

PROJECT AGREEMENT

This Project Agreement (the “Agreement”) is executed as of the 21st day of February, 2022, by and among 96th St Investors, LLC, an Indiana limited liability company (“Company”), the City of Fishers, Indiana, an Indiana municipal corporation (“City”), the City of Fishers Economic Development Commission, the Economic Development Authority for the City of Fishers (the “EDC”), and the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 et. seq. (“RDC” and together with Company, City and EDC, the “Parties”), 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 Nickel Plate Station in the City’s downtown Nickel Plate District, among others;

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

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

WHEREAS, as part of its Master Development Plan, the City likewise desires to incent multi-family, townhome and commercial development in and redevelopment of areas outside its downtown Nickel Plate District;

WHEREAS, Company submitted a proposal to City Bodies for the development of multi-family, townhome and commercial development on the Project Site, and the City determined that Company’s proposal was submitted pursuant to and consistent with the Master Development Plan, and therefore, City Bodies have agreed to provide certain incentives to assist Company in the construction of the multi-family, townhome and commercial development on the Project Site;

WHEREAS, Company expects that the total development cost for the multi-family, townhome and commercial development on the Project Site will be an estimated Ninety-Eight Million and no/100 Dollars (\$98,000,000.00);

WHEREAS, City Bodies have determined that completion of the Project is in the best interests of the citizens of the City, and, therefore, City Bodies desire to induce Company to complete the Project; and

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

Agreement

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

1. Defined Terms.

Allocation Area(s) shall mean, individually or collectively, separate and distinct tax allocation areas established by City Bodies pursuant to Ind. Code § 36-7-14 *et seq.* for each of the Projects.

Ancillary Agreements shall mean, for each Project, individually or collectively, the instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement, Taxpayer Agreement (if required by Company on a Project by Project basis) 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 each Project.

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

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

Bond Interest Rate shall have the meaning ascribed to such term in Subsection 12(d).

Bond Proceeds shall mean the proceeds of the Bond. With respect to the (a) Residential Project, the Bond Proceeds shall be used to (i) pay Approved Costs, (ii) pay Closing Costs; (iii) provide the Infrastructure Proceeds, and (iv) pay reasonably incurred and documented administrative costs of the City associated with maintaining the Bond; and (b) Commercial Project(s), the Bond Proceeds shall be used to (i) pay Approved Costs, (ii) pay Closing Costs; and (iii) pay reasonably incurred and documented administrative costs of the City associated with maintaining the Bond. The Bond Proceeds shall not exceed Twenty-One Million and no/100 Dollars (\$21,000,000.00) without approval of the City and Company.

Bond or Bonds shall mean, for each of the Projects, 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 one hundred percent (100%) of all tax increment revenue generated in each of the Allocation Areas is utilized to pay debt service on the applicable Bonds. The Bonds shall be payable solely from the Pledged Increment, and City Bodies shall not be obligated to provide any other source of payment or security for the Bonds. The Bond Proceeds with respect to the Residential Project shall be exclusively available for Approved Costs resulting from the Residential Project, and the Bond Proceeds with respect to the Commercial Project(s) shall be exclusively available for Approved Costs resulting from the Commercial Project(s). The Bonds for the Residential Project are estimated to be issued in the par amount and produce the net proceeds as set forth and described on Exhibit E attached hereto; provided, however, such amounts are subject to change based on the date on which the Bonds are issued and other relevant variables (e.g., interest rate). Similarly, prior to the Closing of the

Commercial Project(s), the Bonds for the Commercial Project(s) shall be sized in an amount to ensure (as jointly determined by the City Bodies and the Company) that one hundred percent (100%) of all tax increment revenue generated in each of the Allocation Area(s) is utilized to pay debt service on the Bonds.

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

Change Order shall mean a change order executed by the City (or its designee) and Company 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 the City, EDC and/or RDC, as applicable.

City Fees shall mean sewer fees (such as capacity, connection, impact, and tap fees associated with initial construction of each Project; but not including post-occupancy monthly user 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, with respect to the (a) Residential Project, (i) recordation of the Plat (if such recordation has not previously occurred); (ii) Company's transfer and conveyance of the Park Parcel and Roundabout Property to the City; (iii) Company providing the Infrastructure Proceeds to the City pursuant to Section 4; (iii) the City's issuance of the Park Impact Fee Credit and Road Impact Fee Credit to Company and the waiver of the City Fees; (iv) execution (if such execution has not previously occurred) of all Ancillary Agreements; (v) the City's issuance of the Bonds and the purchase of the Bonds by the Purchaser; and (vi) 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); and (b) with respect to the Commercial Project(s), (i) execution (if such execution has not previously occurred) of all Ancillary Agreements; (ii) the City's issuance of the Bonds and the purchase of the Bonds by the Purchaser; (iii) the City's waiver of the City Fees, and (iv) Project Lender issuing the Project Loan to Company.

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

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

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

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

Commercial Project(s) shall mean one (1) or more office, retail and/or commercial projects that, in the aggregate, result in approximately thirty-five thousand square feet (35,000 sq. ft.) of new commercial space.

Commercial Project Site(s) shall mean the area depicted on Exhibit C and labeled “Commercial”. The Commercial Project Site(s) may be comprised of one (1) or more parcels of real property.

Company Land shall mean that real property generally located at 9610 Allisonville Road and identified by property identification no. 15-14-10-00-00-037.101, and/or 9642 Allisonville Road and identified by property identification no. 15-14-10-00-00-037.201.

Construction Drawings shall mean construction drawings with respect to the construction of the exterior components of each Project that are approved as a result of 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.

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

Diligence Period shall mean sixty (60) days commencing on the Execution Date and terminating sixty (60) days thereafter.

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

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

Final Document(s) shall mean each Project, the final Construction Schedule and the final Construction Drawings, as each is finalized and approved or reviewed by the City in accordance with the Plan Refinement Process described in Section 13.

Final Inspection shall mean an inspection of each 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; (b) unusually inclement weather but not cold, ice, sleet, snow or hail in amounts typical in Indiana; (c) the unusual unavailability of materials, equipment, services, or labor; and (d) utility or energy shortages or acts or omissions of public utility providers; provided that a party’s failure to anticipate normal and customary delays due to

weather or normal and customary time periods to obtain Required Permits shall not be deemed Force Majeure.

Funding Agreement shall mean an agreement for each Project 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 each Project in excess of the Bond Proceeds. None of the Bond Proceeds are intended to be used in furtherance of the design and construction of the park anticipated to be developed on the Park Parcel.

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 Due Diligence; and (b) prior to the Closing, all actual, out-of-pocket, third-party costs and expenses incurred by a party through the date of such termination, to the extent not previously paid or reimbursed by the other party (not to exceed \$100,000).

Infrastructure Proceeds shall mean (a) Two Million, Five Hundred Thousand and no/100 Dollars (\$2,500,000.00) of Bond Proceeds made available to the City at the Closing for the Residential Project, and (b) an amount equal to the Road Impact Fee Credit and City Fees made available to the City as and when the City Fees and Road Impact Fee Credit are available to benefit the Project, which Infrastructure Proceeds shall be exclusively available for hard and softs costs associated with the development and construction of the Roundabout. The City shall be solely responsible for any costs to develop and construct the Roundabout in excess of the Infrastructure Proceeds.

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

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

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

Material Defect(s) shall mean any item or component of the exterior of 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.

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 (a) with respect to the Residential Project, March 31, 2023; and (b) with respect to the Retail Project(s), March 31, 2028 (which dates may be extended by written, mutual agreement of the City and Company).

Park Access Agreement shall a permanent, non-exclusive access easement agreement between the City and Company that provides for one or more means of vehicular ingress/egress to the Park Parcel from 96th Street; provided, however, the Park Access Agreement may not be required if other means of ingress/egress to the Park are provided and dedicated to the City.

Park Deed shall mean a limited warranty deed by which Company shall convey its interest in the Park Parcel to the City, which Park Deed shall be subject only to: (a) the Permitted Exceptions; (b) matters created or consented to by the City; and (c) a requirement that the Park Parcel be used exclusively as a park with a right of revision if such requirement is violated; provided however, there shall not be a requirement concerning the type of park or improvements, if any, to be erected within the park.

Park Parcel shall mean the approximately 24.8 acres of real property depicted on **Exhibit B**, which Park Parcel shall be surveyed by Company and a specific legal description prepared prior to Closing. The estimated value of the Park Parcel is _____ and no/100 Dollars (\$_____.00).

Park Impact Fee Credit shall mean a credit issued by the City to Company in an approximate amount of One Million, Nine Hundred Thousand and no/100 Dollars (\$1,900,000.00), which Park Impact Fee Credit shall be issued pursuant to and consistent to Ind. Code § 36-7-4 *et. seq.*

Permitted Change shall mean a change to a Final Document for a 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 Company 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 Real Estate Taxes and Assessments not delinquent; (b) any exceptions to title reflected in the title commitment for the Park Parcel or Roundabout Property at the conclusion of the Diligence Period to which the City has not objected; and (c) matters that would be revealed by a survey or physical inspection.

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

Plan Refinement Process shall mean the process described in Section 13 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 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 Plat, at a minimum, (a) creates the Park Parcel; (b) creates the Project Sites; and (b) provides for the dedication of certain rights

of way as mutually agreed by the City and Company. The Parties acknowledge that the final parcels as platted may vary from the current boundaries of the parcels.

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

Project(s) shall mean, individually or collectively, as applicable, the (a) Residential Project; and/or (b) Commercial Project(s), which Projects, together with the townhome development, are expected to represent an aggregate investment of approximately Ninety-Eight Million and No/100 Dollars (\$98,000,000.00) 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 each 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 each Project, the documents evidencing or securing the Project Loan(s).

Project Site(s) shall mean, individually or collectively, the (a) Residential Project Site; and/or (b) the Commercial Project Site(s), as applicable.

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

Purchaser shall mean Company, an affiliate of Company or a third party identified by Company.

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

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

Residential Project shall mean not less than three hundred eighty (380) multi-family units.

Residential Project Site shall mean the area depicted on **Exhibit C** and labeled “Residential”.

Road Impact Fee Credit shall mean a credit issued by the City to Company in the amount of Eight-Hundred and Sixty Thousand and no/100 Dollars (\$860,000.00), which Road Impact Fee Credit shall be issued pursuant to and consistent to Ind. Code § 36-7-4 *et. seq.*

Roundabout shall mean roundabout at the intersection of Allisonville Road and 96th Street.

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

Roundabout Property shall mean a portion of the Company Land required for the City's development and construction of the Roundabout depicted on **Exhibit B**, which Roundabout Property shall be surveyed by Company and a specific legal description prepared prior to Closing, which survey and legal description shall be mutually acceptable to Company and the City.

Schematic Design Drawings shall mean for each 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 each Project that is approved as a result of the Plan Refinement Process.

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

Substantial Completion shall mean, with respect to each 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 punchlist items that do not materially interfere with the use or operation thereof.

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

Taxpayer Agreement shall mean an agreement pursuant to which Company agrees to pay an amount that, together with the Real Estate Taxes, is not less than the amount required to pay semi-annual debt service on the Bonds. Company shall determine whether or not to require a Taxpayer Agreement on a Project by Project basis.

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

2. Multi-Component and Phased Development Project; Prior Site Commitments.

(a) The Project is a multi-component and phased development project. As such, the different components of the Project will likely be developed and constructed pursuant to different processes (e.g., different designs), on different timelines. Moreover, the different components of the Projects are likely to be financed separately. Provided that Closing on the Residential Project has occurred, any Event of Default shall not be cross-defaulted; meaning, any failure to comply with the requirements of this Agreement pertaining to one Project shall not constitute a failure to comply with the requirements of this Agreement pertaining to the other Project.

(b) City Bodies hereby terminate any and all commitments and obligations owed to the City of previous owners related to the Project Site (“Site Commitments”); provided however, such agreement shall only concern Site Commitments owed to the City and over which the City Bodies have control or authority.

(c) Other than the commitments and obligations included herein, City Bodies shall have no continuing obligations related to the Project Site stemming from or related to the prior owner(s) of the Project Site.

3. 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 13(n) (for a period of five (5) years from Substantial Completion) or Section 16 (for a period of ten (10) years from Substantial Completion), shall survive termination of this Agreement.

4. 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 for the Residential Project; (b) execute and perform (or cause the applicable City Bodies to execute and perform) the Ancillary Agreements; (c) issue the Bonds and, consistent with the Funding Agreement, make available the Bond Proceeds for Approved Costs incurred in connection with each Project, together with Closing Costs and fees associated with closing the Bonds, at Closing and, thereafter, within thirty (30) days after a completed draw request is approved pursuant to the Funding Agreement (which requests shall not be submitted more frequently than monthly); (d) prior each Closing, create the Allocation Area and pledge the Pledged Increment to repayment of the Bonds; (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 shall not be liable for the result of any rezone requests; (f) issue the Park Impact Fee Credit and Road Impact Fee Credit at the Residential Project Closing and waive, or cause to be waived, the City Fees; (g) accept transfer and conveyance of the Park Parcel pursuant to the Park Deed and the Roundabout Property pursuant to the Roundabout Deed at the Residential Project Closing; (h) enter into the Park Access Agreement at the Residential Project Closing; (i) exercise commercially reasonable efforts to cause

the review and timely issuance of the City's development and permit applications necessary to develop and construct each of the Projects on the Project Sites, 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; and (j) design and construct the Roundabout and utilize funds of the City Bodies to pay all costs associated with the Roundabout in excess of the Infrastructure Proceeds with the completion and opening of the Roundabout occurring no later than eighteen (18) months from the Closing of the Residential Project.

5. Company's Obligations. Subject to the terms and conditions of this Agreement, Company shall: (a) in connection with the City, jointly submit the Plat for final approval and recordation; (b) at the Residential Project Closing, transfer and convey the Park Parcel to the City pursuant to the Park Deed and the Roundabout Property pursuant to the Roundabout Deed; (c) provide the Infrastructure Proceeds to the City at Residential Project Closing; (d) complete each Project substantially in accordance with the Final Documents (subject to Change Orders and Permitted Changes); (e) pay, when due, all Real Estate Taxes and Assessments on the Projects and the Project Sites; (f) make or cause to be made the payments required by the Taxpayer Agreement (if required by Company on a Project by Project basis); (g) at each Closing, cause the purchase of the Bonds; (h) obtain the Project Loans and ensure that proceeds of the Project Loans are available on each Closing Date (subject to the satisfaction of customary draw conditions); (i) enter into the Park Access Agreement at the Residential Project Closing, if necessary; and (j) execute and perform the Ancillary Agreements.

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

(a) Closings. Subject to the terms and conditions of this Agreement, each 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 - Each Closing. At each 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;

(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 RDC, EDC, City, 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, EDC, RDC, 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 D**;

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

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

(c) Deliveries- Residential Project Closing, Only. At the Closing for the Residential Project, the following, in addition to the items in Section 6(b), shall occur:

(i) The City shall:

(A) execute and deliver to Company evidence reasonably satisfactory to Company that it has access to and the ability to draw on sufficient funds (including the Infrastructure Proceeds) to complete the construction of the Roundabout in the manner required by this Agreement.

(B) pay all closing costs associated with the conveyance of the Park Parcel and Roundabout Property to the City by wire transfer of immediately available funds;

(C) pay all other title insurance premiums that the City desires; and

(D) issue the Park Impact Fee Credit and Road Impact Fee Credit to Company and waive or cause to be waived the City Fees.

(ii) Company and City Bodies, as applicable, shall execute and deliver the following:

(A) the Park Deed conveying to the City fee simple title to the Park Parcel and the Roundabout Deed conveying to the City fee simple title to the Roundabout Property;

(B) a vendor's affidavit from Company in form and substance such that the Title Insurer agrees to delete the standard exceptions for non-survey matters for the Park Parcel and Roundabout Property;

(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;

(D) a certification by City Bodies and Company that all representations and warranties set forth in Subsection 11(a) and (b), respectively, remain true and accurate in all material respects as of the Closing Date; and

(E) copies of such resolutions, consents of members, partners, officers and/or shareholders and other evidence as the RDC, EDC, City, Company, 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 Park Parcel and Roundabout Property to the City has been properly authorized by the signatories thereto.

(iii) The bond trustee or other authorized party with custody of the proceeds of the Bonds shall provide the City the Infrastructure Proceeds.

7. 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.

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

(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 Residential 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 Residential 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 Residential Project Site establishes that there are conditions that would interfere materially with the construction and use of the Residential 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 whether the Residential Project Site is or will be zoned for the Residential Project.

(d) Utility Availability. Prior to the Closing, 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 Residential Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Residential 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 current stage of construction.

(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 Residential 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 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 of the representations in Section 11(a) shall be true and accurate in all material respects.

If any of the conditions set forth in this Section are not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, 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, (1) Company shall work diligently and in good faith to satisfy the conditions set forth in this Section and in Section 9; 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, then Company shall be deemed to have waived such condition and shall proceed to Closing. For the avoidance of doubt, the Parties acknowledge and agree that the Commercial Project(s) may occur in the sole discretion of the Company. Accordingly, the Conditions included in this Section 8 shall not apply to the Residential Project.

9. Conditions to City Bodies' Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of City Bodies with respect to proceeding to the each of the Closings (unless a specific Closing is stated) 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 each 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 current stage of construction.

(b) Title Conditions. Prior to the expiration of the Diligence Period, the City shall have determined that the Title Insurer shall insure, for its fair market value, marketable, fee simple title to the Park Parcel and Roundabout Property in the name of the City subject only to the Permitted Exceptions. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the condition of title for the Park Parcel or Roundabout Property.

(c) Financial Ability. Prior to each 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.

(d) 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.

(e) 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.

(f) Ancillary Agreements. Prior to each 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.

(g) 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).

(h) 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: (i) all recommendations, approvals, authorizations, resolutions, and/or ordinances required to be completed, obtained, and/or adopted in connection with: (A) the issuance and sale of the Bonds on the terms to which the Parties have agreed; (B) the use of the Bond Proceeds to pay Approved Costs incurred in connection with the Project; (C) the pledging of the Pledged Increment to the payment of debt service on the Bonds; and (D) the Allocation Area has been established.

(i) Plat. On or before the Closing Date for the Residential Project, 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.

(j) 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.

(k) 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.

(l) 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 11(b) and (c) shall be true and accurate in all material respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, City Bodies either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement and the Ancillary Agreements by a written notice to 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. 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 in Section 8; 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.

10. Incurred Costs, Roundabout Property 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 Parties will proceed to the Residential Project Closing on or before

March 31, 2023, unless otherwise mutually agreed in writing by the Company and City. Accordingly, if this Agreement is terminated in accordance with its terms prior to the Residential Project 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 8(h), 8(k), 8(l) or 8(m) or (iii) failure of any City Body to comply with the representations and warranties included in Section 11(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 9(c), (g), (i), (j) or (l), or (iii) failure of Company to comply with the representations and warranties included in Sections 11(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 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.

11. 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) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (vi) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (vii) this Agreement is the legal, valid, and binding obligation of it; and (viii) it has not engaged or dealt with any real estate broker or agent in connection with the Project, Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of a City Body.

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

Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Company or any party affiliated with Company; and (vii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. If 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.

12. Allocation Area and Pledged Increment. Each of the following subsections shall independently apply to each of the Projects, Allocations Areas and the Pledged Increment used to pay debt service on the Bonds issued for each of the Projects:

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

(b) TIF Revenue Shortfalls. In the event Pledged Increment is, in any given period, insufficient to make payment on the Bonds, such shortfall shall accrue and be payable from future Pledged Increment during the Bond Term and no other source of City Bodies. In the event and to the extent Company or any affiliate makes any payment on the 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 applicable Bond.

(c) Excess Pledged TIF Revenue. To the extent Pledged Increment is available in amounts in excess of the amount to make the then due or past due payments on the Bonds (pursuant to Subsection 12(b) above), such excess Pledged Increment shall be used to redeem the Bonds prior to their maturity.

(d) Interest During Construction. At the option and discretion of Company, the Bonds may bear interest (i) at zero percent from their date of issuance until Substantial Completion (and, thereafter, at the Bond Interest Rate (as hereinafter defined)); or (ii) at the Bond Interest Rate from their date of issuance throughout the Bond Term. After the Project has been assessed and is generating increment, the Bonds will (i) bear interest at the Bond Interest Rate and (ii) be in accordance with the City authorizations relating to the Bonds. For purposes of this Agreement, the “Bond Interest Rate” shall mean a rate intended to be equal to or less than six and one half percent (6.5%) (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 Bonds may be structured in one or more series to support the multi-component and phased nature of the Project.

13. Plan Refinement Process.

This Plan Refinement Process shall govern development and construction of the Residential Project. The Commercial Project(s) are not subject to this Section 13 and/or the Plan Refinement Process (provided, that the Commercial Project(s) shall comply with all applicable Laws that might affect the design of the Commercial Project(s)). The City has reviewed and approved the Concept Plan for the Residential Project; provided, however, such Concept Plan may be updated from time to time upon mutual agreement of Company and the City.

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 Residential 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 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.

(g) 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 Residential 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 Residential Project.

(h) 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.

(j) 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.

(k) 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 13 to the Plan Review Panel; provided, that no such delegation shall extend any of the timing deadlines set forth in this Section 13. Any determination by the Plan Review Panel shall be binding on City Bodies.

(l) 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.

(m) 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.

(n) 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.

(o) 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.

(p) 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.

(q) Information Review. Upon City's request, Company 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.

14. Taxpayer Agreement. If required by Company on a Project by Project basis, Company agrees to enter into a Taxpayer Agreement for each of the Bonds mutually acceptable to the City Bodies that (a) states that beginning the calendar year following the first January 1 after Substantial Completion of the applicable Project and continuing through each calendar year of the Bond Term, 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: (A) the amount of the required debt service payment on the Bonds; and (B) the Pledged Increment distributable to RDC for the applicable year; (b) provides that the payments due by Company thereunder are secured by an annually renewable lien against each of the Project Sites 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 each of the Project Sites. City Bodies and Company shall execute and record the Taxpayer Agreement at each of the Closings (if required by Company on a Project by Project basis). Nothing in this Agreement or the Taxpayer Agreement (if required by Company on a Project by Project basis) shall be deemed to release Company from any obligation to pay Real Estate Taxes on the Project Sites regardless of when payable or assessed.

15. Default.

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

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

(c) No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Agreement or by the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages as a 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.

(a) City Bodies. To the extent permitted by applicable Laws, City Bodies shall indemnify and hold harmless Company from and against any and all Claims arising from or connected with 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 or connected with: (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; (iv) Company suffering or

causing the filing of any mechanic's or materialmen's lien against the Roundabout Property, Park Parcel or adjacent property owned by City Bodies; or (v) 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.

(a) Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion of each of the Projects, 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 and/or any subsidiary or affiliate of Company that has full power, authority, and capability to accept such assignment and perform the obligations of Company hereunder, so long as Chris Reid has day-to-day control of such subsidiary or affiliate; or (B) collaterally assign this Agreement (or portion hereof) to a Project Lender.

(b) Notwithstanding any assignment permitted under this Section, the applicable City Bodies or 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. Notwithstanding any provision in this Agreement the contrary, upon an assignment in strict compliance with this Agreement by Company of its rights and obligations in respect of a Project no other assignee of Company shall have any responsibility for any obligations of Company other than those expressly assumed by any such assignee.

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, Chris Greisl, City Attorney with copies (via email, only) to: Jennifer Messer, jennifercmesserlaw@gmail.com; and to Company at 805 City Center Drive, Suite 160, Carmel, Indiana 46032, with copies (via email, only) to: Grant Chapman, gchapman@crgresidential.com and Aaron Dixon, aaron.dixon@icemiller.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 and Company represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City, EDC RDC, 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 and Company, respectively; provided, however, each of the City's, EDC and RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which the City, EDC and RDC agree to undertake with diligence and in good faith.

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 on a Project by Project basis)) 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. Roundabout Development and Construction. The City Bodies acknowledge and agree that the Infrastructure Proceeds are being provided to the City for the sole, exclusive purpose of the City developing and constructing the Roundabout. Upon receipt of the Infrastructure Proceeds, City shall maintain and use the Infrastructure Proceeds for design and construction of the Roundabout. City agrees to proceed with design and construction of the Roundabout as expeditiously as possible and to complete and open the Roundabout no later than eighteen (18) months from the Closing of the Residential Project. Upon reasonable notice, City further agrees to meet and consult with Developer concerning timing for construction of the Roundabout. For the avoidance of doubt, the City's obligation to construction the Roundabout is absolute, and the City shall be exclusively responsible for all costs to construction the Roundabout in excess of the Infrastructure Proceeds.

22. Merger. All prior agreements, understandings, and commitments with respect to the transaction contemplated herein are hereby superseded, terminated, and merged herein, and shall be of no further force or effect. Absent an amendment to, or modification of, this Agreement in accordance with this section, in no event shall City Bodies be obligated to perform any work, incur any expenses, or provide any incentives (whether with respect to the Project Site, the Project, or

any site or improvements adjacent to, or in the vicinity of, the Project Site) other than as specifically set forth in this Agreement. This Agreement may be amended or modify only by written instrument executed by City Bodies and Company.

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, 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, 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 24 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: Concept Plan

- Exhibit B: Park Parcel and Roundabout Property
- Exhibit C: Project Site
- Exhibit D: Insurance
- Exhibit E: Bonds

[signatures on following pages]

IN WITNESS WHEREOF, the City, EDC, RDC 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

Date: _____

“EDC”

**CITY OF FISHERS ECONOMIC
DEVELOPMENT COMMISSION**

By: _____

Its: _____

Date: _____

“RDC”

FISHERS REDEVELOPMENT
COMMISSION

By: _____
Tony Bonacuse, President

Date: _____

ATTEST:

By: _____
Damon Grothe, Secretary

Date: _____

“COMPANY”

96th St Investors, LLC, an Indiana limited liability company

By: _____
_____, _____

Date: _____

Exhibit A Concept Plan

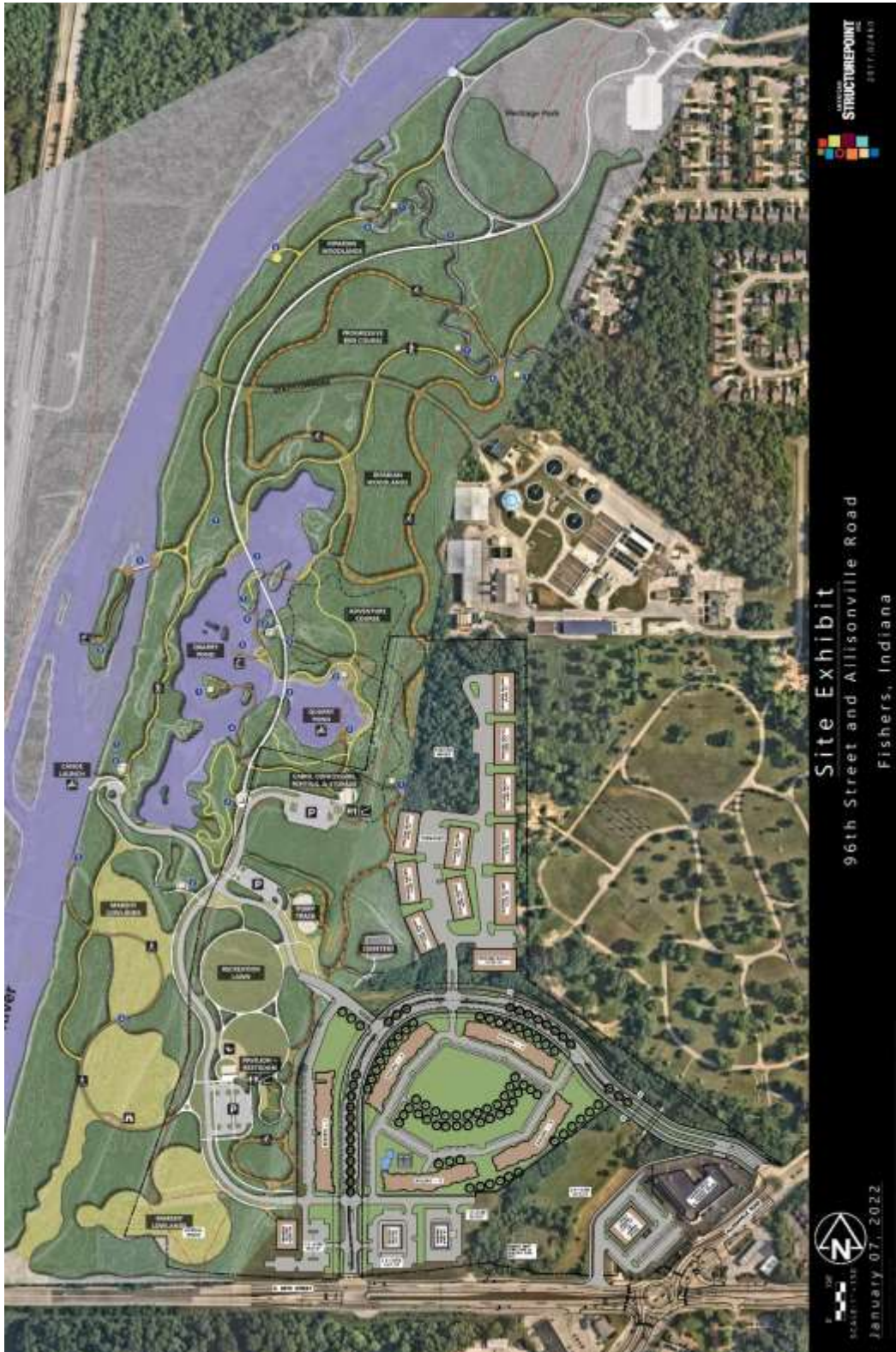


Exhibit B Depiction of Park Parcel and Roundabout Property

The approximate boundaries of the Park Parcel and the Roundabout Property are depicted below, with the final boundaries of each to be determined mutually by the City and Company pursuant to the Plat and generally consistent with this depiction.



**Exhibit C
Depiction of Project Site**

The approximate boundaries of the Project Site are depicted below, with the final boundaries of each of the Residential Project Site and the Commercial Project Site(s) to be determined mutually by the City and Company pursuant to the Plat and generally consistent with this depiction.



Exhibit D

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

Exhibit E
Bonds