC	Meyer Najem 7/23 Rent	\$	35,675.81
Switch Offices LLC	July 2023 Vacant Rent	\$	911.48
Switch Offices LLC	July 2023 Mojo Up Subsidy	\$	293.75
Huntington National Bank	2019A Debt Service	\$	472,315.00
Regions Bank	2016 COIT Debt Servcie	\$	252,550.00
Regions Bank	2018C Debt Service	\$	842,000.00
Regions Bank	2016A Debt Service	\$	713,500.00
Huntington National Bank	2019B Debt Service	\$	330,500.00
Huntington National Bank	2020 Fisher Station Refunding	\$	507,500.00
List Biotheraputics	Pond Work	\$	40,273.79
Regions Bank	2017A CIO Fees	\$	2,500.00
Regions Bank	2017B CIO Fees	\$	1,500.00
Baker Tilly	2017A1 and 2017C Arbitrage	\$	3,795.00

TIF Passthroughs

Huntington National Bank	Pullman Pointe	\$	331,133.20
Huntington National Bank	Stations	\$	109,821.05

Huntington National Bank	Stations MTA	\$	96,039.07
Regions Bank	Clarian/Saxony Med Center	\$	150,563.21
Regions Bank	Exit 10 Area (Town)	\$	167,725.17
Regions Bank	Saxony Project	\$	589,195.93
Regions Bank	Village Center	\$	543.70
Regions Bank	SR 37 Area	\$	460,220.30
Regions Bank	Fishers Automotive Area	\$	66,113.48
Regions Bank	Central Indiana Ortho	\$	111,082.68
Regions Bank	The Yard	\$	750,630.48
Regions Bank	River Place	\$	31,264.05
Bank of New York	Britton Park	\$	533,799.22
Bank of New York	Crosspoint	\$	192,009.83
Bank of New York	Shops at Geist Pointe	\$	120,861.86
		<u>\$ 7,051,166.55</u>	

RESOLUTION NO.: FRC 05R071323

**A RESOLUTION OF THE CITY OF FISHERS REDEVELOPMENT
COMMISSION DESIGNATING AND DECLARING A CERTAIN AREA
AS A PROFESSIONAL SPORTS & CONVENTION DEVELOPMENT AREA,
APPROVING A PLAN FOR SAID AREA, AND RELATED MATTERS THERETO**

WHEREAS, the City of Fishers Redevelopment Commission (the "Commission"), the governing body of the City of Fishers Department of Redevelopment (the "Department") and the City of Fishers Redevelopment District, exists and operates under the provisions of Ind. Code §36-7-14, as amended (the "Redevelopment Act");

WHEREAS, in accordance with Ind. Code §36-7-31.3 *et. seq.*, (the "Professional Sports Development Act"), the City of Fishers, Hamilton County, Indiana (the "City") may establish a Tax Area by resolution before January 1, 2024, in accordance with the Professional Sports Development Act;

WHEREAS, in accordance with the Professional Sports Development Act, the Tax Area is a special taxing district authorized by the general assembly to enable the designating body to provide special benefits to taxpayers in the Tax Area by promoting economic development that is of public use and benefit;

WHEREAS, the Commission has thoroughly studied and investigated that area of the City of Fishers, Indiana (the "City"), as further described and depicted in Exhibit A, attached hereto and incorporated herein, and hereby finds that such area of the City meet the requirements of the Professional Sports Development Act to qualify as a Tax Area, and hereby designates said area as the "Fishers Professional Sports & Convention Development Area" (the "PSC Development Area");

WHEREAS, there has been presented to this meeting for consideration and approval of the Commission an economic development plan for the PSC Development Area entitled "Economic Development Plan for the Fishers Professional Sports and Convention Development Area" (the "Plan");

WHEREAS, the Commission has caused to be prepared estimates of the costs of the professional sports and convention development projects as set forth in the Plan;

WHEREAS, the Plan and supporting data were reviewed and considered by the Commission at this meeting;

WHEREAS, the Plan conforms to other development and redevelopment plans for the City;

WHEREAS, Section 9 of the Professional Sports Development Act provides that a Tax Area may be initially established by resolution in accordance with the Professional Sports Development Act and the procedures set forth for the establishment of an economic development area under the Redevelopment Act;

WHEREAS, the Commission deems it advisable to apply the provision of said Section 9 of the Professional Sports Development Act to the Plan and the financing of the Plan; and

WHEREAS, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them under the Professional Sports Development Act or Redevelopment Act, as applicable.

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

1. The Plan for the PSC Development Area promotes economic development that is of public use and benefit.
2. The Plan for the PSC Development Area contains a capital improvement that will be undertaken or has been undertaken in the Tax Area for a facility that is used by a professional sports franchise for practice or competitive sporting events (which also includes a capital improvement that will be undertaken or has been undertaken in the Tax Area for a facility that is used for any purpose specified by Ind. Code §36-7-31.3-8(a)(2)), which is further described on Exhibit B (the "Event Center").
3. The Event Center that will be undertaken (or that has been undertaken) in the Tax Area will benefit the public health and welfare and will be of public utility and benefit.
4. The Event Center that will be undertaken (or that has been undertaken) in the Tax Area will protect or increase state and local tax bases and tax revenues.
5. The Commission hereby finds that the Declaratory Resolution and the Plan conform to the comprehensive plan for the City.
6. In support of the findings and determinations set forth in Sections 1 through 5 above, the Commission hereby adopts the specific findings set forth in the Plan.
7. The Plan is hereby in all respects approved, and the secretary of the Commission is hereby directed to file a certified copy of the Plan with the minutes of this meeting.
8. The Commission hereby designates certain facilities on certain facility sites identified as within the PSC Development Area, as further described on Exhibit C, attached hereto and incorporated herein, as a facility that is (i) owned by the city, the county, a school corporation, or a board under IC 36-9-13, IC 36-10-8, IC 36-10-10, or IC 36-10-11, and used by a professional sports franchise for practice or competitive sports events; (ii) owned by the city, the county, or a board under IC 36-9-13, IC 36-10-8, IC 36-10-10, or IC 36-10-11, and used as one of the following: (A) a facility used principally for convention or tourism related events serving national or regional markets; (B) an airport; (C) a museum; (D) a zoo; (E) a facility used for public attractions of national significance; (F) a performing arts venue; (G) a county courthouse registered on the National Register of Historic Places; or (iii) a hotel (each a "Facility", and collectively the "Facilities").

9. All Facilities within the PSC Development Area are hereby designated as comprising a "Professional Sports & Convention Development Area" under Section 9 of the Professional Sports Development Act.

10. In accordance with Ind. Code §36-7-31.3-4, "covered taxes" means the part of the following taxes attributable to the operation of a Facility designated as part of the Professional Sports Area: (i) the state gross retail tax imposed under IC 6-2.5-2-1 or use tax imposed under IC 6-2.5-3-2; (ii) an adjusted gross income tax imposed under IC 6-3-2-1 on an individual; (iii) the local income tax imposed under IC 6-3.6; and (iv) except in a county having a population of more than three hundred fifty thousand (350,000) and less than four hundred thousand (400,000), a food and beverage tax imposed under IC 6-9 (collectively, the "Covered Taxes"). The allocation of Covered Taxes attributable to a taxable event or Covered Taxes earned in the PSC Development Area shall be allocated to the Professional Sports and Convention Development Area Fund (the "Allocation Fund") established for the City.

In addition to the Covered Taxes, in accordance with Ind. Code §36-7-31.3-10, all of the salary, wages, bonuses, and other compensation that are: (a) paid during a taxable year to a professional athlete for professional athletic services; (b) taxable in Indiana; and (3) earned in the PSC Development Area; shall be allocated to the Allocation Fund if the professional athlete is a member of a team that plays the majority of the professional athletic events that the team plays in Indiana in the PSC Development Area (the "Professional Athlete Tax").

The maximum amount of Covered Taxes that may be captured in the PSC Development Area is Two Million Dollars (\$2,000,000) per year. The tax revenue captured in the PSC Development Area each year shall be transferred to the City to be used for a capital improvement that will construct or equip a facility owned by the City used by a professional sports franchise for practice or competitive sporting events. This allocation provision shall expire on June 30, 2044.

11. The Secretary of the Commission is directed to file a certified copy of the Plan and this Resolution with the minutes of this meeting.

12. The officers of the Commission are hereby directed to make any and all required filings and recordings with the Indiana State Budget Committee, Indiana Department of Local Government Finance, the Hamilton County Auditor and the Hamilton County Recorder in connection with the actions of the Commission contained in this Resolution regarding the PSC Development Area.

13. The provisions of this Resolution shall be subject in all respects to the Redevelopment Act, the Professional Sports Development Act and any amendments thereto.

14. This Resolution, together with supporting data, shall be submitted to the Plan Commission and the Common Council of the City, as provided by Section 16 of the Redevelopment Act, and the Professional Sports Development Act, for the approval of this Resolution and the Plan, and if approved by both bodies, this Resolution and the Plan shall be submitted to public hearing and remonstrance as provided by Section 17 of the Redevelopment Act, after public notice in accordance with Section 17 of the Redevelopment Act and Indiana Code

5-3-1 and after all required filings with governmental agencies and officers have been made pursuant to Section 17(b) of the Redevelopment Act.

15. This Resolution shall be in full force and effect from and after its adoption by the Commission.

Adopted this 13th day of July, 2023.

CITY OF FISHERS REDEVELOPMENT
COMMISSION

President

Vice President

Secretary

Member

Member

This instrument prepared by: Christopher P. Greisl, Barnes & Thornburg, LLP, 11 South Meridian Street, Indianapolis, IN 46204

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." /s/ Christopher P. Greisl

Exhibit A
[Tax Area]

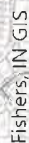


Exhibit B
[The Event Center]

Development Site Plan



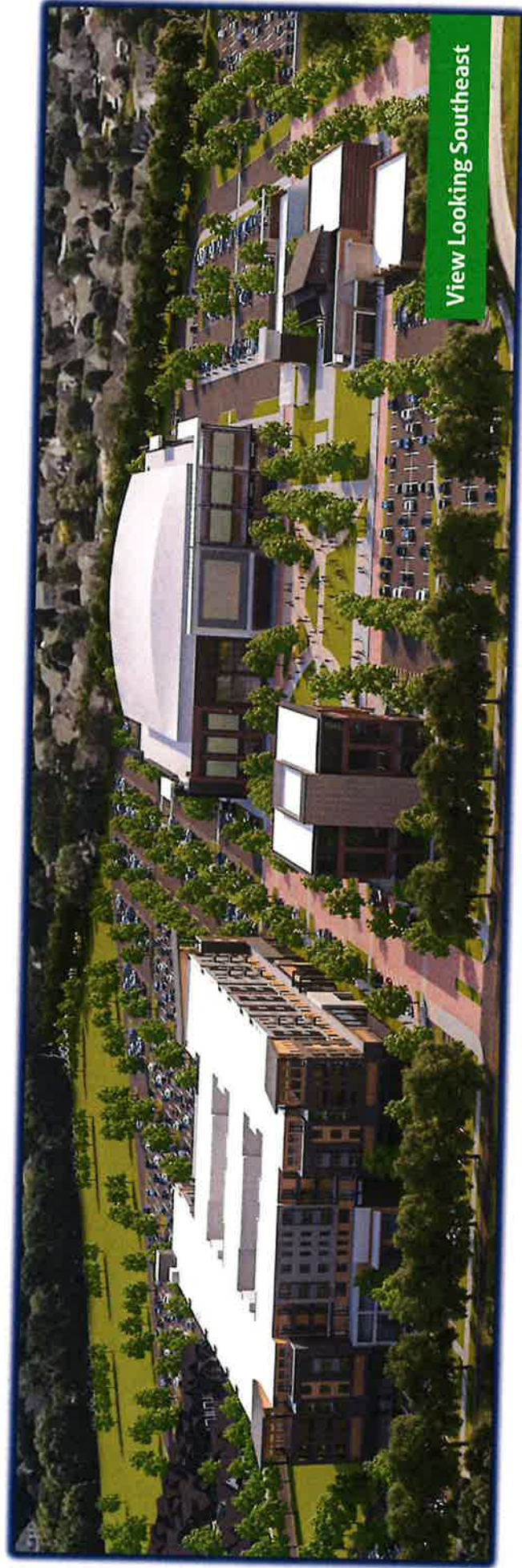
Development Site Plan (Continued)



Development Aerial



Event Center Aerial



Event Center Exterior Renderings



Event Center Interior Renderings



4a. The Next Phase of Fishers District—Interior Renderings

Exhibit C
[The Facilities]

In accordance with Ind. Code §36-7-31.3-8, the City of Fishers hereby designates the following facilities as comprising a PSC Development Area:

PSC Development Area - The Facilities

Facility Name	Decided Owner	Address	City	Acres	Use	Tax District	Township	Zoning	Land AV	Improvement AV	Total Gross AV	Construction Cost
Best Western	Lights Out Developments LLC	9750 North By Northeast Blvd	Fishers	3.07	Hotels	Fishers	Delaware	C3	\$ 1,381,500.00	\$ 2,981,500.00	\$ 4,363,000.00	
Comfort Inn & Suites	Champion Fishers LLC	9780 North By Northeast Blvd	Fishers	2.97	Hotels	Fishers	Delaware	C3	\$ 1,298,000.00	\$ 1,790,000.00	\$ 3,088,000.00	
Courtyard	Stations Hotel Partners LLC	11550 Whistle Dr	Fishers	2.12	Hotels	Fishers	Delaware	PUD-M	\$ 1,272,000.00	\$ 7,856,600.00	\$ 9,128,600.00	
Fairfield Inn & Suites	Crosspoint Blvd Hotel Partners LLC	10495 Crosspoint Blvd	Indianapolis	2.45	Hotels	Fishers	Delaware	PUD-C	\$ 1,195,000.00	\$ 2,508,200.00	\$ 3,703,200.00	
Hampton Inn & Suites	J Enterprises Inn of Fishers LLC	11575 Commercial Dr	Fishers	2.54	Hotels	Fishers	Delaware	NPC-HC	\$ 1,270,000.00	\$ 2,751,300.00	\$ 4,021,300.00	
Hilton Garden Inn	Hamilton Hotel Partners LLC	9785 North By Northeast Blvd	Fishers	4.15	Hotels	Fishers	Delaware	C3	\$ 1,678,500.00	\$ 4,768,000.00	\$ 6,446,500.00	
Holiday Inn Express	Hotel Fishers LP	9791 North By Northeast Blvd	Fishers	2.56	Hotels	Fishers	Delaware	C3	\$ 1,152,000.00	\$ 3,131,800.00	\$ 4,283,800.00	
Home 2 Suites	Fishers 86 Hotel LLC	9701 North By Northeast Blvd	Fishers	1.65	Hotels	Fishers	Delaware	C3	\$ 742,500.00	\$ 4,681,300.00	\$ 5,423,800.00	
Hyatt Place	Springdale Hotel Partners LLC	11455 Ikea Way	Fishers	3.96	Hotels	Fishers	Delaware	PUD-M	\$ 2,376,000.00	\$ 10,974,600.00	\$ 13,350,600.00	
*Nickel Plate Hotel	Nickel Plate Hotel Partners LLC	8651 E 116th St	Fishers	0.54	Hotels	Fishers	Delaware	NPC-DC	\$ 780,000.00	\$ 998,400.00	\$ 1,778,400.00	\$ 30,000,000.00
Quality Suites	Moels Of Fishers LLP	9760 Cross Point Cmn	Indianapolis	1.56	Hotels	Fishers	Delaware	PUD-C	\$ 1,125,000.00	\$ 2,615,500.00	\$ 3,740,500.00	
Residence Inn	Fisher Hotel LLC	9765 Crosspoint Blvd	Indianapolis	2.35	Hotels	Fishers	Delaware	PUD-C	\$ 1,310,000.00	\$ 5,087,600.00	\$ 6,397,600.00	
Springhill Suites	Apple Nine Hospitality Ownership Inc	9698 Hague Rd	Indianapolis	2.82	Hotels	Fishers	Delaware	PUD-C	\$ 1,715,000.00	\$ 5,366,500.00	\$ 7,081,500.00	
Staybridge Suites	Crosspoint Hotel LLC	9780 Crosspoint Blvd	Indianapolis	3.43	Hotels	Fishers	Delaware	PUD-C	\$ 1,152,000.00	\$ 777,200.00	\$ 1,879,200.00	
Studio 6	8250 Fishers Inc	8250 North By Northeast Blvd	Fishers	2.56	Hotels	Fishers	Delaware	C3				
***Fishers Event Center	The City of Fishers	11000 Sociodale St	Fishers	3.82	Entertainment	Fishers	Delaware	PUD-M				
Total									\$ 18,447,500.00	\$ 54,627,500.00	\$ 73,075,000.00	\$ 170,000,000.00
*Anticipated Completion in 2024; **Anticipated Completion in 2025												

CITY OF FISHERS REDEVELOPMENT COMMISSION

ECONOMIC DEVELOPMENT PLAN FOR THE FISHERS PROFESSIONAL SPORTS & CONVENTION DEVELOPMENT AREA

I. Purpose and Introduction

The City of Fishers Redevelopment Commission (the "Redevelopment Commission") proposes to designate and declare a certain area within the City of Fishers, Indiana (the "City") as the Fishers Professional Sports & Convention Development Area (the "PSC Development Area") as a Tax Area (as defined by Ind. Code §36-7-31.3 *et. seq.*, the "Professional Sports Development Act"). This is the plan for the PSC Development Area (the "Plan"). This Plan may be amended as provided in the Plan and Ind. Code §36-7-14, as amended from time to time (the "Redevelopment Act").

Section 9 of the Professional Sports Development Act provides that a Tax Area may be initially established by resolution in accordance with the Professional Sports Development Act and the procedures set forth for the establishment of an economic development area under the Redevelopment Act. Pursuant to Sections 15 and 16 of the Redevelopment Act, the Plan must be approved by the Redevelopment Commission, the City of Fishers Plan Commission, and the City of Fishers Common Council. Upon such approvals, the Redevelopment Commission will hold a public hearing on the Plan as required under Section 17 of the Redevelopment Act, before confirming (or modifying and confirming) the designation of the PSC Development Area and the approval of the Plan.

A. Project Objectives

The purpose of the Plan is to promote economic development that is of public use and benefit to the City through the development of a facility that is owned by the City and used by a professional sports franchise to play a majority of its home games in the facility (the "Event Center"). The Plan will focus on utilizing the tools permitted by the Professional Sports Development Act, which include the ability to allocate certain Covered Taxes on designated Facilities within the PSC Development Area (as further defined herein), to construct and equip the Event Center, which will benefit the public health and welfare of the City, be of public utility and benefit, and protect and increase state and local tax bases and tax revenues.

The Plan will allocate resources to accomplish the goals established herein, and the City's Comprehensive Plan.

II. The Fishers Event Center

The City broke ground on its \$170M, mid-sized, world-class Event Center in April, 2023, in order to open the facility for operations in December, 2024. The Event Center is approximately 200,000 SF located on 53-acres that expands on the recently developed 18-acre "Fishers District", home to a variety of restaurant, retail, and entertainment options. The City recently announced a \$550 million expansion of the Fishers District, which includes new retail, restaurant, entertainment, and residential options within a walkable and vibrant community setting. The

expanded Fishers District will be anchored by the Event Center that will host sporting, theatrical, and entertainment events.

The Event Center will hold a variety of events, to include the ECHL's (formerly known as the East Coast Hockey League) Indy Fuel (a professional sports franchise) as the anchor tenant, playing all regular season home games and playoff games in this facility. The Indy Fuel has entered into a 20-year license agreement with the City to host all home games and home playoff games at the Event Center (which initial term runs through September 1, 2044). When in "hockey mode", the Event Center will have 5,360 general admission seats, 697 club seats (center-ice lounge, stage-view club, and loge club), 410 suite seats (23 total suites), 500 standing room only seats, and 30 seats for media for a total capacity of 6,997. When in "concert mode", the Event Center will have 5,746 general admission seats, 697 club suites, 330 suite seats (21 total suites), 500 standing room only seats, and 10 media seats for a total capacity of 7,283.

The Event Center is projected to host 125 events in its first year of operation, and will ultimately host 135 events per year. In addition to all Indy Fuel Home games (36 regular season home games), the Event Center will hold a variety of top tier musical acts/concerts, a variety of other entertainment options (ex: Disney on Ice, cirque du soleil, comedy shows, etc.), and other athletic events (NCAA and/or a variety of professional sports). Additionally, the Event Center will proudly host community events such as high school graduations and high school athletics.

A. *The Estimated Cost of the Event Center*

The City has committed significant resources toward completion of the Event Center. On or around January 11, 2023, the City entered into a certain public-private agreement with Hunt Construction Group, Inc., to develop and construct the Event Center and certain related master improvements, which, subject to the terms of the agreement, shall be delivered to the City within a guaranteed maximum price of One Hundred Seventy Million and no/100 Dollars (\$170,000,000).¹ Construction of the Event Center commenced in April, 2023, and is scheduled to be completed on or around December, 2024. At the present time, the City has completed bidding on the final outstanding 25% of the project.

The City is actively engaged in structuring permanent financing for the Event Center. In December, 2022, Raymond James Bank acquired the City's \$90 million Lease Rental Revenue Bond Anticipation Note (the "BAN"). The proceeds of the BAN have allowed the City to begin development and construction on the project and the City is working with Raymond James Reinvestment Strategies Group to appropriately invest funds to be used for construction and capitalized interest costs. The BAN will mature on December 31, 2023, and the City is preparing a timetable for permanent financing with a careful eye on evolving market conditions. The Federal Open Market Committee "FOMC" has recently announced it will maintain a target range for benchmark interest rates at 5.00% to 5.25% but that additional rate hikes in the 2023 calendar year are expected. The City hopes to secure financing in a manner that avoids interest rate increases

¹ The maximum project cost (including various soft costs and other development costs) is approximately \$177.5M.

where possible and which takes advantage of the current lack of supply in the municipal bond market.

III. The PSC Development Area

The PSC Development Area is comprised of fifteen (15) hotels and the Event Center (collectively, the “Facilities”).² The hotels are geographically located in areas that will directly benefit the most from the operations of the Event Center. The total gross assessed value for the Facilities is approximately Seventy-Three Million and no/100 Dollars (\$73,000,000).³

The PSC Development Area consist of approximately 42.25 acres of non-contiguous land, with the majority of the land having a commercial or planned unit development zoning designation. Specifically, the Event Center has received all zoning approvals from the applicable City bodies, and this Plan does not purport to change the underlying zoning. While the PSC Development Area is defined by the specific Facilities, the area is generally bounded by 96th Street to the South, 126th Street to the North, Allisonville Road to the West, and Cumberland road to the East, in Fishers, Indiana.⁴

IV. The Event Center is Economically Sound and Will Protect and Increase State and Local Tax Revenues.

The Event Center is economically sound and the allocation of Covered Taxes will further strengthen the City’s position. Annual debt service on the Event Center is estimated to be \$10.4M.⁵ The maximum amount of Covered Taxes that may be captured in the PSC Development Area is Two Million Dollars (\$2,000,000) per year, and such tax shall be transferred to the City to be used for constructing or equipping the Event Center.⁶ Based upon information provided by the Indiana Department of Revenue, the City anticipates capturing the maximum amount of Covered Taxes for each year of the allocation, which expires on June 30, 2044.⁷

On or around October 10, 2022, the City Council adopted a food and beverage tax, which is estimated to generate \$3M/year. The City will pledge all food and beverage tax revenue to fund debt service of the Event Center. Moreover, the City anticipates pledging \$1.5M from a payment-in-lieu-of-taxes from its sewer utility, \$2.5M from its cumulative capital development fund (this can increase, if necessary), and \$1.5M in Event Center revenue. Additionally, it’s important to note that if needed, the City has secondary sources of revenue that it can pledge to debt service.

The Event Center will have a significant economic impact on Fishers and the State of Indiana. The economic impact of the Event Center will protect and increase State and local tax

² The Facilities are further described and depicted in Appendix A, which is attached hereto and made part of the Plan by reference.

³ This does not include the Nickel Plate Hotel and the Event Center (both of which are under construction), whose combined construction cost equals \$200M.

⁴ See Appendix A.

⁵ The City anticipates paying \$4M in 2024, \$8.8M in 2025, and \$10.4M from 2026-2063.

⁶ “Covered Taxes” are defined by Ind. Code §§ 36-7-31.3-4 and 36-7-31.3-10.

⁷ On June 23, 2023, the Department of Revenue reported that the sales tax for fourteen of the designated Facilities (the Nickel Plate Hotel and Event Center are being constructed) for the time period of June 1, 2022 – May 31, 2023 was approximately \$2,370,000, and the income tax for these designated Facilities was approximately \$110,000.

revenues. Current estimates suggest that the Event Center will generate approximately \$1.5M annually in state tax revenue from its own operations. Moreover, the Event Center will exponentially benefit the City's booming entertainment district, which includes 18 acres of restaurants, retail, commercial development, and hotels. The recently expanded district contains 250 luxury apartments, 60,000 square feet of eateries and retail, 150 hotel rooms, and a 60,000-square-foot office building, in a development known as "the Union". An additional, adjacent development (the "Commons") will also include another 250 multi-family units, 50,000 square foot office building, and room for four (4) additional commercial pads, including "Chicken N Pickle". The pickleball-focused entertainment facility announced plans in 2023 to locate in the expanded Fishers District. Among other offerings, the facility will include several dining areas and bars with indoor and outdoor pickleball courts. Chicken N Pickle projects 700,000 visitors annually and creating 150 jobs. The Commons and Union developments are both anchored by the Event Center. The Commons, Union, and the Event Center are expected to generate a total of \$555M in investment for the City. This investment will create over \$130M of new assessed value to Fishers, which equates to nearly \$500,000 in revenue to Hamilton Southeastern School Corporation (or the equivalent of approximately 5 teacher salaries). With experiential destinations such as IKEA, TopGolf, Chicken N Pickle, and the Event Center, downtown Fishers is turning into a multi-day destination for out of town guests. The synergies with nearby developments and experiential destinations will allow the Event Center to amplify tax revenue generated in and around the PSC Development Area.

Statutory Findings

The Plan for the PSC Development Area meets the following required findings under Section 9 of the Professional Sports Development Act:

The Plan for the PSC Development Area includes a capital improvement that will be undertaken or has been undertaken in the tax area for a facility that is used by a professional sports franchise for practice or competitive sporting events (which also includes a capital improvement that will be undertaken or has been undertaken in the tax area for a facility that is used for any purpose specified by Ind. Code §36-7-31.3-8(a)(2). As described above, the Event Center will be host to the Indy Fuel who has entered into a long-term license agreement with the City to host its regular season home games and home playoff games in the Event Center.

The capital improvement that will be undertaken (or that has been undertaken) in the PSC Development Area will benefit the public health and welfare and will be of public utility and benefit. As described above, the Event Center is the cornerstone to a rapidly growing entertainment district that includes restaurants, retail, mixed-use development, and hotels all within a walkable area. The Event Center itself will be a source of cultural enrichment and entertainment in the community which will increase the overall quality of life in Fishers. In addition, the general welfare of the citizens of the City is inextricably related to the economic opportunities available to them. The project will accommodate additional business activity within the PSC Development Area and surrounding territory, thus attracting new business

enterprises and promoting significant employment opportunities for residents of the City. Finally, the Event Center will be made available for various community events such as graduation and high school athletics.

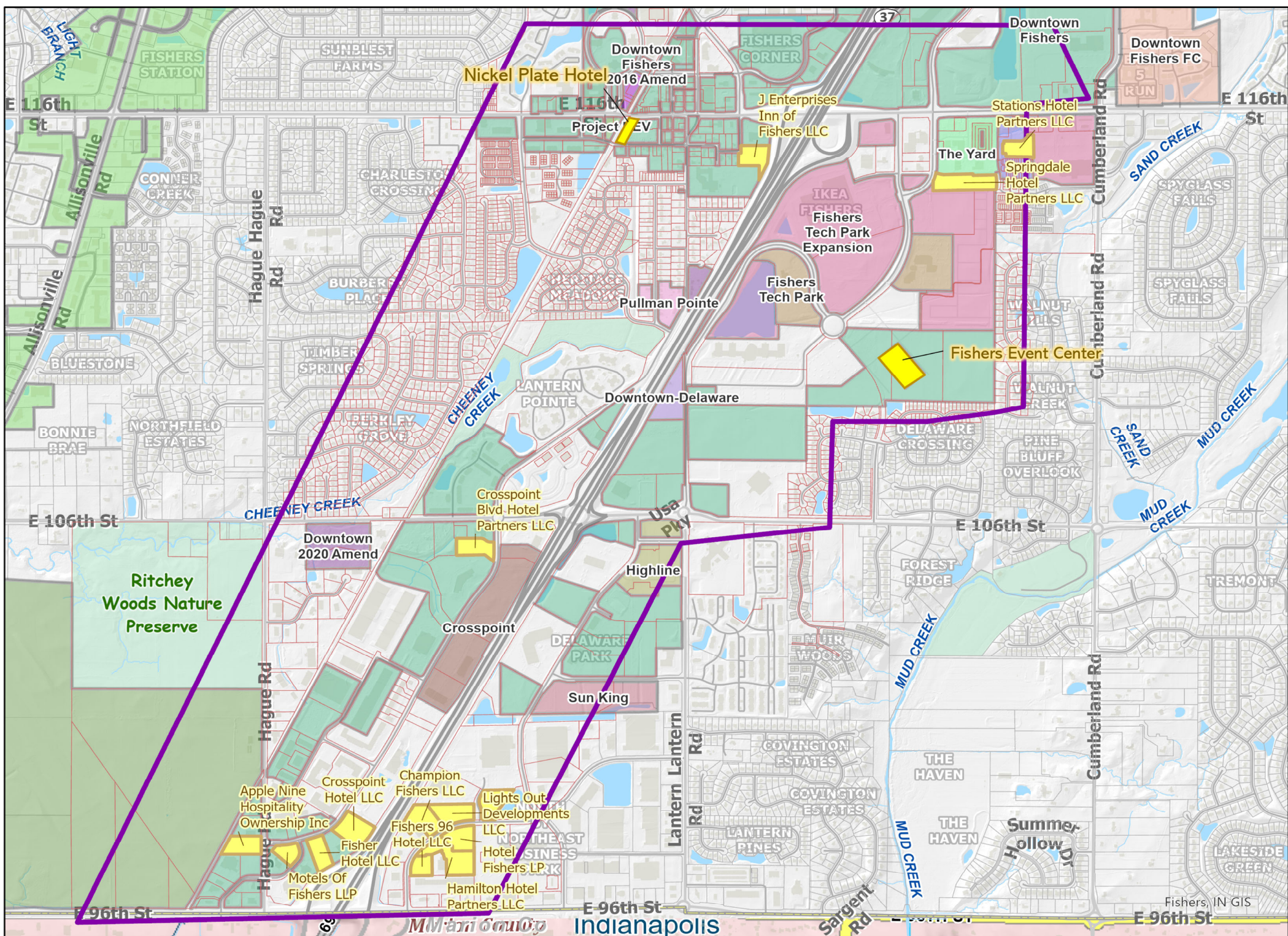
The capital improvement that will be undertaken (or that has been undertaken) in the PSC Development Area will protect or increase state and local tax bases and tax revenues. As further described herein, the Event Center will have a significant economic impact on Fishers and the State of Indiana. The Commons, Union, and the Event Center are expected to generate a total of \$555M in investment for the City, which will create over \$130M of new assessed value to Fishers. The synergies with nearby developments and experiential destinations will allow the Event Center to amplify tax revenue generated in and around the tax area.

Amendment of Plan

This Plan may be amended by following the procedures described in Section 17.5 of the Redevelopment Act and Section 8 of the Professional Sports Development Act.

Appendix A

[*The Facilities*]



PSC Development Area - The Facilities												
Facility Name	Deeded Owner	Address	City	Acres	Use	Tax District	Township	Zoning	Land AV	Improvement AV	Total Gross AV	Construction Cost
Best Western	Lights Out Developments LLC	9790 North By Northeast Blvd	Fishers	3.07	Hotels	Fishers	Delaware	C3	\$ 1,381,500.00	\$ 2,981,500.00	\$ 4,363,000.00	
Comfort Inn & Suites	Champion Fishers LLC	9780 North By Northeast Blvd	Fishers	2.97	Hotels	Fishers	Delaware	C3	\$ 1,298,000.00	\$ 179,000.00	\$ 1,477,000.00	
Courtyard	Stations Hotel Partners LLC	11550 Whistle Dr	Fishers	2.12	Hotels	Fishers	Delaware	PUD-M	\$ 1,272,000.00	\$ 7,856,600.00	\$ 9,128,600.00	
Fairfield Inn & Suites	Crosspoint Blvd Hotel Partners LLC	10495 Crosspoint Blvd	Indianapolis	2.45	Hotels	Fishers	Delaware	PUD-C	\$ 1,195,000.00	\$ 2,508,200.00	\$ 3,703,200.00	
Hampton Inn & Suites	J Enterprises Inn of Fishers LLC	11575 Commercial Dr	Fishers	2.54	Hotels	Fishers	Delaware	NPC-HC	\$ 1,270,000.00	\$ 2,751,300.00	\$ 4,021,300.00	
Hilton Garden Inn	Hamilton Hotel Partners LLC	9785 North By Northeast Blvd	Fishers	4.15	Hotels	Fishers	Delaware	C3	\$ 1,678,500.00	\$ 4,768,000.00	\$ 6,446,500.00	
Holiday Inn Express	Hotel Fishers LP	9791 North By Northeast Blvd	Fishers	2.56	Hotels	Fishers	Delaware	C3	\$ 1,152,000.00	\$ 3,131,800.00	\$ 4,283,800.00	
Home 2 Suites	Fishers 96 Hotel LLC	9701 North By Northeast Blvd	Fishers	1.65	Hotels	Fishers	Delaware	C3	\$ 742,500.00	\$ 4,681,300.00	\$ 5,423,800.00	
Hyatt Place	Springdale Hotel Partners LLC	11455 Ikea Way	Fishers	3.96	Hotels	Fishers	Delaware	PUD-M	\$ 2,376,000.00	\$ 10,974,600.00	\$ 13,350,600.00	
*Nickel Plate Hotel	Nickel Plate Hotel Partners LLC	8651 E 116th St	Fishers	0.54	Hotels	Fishers	Delaware	NPC-DC				\$ 30,000,000.00
Quality Suites	Motels Of Fishers LLP	9760 Cross Point Cmn	Indianapolis	1.56	Hotels	Fishers	Delaware	PUD-C	\$ 780,000.00	\$ 998,400.00	\$ 1,778,400.00	
Residence Inn	Fisher Hotel LLC	9765 Crosspoint Blvd	Indianapolis	2.25	Hotels	Fishers	Delaware	PUD-C	\$ 1,125,000.00	\$ 2,615,500.00	\$ 3,740,500.00	
Springhill Suites	Apple Nine Hospitality Ownership Inc	9698 Hague Rd	Indianapolis	2.62	Hotels	Fishers	Delaware	PUD-C	\$ 1,310,000.00	\$ 5,087,600.00	\$ 6,397,600.00	
Staybridge Suites	Crosspoint Hotel LLC	9780 Crosspoint Blvd	Indianapolis	3.43	Hotels	Fishers	Delaware	PUD-C	\$ 1,715,000.00	\$ 5,366,500.00	\$ 7,081,500.00	
Studio 6	8250 Fishers Inc	8250 North By Northeast Blvd	Fishers	2.56	Hotels	Fishers	Delaware	C3	\$ 1,152,000.00	\$ 727,200.00	\$ 1,879,200.00	
**Fishers Event Center	The City of Fishers	11000 Stockdale St	Fishers	3.82	Entertainment	Fishers	Delaware	PUD-M				\$ 170,000,000.00
Total									\$ 18,447,500.00	\$ 54,627,500.00	\$ 73,075,000.00	
*Anticipated Completion in 2024; **Anticipated Completion in 2025												



January 10, 2022
May 25, 2023 (Updated)

Fishers Indiana
Megan Baumgartner – Director, Economic Development
Jason Taylor – Director, Department of Engineering
1 Municipal Drive
Fishers, IN 46038

Re: Owner's Representative Services for the Life Science's Master Detention

Dear Ms. Baumgartner,

The Veridus Group, Inc., is pleased to provide the following proposal for the project management and owner representation services for the Fishers Life Sciences Development, specifically for the delivery of the Master Detention and associated infrastructure at 126th Street and Cumberland Road in Fishers Indiana. We have prepared a scope of services based on our conversations, our understanding of the proposed project, and our experience with similar projects. Veridus will utilize our collective experience in similar projects in order to provide the services necessary to oversee the development of plans and specifications as well as the construction, for completion of the work as stated in the Project Scope below.

Update 5.25.23: *The original proposal accounted for a fixed fee totaling \$74,600 which covered our effort to provide Owner's Representative services for what we originally understood to be 9 months of work. At the time, when we initially submitted our proposal on January 10, 2022, we had based our proposal on the known schedule at the time provided by Pepper and Gradex which potentially had the infrastructure project completing in September 2022. Due to unforeseen delays with the project, we are still working to complete the Master Detention (Off-Site scope of work) as well as the other infrastructure associated with what will be public utilities (Sanitary and Storm) as well as the construction of roads. Given the delay's, Veridus was able to adjust our original billing and we were able to continue to provide services through March of 2023. The additional fee of \$50,450 will cover services from April 2023 through September 2023.*

We are very excited for the project which has been developed to date and look forward for the opportunity to continue providing Owner's Representative Services for the Town to ultimately to fully deliver these projects.

***Finally, while Veridus has been outside of our contract we have continued to provide our Owners Representative services. With the approval of this contract extension, Veridus will bill for services already rendered for April and May of 2023 as shown below in the compensation schedule.*

PROJECT DESCRIPTION

Project Description – The City of Fishers is in the process of delivering a new master detention pond that will service the Life Sciences Development. The detention pond is anticipated to be located on the west side of the site and will be approximately 3-4 acres in size and will have approximately 1200-1400 lf of new storm sewer associated with the project. In addition, work is currently proceeding to infill the existing pond which is located at the south / southwest corner of the site. The construction of the new master detention at the west side of the site will in the end provide



more ground for development. It is anticipated that soils to build the new master detention will be utilized to complete the infill of the existing pond.

It is understood that there are multiple partners and contractors involved that will require coordination and management from the Cities perspective. These include the Servanoto Group with WSP Engineering, Gradex Inc., Thienamen and Pepper Construction, as well as List Biotherapeutics with Jacobs Engineering. The City of Fishers has selected Kimley Horn to provide design services for the new Master Detention and infrastructure. We understand that the City is requesting Veridus to take the lead with regard to the onsite coordination meetings as well as provide coordination for the overall project on the City's behalf. It is our understanding outside of a weekly meeting with the City Staff for updates there is also a weekly coordination meeting with the development teams as well.

Finally, we understand there is a potential need for assistance with construction inspection. To assist with this our team would propose bringing on JQOL for these services. We have provided a proposal for your review and approval. If the City would prefer, these inspection services could be contracted directly with the City or we could hold under our contract.

PROJECT APPROACH

We would propose this work be completed in two phases. We have included a potential schedule for the project as well. The breakdown of the phases and the potential schedule is as follows (also see the included Project Approach document). Note, that per discussions with City Staff we understand the delivery of the design phase should be expedited as quickly as possible.

Phase I – Design Phase and Coordination

December 2021 – March 2022

Updated: Phase II – Bidding, Construction, Construction Inspection and Coordination

April 2022 – ~~September 2022~~ – September 2023

PROJECT SCOPE OF SERVICES

The following is a general scope of services we typically perform on projects within the phasing structure above. This is meant to be a representative list of the services we provide.

I. Design and Construction Team Management

- A. Establish a communication protocol for the design team (contractor, architect and engineers)
- B. Attend meetings as the City of Fishers Owner's representative
- C. Perform value engineering process and provide recommendations on cost controls
- D. Write and submit progress reports to the Owner on a schedule determined by the Owner
- E. Assist in identifying scope gaps and needed services



- F. Provide construction document review
- G. Oversee the total budget operation including design, construction and any other budget item
- H. Development of Requests for Proposals for the solicitation of Contractors if required
- I. Assist in the submittal and approval process to Hamilton County, The City of Fishers and the State of Indiana

II. Construction Oversight

- A. Review the design and construction overall schedule and performance guidelines for bidding the project.
- B. Conduct the bidding process to secure the final construction team.
- C. Conduct a planning meeting with the team to fully review the project and understand the budget, schedule, and milestones set for the project.
- D. Work with the selected contractor to ensure all changes to the plans were priced appropriately
- E. Finalize the Contractor's contract documentation including insurance and bonding requirements as necessary.
- F. Conduct and document the pre-construction meeting with the design & construction team for purposes of establishing a document submittal system and discussing critical path construction items.
- G. Provide construction observation and review including the following:
 - 1) Conduct twice-weekly construction site visits to verify standard procedures are being followed as well as general quality control observations
 - 2) Attend weekly meeting with City Staff to provide updates and review outstanding issues, costs and schedule updates.
 - 3) Attend weekly meeting with the development and construction teams to review outstanding issues, RFI's, change requests, schedule, etc.
 - 4) Review contractor Payment Applications
 - 5) Report on project schedule adherence by establishing and monitoring project milestones
- H. Provide project close-out services including the following:
 - 1) Attend and document a punch list walk-thru and final close out construction meeting
 - 2) Review all project information, O&M manuals, etc. from design and construction team for owner operation and maintenance as required.

III. Construction Inspection – This request for contract extension does not apply to CI. These services were approved in the original contract and there are adequate funds remaining in JQOL's NTE fee to complete the project.

- A. Construction inspection services shall be provided by JQOL. Please see the attached proposal for further details. The scope of services for CI will generally include the following items.
 - 1) Provide supervision and progress reports for the storm drainage improvements in conjunction with the project.
 - 2) Attend weekly progress meetings as required



- 3) Please note that the City has the preference of holding the CI Services Contract with JQOL or Veridus will hold this. If Veridus holds the contract there will be a 5% markup on services from JQOL for the benefit of Veridus for management services.

CLIENT PROVIDED ITEMS

- A. Fees for all permits and approvals (or reimbursable)
- B. Documents / Drawings of existing project

COMPENSATION

We are excited to assist the City of Fishers with Owner's Technical Representative Services and look forward to being an extension of your staff on a daily basis. We would recommend compensation for services rendered be billed as a fixed fee and invoiced monthly (in arrears). Full payment of invoices is due within 30 days from invoice date. Below is the fixed fee amount for our services (based on our projected effort), along with an estimated breakdown of how we anticipate the fee schedule to be distributed over the life of the project. We understand the project currently underway and schedule as well as immediate coordination is critical as such our services would start immediately.

If payment is not made within 30 days of the date when the payment is due, we may, at our option, and effective upon the delivery of written notice of our intention to do so, terminate the contract or suspend further performance of our services under the contract, and we shall have no liability for delay or damage that results from the termination of the contract or suspension of services.

Initial Fixed Fee Proposal Total (Paid in Full)..... \$74,600

Requested Fixed Fee Extension to Complete Project \$50,450

Total Fee: \$125,050

**Remaining Fee to Bill: \$50,450
With/Out CI Services**

Veridus Scope of Work Monthly Fee of \$50,450 over 6 Months

2023	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
				\$8,700	\$8,700	\$8,700	\$8,700	\$8,700	\$6,950			

REIMBURSABLE EXPENSES

The following expenses will be considered reimbursable and will be invoiced at their direct cost on the monthly invoices. Expenses estimated not-to-exceed \$2,500.

****Update: There is currently a remaining balance of \$1,744 remaining from the initial proposal for reimbursable expenses. No addition reimbursable expenses are being requested with this contract extension.**



- A. Reproduction services for plans and specifications
- B. Overnight postage, certified mail, and delivery services
- C. Permit or applications fees as paid by Veridus
- D. Project-related mileage at the current federal rate

If payment is not made within 30 days of the date when the payment is due, we may, at our option, and effective upon the delivery of written notice of our intention to do so, terminate the contract or suspend further performance of our services under the contract, and we shall have no liability for delay or damage that results from the termination of the contract or suspension of services.

Ms. Baumgartner, we thank you for this opportunity and look forward to working with you on this project. The fees for services contained in this proposal are valid for one year from the date of this letter. If the terms of this proposal and the attached agreement are agreeable, we will schedule a kickoff meeting with your team and begin the work.

If you have any questions, please feel free to contact our office at (317) 598-6647.

Sincerely,
Veridus Group, Inc.

David Rainey
Director – Owner's Representative Group

Accepted

Date

PROJECT AGREEMENT

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

Recitals

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

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

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

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

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

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

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

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

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

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

Agreement

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

1. Defined Terms.

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

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

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

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

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

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

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

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

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

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

Change Order shall mean a change order executed by the City (or its designee) and Company

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

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

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

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

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

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

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

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

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

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

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

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

Construction Drawings shall mean construction drawings with respect to the construction of the

exterior components of the Project that are approved pursuant to the Plan Refinement Process.

Construction Phase Plat shall mean the plat of the land prepared by Company that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hamilton County, Indiana prior to or contemporaneous with other documents needed for Closing, which, at a minimum creates the Garage Parcel and Company Parcel.

Cure Period shall mean a period of: (a) ten (10) days after receipt of written notice of such default given in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite commercially reasonable diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extent more than ninety (90) days after the date of default.

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

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

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

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

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

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

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

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

(b) unusually inclement weather but not cold, ice, sleet, snow or hail in amounts typical in Indiana; (c) the unusual unavailability of materials, equipment, services, or labor; and (d) utility or energy shortages or acts or omissions of public utility providers; provided that a party's failure to anticipate normal and customary delays due to weather or normal and customary time periods to obtain Required Permits shall not be deemed Force Majeure.

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

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

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

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

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

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

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

Garage Parcel Deed shall mean a limited warranty deed by which Developer shall convey its interest in the Garage Parcel to Building Corp. at Closing, together with all improvements thereon,

which deed shall be subject only to (a) Permitted Exceptions; and (b) matters created or consented to by City Bodies at Closing.

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

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

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

Incurred Costs shall mean, if this Agreement is terminated (a) after expiration of the Diligence Period; (b) prior to the Closing, or (c) after the Outside Closing Date, all actual, out-of-pocket, third-party costs and expenses incurred by a party through the date of such termination, to the extent not previously paid or reimbursed by the other party (not to exceed \$100,000.00).

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

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

Laws shall mean all applicable laws, statutes, and/or ordinances, building codes, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City’s Unified Development Ordinance, the Nickel Plate Code and all applicable environmental laws.

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

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

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

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

Non-Compliance Notice shall mean a written notice identifying any Material Defect discovered

during a Permitted Inspection or a Final Inspection.

Outside Closing Date shall mean June 30, 2024.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Substantial Completion shall mean, with respect to the Project, the later of the date that: (a) Company receives a final or temporary certificate of occupancy for such Project; and (b) the date that Company’s architect certifies, per AIA Form G704, that the construction of the Project is substantially complete in material compliance with all Laws, this Agreement, the Final Documents (subject to Permitted Changes and Change Orders), and the Required Permits subject only to tenant improvements, certificates of occupancy for individual tenant spaces, landscaping and minor punch list items that do not materially interfere with the use or operation thereof.

Survey shall mean an ALTA survey of the Project Site, certified as of a current date by a reputable licensed surveyor; which Survey does not show any matters that would: (a) materially and adversely interfere with the construction and/or use of the Project; or (b) render construction of the Project unusually difficult or costly.

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

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

TIF Bond Proceeds shall mean the proceeds of the TIF Bond(s), which TIF Bond Proceeds shall be used to pay (a) Approved Costs, (b) Closing Costs, and (c) reasonably incurred and documented administrative costs of the City associated with maintaining the TIF Bond.

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

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

Utility Relocation shall mean the location and/or relocation of utilities serving, or that will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement.

2. Interpretation; Term and Other General Matters.

(a) The terms "include", "including" and "such as" shall each be construed as if followed by the phrase "without being limited to".

(b) Whenever a Party's consent, approval, agreement or election is required or permitted by this Agreement, such consent, approval, agreement or election shall not be unreasonably withheld, conditioned or delayed.

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

3. City's Obligations. Subject to the terms and conditions of this Agreement, the applicable City Body shall: (a) in connection with Company, jointly submit the Construction Phase Plat for

final approval and recordation at or prior to Closing; (b) execute and perform (or cause the applicable City Bodies to execute and perform) the Ancillary Agreements; (c) at Closing, issue the TIF Bonds and, consistent with the Funding Agreement, make available the TIF Bond Proceeds for Approved Costs together with Closing Costs (thereafter, disbursement of TIF Bond Proceeds shall not be made more frequently than monthly); (d) within thirty (30) days of the Closing Date, (i) issue the Additional Bond, and (ii) consistent with the Funding Agreement, make available the Additional Bond Proceeds for Approved Costs (disbursement of Additional Bond Proceeds shall not be made more frequently than monthly); (e) prior to Closing, create the Allocation Area and pledge the Pledged Increment to repayment of the TIF Bonds; (f) beginning at Closing and consistent with the Funding Agreement make available the Public Infrastructure Proceeds for Company's cost to complete the Public Infrastructure (disbursement of Public Infrastructure Proceeds shall not be made more frequently than monthly); (g) provide all stormwater improvements necessary to allow the Project to connect into a stormwater system at one or more points in the right-of-way immediately adjacent to the Project Site so that no stormwater detention or stormwater quality infrastructure is required to be constructed on the Project Site; (h) immediately after the recording of the Declaration and the HPR Plat, transfer and convey any and all of its title, rights and interests in the Multi-Family Condominium Unit to Company by Limited Warranty Deed: (i) provide reasonable assistance to Company in connection with any zoning changes or variances determined to be necessary or appropriate by Company for the construction and use of the Project in accordance with the Final Documents (subject to Permitted Changes and Change Orders); provided, however, City Bodies shall not be obligated to incur any expenses in connection with such assistance; (j) convey all title, rights and interests in its property parcel to Company known as "Rotary Park" and having the Parcel ID: 15-15-06-01-01-001.000, and (k) execute or have executed the Garage Lease which includes, but is not limited to, construction phase easements benefitting the Company, and (l) exercise commercially reasonable efforts to cause the review and timely issuance of the City's development and permit applications necessary to develop and construct the Project on the Project Site, including, whenever reasonably possible, coordinating with Company to lower the Project's costs by supporting the issuance of interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving final approval of less critical activities, to the extent allowed by the Laws; provided, however, City Bodies shall not be obligated to incur expenses related to such assistance.

4. Company's Obligations. Subject to the terms and conditions of this Agreement, Company shall: (a) at or before Closing, acquire (either by purchase by the Company or by contribution by the current owner(s) to the Company) all parcels of the Project Site to the extent not currently owned by Company; (b) in connection with the City, jointly submit the Construction Phase Plat for final approval and recordation; (c) at Closing, transfer the Garage Parcel to the City; (d) at Closing, acquire or cause a related entity to acquire the TIF Bond; (e) complete the Project, including, without limitation, the Public Infrastructure, substantially in accordance with the Final Documents (subject to Change Orders and Permitted Changes); (f) at its sole cost and expense, complete the HPR; (g) if applicable, within thirty (30) days of the recording of the Declaration and the HPR Plat, transfer and convey **any and all of its title, rights and interests** in the Garage Condominium Unit to the Building Corp. by a Limited Warranty Deed; (h) pay, when due, all

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Physical Condition. Prior to expiration of the Diligence Period, Company shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project or require unusually costly development techniques, in accordance with the terms and conditions of this Agreement.

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

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

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

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

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

(h) Bond Proceeds/Public Infrastructure Proceeds. On or before the Closing Date, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary to authorize the Bonds; and (ii) demonstrated that the (1) Bond Proceeds, and (2) Public

Infrastructure Proceeds, shall be made available to Company in accordance with the Funding Agreement.

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

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

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

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

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

Subject to Section 9, if any of the conditions set forth in this Section are not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Company either may elect to: (A) waive in writing satisfaction of the conditions and proceed to the Closing; or (B) terminate this Agreement and any executed Ancillary Agreements by delivery of written notice to City Bodies; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by a City Body, Company shall have all of the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, Company shall (1) work diligently and in good faith to satisfy the conditions set forth in this Section, and (2) if Company fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, Company shall be deemed to have waived such condition and shall proceed to Closing.

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

(a) Required Permits. Prior to Closing, Company shall have obtained, or City Bodies shall have determined that Company shall be able to obtain, all Required Permits then available for the Project.

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

(c) Environmental Condition. Prior to the expiration of the Diligence Period, Company shall have demonstrated to City Bodies that there: (i) is no contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws; (ii) are no underground storage tanks located on the Project Site; and (iii) are no wetlands on the Project Site. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the environmental condition of the Project Site.

(d) Physical Condition. Prior to the expiration of the Diligence Period, City Bodies shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(e) Ancillary Agreements. Prior to Closing, the City (or the applicable City Bodies) and Company, each exercising commercially reasonable discretion, shall have approved and executed (or at Closing will execute) the Ancillary Agreements.

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

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

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

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

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

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

Subject to Section 9, if one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, City Bodies either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement and the Ancillary Agreements by a written notice to Company; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Company, City Bodies shall have all of the rights and remedies set forth in Section 15. If City Bodies terminate pursuant to this Section, City shall pay Company its Public Infrastructure Improvement costs expended and committed. Notwithstanding anything to the contrary set forth herein, (1) City Bodies shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if the applicable City Body fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, such City Body shall be deemed to have waived such condition and shall proceed to Closing.

9. Incurred Costs and Failure to Close. Each of the City Bodies and Company is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other party will proceed to Closing on or before the Outside Closing Date, unless otherwise mutually agreed in writing by the Company and City. Accordingly, if, after expiration of the Diligence Period, Closing does not occur on or before the Outside Closing Date:

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

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

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

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

10. Representations and Warranties

(a) **City Bodies.** Each City Body represents and warrants to Company that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach

of this Agreement; (ii) the City is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) RDC is the governing body of the City of Fishers Redevelopment Department organized and existing under the laws of the State of Indiana; (iv) EDC is the governing body of the City of Fishers Economic Development Department organized and existing under the laws of the State of Indiana; (v) Building Corp., is an Indiana nonprofit corporation; (vi) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (vii) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (viii) this Agreement is the legal, valid, and binding obligation of it; and (ix) it has not engaged or dealt with any real estate broker or agent in connection with the Project, Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of a City Body.

(b) Company. Company represents and warrants to each City Body that: (i) Developer is an Indiana limited liability company, duly existing and validly formed under the laws of the State of Indiana; (ii) Owner is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana; (iii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iv) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (v) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (vi) this Agreement is the legal, valid, and binding obligation of Company; (vii) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, the Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Company or any party affiliated with Company; and (viii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. If Company has employees, Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Company has employees, Company will state, in all solicitations or advertisements for employees placed by or on behalf of Company, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin. Company states that it does not currently have employees.

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

11. Allocation Area and Pledged Increment.

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

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

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

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

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

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

(g) Garage Tax-Exempt. It is the Parties intent in structuring the transactions contemplated by this Agreement that the Garage shall be exempt from real property taxes during

the Bond Term. If at any time during the Bond Term real property taxes related to the Garage are due and are paid by Company pursuant to Section 13(c)(ii), prior to such payment by the Company, the City Bodies shall (i) provide reasonable assistance to Company in its request to Hamilton County to recognize the Garage as tax exempt; provided, however, City Bodies shall not be obligated to incur any expenses in connection with such assistance and shall not be liable for the result of any such request; and (ii) reimburse Company for any money actually received by City Bodies as a result of the Garage being taxes, which amount will not include any referenda or taxable amounts resulting from the base assessment for the Project Site.

12. Plan Refinement Process.

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

(a) Site Plan.

(b) Schematic Design Drawings.

(c) Design Development Drawings.

(d) Construction Drawings and Construction Schedule.

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

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

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

(g) Change Orders and Permitted Changes.

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

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

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

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

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

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

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

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

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

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

construction of the Project.

13. Garage Condominium Unit Conveyance & Declaration.

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

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

(c) Declaration.

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

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

and utilities; and (4) if applicable, pay all Real Estate Taxes and Assessments when due.

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

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

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

15. Default.

(h) **Events of Default.** It shall be an “Event of Default” if either Party fails to perform or observe any term or condition of this Agreement to be performed or observed by it if such default or failure is not cured within the applicable Cure Period.

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

of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it.

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

16. Mutual Indemnification.

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

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

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

17. Assignment.

(m) Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion of the Project, Company shall not assign this Agreement without the approval of the City, and the City Bodies shall not

assign this Agreement without the prior written approval of the Company; provided that: (i) without the prior written approval of Company, City Bodies may assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder; and (ii) without the prior written approval of City, Company may assign, partially or in its entirety, this Agreement to (A) a third party controlling, controlled by or under common control with Company, or (B) collaterally assign this Agreement (or portion hereof) to a Project Lender.

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

18. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt. Notice shall be provided as follows: if to (x) the City Bodies: City of Fishers, Attn: Lindsey Bennett, City Attorney, 3 Municipal Drive, Fishers, Indiana 46038, with copies (via email, only) to: Jennifer Messer, jennifermesserlaw@gmail.com, and (z) Company at Hageman Group, 12821 East New Market Street, Suite 200, Carmel, Indiana 46032 Attn: Tom Dickey, with copies (via email, only) to: Steph Kilpatrick steph.kilpatrick@hagemangroup.com. Each of the Parties may change its address for notice from time to time by delivering notice to the other party as provided above.

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

20. Force Majeure. Notwithstanding anything to the contrary set forth herein, if any Party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money, including any payment required pursuant to the Taxpayer Agreement (if required by Company) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other

party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. The Parties acknowledge the ongoing COVID-19 pandemic, and agree: (y) to exercise commercially reasonable, good-faith efforts to: (i) consider all then-current information with respect to; and (ii) adjust for shortages that reasonably can be anticipated with respect to materials, equipment, services, and/or labor that reasonably are likely to occur as a result of; the COVID-19 pandemic; and (z) that, notwithstanding that the COVID-19 pandemic falls within the definition of “Force Majeure”, the protections of this Section shall not apply to a claim of Force Majeure based on COVID-19 if the applicable party fails to comply with the foregoing requirement.

21. Merger. All prior agreements, understandings, and commitments with respect to the transaction contemplated herein are hereby superseded, terminated, and merged herein, and shall be of no further force or effect. Absent an amendment to, or modification of, this Agreement in accordance with this section, in no event shall City Bodies be obligated to perform any work, incur any expenses, or provide any incentives (whether with respect to the Project Site, the Project, or any site or improvements adjacent to, or in the vicinity of, the Project Site) other than as specifically set forth in this Agreement. This Agreement may be amended or modified only by written instrument executed by City Bodies and Company.

22. Miscellaneous. Subject to Section 17, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Company, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Company waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Company may have to: (i) assert the doctrine of “forum non conveniens”; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by the City, EDC, Building Corp., RDC, and Company. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, employment relationship or joint venture between Company, the City, EDC, Building Corp., and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period

of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Fishers, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Any amounts due or to be paid hereunder shall bear interest at the prime rate as published in *The Wall Street Journal* plus five percent (5%) per annum from the date due until paid.

23. Execution of Agreement. Upon City Bodies' approval and execution of this Agreement, the City shall provide to Company the executed Agreement (the "City-Executed Agreement"). Within ten (10) days of Company's receipt of the City-Executed Agreement, Company shall execute this Agreement and provide the City a copy of such fully executed Agreement. Failure to strictly comply with this Section 23 shall terminate and automatically revoke any offer made by City Bodies herein, and shall, without further action of any of City Bodies, nullify and render of no force or effect City Bodies' approval of this Agreement.

Index of Exhibits:

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

[signatures on following pages]

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

“CITY”

CITY OF FISHERS, INDIANA

By: _____
Scott Fadness, Mayor

“EDC”

**CITY OF FISHERS ECONOMIC DEVELOPMENT
COMMISSION**

By: _____

“RDC”

FISHERS REDEVELOPMENT COMMISSION

By: _____
Damon Grothe, President

ATTEST:

By: _____
Brad Johnson, Secretary

“BUILDING CORP.”

**FISHERS TOWN HALL BUILDING
CORPORATION**

By: _____

Its: _____

“OWNER”

By: _____

Its: _____

“DEVELOPER”

By: _____

Its: _____

Exhibit A
City Parcel

Exhibit B
Company Parcel

Exhibit C
Concept Plan

Exhibit D
Garage Parcel

Exhibit E
Project Site

Exhibit F
Public Streetscape Improvements

Exhibit G
TIF Bond Summary

Exhibit H
Company Insurance Requirements

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

1.	Workers Compensation insurance coverage in accordance with statutory requirements.
2.	Employers Liability Insurance with limits of not less than \$1,000,000.00 each accident; \$1,000,000.00 Disease- each employee; and \$1,000,000.00 Disease Policy Limit.
3.	Commercial General Liability Insurance on ISO form GC0001 10 01 (or a substitute form providing equivalent coverage) and General Contractor and Subcontractors shall provide the Company with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG2037 10 01 (or substitute forms providing equivalent coverage) naming the City and the Redevelopment Commission as additional insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City and the Redevelopment Commission per the follows: \$1,000,000.00 Each Occurrence (BI & PD Combined Single Limit); \$2,000,000.00 General Occurrence (subject to per project general aggregate provision); and
4.	Business Automobile Liability Insurance: Written in the amount of not less than \$1,000,000.00 each accident to include the City and the Redevelopment Commission as additional insureds.
5.	Umbrella Liability: \$2,000,000.00.

RESOLUTION FRC 01R071323 APPROVING PROJECT AGREEMENT (CITY VIEW)

WHEREAS, HighGround Fishers I, LLC, an Indiana limited liability company (“Developer”), and HighGround Fishers I, Inc., an Indiana corporation (“Owner” and together with the Developer, the “Company”), are sister companies to Hageman Development, an Indiana real estate development company with a reputation of delivering complex multi-family, office, retail and community amenities across Indiana, including large, multi-use developments like the Spark in Fishers, the Barlow in Plainfield, the Levinson in Noblesville and the Linc in Valparaiso, among others;

WHEREAS, Company submitted a proposal to City Bodies for a mixed-use development consisting of (i) approximately one hundred eighty-four (184) luxury, age restricted, active adult (55 and over in conformance with the Housing for Older Persons Act) residential units and (ii) approximately sixteen thousand, five hundred square feet (16,500 sq. ft.) of commercial/retail and restaurant space along 116th Street adjacent to the First Internet Bank building, if the City will approve the incentives described in the Project Agreement attached hereto and incorporated herein as **Exhibit A** (the “Agreement”);

WHEREAS, if Company will complete the Project, the City Bodies have agreed to enter into the Agreement, issue developer-backed and City-backed bonds and contribute certain real property to the Project; and

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

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

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

Section 2. The President and Secretary of the Commission are 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 ____th day of July, 2023.

**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.

Exhibit A
[separately included]

RESOLUTION FRC 02R071323 APPROVING PROJECT AGREEMENT (DISTRICT SOUTH)

Rebar South Street, LLC, an Indiana limited liability company (“Developer”) and Rebar South Street, Inc., an Indiana corporation (“Owner” and together with the Developer, the “Company”), are sister companies of Rebar Development, a real estate development company headquartered in the City’s Nickel Plate District;

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

WHEREAS, Company has assembled seven (7) properties on South Street and has submitted a proposal to City Bodies to redevelop the Project Site as five (5) buildings that are, collectively, approximately 133,320 sq. ft., in size and include approximately (a) 82 multifamily units, and (b) 28,760 sq. ft of commercial and office space, if the City Bodies will provide the incentives included in the Project Agreement attached hereto and incorporated herein as Exhibit A (the “Agreement”); and

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

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

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

Section 2. The President and Secretary of the Commission are 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 ____th day of July, 2023.

**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.

Exhibit A
[separately included]

PROJECT AGREEMENT

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

Recitals

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

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

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

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

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

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

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

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

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

Agreement

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

1. Defined Terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cure Period shall mean a period of: (a) ten (10) days after receipt of written notice of such default given in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite commercially reasonable diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently

pursues such cure to completion; provided that in no event shall a Cure Period extent more than ninety (90) days after the date of default.

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

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

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

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

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

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

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

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

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

FTEs shall mean full time employees.

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

Proceeds.

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

Incurred Costs shall mean, if this Agreement is terminated (a) after expiration of the Diligence Period and prior to the Closing, or (b) after the Outside Closing Date, all actual, out-of-pocket, third-party costs and expenses incurred by a party through the date of such termination, to the extent not previously paid or reimbursed by the other party (not to exceed \$100,000.00).

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

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

Laws shall mean all applicable laws, statutes, and/or ordinances, building codes, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City’s Unified Development Ordinance, the Nickel Plate Code and all applicable environmental laws.

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

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

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

Notice shall mean a notice given pursuant to Section 18 hereof.

Outside Closing Date shall mean December 1, 2023.

Permitted Change shall mean a change to a Final Document for the Project that: (a) is not

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Substantial Completion shall mean, with respect to the Project, the later of the date that: (a) Company receives a final or temporary certificate of occupancy for such Project; and (b) the date that Company’s architect certifies, per AIA Form G704, that the construction of the Project is substantially complete in material compliance with all Laws, this Agreement, the Final Documents (subject to Permitted Changes and Change Orders), and the Required Permits subject only to tenant improvements, certificates of occupancy for individual tenant spaces, landscaping and minor punch list items that do not materially interfere with the use or operation thereof.

Survey shall mean an ALTA survey of the Project Site, certified as of a current date by a reputable licensed surveyor; which Survey does not show any matters that would: (a) materially and adversely interfere with the construction and/or use of the Project; or (b) render construction of the Project unusually difficult or costly.

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

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

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

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

2. Interpretation; Term and Other General Matters.

(a) The terms "include", "including" and "such as" shall each be construed as if followed by the phrase "without being limited to".

(b) Whenever a Party's consent, approval, agreement or election is required or permitted by this Agreement, such consent, approval, agreement or election shall not be unreasonably withheld, conditioned or delayed.

(c) The term of this Agreement shall be for the period commencing on the Execution Date and continuing through the first to occur of (i) Substantial Completion of the Project, or (ii) termination of this Agreement. Except as expressly set forth otherwise herein, this Agreement shall terminate upon the expiration of this term of this Agreement; provided, however, the obligation of the Parties (i) to pay any money owed pursuant to this Agreement, or (ii) pursuant to Section 12(1) (for a period of ten (10) years from Substantial Completion), shall survive termination of this Agreement.

3. City's Obligations. Subject to the terms and conditions of this Agreement, the applicable City Body shall: (a) in connection with Company, jointly submit the Plat for final approval and recordation at or prior to Closing; (b) execute and perform (or cause the applicable City Bodies to execute and perform) the Ancillary Agreements; (c) within thirty (30) days of the Closing Date, (i) issue the Bond, and (ii) consistent with the Funding Agreement, make available the Bond Proceeds for Approved Costs (disbursement of Bond Proceeds shall not be made more frequently than monthly); (d) at Closing, transfer the City Parcel to the Company; (e) provide reasonable assistance to Company in connection with any zoning changes or variances determined to be necessary or appropriate by Company for the construction and use of the Project in accordance with the Final Documents (subject to Permitted Changes and Change Orders); provided, however, City Bodies shall not be obligated to incur any expenses in connection with such assistance; and (f) exercise commercially reasonable efforts to cause the review and timely issuance of the City's development and permit applications necessary to develop and construct the Project on the Project Site, including, whenever reasonably possible, coordinating with Company to lower the Project's costs by supporting the issuance of interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving

final approval of less critical activities, to the extent allowed by the Laws; provided, however, City Bodies shall not be obligated to incur expenses related to such assistance.

4. Company's Obligations. Subject to the terms and conditions of this Agreement, Company shall: (a) at or before Closing, acquire all parcels of the Project Site (with the City Parcel to be conveyed at Closing) to the extent not currently owned by Company; (b) in connection with the City, jointly submit the Plat for final approval and recordation; (c) complete the Project, including, without limitation, the Public Streetscape Improvements and make a good faith effort to work with Heritage Meadows and adjacent neighbors to design and program the open green space, substantially in accordance with the Final Documents (subject to Change Orders and Permitted Changes); (d) pay, when due, all Real Estate Taxes and Assessments on the Project and the Project Site; (e) make or cause to be made the payments required by the Taxpayer Agreement; (f) obtain the Project Loan and ensure that proceeds of the Project Loans are available on the Closing Date (subject to the satisfaction of customary draw conditions); (g) pay all City Fees; and (h) execute and perform the Ancillary Agreements.

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

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

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

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

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

(iii) *[intentionally omitted]*

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

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

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

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

matters for the City Parcel;

- (C) an affidavit that Company is not a “foreign person”, in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder; and
- (D) a certification by the City Bodies and Company that all representations and warranties set forth in Subsection 10(a) and (b), respectively, remain true and accurate in all material respects as of the Closing Date.

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

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

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

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

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

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

(b) Physical Condition. Prior to expiration of the Diligence Period, Company shall have determined that no test, inspection, examination, study, or investigation of the Project Site

establishes that there are conditions that would interfere materially with the construction and use of the Project or require unusually costly development techniques, in accordance with the terms and conditions of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

Subject to Section 9, if any of the conditions set forth in this Section are not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Company either may elect to: (A) waive in writing satisfaction of the conditions and proceed to the Closing; or (B) terminate this Agreement and any executed Ancillary Agreements by delivery of written notice to City Bodies; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by a City Body, Company shall have all of the rights and remedies set forth in Section 14. Notwithstanding anything to the contrary set forth herein, Company shall (1) work diligently and in good faith to satisfy the conditions set forth in this Section, and (2) if Company fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, Company shall be deemed to have waived such condition and shall proceed to Closing.

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

(a) **Required Permits.** Prior to Closing, Company shall have obtained, or City Bodies shall have determined that Company shall be able to obtain, all Required Permits then available for the Project.

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

(c) **Environmental Condition.** Prior to the expiration of the Diligence Period, Company shall have demonstrated to City Bodies that there: (i) is no contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws; (ii) are no underground storage tanks located on the Project Site; and (iii) are no wetlands on the Project Site. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the environmental condition of the Project Site.

(d) **Physical Condition.** Prior to the expiration of the Diligence Period, City Bodies shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(e) **Ancillary Agreements.** Prior to Closing, the City (or the applicable City Bodies) and Company, each exercising commercially reasonable discretion, shall have approved and executed (or at Closing will execute) the Ancillary Agreements.

(f) **Financing Documents.** On or before the Closing Date, the Project Loan shall be closed, and in connection therewith, the Project Loan Documents, and any additional documents

relating thereto shall be fully executed by all parties thereto and the proceeds of the Project Loan shall be immediately available to Company without Company's satisfaction of any additional conditions (except for the satisfaction of customary draw conditions).

(g) Procedure. Prior to the expiration of the Diligence Period, the Parties have agreed on the terms on which the Bonds will be issued, and each of the City Bodies has completed all procedures required by the Laws in connection with consummating the transaction contemplated herein, including that all recommendations, approvals, authorizations, resolutions, and/or ordinances required to be completed, obtained, and/or adopted in connection with: (i) the issuance and sale of the Bonds on the terms to which the Parties have agreed; and (ii) the use of the Bond Proceeds to pay Approved Costs incurred in connection with the Project.

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

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

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

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

Subject to Section 9, if one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, City Bodies either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement and the Ancillary Agreements by a written notice to Company; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Company, City Bodies shall have all of the rights and remedies set forth in Section 14. Notwithstanding anything to the contrary set forth herein, (1) City Bodies shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if the applicable City Body fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, such City Body shall be deemed to have waived such condition and shall proceed to Closing.

9. Incurred Costs and Failure to Close. Each of the City Bodies and Company is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other party will proceed to Closing on or before the Outside Closing Date, unless otherwise mutually agreed in writing by the Company and City. Accordingly, if, after expiration of the Diligence Period, Closing does not occur on or before the Outside Closing Date:

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

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

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

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

10. Representations and Warranties

(a) City Bodies. Each City Body represents and warrants to Company that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) the City is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) RDC is the governing body of the City of Fishers Redevelopment Department organized and existing under the laws of the State of Indiana; (iv) EDC is the governing body of the City of Fishers Economic Development Department organized and existing under the laws of the State of Indiana; (v) Building Corp., is an Indiana nonprofit corporation; (vi) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (vii) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (viii) this Agreement is the legal, valid, and binding obligation of it; and (ix) it has not engaged or dealt with any real estate broker or agent in connection with the Project, Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of a City Body.

(b) Company. Company represents and warrants to each City Body that: (i) Developer is an Indiana limited liability company, duly existing and validly formed under the laws of the State of Indiana; (ii) Owner is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana; (iii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iv) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (v) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (vi) this Agreement is the legal, valid, and binding obligation of Company; (vii) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, the Project Site, or this transaction

and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Company or any party affiliated with Company; and (viii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. If Company has employees, Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Company has employees, Company will state, in all solicitations or advertisements for employees placed by or on behalf of Company, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin. Company states that it does not currently have employees.

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

11. [Intentionally Omitted].

12. Plan Refinement Process.

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

(a) Site Plan.

(b) Schematic Design Drawings.

(c) Design Development Drawings.

(d) Construction Drawings and Construction Schedule.

(e) Approval of Submitted Document. Within fourteen (14) days after the City receives each of the Site Plan, the Schematic Design Drawings, the Design Development Drawings, the Construction Drawings and the Construction Schedule (each, a "Submitted Document"), the City shall deliver to Company written notice that it approves or rejects the Submitted Document; provided that, if the City rejects all or any part of a Submitted Document, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such

rejection. Upon the City's approval of a Submitted Document, or if the City fails to respond within the time period provided above, any such Submitted Document shall be deemed approved. Provided that a Submitted Document complies with the Laws, the City shall approve each Submitted Document if it is materially consistent with the immediately preceding Submitted Document approved by the City. For example, and without limitation, if the Design Development Drawings comply with the Laws and are materially consistent with the Schematic Design Drawings, the City shall approve the Design Development Drawings.

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

(g) Change Orders and Permitted Changes.

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

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

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

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

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

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

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

day period and thereafter continuously and diligently pursues such remedy to completion.

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

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

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

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

14. Default

(a) Events of Default. It shall be an "Event of Default" if either Party fails to perform or observe any term or condition of this Agreement to be performed or observed by it if such default or failure is not cured within the applicable Cure Period.

General Remedies. During the continuance of an Event of Default, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting Party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any

such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it.

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

15. Mutual Indemnification.

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

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

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

16. Special Remedies.

(a) No Commencement. Subject to Force Majeure and after offering in writing to

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

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

enforce any of the covenants, conditions, reservations and rights contained in this Section 16(b), or to invoke any available remedy with respect to an Event of Default by Company shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

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

17. Assignment. Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion of the Project, Company shall not assign this Agreement without the approval of the City, and the City Bodies shall not assign this Agreement without the prior written approval of the Company; provided that: (i) without the prior written approval of Company, City Bodies may assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder; and (ii) without the prior written approval of City, Company may assign, partially or in its entirety, this Agreement to (A) a third party controlling, controlled by or under common control with Company, or (B) collaterally assign this Agreement (or portion hereof) to a Project Lender. Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Company, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Bodies or Company, as the case may be, from such performance; provided that, if any City Body assigns this Agreement to another agency or instrumentality of the City that: (i) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder; and (ii) expressly assumes all such obligations in writing; then the applicable City Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

18. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt. Notice shall be provided as follows: if to (x) the City Bodies: City of Fishers, Attn: Lindsey Bennett, City Attorney, 3 Municipal Drive, Fishers, Indiana 46038, with copies (via email, only) to: Jennifer Messer, jennifermesserlaw@gmail.com, and (z) Company at Rebar Development, 8700 North Street, Suite 120, Fishers, Indiana 46032 Attn: Shelby Bowen, with copies (via email, only) to: Liz Bowen (liz@rebardev.com). Each of the Parties may change its address for notice from time to time by delivering notice to the other party as provided above.

19. Authority. Each undersigned person executing this Agreement on behalf of the City, EDC, RDC, Building Corp. and Company represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City, EDC RDC, Building Corp. or Company, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and

performance of this Agreement duly have been authorized by the City, RDC, EDC, Building Corp. and Company, respectively; provided, however, each of the City's, EDC's, Building Corp.'s RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which the City, EDC, Building Corp. and RDC agree to undertake with diligence and in good faith.

20. Force Majeure. Notwithstanding anything to the contrary set forth herein, if any Party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money, including any payment required pursuant to the Taxpayer Agreement (if required by Company) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

21. Merger. All prior agreements, understandings, and commitments with respect to the transaction contemplated herein are hereby superseded, terminated, and merged herein, and shall be of no further force or effect. Absent an amendment to, or modification of, this Agreement in accordance with this section, in no event shall City Bodies be obligated to perform any work, incur any expenses, or provide any incentives (whether with respect to the Project Site, the Project, or any site or improvements adjacent to, or in the vicinity of, the Project Site) other than as specifically set forth in this Agreement. This Agreement may be amended or modified only by written instrument executed by City Bodies and Company.

22. Miscellaneous. Subject to Section 17, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Company, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Company waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Company may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by the City, EDC, Building Corp., RDC, and Company. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or

content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, employment relationship or joint venture between Company, the City, EDC, Building Corp., and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Fishers, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Any amounts due or to be paid hereunder shall bear interest at the prime rate as published in *The Wall Street Journal* plus five percent (5%) per annum from the date due until paid.

23. Execution of Agreement. Upon City Bodies' approval and execution of this Agreement, the City shall provide to Company the executed Agreement (the "City-Executed Agreement"). Within ten (10) days of Company receiving the City-Executed Agreement, Company shall execute this Agreement and provide the City a copy of such fully executed Agreement. Failure to strictly comply with this Section 23 shall terminate and automatically revoke any offer made by City Bodies herein, and shall, without further action of any of City Bodies, nullify and render of no force or effect City Bodies' approval of this Agreement.

Index of Exhibits:

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

[signatures on following pages]

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

“CITY”

CITY OF FISHERS, INDIANA

By: _____
Scott Fadness, Mayor

“EDC”

**CITY OF FISHERS ECONOMIC DEVELOPMENT
COMMISSION**

By: _____

“RDC”

**FISHERS REDEVELOPMENT
COMMISSION**

By: _____
Damon Grothe, President

ATTEST:

By: _____
Brad Johnson, Secretary

“BUILDING CORP.”

**FISHERS TOWN HALL BUILDING
CORPORATION**

By: _____

Its: _____

“OWNER”
REBAR SOUTH STREET, INC.

By: _____
Shelby M. Bowen, President

“DEVELOPER”
REBAR SOUTH STREET, LLC

By: _____
Shelby M. Bowen, Manager

**Exhibit A
City Parcel**

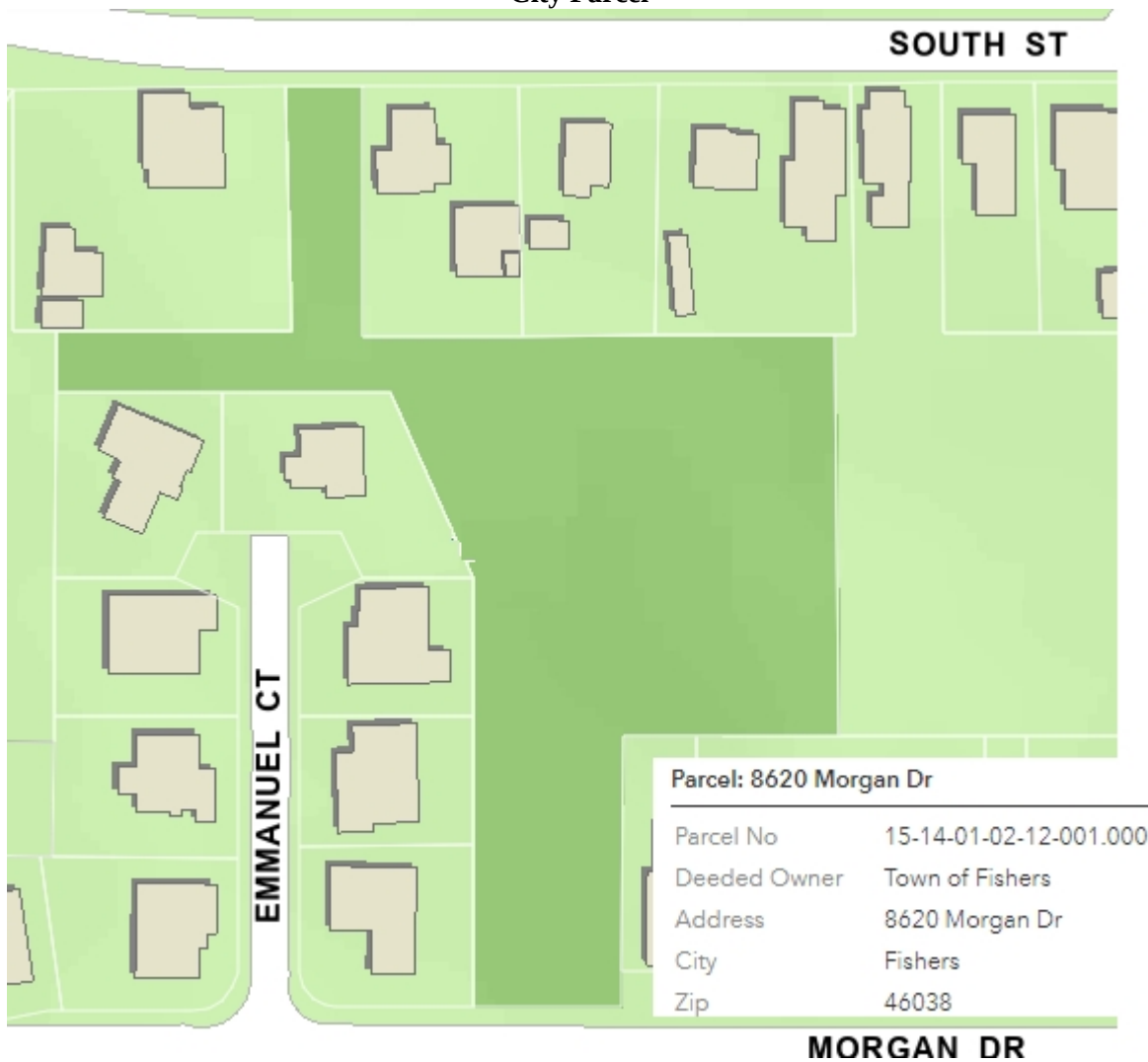


Exhibit B
Company Parcel

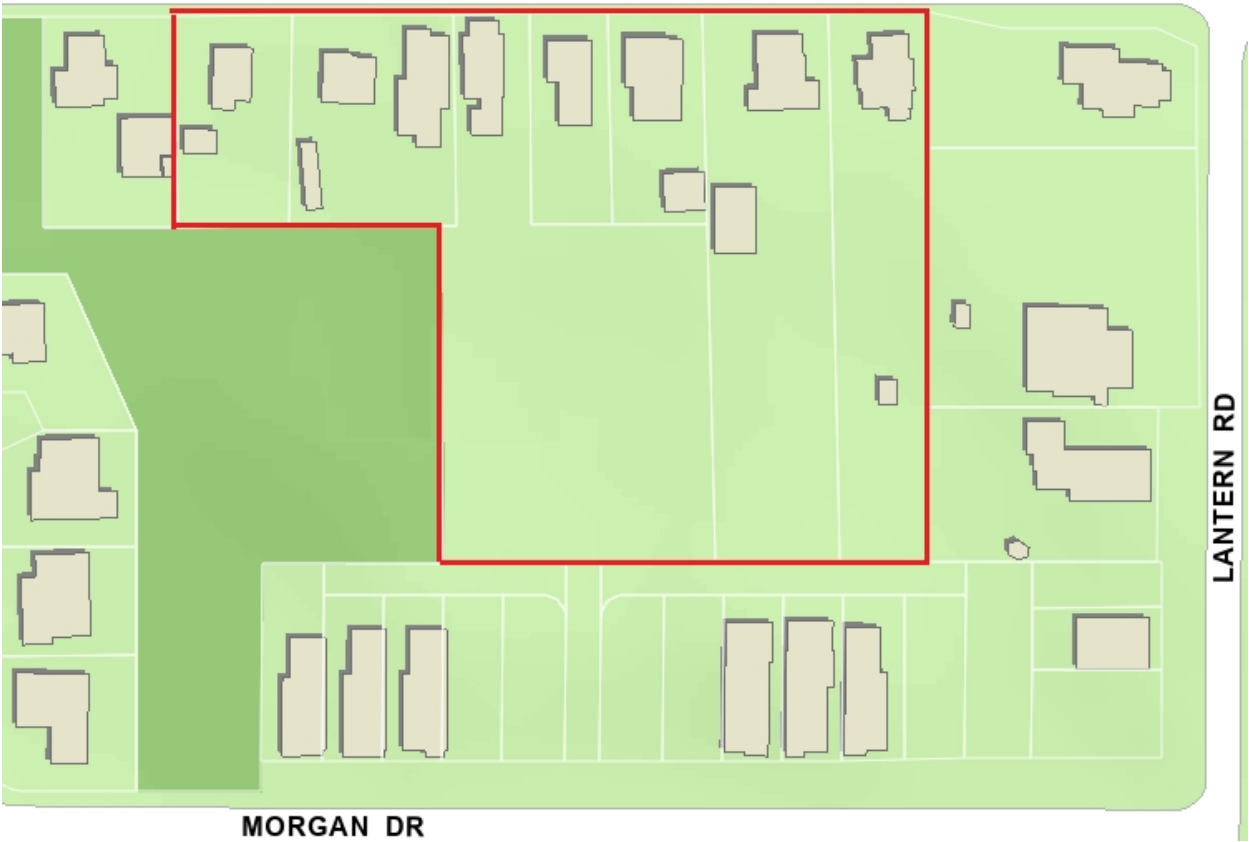


Exhibit C
Project Site

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

Exhibit D
Public Streetscape Improvements



Exhibit E

Company Insurance Requirements

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

1.	Workers Compensation insurance coverage in accordance with statutory requirements.
2.	Employers Liability Insurance with limits of not less than \$1,000,000.00 each accident; \$1,000,000.00 Disease- each employee; and \$1,000,000.00 Disease Policy Limit.
3.	Commercial General Liability Insurance on ISO form GC0001 10 01 (or a substitute form providing equivalent coverage) and General Contractor and Subcontractors shall provide the Company with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG2037 10 01 (or substitute forms providing equivalent coverage) naming the City Bodies as additional insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City Bodies per the follows: \$1,000,000.00 Each Occurrence (BI & PD Combined Single Limit); \$2,000,000.00 General Occurrence (subject to per project general aggregate provision); and
4.	Business Automobile Liability Insurance: Written in the amount of not less than \$1,000,000.00 each accident to include the City Bodies as additional insureds.
5.	Umbrella Liability: \$2,000,000.00.

PROJECT AGREEMENT

This Project Agreement (the "Agreement") is executed as of the 15th day of May 2023, by and among OnPoint Innovation Park 3, LLC an Indiana limited liability company ("Developer"), the City of Fishers, Indiana, an Indiana municipal corporation ("City"), and the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq.* ("Commission" and together with the Developer and City, the "Parties", or each a "Party"), 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 live, work and play (the "Master Development Plan");

WHEREAS, as the City continues to fulfill its Master Development Plan, the City has induced a plethora of advanced technology, biopharmaceutical and research entities to locate within the City;

WHEREAS, Developer is a sister company to Meyer Najem Construction, a Fishers-based construction company that has developed and constructed facilities throughout Indiana and in several other states;

WHEREAS, Developer has advised the City that it desires to develop a flex/light industrial in Fishers Life Sciences Park in which various life sciences companies will locate, including Tenant 1 and Tenant 2 (as defined in Section 3);

WHEREAS, the Developer's investment in the Project (as defined in Section 3) will total more than Fifteen Million and no/100 Dollars (\$15,000,000.00) and will culminate in not less eighty-one (81) jobs;

WHEREAS, City Bodies (as defined herein) have determined that the completion of the Project is in the best interests of the citizens of the City, and, therefore, City Bodies desire to induce Developer to complete the Project; and

WHEREAS, to stimulate and induce the development and completion of the Project, the City Bodies have agreed, subject to further proceedings as required by the Laws (as defined in Section 3), to provide the economic development incentives described herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the City, the Commission and Developer 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 (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.

3. **Definitions.** As used in this Agreement, the following capitalized terms are used with the meanings provided in this Section 3.

Abatement shall mean, subject to early termination pursuant to the terms of this Agreement, a real property tax abatement on the Project in the following amounts: (a) Year 1=100%; (b) Year 2= 80%; (c) Year 3=60%; (d) Year 4=40%; and (e) Year 5=20%. As used in this definition, Year 1 refers to the first year for which real property tax is assessed and payable after Substantial Completion of the Project and each Year thereafter refers to each consecutive Year following Year 1.

Additional Compliance Information shall mean information requested by City from Developer pursuant to a Notice concerning Developer's fulfillment of the Employment Commitment, reasonably necessary to determine compliance with the Employment Commitment, including, without limitation, the number of FTEs employed at the Site. The City shall have the right to request Additional Compliance Information at any time from the Effective Date until conclusion of the Term.

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

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

Building shall mean a Class-A, flex/industrial building commercial office building of approximately one hundred thousand square feet (100,000) in size constructed on the Site for the purpose of leasing space to Tenant 1, Tenant 2 and additional Life Sciences Tenants.

CF-1 shall mean a properly completed and executed Indiana form 51766 (R2/1-07), Compliance With Statement Of Benefits Real Estate Improvements, as amended.

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

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

City Body or City Bodies shall mean both or either of City, and/or the Commission, as applicable.

City Fees shall mean local fees assessed by the City for the Project, including road and park impact fees, permitting fees and sewer fees (such as capacity, connection, impact, and tap fees associated with initial construction of the Project; but not including post-occupancy monthly user or inspection fees).

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

Closing shall mean the date on which the City transfers and conveys the Site to Developer.

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with a commercial real estate closing.

Closing Date shall mean the date on which the City transfers and conveys the Site to Developer, which Date shall not be later than December 31, 2023, except that the Closing Date shall be extended day for day for each day that Developer demonstrates it is unable to complete its inspections of the Site because of trailers and other large equipment located on the Site.

Commitment shall mean 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 Site in the name of Developer free of all Title Defects, other than those Title Defects that Developer expressly waives in writing.

Concept Plan shall mean the conceptual site plan for the Project that is attached hereto as Exhibit A.

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

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

Cure Period shall mean a period of: (a) ten (10) days after Notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives 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: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than one hundred twenty (120) days after the date of the default.

Current Year Taxes shall mean the Real Estate Taxes assessed for, and first becoming a lien against, the Site during the year in which the Closing occurs.

Deed shall mean a limited warranty deed by which the Commission shall convey its interest in the Site to Developer together with all improvements thereon, which deed shall be subject only to: (a) the Permitted Exceptions; and (b) matters created or consented to by Developer.

Divestiture Payment shall mean in the case of the exercise of the Power of Termination as a result of (a) a default by Developer under Section 13(a), One Dollar (\$1.00); and/or (b) a default by Developer under Section 13(b), an amount equal to the Project Loan proceeds disbursed by the Project Lender for construction and development of the Project.

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

Employment Commitment shall mean (a) Tenant 1 and Tenant 2 executing a lease with Developer, having the obligation to begin paying rent and locating in the Building; (b) not less than eighty-one (81) FTEs employed at the Site by Life Sciences Entities; and (c) payment of a total annual payroll of not less than Five Million, Seven Hundred Forty Thousand, Eight Hundred and no/100 Dollars (\$5,740,800.00); provided, however, with respect to subsection (b) hereof, beginning on the date that is two (2) years from Substantial Completion, Developer may satisfy the required eight-one (81) FTEs by including FTEs from all employers in the Building (as opposed to exclusively including employees of Life Sciences Entities). In the instance of subsections (b) and (c) hereof, the Employment Commitment shall continue throughout the Term.

Employment Commitment Date shall mean the later of (i) December 31, 2026 or (ii) the date that is 180 days from Substantial Completion, except that in the instance of subsections (b) and (c) of the definition of "Employment Commitment", the Employment Commitment shall continue throughout the Term.

Event of Default shall have the meaning set forth in Section 12.

Executive Director shall mean the Director of Economic Development for the City or, in the event of a vacancy in the Director's position, then the Mayor of the City.

Final Document(s) shall mean the final Construction Schedule and the final Construction Drawings, as each is finalized and approved or reviewed by the City in accordance with the Plan Refinement Process described in Section 11.

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

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

Force Majeure shall mean, with respect to Developer or City Bodies, any cause that is not within the reasonable control of Developer or City Bodies, respectively (including, without limitation: (a) unusually inclement weather but not prolonged inclement cold, ice, sleet, snow or hail; (b) the unusual unavailability of materials, equipment, services, or labor; (c) pandemic or epidemic causes; and (d) utility or energy shortages or acts or omissions of public utility providers); provided that a party's failure to reasonably anticipate delays due to weather or in obtaining Required Permits shall not be deemed Force Majeure.

FTEs shall mean full time employees who are employed for consideration for at least thirty-two (32) hours each week.

Incurred Costs shall mean, if this Agreement is terminated (including for default and failure to close) (a) after expiration of Due Diligence; and (b) prior to the Closing, all actual, commercially reasonable out-of-pocket, third-party costs and expenses incurred by a Party through the date of

such termination, to the extent not previously paid or reimbursed by the other party (not to exceed \$100,000).

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

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

Laws shall mean all applicable laws, statutes, and/or ordinances, building codes, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City's Unified Development Ordinance and all applicable environmental laws.

Life Sciences Entity means, unless otherwise approved by the City in its sole discretion, a legal entity duly registered with the Office of the Indiana Secretary of State whose primary purpose is the research, development, manufacture, sale, use, or distribution of (a) pharmaceuticals, (b) biotechnology, (c) medical devices, (d) medical diagnostics or equipment or (e) health services, and service entities directly related thereto.

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

Multi-Party Agreement shall mean an agreement by and among the Redevelopment Commission, Developer, and the Project Lender pursuant to which (a) the Project Lender agrees to give to the City and Redevelopment Commission: (i) notices of material defaults by Developer under the Project Loan Documents; and (ii) the right (but not obligation) to cure defaults by Developer under the Project Loan Documents; (b) provides for the release of the Project Loan in the event of the exercise of the Power of Termination and upon payment of the Divestiture Payment under Sections 13(a) and 13(b); and (c) the City and Redevelopment Commission agree to give the Project Lender notices of any defaults by Developer under this Project Agreement and any Ancillary Agreements with the right (but not obligation) to cure such defaults. The Multi-Party Agreement shall be in form and substance reasonably acceptable to the City, Redevelopment Commission, Developer, and Project Lender and shall specifically state that in the event of conflict between any term or provision of the Multi-Party Agreement and any term or provision included in the Project Loan Documents, the terms of the Multi-Party Agreement shall control.

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

Notice shall mean any written notice required to be given pursuant to this Agreement and provided pursuant to Section 18.

Permitted Change shall mean a change to a Final Document for the Project that: (a) is not material in the overall scope and design of a Project; (b) is in conformity with the Laws; (c) does not result

in the Final Document containing a Material Defect; and (d) does not make it unlikely, impracticable, or impossible for Developer to complete and open a Project, or any component thereof, by the applicable date set forth in a Construction Schedule. In addition to the foregoing, any change required by the Laws shall constitute a Permitted Change.

Permitted Exceptions shall mean: (a) the lien of Current Year Taxes and Assessments not delinquent; (b) any exceptions to title reflected in the Commitment and not objected to by Developer; (c) this Agreement; (d) reservations of the Power of Termination; and (e) such other matters as are accepted by Developer in writing or which Developer is deemed to have waived pursuant to the terms and conditions of this Agreement.

Plan Refinement Process shall mean the process described in Section 11 hereof.

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

Plat shall mean the plat that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hamilton County, Indiana contemporaneous with other documents needed for Closing which Plat shall, at a minimum, create a separate lot for the Site.

Power of Termination shall mean the Commission's right under Section 13(a), 13(b) of this Agreement to enter the Site and, upon payment of the Divestiture Payment, if applicable, to Developer or Project Lender, divest Developer of title thereto and to cause title to the Site to vest in the Commission which re-vesting shall be free and clear of any and all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than those: (a) existing when the Commission transferred the Site to Developer; or (b) otherwise agreed-to by City. The Power of Termination shall lapse and expire by its own terms upon, as applicable, (x) Commencement of Construction, with respect to Section 13(a); and (y) Substantial Completion, with respect to Section 13(b).

Project shall mean the investment not less than Fifteen Million and no/100 Dollars (\$15,000,000.00) developing and constructing the Building on the Site together with all Public Infrastructure required by the Laws.

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

Project Loan(s) shall mean one (1) or more construction loans to Developer, the proceeds of which shall be used to develop and construct the Project. The Project Loan shall be disbursed pursuant to the Project Loan Documents, and the proceeds available at Closing (subject to the satisfaction of customary draw conditions).

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

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

Public Infrastructure shall mean all streetscape and other infrastructure improvements required by and consistent with the Laws for the Project that shall be constructed by Developer and generally (but not always) are in the areas between the curb (including the curb) and the Building.

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

Reimbursement Amount shall mean, (a) if Developer fails to meet the Employment Commitment on or before the Employment Commitment Date, an amount equal to the following: the percentage Developer fell below the Employment Commitment, multiplied by the benefit of the Abatement received by Developer prior to the Employment Commitment Date (this subpart (a) shall no longer apply if the Developer meets the Employment Commitment prior to the Employment Commitment Date); and (b) for each calendar year of non-compliance commencing from the Employment Commitment Date until conclusion of the Term, an annual amount equal to the following: the percentage Developer fell below the Employment Commitment in such calendar year, as applicable, multiplied by any benefit of the Abatement received by Developer in such calendar year.

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

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

Site shall mean an approximately eight (8) acre portion of real property located at the 0 E 126th Street and Cumberland Road, currently identified by parcel identification no.: 15-11-31-00-00-025.000 and generally depicted in Exhibit B.

Site Plan shall mean the site plan for the Project that is approved as a result of the Plan Refinement Process.

Statement of Benefits shall mean a properly completed and executed Indiana form 51764 (R5/1-21), Statement of Benefits Real Property, as amended.

Substantial Completion shall mean the date that Developer receives the final certificate of occupancy for the Building, which Substantial Completion shall occur by or before June 30, 2025.

Survey shall mean an ALTA survey of the Site, certified as of a current date by a reputable licensed surveyor; which Survey shall show that the Site is suitable for development of the Project as contemplated in this Agreement and subject only to the Permitted Exceptions.

Tenant 1 shall mean Certus Medical LLC, an Indiana limited liability company.

Tenant 2 shall mean Radiological Care Services LLC, an Indiana limited liability company.

Title Defects shall mean conditions or defects disclosed in the Commitment or the Survey that, in the commercially reasonable discretion of Developer, will interfere with the development, construction and/or intended use of the Project, including, but not limited to, claims, liens, options, rights of first refusal or offer and other encumbrances and interests of any kind or nature whatsoever; provided that the lien of any mortgage or other security instruments to be released at

or before the Closing (a "Financial Defect") shall not be a Title Defect nor shall Developer, City, or any City Bodies have any obligation to cure any Title Defects. Encumbrances disclosed to and expressly approved in writing by Developer shall not be deemed to be a Title Defect. Developer, City, and/or any City Bodies shall cure all Financial Defects on or before closing.

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

Term shall mean, unless earlier terminated pursuant to this Agreement, the time period beginning on the date that Developer first claims the benefit of the Abatement and ending on December 31st of the last year that Developer claims the benefit of the Abatement.

4. City's Obligations. Subject to Section 9, City or the Commission, as applicable, shall: (a) submit the Plat for final approval and recordation at or prior to Closing; (b) for a purchase price of \$1.00, transfer the Site to Developer pursuant to the Deed on the Closing Date; (c) waive City Fees; (d) review and issue the City's development and permit applications necessary to develop the Site and construct the Project; (e) undertake the required procedural steps to authorize the Abatement (provided, however, a specific result of such procedure is not hereby guaranteed); and (f) otherwise comply with all terms and provisions of this Agreement.

5. Developer's Obligations. Subject to Section 8, Developer shall: (a) accept the transfer of the Site pursuant to the Deed on the Closing Date; (b) by or before June 30, 2025, invest not less than Fifteen Million and no/100 Dollars (\$15,000,000.00) in the development and construction of the Project together with the personal property used at the Site; (c) in accordance with the terms of this Agreement, either satisfy the Employment Commitment or pay the Reimbursement Amount; (d) file a Statement of Benefits with the City prior to the City authorizing the Abatement; (e) by or before April 15th of each year of the Term, file a CF-1 with the City's legislative body and the Hamilton County Assessor showing the extent to which there has been compliance with the Statement of Benefits submitted for the Site; (f) from the Effective Date and throughout the Term, provide, within twenty (20) business days of receipt of Notice from the City, Additional Compliance Information to the City; (g) if applicable, pay the City the Reimbursement Amount within ten (10) business days of receiving Notice stating that such Reimbursement Amount is due; (h) pay, when due, all Real Estate Taxes and Assessments on the Site and the Project (subject to the Abatement); (i) construct and complete the Project by or before June 30, 2025; (j) obtain all Required Permits; (k) maintain, repair and replace the Project in good condition and repair (subject to ordinary wear and tear and casualty and condemnation); subject to the terms and conditions of this Agreement; and (l) otherwise comply with all terms and provisions of this Agreement.

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

(a) Closing. The Closing Date shall occur: (i) on or before the date that is thirty (30) days after the conditions in Sections 8 and 9 have been satisfied or waived, but in no event later than December 31, 2023, except as extended by mutual agreement of the City and Developer, and (ii) either at the office of the Title Insurer or at such other place as City and Developer mutually may agree.

(b) Deliveries. At the Closing, unless another time is specifically stated:

(i) Developer shall pay the Closing Costs by wire transfer of immediately

available funds.

(ii) Developer shall pay for any title insurance premiums for any such policy required by Developer, including, without limitation, lender's policies, endorsement fees, search fees, costs, and expenses charged for the owner's policies of title insurance.

(iii) Developer shall pay the cost of the Survey and the Plat and such Plat shall be recorded, if not previously recorded.

(iv) Each party shall be responsible for its own legal fees incurred in connection with negotiation and performance of this Agreement and the Closing.

(v) Developer and/or the applicable City Bodies shall execute and deliver the following:

(A) the Deed conveying to Developer fee simple title to the Site subject only to the Permitted Exceptions;

(B) a vendor's affidavit from the Commission, in form and substance reasonably satisfactory to Developer and such that the Title Insurer agrees to delete the standard exceptions for non-survey matters;

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

(D) a certification by the City Bodies and Developer that the representations and warranties set forth in Subsection 10(a) (City Bodies) and Sections 10(b) and (c) (Developer) remain true and accurate in all respects as of the Closing Date;

(E) copies of such resolutions, consents of members, partners, officers, and/or shareholders and other evidence as the Commission, City, Developer, or the Title Insurer reasonably may request, 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, and the conveyance of the Site to Developer in accordance with the terms and conditions of this Agreement, have, in each case, been properly authorized by the signatories thereto;

(F) such other customary documents or instruments as City, the Commission, Developer or the Title Insurer reasonably may request in connection with the Closing (including, for example, a Sales Disclosure Form and a closing statement); and

(G) fully executed versions of the Ancillary Documents.

7. Property Inspections. Prior to the Closing Date, Developer shall cause the Property Inspections to be completed for the Site and provide to City (or its designee), promptly after receipt thereof, true, correct, and complete copies of all results of, and reports received in connection with, the Property Inspections. Developer shall determine in its sole discretion whether the Site is suitable for the Project. The Developer shall be entitled to access the Site

pursuant to the Access Agreement attached as Exhibit C which Access Agreement shall be effective upon execution by the Commission and Developer.

8. Conditions to Developer Obligations. The obligations of Developer with respect to the Closing are subject to the satisfaction or waiver in writing, by Developer, in its commercially reasonable discretion, of the following prior to the applicable period specified in this Section:

Title. As of the Closing Date, Developer shall have obtained the Commitment for the Site.

Survey. As of the Closing Date, Developer shall have obtained the Survey for the Site.

Title Conditions. Prior to Closing, Developer shall have determined that the Title Insurer shall: (i) insure, for its fair market value, as applicable, marketable, fee simple title to the Site in the name of Developer, free of all Title Defects, other than those Title Defects that Developer is deemed to have waived pursuant to the terms and conditions of this Agreement; and (ii) issue such endorsements as Developer reasonably deems to be necessary or appropriate.

Survey Conditions. As of the Closing Date, Developer shall have determined that, upon recordation of the Plat, the Survey: (i) describes the perimeter of the Site as single parcel without gaps, gores, or overlaps; (ii) shows no encroachments thereto; (iii) shows no Title Defects thereto; and (iv) establishes that no part of the parcel is located within: (A) a “flood hazard zone”, as shown on the applicable Federal Insurance Rate Map; or (B) a “floodway” or “flood plain”, as shown on the applicable Flood Control District Map; and (v) otherwise acceptable to Developer in its sole discretion. Prior to Closing, the Survey shall establish the precise legal description of the Site.

Environmental Condition. As of the Closing Date, Developer shall have determined that there: (i) is no contamination or pollution of the Site, or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws; (ii) are no underground storage tanks located on the Site; and (iii) are no wetlands on the Site.

Physical Condition. As of the Closing Date, Developer shall have determined that no test, inspection, examination, study, or investigation of the Site establishes that there are conditions that would interfere materially with the construction and use of the Project, in accordance with the terms and conditions of this Agreement.

Zoning. As of the Closing Date, Developer shall have determined that: (i) the zoning of the Site is proper and appropriate for the construction of the Project and use of the Project in accordance with the terms and conditions of this Agreement; and (ii) the Site is subject only to commitments and restrictions that are acceptable to Developer in its sole discretion.

Utility Availability. As of the Closing Date, Developer shall have determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Site at adequate pressures, and in sufficient quantities and volumes, for

the construction and use of the Project.

Required Permits. As of the Closing Date, Developer shall have (i) obtained; or (ii) determined that it shall be able to obtain; all Required Permits in a timely manner so as to permit Developer to comply with the terms and conditions of this Agreement.

Financial Ability. As of the Closing Date, Developer, exercising commercially reasonable discretion, shall have determined that it has adequate funds to construct the Project.

Plat. As of the Closing Date, the Plat shall have received final approval from the Transfer and Mapping Department of the Office of the Auditor of Hamilton County, Indiana and be recorded. The Plat shall establish the precise legal description of the Site for purposes of title insurance and closing documents.

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

(m) Approvals. The City Bodies shall have obtained all required approvals from their respective governing bodies necessary for the City Bodies' compliance with the terms of this Agreement and obtained approval of the Abatement.

(n) Compliance. 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.

(o) Ancillary Agreements. As of the Closing Date, the Developer has, in good faith negotiated and executed the Ancillary Agreement.

Notwithstanding anything to the contrary set forth herein, (1) Developer shall work diligently and in good faith to satisfy the conditions set forth in this Section 8; and (2) if Developer fails to terminate this Agreement for any unsatisfied condition on or before the earlier of (i) the Closing Date; or (ii) two (2) business days after the applicable deadline set forth in each of the foregoing subsections; Developer shall be deemed to have waived such condition. Moreover, the City acknowledges that Developer may require certain other permits, approvals, waivers and accommodations in connection with the development and construction of the Project, and the City, to the extent of its authority, will reasonably cooperate with Developer in obtaining such permits, approvals, waivers and accommodations.

9. 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:

Required Permits. As of the Closing Date, City Bodies shall have determined that Developer has obtained will be able to obtain all Required Permits.

Financial Ability. As of the Closing Date, Developer shall have demonstrated to City, exercising commercially reasonable discretion, that Developer has adequate funds to

construct the Project.

Procedures. As of the Closing Date, 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 including approval of the Abatement.

(d) Plat. As of the Closing Date, the Plat shall have received final approval from the Transfer and Mapping Department of the Office of the Auditor of Hamilton County, Indiana and be recorded. The Plat shall establish the precise legal description of the Site for purposes of title insurance and closing documents.

(e) Compliance. 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 Date: (i) there shall be no breach of this Agreement by Developer that Developer has failed to cure within the Cure Period; and (ii) all of the representations and warranties set forth in Subsection 10(b) and (c) shall be true and accurate in all respects.

(g) Ancillary Agreements. As of the Closing Date, the City Bodies have negotiated in good faith and executed the Ancillary Agreement.

If one or more of the conditions set forth in this Section 9 is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, City either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement by providing Notice to Developer; provided that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Developer, City and/or the applicable City Body shall have all of the rights and remedies set forth in this Agreement. Notwithstanding anything to the contrary set forth herein, (1) City shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if City fails to terminate this Agreement for any unsatisfied condition; on or before the earlier of (i) the Closing Date; or (ii) two (2) business days after the applicable deadline set forth in each of the foregoing subsections; City shall be deemed to have waived such condition.

10. Representations and Warranties.

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

it has not 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 or otherwise by, through, or as a result of, the acts or omissions of a City Body.

(b) Developer. Developer represents and warrants to each City Body that: (i) Developer is an Indiana limited liability company, duly registered with the Office of the Indiana Secretary of State ; (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) it has not 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 or otherwise by, through, or as a result of, the acts or omissions of Developer. 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. Pursuant to IND. CODE § 22-5-1.7 *et seq.*, Developer covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Effective Date. Upon Closing, Developer shall execute an affidavit affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Developer 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 Developer and delivered to City's authorized representative.

11. Plan Refinement Process.

This Plan Refinement Process shall govern development and construction of the Project. The City has reviewed and approved the Concept Plan for the Project; provided, however, such Concept Plan may be updated from time to time upon mutual agreement of Developer and the City. At its sole cost and expense, Developer shall submit for review and approval the following documents, which documents shall be submitted to the City in the order listed below, with respect to the Project:

- (a) Site Plan.
- (b) Schematic Design Drawings.
- (c) Design Development Drawings.
- (d) Construction Drawings and Construction Schedule.

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

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

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

(h) Permits. Developer acknowledges that the Plan Refinement Process is in addition to, and not in lieu of, any plan review or Required Permits required under applicable Laws, and it shall not be deemed a warranty or representation of any kind by City Bodies that Submitted Documents or Resubmitted Documents comply with, or are approved under, applicable Laws. Prior to commencing construction, Developer shall obtain Required Permits for the Project that

are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. The City shall use reasonable efforts to assist Developer in its efforts to obtain the Required Permits. Developer acknowledges that City Bodies cannot (and do not) guarantee that it will be able to obtain the Required Permits.

(i) Review Panel. Consistent with the Laws and notwithstanding anything to the contrary set forth herein, the City, at its option, may delegate all or any part of its review, approval, or rejection obligations pursuant to this Section 11 to the Plan Review Panel; provided, that no such delegation shall extend any of the timing deadlines set forth in this Section 11. Any determination by the Plan Review Panel shall be binding on City Bodies.

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

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

(l) Failure to Cure. If Developer fails to cure any item in a Non-Compliance Notice or any Latent Defect identified in writing by the City, within forty-five (45) days of the receipt of such notice, then the City, in addition to any other right or remedy provided herein (and regardless of any Cure Period provided herein), shall be entitled to Two Hundred Fifty and no/100 Dollars (\$250.00) per day from Developer for each day after the expiration of such 45-day period that any items in any (i) Non-Compliance Notice remain incomplete; or (ii) other

notice of any Latent Defect remain incomplete; provided that, if such Material Defect or Latent Defect is of such a nature that it cannot be remedied within forty-five (45) days, despite reasonably diligent efforts, then the forty-five (45) day period shall be extended as may be reasonably necessary for Developer to remedy such Material Defect or Latent Defect (not to exceed one hundred twenty (120) days) so long as Developer commences to remedy such Material Defect or Latent Defect within the forty-five (45) day period and thereafter continuously and diligently pursues such remedy to completion.

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

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

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

12. Default.

(a) Events of Default. It shall be an "Event of Default" if any party hereto fails to perform or observe any term or condition of this Agreement to be performed or observed by it if such default or failure is not cured within the applicable Cure Period.

(b) General Remedies. 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 rate of twelve percent (12%) per annum.

(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 because 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.

13. Special Remedies.

(a) No Commencement. Subject to Force Majeure and after offering in writing to meet with Developer to discuss Developer's failure to commence, if Developer has not commenced construction of the Project within ninety (90) days after the Closing Date, then, at any time until Developer commences construction of the Project, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement; and (ii) re-enter the Site and exercise its Power of Termination and cause title to the Site to vest in the Commission, without any liability or obligation to Developer. The Power of Termination and foregoing rights shall be deemed exercised upon delivery to Developer of Notice delivered at any time after such ninety (90) day period but prior to Commencement of Construction (as defined herein below) of the Project. Upon delivery of such Notice to Developer, Developer shall surrender possession of the Site to the Commission and title to the Site shall automatically, and without further action, vest in the Commission; provided, however, if title to the property cannot automatically vest in the Commission, Developer acknowledges and agrees that it shall execute a limited warranty deed and take all other required action under the Laws or by the Title Insurer to reconvey the Site to the Commission. Any such re-vesting shall be free and clear of all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than those existing immediately prior to Closing. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this Section 13(a) or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. For purposes of this Section 13(a), "Commencement of Construction" shall mean material and substantial work on the Project pursuant to Required Permits such as installation of footings and foundations and shall not be deemed to occur as a result of mere excavation work.

(b) Work Stop. After Commencement of Construction, subject to Force Majeure, if all construction work of a material nature ceases with respect to the Project for a period of at least

one hundred twenty (120) consecutive days or for more than a total of two hundred (200) days during any three hundred sixty (360) day period, then, at any time until construction work of a material nature resumes and is continuing, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement; (ii) re-enter the Site and exercise its Power of Termination and cause title to the Site to vest in the Commission, without any liability or obligation to Developer. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to Developer of Notice prior to material resumption of the construction work. Such Notice together with evidence of remittance of the Divestiture Payment to Developer may be recorded by the Commission contemporaneously with, or at any time after, its delivery of such Notice and payment to Developer. Upon delivery of such Notice and payment, if applicable, Developer shall surrender possession of the Site to the Commission and title to the Site shall automatically and without further action of the parties' vest in the Commission; provided, however, if title to the property cannot automatically vest in the Commission, Developer acknowledges and agrees that it shall execute a limited warranty deed and take all other required action under the Laws or by the Title Insurer to convey the Site to the Commission. Any such vesting of shall be free and clear of any, and all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than existing immediately prior to Closing. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this Section 13(b), or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder.

(c) Abatement Termination. If the City Bodies exercise the Power of Termination pursuant to Section 13(a) or 13(b), the Abatement shall, without further action of the parties, automatically terminate.

14. Abatement Compliance & Termination.

(a) Compliance/CF-1 for Real Property Information. By or before April 15th of each year of the Term, Developer shall file a CF-1 with the City's legislative body and the Hamilton County Auditor showing the extent to which there has been compliance with the Statement of Benefits submitted for the Site.

(b) Abatement Termination, Hearing and Reimbursement. If the City determines that (i) Developer has not or cannot reasonably satisfy the Employment Commitment, or (ii) has not complied with its Statement of Benefits, the City may terminate the Abatement (or Developer's right to it); provided, however, if the City terminates the Abatement based on subsections (i), the City shall provide Notice and in such Notice specifically state the information on which it is relying to terminate the abatement. It shall be a violation of this Agreement for City to terminate the Abatement based on subsections (i) without substantial, compelling evidence that Developer cannot satisfy the Employment Commitment. For the avoidance doubt, an employer relocating from the Building shall not be substantial, compelling evidence to allow the City to terminate the Abatement pursuant to subsection (i) hereof, if Developer demonstrates that it has another employer timely moving into the Building that will allow it to otherwise meet

the Employment Commitment. Developer shall have thirty (30) days to respond to such Notice prior to City terminating the Abatement, which right shall not be subject to a Cure Period.

(c) Abatement Hearing. If the City determines that the Abatement should be terminated, the City shall give Developer Notice of such determination and provide Developer an opportunity to appear before the City Council to show cause why the Abatement should not be terminated. Developer shall have thirty (30) days from the date of such Notice to confirm that it desires to be added to the City Council's next agenda and to provide evidence concerning why the Abatement should not be terminated. If the City Council adopts a resolution terminating the Abatement, Developer shall be entitled to appeal the determination to a Hamilton County Superior or Circuit Court.

15. No Limitation. Notwithstanding anything to the contrary set forth herein, the rights and remedies set forth in Sections 12, 13 and 14 are not exclusive and 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.

16. Indemnification. Developer shall indemnify and hold harmless each of the City Bodies from and against any and all Claims of third parties arising from or connected with: (a) breaches by Developer under contracts to which Developer is a party and which contracts relate to the performance of any work on the Site by Developer or any party acting by, under, through, or on behalf of Developer; (b) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Site by Developer or any party acting by, under, through, or on behalf of Developer; (c) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; (d) Developer suffering or causing the filing of any mechanic's or materialmen's lien against the Site, Project, or any adjacent property owned by City Bodies and arising by or through Developer; or (e) the breach by Developer of any term or condition of this Agreement. Notwithstanding anything to the contrary set forth herein, Developer's obligations under this Section shall survive the termination of this Agreement.

17. Assignment. The City shall be entitled to record this Agreement in the Office of the Hamilton County Recorder against the Site. Upon Closing, this Agreement shall run with the Site and shall be binding on successors in title to the 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 Developer, 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, Developer may assign this Agreement, or any portion thereof, in one or more assignment transactions, to one or more subsidiaries or affiliates of Developer or any entity which controls or is controlled by Developer. Notwithstanding any assignment permitted under this Section, the Developer shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval of any assignment shall not release the Developer from such performance, unless the assignee expressly assumes all such obligations in writing, and the City approves in writing the assignment document between Developer and any such assignee; provided that, if any City Bodies 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.

18. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to City at 3 Municipal Drive, Fishers, Indiana 46038, Attn: Scott Fadness, Mayor, with a copy to: Jennifer Messer (via email, only) at jennifermesserlaw@gmail.com; and to Developer at 11787 Lantern Road, Suite 100, Fishers, Indiana Attention: Keith Konkoli, with a copy (via email only) to Tim Russell. Each of the parties may change its address for notice from time to time by delivering notice to the other party as provided above.

19. Authority. Each undersigned person executing this Agreement on behalf of City, the Commission, and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of City, the Commission, and 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, the Commission, and Developer, respectively; provided, however, City's and the Commission's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which City and the Commission agree to undertake with diligence and in good faith.

20. 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 Notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

21. Merger. All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

22. Incurred Costs, Roundabout Property and Failure to Close. Each of the City Bodies and Developer is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other Parties will proceed to the Closing on or before December 31, 2023, unless otherwise mutually agreed in writing by the Developer and City. Accordingly, if this Agreement is terminated in accordance with its terms prior to the Closing:

(a) due to (i) a continuing Event of Default by one of the City Bodies, (ii) failure of the applicable City Body to satisfy the condition included in Sections 9(c), 9(e), or 9(g) or (iii) failure

of any City Body to comply with the representations and warranties included in Section 10(a), then City Bodies shall reimburse Developer for its Incurred Costs.

(b) due to (i) a continuing Event of Default by Developer, (ii) failure of Developer to satisfy the conditions included in Section 8(a) - (j) or (o), or (iii) failure of Developer to comply with the representations and warranties included in Sections 10(b) or 10(c), then Developer shall reimburse the City for its Incurred Costs.

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

(d) Any reimbursement or action required under this Section 10 shall be paid or performed, as applicable, by such party within thirty (30) days after receipt of written invoice or notice therefor, together with reasonable evidence supporting the amount set forth in such invoice.

23. Execution of Agreement. Upon City Bodies' approval and execution of this Agreement, the City shall provide to Developer the executed Agreement (the "City-Executed Agreement"). Within ten (10) days of Developer's receipt of the City-Executed Agreement, Developer shall execute this Agreement and provide the City a copy of such fully executed Agreement. Failure to strictly comply with this Section 23 shall terminate and automatically revoke any offer made by City Bodies herein, and shall, without further action of any of City Bodies, nullify and render of no force or effect City Bodies' approval of this Agreement.

24. Miscellaneous. Subject to Section 17, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Developer, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Developer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by City, 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

a partnership, employment relationship or joint venture between Developer, City and 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 Site 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. Unless otherwise specifically stated, any amounts owed pursuant to this Agreement shall accrue interest at rate published in the Wall Street Journal plus six percent (6%) per annum from the date due until paid.

25. Exhibits.

Exhibit A: Concept Plan
Exhibit B: Site
Exhibit C: Access Agreement

[signatures included on following pages]

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

"CITY"

CITY OF FISHERS, INDIANA

By: _____

Scott Fadness, Mayor

R051523C

"COMMISSION"

**FISHERS REDEVELOPMENT
COMMISSION**

By: 
Damon Grothe, President

ATTEST:
By: 
Brad Johnson, Secretary

"DEVELOPER"

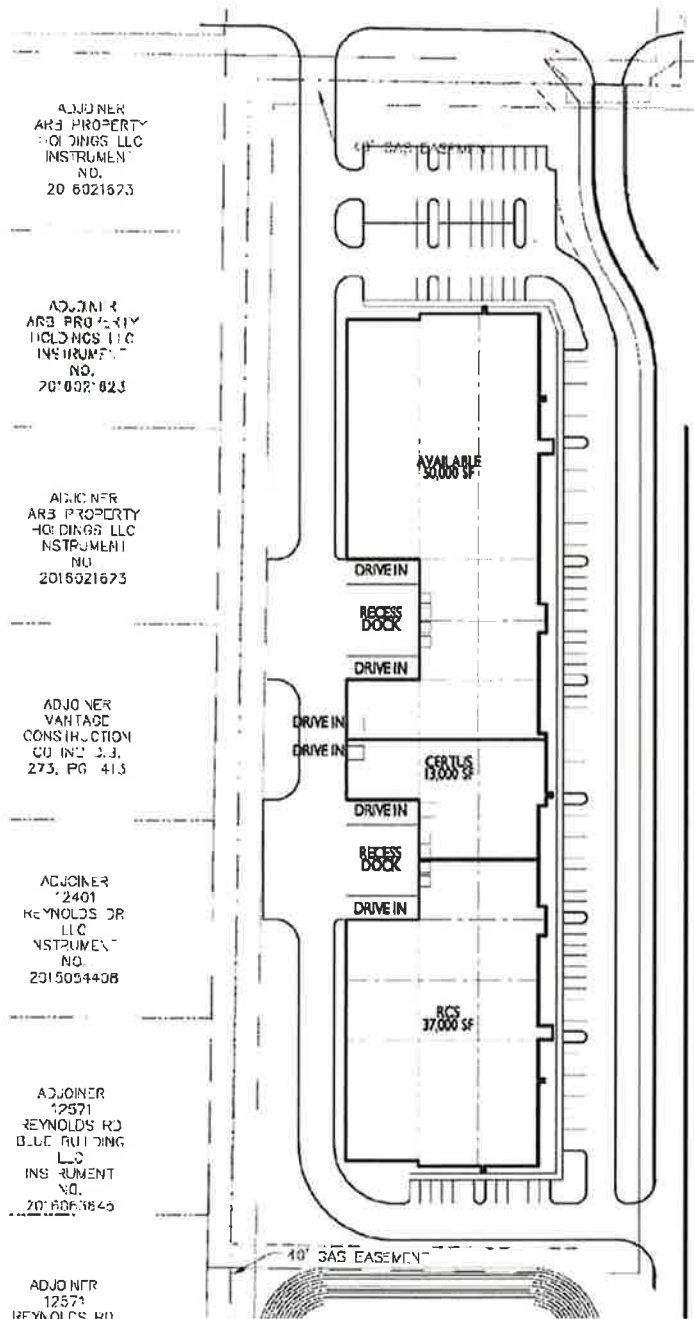
ONPOINT INNOVATION, LLC

By: _____

Its: Authorized signer

EXHIBIT A

CONCEPT PLAN



SITE PLAN C
12.17.22
NTS
PROJECT # 220276
FISHERS INNOVATION PARK

CURRAN
ARCHITECTURE
317.288.0661
CURRAN-ARCHITECTURE.COM

EXHIBIT B

SITE



EXHIBIT C
ACCESS AGREEMENT

RESOLUTION FRC 03R071323 APPROVING PROJECT AGREEMENT (ONPOINT)

WHEREAS, OnPoint Innovation Park 3, LLC, an Indiana limited liability company ("Developer"), is a sister company to Mayer Najem Construction, a Fishers-based construction company that has developed and constructed healthcare and other facilities throughout Indiana and in several other states;

WHEREAS, Developer has advised the City of Fishers ("City") and City of Fishers Redevelopment Commission (the "Commission") that it desires to develop a Class-A, flex/industrial, commercial office building approximately one hundred thousand square feet (100,000) (the "Project") in size in Fishers Life Sciences Park and, specifically, on an approximately eight (8) acre portion of real property located at the 0 E. 126th Street and Cumberland Road that is currently identified by parcel identification no.: 15-11-31-00-00-025.000 (the "Site");

WHEREAS, various life sciences companies will locate to the Project, Developer's investment in the Project will total more than Fifteen Million and no/100 Dollars (\$15,000,000.00) and the Project will culminate in not less than eighty-one (81) jobs;

WHEREAS, to incent Developer's completion of the Project, the City and Commission, as applicable, desire to (a) transfer the Site to Developer; (b) waive City Fees; and (c) undertake the required procedural steps to authorize the Abatement pursuant to a project agreement substantially similar to the Project Agreement attached hereto as **Exhibit A** (the "Agreement"); and

WHEREAS, capitalized words 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 regular session as follows:

Section 1. A project agreement substantially similar to the Agreement is hereby approved.

Section 2. The President and Secretary of the Commission are hereby authorized to execute a project agreement in substantially similar form 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 ____th day of July, 2023.

**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.

ECONOMIC DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF FISHERS REDEVELOPMENT COMMISSION AND SPOKENOTE, INC.

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 13th day of July, 2023 (the "Effective Date"), by and among the City of Fishers Redevelopment Commission, a commission authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq.* (the "Commission") and spokenote, LLC, an Indiana limited liability company duly registered with the Indiana Secretary of State's Office ("Spokenote" and together with the Commission, the "Parties"), as follows:

WHEREAS, headquartered in City of Fishers (the "City"), Spokenote produces stickers that provide a gateway to a video creation and sharing platform, with each spokenote sticker featuring a unique spokenote™ code that users can pair with a recorded or uploaded video;

WHEREAS, Spokenote has advised the Commission that it desires to lease space at 8933 Technology Drive, Fishers, Indiana (the "Site"), invest approximately Two Million, Nine Hundred Twenty-Five Thousand and no/100 Dollars (\$2,925,000.00) in Spokenote and hire approximately three hundred (300) employees by 2026 at an average, annual salary of One Hundred Ten Thousand, Three Hundred Sixty-Four and no/100 Dollars (\$110,364.00), if the Commission will provide the incentive described herein; and

WHEREAS, the Commission has determined that it is in the best interest of the City to induce Spokenote to locate to the Site and fulfill the Spokenote Obligations (as defined in Section 3).

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 law, 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 of this Agreement.
3. **SPOKENOTE'S OBLIGATIONS.** In consideration and as a material inducement for the Commission providing the incentives included in Section 4, Spokenote shall perform or cause to be performed the following:

a. By or before _____, (i) relocate to the Site and relocate not less than _____ employees to the Site (the "Relocation Commitment");

b. by or before December 31, 2026, invest approximately Two Million, Nine Hundred Twenty-Five Thousand and no/100 Dollars (\$2,925,000.00) in Spokenote;

c. by or before December 31, 2025, hire approximately two hundred ten (210) of the anticipated total three hundred (300) new employees and compensate such new employees at an average, annual salary of One Hundred Ten Thousand, Three Hundred Sixty-Four and no/100 Dollars (\$110,364.00) (the “Employment Commitment”);

d. Utilize the Training Funds (as defined in Section 4) as specifically required herein; and

e. Strictly comply with all terms and provisions of this Agreement (collectively, Sections 3(a) – (e), the “Spokenote Obligations”).

4. THE COMMISSION’S OBLIGATIONS. In consideration and as a material inducement for Spokenote satisfying in full the Spokenote Obligations, pursuant to and consistent with Ind. Code §36-7-25-7, for a time period beginning on the Effective Date and ending on December 31, 2025 (the “Term”), the Commission shall provide Spokenote training funds for educational programs, work training programs, and/or worker retraining programs (the “Training Funds”) that are designed to prepare individuals to participate in a competitive and global economy, including, but not limited to classes, seminars, certifications and conferences (individually or collectively, “Training Programs”); provided, however, the Training Funds shall not be used, or serve as a match, for Occupational Safety and Health Administration (OSHA) or federally mandated safety training, human resources or on-boarding training.

Training Funds shall be (a) exclusively available in an aggregate amount not greater than Fifty-Two Thousand, Five Hundred and no/100 Dollars (\$52,500.00) (approximately Two Hundred Fifty and no/100 Dollars (\$250.00), per each new, full-time employee (each a “New FTE”)); (b) a fifty percent (50%) match to those funds expended by Spokenote for Training Programs for each New FTE (the “Company Match”), and (c) reimbursed to Spokenote by the Commission within thirty (30) days of receiving a Work Training Disbursement Request in the form attached hereto as Exhibit A, which Work Training Disbursement Request and certification for payment shall: (i) be prepared by Spokenote; and (ii) be accompanied by: (1) a description of the Training Program for which Spokenote seeks reimbursement or payment; (2) a summary of the expenses, included in such Work Training Disbursement Request; and (3) include information reasonably necessary to establish the accuracy of the information set forth in the Work Training Disbursement Request. Spokenote shall not submit more than one (1) Work Training Disbursement Request in any three (3) month period.

The Commission shall not be obligated to make any payment pursuant to a Work Training Disbursement Request (w) in excess of Two Hundred Fifty and no/100 Dollars (\$250.00) per New FTE, (x) in excess of a cumulative, total amount of Fifty-Two Thousand, Five Hundred and no/100 Dollars (\$52,500.00); (y) after expiration of the Term; or (z) for or as a match for Occupational Safety and Health Administration (OSHA) or federally mandated safety training, human resources or on-boarding training. Moreover, any Work Training Disbursement Request shall demonstrate expenditures in an amount twice the amount for which Spokenote seeks

reimbursement. For example, and without limitation, if Spokenote seeks Ten Thousand and no/100 Dollars (\$10,000.00) in reimbursement, Spokenote shall submit a Work Training Disbursement Request that demonstrates that Spokenote spent Twenty Thousand and no/100 Dollars (\$20,000.00) for Training Programs for at least forty (40) new FTEs. The Commission acknowledges that any money received by the Company from the Indiana Economic Development Corporation for worker training counts toward the Company Match.

5. COMPLIANCE REQUIREMENTS & REIMBURSEMENT.

a. **Compliance Information.** During the Term, the Commission may request information from Spokenote concerning its satisfaction of the Employment Commitment (individually or collectively, "Compliance Information"), and Spokenote shall provide such Compliance Information within twenty (20) business days of such request.

b. **Incentive Termination.** If, during the Term, the Commission reasonably determines that Spokenote cannot satisfy the Spokenote Obligations, the Commission may terminate Spokenote's right to receive additional Training Funds.

6. AUTHORITY.

a. **Commission.** The Commission represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver this Agreement upon proper approval of the Commission. The performance by the Commission of its obligations under this Agreement shall be subject to completion of such procedures as are required by law.

b. **Spokenote.** Spokenote represents and warrants to the Commission that Spokenote: (i) is duly registered with the Indiana Secretary of State's Office; (ii) shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) has the authority: (1) to enter into this Agreement; and (2) to perform its respective obligations hereunder, (iv) has been authorized by proper action: (1) to execute and deliver this Agreement; and (2) to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of Spokenote. Further, Spokenote affirms that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. If Spokenote has employees, Spokenote agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Spokenote has employees, Spokenote will state, in all solicitations or advertisements for employees placed by or on behalf of Spokenote, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, 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. Pursuant to IND. CODE § 22-5-1.7 *et seq.*, Spokenote covenants to enroll in and verify the work eligibility status of its employees using the E-Verify program, if it has not already done so as of the Effective Date. If Spokenote has employees, within ten (10)

days after the Effective Date, Spokenote 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, Spokenote shall provide the Commission with documentation that it has enrolled and is participating in the E-Verify program if it has employees. This Agreement shall not take effect until said affidavit is signed by Spokenote and delivered to the Commission's authorized representative if Spokenote has employees.

7. INDEMNITY. Spokenote covenants and agrees at its sole expense to pay and to indemnify and save harmless the Commission and its officers and agents (collectively, 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 (a) Spokenote's (and/or any affiliate's thereof) use of the Site; or (b) this Agreement unless such claims, damages, demands, expenses or liabilities arise by reason of a willful act, negligence or omission of the Commission. Spokenote's obligation to indemnify the Commission pursuant this Section 7 shall survive termination of this Agreement.

8. ASSIGNMENT. The rights and obligations contained in this Agreement may not be assigned by Spokenote without the express prior written consent of the Commission, which consent shall not be unreasonably withheld.

9. 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 Commission at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Economic Development Director with a copy to: Jennifer Messer (via email) at jennifermesserlaw@gmail.com; and to Spokenote at 12175 Visionary Way, Fishers, IN 46033, Attention: John Wechsler (John@spokenote.com) and spokenote Legal Dept. (legal@spokenote.com), with a copy to Ginovus, LLC, 9 Municipal Drive, Suite 1, Fishers, IN 46038, Attention: Director of Compliance (Gerald@Ginovus.com). Each of the Parties may change its address for notice from time to time by delivering notice to the other party as provided above.

10. MERGER. All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

11. MISCELLANEOUS. Subject to Section 8, this Agreement shall inure to the benefit of, and be binding upon, the Commission and Spokenote, 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. Spokenote waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Spokenote 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 Spokenote.

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, employment relationship or joint venture between Spokenote and 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 Site 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. Unless otherwise specifically stated, any amounts owed pursuant to this Agreement shall accrue interest at rate published in the Wall Street Journal plus six percent (6%) per annum from the date due until paid.

12. EXHIBIT. Exhibit A, the Work Training Disbursement Request, is attached hereto and incorporated herein as if fully set forth herein.

[signatures on following page]

spokenote, LLC

By: _____

Its: _____

City of Fishers Redevelopment Commission

By: _____
Damon Grothe, Vice-President

Attest: _____
Anderson Schoenrock, Secretary

EXHIBIT A
WORK TRAINING DISBURSEMENT REQUEST

Disbursement No.: _____

Date: _____

Disbursement Amount: \$_____

spokenote, LLC (“Spokenote”) hereby requests the disbursement of funds in the Work Training Disbursement Amount stated above and certifies that such amount is in accordance with the attached invoices and other documentation provided in support of this Disbursement Request.

This Work Training Disbursement Request shall also constitute a representation and affirmation to the Commission that the following information is accurate in all respects:

- 1) Description of the Training Programs:
- 2) Summary of expenses:
- 3) Attach all invoices and related documentation.
- 4) If outside Vendors are to receive payment, complete Schedule I.

“Spokenote”
SPOKENOTE, LLC

By: _____

Printed: _____

Title: _____

Schedule I

[Narrative summary of expenses included in Work Training Disbursement Request]

Vendor

Amount

RESOLUTION NO. FRC 04R071323

RESOLUTION APPROVING PROJECT AGREEMENT (SPOKENOTE)

WHEREAS, headquartered in City of Fishers (the “City”), spokenote, LLC (“Spokenote”) produces stickers that provide a gateway to a video creation and sharing platform with each spokenote sticker featuring a unique spokenote™ code that users can pair with a recorded or uploaded video;

WHEREAS, Spokenote has advised the City of Fishers Redevelopment Commission (the “Commission”) that it desires to lease space at 8933 Technology Drive, Fishers, Indiana (the “Site”), invest approximately Two Million, Nine Hundred Twenty-Five Thousand and no/100 Dollars (\$2,925,000.00) in Spokenote and hire approximately three hundred (300) employees by 2026 at an average, annual salary of One Hundred Ten Thousand, Three Hundred Sixty-Four and no/100 Dollars (\$110,364.00), if the Commission will provide the Training Funds for the Training Programs as both are described in the economic development agreement attached hereto and incorporated herein as Exhibit A (the “Agreement”); and

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

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

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

Section 2. The President or Vice-President and Secretary are hereby authorized to execute an economic development 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 July, 2023.

**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: Christopher P. Greisl, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038.