PROJECT AGREEMENT

This Project Agreement (the "**Agreement**") is executed as of the _____ day of _____ 2023, by and among **Thompson Thrift Development, Inc.**, an Indiana corporation, ("**Developer**"), **City of Fishers, Indiana** ("**City**"), **Fishers Town Hall Building Corporation** ("**Building Corp.**"), **City of Fishers Redevelopment Commission** ("**RDC**"), and **City of Fishers Economic Development Commission** ("**EDC**") on the following terms and conditions:

Recitals

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

WHEREAS, as part of the Master Development Plan, the City has (a) worked with developers to develop mixed-use developments that include apartments, condominiums, office space and retail; (b) incented multiple high-growth, high-technology businesses to locate to the City; (c) in 2016, entered into an agreement with the State of Indiana for a portion of the City's Nickel Plate District to be designated a certified technology park; (d) developed a biosciences corridor; and (e) designed and developed the City's Nickel Plate pedestrian trail extending throughout the City and serving, among other areas, the Nickel Plate District;

WHEREAS, the City continues to fulfill its Master Development Plan and now desires, in connection with and as a part thereof, to induce the development of additional hotel rooms and commercial amenities in the City;

WHEREAS, Developer is an Indiana-based commercial and residential developer that has designed and constructed mixed-use developments and other residential and commercial amenities throughout the Midwest and in Arizona, Florida and Texas, including, among others, the Fishers District and the Stations, in the City;

WHEREAS, Developer has agreed to invest or cause to be invested approximately $160 Million to $180 Million in completing the Union Project and $60 Million to $85 Million in completing the Crossing Project, if the City will satisfy the City's obligations included herein;

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

WHEREAS, to stimulate and induce the development of the Projects on each of the Project Sites, 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. <u>Defined Terms</u>. The following capitalized terms are used throughout this Agreement with the meaning set forth in this <u>Section 1</u>:

Additional Crossing Allocation Areas shall mean separate and distinct tax allocation areas established by City Bodies pursuant to Ind. Code § 36-7-14 *et seq*., for the following areas: Parcel 3, Parcel 5 and Parcel 6 as depicted on Exhibit B.

Additional Crossing Area TIF shall mean 100% of the increment generated in the Additional Crossing Allocation Areas.

Allocation Areas shall mean collectively, the Additional Crossing Allocation Areas, the Crossing Allocation Area and the Union Allocation Area.

Ancillary Agreements shall mean, individually or collectively, for each of the Projects, the instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement, Taxpayer Agreement (if required by Developer and consistent with the Laws based on the tax status of the Bonds) and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement. For the avoidance of doubt there may be two (2) sets of Ancillary Agreements, one (1) for the Union Project and one (1) for the Crossing Project.

Approved Costs shall mean all Hard Costs and Soft Costs (including capitalized interest on and reserves for the Bonds) related to the development and construction of the Projects.

Approved Plans shall mean for each of the Projects, the plans for the Projects on which the financial analysis for the Bonds is based. For the avoidance of doubt there shall be two (2) sets of Approved Plans, one (1) for the Union Project and one (1) for the Crossing Project.

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

Bond(s) shall mean, for the Projects (and whether referring to the Senior Bonds, Junior Subordinate Bonds or Subordinate Bonds), one or more series of taxable or tax exempt (as collaboratively determined by the City Bodies and Developer pursuant to the Laws; provided, however, in the event of differing determinations concerning the status of the Bonds based on the Laws, the City's determination shall prevail) economic development revenue bonds to be issued under Ind. Code § 36-7-12 *et. seq*. in a maximum par amount that Developer and City Bodies jointly determine will ensure that one hundred percent (100%) of all tax increment revenue generated by the Union Project and Crossing Project, as applicable, is utilized to pay debt service on the Bonds. Such maximum principal amount shall assume that there will be three percent (3%) annual increases in assessed value during the twenty-five (25) year term of each of the Union Allocation Area and Crossing Allocation Area , as applicable (the "AV Increases"). For the avoidance of doubt, the Bonds shall be exclusively based on tax increment to be generated from the Projects together with the AV Increases and shall be payable solely from the applicable Pledged Increment. Except as stated herein with respect to the Yard TIF, the City Bodies shall not be obligated to provide any other source of payment or security for the Bonds. Prior to expiration of the applicable Diligence Period, the Parties shall mutually agree to the par amount of the Bonds

and the net proceeds resulting therefrom.

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

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

Bond Proceeds shall mean the proceeds of the Bonds, which Bond Proceeds shall be used to pay (a) Approved Costs, (b) Closing Costs; and (c) reasonably incurred and documented administrative costs of the City associated with maintaining the Bonds (the "**Continuing Bond Costs**"). The Bond Proceeds shall be exclusively available for the Projects as herein specified.

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

Budget shall mean, for each of the Projects, a detailed hard and soft cost budget, for (a) the costs of the design and construction of the Project in accordance with the Final Documents and Drawings; (b) the payment of all professional fees and financing fees; and (c) the payment of all other related closing costs and soft costs to be incurred in connection with the development and construction of the Project. The Budget must be in a form and with detail acceptable to Project Lender.

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

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

Closing shall mean, for each of the Projects, to the extent such has not previously occurred, (a) recordation of the Plat; (b) execution of all Ancillary Agreements; (c) the City's approval of the Budget; (d) the City's issuance of the Bonds and the purchase of the Bonds by the Purchaser; (e) Project Lender issuing the Project Loan to Developer (and Developer authorized to draw upon such Project Loan subject to the satisfaction of customary draw conditions); (f) with respect to the Crossing Project, Developer's payment of the Crossing Project Price to the City; and (g) the Parties approval of applicable financial analyses, including, without limitation, the estimated assessed value, estimated tax increment, available Bond Proceeds, reserve requirements and capitalized interest, if applicable, and schedule of initial and continuing debt service payments (for each project, the "**Project Analysis**").

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, including, without limitation bond issuance costs and administrative fees and counsel fees for both City Bodies and Developer.

Closing Date shall mean each of the dates on which Closing for the Union Project or Crossing Project occurs.

Concept Plan shall mean, for the Union Project, the plan attached hereto as **Exhibit C-1 (Union Project)** and for the Crossing Project the plan attached hereto as **Exhibit C-2 (Crossing Project).**

Crossing Allocation Area shall mean the allocation area established for the Crossing Site.

Crossing Project shall mean collectively, the development and construction of a mixed-use project envisioned to include approximately 275 multifamily units and 20,000 square feet of retail and restaurant space). Notwithstanding the foregoing, the Crossing Project may change in use and scope during the Due Diligence Period and shall ultimately be developed based on the Approved Plans. The Crossing Project shall culminate in approximately $60 Million to $80 Million in private investment in the City, which is subject to change based upon the Approved Plan and corresponding uses.

Crossing Purchase Price shall mean the purchase price agreed to by the Parties based on a shared pro forma, and with such purchase price payable at the time that Developer closes its construction loan and is prepared to commence construction of the Crossing Project.

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

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

Development Land shall mean the approximately ten and one-half (10.5) acres of real property depicted on **Exhibit G**.

Diligence Period shall mean, for each of the Projects, the time period commencing on the Effective Date and ending thirty (30) days prior to the applicable Outside Closing Date.

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

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

Excess TIF shall mean any Project Increment remaining, following (i) payment of debt service on the Senior Bonds, (ii) replenishment of reserve funds for the Senior Bonds, (iii) payment of debt service on the Subordinate Bonds, (iv) reimbursement to the Developer for any Shortfall (as defined in Section 11(b)), (v) replenishment of reserve funds for the Subordinate Bonds, (vi) payment of Continuing Bond Costs and (vii) payment of debt service on the Junior Subordinate Bonds.

Final Documents and Drawings shall mean, for each of the Projects, the final design development documents, construction drawings and construction schedule, as each is finalized and approved or reviewed by the City in accordance with City planning and zoning procedure, which Final Documents and Drawings shall strictly comply with the zoning requirements for the Project Site and be materially the same as the Concept Plan.

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

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

Hard Costs shall mean the costs incurred in connection with construction of each of the Projects, which costs are customarily known in the industry as "hard costs".

Incurred Costs shall mean, if this Agreement is terminated (a) after expiration of the applicable Diligence Period; and (b) prior to the applicable 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).

Junior Subordinate Bonds shall mean Bonds issued for the Union Public Project Garage payable from the Pledged Increment on a junior subordinate basis, following payment from the Pledged Increment of the Senior Bonds and the Subordinate Bonds.

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

Original LAA shall mean that certain June 1, 2021, Land Acquisition And Economic Development Agreement by and among Thompson Thrift Development, Inc. and the City Bodies concerning the Development Land, among other obligations and commitments of the parties thereto.

Outside Closing Date shall mean for the (a) Crossing Project on or before October 31, 2026, if such project on Parcel 2 remains financially viable and Developer proceeds to develop such project on Parcel 2, and (b) Union Project on or before December 31, 2025, unless the Outside Closing Date is extended by the City in its sole discretion. In the event Developer or its affiliate do not

close on Parcel 2 of the Crossing Project, such land shall remain Commercial Property subject to the Land Acquisition Agreement.

Plat shall mean, for each of the Projects, the plat prepared by Developer that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hamilton County, Indiana prior to or contemporaneous with other documents needed for Closing, which Plat is anticipated to create five (5) parcels and a horizontal property regime with multiple parcels.

Pledged Increment shall mean, for the (a) Senior Bonds, (i) the Project Increment, and (ii) the Yard TIF (if available and needed to pay debt service on the Senior Bonds); (b) Subordinate Bonds, (i) the Project Increment following payment of the Senior Bonds, and (ii) the Yard TIF (if available and needed to pay debt service on the Subordinate Bonds and following payment of the Senior Bonds); and (c) the Junior Subordinate Bonds, the Project Increment following payment of the Senior Bonds and the Subordinate Bonds).

Project(s) shall mean, individually or collectively, as applicable, the Crossing Project and the Union Project.

Project Increment shall mean collectively, one hundred percent (100%) of the tax increment generated from the Union Allocation Area, one hundred percent (100%) of the tax increment generated from the Crossing Allocation Area and one hundred percent (100%) of the tax increment generated from the Additional Crossing Allocation Areas.

Project Site(s) shall mean, individually or jointly, as applicable, the Crossing Project Site and the Union Project Site.

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

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

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

Property Inspections shall mean, for each of the Project Sites, surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments.

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

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.

Reimbursement Amount shall mean the positive difference, if any, between the estimated, annual, aggregate amount of tax increment that the City and Developer mutually determine in their commercially reasonable discretion (collectively, or for each parcel, the "**Additional Estimated Taxes**"), will be generated by each of the parcels within the Additional Crossing Allocation Areas and the annual, aggregate tax increment actually generated by such Additional Crossing Allocation Areas. For example, in the event the City and Developer determine the Additional Crossing Allocation Area will annually generate One Hundred Dollars ($100.00), but only Seventy-Five Dollars ($75.00) is generated, the Reimbursement Amount for such year would equal Twenty-Five Dollars ($25.00).

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

Senior Bonds shall mean Bonds issued for the Projects (but not including the Union Project Public Garage) and payable from the Pledged Increment on a senior basis.

Soft Costs shall mean costs incurred in connection with the Projects, which costs are customarily known in the real estate development and construction industry as "soft costs".

Subordinate Bonds shall means Bonds issued for the Union Project Public Garage and payable from the Pledged Increment on a subordinate basis, following payment on the Senior Bonds and prior to the payment of the Junior Subordinate Bonds. The Subordinate Bonds will also be secured by the Taxpayer Payments.

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

Survey shall mean an ALTA survey of each 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 Projects; or (b) render construction of each of the Projects unusually difficult or costly.

Taxpayer Agreement(s) shall mean, for the securing of the Subordinate Bonds, a developer obligations agreement and consent to real property tax lien imposing a lien against the real property included in the Union Allocation Area, equal in priority to the property tax lien granted to the State of Indiana under Ind. Code § 6-1.1-22-13 as permitted by Ind. Code § 36-7-25-6.

Taxpayer Payments shall mean payments made pursuant to the Taxpayer Agreement(s).

Title Insurer shall mean First American Title Insurance Company.

Union Allocation Area shall mean the allocation area established for the Union Project Site.

Union Project shall mean, collectively, the development and construction of mixed-use project envisioned to include (a) a hotel and 17,500 square feet of retail space; (b) four (4) retail structures totaling approximately twenty-seven thousand, eight hundred square feet (27,800 sq. ft.); (c) approximately sixty-thousand square feet (60,000 sq. ft.) of Class-A office space; (d) a mixed-use building comprised of approximately two hundred fifty (250) units and twelve thousand square feet (12,000 sq. ft.) of retail space; and (e) garages to support other project elements. Notwithstanding the foregoing, the Union Project may change in use and scope during the Diligence Period and shall ultimately be developed based on the Approved Plans. The Union Project shall culminate in approximately $160 Million to $180 Million in private investment in the City, which is subject to change based upon the Approved Plan and corresponding uses. Notwithstanding the foregoing or anything contained herein, when used herein in relation to the allocation of the Subordinate Bonds and Junior Subordinate Bonds proceeds to the Union Project, the Union Project shall mean only the Union Project Public Garage.

Union Project Public Garage shall mean the public parking garage that is part of the Union Project and located on the Union Project Site [as depicted on **Exhibit D**].

Union Project Site shall mean the approximately 10.5 acres of real property depicted on **Exhibit E**.

Yard Allocation Area shall mean The Yard Economic Development Allocation Area, as depicted on **Exhibit A**.

Yard Bonds shall mean the City of Fishers, Indiana Taxable Economic Development Revenue Bonds, Series 2018A (The Yard Retail Project) and the City of Fishers, Indiana Economic Development Revenue Bonds, Series 2018B (The Yard Garage Project).

Yard TIF shall mean for the Yard TIF Term, excess tax increment (any amount not required to pay debt service and other typical administrative costs associated with the Yard Bonds), in an amount not to exceed Five Hundred Thousand and no/100 Dollars, annually from the Yard Allocation Area (as depicted on **Exhibit A**).

Yard TIF Term shall mean the time period remaining under the Laws for the Yard Allocation Area.

2. Interpretation; Term and Other General Matters.

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

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

(c) The term of this Agreement shall be for the period commencing on the Effective Date and continuing throughout the Bond Term (the "Agreement Term"). Except as expressly set forth otherwise herein, this Agreement shall terminate upon the expiration of the Agreement Term;

provided, however, the obligation of the Parties to pay any money owed pursuant to this Agreement, shall survive termination of this Agreement) This Agreement concerns two (2) separate and distinct Projects. As such, the terms and provisions herein, unless otherwise specifically stated, equally and separately apply to each of the Projects. For example, and without limitation Developer shall complete the Closing process described in Section 5 and the Plan Refinement process described in Section 12 for each of the Projects.

3. City's Obligations. Subject to the terms and conditions of this Agreement, the applicable City Body shall: (a) in connection with Developer, jointly submit the Plat for final approval and recordation at or prior to Closing for each 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 and Closing Costs at each 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); provided, however, the parties acknowledge and agree that Bonds for each of the Projects will not be issued until Closing for such Project; (d) prior to the Union Closing, create the Allocation Areas and pledge the Pledged Increment to repayment of the Bonds; provided, however, any such pledge shall be contingent on Closing for each of the Projects (for example and without limitation, the pledge of increment from the Crossing Allocation Area, shall be subject to Closing for the Crossing Project; provided further that upon the issuance of the Bonds for the Union Project in conjunction with the Closing of the Union Project, the City shall have pledged the increment from the Union Allocation Area and the Additional Crossing Allocation Area to the Bonds for the Union Project, with no contingency) (e) [*intentionally omitted*]; (f) provide reasonable assistance to Developer in connection with any zoning changes or variances determined to be necessary or appropriate for construction and use of the Projects in accordance with the Final Documents and Drawings; 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; (g) pay to Developer any Reimbursement Amount owed pursuant to Section 11; (h) own the Union Project Public Garage and contract for its operation by the Developer pursuant to a Revenue Procedure 2017-13 compliant management agreement; provided, however, any such agreement: (i) shall not require the City Bodies to pay or contribute to the cost of operation or maintenance of the Union Project Public Garage, and (ii) shall provide that all revenues generated by the Union Project Public Garage shall be utilized as determined by Developer; and (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 the Projects on the Project Sites, including, whenever reasonably possible, coordinating with Developer to lower the Projects' costs by supporting the issuance of interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving final approval of less critical activities, to the extent allowed by the Laws; provided, however, City Bodies shall not be obligated to incur expenses related to such assistance.

4. Developer's Obligations.

(a) Subject to the terms and conditions of this Agreement, Developer shall: (1) in connection with the City, jointly submit the Plats for final approval and recordation prior to each of the Closings; (2) complete the Projects (i) substantially in accordance with the applicable Final Documents and Drawings and (ii) with respect to the Union Project, in a manner that results in approximately $140 Million to $160 Million Dollars of private investment in the Union Project, and (iii) with respect to the Crossing Project, in a manner that results in approximately $60 Million to $80 Million Dollars of private investment in the Crossing Project; (3) pay, when due, all Real Estate Taxes and Assessments on the Projects and the Project Sites; (4) make or cause to be made the payments required by the Taxpayer Agreements; (5) at each Closing, cause the Purchaser to purchase of the Bonds; (6) obtain the Project Loans and ensure that proceeds of such Project Loan are available on the applicable Closing Date (subject to the satisfaction of customary draw conditions); and (7) execute and perform the Ancillary Agreements.

(b) Subject to the terms and conditions of this Agreement, Developer will: (i) own the Crossing Project and the Crossing Project Site; (ii) construct and transfer the Union Project Public Garage to the City; (iii) operate the Union Project Public Garage for the City pursuant to a Revenue Procedure 2017-13 compliant management agreement which will not result in private use with respect to the Subordinate Bonds; and (iv) own the Union Project and the Union Project Site, with the exception of the Union Project Public Garage.

5. <u>Closing</u>. Subject to the terms and conditions of this Agreement,

(a) <u>Closing</u>. Subject to the terms and conditions of this Agreement, Closing for the (i) Union Project shall occur on a date designated by Developer that is by or before the Outside Closing Date of July 31, 2025, (ii) Crossing Project shall occur on a date designated by Developer that is by or before the Outside Closing Date of October 31, 2026 (if developed by the Developer and subject to the Land Acquisition Agreement) and (iii) each of the Projects shall occur at the office of the Title Insurer or at such other place as the City and Developer mutually may agree.

(b) <u>Deliveries</u>. At each Closing, unless another time is specifically stated or the required action has previously occurred:

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

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

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

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

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

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

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

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

(ix) With respect to the Closing for the Crossing Project, Developer shall pay the Crossing Purchase Price to the City.

6. Taxes. At all times during Developer's ownership or operation of each of the Projects and the Project Sites, as applicable, Developer assumes and agrees to pay or cause to be paid all Real Estate Taxes and Assessments becoming a lien against such Project Site whenever due and payable.

7. Conditions to Developer Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of Developer with respect to each of the Projects and Closings are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 7, each of which shall apply to the Closing for the Union Project and Crossing Project:

(a) Environmental Condition. Prior to expiration of the Diligence Period, Developer shall have conducted all industry standard Property Inspections concluding 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 [D. Potter?].

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

(c) Zoning. Prior to expiration of the Diligence Period, Developer shall determine whether the Project Site is or will be zoned for the Project.

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

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

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

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

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

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

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

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

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

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

If any of the conditions set forth in this Section are not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer either may elect to: (A) waive in writing satisfaction of the conditions and proceed to the Closing; or (B) terminate this Agreement and any executed Ancillary Agreements by delivery of written notice to City Bodies; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by a City Body, Developer shall have all of the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, (1) Developer shall work diligently and in good faith to

satisfy the conditions set forth in this Section; and (2) if Developer fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, then Developer shall be deemed to have waived such condition and shall proceed to Closing.

8. Conditions to City Bodies' Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of City Bodies with respect to proceeding to the Closing (unless a specific Closing is stated) with respect to each of the Projects, 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 expiration of the Diligence Period, Developer shall have obtained, or City Bodies or Developer have determined that Developer shall be able to obtain, all Required Permits then available for the current stage of construction.

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

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

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

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

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

(g) Procedure. On or before the Closing Date, 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 capitalized interest as applicable; and (D) the Allocation Areas have been established.

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

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

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

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

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

9. Incurred Costs and Failure to Close. Each of the City Bodies and Developer is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other Parties will proceed to Closing on or before the applicable Outside Closing Date. Accordingly, if this Agreement is terminated:

(a) due to (i) a continuing Event of Default by one of the City Bodies, (ii) after expiration of the Diligence Period, failure of the applicable City Body to satisfy the condition included in Sections 8(e) or (g), or (iii) failure of any City Body to comply with the representations and warranties included in Section 10(a), then City Bodies shall reimburse Developer for its Incurred Costs.

(b) due to (i) a continuing Event of Default by Developer, (ii) after expiration of the Diligence Period, failure of Developer to satisfy the conditions included in Section 7(a) through 7(g) and 7(i), or (iii) failure of Developer to comply with the representations and warranties included in Sections 10(b) or (c), then Developer shall reimburse the City for its Incurred Costs.

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

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

10. Representations and Warranties

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

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

religion, sex, sexual identification, sexual orientation, or national origin. Developer states that it does not currently have employees.

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

(d) Master Development Plan. The City represents that the completion of the Projects are consistent with, a part of, and will assist it in fulfilling its Master Development Plan.

11. Allocation Areas and Pledged Increment; Bonds Structure.

(a) Allocation Areas. Subject to all procedures required by the Laws and the terms and conditions of this Agreement and prior to Closing for the Senior Bonds, the City Bodies shall establish the Allocation Areas. Subject to all procedures required by the Laws the City Bodies shall pledge: (i) the Pledged Increment to the repayment of the Senior Bonds, the Subordinate Bonds and the Junior Subordinate Bonds; (ii) capitalized interest to the Bonds, as applicable; and (iii) the Taxpayer Payments to the repayment of the Subordinate Bonds. The foregoing pledges will remain effective for the respective Bond Terms.

(b) Payment Order. Pledged Increment will be utilized in the following order: (i) to make current payments of interest and principal on the Senior Bonds, (ii) to replenish reserves for the Senior Bonds, (iii) to make current payments of interest and principal on the Subordinate Bonds, (iv) to remedy any prior shortfalls with respect to payments of interest and principal on the Subordinate Bonds pursuant to the Taxpayer Agreements (in any instance, a "**Shortfall**") or, in the event of a Shortfall, reimburse Developer or a Developer affiliate if such entity makes a payment on the Subordinate Bonds (including its carrying costs for such payments), (v) to replenish reserves for the Subordinate Bonds, (vi) to pay Continuing Bond Costs, and (vii) to make payments of interest and principal on the Junior Subordinate Bonds. 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. Beginning not less than thirty (30) days prior to the initial date for the first (1st) debt service payment on the Union Project (as stated in the Project Analysis) and continuing for each consecutive year thereafter during the Reimbursement Term (as that term is hereinafter defined), the City shall pay to Developer the Reimbursement Amount, if any, semi-annually on or before May 10th and November 10th of each year of the Reimbursement Term. The "Reimbursement Term" is defined as the earlier of either (i) twenty-five (25) years, or (ii) the date on which owners of the parcels within the Additional Crossing Allocation Area are liable for making a taxpayer payment pursuant

to a developer obligations agreement that requires such owners to guarantee tax payments in an amount not less than the Additional Estimated Taxes for such parcel. For the avoidance of doubt, the Reimbursement Term may vary for each parcel within the Additional Crossing Allocation Area depending on when an owner of a parcel within the Additional Crossing Allocation Area is liable for making a payment pursuant to a developer obligations agreement. Notwithstanding the foregoing or anything included herein to the contrary, the Reimbursement Amount shall only be due from the City to the Developer in any semi-annual period, to the extent a Taxpayer Payment is required to be made under a Taxpayer Agreement for such period. Notwithstanding the foregoing with respect to the order of uses of Pledged Increment, the Yard TIF shall be used only to pay debt service on the Senior Bonds and the Subordinate Bonds. The Yard TIF, if available and needed to pay debt service on the Senior Bonds or the Subordinate Bonds will be utilized for debt service on the Senior Bonds before being applied to the Subordinate Bonds.

(c) TIF Revenue Shortfalls. In the event of any Shortfall, such Shortfall shall accrue interest at the Subordinate Bond Interest Rate notwithstanding whether, in the event of a Shortfall, Developer or a Developer affiliate makes a payment on the Subordinate Bonds.

(d) Excess TIF. To the extent there is Excess TIF, such Excess TIF shall be available to the RDC to use for any purpose under the Laws, in its sole discretion.

(e) Interest During Construction. At the option and discretion of Developer, the Bonds shall bear interest (i) at zero percent from their date of issuance until Substantial Completion (and, thereafter, at the Bond Interest Rate, 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 eight percent (8%), as determined jointly by the Parties, each in the exercise of its reasonable discretion.

(f) Costs of Issuance and Administrative Fees. Developer shall be solely liable for all Closing Costs, which amounts shall be paid from Bond Proceeds, and, subject to Section 11, Bond Proceeds shall additionally be used to pay Continuing Bond Costs.

(g) Bond Structuring. The Bonds may be structured in one or more series to support the Projects. It is currently anticipated that the Senior Bonds will (i) be payable solely from Pledged Increment (including the Yard TIF), with the lien of the Pledged Increment being pledged on a senior basis to the Subordinate Bonds and Junior Subordinate Bonds, (ii) be issued on a tax-exempt basis, (iii) be issued in multiple separate series on two or more different closing dates, and (iv) be utilized to finance the Crossing Project and the Union Project (but not the Union Project Public Garage). In connection with the issuance of the Senior Bonds it is anticipated that the Developer will own and operate the Crossing Project, the Crossing Project Site, the Union Project (but not own the Union Project Public Garage or have other rights with respect to the Union Project Public Garage that would cause interest on the Subordinate Bonds to be taxable) and the Union Project Site. It is currently anticipated that the Subordinate Bonds will (i) be payable from (A) the Pledged Increment (including the Yard TIF), with the lien of the Pledged Increment pledged to the Subordinate Bonds being subject to the prior payment of the

Senior Bonds and senior to the payment of the Junior Subordinate Bonds, and, to the extent the Pledged Increment is insufficient, from the Taxpayer Payments, (ii) be issued on a tax-exempt basis, and (iii) be utilized to finance the Union Project Public Garage. It is currently anticipated that the Junior Subordinate Bonds will (i) be payable from the Pledged Increment, with the lien of the Project Increment pledged to the Junior Subordinate Bonds being subject to the prior payment of the Senior Bonds and the Subordinate Bonds, (ii) be issued on a taxable basis, and (iii) be utilized to finance the Union Project Public Garage. In connection with the issuance of the Subordinate Bonds and Junior Subordinate Bonds it is anticipated that the City will ultimately own and operate the Union Project Public Garage, but that the Union Project Public Garage will be managed by the Developer pursuant to a Revenue Procedure 2017-13 compliant management agreement. Notwithstanding anything contained herein, the parties acknowledge that the proceeds of: (i) the Subordinate Bonds and Junior Subordinate Bonds will be allocated to the Union Project Public Garage portion of the Union Project; and (ii) the Senior Bonds will be allocated to the Crossing Project and the Union Project but excluding the Union Project Public Garage portion of the Union Project. Notwithstanding anything contained herein, including as set forth in Sections 3, 4(a) and 7(h), Bonds may be issued in conjunction with either Project Closing, or on one or more dates separate from and after the Project Closing dates, and there is no requirement that Bonds be issued in conjunction with a Project Closing; provided, however, the Bonds shall not be issued prior to the Union Project Closing.

12. <u>Plan Refinement Process</u>. For each of the Projects, Developer shall prepare and submit the Final Documents and Drawings to the City as part of the Plan Refinement Process. While City may provide written comments to Developer regarding the Final Documents and Drawings, City's rights to approve the Final Documents and Drawings shall be limited to its rights under applicable City process(es) for Zoning and the Required Permits.

13. <u>Inspections</u>. City shall have inspection rights to ensure compliance by Developer with Zoning, the Required Permits, and as otherwise permitted by the Laws.

14. <u>Taxpayer Agreement</u>. For the Subordinate Bonds, to the extent determined necessary for the Subordinate Bonds by the Developer, Developer and the City and the RDC agree to enter into a mutually acceptable Taxpayer Agreement for the Subordinate Bonds, covering the Union Allocation Area, that (a) states that beginning in the calendar year following the first January 1 after Substantial Completion of the Union Project continuing through each calendar year of the applicable Bond Term, Developer agrees to (i) annually (in semi-annual payments on the dates that are twenty (20) days prior to the next-due payment of debt service on the Subordinate Bonds) pay RDC the positive difference, if any, between: (A) the amount of the required debt service payment on the Subordinate Bonds; and (B) the Pledged Increment distributable to RDC for the applicable year available for payment on the Subordinate Bonds, following payment of the Senior Bonds; (b) provides that the payments due by Developer thereunder are secured by an annually renewable lien against the Union Project Site that is the same in nature and priority to (but different from and in addition to) the lien of Real Estate Taxes and, accordingly, shall: (i) be prior to any mortgage or other lien or encumbrance on the Union Project Site other than the lien of Real Estate Taxes; and (ii) renew automatically every January 1 during the Bond Term in its same priority;

and (c) shall be recorded and run with the real property comprising the Union Project Site. Nothing in this Agreement or the Taxpayer Agreement (if required by Developer) shall be deemed to release Developer from any obligation to pay Real Estate Taxes on the Union Project Site regardless of when payable or assessed. The Taxpayer Payments shall only secure payment of the Subordinate Bonds and shall only be required to the extent the Pledged Increment, following payment of the Senior Bonds is insufficient to make payment on the Subordinate Bonds. The Taxpayer Agreement shall be drafted as a guarantee of payments on the Subordinate Bonds and in a manner that does not endanger the tax-exempt status of the Senior Bonds. In the event developer obligations agreements are entered into for the Additional Crossing Allocation Areas, such agreements shall be drafted as guarantees on the Subordinate Bonds and in a manner that does not endanger the tax-exempt status of the Senior and Subordinate Bonds.

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

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

17. <u>Assignment</u>.

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

(b) Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Developer, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Bodies or Developer, as the case may be, from such performance; provided that, if any City Body assigns this Agreement to another agency or instrumentality of the City that: (i) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder, and (ii) expressly assumes all such obligations in writing; then the applicable City Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption. Notwithstanding any provision in this Agreement the contrary, upon an assignment in strict compliance with this Agreement by Developer of its rights and obligations in respect of the Project no other assignee of Developer shall have any responsibility for any obligations of Developer other than those expressly assumed by any such assignee.

18. <u>Notice</u>. 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, Lindsey Bennett, City Attorney with copies (via email, only) to: Jennifer Messer, jennifercmesserlaw@gmail.com; and to Developer, Ashlee Boyd (aboyd@thompsonthrift.com), with copies (via email, only) to: Brian Fritts (bfritts@thompsonthrift.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, Building Corp., EDC, RDC and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City, Building Corp., EDC RDC, or Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by the City, Building Corp., RDC, EDC and Developer, respectively; provided, however, each of the City's, Building Corp., EDC and RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which the City, Building Corp., 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 Developer) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. The Parties acknowledge the ongoing COVID-19 pandemic, and agree: (y) to exercise commercially reasonable, good-faith efforts to: (i) consider all then-current information with respect to; and (ii) adjust for shortages that reasonably can be anticipated with respect to materials, equipment, services, and/or labor that reasonably are likely to occur as a result of; the COVID-19 pandemic; and (z) that, notwithstanding that the COVID-19 pandemic falls within the definition of "Force Majeure", the protections of this Section shall not apply to a claim of Force Majeure based on COVID-19 if the applicable party fails to comply with the foregoing requirement.

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

22. **Original LAA**. The Parties acknowledge and agree that the Original LAA includes certain obligations and rights of the Parties concerning the Development Land. On the Effective Date, the Original LAA shall be null, void and of no further force or effect.

23. **Development Land**. If the Closing for the Union Project does not occur prior to December 31, 2025, then Parties agree that within sixty (60) days thereafter, the City Bodies shall purchase (unless the Parties agree otherwise) the Development Land from Developer for the Development Land Price as calculated pursuant to **Exhibit H** (including, without limitation, the cap of **$5,900,000**.00, the "**Development Land Price**") and pursuant to the terms included in. **Exhibit I** (the "**Development Land Closing Terms**"). However, upon Closing on the Union Project, the City Bodies' right and/or obligation to purchase the Development land shall automatically and without further action of the Parties terminate.

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

in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

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

25. Index of Exhibits:

Exhibit A:	Yard Allocation Area
Exhibit B	Additional Crossing Allocation Areas
Exhibit C-1:	Concept Plan (Union Project)
Exhibit C-2:	Concept Plan (Crossing Project)
Exhibit D:	Crossing Project Site
Exhibit E:	Union Project Site
Exhibit F:	Insurance
Exhibit G:	Development Land
Exhibit H:	Development Land Cost
Exhibit I:	Development Land Closing Terms

[signatures on following pages]

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

"CITY"

CITY OF FISHERS, INDIANA

By: _____
Scott Fadness, Mayor

Date: _____

“EDC”

CITY OF FISHERS ECONOMIC DEVELOPMENT COMMISSION

By: _____
Its: _____

Date: _____

"**RDC**"

FISHERS REDEVELOPMENT
COMMISSION

By:_____
Damon Grothe, President

Date: _____

ATTEST:

By:_____
Anderson Schoenrock, Secretary

Date: _____

“BUILDING CORP.”

FISHERS TOWN HALL BUILDING CORPORATION

By: _____
Jay Bangert, President

Attest: _____

Secretary

“DEVELOPER”

THOMPSON THRIFT DEVELOPMENT, INC.

By: _____
_____, _____

Date: _____

EXHIBIT A
Yard Allocation Area

EXHIBIT B
Additional Crossing Allocation Areas

EXHIBIT C-1
Concept Plan (Union Project)

Exhibit C-2
CONCEPT PLAN (CROSSING PROJECT)

EXHIBIT D
Project Site (Crossing Project)

EXHIBIT E
Project Site (Union Project)

EXHIBIT F
Developer Insurance Requirements

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

1.	Workers Compensation insurance coverage in accordance with statutory requirements.
2.	Employers Liability Insurance with limits of not less than $1,000,000.00 each accident; $1,000,000.00 Disease- each employee; and $1,000,000.00 Disease Policy Limit.
3.	Commercial General Liability Insurance on ISO form GC0001 10 01 (or a substitute form providing equivalent coverage) and General Contractor and Subcontractors shall provide 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: $1,000,000.00 Each Occurrence (BI & PD Combined Single Limit); $2,000,000.00 General Occurrence (subject to per project general aggregate provision); and
4.	Business Automobile Liability Insurance: Written in the amount of not less than $1,000,000.00 each accident to include the City and the Redevelopment Commission as additional insureds.
5.	Umbrella Liability: $2,000,000.00.

EXHIBIT H
Development Land Price

The Parties acknowledge and agree that the following expenses are estimates, and the City Bodies shall be responsible for the actual and documented cost; provided however, such costs shall not exceed Five Million Nine Hundred Thousand and no/100 Dollars ($5,900,000.00)

Contract Purchase Price	$4,573,800.00
Title Insurance (*TBD*)	*TBD*
ALTA Survey	$20,000.00
Geotechnical Investigation	$9,000.00
Environmental (Phase 1 and Reliance)	$1,500.00
Development Fee	$0
Recording Fees	$500.00
Escrow Fees (*TBD*)	*TBD*
Loan Fees and Costs (*not to exceed $75K)*	$75,000.00
Additional Due Diligence	$40,000.00
Attorneys' Fees (*not to exceed $55K*)	$55,000.00
Property Taxes (*Assume $60K AV/acre*)	$14,748.30
LAA and Carry Costs	**$4,789,548.30**
Approximate Carry Costs @ 6.0%	$1,005,805.14
Estimated Land Acquisition Cost	**$5,795,353.44**

EXHIBIT I
Development Land Closing Terms

- Development Land Price shall be paid in immediately available funds by wire transfer in accordance with wire transfer instructions to be provided by the title insurer.

- City Bodies may assign the right to acquire the Development Land or any portion thereof but shall be liable to acquire the Development Land until closing on a transfer and conveyance to any third-party.

- Possession of the Development Land or any portion thereof shall be delivered at the City Closing, subject only to (a) the lien of current year taxes and assessments not delinquent; (b) any exceptions to title reflected in the commitment at the time of closing to which the City Bodies do not object; and (c) such other matters that are accepted by the City Bodies in writing.

- City Bodies shall pay or cause to be paid, on the closing date, all closing costs. except that each party shall pay its own attorneys' fees related to the city closing.

- Developer shall deliver: (a) the deed; (b) a vendor's affidavit from in form and substance such that the title insurer will issue the commitment; and (c) such other customary documents or instruments as required to be delivered in connection with a commercial real estate closing.