

**FEE WAIVER AGREEMENT BY AND BETWEEN THE TOWN OF FISHERS,
HAMILTON COUNTY, INDIANA AND CARDON & ASSOCIATES, INC.**

THIS FEE AGREEMENT ("Agreement") is made and entered into as of the 2nd day of June, 2014, by and between the Town of Fishers, Hamilton County, Indiana, an Indiana municipal corporation ("Fishers"), and CarDon & Associates, Inc., an Indiana corporation ("CarDon"), as follows:

WHEREAS, the Fishers Town Council desires to foster economic development and incent job creation throughout Fishers;

WHEREAS, Fishers also desires to develop, maintain and improve Fishers' infrastructure, including but not limited to its bridges, roads, parks and sewers through cooperative efforts with the development community;

WHEREAS, CarDon develops and operates senior living communities that provide residents with a myriad of health care services such as assisted living, rehabilitation and long-term care;

WHEREAS, CarDon constructed and operates the Hamilton Trace retirement community located at or about 11851 Cumberland Road, Fishers, Indiana 46037 and identified by tax identification no. 19-11-32-00-09-002.001 ("Site");

WHEREAS, CarDon desires to expand its operation in Fishers by constructing Phase II of its Hamilton Trace development which will include assisted living apartments and construction of approximately eighteen (18) cottage buildings for independent living on the Site ("Project");

WHEREAS, CarDon has stated that it will invest seventeen million six hundred twenty two thousand and no/100 Dollars (\$17,622,000.00) in the Project, and that the Project will result in approximately 25 new jobs in Fishers;

WHEREAS, as a result of the Project, CarDon will be obligated to pay certain impact and development fees to Fishers in accordance with Title XV and Chapter 96 and of Fishers' ordinances;

WHEREAS, Fishers desires to induce CarDon to accelerate construction of the Project by (a) issuing CarDon a waiver for certain fees resulting from development of the Project and (b) in conjunction with other Fishers' infrastructure projects, improving 116th Street to enhance ingress and egress to the Project such as curb modifications, acceleration and deceleration lanes and/or median improvements ("116th Street Improvements"); and

WHEREAS, in exchange for the fee waiver, CarDon desires to accelerate construction of the Project by breaking ground on the Project by or before August 1, 2014, and substantially completing the Project by or before September 15, 2015.

NOW, THEREFORE, in consideration of the foregoing and of 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:

ARTICLE I. 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 Article 1.

ARTICLE II. MUTUAL ASSISTANCE

The parties agree, subject to further proceedings required by law, to take such actions, including but not limited to Fishers' adoption of a resolution authorizing the Agreement and the execution and delivery of other 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.

ARTICLE III. FEES OWED

Fishers shall waive or otherwise not charge CarDon road impact fees, park impact fees, bridge impact fees, development fees and/or sewer impact fees owed by CarDon, as applicable to the Project, ("Fees") up to a cumulative amount of Three Hundred Thousand and no/100 Dollars (\$300,000.00) ("Waiver").

ARTICLE IV. WAIVER AND CONSIDERATION

4.01 Consideration. In consideration for the Waiver, CarDon shall:

- A. begin construction on the Project by or before August 1, 2014;
- B. substantially complete construction by or before September 15, 2015;
- C. invest not less than \$17,622,000.00 in the land and construction of the Project;
and

D. cause the Office of the Hamilton County Assessor to complete a tax assessment of the Site, including the Project, by or before March 15, 2015 ("CarDon Commitment").

4.02 Tax Payments. CarDon acknowledges that Fishers' grant of the Waiver is, in part, based on estimated annual taxes and the timing thereof, which Fishers will receive as a result of the Project. As further consideration for the Waiver, CarDon hereby acknowledges and agrees that for five (5) years following the 2016 assessment of the Site and Project, CarDon shall not (a) apply for tax exempt status or (b) appeal a tax assessment for the Site and Project unless such assessment exceeds fifteen percent (15%) of the assessed value of the Project and Site established in 2016.

ARTICLE V. NONCOMPLIANCE

Failure to Comply. If Fishers determines that CarDon has failed to meet any of the obligations comprising the CarDon Commitment, Fishers may automatically terminate the Waiver by providing notice to CarDon pursuant to Section 7.06 below (“Termination Notice”). CarDon specifically acknowledges and agrees that issuance of the Waiver is dependent on CarDon fully satisfying the CarDon Commitment, and any fees owed by CarDon shall be paid within fifteen (15) days of receiving the Termination Notice.

ARTICLE V. AUTHORITY

6.01 Fishers. Fishers represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its obligations under this Agreement upon proper approval by the Fishers Town Council.

Fishers further represents and warrants that it has taken or will use its best efforts to take (subject to CarDon’s performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable Fishers to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

6.02 CarDon. CarDon represents and warrants to Fishers that: (A) CarDon is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana; (B) CarDon shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (C) CarDon has the authority: (i) to enter into this Agreement, and (ii) to perform its obligations hereunder, (D) CarDon has been duly authorized by proper action: (i) to execute and deliver this Agreement, and (ii) to perform its obligations hereunder; and (E) this Agreement is the legal, valid and binding obligation of CarDon.

ARTICLE XII. GENERAL PROVISIONS

7.01 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

7.02 Amendment. This Agreement may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of Fishers approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

7.03 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

7.04 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

7.05 Indiana Law and Venue. This Agreement shall be 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.

7.06 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To: CarDon & Associates, Inc.
2749 East Covenant Drive
Bloomington, Indiana 47401

To Fishers:
Town of Fishers
Attn: Town Manager
1 Municipal Drive
Fishers, Indiana 46038

With a copy to:
Jennifer Messer
Church Church Hittle & Antrim
10765 Lantern Road, Suite 201
Fishers, Indiana 46038

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

7.07 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

7.08 Assignment. The rights and obligations contained in this Agreement may not be assigned by CarDon, or any affiliate thereof without the express prior written consent of Fishers.

7.09 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and Fishers has approved or ratified this Agreement as required by law.

IN WITNESS WHEREOF, the Town of Fishers and CarDon & Associates, Inc. have entered into and executed this Agreement on the 2nd day of June, 2014.

CarDon & Associates, Inc.

Town of Fishers

S. Moore

By: Stephen Moore

John Weingardt, Fishers Town Council
President

Its: President