

**INSTALLMENT PURCHASE AGREEMENT
(City of Fishers Community Center)**

This Installment Purchase Agreement (City of Fishers Community Center) (the “Contract”), by and between HAGERMAN GM REC CENTER, LLC (the “Developer”), and the CITY OF FISHERS, INDIANA, by and through its Board of Public Works & Safety (the “City”), is executed this ___ day of _____, 2024.

1. Definitions.

Acquisition Property shall mean the completed Project.

Acquisition Property Price shall mean the total aggregated IP Principal Amounts.

Agency shall mean any applicable: (a) governmental agency, board, commission, or department; or (b) other judicial, administrative, or regulatory body.

Assignment Closing shall mean the closing with respect to the Assignment Transaction.

Assignment Closing Date shall mean the date of the Assignment Closing.

Assignment Documents shall mean all instruments, agreements, and other documents evidencing, or required in connection with, the Assignment Transaction, including, without limitation, the Participation Agreement and the Developer Mortgage.

Assignment Transaction shall mean the purchase of an absolute assignment of the Payment Rights, the proceeds of the sale of which shall be used to finance the Project Costs.

BOT Agreement shall mean that certain agreement entitled “Public-Private Agreement for the Design, Build and Transfer of the City’s Community Center” of even date herewith executed by and between Developer and City.

City Transfer shall mean: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project Site or any interest in the Project Site; or (b) any granting of a mortgage or security interest in the Project Site, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the Assignment Documents or required by the BOT Agreement or this Contract, shall not constitute a City Transfer nor shall any assignment or transfer to a nonprofit building corporation in connection with the issuance by such nonprofit building corporation of bonds, the proceeds of which will be used to fully satisfy the City’s obligations under this Installment Purchase Agreement constitute a City Transfer.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys’ fees).

Code shall mean the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations in effect with respect thereto.

Contract Price shall mean the sum of all of the Installment Payments.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Contract to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite reasonably diligent efforts, then the 30 day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30 day period; and (b) diligently pursues such remedy to completion.

Default Rate shall mean the Fixed Rate plus 3% per annum.

Developer Mortgage shall mean that certain [Mortgage, Security Agreement and Fixture Filing] executed and given by Developer in favor of the Payment Rights Purchaser.

Developer Transfer shall mean, prior to the conveyance of the Acquisition Property to City: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project or the materials to construct the Project, or any interest in the foregoing; or (b) any granting of a security interest in the Project or the materials to construct the Project, other than to the Payment Rights Purchaser. Notwithstanding the foregoing, encumbrances created by the Assignment Documents, or required by the BOT Agreement or this Contract, shall not constitute a Developer Transfer.

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

Fixed Rate shall mean a fixed annual interest rate of [5.10]% per annum; provided that, if there is a Taxable Event, then, from and after the occurrence of such Taxable Event, the taxable rate shall be an amount equal to the interest rate that provides to the Payment Rights Purchaser an after-tax yield on the Installment Payments equal to what the Payment Rights Purchaser would have received had the Taxable Event not occurred.

Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; (iii) pandemic events or the declaration of any national health emergency by the applicable authorities which reasonably impairs such parties ability to perform and (iv) utility or energy shortages or acts or omissions of public utility providers).

Full Prepayment Closing Date shall mean, in the case of the exercise by City of the Full Prepayment Option (or the declaration by Developer of the exercise of the Full Prepayment Option pursuant to Subsection 13(a)), the date on which the Full Prepayment Price is to be paid.

Full Prepayment Notice shall mean a written notice pursuant to which City notifies Developer that it is exercising the Full Prepayment Option.

Full Prepayment Option shall mean the option (but not the obligation) of City to satisfy its obligation in full with respect to the payment of the Acquisition Property Price in advance of the expiration of the Payment Period by paying the Full Prepayment Price.

Full Prepayment Price shall mean the sum of: (a) the Outstanding IP Principal Amount on the Full Prepayment Closing Date; plus (b) interest thereon that has: (i) accrued at the Fixed Rate; and (ii) not been paid prior to the Full Prepayment Closing Date (stated alternatively, interest that has accrued, but has not been paid as part of the Installment Payments).

Installment Payments shall mean semi-annual installment payments for the purchase of the Acquisition Property, which installment payments: (a) shall be in the amounts specified on Exhibit A; and (b) in the aggregate constitute the Contract Price. As reflected on Exhibit A, the installment payments consist of IP Interest Amounts and IP Principal Amounts as necessary to fully amortize the Acquisition Property Price over the Payment Period at the Fixed Rate.

IP Interest Amount shall mean, with respect to any given Installment Payment, the amount thereof that is attributable to interest that has accrued on the Outstanding IP Principal Amount at the Fixed Rate, which amount is specified on Exhibit A in the column entitled “Interest” or “Interest Amount”.

IP Principal Amount shall mean, with respect to any given Installment Payment, the amount thereof specified on Exhibit A in the column entitled “Principal” or “Principal Amount”. The aggregated IP Principal Amounts specified on Exhibit A constitute the Acquisition Property Price.

Law shall mean any applicable federal, state, or local law, statute, ordinance, rule, or regulation, or any order or decree of any Agency.

Outstanding IP Principal Amount shall mean, as of any given date, the aggregate outstanding IP Principal Amount.

Participation Agreement shall mean that certain Participation and Purchase Agreement (City of Fishers Community Center) of even date herewith executed by and among Developer, City, and the Payment Rights Purchaser.

Payment Due Date shall mean each June 30 and December 31 during the Payment Period, commencing on June 30, 2024.

Payment Period shall mean the period: (a) beginning on the Assignment Closing Date; and (b) ending on December 31, 2025, which is the date on which the final Installment Payment is due and payable.

Payment Rights shall mean the rights hereunder with respect to the receipt of the Installment Payments.

Payment Rights Purchaser shall mean Raymond James Capital Funding, Inc. and its successors and assigns.

Project shall mean the project to be constructed on the Project Site by Developer pursuant to the BOT Agreement. The Project is the “Project” under the BOT Agreement.

Project Costs shall mean have the meaning ascribed to the term “Project Costs” in the BOT Agreement.

Project Fund shall mean the fund of the same name established pursuant to the Participation Agreement.

Project Site shall mean that certain real estate that is defined as the “Project Site” in the BOT Agreement.

Special Tax Counsel shall have the meaning ascribed to the term “Special Tax Counsel” in the Participation Agreement.

Substantial Completion shall have the meaning ascribed to the term “Substantial Completion” in the BOT Agreement.

Taxable Event shall mean any action or event that results in the loss of the exclusion of the IP Interest Amount from gross income under the Code or any Laws regarding Indiana income taxation.

2. General Obligations.

- (a) Assignment Transaction. Subject to the terms and conditions of this Contract:
 - (i) Developer shall: (A) close the Assignment Transaction, including executing and delivering the Assignment Documents; and (8) satisfy its obligations under the Assignment Documents;
 - (ii) City shall execute the Assignment Documents to which it is a party;
 - (iii) Developer shall use the proceeds of Assignment Transaction for the sole purpose of financing the Project Costs.
 - (iv) Developer shall comply with all of its obligations under the BOT Agreement with respect to the construction of the Project.
- (b) Conveyance. Subject to the terms and conditions of this Contract and the BOT Agreement: (i) Developer shall convey to City; and (ii) City shall purchase; title to the Acquisition Property for the Acquisition Property Price; provided that, if City exercises the Full Prepayment Option, then, in lieu of the Acquisition Property Price, City shall pay the Full Prepayment Price.

3. Assignment Transaction Closing. The Assignment Closing Date shall be established mutually by Developer and City, acting in cooperation with the Payment Rights Purchaser. The Assignment Closing shall take place at such location as Developer and City mutually agree, acting in cooperation with the Payment Rights Purchaser. At the Assignment Closing, Developer and City shall execute the Participation Agreement, together with such other customary documents as the Payment Rights Purchaser reasonably may request.

4. Conditions of Performance. The obligations of each of Developer and City with respect to proceeding with the Assignment Closing shall be subject to the satisfaction, or waiver in writing, of the following as of the Closing Date:

- (a) each of Developer and City, exercising commercially reasonable discretion, shall have approved the terms and conditions of: (i) the sale and assignment of the Payment Rights; and (ii) the Assignment Documents to which it is a party;
- (b) each of Developer and City, exercising commercially reasonable discretion, shall have determined that the other party and the Payment Rights Purchaser are prepared to execute the Assignment Documents at the Assignment Closing;
- (c) there shall be no breach of this Contract by either party that such party has failed to cure within the Cure Period; and
- (d) all of the representations and warranties set forth in Section 5 shall be true and accurate in all respects.

5. Representations. Each of Developer and City represents and warrants that:

- (a) it has: (i) the power and authority to enter into this Contract and perform its obligations hereunder; (ii) the power and authority to carry out all transactions contemplated by this Contract; and (iii) complied with the Laws in all matters relating to the foregoing transactions;
- (b) it has been authorized by proper action to execute, deliver, and perform its obligations under this Contract;
- (c) neither the execution and delivery of this Contract by it, nor the performance by it of its obligations hereunder: (i) violates any Law or the terms and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (B) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (C) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets; and
- (d) it shall not take or, to the extent within its power, permit to be taken, any action that would cause a Taxable Event.

In addition to the foregoing: (a) City represents and warrants that it is a city incorporated under the laws of the State of Indiana; and (and (b) Developer represents and warrants that it is a limited liability company organized and existing under the laws of the State of Indiana.

6. Project Fund.

- (a) Project Fund. Funds in the Project Fund shall be disbursed to Developer in accordance with the Participation Agreement to pay (or reimburse Developer for) Project Costs.

- (b) Completion. Upon the occurrence of the Substantial Completion Date, Company shall deliver written notice pursuant to the Participation Agreement stating that: (i) the Project has been constructed and/or installed in accordance with the terms and conditions of the BOT Agreement; and (ii) all of the Project Costs have been determined and paid (or that: (A) all of the Project Costs have been paid, other than specified claims that are subject to dispute; and (B) there is to be retained in the Project Fund, until resolution of the dispute, the full amount of such specified claims). Upon the receipt of such statement, the remaining balance in the Project Fund less: (i) any amounts needed for Project Fund purposes; and (ii) the amount certified by Developer as sufficient to cover the full amount of the specified claims that are subject to dispute; shall be applied to the next due Installment Payments, as specified in the Participation Agreement.

7. Acquisition Property-Payment.

- (a) Interest. During the Payment Period, interest shall accrue on the Outstanding IP Principal Amount: (i) at the Fixed Rate; and (ii) on the basis of a 360-day year consisting of 12, 30-day months..
- (b) Payments. During the Payment Period, City shall pay an Installment Payment on each Payment Due Date. Each Installment Payment shall be: (i) in the amount set forth on Exhibit B; and (ii) paid by City directly to the Payment Rights Purchaser in accordance with the Participation Agreement. If City fails to make any Installment Payment on the applicable Payment Due Date, then City shall: (i) remain obligated to pay the full amount of such Installment Payment; and (ii) pay interest on the unpaid amount of the Installment Payment at the Fixed Rate. If there is a Taxable Event, then a replacement Exhibit B shall be attached to this Contract, which replacement Exhibit B shall reflect the increase in the Fixed Rate, as set forth in the definition thereof.
- (c) Partial Prepayment Not Permitted. City may make a Full Prepayment as described in 7(d), but a partial prepayment is not permitted at any time.
- (d) Full Prepayment. City may exercise the Full Prepayment Option, to be effective at any time during the Payment Period, by delivery of the Full Prepayment Notice. Within ten days after receipt by Developer of the Full Prepayment Notice, Developer and City, each acting reasonably, shall agree on the Full Prepayment Closing-Date; provided that, if the Full Prepayment Notice is delivered more than 90 days prior to the expiration of the Payment Period, then the Full Prepayment Closing Date shall not occur for at least 30 days after delivery of the Full Prepayment Notice. If City properly exercises the Full Prepayment Option, then, in lieu of the remainder of the Acquisition Property Price, City shall pay the Full Prepayment Price (thereby paying off the Acquisition Property Price in full and satisfying all obligations to the Payment Rights Purchaser with respect to the payment of the Installment Payments).

- (e) **Absolute Obligation.** Subject to subsection (g) below, the obligation of City to pay the Installment Payments is absolute and unconditional, and until the Outstanding IP Principal Amount, together with all interest that has accrued thereon and remains unpaid, has been paid in full: (i) City shall not discontinue or suspend payment of any Installment Payments; and (ii) no Installment Payment shall be: (A) subject to reduction, whether by offset or otherwise; or (B) conditional upon the performance or nonperformance by any party of any agreement (including, without limitation, the performance or nonperformance by Developer under the BOT Agreement) or any other cause.
- (f) **Principal/Interest.** The obligation of City hereunder to pay the Installment Payments shall constitute an “obligation” under Section 1.150-1(b) of the Regulations: (i) the principal of which is the IP Principal Amount; and (ii) the interest on which is the IP Interest Amount; although, for purposes of the laws of the State of Indiana, the IP Principal Amount and the IP Interest Amount simply are two amounts that serve as the basis for calculating the amount of each Installment Payment, which, when aggregated, constitute the Contract Price. The obligations of City under this Contract are those of a purchaser under an installment purchase agreement of real and personal property. Accordingly, this Contract is neither a bond nor a loan to, nor a borrowing of, City.
- (g) **Payment Source.** The obligations of City under this Contract are payable from any funds of City that legally may be used to pay the Installment Payments, subject to appropriation by the fiscal body of the City.

8. Conveyance. As soon as reasonably is practicable after Substantial Completion with respect to the Project, and subject to the terms of the BOT Agreement, Developer shall convey the Acquisition Property to City (or its designee) pursuant to conveyance documents that reasonably are approved by each of Developer and City. The conveyance of the Acquisition Property shall not: (a) result in a merger of this Contract into the conveyance documents by which City (or its designee) receives ownership, so that this Contract, and all of the rights of the parties hereunder, shall remain in full force and effect; or (b) have any effect on the obligation of City to make the Installment Payments pursuant to the terms and conditions of this Contract (stated alternatively, it shall not accelerate payment of the Outstanding IP Principal Amount or decrease the period within which Installment Payments are made}.

9. City Covenants.

- (a) **Contract Compliance.** City: (i) shall pay the Installment Payments punctually and in strict conformity with the terms of this Contract; (ii) faithfully shall observe and perform all of its obligations under this Contract; and (iii) shall not terminate this Contract for any cause whatsoever.
- (b) **Other Compliance.** City shall: (i) not take, or omit to take, any action under any contract, if the effect of such act or failure to act would in any manner impair or adversely affect the obligation or ability of City to pay Installment Payments; and

- (ii) observe and perform all of its obligations under all other contracts affecting or involving the Project to which City is a party.
- (c) No Liens. At all times City shall: (i) keep the Project Site and, after the acquisition thereof, the Acquisition Property, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) the lien of current real estate taxes not delinquent; and (B) any of the foregoing existing due to compliance with the BOT Agreement, this Contract, and/or the Assignment Documents; and (ii) defend the Project Site against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Acquisition Property, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, City, then City shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.
- (d) Taxes. City: (i) shall pay and discharge when due all taxes, assessments, and other governmental charges that lawfully are imposed upon the Project or any part thereof; and (ii) upon request by Developer or the Payment Rights Purchaser, shall take such actions as may be necessary or appropriate to remedy or cure any defect in, or cloud upon, the title to the Project or any part thereof.
- (e) Protection. City shall: (i) preserve and protect the security hereof, and the rights of Developer and the Payment Rights Purchaser to the Installment Payments; and (ii) warrant and defend such rights against all claims and demands of all persons.
- (f) Laws. City shall comply with the Laws in connection with its use and operation of the Acquisition Property.
- (g) Assurances. City shall adopt such resolutions, execute and deliver such instruments, and make any and all further assurances as reasonably may be necessary or proper: (i) to carry out the intention of this Contract; (ii) to facilitate the performance of this Contract; and/or (iii) in connection with assuring and confirming the rights and benefits provided to Developer and the Payment Rights Purchaser.
- (h) No Transfer. Except as approved by Developer and the Payment Rights Purchaser:
- (i) Except for an assignment to a nonprofit building corporation in connection with the issuance by such nonprofit building corporation of bonds, the proceeds of which will be used to fully satisfy the City's obligations under this Installment Purchase Agreement, there shall be no City Transfer by City; and (ii) City shall not cause or permit any City Transfer. The execution by Developer of the Assignment Documents shall not be deemed to be a consent by Developer to any City Transfer.
- (j) No Mortgage. City shall not: (i) record or file any mortgage or financing statement covering all or any portion of the Project Site, the Acquisition Property, or the materials to construct the Project, in any public office, except financing statements

in favor of the Payment Rights Purchaser; or (ii) cause or permit any such mortgage or financing statement to be recorded or filed.

10. Developer Covenants.

- (a) Filings. Developer shall keep in full force and effect, without any violations by Developer, any and all filings or registrations with any Agency necessary in connection with: (i) the performance by Developer of its obligations under the Assignment Documents; (ii) the acquisition of the materials to construct, and/or the construction of, the Project in accordance with the BOT Agreement, this Contract, and the Construction Contract; or (iii) the sale of the Acquisition Property to City in accordance with this Contract.
- (b) No Liens. At all times prior to conveyance of the Acquisition Property to City, Developer shall: (i) keep the Acquisition Property, and the materials to construct the Project, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) the lien of current real estate taxes not delinquent; and (B) any of the foregoing existing due to compliance with the BOT Agreement, this Contract, and/or the Assignment Documents; and (ii) defend the Acquisition Property, and the materials to construct the Project, against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Project, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, Developer, then Developer shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.
- (c) Laws. Developer shall comply with all Laws in the performance of its obligations under the BOT Agreement, the Construction Contract, this Contract, and the Assignment Documents.
- (d) No Transfer. Except as approved by City and the Payment Rights Purchaser: (i) there shall be no Developer Transfer by Developer; and (ii) Developer shall not cause or permit any Developer Transfer. The execution by City of the Assignment Documents to which it is a party shall not be deemed to be a consent by City to any Developer Transfer.
- (e) Mortgage only to Payment Rights Purchaser. Developer shall not record or file any mortgage or financing statement covering all or any portion of the Project Site, the Project, or the materials to construct the Project, in any public office, except any mortgage or financing statements in favor of the Payment Rights Purchaser.
- (f) No Merger. Developer shall not: (i) change its name; (ii) merge into, or consolidate with, any other entity, or otherwise reorganize; (iii) permit any change in the members of Developer or the percentage of ownership in Developer; or (iv) fail to promptly notify City in writing of any change in the members of Developer or the percentage of ownership in Developer.

- (g) No Amendments. Developer shall not: (i) amend, modify, or restate the articles of organization or operating agreement of Developer; (ii) cause or permit any such amendment, modification, or restatement; or (iii) be dissolved, wound up, or converted to another type of entity, or have its existence as a limited liability company terminated.
- (h) Developer Interests. Developer shall not: (i) sell, convey, or transfer to any person any interest in Developer; (ii) otherwise encumber, pledge, or assign any interest in Developer; (iii) grant any security interest in any interest in Developer; or (iv) cause or permit any such sale, conveyance, transfer, encumbrance, pledge, assignment, or grant of security interest.
- (i) Business. Developer shall not make or permit to be made any material change in the character of its business as currently conducted.
- (j) Records. Developer shall keep and maintain true, correct, accurate, and complete books and records. All books and records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. City and the Payment Rights Purchaser, and their respective attorneys, accountants, representatives, architects, engineers, and consultants, at all reasonable times shall have: (i) free access to, and rights of inspection of, the books and records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the books and records.
- (k) Insurance. Developer shall comply with its obligations under the BOT Agreement with respect to the maintenance of insurance during construction of the Project.
- (l) No Ownership of Project. The Developer will not take the position in its tax or financial reporting that it is the owner of the Project. With respect to the Developer's financial accounting purposes, federal and all state and local income tax purposes, sales or use tax purposes, regulatory purposes and commercial law purposes, the City will be treated as the owner of the Project.

11. Tax Covenants. Notwithstanding anything to the contrary set forth herein, neither Developer nor City shall: (a) take any action; or (b) fail to take any action; that would cause a Taxable Event. Any agreement entered into by City or Developer that would result in a Taxable Event shall: (a) be of no force or effect; and (b) not convey any rights, or impose any obligation, at law or in equity. If Developer incurs out-of-pocket costs and expenses to comply with the terms and conditions of this Section, then City shall reimburse Developer for such costs and expenses.

12. Events of Default. Each of the following shall be deemed to be an "Event of Default" by Developer or City, as applicable:

- (a) the failure by the applicable party to pay any amount due hereunder on the date due, including, without limitation, subject to Section 7(g) hereof, the failure by City to make any Installment Payment when due;

- (b) the occurrence of any City Transfer or Developer Transfer without the consents required to be obtained pursuant to this Contract;
- (c) the failure by the applicable party to comply with the terms and conditions of Section 11;
- (d) the failure by the applicable party to observe or perform any term or condition of this Contract to be observed or performed by it (other than those reflected in Subsections 12(a), 12(b), and 12(c)), and the continuance of such failure beyond the Cure Period;
- (e) an “Event of Default” by the applicable party under the Participation Agreement;
- (f) the filing of a petition or answer seeking arrangement or reorganization of the applicable party under the Laws;
- (g) the approval by a court of competent jurisdiction of a petition, filed with or without the consent of the applicable party, seeking arrangement or reorganization under the Laws; or
- (h) the assumption by a court of competent jurisdiction of custody or control of by the applicable party, or all or a substantial portion of the property of such party, pursuant to the provisions of any Law for the relief or aid of debtors;

13. Remedies.

- (a) Remedies. If there is an Event of Default, then the non-defaulting party, without further notice or demand, shall have the following rights and remedies:
 - (i) if the defaulting party has failed to perform any of its obligations under this Contract: (A) enjoining the failure or specifically enforcing the performance of such obligation; or (B) performing the obligation that the defaulting party has failed to perform; provided that the performance by the non-defaulting party of such obligation shall not be construed to be a waiver of the Event of Default; and if City is the defaulting party, then during the continuation of such Event of Default, the Installment Payments shall accrue interest at the Default Rate.
- (b) No Waiver. Neither: (i) a waiver by either party of an Event of Default; nor (ii) a delay in the exercise by either party of any right or remedy with respect to an Event of Default; shall be deemed either to: (i) constitute a waiver of any subsequent Event of Default; (ii) release or relieve the other party from performing any of its obligations under this Contract; or (iii) constitute an amendment or modification of this Contract. If Installment Payments are accepted during the continuance of an Event of Default, then such acceptance shall not be construed as a waiver of: (i) such Event of Default; or (ii) any right or remedy of Developer or the Payment Rights Purchaser with respect to such Event of Default. The rights and remedies hereunder are cumulative, and, except as specifically limited in this Contract, no:

(i) right or remedy shall be deemed to be, or construed as, exclusive of any other right or remedy hereunder, at law, or in equity; or (ii) failure to exercise any right or remedy shall operate to prevent the subsequent exercise of such right or remedy.

- (c) **Damages.** The non-defaulting party may recover from the defaulting party all damages that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default; together with interest thereon at the Default Rate. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the other party, and the obligation of the defaulting party to pay such amounts shall survive the acquisition by City of the Acquisition Property.
- (d) **Non-Acceleration.** The obligations of the City to make Installment Payments is not subject to acceleration.

14. Notice. Any notice required or permitted to be given by either party to this Contract shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at _____, Attn: _____, with a copy to: _____; and to City at Office of the Mayor, City of Fishers, 1 Municipal Drive, Fishers, Indiana 46038, with a copy to: (a) Fishers City Attorney, 1 Municipal Drive, Fishers, Indiana 46038; (b) Raymond James Capital Funding, Inc., _____, Attn: _____; and (c) Jerimi Ullom, Esq., Barnes & Thornburg LLP, 11 S. Meridian Street, Indianapolis, Indiana 46204. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

15. Assignment. Neither Developer nor City shall: (a) assign this Contract or any interest herein, except for an assignment to a nonprofit building corporation in connection with the issuance by such nonprofit building corporation of bonds, the proceeds of which will be used to fully satisfy the City's obligations under this Installment Purchase Agreement; or (b) delegate any duty or obligation hereunder; except as permitted by the Participation Agreement. Notwithstanding any assignment as permitted by the Participation Agreement: (a) the assigning or delegating party shall remain fully liable to perform all of its obligations under this Contract; and (b) a consent by a party to any assignment or delegation shall not release the assigning or delegating party from such performance. Any transfer of this Contract by operation of law (including, without limitation, a transfer as a result of merger, consolidation, or liquidation of Developer or City) shall constitute an assignment for purposes of this Contract.

16. Mutual Indemnification. Each of Developer and City shall, to the extent permitted by law, indemnify and hold harmless the other from and against any and all Claims arising from, or connected with: (a) the negligence or wilful misconduct of: (i) Developer or City, respectively; or (ii) any party acting by, under, through, or on behalf of Developer or City, respectively; and/or (b) the: (i) breach by Developer or City, respectively, of any term or condition of the BOT Agreement, this Contract, or the Assignment Documents; and (ii) resulting exercise by City or Developer of its rights and remedies with respect to such breach. The Participation Agreement shall provide that

City shall Indemnify and hold harmless the Payment Rights Purchaser from and against any and all actual losses arising from, or connected with, the occurrence of a Taxable Event.

17. Force Majeure. Notwithstanding anything to the contrary set forth therein, If either party Is delayed in, or prevented from, observing or performing any of Its obligations under, or satisfying any term or condition of, this Contract 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.

18. Miscellaneous. Subject to Section 15, this Contract shall inure to the benefit of, and be binding upon, Developer and City, and their respective successors and assigns. This Contract constitutes the entire agreement between Developer and City with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and City. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Contract shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Contract may be executed in separate counterparts, each of which shall be an original, but all of which together shall constitute a single instrument. This Contract shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Contract are attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, Developer and City have executed this Contract on the date set forth above.

HAGERMAN GM REC CENTER, LLC

By: _____

Printed: _____

Title: _____

CITY OF FISHERS, INDIANA

By: _____

Printed: _____

Title: _____

EXHIBIT A
Installment Payments