

REVISED LAND ACQUISITION AGREEMENT

This Land Acquisition Agreement (the “Agreement”) is executed as of the ____ day of August, 2019, by and among HG Acquisition Company LLC, an Indiana limited liability company (“Buyer”), the City of Fishers, Hamilton County, Indiana (“City”) and City of Fishers Redevelopment Commission (“RDC”), a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq.*, on the following terms and conditions:

Recitals

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

WHEREAS, as part of the Master Development Plan, the City has (a) worked with developers to develop large, mixed-use developments that include apartments, condominiums, office space and retail; (b) incented multiple high-growth, high-technology businesses to locate to the area; and (c) in 2016, entered into an agreement with the State of Indiana for a portion of the area to be designated a certified technology park;

WHEREAS, as part of its Master Development Plan, the City desires to assimilate parcels of land owned by multiple owners within the City’s Nickel Plate District zoning district for large-scale economic development projects;

WHEREAS, the Development Land is located in and about the Nickel Plate District and more specifically, the Maple Del subdivision, and is owned by multiple owners;

WHEREAS, the City has requested and Buyer has agreed to become a party to the Purchase Agreements for the Development Land and acquire the Development Land, if the RDC will agree to purchase the Development Land for the Land Acquisition Costs; and

WHEREAS, the RDC and the City have determined that it is in the best interest of the City and is pursuant to the Master Development Plan to purchase the Development Land from Buyer in accordance with the terms hereof.

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

1. DEFINED TERMS

Assemblage Fee shall mean the assemblage fee included in **Exhibit D** for the Development Land.

Carry Cost shall mean interest at a rate of 6.0% APR on all sums expended by Buyer (from the date of such expenditure until paid by the Commission) that ultimately are part of the Purchase Price at the City Closing.

City Closing shall mean the date on which the act of settlement of the purchase by the RDC from Buyer and conveyance of the Properties to the RDC by Buyer occurs in accordance with this Agreement.

City Closing Date shall mean a date of closing which shall be no later than December 31, 2021. City shall establish the Closing Date by giving Buyer ninety (90) days' written notice of its intent to close; provided, however, in no event shall the Closing Date be prior to July 1, 2020 unless Buyer consents in writing.

Buyer Closing shall mean the closing with respect to Buyer's acquisition of the Development Land pursuant to Section 3, below.

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 and charged to Buyer at Closing pursuant to the Purchase Agreements.

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 Development Land.

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

Deeds shall mean limited warranty deeds by which the Buyer shall convey its interest in the Development Land, together with all improvements thereon, which deed shall be subject only to (a) the Permitted Exceptions; and (b) matters created or consented to by City or a developer, as applicable.

Development Land shall mean the fourteen (14) parcels of real property identified on Exhibit C.

Event of Default shall have the meaning set forth in Subsection 6(a).

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

Land Acquisition Costs shall mean the costs specifically detailed on Exhibit D.

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 and Nickel Plate Code.

Net Management Income shall mean all rental and rental-related income received by Buyer for the Development Land minus all Operating Expenses for the Development Land, respectively. The parties acknowledge the Net Management Income may be a negative number.

Operating Expenses shall mean the following reasonably incurred, documented and paid fees and costs related to the Development Land: (i) general maintenance and upkeep as needed to keep the Properties in compliance with the Laws and to prevent the Properties from becoming a danger to public safety or an attractive nuisance; (ii) any obligations of Buyer, as landlord under any lease for the Properties, provided the particular lease has been approved by the RDC (any lease that is included in a Purchase Agreement is deemed approved upon the Buyer Closing) ; (iii) third-party property management fees or, if Buyer, or an affiliate of Buyer, provides property management services for the Properties in lieu of a third-party, a property management fee not to exceed Two Thousand Dollars (\$2,000) per month; which maximum amount shall be for management of all the Properties; (iv) insurance premiums; and (v) Real Estate Taxes.

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 Buyer Closing; and (c) such other matters as are accepted by Buyer or in writing or which Buyer (as applicable) is deemed to have waived pursuant to the terms and conditions of this Agreement.

Properties shall mean the, collectively, the parcel of Development Land.

Purchase Agreements shall mean, individually or collectively, the purchase agreements for the Development Land as those agreements exist on the date they are assigned to Buyer as contemplated by this Agreement. If, after Buyer takes assignment of the agreements, Buyer believes one or more of the agreements should be amended (a "Subsequent Amendment"), then Buyer shall obtain RDC's approval of the Subsequent Amendment, in writing, before executing the Subsequent Amendment. Upon approval by the RDC and execution by Buyer, a Subsequent Amendment shall become part of the respective Purchase Agreement.

Purchase Price shall mean Land Acquisition Costs minus Net Management Income. The parties acknowledge that, if Net Management Income is negative, the total by which Net Management Income is negative shall be added to Land Acquisition Cost in arriving at the Purchase Price.

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

Survey shall mean an ALTA survey of the Development Land, certified as of a current date by a reputable licensed surveyor; which Survey shall show that the Development Land is suitable for development.

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

2. **RDC's Obligations.** On the City Closing Date, RDC shall either (a) acquire the Properties from the Buyer; or (b) assign this Agreement to a third-party and cause that third-party to acquire the Properties from the Buyer, all as set forth in Section 4 below. If the RDC assigns this Agreement to a third-party entity, as contemplated in (b) above, the RDC is specifically not released from its obligations hereunder until such time as the third-party closes on the acquisition of the Properties from Buyer as contemplated herein. The RDC's obligations

to purchase the Properties from Buyer hereunder are absolute and unconditional until a third-party closes on the acquisition of the Properties from Buyer

3. Buyer's Obligations. Buyer shall: (a) assume the Purchase Agreements within fifteen (15) days of entering into this Agreement; (b) Close on the Development Land by or before July 31, 2019; (c) operate the Development Land in a commercially reasonable manner in order to maximize Net Management Income; and (d) perform its obligations pursuant to **Section 4** below, if applicable.

4. Purchase, Sale and City Closing

4.01 Purchase and Sale. Subject to the terms and conditions of this Agreement, Buyer hereby agrees to sell and convey to RDC, and RDC hereby agrees to purchase and acquire from Buyer, all of the Buyer's assignable and transferable right, title and interest in and to the Properties.

4.02 Purchase Price. The Purchase Price shall be paid in immediately available funds by RDC to the Escrow Agent at the City Closing by wire transfer in accordance with wire transfer instructions to be provided by the Escrow Agent, to be released to Buyer at the City Closing by the Escrow Agent.

4.03. City Closing. The RDC's obligation to close on the acquisition of the Properties from the Buyer is absolute and unconditional. The City Closing shall occur with Escrow Agent on the City Closing Date (unless the parties mutually agree in writing upon another place, time or date).

4.05. Possession. Possession of the Properties shall be delivered to RDC at the Closing, subject only to the Permitted Encumbrances.

4.06. Closing Costs. RDC shall pay, on the Closing Date, all closing costs. Except as otherwise provided herein, each party shall pay its own attorneys' fees related to the City Closing.

4.07 Closing Deliveries. At the City Closing:

- A. Owner shall deliver the (1) Deeds; (2) a vendor's affidavit from in form and substance such that the Title Insurer will issue the Title Commitment; (3) a certification that all of the representations and warranties set forth in Section 4.07 remain true and accurate in all respects as of the City Closing Date;
- B. RDC shall pay the Closing Costs by wire transfer of immediately available funds;
- C. RDC shall pay for the owner's policy of title insurance for the Properties;
- D. Such other customary documents or instruments as required to be delivered in connection with the City Closing (whether required by the other party or the Escrow Agent); and
- E. Each party shall be responsible for its own legal fees incurred in connection with

this Agreement and the City Closing.

5. Representations and Warranties.

(a) **City and RDC.** Each of City and RDC represents and warrants to Buyer that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) RDC is the governing body of the City of Fishers Redevelopment Department and the City is an Indiana municipal corporation, each of which is organized and existing under the laws of the State of Indiana; (iii) 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 Development Land 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 RDC or City.

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

6. Default.

(a) **Events of Default.** It shall be an “**Event of Default**” if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it.

(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; which right, in the Event of Default by RDC, is specifically intended to give Buyer the right to seek specific performance of RDC's obligation to purchase the Properties hereunder); 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. Any past due payments due under this Agreement (specifically including the payment of the Purchase Price) shall bear interest at the rate of 12% per annum until paid. 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.

(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.

7. 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 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 Buyer at 12821 E. New Market Street, Carmel, Indiana 46032, Attn: Tom Peck. Each of the parties may change its address for notice from time to time by delivering notice to the other party as provided above.

8. Authority. Each undersigned person executing this Agreement on behalf of RDC and Buyer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of RDC and Buyer, 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 RDC and Buyer, respectively.

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

10. [Intentionally Omitted].

11. Demolition and Other Pre-Development Services. During the time that this Agreement is in effect and prior to the City Closing, the RDC may request that Buyer demolish some or all of the structures located on the Properties and that Buyer provide certain to-be-defined pre-development services, such as annexation, rezoning, land planning, utility planning, utility relocation, infrastructure planning and other services that will prepare the Properties for redevelopment. Upon such request by the RDC, Buyer shall submit a proposed budget and fee for such work to the RDC for approval prior to commencing the work. RDC shall not be liable for any demolition or pre-development services, unless pre-approved in writing by the RDC.

12. Miscellaneous. This Agreement shall inure to the benefit of, and be binding upon RDC City and Buyer, 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. Buyer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Buyer 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 RDC, City and Buyer. 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 Buyer, City 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 Development Land 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, RDC and Buyer have executed this Land Acquisition 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 Land Acquisition Agreement for and on behalf of said City.

WITNESS my hand and notarial seal this ____day of _____, 2019.

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 Land Acquisition Agreement for and on behalf of said commission.

Witness my hand and Notarial Seal this ____ day of _____, 2019.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“BUYER”

HG ACQUISITION COMPANY, LLC

By: Hageman Investments, LLC, its sole member

By: _____
Shane Hageman, General Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Shane Hageman personally known to me to be the General Manager of Hageman Investments, LLC, an Indiana limited liability company and the sole member of HG Acquisition Company, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Land Acquisition Agreement for and on behalf of said limited liability company.

WITNESS my hand and notarial seal this ____ day of _____, 2019.

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

This instrument prepared by Jennifer C. Messer

INDEX TO EXHIBITS

Exhibit A	[intentionally omitted]
Exhibit B	[intentionally omitted]
Exhibit C	Development Land
Exhibit D	Land Acquisition Costs

EXHIBIT A

[intentionally omitted]

EXHIBIT B

[intentionally omitted]

EXHIBIT C**DEVELOPMENT LAND**

	PROPERTY	SELLER	PROPERTY ID. NO.
1.	8095 E. 116 th Street	James and Dwayne Barnhill	14-14-01-01-03-001.000
2.	11435 Maple Drive	Julie Davenport and Bill Beach	14-14-01-01-03-011.000
3.	11445 Maple Drive	Jamie and Kim Beaver	14-14-01-01-03-010.000
4.	8128 E. 115 th Street	Glenn Fieldhouse	14-14-01-01-03-004.000
5	8145 E. 116 th Street	Dawn Ficklin	14-14-01-01-03-005.000
6.	11585 Maple Drive	Gary and Rhonda Ennis	14-14-01-01-03-002.000
7.	11560 E. 116 th Street	Vicki Cox	14-14-01-01-03-017.000
8.	8111 E. 115 th Street	Brenda Collins	14-14-01-01-03-013.000
9.	8095 E. 115 th Street	Solange Lixon	14-14-01-01-03-014.000
10.	11450 Maple Drive	Mohamed Rashrash	14-14-01-01-03-012.000
11.	11545 Maple Drive	Phillip and Holly Paxton	14-14-01-01-03-003.000
12	11455 Maple Drive	David Wiant	14-14-01-01-03-009.000
13.	11540 Maple Drive	Luke and Danielle Tansy	14-14-01-01-03-016.000
14.	8075 E. 115 th Street	Charles Cloyd	14-14-01-01-03-015.000

EXHIBIT D

LAND ACQUISITION COSTS

Contract Purchase Price	\$
Title Insurance (searches, commitments and premium)	TBD
ALTA Survey	\$
Environmental (Phase I and reliance reports)	\$
Assemblage Fee	\$400,000
Recording Fees	TBD
Escrow Closing fees	TBD
Loan fees and costs	Not to exceed \$75,000.00
Additional Due Diligence (Carmasino Group)	Not to exceed \$9,000.00
Attorneys' Fees	Not to exceed \$20,000