

PROJECT AGREEMENT

This Project Agreement (the “**Agreement**”) is executed as of the ___ day of _____, 2017 (“Effective Date”), by and between **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

- A. City Bodies desire to foster economic development within Fishers, Indiana;
- B. Developer submitted a proposal to City Bodies for the development of the Project Site, and Developer and City Bodies discussed certain incentives to assist Developer in the construction of the Project on the Project Site;
- C. Developer expects that the development cost for the Project will be no less than Forty Million and 00/100 Dollars (\$40,000,000.00) and has requested certain economic development assistance from City;
- D. City Bodies have determined that the completion of the Project is in the best interests of the citizens of Fishers, Indiana, and, therefore, City Bodies desire to induce Developer to complete the Project;
- E. To stimulate and induce the development of the Project Site and the completion of the Project, the City Bodies have agreed, subject to further proceedings as required by law, to provide the economic development incentives described herein;
- F. It is further acknowledged that on or before the Closing: (i) Developer shall acquire the Development Land; (ii) City shall assist Developer in obtaining the Remnant Land from the Previous Owners; and (iii) City shall vacate the Right-of-Way; and
- G. Developer desires to develop, acquire, and lease (as applicable) the Project Site, to accept such incentives, and to construct the Project in accordance with the terms hereof.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, City, RDC, Building Corp., EDC, and Developer agree as follows:

1. Defined Terms.

Ancillary Agreements shall mean all instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement, the Developer Obligations Agreement, the Multi-Party Agreement, and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement, which documents shall be approved and executed prior to Developer issuing a Bond Proceeds Notice (such

approval and execution not to be unreasonably withheld, delayed or conditioned except that Developer and City specifically acknowledge and agree that City Bodies' acceptance of the Multi-Party Agreement and Funding Agreement is expressly conditioned on sufficient protection, in the City's sole discretion, for the Bond Proceeds).

Approved Costs shall mean, individually or jointly, Land Acquisition Costs, Project Hard Costs and FF&E.

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

Bond Proceeds shall mean that portion of the net proceeds of the Bonds in the total amount estimated to be Seven Million One Hundred Thousand and 00/100 Dollars (\$7,100,000.00) to be made available to Developer for the reimbursement of Approved Costs in Bond Proceed Portions, all as more specifically set forth in the Funding Agreement and/or Multi-Party agreement, as applicable. One hundred percent (100%) of the tax increment generated within the Project Site shall be pledged to support the Bonds. An estimate of tax increment to be generated by a particular Project Phase shall be made and agreed upon by and between City and Developer prior to delivery of a Bond Proceeds Notice for a Project Phase. The City shall issue a series of the Bonds in the principal amount that may be fully paid, with interest, solely from the estimated tax increment. The actual amount of the Bond Proceeds for a particular Project Phase shall equal that portion of the proceeds of the series of Bonds remaining after the payment of the costs of issuance of and capitalized interest on such series of Bonds.

Bond Proceeds Date shall mean the date that is forty-five days after City receives the Bond Proceeds Notice, which date shall not occur prior to the Closing Date. Each Project Phase shall have a Bond Proceeds Date (e.g., the "Phase One Bond Proceeds Date").

Bond Proceeds Notice shall mean a written notice from Developer to City that states that Developer intends to commence a Project Phase within ninety (90) days and obligates City to provide the applicable Bond Proceeds Portion within sixty (60) days, subject to the Ancillary Agreements. Each Project Phase shall have a Bond Proceeds Notice (e.g., the "Phase One Bond Proceeds Notice").

Bond Proceed Portion(s) shall mean, individually or collectively, the amount of Bond Proceeds for each Project Phase that shall be made available to Developer for Approved Costs in accordance with the Funding Agreement but in no instance prior to the Closing Date.

Bonds shall mean one or more series of taxable economic development revenue bonds, or bond anticipation notes, to be issued under Ind. Code § 36-7-12 for the Project (and, if the City elects in its sole discretion, other projects). Developer shall not be obligated to guaranty the Bonds.

CAB Lease shall mean the lease of the Culinary Accelerator Buildings from Developer to City upon the following minimum terms, among others: (a) annual rent in the amount of One and no/100 Dollars (\$1.00) for each year of the term; and (b) additional rent for operation, maintenance and capital repairs.

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

City Fees shall mean applicable local fees assessed by the City and associated with the Project, including but not limited to impact fees, improvement location fees, building permit fees, sign permit fees, variance requests and inspection fees.

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

Closing shall mean the closing with respect to: (a) Developer acquiring the Development Land in fee simple; (b) final execution of all Ancillary Documents; and (c) recordation of the Plat.

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with a commercial real estate closing.

Closing Date shall mean the date of the Closing, which date shall be no later than December 31, 2017.

Commencement Date shall mean June 30, 2019.

Commencement of Construction shall mean material and substantial work on the Phase One Site related to the construction of the Phase One Work pursuant to Required Permits such as demolition of the existing buildings, installation of footings, foundations, and infrastructure and shall not be deemed to occur as a result of mere excavation work.

Commitment shall mean a title insurance commitment for an owner's policy of title insurance that: (a) is issued by the Title Insurer; and (b) commits to insure marketable fee simple title to the Project Site in the name of Developer.

Concept Plan shall mean the illustrative plan attached hereto as **Exhibit A** that: (i) shows the Project's conceptual building layout, ingress/egress locations and other significant site features; and (ii) includes conceptual illustrations of the quality and character of the: (a) exterior elevations of the buildings; and (b) the program for hardscape and landscape improvements.

Construction Contract shall mean a lump sum construction contract with the General Contractor for the construction of the Phase One Work. The Construction Contract shall be subject to the reasonable review and approval of City.

Construction Drawings shall mean construction drawings for each Project Phase, which drawings shall be consistent with the Concept Plan, Site Specific PUD approved by City and the Laws.

Construction Schedule shall mean a schedule for construction of the Project in accordance with the Concept Plan, which schedule shall reflect: (i) Commencement of Construction on or before the Commencement Date (ii) Substantial Completion of the Phase One Work and the Culinary Accelerator Building by Developer within eighteen (18) months after Commencement of Construction; and (ii) all Project Phases completed within sixty (60) months after Closing.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

Culinary Accelerator Building(s) shall mean two (2) buildings constructed on the Culinary Accelerator Parcel, each of which shall be no less than one thousand five hundred (1,500) square feet in size (or, if mutually agreed by Developer and City, one (1) building no less than three thousand (3,000) square feet in size) and designed to afford a variety of opportunities to accelerate new restaurant, catering and other culinary entrepreneur efforts.

Culinary Accelerator Parcel shall mean the parcel of land on which the Culinary Accelerator Buildings are located.

Cure Period shall mean a period of: (a) ten (10) days after written notice of such default 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 reasonably 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 the default. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under **Section 17**, any specific cure periods for such defaults being expressly set forth in **Section 17**, and a Cure Period shall not be applicable to a default under an Ancillary Agreement, any specific cure periods for such defaults being expressly set forth in such Ancillary Agreement.

Current Year Taxes shall mean the Real Estate Taxes assessed for, and first becoming a lien against, the Project Site during the year in which the Closing occurs.

Design Development Documents shall mean detailed design development documents for each Project Phase consistent with the Schematic Design Drawings, the Site Specific PUD and the Laws.

Developer Divestiture Payment shall mean, in all cases, the amount of (a) Land Acquisition Costs; plus (b) the documented amount of Developer's Equity Contribution reasonably invested in construction of the Project; less (c) the amount of Bond Proceeds that has been disbursed to the Developer at the time the Power of Termination is exercised.

Developer's Equity Contribution shall mean Developer's and Developer's equity investor's minimum equity contribution to be invested in the Project, which shall be no less than Three Million and 00/100 Dollars (\$3,000,000.00).

Developer Obligations Agreement shall mean the "Developer Obligations Agreement and Consent to Real Property Tax Lien" described in **Section 15(b)**.

Development Land shall mean the parcels that shall be acquired by Developer at or prior to Closing and the deeds to such land recorded at or prior to Closing, which parcels are identified and depicted on **Exhibit C**.

Diligence Period shall mean the period: (a) commencing on the Execution Date; and (b) ending on the date that is one hundred twenty (120) days after the Execution Date.

Event of Default shall have the meaning set forth in **Subsection 16(a)**.

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

Executive Director shall mean the Director of Economic Development for the City of Fishers.

FF&E shall mean furniture, fixtures and equipment approved by the City to be installed and/or located by Developer in the Culinary Accelerator. Although the City may use bond proceeds for the FF&E, such proceeds shall be separate and distinct from the Bond Proceeds.

Final Date shall mean sixty (60) months from the Effective Date.

Final Documents and Drawings shall mean, as each is finalized and approved or reviewed by City in accordance with the Plan Refinement Process described in **Section 10**, (a) for the Phase One Work, the final Schematic Design Drawings, the final Design Development Documents, the final Construction Schedule, the Project Budget, and the final Construction Drawings; and (b) for all other Project Phases, the the final Schematic Design Drawings, the final Design Development Documents and the final Construction Drawings.

Final Inspection shall mean an inspection of the Project after Substantial Completion thereof.

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) unusually inclement weather but not prolonged inclement cold, ice, sleet, snow or hail; (b) the unusual unavailability of materials, equipment, services, or labor; and (c) utility or energy shortages or acts or omissions of public utility providers; provided that a party's failure to anticipate normal and customary delays and weather shall not constitute Force Majeure.

Funding Agreement shall mean an agreement pursuant to which the Bond Proceeds Portions shall be disbursed to Developer in a commercially reasonable manner for Approved Costs which agreement shall specifically state that Developer shall not be entitled to Bond Proceeds after the Final Date. Developer shall be responsible for all costs to design and construct the Project in excess of the Bond Proceeds.

General Contractor shall mean Thompson Thrift Construction, Inc., which is the general contractor that has been selected by Developer to construct the Project and has been approved by the City. Primary sub-contractors shall be approved in advance by City, which approval shall not be unreasonably withheld.

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

Land Acquisition Costs shall mean all of Developer's costs associated with the acquisition of the Project Site excluding brokerage, legal, professional or other fees paid to Developer or any affiliate of Developer.

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

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

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Documents and Drawings; or (c) has not been performed materially in accordance with the terms and conditions of this Agreement.

Multi-Party Agreement shall mean an agreement by and among City, Developer, and the Project Lender pursuant to which (a) the Project Lender agrees to give to City: (i) notices of defaults by Developer under the Project Loan Documents; (ii) the right (but not obligation) to cure defaults by Developer under the Project Loan Documents; (iii) the right to purchase the Loan in the event of a default by Developer under this Agreement, or the Project Loan Documents if such default is not cured within the Cure Period or other applicable cure period for an amount equal to: (A) the proceeds of the Project Loan disbursed pursuant to the terms and conditions of the Project Loan Documents; and (B) unpaid, accrued interest on the Project Loan at the regular (non-default) rate of interest; (b) provides for the release of the Project Loan in the event of the exercise of the Power of Termination and upon payment of the Divestiture Payment under **Section 17(a)** or **17(b)**; and (c) provides the City the right to keep the Project Loan in place if City exercises its right under **Section 17(c)** to complete the Project for and on behalf of Developer, including the right to obtain draws up to the maximum principal amount of the Project Loan pursuant to draw requests delivered by City to the Project Lender (with carbon copies to Developer). The Multi-Party Agreement shall be in form and substance reasonably acceptable to City, Developer, and Project Lender.

Non-Compliance Notice shall mean a written notice from City to Developer that identifies Material Defects with respect to the Project discovered by City or the Inspector during a Permitted Inspection and/or the Final Inspection.

Permitted Change shall mean any change to that portion of the Final Documents and Drawings consisting of the final Construction Drawings, so long as such change: (a) is consistent with the Site Specific PUD; (b) does not change the design or exterior of the Culinary Accelerator Buildings; (c) does not affect the exterior appearance of the Project, (d) is not inconsistent with the Schematic Design Drawings approved by City; (e) is not inconsistent with the Design Development Documents approved by City; (f) is in conformity with each of the Concept Plan, the Required Permits, and the Laws; (g) does not result in the Final Documents and Drawings containing structurally flawed elements; (h) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule; and (i) does not result in an increase in the Project Budget.

Permitted Exceptions shall mean: (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 as are accepted by Developer in writing or which Developer is deemed to have waived pursuant to the terms and conditions of this Agreement; (c) this Agreement, together with any Ancillary Agreements including, without limitation, the Declaration and the Developer Obligations Agreement (d) reservations of the Power of Termination.

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

Phase One Site shall mean the site depicted on the Concept Plan.

Phase One Work shall mean the work described and depicted on Exhibit D.

Phase Work shall mean the work to be performed during each specific Project Phase.

Plan Refinement Process shall mean the process set forth in **Section 10** for completion of the Final Documents and Drawings.

Plan Review Panel shall mean a plan review panel comprised of the Executive Director and Deputy Mayor and such other parties as may hereafter be designated by City.

Plat shall mean the plat of the Project Site that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hamilton County, Indiana contemporaneous with other documents needed for Closing which Plat shall create separate lots for each of the Culinary Accelerator Parcel, outlots, interior lots, and the balance of the Project Site.

Power of Termination shall mean, in the event of a default described in **Sections 17(a) or 17(b)**, the right of the City to terminate this Agreement and require Developer to make the Reimbursement Payment.

Previous Owners shall mean the persons and/or entities who possessed title to of the several Remnant Parcels immediately prior to the City acquiring title to the several Remnant Parcels.

Prohibited Uses shall mean those prohibited uses as set forth in **Exhibit G**.

Project shall mean the improvements to be constructed on the Project Site, all in accordance with the Final Documents and Drawings for each Project Phase and as generally shown on the Concept Plan.

Project Budget shall mean a detailed budget for each of the Project Phases in accordance with the Final Documents and Drawings that shows line-item estimated costs for each of the Project Phases, which shall be prepared when the Construction Drawings approximately are 85%-100% complete and shall be approved by the City, which approval shall not be withheld, conditioned or delayed unreasonably.

Project Costs shall mean Project Hard Costs, Project Soft Costs, Land Acquisition Costs & FF&E incurred in connection with construction of the Project.

Project Hard Costs shall mean costs incurred in connection with construction of the Project, which costs are customarily known as “hard costs”.

Project Lender shall mean the financial institution which is not affiliated with Developer making the Project Loan, and any successor or assignee thereof.

Project Lender Divestiture Payment shall mean in the case of the exercise of the Power of Termination as a result of (a) a default by Developer under **Section 17(a)**, One Dollar (\$1.00); and (b) a default by Developer under **Section 17(b)**, an amount equal to (i) the amount of the proceeds of the Project Loan disbursed pursuant to the terms and conditions of the Project Loan Documents; plus (ii) unpaid, accrued interest on the Project Loan at the regular (non-default) rate of interest.

Project Loan shall mean a construction loan or series of constructions loans to Developer, the proceeds of which shall be used to: (a) acquire the materials to construct the Project in Project Phases; (b) design and/or construct the Project; and (c) fund other soft costs, fees, and expenses incurred by Developer in connection with the design and/or construction of the Project. The Project Loan shall be separate from the Funding Agreement.

Project Loan Documents shall mean the documents evidencing or securing the Project Loan.

Project Phase(s) or Project Phase Work shall mean, individually or collectively, Phase One Work, Phase Two Work, and Phase Three Work.

Project Site shall mean: (a) the Culinary Accelerator Parcel; and (b) remaining land within the Project; all as generally depicted on **Exhibit K**.

Project Soft Costs shall mean costs incurred in connection with the Project and in addition to the Project Hard Costs, which costs are customarily known as “soft costs”.

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

Real Estate Taxes shall mean all real estate taxes levied on, against, or with respect to the Project Site.

Reimbursement Payment shall mean the payment that Developer shall be obligated to make in the event the City exercises the Power of Termination. The scope and extent of the Reimbursement Payment, along with adequate security for this obligation, shall be included within the Funding Agreement and shall be subject to the parties’ mutual agreement; provided however that nothing contained herein shall be construed to require the City to accept security it determines, in its sole discretion, to be inadequate.

Remnant Land shall mean the parcels identified and depicted on **Exhibit B**.

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

Right-of-Way shall mean the right-of-way depicted on **Exhibit E**.

Preliminary Estimated Project Costs shall mean the amount of Forty Million and 00/100 Dollars (\$40,000,000.00), which amount includes the total preliminary budget for Project Hard Costs, Land Acquisition Costs, Project Soft Costs and FF&E.

Site Specific PUD shall mean the planned unit development ordinance approved pursuant to the Laws that governs the use of the Project Site, including, without limitation, materials used for construction within the Project Site, density, building size(s), set-back, and prohibited uses.

Substantial Completion, with respect to each of the Project Phases, shall mean, the later of the date: (i) the Phase Work is completed; and (ii) the date that the Developer's architect certifies, per AIA Form G704, that the construction of the Phase Work is substantially complete in compliance with all Laws, this Agreement, and the Required Permits subject only to tenant improvements, certificates of occupancy for individual tenant spaces, and minor punchlist items that do not interfere with the use or operation thereof.

Survey shall mean an ALTA survey of the Project Site certified as of a current date by a reputable licensed surveyor; which Survey shall show that the Project Site is suitable for Development of the Project as contemplated in this Agreement.

Title Defects shall mean conditions or defects disclosed in the Commitment or the Survey that, in the reasonable determination of Developer or Building Corp., as applicable, materially and adversely will interfere with the construction and/or use of the Project; provided that the lien of any mortgage or other security instruments to be released at or before the Closing shall not be a Title Defect nor shall Developer, City, or any City Bodies have any obligation to cure any Title Defects.

Title Insurer shall mean First American Title Insurance Company (Gina Longere).

2. **City's Obligations.** Subject to **Section 7**, City, Building Corp. or RDC, as applicable, shall: (a) reasonably assist Developer with acquiring fee simple title to the Remnant Land; (b) execute and perform (or cause the applicable City Bodies thereto to execute and perform) the Ancillary Agreements; (c) issue the Bonds in accordance with the terms and conditions of **Exhibit M** and make available the Bond Proceed Portions to Developer within sixty (60) days after City's receipt of a Bond Proceeds Notice pursuant to the Funding Agreement for the purposes set forth in this Agreement, provided that City has approved the Final Documents and Drawing for the Project Phase for which Developer is requesting a Bond Proceed Portion (if City has not yet approved the Final Documents and Drawings, the Bond Proceed Portion shall be disbursed to Developer immediately upon approval of the Final Documents); (d) adopt by ordinance the Site Specific PUD; (e) together with Developer, cause the Right-of-Way to be vacated prior to Closing; and (f) review and issue the City's development and permit applications necessary to develop the Project Site and construct the Project, including, whenever possible, coordinating with the Developer to lower Project costs by issuing interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving final approval of less critical activities (e.g., review and approval of the ILP and foundation release permits to allow overall site work and foundation installation for the buildings to be expedited and reserving for later review streetscape improvements and other improvements to be constructed later in the construction phasing) to the extent allowed by the Laws.

3. **Developer's Obligations.** Subject to **Section 6**, Developer shall: (a) acquire the Development Land at or prior to Closing; (b) submit the Plat for final approval and recordation; (c) lease the Culinary Accelerator Buildings to City pursuant to the CAB Lease; (d) make the payments required by the Developer Obligations Agreement; (e) obtain the Project Loan; (f)

construct and complete the Project in accordance with the Final Documents and Drawings and this Agreement by or before the Final Date; (g) obtain all Required Permits; (h) execute and perform the Ancillary Agreements; (i) make the Developer's Equity Contribution in the Project; (j) maintain, repair, replace and keep the Project in good condition and repair; in each case subject to the terms and conditions of this Agreement and the Ancillary Agreements; upon City's request, provide City access to Developer's books and records to verify the Developer's Equity Contribution; and (k) perform its other obligations set forth herein.

4. **Closing.**

(a) **Closing.** Subject to the terms and conditions of this Agreement, Closing shall occur: (i) on or before the date that is thirty (30) days after the conditions in **Sections 6 and 7** have been satisfied or waived, but in no event later than December 31, 2017, and (ii) either at the office of the Title Insurer or at such other place as City and Developer mutually may agree. In the event of the termination of this Agreement on or before Closing due to a failure to satisfy any condition in **Section 6 or 7**, each party shall bear their own costs in connection with negotiation and performance of this Agreement.

(b) **Closing Deliveries.** At the Closing:

(i) Developer shall deliver to Closing Agent (A) limited warranty deeds, if any, to any portion of the Development Land not yet recorded to show Developer as fee simple owner; and (B) all Project Loan Documents needed to close the Project Loan.

(ii) Developer shall pay the Closing Costs by wire transfer of immediately available funds. Developer shall pay (A) the cost of the Survey and the Plat and (B) the cost for the owner's policy of title insurance on the Project Site in an amount determined by Developer. Each party shall be responsible for its own legal fees incurred in connection with this Agreement and the Closing.

(c) **Bond Proceeds Notice Deliveries.** On or before the Bond Proceeds Notice:

(i) Developer and/or the applicable City Bodies shall execute and deliver the following:

(A) a certification by Developer that all of the representations and warranties set forth in **Subsection 8(b)** remain true and accurate in all respects as of the Closing Date;

(B) the executed Construction Contract;

(C) the Ancillary Agreements;

(D) an original of this Project Agreement to be recorded in the chain of title for the Project Site;

(E) the Project Loan Documents, including the Multi-Party Agreement;

(F) such other customary documents or instruments as required to be delivered in connection with the issuance of the Bonds;

(G) copies of such resolutions, consents of members, partners, officers, and/or shareholders and other evidence as EDC, RDC, City, Building Corp., Developer, or the Title Insurer reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents, have, in each case, been properly authorized by the signatories thereto;

(H) such other customary documents or instruments as City, RDC, Building Corp., EDC, Developer or the Title Insurer may request in connection with the Closing;

(I) certificates of insurance policies required pursuant to **Section 13**; and

(O) Taxes. As long as Developer owns the Project Site, Developer assumes and agrees to pay all Real Estate Taxes and Assessments becoming a lien against the Project Site whenever assessed, due, or payable.

5. **Property Inspections/Due Diligence.**

(a) Developer and its agents, employees, and contractors have the right to enter upon the portions of the Remnant Land owned by a City Body at reasonable times to conduct such Property Inspections as it deems necessary or appropriate.

(b) Developer agrees that, in connection with the Property Inspections, it shall: (i) maintain insurance with customary coverages naming City Bodies as additional insureds; (ii) promptly repair any damage to the Remnant Land resulting from the Property Inspections if the Closing does not occur; (iii) indemnify and hold harmless City Bodies from and against any and all Claims arising or incurred as a result of, or in connection with, Developer's Property Inspections; provided that the foregoing indemnity shall not cover Claims arising or incurred as a result of, or in connection with: (1) negligence or intentional misconduct of a City Body; or (2) any existing adverse physical condition of the Remnant Land that is not exacerbated by Developer; and (iv) provide to City (or its designee), promptly after receipt thereof, true, correct, and complete copies of all results of, and reports received in connection with, the Property Inspections.

(c) The obligations of Developer and City under this **Section 5** shall survive: (i) the Closing; and (ii) if applicable, the termination of this Agreement.

6. **Conditions to Developer Obligations.** The obligations of Developer with respect to this Agreement are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section:

(a) Title. On or before December 31, 2017, Developer shall have acquired title to the Development Land and the Remnant Land.

(b) Zoning. As of the Closing Date, Developer shall have determined that: (i) the zoning of the Project Site is proper and appropriate for the construction of the Project and use of the Project in accordance with the terms and conditions of this Agreement; and (ii)

the Project Site is subject only to commitments and restrictions that are acceptable to Developer in its reasonable discretion.

(c) Required Permits. As of the expiration of the Closing Date, Developer shall have (A) obtained; or (B) determined that it shall be able to obtain; all Required Permits.

(d) Financial Ability. As of the Bond Proceeds Notice, Developer, exercising commercially reasonable discretion, shall have determined that it has adequate funds (Project Loan proceeds, Developer's Equity Contribution, Bond Proceeds, and/or cash on hand) to construct the Project.

(e) Ancillary Agreements. Prior to acceptance of any Bond Proceeds Notice (meaning, the 60-day time period for disbursing Bond Proceed Portions shall not commence): (i) City (or the applicable City Bodies) and Developer, each exercising commercially reasonable discretion, shall have approved the form and substance of all Ancillary Agreements; and (ii) all other parties to the Ancillary Agreements shall have approved the form and substance of all Ancillary Agreements.

(f) Bond Proceeds. As of the Bond Proceeds Date, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary and prudent to authorize the Bonds; and (ii) demonstrated that the Bond Proceeds shall be made available to Developer on or before the Bond Proceeds Date; and, as of the Bond Proceeds Date, Developer, exercising commercially reasonable discretion, shall have determined that the proceeds of the Bonds shall be no less than the Bond Proceeds and available to Developer for the purposes set forth in this Agreement.

(g) Financing Documents. As of the Bond Proceeds Date, Project Lender and the applicable City Bodies shall have approved the form and substance of the Multi-Party Agreement, Project Loan Documents, and any additional documents relating to the Project Loan. On or before the Bond Proceeds Date, the Project Loan shall be closed, and in connection therewith, the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating thereto shall be fully executed by all parties thereto.

(h) Plat. As part of Closing, 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. The Plat shall establish the precise legal description of at least the following: (A) the Project Site; and (B) the Culinary Accelerator Parcel; for purposes of title insurance and closing documents.

(i) No Breach. As of the Bond Proceeds 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 8(a)** shall be true and accurate in all other respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer either may elect to: (i) waive in writing satisfaction of the conditions and to proceed to the Closing and the Bond

Proceeds Date; or (ii) terminate this Agreement by a written notice to City; provided that, with respect to any unsatisfied condition resulting from another party's breach of this Agreement, Developer shall have the rights and remedies set forth in **Section 16**. 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 earlier of (i) the Bond Proceeds Date; or (ii) two (2) business days after the applicable deadline set forth in each of the foregoing subsections; Developer shall be deemed to have waived such condition.

7. **Conditions to City Bodies' Obligations.** The obligations of City Bodies with respect to the Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section:

(a) **Required Permits.** As of the expiration of the Diligence Period, City Bodies shall: (i) have determined that Developer shall have: (A) obtained; or (B) determined that Developer shall be able to obtain; all Required Permits; and (ii) the Survey is acceptable to the City; and (iii) there are no exceptions or matters of record reflected in the Commitment or Survey which would have a materially adverse effect on the Project or the City Bodies' ability to perform hereunder or under any Ancillary Agreements.

(b) **Conceptual Plan.** As of the Closing Date, the Concept Plan shall have been completed and approved by City.

(c) **Construction Contracts.** Prior to the execution thereof, final copies of the Construction Contract shall be submitted to the Executive Director for review.

(d) **Financial Ability.** As of the Bond Proceeds Notice, Developer shall have demonstrated to City, exercising commercially reasonable discretion, that Developer has and/or will have adequate funds (Project Loan proceeds, Developer's Equity Contribution, Bond Proceeds, and/or cash on hand) to construct the Project

(e) **Ancillary Agreements.** Prior to the issuance of a Bond Proceeds Notice: (i) City (or the applicable City Bodies) and Developer, each exercising commercially reasonable discretion, shall have approved the form and substance of all Ancillary Agreements; and (ii) all other parties to the Ancillary Agreements shall have approved the form and substance of all Ancillary Agreements. The execution of the Developer's Obligation Agreement is a condition precedent to the effectiveness of this Agreement. In the event the Developer's Obligation Agreement is not executed on or before a Bond Proceeds Notice this Agreement shall be null and void.

(f) **Bond Proceeds.** On or before the Phase One Bond Proceeds Date, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary and prudent to authorize the Phase One Bond Proceed Portion; and (ii) demonstrated that such Phase One Bond Proceed Portion shall be issued and the proceeds available to Developer on or before the Phase One Bond Proceeds Date; and, as of the Phase One Bond Proceeds Date, Developer, exercising commercially reasonable discretion, shall have determined that the proceeds of the Bonds shall be no less than the Bond Proceed Portion applicable to Phase One and available for Developer for the purposes set forth in

this Agreement. Upon (x) receipt of a Bond Proceeds Notice for a subsequent Project Phase; (y) approval of Final Documents and Drawings for such subsequent Project Phase; and (z) demonstration that Developer has adequate funds to construct such subsequent Project Phase, City shall make available additional Bond Proceed Portions on or before the applicable Bond Proceeds Date consistent with the Funding Agreement

(g) Financing Documents. Prior to the issuance of a Bond Proceeds Notice, Project Lender and the applicable City Bodies shall have approved the form and substance of the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating to the Project Loan. On or before the Phase One Bond Proceeds Notice is issued, the Project Loan shall be closed and, in connection therewith, the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating thereto shall be fully executed by all parties thereto.

(h) Procedures. As of the Bond Proceeds Date, the applicable City Bodies shall have completed all procedures required by Laws to undertake the obligations contemplated hereunder; and all requisite public bodies shall have approved the transaction.

(i) Plat. As part of Closing, 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. The Plat shall establish the precise legal description of at least the following: (A) the Project Site; and (B) the Culinary Accelerator Parcel; for purposes of title insurance and closing documents.

(j) Compliance. 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. As of the Bond Proceeds Date: (i) there shall be no breach of this Agreement by Developer that Developer has failed to cure within the Cure Period; and (ii) all of the representations and warranties set forth in Subsection 9(b) shall be true and accurate in all respects.

(l) Developer's Equity Contribution. Developer shall have provided to City credible and reliable evidence of the Developer's Equity Contribution on or before the Bond Proceeds Date.

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 either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing and/or the Bond Proceeds Date; or (ii) terminate this Agreement by a written notice to Developer; provided that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Developer, City and/or the applicable City Body shall have all of the rights and remedies set forth in **Sections 16 and/or 17**, as applicable. Notwithstanding anything to the contrary set forth herein, (1) City shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if City fails to terminate this Agreement for any unsatisfied condition; on or before the earlier of (i) the later of the Closing Date and the Bond Proceeds Date; or (ii) two (2) business

days after the applicable deadline set forth in each of the foregoing subsections; City shall be deemed to have waived such condition.

8. **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) City is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) Building Corp. is a nonprofit corporation organized and existing under the laws of the State of Indiana; (iv) RDC is the governing body of the City of Fishers Redevelopment Department organized and existing under the laws of the State of Indiana; (v) EDC is the governing body of the City of Fishers Economic Development Department organized and existing under the laws of the State of Indiana; (vi) 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; (vii) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (viii) this Agreement is the legal, valid, and binding obligation of it; and (ix) 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 limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) Developer shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) Developer has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) Developer duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of Developer; (vi) neither Developer nor any party affiliated with Developer has 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 sale by, through, or as a result of, the acts or omissions of Developer or any party affiliated with Developer; and (vii) Developer, for itself, agrees that during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and 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, or national origin.

(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., Developer covenants to enroll in and verify the work eligibility status of all of its employees using

the E-Verify program, if it has not already done so as of the Execution Date. Within ten (10) days after the Execution Date, Developer shall execute an affidavit affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Developer shall provide City with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Developer and delivered to City's authorized representative.

9. **Intentionally Omitted.**

10. **Developer Design and Construction.**

(a) **Concept Plan.** City has reviewed and approved the Concept Plan.

At its sole cost and expense, Developer shall submit to City for its review and approval the following documents for each of the Project Phases, as applicable (meaning, that the requirements concerning the Construction Schedule and Project Budget apply only to the Phase One Work) which documents may incorporate multiple Project Phases.

(b) **Design Development Documents.** In accordance with the City's zoning and planning procedures, Developer, at its cost and expense, shall submit to City for its review, the Design Development Documents for each of the Project Phases. Within fifteen (15) days after City receives the Design Development Documents, City shall deliver to Developer written notice that it approves or rejects the Design Development Documents; provided that, if City rejects all or any part of the Design Development Documents, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of all of the Design Development Documents, the Design Development Documents shall be deemed to be final.

(c) **Construction Drawings.** In accordance with the City's zoning and planning procedures, Developer, at its cost and expense, shall submit to City for its review the Construction Drawings for each of the Project Phases. Within ten (10) days after City receives the Construction Drawings and the Construction Schedule (Construction Schedule is applicable to Phase One Work, only), City shall deliver to Developer written notice that it approves or rejects the Construction Drawings and the Construction Schedule; provided that, if City rejects all or any part of the Construction Drawings and the Construction Schedule then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of all of the Construction Drawings and the Construction Schedule: (i) the Construction Drawings and the Construction Schedule shall be deemed to be (i) final, subject to modifications by Change Orders; and (ii) consistent with the Design Development Documents.

(d) **Resubmitted Documents.** If, at any stage of the Plan Refinement Process, City, rather than approving any drawings or documents, instead notifies Developer of rejection of the foregoing then, within ten (10) days after Developer receives notice from City that it has rejected the drawings or documents, Developer shall promptly: (i) revise the rejected drawings or documents; and (ii) resubmit the foregoing to City. Within ten (10)

days after City receives the resubmitted drawings or documents, City shall deliver to Developer written notice that it approves or rejects the foregoing; provided that, if City rejects all or any part of the foregoing, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection; and Developer shall revise and resubmit the rejected drawings or documents in accordance with the preceding sentence until such drawings or documents are approved. Upon approval of any resubmitted drawings or documents, the resubmitted drawings or documents shall become part of the Final Documents and Drawings, subject to modifications by Change Orders. Notwithstanding the involvement of City in the Plan Refinement Process, Developer shall be responsible for insuring that revisions submitted by Developer to, and approved by, City in writing are implemented in the Final Documents and Drawings and any approved Change Order; the failure of which shall be a default hereunder.

(e) Change Orders. If Developer desires to make changes to the Final Documents and Drawings, then Developer shall submit a Change Order Request to City for review and approval. Within ten (10) days after City receives the Change Order Request, City shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) City shall not withhold its approval unreasonably; and (ii) if City rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that City is rejecting; and (B) include the specific basis for such rejection. If City approves a Change Order Request, then City and Developer shall execute a Change Order. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of City with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer; provided that, with respect to a Permitted Change, Developer shall submit a copy of the Change Order to City for its review prior to the execution and implementation thereof. Changes to the Final Documents and Drawings which are not identified in a Change Order approved by City, other than Permitted Changes submitted to the City for review in accordance with the foregoing, shall not be deemed a Permitted Change and shall constitute a default hereunder. Except as described above, Developer shall not be required to include a Permitted Change in a Change Order.

(f) Permits. Developer acknowledges that the Plan Refinement Process is in addition to, and not in lieu of, any plan review or Required Permits required under applicable Laws, and it shall not be deemed a warranty or representation of any kind by any City Bodies that the Concept Plan, the Design Development Documents, or the Construction Drawings comply with, or are approved under, applicable Laws. Prior to commencing construction of the Project, Developer shall obtain Required Permits with respect to the Project that are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. City shall use reasonable efforts to assist Developer in its efforts to obtain the Required Permits in a timely fashion. Developer acknowledges that City Bodies cannot (and do not) guarantee that Developer will be able to obtain the Required Permits.

(g) Construction. Prior to commencing construction of the Project, Developer shall provide the Construction Contract to City for its review and approval, which approval shall not be unreasonably withheld. Developer shall construct the Project: (i) in a good

and workmanlike manner; (ii) in accordance with the Final Documents and Drawings (as modified by any Change Orders); and (iii) in compliance with the Laws.

(h) Review Panel. Consistent with the Laws and notwithstanding anything to the contrary set forth herein, City, at its option, may delegate all or any part of its review, approval, or rejection obligations pursuant to this Section to the Plan Review Panel.

(i) Fee Waiver. If assessed or chargeable by the City Bodies, the City shall waive: City Fees related to (a) the initial construction of the Project and (b) for first generation tenants; provided that during any continuing Event of Default by Developer hereunder or under any Ancillary Agreements, City shall be entitled to either suspend or terminate any further waiver of the foregoing fees. It is further agreed that City has not waived and does not hereby waive any re-inspection fees customarily charged by any City Parties.

(j) Construction Contract. Prior to the Bond Proceeds Date and its execution of the Construction Contract, Developer shall submit final copies of such contract to the Executive Director for review and approval which approval shall not be unreasonably withheld, conditioned or delayed.

(k) Project Budget. Developer, at its sole cost and expense, shall prepare and submit to the Executive Director for review, the Project Budget consistent with the Final Documents and Drawings.

11. **Intentionally Omitted.**

12. **Inspection/Completion.**

This Section 12 applies to the Phase One Work only

(a) Permitted Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, City may perform a Permitted Inspection. Within seven (7) business days after a Permitted Inspection, City may deliver to Developer a Non-Compliance Notice. If City timely delivers a Non-Compliance Notice, then Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or deemed to have been accepted, by City. Notwithstanding anything to the contrary set forth herein, all items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by City, subject to Latent Defects.

(b) [Intentionally Omitted].

(c) Final Inspection. If Developer delivers to City a written request for a Final Inspection, then, on or before the later of the date that is five (5) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; City shall: (1) conduct the Final Inspection; and (2) deliver a Non-Compliance Notice (if applicable) to Developer; provided that: (y) upon receipt of a Non-

Compliance Notice, Developer shall correct, or cause to be corrected, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice; and (z) all then-completed items or components of the Phase One Work with respect to which no Material Defects or punchlist items are identified in a timely Non-Compliance Notice shall be deemed to be accepted by City, subject to Latent Defects. All Material Defects and punchlist items shall be promptly completed; and, upon correction of all Material Defects and punchlist identified in the Non-Compliance Notice, the applicable work shall be deemed completed (subject to **Section 12(e)**). Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this Subsection; City shall have no further inspection rights except to ensure compliance by Developer with the Required Permits and as permitted by the Laws.

(d) Failure to Cure. If Developer fails to cure any item in a Non-Compliance Notice or any Latent Defect identified in writing by City, in each case, within thirty (30) days of the receipt of such notice, then City, in addition to any other right or remedy provided herein (and regardless of any Cure Period provided herein), shall be entitled to withhold the related certificate of occupancy until such item is cured.

(e) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by City pursuant to this Section shall be applicable with respect to any Latent Defects discovered within twelve (12) months after the applicable certificate of occupancy. An acceptance, or deemed acceptance, by City pursuant to this Section shall not mean that City has accepted, or the other party has been relieved of, responsibility for: (i) compliance with the Laws; (ii) the proper application of construction means or methods; or (iii) correcting any portion of the Project if it later is determined within twelve (12) months after a building's certificate of occupancy that any portion of the Project is materially inconsistent with the Final Documents and Drawings.

(f) General; Testing. In the case of a Permitted Inspection or the Final Inspection, the parties shall: (i) comply with all health and safety rules of which such party has been informed that have been established for personnel present on the construction site; and (ii) coordinate the inspections so that the inspections do not interfere with the performance of construction. City and Developer each shall have the right to accompany, and/or have its construction manager accompany, the inspecting party during any Permitted Inspection and/or the Final Inspection. Notwithstanding anything to the contrary set forth herein, to the extent City, in the exercise of its reasonable discretion, requires any sampling or testing (e.g., concrete testing) as part of a Permitted Inspection and/or Final Inspection: (i) the deadline for City's issuance of a Non-Compliance Notice shall be deemed extended to five (5) business days following City's receipt of a complete and final set of such test or sample results; and (ii) the applicable dates in the Construction Schedule shall likewise be extended.

(g) No Waiver of Police Power. The foregoing rights in favor of City shall be addition to, and not in lieu of, any rights and remedies City may have under this Agreement or applicable Laws; and nothing set forth herein shall be deemed to waive any authority, right, remedy, or power vested in any City Bodies under applicable Laws.

(h) Information Review. Upon Executive Director's request, Developer agrees to permit the Executive Director to review and inspect copies of any and all (i) Project Loan draw requests (as well as any revised draw requests); and (ii) any inspections and reports related to the Project.

13. Insurance. During the construction of the Project, Developer shall maintain the policies of insurance described on Exhibit N. Each such policy shall: (a) be written by a company reasonably acceptable to City; and (b) provide that it shall not be modified or canceled without written notice to City at least thirty (30) days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name City Bodies as additional insureds. Developer shall deliver to City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. Other required coverages may be specified in the Ancillary Agreements.

14. Intentionally Omitted.

15. Certain Ancillary Agreements.

(a) Developer Obligations Agreement. Beginning in the calendar year following the first March 1 after Substantial Completion of each Project Phase and continuing until debt service on the Bond Proceeds is paid in full, Developer agrees to make payments of Real Estate Taxes on the Project Site in the amounts not less than those set forth on Exhibit O hereto. Developer and City shall enter into the Developer Obligations Agreement which shall: (i) provide that so long as the amounts set forth on Exhibit O are greater than the amount of the Real Estate Taxes actually assessed and paid on the Site for the same period, then, Developer shall pay, in addition to its payment of Real Estate Taxes, an amount equal to: (A) the amounts set forth on Exhibit O; minus (B) the amount of the Real Estate Taxes actually assessed and paid on the Project Site, as the case may be, for such same period; (ii) be for a term that ends in 2042; (iii) provide that the payments due by Developer thereunder are secured by a lien against the Project Site that is similar in type to a lien for real estate taxes (including that such lien shall have the same priority as a lien for real estate taxes); and (iv) be recorded and run with the Project Site. City and Developer shall: (i) agree on the form and substance of the Developer Obligations Agreement on or before the Closing; and (ii) execute and record the Developer Obligations Agreement (or a memorandum thereof) at the Closing. Nothing in this Agreement or the Developer Obligations Agreement shall be deemed to release Developer from any obligation to pay Real Estate Taxes or Assessments on the Project Site regardless of when payable or assessed.

(b) Retail/Office Tenants. Developer, for and on behalf of itself and any successor owner of the Project Site, agrees that the Project Site shall not be leased or used for the Prohibited Uses. The Prohibited Uses shall be included in any memorandum of this Project Agreement.

16. 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 or any of the Ancillary

Agreements to be performed or observed by it, if such default or failure is not cured within the applicable Cure Period.

(b) General Remedies. Whenever an Event of Default occurs, 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. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 12% per annum. Notwithstanding anything to the contrary set forth herein, City shall exercise its rights under this Subsection subject to the terms of the Multi-Party Agreement.

(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 consequence 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.

17. **Special Remedies.**

(a) No Commencement. Subject to the terms and conditions of **Section 22**, if Commencement of Construction of the Project Phase Work has not occurred within ninety (90) days after each of the Bond Proceeds Dates, then, at any time until Commencement of Construction has occurred for the specific Project Phase Work for which Developer issued a Bond Proceeds Notice, City may elect, in addition to any other legal and equitable remedies available to City, to unilaterally terminate this Agreement

and all Ancillary Agreements and notify Developer to make the Reimbursement Payment, without any liability or obligation to Developer or Project Lender. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to Developer of written notice delivered at any time after such ninety (90) day period but prior to Commencement of Construction. Such notice may be recorded by City contemporaneously with, or at any time after, its delivery to Developer. Upon delivery of such notice Developer shall make the Reimbursement Payment as provided in the Multi-Party Agreement and/or Funding Agreement, as applicable. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 17(a)**, or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. No consent from, or notice to, Project Lender or any cure right in favor of Project Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Multi-Party Agreement.

(b) Work Stop. Subject to the terms and conditions of **Section 22**, and after construction has begun, if (i) the Project Phase Work is not completed (as determined in accordance with **Section 12(c)**) within twenty-four (24) months after the Bond Proceeds Date for the specific Project Phase; or (ii) all construction work of a material nature ceases with respect to the Project Phase Work for a period of at least one hundred twenty (120) consecutive days or for more than a total of one hundred fifty (150) days during any two hundred forty (240) day period, then, at any time until construction work of a material nature resumes and is continuing, City may elect, in addition to any other legal and equitable remedies available to City, to unilaterally terminate this Agreement and all Ancillary Agreements and notify Developer to make the Reimbursement Payment, without any liability or obligation to Developer or Project Lender. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to Developer of written notice (1) at any time after the expiration of the 24th month in the case of clause (i) of the preceding sentence (but prior to Substantial Completion of the Project Phase Work); or (2) prior to material resumption of the construction work in the case of clause (ii) of the preceding sentence. Such notice may be recorded by Building Corp. contemporaneously with, or at any time after, its delivery of such notice. Upon delivery of such notice, Developer shall make the Reimbursement Payment as provided in the Multi-Party Agreement and/or Funding Agreement, as applicable. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 17(b)**, or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. No consent from, or notice to, Project Lender or any cure right in favor of Project Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Multi-Party Agreement.

(c) **Final Date.** City and Developer acknowledge and agree that all Project Phases shall be Substantially Completed within sixty (60) months of the Closing Date (the “Final Date”). If Developer does not complete the Project, including all Project Phases, by the Final Date, then the City, in its sole discretion, may, by written notice to developer, terminate (i) Developer’s right to receive additional Bond Proceeds; and (ii) the waiver of additional City Fees (whether concerning City Fees or Bond Proceeds individually or jointly, “Termination Notice”). Further, if Developer fails to complete the Project by the Final Date, the City shall not be required to issue Bond Proceeds for portions of the Phase Work initiated but not yet completed.

(f) **Injunctive Remedies.** If an Event of Default occurs, City shall be entitled to seek specific performance or injunctive relief and in each case Developer hereby waives any claim or defense that City or any City Bodies have an adequate remedy at law.

(g) **No Limitation.** Notwithstanding anything to the contrary set forth herein, the rights and remedies set forth in this **Section 17** are not exclusive and 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.

(f) **Opportunity to Cure.** Notwithstanding anything to the contrary set forth herein, before the City exercises its rights under this **Section 17**, including the Power of Termination, City must first notify Developer in writing of its intention to do so and provide developer thirty (30) days to cure the default or otherwise provide to City a curative plan to do so that is acceptable to City.

18. **Mutual Indemnification.**

(a) **City.** To the extent permitted by applicable Laws, City shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with the breach by City of any term or condition of this Agreement.

(b) **Developer.** 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; (iv) Developer suffering or causing the filing of any mechanic’s or materialmen’s lien against the Project Site, Project, or any adjacent property owned by City Bodies; or (v) the breach by Developer of any term or condition of this Agreement or any Ancillary Agreement.

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

19. **Assignment.** Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion of the Project, no party hereto shall assign this Agreement without the prior written approval of the other parties; provided that: (a) without the prior written approval of Developer, City Bodies may assign this Agreement to another agency or instrumentality of City that legally is able to perform the respective obligations hereunder; and (b) without the prior written approval of City, Developer may: (i) assign this Agreement to any to-be-formed entity in which Developer or its affiliates or primary shareholders either maintains a controlling interest or has effective control as a member; and (ii) execute and deliver the Project Loan Documents, including, without limitation, a collateral assignment of this Agreement. Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Developer, as the case may, 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 Bodies assigns this Agreement to another agency or instrumentality of City that: (a) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder; and (b) 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.

20. **Notice.** Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to City at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Scott Fadness, Mayor, with a copies to: Rick Hall, Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204, Chris Greisl, City Attorney, 1 Municipal Drive, Fishers, Indiana 46038 and Jennifer Messer (via email) at jennifercmesserlaw@gmail.com; and to Developer at Thompson Thrift Development, Inc., 901 Wabash Avenue, Suite 300, Terre Haute, IN 47807 (Attention: Tim Fears), with a copy to the Steve Hardin, Faegre Baker Daniels, LLP, 600 East 96th Street, Suite 600, Indianapolis, IN 46240. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

21. **Authority.** Each undersigned person executing this Agreement on behalf of City, Building Corp, RDC, EDC, and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of City, Building Corp., RDC, EDC, and 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 City, Building Corp., RDC, EDC, and Developer, respectively; provided, however, City's, Building Corp.'s, EDC's, and RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which City, Building Corp., EDC, and RDC agree to undertake with diligence and in good faith.

22. **Force Majeure.** Notwithstanding anything to the contrary set forth herein, 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 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.

23. **Merger.** All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

24. **Indiana Tort Claims/Indemnification.** Notwithstanding anything to the contrary contained herein, Developer hereby acknowledges and agrees that City's financial exposure for certain claims is limited by the Indiana Tort Claims Act, and City's obligation to indemnify and save Developer, its agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

24. **Miscellaneous.** Subject to **Section 19**, 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 City, Building Corp, RDC, EDC, and Developer. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. 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 or joint venture between Developer, 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 location where the Project Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[signatures on following pages]

IN WITNESS WHEREOF, City, Building Corp., EDC, 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

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me to be the Mayor of the **City of Fishers, Indiana**, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said City.

WITNESS my hand and notarial seal this ____ day of _____, 2016.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“BUILDING CORP.”

FISHERS TOWN HALL BUILDING CORPORATION

By: _____
_____, President

ATTEST:

By: _____
_____, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared _____ and _____, the President and Secretary, respectively, of **Fishers Town Hall Building Corporation**, an Indiana nonprofit corporation, who having been duly sworn acknowledged the execution of the foregoing Project Agreement for and on behalf of said entity.

Witness my hand and Notarial Seal this ____ day of _____, 2016.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“RDC”

FISHERS REDEVELOPMENT
COMMISSION

By: _____
_____, President

ATTEST:

By: _____
_____, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared _____ and _____, the President and Secretary, respectively, of **Fishers Redevelopment Commission**, who having been duly sworn acknowledged the execution of the foregoing Project Agreement for and on behalf of said commission.

Witness my hand and Notarial Seal this ____ day of _____, 2016.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“EDC”

CITY OF FISHERS ECONOMIC
DEVELOPMENT COMMISSION

By: _____

(Printed Name)

Its: _____

(Title)

ATTEST:

By: _____

(Printed Name)

Its: _____

(Title)

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared _____ and _____, the _____ and _____, respectively, of **City of Fishers Economic Development Commission**, who having been duly sworn acknowledged the execution of the foregoing Project Agreement for and on behalf of said commission.

Witness my hand and Notarial Seal this _____ day of _____, 2016.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“DEVELOPER”

Thompson Thrift Development, Inc.

By: _____

(Printed Name)

Its: _____
(Title)

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ personally known to me to be the _____, of _____, **Inc.**, an Indiana corporation, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said limited liability company.

WITNESS my hand and notarial seal this ____day of _____, 2016.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. _____

This instrument prepared by _____

INDEX TO EXHIBITS

Exhibit A	Concept Plan
Exhibit B	Remnant Land
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Exhibit M	Description of Bonds
Exhibit N	Required Insurance Policies (Developer)
Exhibit O	Real Estate Tax Minimums
Exhibit P	Omitted

EXHIBIT A Concept Plan



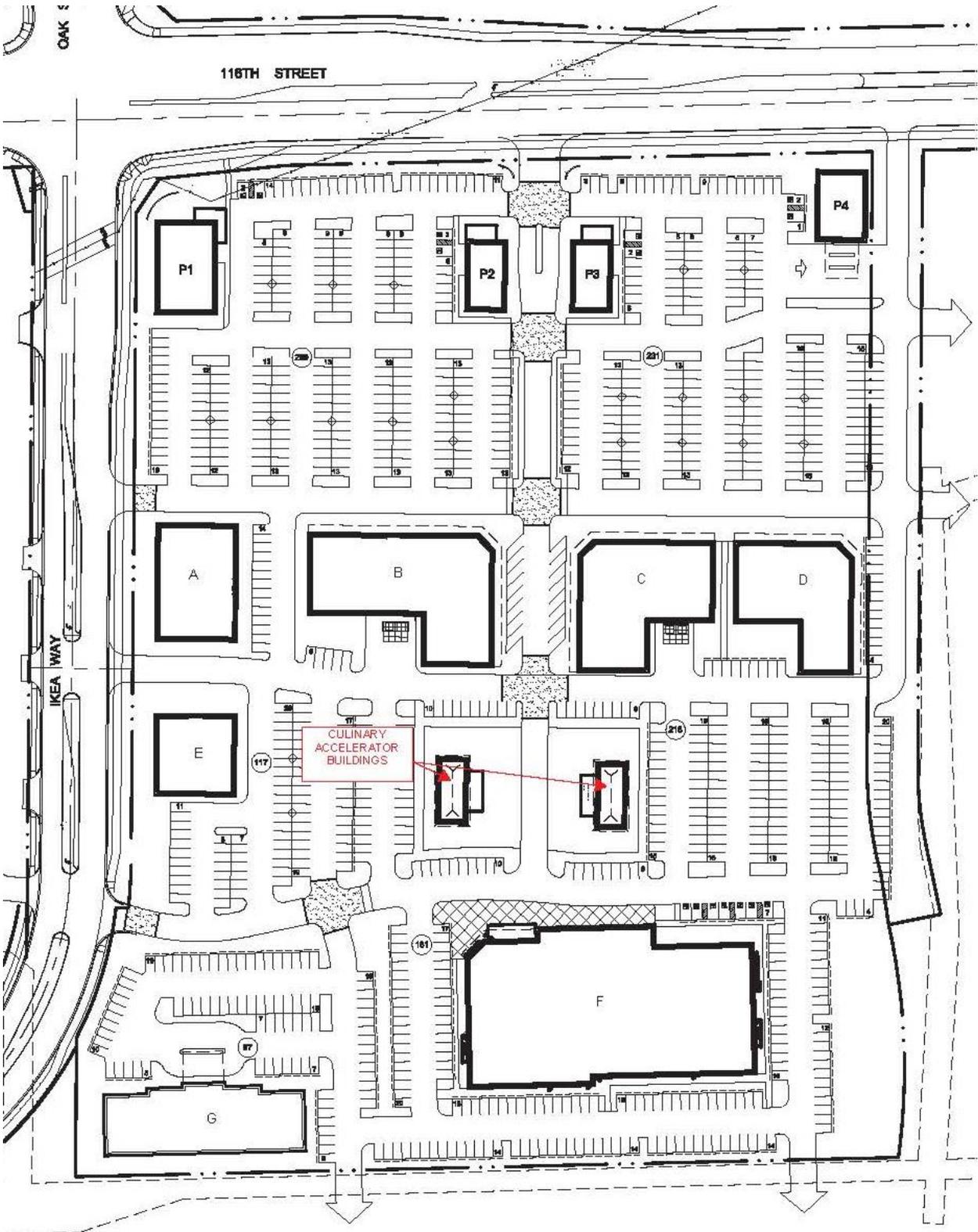


EXHIBIT B Remnant Land



 Remnant Land



EXHIBIT C Development Land



Parcel Numbers

1.	14-15-06-02-01-011.000	8.	14-15-06-02-02-004.000	15.	14-15-06-02-03-006.000
2.	14-15-06-02-01-010.000	9.	14-15-06-02-02-005.000	16.	14-15-06-02-03-012.000
3.	14-15-06-02-01-009.000	10.	14-15-06-02-02-006.000	17.	14-15-06-02-03-011.000
4.	14-15-06-02-01-008.000	11.	14-15-06-02-03-002.000	18.	14-15-06-02-03-010.000
5.	14-15-06-02-01-007.000	12.	14-15-06-02-03-003.000	19.	14-15-06-02-03-009.000
6.	14-15-06-02-02-002.000	13.	14-15-06-02-03-004.000	20.	14-15-06-02-03-008.000
7.	14-15-06-02-02-003.000	14.	14-15-06-02-03-005.000	21.	15-15-06-02-03-007.000

EXHIBIT D

Phase One Work



EXHIBIT E Right-of-Way



 Vacated Right-of-Way



EXHIBIT G

Prohibited Uses

Tattoo parlor

Piercing studio

Nail salon (specifically not including nail services that are part of a high-end day spa or other similar use)

Massage parlor (specifically not including massage services that are part of a high-end day spa or other similar use)

Alternative financial services (e.g., refund anticipation loan lenders, title loan businesses, short-term loan providers, cash for precious metal stores and pawn shops)

Day care, adult

Sexually-oriented business

Tobacco shop, cigar lounge, hookah, head or other smoke shop

Package goods store (alcohol) (specifically not including a restaurant, tavern, bar, brewery that sells beer, wine and/or alcohol for take-home use).

Second hand or government surplus store

EXHIBIT M
Description of Bonds

The Bonds shall consist of one or more series of taxable economic development revenue bonds or bond anticipation notes, issued by City pursuant to Ind. Code § 36-7-12. City shall loan a portion of the proceeds of the Bonds to the Building Corp., which will provide such proceeds to Developer to design and construct the Project Hard Costs and to acquire the Development Land in accordance with the terms of this Project Agreement. In addition, a portion of the proceeds of the Bonds may finance all or a portion of City's costs of issuance of the Bonds, capitalized interest on the Bonds, a reserve fund securing the Bonds.

The sale of the Bonds shall be solely the responsibility of City, and Developer shall not guaranty the repayment of the Bonds.

EXHIBIT N

Required Insurance Policies (Developer)

For purposes of this Exhibit N, General Contractor shall mean the general contractor constructing the Project.

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 a company reasonably acceptable to the City and for which certificates of insurance shall be provided to the City prior to commencement of any work on the Project. City shall be named as an additional insured on Developer's, its general contractor's and subcontractors' 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 Each Accident, \$1,000,000 Disease-Each Employee, \$1,000,000 Disease-Policy Limit.
3.	<p>Commercial General Liability Insurance on ISO form GC0001 10 01 (or a substitute form providing equivalent coverage) and General Contractor and Subcontractors shall provide the Developer with a 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 Town of Fishers as an Additional Insured thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the Town of Fishers per the following:</p> <p>\$1,000,000 Each Occurrence (BI & PD Combined Single Limit); \$2,000,000 General Occurrence (subject to per project general aggregate provision); \$1,000,000 Personal Injury Liability to include coverage for employee-related claims; \$2,000,000 Products and Completed Operations Aggregate (such Products and Completed Operations insurance shall be provided for a period of two (2) years after final completion and final Acceptance of the Work by the Town.)</p> <p>Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured liability (including the tort liability of another assumed in a business contract) There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors.</p>

4.	Business Automobile Liability Insurance: Written in the amount of not less than \$1,000,000 each accident to include the Town of Fishers as an additional insured.
5.	Umbrella Liability: \$5,000,000.
6.	Builders' Risk to be obtained and maintained by the General Contractor for limits adequate to cover full replacement cost of project including material in transit, at jobsite or stored at a temporary location. Earthquake to be included for \$5,000,000. with the deductible not to exceed 5%.
7.	Professional Liability: If the Contract is the subject of any professional services or design work, the party rendering those services must maintain Professional Liability insurance covering <i>errors and omissions</i> arising out of the work or services performed for a minimum limit of \$2,000,000.

The general contractor and any subcontractors shall obtain from each of its insurers a waiver of subrogation on the General Liability, Automobile and Workers Compensation policies in favor of the City with respect to losses arising out of or in connection with the Project.

EXHIBIT O
Real Estate Tax Minimums

For purposes of Section 15(b) of this Project Agreement and the Developer Obligations Agreement, the minimum taxpayer obligation shall be the amount that equals the semi-annual debt service on the Bonds, with such amount to be amended with the issuance of each series of the Bonds.

Further, Developer acknowledges and agrees that this Real Estate Tax Minimum sets forth Developer's minimum tax obligation and is not indicative of or relevant to the real estate taxes that may be assessed on the Project. Accordingly, Developer agrees that this Real Estate Tax Minimum or the information contained herein shall not be used in any appeal of a tax assessment, whether by Developer or a successor in interest or any unit of government.

