

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ___ day of July, 2016 ("Effective Date"), by and among the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation ("City"), Fishers Redevelopment Commission, a City commission existing and authorized pursuant to Ind. Code § 36-7-14 *et. seq.* ("FRC") and Fishers Economic Development Commission, a City commission of existing and authorized pursuant to Ind. Code § 36-7-12 *et. seq.* ("EDC") and CIO Real Estate Fishers, LLC, an Indiana limited liability, ("CIORE"), as follows:

WHEREAS, for purposes of this Agreement, City, FRC and EDC are collectively defined as "City Bodies";

WHEREAS, City Bodies desire to enter into agreements with private entities to encourage investment and foster economic development within City;

WHEREAS, CIORE is an affiliate of Central Indiana Orthopedics, P.C. ("CIO");

WHEREAS, founded in 1950 by Leland Brown, M.D., and Jack Walker, M.D., CIO is a leader in the field of orthopedics and sports medicine that uses advanced training and state-of-the-art techniques to provide specialized care in the areas of ankle, back, elbow, foot, hand, hip, joint replacement & revision, knee, neck, pediatric orthopedics, physical medicine & rehabilitation, shoulder, spine, sports medicine, and wrist;

WHEREAS, CIO's doctors and staff serve as the official team doctors for Anderson University, Ball State University, Indiana Wesleyan University, and Taylor University as well as several area high schools;

WHEREAS, CIO currently operates in the City at St. Vincent's Hospitals' 13914 Southeastern Parkway location;

WHEREAS, CIORE desires to develop an office/commercial park within the City for CIO and others by purchasing and developing approximately 37 acres of real property generally located at or about 0 East 136th Street and identified by parcel nos. 13-11-24-00-00-022.000 and 13-11-24-00-00-022.004 ("Fishers Site");

WHEREAS, upon CIORE's purchase of the Fishers Site, CIORE plans to: (i) develop an office/commercial park on the Fishers Site by completing the Phase 1 infrastructure improvements identified on **Exhibit A**, attached hereto and incorporated herein; (ii) in the south west portion of the Fishers Site (the "CIO Parcel"), construct a medical facility to include, among other services, a clinic, surgery center, imaging and physical therapy that is not less than Forty Thousand square feet (40,000 sq. ft.) in size (the "CIO Facility"); (iii) make available for other businesses the balance of the Fishers Site; (iv) complete or cause to be completed the Phase 2 improvements prior to a certificate of occupancy being issued for the land immediately north of the Phase 2 improvements; and (v) complete or cause to be completed the Phase 3 improvements prior to a certificate of occupancy being issued for the land immediately north of

the Phase 3 improvements, all as more fully described and depicted in **Exhibit B** attached hereto and incorporated herein (collectively, “Fishers Development”);

WHEREAS, by or before December 31, 2018, CIO will make real property and capital investments in the Fishers Site and personal property used at or about the Fishers Site totaling not less than an estimated Twelve Million Eight Hundred Thousand and no/100 Dollars (\$12,800,000.00) to develop the Fishers Site and construct the CIO Facility;

WHEREAS, following construction of the CIO Facility and development on the remaining building sites within the Fishers Development, CIORE expects the Fishers Development to result in Thirty Six Million and 00/100 Dollars (\$36,000,000.00) in investment in the City.

WHEREAS, by or before December 31, 2019, the CIO Facility is expected to include approximately twenty five (25) new full time positions (“FTP”) with an estimated total annual payroll of One Million Three Hundred Seventy Five Thousand (\$1,375,000.00) per year;

WHEREAS, to induce CIORE to satisfy the commitments specifically described in Article III below, City Bodies desire to provide certain incentives to CIORE; and

WHEREAS, City Bodies have determined that incenting CIORE to construct the Fishers Development is in the best interests of City’s citizens.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

ARTICLE II. MUTUAL ASSISTANCE

The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent, including without limitation, establishing the allocation area and selling the ED Bonds described in Article IV.

ARTICLE III. CIORE OBLIGATIONS

In consideration of and as a material inducement for the incentives provided by City Bodies pursuant to Article IV, CIORE shall fully satisfy the Investment Commitment, and Bond Purchase Commitment as specifically described as follows:

3.01 Location and Investment. CIORE shall (a) purchase the Fishers' Site; (b) begin construction of the Fishers Development by or before December 31, 2017; (c) locate the CIO Facility on the CIO Parcel by or before December 31, 2019; and (d) make a real property and capital investment in the Fishers Site and personal property to be used at the Fishers Site, including without limitation, new equipment, machinery, and computer and information technology hardware (individually or collectively, "Property") in an amount not less than Twelve Million Eight Hundred Thousand and 00/100 Dollars (\$12,800,000.00) by or before December 31, 2019 (collectively, "Investment Commitment").

3.02 Employees. Further, CIORE shall work to cause CIO and/or other entities within the CIO Facility to include an estimated 25 FTPs by or before December 31, 2019.

3.03. Bond Purchase. CIORE shall additionally purchase or arrange for the purchase of the ED Bonds specifically defined and described in Article IV below ("Bond Purchase Commitment").

3.04. Conditions to CIORE's Obligations. CIORE's obligations set forth herein are subject to: (1) the City's compliance with its obligations set forth herein; (2) CIORE obtaining governmental approvals; and (3) CIORE acquiring title to the Fishers Site.

ARTICLE IV. ECONOMIC DEVELOPMENT BOND

A. TIF Pledge & Allocation. In consideration for CIORE purchasing the Fishers Site, completing the Fishers Development, the Investment Commitment and Bond Purchase Commitment, each of City, FRC and EDC, as applicable, shall

1. issue certain taxable economic development bonds ("ED Bonds") for a term of twenty-five (25) years ("Bond Term") in an amount that can be supported by one hundred percent (100%) of the anticipated tax increment generated from the Allocation Area ("Bond Amount") which ED Bonds shall be issued in one or more series and may be structured as "Draw Bonds" with the principal amount being drawn incrementally as such bonds are purchased by CIORE;

2. make available to CIORE "Net Proceeds" (as defined below) which proceeds shall be available to CIORE to pay, or reimburse CIORE for the prior payment of, the cost of the infrastructure improvements described in Exhibit A. If Net Proceeds remain after completion of the Phase 1, Phase 2 and Phase 3 Improvements listed on Exhibit A to the City's reasonable satisfaction (the "Remaining Net Proceeds"), such Remaining Net Proceeds shall be made available to CIORE to pay, or reimburse CIORE for the prior payment of, the purchase of the Fishers Site and/or the development and construction of the CIO Facility all consistent with and subject to Ind. Code § 36-7-14 *et. seq.* and agreements and such other ancillary documents concerning the economic development bonds ("ED Bonds") ("Net Proceeds" shall mean the Bond Amount less: (a) issuance and other transaction costs; and (b) capitalized interest as provided for by Ind. Code § 36-7-12-29(b)(3) (during the construction period, plus one year);

3. cause the Fishers Site to be established as an allocation area separate and distinct from other allocation areas at or about the Fishers Site, if any (“Allocation Area”); and

4. pledge tax increment from the Allocation Area to debt service for the ED Bonds for a term of twenty-five (25) years from the date of issuance of the ED Bonds (“TIF Pledge”).

CIORE shall be solely and independently liable for all bond issuance costs, including bond counsel fees for both the City Bodies and CIORE, which amounts shall be paid from ED Bond proceeds. The City Bodies shall not pledge to the repayment of the ED Bonds any tax revenues or other funds of the City, except the TIF Revenues (as defined below).

B. Debt Service. Upon issuance of the ED Bonds, there shall be created an allocation fund to receive and hold tax increment received from the Allocation Area (“Allocation Fund”) which Allocation Fund shall include the following accounts: (a) an ED Bond Account; and (b) a surplus pledged revenues account (“Excess TIF Account”). At all times during the Bond Term, on each January 1 and July 1 during the term of the ED Bond, the tax increment received from the Allocation Area (the “TIF Revenues”) shall be deposited in the ED Bond Account in an amount equal to one hundred percent (100%) of the amount needed to meet the next occurring annual interest and principal payments on the ED Bond (“Bond Payment Amount”).

Each January 1 and July 1, all TIF Revenues in excess of the Bond Payment Amount (“Surplus Funds”) shall be transferred to the Excess TIF Account. City shall be entitled to one hundred percent (100%) of funds that accumulate in the Excess TIF Account, which funds shall be made available to FRC to use for any permissible purpose pursuant to Ind. Code 36-7-14 *et. seq.*

C. Availability of Proceeds. Proceeds from the ED Bonds shall be available to CIORE pursuant to and consistent with the Funding Agreement to be entered into between City and CIORE.

D. Personal Property Purchased with Proceeds. All Property purchased with the ED Bonds proceeds shall remain and be used at the Fishers Site for not less than five (5) years from the date of purchase. CIORE shall maintain a list of all Property purchased with ED Bond proceeds and the date of such purchase. Upon reasonable notice and during CIORE’s normal business hours, City shall be entitled to inspect the Property to confirm that it is located at the Fishers Site.

ARTICLE V. FEE WAIVER AND ROAD IMPROVEMENTS

5.01 Fee Waiver. The City shall waive all eligible, applicable local fees assessed by the City and associated with CIORE’s development of the Fishers Site and construction of the CIO Facility, including but not limited to impact fees, improvement location fees, building permit fees, sign permit fees, variance requests and inspection fees incurred from the Effective Date to December 31, 2019 (collectively, “City Fees”). Notwithstanding the foregoing, CIORE acknowledges and agrees that City Fees shall not be waived on future development (structures)

on the Fishers Site other than the CIO Facility unless the City agrees to do so in the future on a case-by-case basis.

A. Termination-Permitting Violation. Within thirty (30) calendar days (“Cure Period”) written notice that CIORE is not in compliance with applicable City’ ordinances or has failed to obtain applicable permits or complete all applicable reviews and inspections, CIORE shall come into full compliance by obtaining the requisite permit, completing the applicable review or inspection or otherwise coming into compliance with the applicable ordinance (individually or collectively, "Permitting Violation"), subject to reasonable extensions necessary to come into compliance if (a) CIORE has reasonably taken steps to come into compliance during the Cure Period; and (b) compliance cannot be achieved during the Cure Period. If CIORE fails to come into such compliance, obtain such permit or complete the applicable review or inspection, the City may terminate Section 5.01 concerning the waiver of City Fees with respect to the CIO Facility, and, if the City so terminates , then City shall not have any additional obligation to waive City Fees on the CIO Facility.

B. Termination- Commitment Violation. If CIORE is in breach of its Investment Commitment, including beginning construction of the Fishers Development by or before December 31, 2017, then the City may provide CIORE with written notice thereof. If, within twenty (20) business days after receipt of the notice, CIORE fails to commence performance to the reasonable satisfaction of the City, then the City may terminate the waiver of the City’s Fees upon written notice delivered to the CIORE of same unless and until such time as the CIORE comes into compliance with the Investment Commitment (“Commitment Violation”).

C. Reimbursement. Upon termination of the waiver of City Fees whether caused by a Permitting Violation or Commitment Violation, the City may submit an invoice to CIORE for the amount of all City Fees waived, as applicable ("Reimbursement Amount"), and within thirty (30) of submitting the invoice, CIORE shall pay the Reimbursement Amount. If CIORE fails to pay the City any portion of the Reimbursement Amount when due, interest shall accrue on the balance owed in the amount of seven percent (7%) per annum. Interest shall continue to accrue until the outstanding amount owed, together with interest, is paid in full. CIORE's obligation to repay the City pursuant this Section 5.01(B) shall survive termination of this Agreement.

5.02 Road Improvements. The City agrees to begin construction of the improvements to 136th Street and Southeastern Parkway as shown on the attached Exhibit C (the “Road Improvements”) on or before _____ and to diligently pursue completion of same thereafter. If the Road Improvements are not completed on or before January 1, 2018, then the City agrees to provide CIORE, CIO and the public temporary access to the Fishers Site and the CIO Facility until the Road Improvements are completed.

ARTICLE VI.

INTENTIONALLY OMITTED

ARTICLE VII. SUCCESSORS, ASSIGNS & AMENDED AGREEMENT

If CIORE desires to transfer the CIO Parcel to any entity not included in this Agreement, CIORE acknowledges and agrees that prior to any transfer this Agreement, all other requisite ancillary documents shall be drafted or amended, as applicable, to appropriately reference and include the owner of the CIO Parcel as a party.

Further, CIORE specifically acknowledges and agrees that its obligations pursuant to this Agreement shall inure to the benefit of and be binding upon and enforceable against CIORE and its respective heirs, executors, administrators, successors and assigns. In any merger, acquisition or assignment of assets such obligation shall continue as a liability of CIORE and shall be disclosed as a binding obligation and liability of CIORE and any successors in interest.

ARTICLE VIII. AUTHORITY

8.01 City, FRC and EDC. City, FRC and EDC represent and warrant that each entity has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver this Agreement upon proper approval by the Fishers City Council, FRC and EDC. The performance by each of City, FRC, and EDC of its obligations under this Agreement shall be subject to completion of such procedures as are required by law.

City, FRC and EDC further represent and warrant that they have taken or will use their best efforts to take (subject to CIORE's performance of their agreements and obligations hereunder) such action(s) as may be required and necessary to enable City, FRC and EDC to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

8.02 CIORE. CIORE represents and warrants to City that: (a) CIORE is an Indiana limited liability company, duly existing and validly formed under the laws of the State of Indiana; (b) CIORE shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (c) CIORE has the authority: (i) to enter into this Agreement; and (ii) to perform its obligations hereunder, (d) CIORE duly has been authorized by proper action: (i) to execute and deliver this Agreement; and (ii) to perform its obligations hereunder; and (e) this Agreement is the legal, valid, and binding obligation of CIORE.

ARTICLE IX. GENERAL PROVISIONS

9.01 Indemnity; No Joint Venture or Partnership. CIORE covenants and agrees at its sole expense to pay and to indemnify and save harmless City, FRC and EDC and their respective officers and agents (the "Indemnitees") harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from CIORE's (and/or any affiliate's thereof) use of the Fishers Site unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of Fishers, FRC and EDC. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between City, FRC and EDC and CIORE any affiliate thereof.

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

9.03 Breach. Except as otherwise stated in Articles IV, V and VI above, before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

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

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

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

9.07 Indiana Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana.

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

To CIORE:

CIO Real Estate Fishers, LLC
c/o Central Indiana Orthopedics, P.C.
Attn: Karla Hostetler
Chief Strategy Officer
3600 West Bethel Avenue
Muncie, IN 47304

With a copy to:

Faegre Baker Daniels LLP
Attn: Steve Hardin, Partner
600 E. 96th Street, Suite 600
Indianapolis, IN 46240

To City Bodies:

City of Fishers
Attn: Chris Greisl, City Attorney
1 Municipal Drive
Fishers, Indiana 46038

With a copy to:

Jennifer Messer
Jennifer C. Messer P.C.
119 South Vine Street
Greensburg, Indiana 47240

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

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

9.10 Assignment. The rights and obligations contained in this Agreement may not be assigned by CIORE or any affiliate thereof without the express prior written consent of City.

9.11 No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

9.12 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and each of City, EDC and FRC has approved or ratified this Agreement as required by law.

CIO Real Estate Fishers, LLC

By: _____

By: _____

Its: _____

Its: _____

Fishers Economic Development Commission

Fishers Redevelopment Commission

By: _____

By: _____

Its: _____

Its: _____

City of Fishers

Scott Fadness, Mayor

Text [REDACTED]


AERIAL LOCATION MAP	[REDACTED]	
CENTRAL INDIANA ORTHOPEDICS		

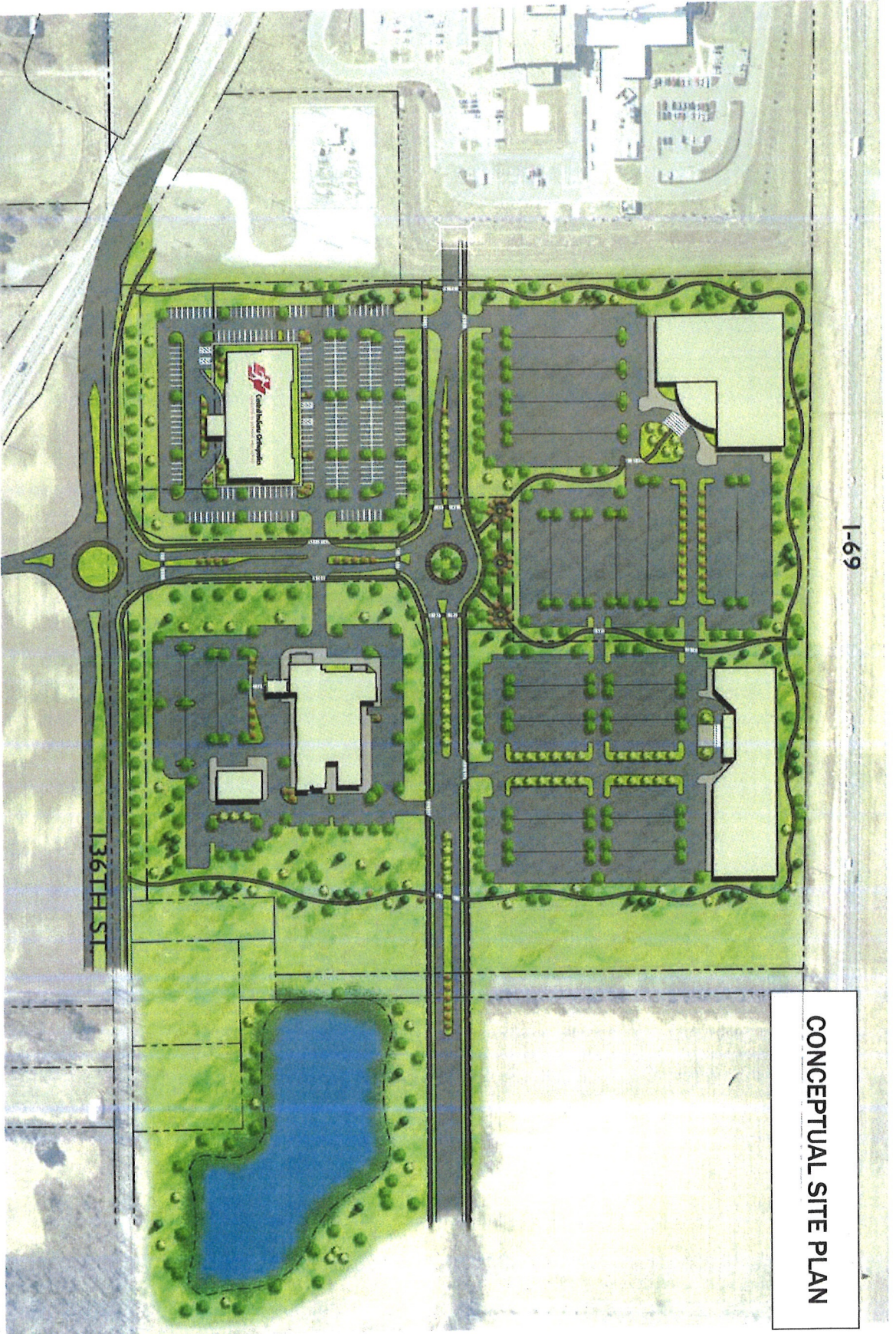
Exhibit A



 SITE

I-69

CONCEPTUAL SITE PLAN



CENTRAL INDIANA ORTHOPEDICS | FISHERS, INDIANA

Kimley»Horn



OVERVIEW OF PRIMARY INFRASTRUCTURE IMPROVEMENTS CENTRAL INDIANA ORTHOPEDICS	EX. B	 Central Indiana Orthopedics <small>INVESTED IN MAKING YOU BETTER</small>
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Exhibit B



Overview of Primary Infrastructure Improvements	
Phase 1	
- Utility Main Extensions	\$422,600
- Main Entrance Road & Round-A-Bout	\$1,467,400
- Overall, Site & Drainage Improvements	\$2,328,930
Phase 2	
- West Road & Bridge	\$1,018,400
Phase 3	
- East Road	\$889,950
Total	\$6,127,280

Overall Site & Drainage Improvements