

RESOLUTION NUMBER 08-17

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WESTFIELD,
INDIANA, APPROVING THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF WESTFIELD, THE WESTFIELD
REDEVELOPMENT COMMISSION AND CR WHITE AURORA, LLC,
FOR THE AURORA PROJECT**

WHEREAS, the City of Westfield, Indiana (the “City”) is a duly organized municipal corporation under the laws of the State of Indiana, governed by its duly elected City Council (the “City Council”); and

WHEREAS, the Westfield Redevelopment Commission (the “Commission”) of the City, is the governing body of the Westfield Department of Redevelopment (the “Department”) and the Westfield Redevelopment District (the “District”), and exists and operates under the provisions of Indiana Code 36-14 and 36-7-25, *et seq.*, as amended from time-to-time (the “Act”); and

WHEREAS, the Commission has taken all actions necessary under the Act to establish under the Act the Aurora Sub-Economic Development Area (the “Aurora Sub-Area”) as a sub-economic development area of the East Side Economic Development Area (the “Area”) and has approved an economic development plan (the “Plan”) providing specific recommendations for economic development of the Aurora Sub-Area, including road, infrastructure and drainage improvements and related improvements and equipment serving the Aurora Sub-Area as further described in the Plan (the “Project”); and

WHEREAS, in order to provide for orderly development of the Project, the Commission and the City have negotiated a development agreement (the “Development Agreement”) with CR White Aurora, LLC (the “Developer”) and the Development Agreement has been presented to the City Council for approval in order to provide for the orderly development of the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL
OF THE CITY OF WESTFIELD, AS FOLLOWS:**

SECTION I. The City Council hereby approves the Development Agreement and authorizes its execution and delivery, all for the purposes hereinabove provided.

SECTION II. Mayor of the City is hereby authorized to execute and deliver the Development Agreement and the Clerk-Treasurer of the City is hereby authorized to attest the execution thereof.

ADOPTED AND PASSED THIS 9th DAY OF JUNE, 2008, BY THE
WESTFIELD CITY COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD CITY COUNCIL
Hamilton County, Indiana

WESTFIELD CITY COUNCIL

Voting For

Voting Against

Abstain

John Dippel

John Dippel

John Dippel

Bob Horkay

Bob Horkay

Bob Horkay

Ken Kingshill

Ken Kingshill

Ken Kingshill

Bob Smith

Bob Smith

Bob Smith

Thomas Smith

Thomas Smith

Thomas Smith

Rob Stokes

Rob Stokes

Rob Stokes

Melody Sweat

Melody Sweat

Melody Sweat

ATTEST:

Clerk-Treasurer, Cindy Gossard

This resolution prepared by:

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I hereby certify that RESOLUTION 08-17 was delivered to the Mayor of Westfield on the _____ day of _____, 2008, at _____ m.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE Resolution 08-17
this _____ day of _____, 2008.

J. Andrew Cook, Mayor

I hereby VETO Resolution 08-17
this _____ day of _____, 2008.

J. Andrew Cook, Mayor

This document prepared by
Brian J. Zaiger, Esq.
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(317) 238-6266

DEVELOPMENT AGREEMENT

among

CITY OF WESTFIELD, INDIANA

and

WESTFIELD REDEVELOPMENT COMMISSION

and

CR WHITE AURORA, LLC

Regarding

AURORA PROJECT

MayJune __, 2008

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Exhibit A-1	Description of <u>Eastside</u> Economic Development Area and Allocation Area
Exhibit A-2	Description of Aurora Sub-Area and Project Site
Exhibit A-3	Description of Expansion Sub-Area and Expansion Project Site
Exhibit B	Description of Project
Exhibit C	Public Improvements Procedure
Exhibit D	Description of Public ROW Improvements
Exhibit E	Reimbursable Project Costs
Exhibit F	Project Site Plan
Exhibit G	Term Sheet for Developer Bonds
Exhibit H	Form of Certificate of Substantial Completion of Public ROW Improvements
Exhibit I	Form of Certificate of Reimbursable Project Costs

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "**Agreement**") made this ____ day of ~~April~~June, 2008, by and between the City of Westfield, Indiana, a municipal corporation ("**Westfield**"), Westfield Redevelopment Commission (the "**Redevelopment Commission**"), in its capacity as the governing body of Westfield, Indiana Department of Redevelopment and the Redevelopment District of the City of Westfield, Indiana (the "**District**"), and CR White Aurora, LLC (the "**Developer**"), an Indiana limited liability company, its successors and assigns. All capitalized terms used herein shall have the meanings as set forth in **Article I** hereof.

WITNESSETH:

A. Pursuant to the RDC Act, Westfield has established a Redevelopment Commission;

B. The Redevelopment Commission has the responsibility to investigate, study and survey areas and promote the use of land in a manner that best serves Westfield, and has the responsibility to cooperate with departments and agencies of Westfield that best serve the development or redevelopment of areas of Westfield;

C. Westfield and the Redevelopment Commission desire to stimulate and promote economic development activities in or about the City of Westfield;

D. The Developer has submitted to Westfield and the Redevelopment Commission a proposal for the development of the Project;

E. The Redevelopment Commission, pursuant to a Declaratory Resolution, a Confirmatory Resolution and an Amendatory Resolution has taken such actions as shall be necessary to adopt an "economic development plan" for the Economic Development Area and to cause the Economic Development Area to be designated as an "allocation area" within the meaning of the RDC Act; and the Redevelopment Commission will take such actions as shall be necessary to effect the transactions contemplated by this Agreement;

F. The Developer intends to acquire the Project Site and to acquire and construct the Project thereon subject to the further provisions of this Agreement;

G. The Redevelopment Commission, subject to the terms and conditions hereof, by resolution will induce the Developer to proceed with the Project in Westfield, by agreeing to take such steps as shall be reasonably necessary to issue its Westfield Redevelopment District Tax Increment Revenue Bonds (Aurora Project) as set forth in **Article IV** hereof for the purpose of financing the TIF Project;

H. Westfield and the Redevelopment Commission have determined that it is in the best interest of the citizens of Westfield to assist in (i) the development of the Project, (ii) the issuance of the Bonds by the Redevelopment Commission for the financing of certain "local

public improvements" (within the meaning of Indiana Code 36-7-14.5-6) or structures that are necessary for redevelopment of the Economic Development Area or that enhance development or economic development (as set forth in Indiana Code 36-7-14-12.2(a)(22)) directly serving or benefiting the Project, and (iii) the taking of such other actions as are hereinafter set forth, all for the promotion of economic development in or about the Economic Development Area; and

I. Westfield, the Redevelopment Commission and the Developer desire to enter into this Agreement to effectuate the foregoing recitals, to the end that the Project shall be constructed in Westfield.

NOW, THEREFORE, in consideration of the foregoing premises the mutual covenants of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Westfield, the Redevelopment Commission and the Developer agree as follows:

ARTICLE I DEFINED TERMS AND EXHIBITS

Section 1.01. Defined Terms.

"Agreement" means this Development Agreement by and among Westfield, the Redevelopment Commission and the Developer.

"Allocation Area" means the real property described in **Exhibit A-2** hereto and in the allocation provision of the Declaratory Resolution.

"Allocation Fund" means the allocation fund created by the Redevelopment Commission pursuant to Indiana Code 36-7-14-39 for the Allocation Area, including the Developer Account and Taxing District Account therein.

"Amendatory Resolution" means the Resolution No. 8-2008, adopted by the Redevelopment Commission on April 30, 2008, amending the Declaratory Resolution and the Confirmatory Resolution.

"Applicable Laws" means all laws, rules, regulations, ordinances, codes, administrative actions and/or orders of any Court or governmental agency or unit, whether federal, state or local properly exercising or having jurisdiction with respect to or over the subject matter in question. Applicable Laws are always subject to variances and Governmental Approvals.

"Approved Investor" means (i) a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended (the **"Securities Act"**), (ii) an **"Accredited Investor"** within the meaning of Rule 501 of Regulation D promulgated under the Securities Act with sufficient knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Bonds or (iii) a Lender.

"Aurora Sub-Area" means the sub-area within the Economic Development Area described in **Exhibit A-12** hereto in which the Project is to be developed.

"Authorized Developer Representative" means Chris R. White, or such other person at the time designated to act on behalf of the Developer as evidenced by written certificate furnished to the Redevelopment Commission and Westfield containing the specimen signature of such person and signed on behalf of the Developer by any authorized officer of the Developer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Developer Representative.

"Authorized Redevelopment Commission Representative" means the President, Vice President, Secretary or Executive Secretary of the Redevelopment Commission, or such other person at the time designated to act on behalf of the Redevelopment Commission as evidenced by written certificate furnished to the Developer and Westfield containing the specimen signature of such person and signed on behalf of the Redevelopment Commission by any authorized officer of the Redevelopment Commission. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Redevelopment Commission Representative.

"Authorized Westfield Representative" means the Mayor or the Clerk-Treasurer of Westfield, or such other person at the time designated to act on behalf of Westfield as evidenced by written certificate furnished to the Redevelopment Commission and Westfield containing the specimen signature of such person and signed on behalf of Westfield by any authorized officer of the Redevelopment Commission. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Westfield Representative.

"Bonds" means the Westfield Redevelopment District Tax Increment Revenue Bonds (Aurora Project) to be issued by the District pursuant to the Bond Resolution for the purpose of financing the Reimbursable Project Costs, which Bonds may be issued in one or more series.

"Bond Resolution" means the Resolution adopted by the Redevelopment Commission authorizing the issuance of the Bonds.

"Business Day" means any day, except Saturday, Sunday or other day (a) on which banking institutions in Westfield are authorized or obligated by law or executive order to close, or (b) on which the New York Stock Exchange is closed.

"Capital Fund" means the capital fund created by the Redevelopment Commission pursuant to Indiana Code 36-7-14-26 into which net proceeds of the Bonds shall be deposited to pay Reimbursable Project Costs.

"Certificate of Substantial Completion of Public ROW Improvements" means a document substantially in the form of **Exhibit H** attached hereto and incorporated by reference herein, delivered by the Commission to Westfield and the Developer in accordance with this

Agreement and evidencing the completion of construction of the Public ROW Improvements or a functional portion thereof.

"Confirmatory Resolution" means Resolution No. 2-2007 adopted by the Redevelopment Commission on November 27, 2007, confirming all prior actions of the Redevelopment Commission in connection with the creation of the Economic Development Area and the Allocation Area, as amended by the Amendatory Resolution, and as further confirmed by Resolution No. ___-2008 adopted by the Redevelopment Commission on June 12, 2008.

"County" means Hamilton County in the State of Indiana.

"Declaratory Resolution" means Resolution No. 1-2007 adopted by the Redevelopment Commission on February 21, 2007, as amended by the Amendatory Resolution, declaring the Economic Development Area to be an "economic development area" within the meaning of the RDC Act, approving the Economic Development Plan for the Economic Development Area and designating the Allocation Area as a tax increment finance "allocation area" within the meaning of the RDC Act.

"Developer" means CR White Aurora, LLC, an Indiana limited liability company and its successors and assigns.

"Developer Bonds" means Bonds issued to and registered in the name of Developer, a related party to the Developer or a Lender, pursuant to **Section 4.05** hereof.

"Developer Share" means an amount equal to 75% of Tax Increment generated in the Allocation Area.

"Developer Account" means the Account created in the Aurora account into which the Developer Share shall be deposited.

"District" means Westfield Redevelopment District, a taxing district, whose boundaries are coterminous with the corporate boundaries of Westfield.

"Economic Development Area" means the East Side Economic Development Area that was designated by the Declaratory Resolution as an "economic development area" pursuant to Indiana Code 36-7-14-41, as amended by the Amendatory Resolution and as described in **Exhibit A-1** hereto.

"Economic Development Plan" means the economic development plan approved and adopted by the Redevelopment Commission in the Declaratory Resolution pursuant to Indiana Code 36-7-14-41, as amended by the Amendatory Resolution.

"Effective Date" means the date set forth on the initial page of this Agreement.

"Environmental Laws" means any federal, state, regional, county or local governmental statute, law, regulation, ordinance, order or code or any consent decree, judgment, permit,

license, code, covenant, deed restriction, common law or other requirement currently in effect or created, issued and/or adopted after the date of this Agreement, pertaining to protection of the environment, health or safety of persons, natural resources, conservation, wildlife, waste management and pollution (including regulation of releases and disposals to air, land, water and ground water), including (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.*; (b) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 7401 *et seq.*; (c) Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*; (d) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*; (e) National Environmental Policy Act of 1975, 42 U.S.C. §§ 4321 *et seq.*; (f) Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 7401 *et seq.*; (g) Safe Water Drinking Act of 1974, as amended, 42 U.S.C. §§ 300(f) *et seq.*; and all amendments thereto as well as any similar state or local statute (including the laws and regulations governed by the State) or code and replacements of any of the same rules, regulations, guidance documents and publications promulgated thereunder.

"Events of Default" means the "Events of Default" as defined in **Section 8.04** hereof.

"Expansion Project" means the acquisition, construction, installation and equipping of a retail, office or other commercial development on all or a portion of the Expansion Project Site pursuant to **Article V** hereof.

"Expansion Project Site" means the real property described on **Exhibit A-3** hereto, which is the site of the Expansion Project and constitutes a portion of the real property located in the Allocation Area.

"Force Majeure" means the events of "*Force Majeure*" as defined in **Section 8.05** hereof.

"Governmental Approvals" means all plat approvals, rezonings, text amendments or other zoning changes, site or development plan approvals, conditional use permits, resubdivisions or other subdivision approvals, variances, sign approvals, building permits, grading permits, occupancy permits or similar approvals, including statutorily required resolutions and ordinances and other approvals pertaining to the roadway widenings and reconfigurations and intersection and other street improvements from Westfield, the Redevelopment Commission, the State, the U.S. Army Corps of Engineers, the Indiana Department of Environmental Management, and other or similar approvals required for the implementation of the Project.

"Hazardous Substances" means, but is not limited to meaning: any substance, chemical, material or waste which is regulated by any federal, State or local government authority because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive or other physical property or because of its effect on the environment, natural resources or human health and safety, including petroleum and petroleum products,

asbestos-containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, flammables and explosives; or which is designated, classified or regulated as being hazardous or toxic substances, material, pollutant, waste (or a similar such designation) under any federal, State or local law, regulation or ordinance, or under any Environmental Laws.

"Investor Bonds" means Bonds issued to and registered in the name of an Approved Investor pursuant to **Section 4.06** hereof.

"Lender" or "Lenders" means any bank or financial institution providing financing for the Project.

"Paying Agent" means the Paying Agent or fiscal agent for any issue of Bonds pursuant to the Bond Resolution.

"Plan Commission" means Westfield-Washington Plan Commission, duly organized and validly existing under Indiana Code 36-7-4-1210.5.

"Project" means the acquisition, construction, installation and equipping of a planned unit development consisting of multi-family housing units, attached single-family dwellings, office uses, retail uses, light industrial uses, as well as a path network and public spaces, to be undertaken by the Developer. Upon annexation of the Expansion Project by the City, such term shall include the Expansion Project. "Project" does not include the TIF Project.

"Project Site" means the real property described on **Exhibit A-2** hereto, which is the site of the Project and constitutes the Aurora Sub-Area within the Allocation Area. Upon annexation of the Expansion Project by the City, such term shall include the Expansion Project Site.

"Project Site Plan" means the concept site plan for the Project attached hereto as **Exhibit F**, as modified from time to time in accordance with the provisions hereof.

"Public Improvements Procedure" means the procedure for bidding and constructing the Public ROW Improvements as more particularly described in **Exhibit C** hereto.

"Public ROW Improvements" means:

(i) the local public improvements located within public rights-of-way (within the meaning of Indiana Code 36-7-14.5-6) directly serving or benefiting the Project, and

(ii) such other portions of the TIF Project that the parties hereto shall treat as Public ROW Improvements to be constructed in accordance with the Public Improvements Procedure;

the description and estimated cost of which improvements are more particularly described in **Exhibit D** hereto.

"RDC Act" means Indiana Code 36-7-14 and 36-7-25, as supplemented and amended.

"Redevelopment Commission" means the Westfield Redevelopment Commission, the governing body of the City of Westfield, Indiana, Department of Redevelopment and the Redevelopment District of the City of Westfield, Indiana, duly organized and validly existing under the RDC Act.

"Reimbursable Project Costs" means those costs of the TIF Project as described in **Exhibit E** attached hereto and incorporated by reference herein, which are eligible for reimbursement or payment from Tax Increment under the RDC Act in accordance with this Agreement.

"Special Event" means the occurrence of those events set forth in Section 8.05(c) hereof.

"State" means the State of Indiana.

"Substantial Completion" or **"Substantially Complete"** or **"Substantially Completed"** means the date on which Westfield approves the Certificate of Substantial Completion of Public ROW Improvements.

"Taxing District Share" means an amount equal to 25% of the Tax Increment generated in the Aurora Sub-Area and deposited into the Taxing District Subaccount.

"Taxing District Account" means the account created in the Allocation Fund into which the Taxing District Share of the Tax Increment shall be deposited.

"Tax Increment" means all real property tax proceeds attributable to the assessed valuation in the Allocation Area as of each March 1 in excess of the assessed valuation described in Indiana Code 36-7-14-39(b)(2). For purposes of this calculation, the assessment date for the parcels in the Allocation Area described on **Exhibit A-2**(exclusively of the parcels described on **Exhibit A-3**), shall be March 1, 2006 and for the parcels described on **Exhibit A-3**, shall be March 1, 2008. The incremental assessed value is multiplied by the current property tax rate (per \$100 assessed value).

"Taxpayer Agreement" means an agreement by CR White Aurora LLC (or another person or entity approved by the Redevelopment Commission) guaranteeing the timely payment of the principal of and interest on the Bonds.

"TIF Consultant Report" means a report of the firm of O.W. Krohn & Associates, Westfield, Indiana, or other nationally recognized independent consultant, knowledgeable as to urban redevelopment, tax increment financing and municipal finance, which states such independent consultant's opinion, based upon a review of this Agreement, the Bond Resolution and the related indenture and such other documents as such consultant reasonably deems pertinent, as to the expected Tax Increment to be generated in each year the Bonds are scheduled to be outstanding.

"TIF Expiration Date" means (i) with respect to those parcels described in **Exhibit A-2** (exclusive of the parcels described in **Exhibit A-3**), February 20, 2037, being the date of

expiration of that portion of the Allocation Area and (ii) with respect to those parcels described in **Exhibit A-3**, April 30, 2038, being the date of expiration of that portion of Allocation Area.

"TIF Project" means:

- (i) the Public ROW Improvements and such other improvements directly serving or benefiting the Project as agreed to from time to time by the Developer,
- (ii) the costs of engineering and surveying work, financial advisors, counsel to the Redevelopment Commission and Westfield, bond counsel, Developer, Developer's counsel, Lenders and Lender's counsel,
- (iii) costs of issuance of the Bonds,
- (iv) capitalized interest,
- (v) debt service reserves, and
- (vi) related costs and expenses, which are more particularly described in **Exhibit E** hereto.

"Westfield" means the City of Westfield, Indiana, a municipal corporation, duly organized and existing under the laws of the State, and its successors.

"Westfield Code" means all laws, rules, regulations, ordinances, codes, administrative actions and/or orders of Westfield properly exercising or having jurisdiction with respect to or over the subject matter in question.

"Westfield Council" means the City Council of Westfield.

"Zoning Ordinance" means Ordinance No. 06-55 adopted by the Westfield Council on December 11, 2006, subject to amendment, variance and modification in accordance with this Agreement and Applicable Laws.

Section 1.02. Rules of Interpretation. For purposes of this Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) **Development Agreement.** This "Development Agreement" or this "Agreement" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) **Articles, Sections, Etc.** All references in this instrument to designated "Articles," "Sections" and other subdivisions are to be designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) **Singular and Plural.** The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) **Accounting Terms.** All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) **Terms Defined Elsewhere.** The terms defined elsewhere in this Agreement shall have the meanings therein prescribed for them. If there is a conflict between a term defined elsewhere in this Agreement and a term defined in this Article, the definition contained in this Article will prevail.

(f) **Including.** When used in this Agreement, words such as "includes" and "including" are not intended to express any limitation; that is, words such as "includes" and "including" do not mean "comprises" and "comprising."

Section 1.03. Exhibits. The Exhibits set forth in the Table of Contents of this Agreement are attached to and by reference made a part of this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF WESTFIELD, REDEVELOPMENT COMMISSION AND DEVELOPER

Section 2.01. Representations and Warranties of Developer. The Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

(a) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Indiana.

(b) The Developer has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder.

(c) The Developer has duly and properly undertaken all necessary acts and proceedings required to authorize the execution, delivery and performance of this Agreement.

(d) This Agreement has been duly executed and delivered by the Developer and constitutes the valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally heretofore or hereafter enacted and (ii) to the exercise of judicial discretion in accordance with the general principles of equity.

(e) The execution and delivery of this Agreement by the Developer does not, and the consummation of the transactions contemplated hereby and compliance with the terms hereof will not, (i) conflict with or result in a violation of (x) its Operating Agreement; (y) any

judgment, order, writ, injunction, decree, applicable to and known to the Developer; or (z) Applicable Laws; or (ii) conflict with, or result in or cause any material breach, violation of or default under, any material contract, agreement, other instrument, commitment, arrangement or understanding to which the Developer is a party which would have a material adverse effect on Developer's ability to perform its obligations hereunder.

(f) No authorization, consent or approval of, or filing with or notice to, any person (including any governmental authority or body) is required in connection with the execution or delivery of this Agreement by the Developer which has not been obtained and which, if not obtained, would have a material adverse effect on the ability of the Developer to perform its obligations hereunder.

(g) To the Developer's knowledge, there is no court, administrative, regulatory or similar proceeding (whether civil, quasi-criminal), arbitration or other dispute settlement procedure, investigation or inquiry by any governmental body, or any similar matter or proceeding (collectively, "proceeding") against or involving the Developer or any affiliate of the Developer (whether in progress or to the Developer's knowledge threatened) which, if determined adversely to the Developer or any affiliate of the Developer would materially adversely affect the Developer's ability to perform any of its obligations under this Agreement, or which purports to affect the legality, validity or enforceability of this Agreement; to the Developer's knowledge no event has occurred which might give rise to any such proceeding; and there is no judgment, decree, injunction, rule, award or order of any governmental authority or body outstanding against the Developer or any affiliate of the Developer which has or may have a material adverse affect on the Developer's ability to perform any of its obligations under this Agreement.

Section 2.02. Representations and Warranties of Westfield. Westfield makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

(a) Westfield is a municipal corporation duly authorized and validly existing under the laws of the State, is authorized and empowered by Applicable Law, including the RDC Act, to authorize and approve the transactions contemplated by this Agreement to which it is a party and to carry out its obligations hereunder, and by proper action of the Westfield Council has been duly authorized to execute and deliver this Agreement.

(b) This Agreement has been duly executed and delivered by Westfield and constitutes the valid and binding obligation of Westfield, enforceable in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally heretofore or hereafter enacted; (ii) the exercise of judicial discretion in accordance with the general principles of equity; and (iii) the valid exercise of the constitutional powers of the State and the United States of America.

(c) Neither Westfield's execution and delivery of this Agreement nor the fulfillment or compliance with the terms and conditions hereof conflicts with or results in a breach of the

terms, conditions or provisions of any material restriction, agreement or instrument to which Westfield is a party, or by which it or any of its property is bound, or constitutes a default under any of the foregoing.

(d) To Westfield's knowledge, there is no proceeding against or involving Westfield (whether in progress or threatened) which, if determined adversely to Westfield would materially adversely affect its ability to perform any of the applicable provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement; to Westfield's knowledge, no event has occurred which might give rise to any proceeding; and there is no judgment, decree, injunction, rule, award or order of any governmental body outstanding against Westfield which has or may have a material adverse affect on its ability to perform any of the applicable provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement.

Section 2.03. Representations and Warranties of Redevelopment Commission. The Redevelopment Commission makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

(a) The Redevelopment Commission is the governing body of Westfield, Indiana Department of Redevelopment and of the Redevelopment District of Westfield and pursuant to a resolution of the Redevelopment Commission and authority granted to it under the RDC Act is authorized and empowered to authorize and approve the transactions contemplated by this Agreement to which it is a party and to carry out its obligations hereunder, and by proper action of the Redevelopment Commission has been duly authorized to execute and deliver this Agreement.

(b) This Agreement has been duly executed and delivered by the Redevelopment Commission and constitutes the valid and binding obligation of the Redevelopment Commission, enforceable in accordance with its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally heretofore or hereafter enacted; (ii) the exercise of judicial discretion in accordance with the general principles of equity; and (iii) the valid exercise of the constitutional powers of the State and the United States of America.

(c) Neither the Redevelopment Commission's execution and delivery of this Agreement nor the fulfillment or compliance with the terms and conditions hereof conflicts with or results in a breach of the terms, conditions or provisions of any material restriction, agreement or instrument to which the Redevelopment Commission is a party, or by which it or any of its property is bound, or constitutes a default under any of the foregoing.

(d) There is no proceeding against or involving the Redevelopment Commission (whether in progress or to the best of knowledge of the Redevelopment Commission threatened) which, if determined adversely to the Redevelopment Commission would materially adversely affect its ability to perform any of the applicable provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement; to the Redevelopment Commission's knowledge, no event has occurred which might give rise to any proceeding; and

there is no judgment, decree, injunction, rule, award or order of any governmental body outstanding against the Redevelopment Commission which has or may have a material adverse affect on its ability to perform any of the applicable provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement.

ARTICLE III TIF PROJECT AND PROJECT

Section 3.01. Acquisition of Project Site; TIF Project; Funding.

(a) **Approvals.** Subject to this Agreement and Applicable Laws, Westfield hereby approves the Developer's acquisition of the Project Site, the Redevelopment Commission's planning, design, acquisition and construction of the TIF Project, and the Developer's planning, design, acquisition, construction and equipping of the Project.

(b) **TIF Project Funding.** The Developer intends to provide funding for the initial phase of the TIF Project by purchasing the Developer Bonds or causing a related party or a Lender to purchase the Developer Bonds.

(c) **Expenses; Legal Fees.** The Developer acknowledges and agrees that the Redevelopment Commission may pay the reasonable out of pocket expenses incurred by Westfield and the Redevelopment Commission in connection with the TIF Project, including the preparation of this Agreement and the issuance of the Developer Bonds, from proceeds of such Developer Bonds. Prior to the issuance of the Developer Bonds, the Developer will pay within (30) days of the receipt of written invoices in reasonable detail, but not more often than monthly, the reasonable fees and expenses of Krieg DeVault, LLP, as counsel to Westfield, the Redevelopment Commission and bond counsel, in connection with the TIF Project, including the preparation of this Agreement and the issuance of the Developer Bonds. Notwithstanding anything in this Agreement to the contrary, Westfield and the Redevelopment Commission will cause the Developer to be reimbursed for all fees and expenses paid to Krieg DeVault from proceeds of the Developer Bonds immediately upon issuance of the Developer Bonds, unless the Developer waives in writing all or any part of the reimbursement then payable.

(d) **Acquisition of Public ROW Improvements.** Subject to this Agreement and Applicable Laws, Westfield and the Redevelopment Commission will plan, design, acquire and construct the Public ROW Improvements in three phases as outlined in this Section 3.01 and **Exhibit B** and **Exhibit D** hereto.

- (i) Phase One has an estimated completion date of June 30, 2009, and an estimated cost of \$~~4,300,000~~4,200,000;
- (ii) Phase Two has an estimated completion date of December 31, 2009, and an estimated cost of \$600,000; and

- (iii) Phase Three has an estimated completion date of June 30, 2011, and an estimated cost of ~~\$1,100,000~~ 1,200,000.

The estimated completion dates are subject to Force Majeure. However, Westfield and the Redevelopment Commission acknowledge and agree that the Public ROW Improvements must be completed by the Redevelopment Commission to accommodate and permit the Developer's acquisition and construction of the Project, also in phases, as contemplated by this Agreement. The Developer will not be in breach of, or deemed to be in breach of, this Agreement so long as its intended planning, design, acquisition, construction and equipping of the Project is delayed by the Westfield's or the Redevelopment Commission's inability or failure to complete the Public ROW Improvements as contemplated by this Agreement, so long as such inability or failure is not caused by a material action or inaction of the Developer.

(e) **Public Procurement.** Subject to Applicable Laws, Westfield and the Redevelopment Commission will cooperate with the Developer to let bids and cause the commencement and completion of construction of the Public ROW Improvements in accordance with the Public Improvements Procedure attached hereto as **Exhibit C** hereto.

(f) **Acquisition of Project Site.** Subject to this Agreement, Applicable Laws and receipt of required Governmental Approvals, the Developer intends to acquire the Project Site as and when required to accommodate and effect development of the Project, including the Public ROW Improvements, as contemplated by Section 3.04. In the event the Developer determines that additional parcels or interests in real estate are necessary or desirable for the Project, at the request of the Developer, Westfield and the Redevelopment Commission shall, subject to Applicable Laws and receipt of required Governmental Approvals, take all actions reasonably required to assist the Developer in such acquisition, including the exercise of the powers of condemnation, to the extent legally available and approved by Westfield and the Redevelopment Commission, as applicable. On the Effective Date, the Developer shall have acquired title to so much of the real property or interests therein as may be necessary to acquire and construct the initial Public ROW Improvements and develop the initial phase of the Project (as described in **Exhibit D** hereto). Notwithstanding anything to the contrary in this Agreement, including **Exhibit D** hereto, ~~—~~ Westfield and the Redevelopment Commission acknowledge and agree that (i) on the Effective Date, the Developer will not have acquired the easements or right of way necessary to provide (A) any of the off-site sanitary sewer, storm sewer, water and other utilities contemplated by Part II of **Exhibit D** hereto, or (B) any ~~of~~ state highway and related improvements as contemplated by Part II of **Exhibit D** hereto; and (ii) Westfield or the Redevelopment Commission may, subject to their prior approval, be required to acquire and provide such easements or right of way. If so acquired and provided, the costs thereof may be reimbursed from Bond proceeds.

(g) **Acquisition of Project.** Subject to this Agreement, Applicable Laws and receipt of required Governmental Approvals, the Developer intends to acquire and construct, or cause to be acquired and constructed, the Project, in phases, as contemplated by this Agreement. Any revision to the development plan resulting in a change of the phases of the Project shall be

submitted to the Redevelopment Commission, and the Plan Commission if required by Applicable Law, for approval of such change.

(h) **Dedication of Right of Way.** As a condition to the phased acquisition and construction of any of the Public ROW Improvements, the Developer shall convey to the Redevelopment Commission by warranty deed or grant easements in, those portions of the Project Site, necessary for such phased acquisition and construction of the Public ROW Improvements. The Developer shall make such conveyances and grants as and when required to complete the phased acquisition and construction of the Public ROW Improvements as mutually agreed upon by Westfield, the Redevelopment Commission and the Developer.

Section 3.02. Governmental Approvals.

(a) **Applications.** Westfield agrees to cooperate with the Developer and to process expeditiously and consider timely all applications for Governmental Approvals as prioritized in writing by the Developer, all in accordance with Applicable Laws.

(b) **State Permits and Approvals.** The parties will cooperate with each other to obtain all necessary permits from and approvals by the Indiana Department of Transportation and the Indiana Department of Environmental Management. Subject to Applicable Laws, Westfield and the Redevelopment Commission will take all actions reasonably required to obtain all such necessary permits and approvals for the Public ROW Improvements, including the use of their good offices in conferring with elected State officials and their appointees. The Developer agrees to use commercially reasonable efforts to obtain all such necessary permits and approvals, including the use of its offices in conferring with elected State officials and their appointees.

Section 3.03. Project Site Plan.

(a) **Approval.** The Project Site Plan is hereby approved in substantially the form attached as **Exhibit F** hereto or as otherwise approved and/or amended by the Plan Commission in accordance with Applicable Laws. The parties acknowledge that the form of the Project Site Plan attached as **Exhibit F** hereto on the Effective Date is the form previously approved by the Plan Commission. Subject to obtaining any required Governmental Approvals, the Developer may make changes to the Project Site Plan or any aspect thereof as site conditions or other issues of feasibility may dictate or as may be required to meet the reasonable requests of prospective tenants or as may be necessary or desirable in the sole discretion of the Developer to enhance the economic viability of the Project as may be in furtherance of the general objectives of the Redevelopment Plan and this Agreement.

(b) **Modifications.** The Project Site Plan also shall be deemed to be modified from time to time to reflect changes to the locations and configurations of the improvements which comprise the Project to the extent such changes are made in connection with the processing and approval of a concept plan, a site/improvement plan or other Governmental Approvals; provided

that any such modification required to be approved under Applicable Laws must comply with such Applicable Laws and will not be deemed approved solely by operation of this Agreement.

Section 3.04. Construction of Project.

(a) **Phased Construction.** The Developer intends to enter into, or cause to be entered into, one or more contracts to plan, design, acquire and construct the Project. For such purpose, the Developer may enter into contracts with related parties. The Developer intends to plan, design, acquire, construct and equip the Project in three phases as contemplated by **Exhibit B** and **Exhibit D** hereto. The Developer will notify Westfield and the Redevelopment Commission in writing promptly after it has completed or caused to be completed all or substantially all of a phase of the Project and permit Westfield and the Redevelopment Commission to review and inspect such completed phase.

(b) **Sale of Portions of Project.** If the Developer shall execute a sale or purchase agreement for a portion of the Project Site for development and construction in accordance with the Zoning Ordinance, the Developer shall provide to Westfield and the Redevelopment Commission a memorandum setting forth the identity of the purchaser, the proposed use, the proposed site plan and the estimated timeline for development and construction thereof.

Section 3.05. Construction, Project Management; Review and Inspections; Cooperation.

(a) **Developer to Control Construction, Project.** Except as expressly provided in this Agreement, the Developer shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment and construction of the Project, provided that the same shall, in any event, conform to and comply with Applicable Laws. Subject to this Agreement, Westfield and the Redevelopment Commission acknowledge and agree that the Developer has the right to develop, acquire, lease, construct, equip and operate the Project in accordance with Applicable Laws, without undue interference from or disruption by Westfield or the Redevelopment Commission, as a commercial venture.

(b) **Review and Inspection of Project.** The Developer shall keep Westfield reasonably informed as to the progress of the Project. The Developer shall not be required to report more often than once each calendar quarter to Westfield and the Redevelopment Commission, including the Westfield Council except that the information required to be provided pursuant to Section 3.04(b) hereof shall be provided within thirty (30) days of the date of execution of any sale or purchase agreement. The Developer acknowledges and agrees that Westfield and the Redevelopment Commission are providing substantial assistance and benefit to the Project by the execution and delivery of this Agreement and the issuance of the Bonds. The Developer further acknowledges and agrees that development of the Project is of significant public interest to the officials of and citizens of Westfield and shall cooperate with Westfield to ensure that the Project is developed in a timely and commercially reasonable manner, consistent with Applicable Laws and financial and other market conditions. Westfield and the

Redevelopment Commission shall have the right to access the Project Site and periodically inspect the construction of the Project to assure compliance with this Agreement and Applicable Laws.

Section 3.06. Scope and Modifications.

(a) **Modifications prior to Substantial Completion.** During the progress of the Project, the Developer may make such reasonable changes, including modification of the construction schedule, modification of the areas in which the Project is to be performed or on which buildings or other improvements are to be situated, expansion or deletion of items, revisions to the locations and configurations of improvements, revisions to the areas and scope of the Project, and any and all such other changes as site conditions or orderly development may dictate or as may be required to meet any reasonable requests of prospective tenants or purchasers of any portion of the Project Site or as may be necessary or desirable, in the discretion of the Developer, to enhance the economic viability of the Project, and as may be in furtherance of the general objectives, this Agreement; provided, however, that any such modifications shall comply with Applicable Laws.

(b) **Modifications after Substantial Completion.** After substantial completion of the Project, the Project Site may be regraded, reconfigured, redeveloped or otherwise modified, improvements within the Project Site may be reconfigured, expanded, contracted, remodeled, reconstructed, replaced or otherwise modified, and new improvements may be added to the Project Site, and demolition may be undertaken in connection therewith, from time to time and in such manner as the Developer (or its successor(s) in interest, as owner or owners of the affected portion(s) of the Project Site) may determine, provided that any such modifications shall comply with Applicable Laws.

Section 3.07. Reserved.

Section 3.08. Maintenance of Project Site. The Developer shall remain in compliance with provisions of Westfield's Code relating to maintenance and appearance of the Project Site during the construction of the Project.

Section 3.09. Reserved.

Section 3.10. Liability for Areas Affected by Project. Neither Westfield nor the Redevelopment Commission shall be liable or responsible for any damage to the owner/occupant of any land or area that results from acquisition and construction of the Project, and the Developer agrees to indemnify and hold harmless Westfield and the Redevelopment Commission from any such third-party damages, claims or demands, including the fees, expenses and reasonable attorney's fees of Westfield or the Redevelopment Commission incurred in connection therewith. The Developer may, at its option, assume the defense of such third-party damages, claim or demands (including, without limitation, to settle or compromise any claim or other action for which the Developer has assumed the defense) with counsel of the Developer's choosing, and the parties expressly agree that so long as no conflict of interest exists

between them, the same attorney or attorneys may simultaneously represent Westfield and the Developer in any such proceeding. The Developer and its counsel shall copy Westfield on all correspondence relating to any such claim or other action, and shall consult with Westfield throughout the course of any such claim or other action. All costs incurred by the Developer shall be deemed to be Reimbursable Project Costs and reimbursable from moneys on deposit in the Developer Subaccount.

Section 3.11. Project Documents. The Developer will provide three architectural renderings for the Project to the Redevelopment Commission for display at various Westfield government buildings during the development of the Project.

Section 3.12. Drug Free Workplace. The Developer agrees to undertake reasonable efforts at all times to provide and maintain a drug free workplace at the Project Site (other than the sites of the Public ROW Improvements). If, in connection with the development of the Project, the Developer includes in a contract therefore a provision similar to the immediately preceding sentence, the Developer will be deemed to have made reasonable efforts during the term of such contract to provide and maintain a drug free workplace at the Project Site. Breach or violation of this Section 3.12 will not give rise to an event of default under Section 8.04 hereof.

Section 3.13. Tenants. There shall be no tenants of the Project who shall conduct, or be permitted to conduct, any fire, bankruptcy, liquidation, going out of business, auction or close out sales as their primary business.

Section 3.14. Permits and Compliance with Applicable Laws. The Developer shall be responsible for (a) giving all necessary notices to and obtaining all necessary permits, approvals, consents and authorizations of the proper governmental authorities having jurisdiction over the development of the Project and (b) complying with all Applicable Laws.

Section 3.15. Construction of Public ROW Improvements.

(a) The Developer, Westfield and the Redevelopment Commission will cooperate regarding the planning, design, acquisition, construction and completion of the Public ROW Improvements in accordance with the Public Improvements Procedure.

(b) Westfield and the Redevelopment Commission shall cooperate with the Developer to acquire the real property (or interests therein) necessary for the Public ROW Improvements in accordance with Applicable Laws.

(c) Westfield, the Redevelopment Commission and the Developer acknowledge that the RDC Act requires that contracts for work and labor to be provided in connection with the Public ROW Improvements are subject to Indiana Code 5-16-7, providing for a common construction wage, and Indiana Code 36-1, providing for the letting of bids for public works projects.

(d) The Developer may pay costs of the Public ROW Improvements as it deems appropriate or necessary. Notwithstanding anything in this Agreement to the contrary, all such

payments will constitute payments for Reimbursable Project Costs and will be reimbursed to the Developer from Bond proceeds or the Developer Share (to the extent the Developer Share is available and the Developer consents in writing).

(e) The Redevelopment Commission, with the assistance of the Developer, shall follow the Public Improvements Procedure to achieve timely completion of the Public ROW Improvements.

(f) The Developer shall not be liable or responsible for any damage to the owner/occupant of any land or area that results from construction of the Public ROW Improvements, and Westfield and the Redevelopment Commission agree, fully to the extent permitted by law, to indemnify and hold harmless the Developer from any such damages, claims or demands, including the fees, expenses and reasonable attorney's fees of the Developer incurred in connection therewith.

(g) Plans for and designs of the Public Row Improvements are subject to the prior written approval of the Developer.

Section 3.16. Completion of Public ROW Improvements.

(a) The Redevelopment Commission shall furnish Westfield and the Developer with a Certificate of Substantial Completion of Public ROW Improvements upon completion of all or a functional portion of the Public ROW Improvements.

(b) Westfield and the Developer shall, within 30 days following receipt of each Certificate of Substantial Completion of Public ROW Improvements, carry out such inspections as it deems necessary to verify to its reasonable satisfaction with the accuracy of the certifications contained in the Certificate of Substantial Completion of Public ROW Improvements and to verify conformance of the improvements with Applicable Laws. The certificates shall be deemed verified and the Certificate of Substantial Completion of Public ROW Improvements shall be deemed accepted unless, prior to the end of such 30-day period after delivery to Westfield and the Developer of the Certificate of Substantial Completion of Public ROW Improvements, Westfield or the Developer furnishes the Redevelopment Commission with specific written objections to the status of the Public ROW Improvements, describing in reasonable detail such objections and the measures required to correct such objections.

ARTICLE IV BONDS AND OTHER INCENTIVES

Section 4.01. Issuance of Bonds.

(a) Subject to Applicable Laws, Westfield and the Redevelopment Commission will take all actions reasonably required to issue the Bonds and to pledge the Developer Share as security for the Bonds and apply the proceeds as contemplated by this Agreement and for no other purpose. The Redevelopment Commission and the Developer acknowledge that the

valuation and assessment of real property for purposes of property taxation is governed by laws and administrative regulations of the State and, accordingly, the amount of the Developer Share will be based upon the application and interpretation of those laws and administrative regulations to the Project Site and the Project. Neither Westfield nor the Redevelopment Commission makes any representation as to the amount of Bonds (or the debt service thereon) that may be supported by the Developer Share and for such purposes will rely upon the advice of O.W. Krohn & Associates, Westfield's financial advisor. Neither Westfield nor the Redevelopment Commission shall be liable or responsible for payment of debt service on the Bonds, as the Bonds are payable solely from the Developer Share pledged to the Bonds by the Redevelopment Commission.

(b) Subject to Applicable Laws, on or before June ~~15~~,30, 2008, Westfield and the Redevelopment Commission will take all actions reasonably required to:

- (i) Complete the annexation of the Expansion Project Site;
- (ii) Expand (and approve the expansion of) the Economic Development Area to include the Expansion Project Site;
- (iii) Expand (and approve the expansion of) the original Allocation Area to include the Expansion Project Site;
- (iv) Create (and approve the creation of) the Aurora Allocation Area;
- (v) Adopt the Bond Resolution and approve the issuance of the Developer Bonds;
- (vi) Appropriate the Bond proceeds; and
- (vii) Establish (and approve the establishment of) an economic revitalization area, the boundaries of which are coterminous with the boundaries of the Project Site, including the Expansion Project Site.

Section 4.02. Obligation to Pay or Reimburse for Costs of TIF Project.

(a) The Redevelopment Commission will pay all costs of the TIF Project, but such obligation shall be satisfied solely from Bond proceeds. If the Developer pays any costs of the TIF Project, either before or after the issuance of the Bonds, the Redevelopment Commission will reimburse the Developer therefor as contemplated by Section 3.15(d) hereof. Payment of costs of the TIF Project and Reimbursable Project Costs will be made from Bond proceeds or the Developer Share (to the extent the Developer Share is available).

(b) Upon the incurring of Reimbursable Project Costs, the Authorized Redevelopment Commission Representative shall approve or disapprove of each invoice, receipt or other information evidencing a claim for payment submitted by the Developer within 30 days of the submittal thereof and shall evidence such approval by attaching such invoices or receipts to a Certificate of Reimbursable Project Costs in the form attached as **Exhibit I** hereto, duly

executed by an Authorized Redevelopment Commission Representative. If the Authorized Redevelopment Commission Representative disapproves of any, it shall state in writing the reasons therefor and provide to the Developer an explanation of such disapproval.

Section 4.03. Reimbursable Project Costs. Westfield, the Redevelopment Commission and the Developer agree that each of the categories of costs set forth in **Exhibit D** hereto constitutes Reimbursable Project Costs which are eligible for reimbursement from Bond proceeds or the Developer Share in accordance with the RDC Act and this Agreement, including **Exhibit E** hereto. The amounts set forth in **Exhibit D** hereto are estimates and payments or reimbursements shall be based on the actual costs, plus related soft costs, subject to Applicable Law.

Section 4.04. Obligations Limited. Notwithstanding any other provision of this Agreement to the contrary, the Redevelopment Commission's obligations to pay for the TIF Project, including the Public ROW Improvements and all Reimbursable Project Costs, are limited to Bond proceeds and the Developer Share and from no other source.

Section 4.05. Developer Bonds. Subject to Applicable Law, the Developer, Westfield and the Redevelopment Commission acknowledge and agree that the Developer Bonds will be issued after the execution and delivery of this Agreement and when requested in writing by the Developer. In order to assure that the Bonds can be designated as “qualified tax-exempt obligations” for federal income tax purposes, the Developer acknowledges that the Bonds may need to be issued in ~~two (2) series, one in 2008 and another in 2009,~~ multiple series, over a period of two (2) or three (3) years, as agreed by the Developer and the Redevelopment Commission, based upon the funding needs for payment of Public ROW Improvements.

(a) **Timing; Form; Terms.** Subject to Applicable Law, including the RDC Act, Westfield and the Redevelopment Commission will authorize fully and, if requested in writing by the Developer, deliver, the Developer Bonds not later than June 15, 2008, and the Developer Bonds shall have the terms outlined in the Term Sheet set forth in **Exhibit G** hereto. Subject to Applicable Law, including the RDC Act, the Redevelopment Commission agrees to adopt the Bond Resolution in form and substance satisfactory to the Developer not later than June 15, 2008.

(b) **Maturity Date; Source of Repayment.** All Developer Bonds shall have a stated maturity of approximately twenty-five (25) years following their date of issuance, but in no event later than the TIF Expiration Date. Developer Bonds shall be secured by a pledge of the Developer Share of the Tax Increment.

(c) **Limited Obligations.** Developer Bonds shall not constitute general obligations of Westfield, the Redevelopment Commission or the State, but shall be payable solely from the Developer Share, investment earnings and the proceeds of Investor Bonds.

(d) **Registered Owner.** Developer Bonds shall be registered as directed by the Developer in the name of the Developer, a related party or a Lender (and shall be fully

transferable to any such entity). Notwithstanding anything in this Agreement to the contrary, Developer Bonds will be issued in one or more series, as determined by the Developer, in an aggregate principal amount determined as follows:

- (i) not more than \$6,000,000 to pay for the Public ROW Improvements; *plus*
- (ii) the amount necessary to fund or pay:
 - A. the costs of engineering work, financial advisors, counsel to the Redevelopment Commission and Westfield, bond counsel, Developer, Developer's counsel, Lenders and Lender's counsel;
 - B. costs of issuance;
 - C. capitalized interest (for not fewer than three years, calculated at the interest rate on the Developer Bonds); and
 - D. any other related costs and expenses as determined by the Developer.

(e) **Amount of Developer Bonds.** Prior to the issuance of the Developer Bonds, Westfield and the Redevelopment Commission shall have received a TIF Consultant Report, estimating (based upon the Developer's construction plans and other data provided or approved by the Developer) the amount of debt service reasonably projected to be payable from the Developer Share, and may rely on the TIF Consultant Report in determining the principal amount of Developer Bonds to be issued.

Section 4.06. Investor Bonds.

(a) **Timing; Form; Terms.** Subject to the applicable provisions of this Article IV and at the earliest practical time upon the request of the Developer, Westfield and the Redevelopment Commission will, promptly and to the extent permitted by law, issue Investor Bonds to refund all outstanding Developer Bonds. The Investor Bonds shall be issued in one or more series and shall have total debt service requirements which do not exceed the projected Developer Share for each year as shown by a TIF Consultant Report.

(b) **Maturity; Source of Repayment.** Each series of Investor Bonds shall have a stated maturity not later than twenty-five (25) years, but in no event later than the TIF Expiration Date. Investor Bonds shall be secured by a pledge of all Tax Increment representing the Developer Share and, if necessary to sell the Investor Bonds, by a Debt Service Reserve and/or a Taxpayer Agreement.

(c) **Registered Owner.** Investor Bonds shall only be issued for sale or transfer to Approved Investors.

(d) **Cooperation in Issuance of Investor Bonds.** The Developer, Westfield and the Redevelopment Commission will cooperate and take all reasonable actions necessary to assist the underwriters and financial advisors in the preparation of offering statements (including any official statement, private placement memorandum or similar disclosure documents) and other documents reasonably necessary to market and sell the Investor Bonds, including disclosure of tenants of the Project and the non-financial terms of the leases between the Developer and such tenants.

(e) **Limited Obligations.** Investor Bonds shall not constitute general obligations of Westfield, the Redevelopment Commission or the State, but shall be payable solely from the Tax Increment representing the Developer Share deposited from time to time in the Developer Subaccount of the Aurora Account of the Allocation Fund or from the proceeds of refunding Investor Bonds issued in accordance with this Agreement.

Section 4.07. No Other Bonds or Uses of Tax Increment in Aurora Account. So long as the Developer or its successors or assigns holds any Developer Bonds, Westfield and the Redevelopment Commission shall not issue any other indebtedness or obligations secured by the Aurora Account or the Tax Increment realized from the Aurora Sub-Area (other than Investor Bonds requested by the Developer to refund Developer Bonds), and Westfield and the Redevelopment Commission shall not use or apply the Developer Share (or Bond proceeds or Tax Increment representing the Developer Share deposited in the Capital Fund) to pay any costs other than the costs of the TIF Project and Reimbursable Project Costs as are expressly authorized for payment in this Agreement.

Section 4.08. Certificate of Total Initial Equalized Assessed Value. At the time of execution and delivery of this Agreement, Westfield and the Redevelopment Commission shall provide to the Developer a copy of the County Assessor's calculation of the total assessed value of all taxable property within the Aurora Sub-Area for the base year, determined pursuant to the RDC Act and reviewed and approved by the TIF Consultant.

Section 4.09. Allocation Fund.

(a) Westfield agrees to cause its Clerk-Treasurer or other fiscal officer to maintain the Allocation Fund, including the following accounts such further accounts or subaccounts as required by the Bond Resolution and as such officers may deem appropriate in connection with the administration of the Allocation Fund pursuant to this Agreement:

- (i) "Developer Account"; and
- (ii) "Taxing District Account";

and a Capital Fund in which the proceeds of the Bonds will be deposited in and disbursed to fund construction of the TIF Project and Reimbursable Project Costs.

(b) There shall be deposited into the Allocation Fund all Tax Increment from the Aurora Sub-Area. The Developer Share shall be deposited into the Developer Account and the Taxing District Share shall be deposited into the Taxing District Account.

(c) Westfield and the Redevelopment Commission will apply and deposit into such accounts of the Allocation Fund such Tax Increment and any taxes, fees, or assessments subsequently enacted and imposed in substitution therefor and allocable to such accounts under the Act, or under successor statutes. Westfield and the Redevelopment Commission will apply any and all interest earnings from the deposits of Tax Increment into the Allocation Fund only to such purposes as are permitted under this Agreement or the Bond Resolution.

Section 4.10. Application of Tax Increment.

(a) Moneys in the Allocation Fund shall be applied (either by the Clerk-Treasurer or other fiscal officer or, at the option of Westfield, by a trustee or paying agent for the Bonds) from the Developer Account, as follows:

- (i) Payment to the United States of America of an amount sufficient to pay arbitrage rebate, if any, owed with respect to the Bonds under Section 148 of the Internal Revenue Code of 1986, as amended;
- (ii) Payment of reasonable fees and expenses owing to the Paying Agent;
- (iii) Payment of interest becoming due and payable on Bonds on such payment date;
- (iv) Payment of principal becoming due and payable on Bonds on each payment date; and
- (v) Payment by redemption of principal on Bonds;

provided, however, if both Developer Bonds and Investor Bonds are outstanding, interest on and principal of Investor Bonds shall be paid before interest on and principal of Developer Bonds, but Developer Bonds shall be redeemed (from excess Tax Increment) before Investor Bonds are redeemed, unless the Developer otherwise agrees. In addition, and notwithstanding anything in this Agreement to the contrary, if a Lender buys Developer Bonds, and the Developer pays debt service on the Developer Bonds because Tax Increment is not available ~~therefore~~therefor or for some other reason, the Developer will be entitled to be reimbursed from time to time from the Developer Share as and when available until the later of (1) reimbursement in full of all such payments and (2) the TIF Expiration Date.

Section 4.11. Cooperation in Determining Tax Increment. Westfield and the Redevelopment Commission will cooperate and, subject to Applicable Laws, take all reasonable actions necessary to cause the Developer Share to be paid into the Aurora Account, including Westfield and the Redevelopment Commission's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

Section 4.12. Property Tax Abatement. The Developer has advised Westfield and the Redevelopment Commission that it believes real and personal property tax abatement will be necessary if the Project is to be fully developed in a timely manner. Westfield and the Redevelopment Commission agree to consider promptly all requests for property tax abatement, subject to the application of all Applicable Laws then in effect.

Section 4.13. Conditions Precedent to Redevelopment Commission's Obligations. Notwithstanding anything in this Agreement to the contrary, Westfield's and the Redevelopment Commission's obligation to issue the Bonds shall be conditioned upon:

- (a) With respect to the issuance of the Developer Bonds:
 - (i) The Developer shall have executed and delivered this Agreement;
 - (ii) the Developer shall have acquired that portion of the Project Site consistent with Section 3.01(f);
 - (iii) the Redevelopment Commission shall have received and accepted bids for the Public ROW Improvements required to develop the initial phase of the Project;
 - (iv) the Developer shall have agreed to purchase, or caused to be purchased by a related party or a Lender, the Developer Bonds on terms and conditions consistent with this Agreement, including the Term Sheet attached hereto as Exhibit G; and
 - (v) an executed Taxpayer Agreement guaranteeing payment of the principal of and interest on the Developer Bonds while and so long as they remain outstanding, such guaranty of payment to be provided by Chris White and/or others deemed creditworthy by Westfield and the Redevelopment Commission.

- (b) With respect to the issuance of Investor Bonds, there shall be delivered to the Redevelopment Commission:
 - (i) A TIF Consultant Report certifying that the annual amount of Tax Increment projected to be deposited in the Developer ~~Subaccount of the Aurora~~ Account of the Allocation Fund for each calendar year the Investor Bonds proposed to be issued will be outstanding, shall be equal to at least 125% of annual debt service for each such calendar year unless a less than 125% coverage requirement permits the sale of the Investor Bonds to an Approved Investor;
 - (ii) An executed and mutually satisfactory Taxpayer Agreement, if necessary to sell the Investor Bonds to an Approved Investor; provided that the Developer acknowledges that a Taxpayer Agreement likely will necessary

if the annual amount of Tax Increment projected to be deposited into the Developer ~~Subaccount of the Aurora~~ Account of the Allocation Fund for each calendar year of the Investor Bonds provides less than 125% debt service coverage; and

- (iii) An executed commitment from an Approved Investor agreeing to purchase the Bonds upon terms and conditions mutually agreed to by the Redevelopment Commission and the Developer.

ARTICLE V EXPANSION PROJECT

Section 5.01. Expansion Project. The Developer desires to include the Expansion Project Site in the Aurora Sub-Area for purposes of developing the Expansion Project. Following the annexation of the Expansion Project Site (or any portion thereof), Westfield and the Redevelopment Commission will proceed under Applicable Laws, including the RDC Act, to take such actions to amend the Declaratory Resolution to include the Expansion Project Site as a part of the Aurora Sub-Area.

ARTICLE VI TERM OF AGREEMENT

Section 6.01. Term of Agreement. This Agreement, and all of the rights and obligations of the parties hereunder, shall terminate and shall become null and void upon the later of the following: (i) Substantial Completion of the Public ROW Improvements and (ii) payment in full of the Bonds and any other amounts due the Developer under this Agreement.

ARTICLE VII LIABILITY

Section 7.01. Westfield; Redevelopment Commission.

(a) Westfield and the Redevelopment Commission and its governing body members, officers, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the construction of the Project except for matters arising out of the negligence or willful misconduct of Westfield or the Redevelopment Commission and its governing body members, officers, agents, attorneys, employees and independent contractors.

(b) All covenants, stipulations, promises, agreements and obligations of Westfield and the Redevelopment Commission contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Westfield and the Redevelopment

Commission and not of any of its governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities.

Section 7.02. Environmental Indemnification. The Developer agrees, at the Developer's sole cost and expense, to protect, defend, indemnify and save harmless Westfield and the Redevelopment Commission from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, response and clean up costs and other costs, expenses (including, without limitation, reasonable attorneys' fees, the cost of any remedial action, consultant fees, investigation and laboratory fees, court costs and litigation expenses) arising out of or relating to, the presence, disposal, escape, seepage, leakage, spillage discharge, emission, release or threatened release of any Hazardous Substances on, from or affecting the Project Site, imposed upon or incurred by or asserted against Westfield and the Redevelopment Commission.

Section 7.03. Bond Indemnification. The Developer shall hold harmless, indemnify and defend Westfield and the Redevelopment Commission and its governing body members, officers and employees from any damages or loss occasioned by any action or proceeding commenced by any bondholders or class of bondholders holding the Bonds or by any paying agent or any representative of such paying agent in connection with any action that is commenced on the basis of failure to pay debt service on the Bonds when due or other related claims unless such claim results from the action of Westfield or the Redevelopment Commission or the failure of Westfield or the Redevelopment Commission to take reasonable action.

ARTICLE VIII MISCELLANEOUS

Section 8.01. No Agency, Partnership or Joint Venture. Nothing contained in this Agreement nor any act of Westfield, the Redevelopment Commission and the Developer, or any other person, shall be deemed or construed by any person to create any relationship of third-party beneficiary, or if principal and agent, limited or general partnership, or joint venture between Westfield and the Redevelopment Commission on the one hand and the Developer on the other.

Section 8.02. Compliance With Laws. The Developer, Westfield and the Redevelopment Commission each acknowledge that the agreements of Westfield and the Redevelopment Commission described in this Agreement, including without limitation any agreement to issue Bonds, acquire property, or to sell, lease or dispose of any interest in property owned by Westfield or the Redevelopment Commission, may involve certain and various legally required proceedings and/or approvals, and any and all such agreements or undertakings of Westfield and the Redevelopment Commission described herein are accordingly subject to compliance with such proceedings and all other Applicable Laws.

Section 8.03. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, administrators, executors, personal representatives, successors and assigns.

Section 8.04. Defaults and Remedies. Each of the following is hereby defined as and shall be deemed an “**Event of Default**”:

(a) If Westfield or the Redevelopment Commission fail to deposit, hold, segregate and apply the Tax Increment as herein provided or fail to acquire and construct the Public ROW Improvements in accordance with the Public Improvements Procedure as and when required to provide for the timely development of the Project;

(b) If Westfield or the Redevelopment Commission shall default in the due and punctual performance of any material covenants or conditions, agreements and provisions contained herein on its part to be performed (other than as described in paragraph (a) above), and if such default shall continue for sixty (60) days after written notice specifying such default and requiring the same to be remedied shall have been given to Westfield or the Redevelopment Commission by the Developer; provided that it shall not be considered an Event of Default if corrective action has been instituted by Westfield or the Redevelopment Commission within such 60-day period and is being diligently pursued;

(c) If the Developer fails to commence development of the initial phase of the Project by ~~_____~~, ~~20____~~, September 30, 2009, subject to extension for Force Majeure or further extension approved by the Authorized Westfield Representative or shall default in the due and punctual performance of any material covenants or conditions, agreements and provisions contained herein on its part to be performed, and if such failure or default shall continue for sixty (60) days after written notice specifying such failure or default and requiring the same to be remedied shall have been given to the Developer by Westfield or the Redevelopment Commission; provided that it shall not be considered an Event of Default if corrective action has been instituted by the Developer within such 60-day period and is being diligently pursued.

Upon the happening and continuance of an Event of Default, then and in every case, the non-defaulting party, the Owner of the Developer Bonds, or the Paying Agent on behalf of the Owners of the Investor Bonds may proceed by mandamus or other suit, action or special proceeding, in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein, or an award of execution of any power herein granted for the enforcement of any proper legal or equitable remedy to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of hereunder, or any combination of such remedies. No right or remedy is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Notwithstanding any provision hereof to the contrary any such legal proceedings shall only affect property as to which such default or breach exists and shall not affect any other rights established in connection with this Agreement or any other property in the Aurora Sub-Area of the Allocation Area which has been or is being developed or used in accordance with the provisions of this Agreement.

Section 8.05. Force Majeure and Other Extensions of Time for Performance.

(a) Except for the authorization of the Bonds by June 15, 2008, neither Westfield nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and all times for performance of obligations hereunder shall be extended, in the event of any delay caused by force majeure, including legal proceedings (including condemnation or eminent domain proceedings), orders of any kind of any court or governmental body, strikes, lockouts, labor disputes, labor shortages, riots, acts of God, epidemics, landslides, lightning, earthquake, fire or other casualties, breakage, explosions, storms, washouts, droughts, tornadoes, cyclones, floods, adverse weather conditions, unusually wet soil conditions, war, invasion or acts of a public enemy, serious accidents, arrests, failure of utilities, governmental restrictions or priorities, issuance of any permits and/or legal authorization by necessary governmental entity, shortage or delay in shipment of material or fuel, any court order or judgment resulting from any litigation affecting the validity of this Agreement, the Bond Resolution, the designation of the Allocation Area, the Project or the Bonds, or any of the resolutions, ordinances or other proceedings approving the same, or other causes beyond the responsible party's reasonable control, including any Special Event. The party claiming any extension caused by force majeure shall have the burden of proof in establishing such cause.

(b) In addition to the foregoing, periods provided herein for commencement or substantial completion of the Project shall be automatically extended for periods of delay in obtaining rezoning of the Project or any other Governmental Approvals, and may also be extended, for reasonable cause, from time to time, upon request of the Developer to the Authorized Westfield Representative and upon finding by the Authorized Westfield Representative that the requested delay is reasonably justified.

(c) "Special Event" mean:

- (i) any change, or any proposed or threatened change, in law, including regulations, rulings or other guidance, or the interpretation thereof, which has the purpose or effect, directly or indirectly, of materially adversely ~~effectively~~affecting the federal income tax treatment of the Bonds and interest on the Bonds (Westfield, the Redevelopment Commission and the Developer acknowledge and agree that interest on the Bonds must be tax-exempt as contemplated by this Agreement);
- (ii) any other event that adversely affects the market for obligations such as the Bonds or makes it impracticable (A) for the Developer to purchase, or finance the purchase of the Developer Bonds or secure or maintain financing for development of the Project or any portion thereof, of (B) for those with which the Developer is working on the development of the Project, to secure or maintain financing for the Project or any portion thereof.

- (iii) an outbreak or escalation of hostilities or other national or international calamity or crisis, the effect of which on the financial markets of the United States of America is such as would adversely affect the market for obligations such as the Bonds or make it impracticable (A) for the Developer to purchase, or finance the purchase of, the Developer Bonds or secure or maintain financing for development of the Project or any portion thereof, or (B) for those with which the Developer is working on the development of the Project, to secure or maintain financing for the Project or any portion thereof;
- (iv) there is in force a general suspension of trading on the New York Stock Exchange or a general banking moratorium is declared by federal, Indiana or New York authorities;
- (v) there occurs any material adverse change or any development involving a prospective change in the fiscal affairs and conditions of Westfield, including any change or development resulting from implementation of P.L 146-2008 (HEA 1001) or any future law, which has the effect, directly or indirectly, of materially adversely affecting the ability of the Developer or those with which the Developer is working to develop the Project or any portion thereof on a timely basis;
- (vi) there is in force wage and price controls, which has the purpose or effect, directly or indirectly, of materially adversely affecting the ability of the Developer or those with which the Developer is working to develop the Project or any portion thereof on a timely basis;
- (vii) any change, or any proposed or threatened change, in law, including regulations, rulings or other guidance, or the interpretation thereof, which has the purpose or effect, directly or indirectly, of materially adversely affecting the ability of the Developer or those with which the Developer is working to develop the Project or any portion thereof on a timely basis;
- (viii) an outbreak or escalation of hostilities or other national or international calamity or crisis, the direct or indirect effect of which is such as would adversely affect the ability of the Developer or those with which the Developer is working to develop the Project or any portion thereof on a timely basis; and

Section 8.06. Actions Contesting Validity and Enforceability of Redevelopment Plan and Related Matters. Before and during such time as the Developer is the owner of the Developer Bonds, if a third party brings an action against Westfield, the Redevelopment Commission or each such entities, officials, agents, employees or representatives contesting the validity or legality of the Allocation Area, any portion thereof, the Project, this Agreement, the Bonds or any of the resolutions, ordinances, or other proceedings approving the same, Westfield

shall promptly, and in any event prior to filing any responsive pleadings, notify the Developer in writing of such claim or action. The Developer may, at its option, assume the defense of such claim or action (including, without limitation, to settle or compromise any claim or action for which the Developer has assumed the defense) with counsel of the Developer's choosing, and the parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent Westfield and the Developer in any such proceeding. The Developer and its counsel shall copy Westfield on all correspondence relating to any such action, and shall consult with Westfield throughout the course of any such action. All costs incurred by the Developer shall be deemed to be Reimbursable Project Costs and reimbursable, first, from moneys on deposit in the Developer Subaccount and, second, from moneys on deposit in the Taxing District Subaccount.

Section 8.07. Exhibits. All Exhibits identified in or attached to this Agreement are incorporated herein and made part hereof by this reference.

Section 8.08. Captions. The captions, headings and arrangements in this Agreement are for convenience only and do not in any way define, limit or modify the terms or provisions hereof.

Section 8.09. Number and Gender. Whenever the singular number is used in this Agreement, the same shall include the plural where appropriate and words of any gender shall include the other gender where appropriate.

Section 8.10. Notices. No notice, approval, consent or other communication authorized or required by this Agreement shall be effective unless the same shall be in writing. Any such communications shall be effective (i) upon receipt if it is hand delivered, with signed receipt therefore obtained, (ii) three Business Days after it is sent postage prepaid by United States registered or certified mail, return receipt requested, (iii) two Business Days after it is deposited with a national courier for overnight delivery, addressed in each case to the other party at its address set forth below:

The addresses and ~~fax~~[telephone](#) numbers for notices are:

To Westfield: City of Westfield
 130 Penn Street
 Westfield, Indiana 46074
 Attention: Mayor
 Telephone: (317) 896-5570

 Westfield Redevelopment Commission
 130 Penn Street
 Westfield, Indiana 46074
 Attention: President

With a copy to: Brian J. Zaiger
John R. Kirkwood
Krieg DeVault, LLP
12800 North Meridian Street, Suite 200
Carmel, Indiana 46032
Telephone: (317) 238-6266

To the Developer: Chris R. White
CR White Development, LLC
15658 Bridgewater Club Boulevard
Carmel, Indiana 46033
Telephone: (317) 848-2830

With a copy to: Steven D. Hardin
Baker & Daniels LLP
600 East 96th Street, Suite 600
Indianapolis, Indiana 46240
Telephone: (317) 569-4833

Any party may, in substitution of the foregoing, designate a different address and addresses within the continental United States for purposes of this Section by written notice delivered to all other parties in the manner prescribed in this Section at least ten (10) days in advance of the date upon which such change of address is to be effective.

Section 8.11. Survival. Notwithstanding any breach of this Agreement by any party, the agreements contained in Article IV shall survive such breach until payment in full of the Developer Bonds and any other amounts due the Developer under this Agreement.

Section 8.12. Counterparts. This Agreement may be executed in a number of identical counterparts and, if so, executed, each such counterpart is deemed an original for all purposes, and all such counterparts shall collectively constitute one Agreement.

Section 8.13. Time of Essence. Time is of the essence in the performance of this Agreement and each and every provision contained herein.

Section 8.14. Costs of Proceedings. In the event of the institution of any proceeding relating to the performance of this Agreement, the parties agree that they shall each bear their own costs and expenses, including reasonable attorneys' fees and expenses, in connection with such proceeding.

Section 8.15. Severability. If any provision of this Agreement is determined to be invalid for any reason, it shall be severed and all other provisions not determined invalid shall continue with full force and effect; provided, however, that if (i) such declaration of invalidity relieves a party of a material obligation to another party, or eliminates a material benefit to another party, and (ii) the effect of either of the foregoing is to deprive such other party of

substantially all of the benefits to such party of the transactions contemplated by this Agreement, then the adversely affected party shall have the right to terminate this Agreement, by giving notice of such termination to the other party.

Section 8.16. Non-Waiver. No failure by any party, at any time, to require the performance by another party of any term of this Agreement shall in any way affect the right of a party to enforce such term, nor shall any waiver by either party of any term hereof be taken or held to be a waiver of any other provision of this Agreement. No waiver of any provision of this Agreement shall be effective unless the same is in writing, signed by the parties.

Section 8.17. Governing Law. This Agreement is entered into in the State and shall be governed by and construed (and all of the rights and obligations hereunder shall be determined) in accordance with the internal laws of the State, without reference to the choice of law principles thereof.

Section 8.18. No Third Party Beneficiaries. Nothing in this Agreement shall be construed as creating any rights of entitlement that inure to the benefit of any person or entity not a party of this Agreement.

Section 8.19. Jurisdiction and Consent to Suit. Each of Westfield, the Redevelopment Commission and the Developer agrees and consents to be subject to the exclusive personal and subject matter jurisdiction of the Circuit or Superior Court of Hamilton County, in connection with any claim, cause of action or other dispute by any of them against another arising out of or relating to the terms, obligations and conditions of this Agreement; provided, however, that each party shall retain any rights it may have under Applicable Laws then in effect to seek a change of judge in any proceeding before such designated court.

Section 8.20. Confidentiality. The parties acknowledge that the Agreement shall be subject to public disclosure under the laws of the State, if, as and when it is executed and becomes effective.

Section 8.21. Standards for Consent. Where any provision of this Agreement requires the consent or approval of another party, such party agrees that it will not unreasonably withhold, condition, or delay such consent or approval, except as otherwise expressly provided in this Agreement, and the reasonableness of each party's determination shall be evaluated in accordance with any particular standards governing such particular consent or approval as expressly set forth in this Agreement, or if no standards are expressly set forth, then in accordance with all relevant facts and circumstances. Where any provision of this Agreement requires one party to do anything to the satisfaction of another party, such other party agrees that it will not unreasonably refuse to state its satisfaction with such action. Any dispute over the reasonableness of a party withholding or conditioning its consent or satisfaction shall be resolved pursuant to this Article of this Agreement.

Section 8.22. Project Financing. Westfield and the Redevelopment Commission acknowledge and agree that development of the Project is dependent upon the Developer

securing financing, and that the issuance of the Bonds and the construction of the Public ROW Improvements is a part of the overall financing of the Project and, therefore, Westfield and the Redevelopment Commission agree to cooperate with the Developer and those with which it is working to develop the Project as they attempt to secure and maintain financing of the Project and the TIF Project.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above, to be effective on the Effective Date of this Agreement.

[signature pages follow this page]

SIGNATURE PAGE OF THE CITY OF WESTFIELD, INDIANA
TO THE
DEVELOPMENT AGREEMENT

CITY OF WESTFIELD, INDIANA

By: _____
Mayor

ATTEST:

Clerk-Treasurer

SIGNATURE PAGE OF THE WESTFIELD REDEVELOPMENT COMMISSION
TO THE
DEVELOPMENT AGREEMENT

WESTFIELD REDEVELOPMENT COMMISSION

By: _____

Its: _____

ATTEST:

Secretary

SIGNATURE PAGE OF THE DEVELOPER
TO THE
DEVELOPMENT AGREEMENT

CR WHITE AURORA, LLC
an Indiana limited liability company

By: _____
Chris R. White, Managing Member

EXHIBIT A-1

DESCRIPTION OF EASTSIDE ECONOMIC DEVELOPMENT AREA **AND
ALLOCATION AREA**

[See Attached]

FinPrntNo	DeededOwr	LocAddress	LocCity	LocZip	OwnAddress	OwnState	OwnZip
09-05-36-04-07-037 000	Allegra Properties LLC	109 Union St N	Westfield	46074	2362 Briarwood Ln	IN	46033
09-05-36-04-07-038 000	Town Of Westfield	100 Main St W	Westfield	46074	130 Penn St	IN	46074
09-05-31-03-04-037 000	Jamaik Enterprises LLC	302 Main St W	Westfield	46074	8653 Main St W	IN	46074
09-05-31-03-04-020 000	Periwinkle Plaza LLC	302 Main St E	Westfield	46074	PO Box 1275	IN	46036
09-05-31-03-04-019 000	Periwinkle Plaza LLC	320 Main St E	Westfield	46074	PO Box 1275	IN	46036
09-05-36-04-07-036 000	Baker, Clarence F & Leota M	328 Main St E	Westfield	46074	P O Box 783	IN	46074
09-05-36-04-07-035 000	Heffern, Raymond J	132 Main St W	Westfield	46074	132 Main St W	IN	46074
09-05-32-00-00-023 002	Community Bank	144 Main St W	Westfield	46074	830 Logan St P O Box 1990	IN	46060
09-05-32-00-00-022 002	Flynn & Zinkan & Baker Holdings LLC	O S R 32 E	Westfield	46074	5332 Temple Ave N	IN	46220
09-05-32-00-00-022 001	Flynn & Zinkan & Baker Holdings LLC	3550 S R 32 E	Westfield	46074	5332 Temple Ave N	IN	46220
09-06-32-00-00-022 001	Huntington National Bank	3560 S R 32 E	Westfield	46074	7 Easton Oval EA4C37	OH	43219
09-06-32-00-00-025 102	Hutson, James D & James Michael 1/2 Int Each T/c	O S R 32	Westfield	46074	P O Box 898	IN	46074
09-06-32-00-00-025 202	Hutson, James D & James Michael 1/2 Int Each T/c	3440 S R 32 E	Westfield	46074	P O Box 898	IN	46074
09-06-19-00-01-001 104	Land Owners Llc	O Grassy Branch	Westfield	46074	12443 Charing Cross Rd	IN	46033
09-06-19-00-01-001 206	Land Owners Llc	O Nostreet	Westfield	46074	12443 Charing Cross Rd	IN	46033
09-06-19-00-01-001 006	Flynn & Zinkan & Baker Holdings LLC	O S R 32 E	Westfield	46074	5332 Temple Ave N	IN	46220
09-06-32-00-00-025 002	Hutson & Hutson LLC	3502 S R 32	Westfield	46074	P O Box 898	IN	46032
09-06-19-00-00-004 000	CR White Aurora LLC	O Grassy Branch Rd	Westfield	46074	510 Fox Ln	IN	46032
09-06-19-00-00-004 000	Aurora Investments LLC	O 203rd St E	Westfield	46074	12443 Charing Cross Rd	IN	46033
09-06-19-00-00-004 001	Cozzing Investments LLC	O 203rd St E	Westfield	46074	12443 Charing Cross Rd	IN	46033
09-06-19-00-01-001 004	Land O, Henry Joe	O Grassy Branch	Westfield	46074	12443 Charing Cross Rd	OH	45338
09-06-19-00-01-001 105	Land O, Henry Joe	O Grassy Branch	Westfield	46074	5745 Charming Verona Rd	OH	45338
09-09-01-02-04-003 000	CR White Aurora LLC	O 203rd St E	Westfield	46074	12443 Charing Cross Rd	IN	46033
09-09-01-02-04-010 000	Jenkins Management Inc	O Main St	Westfield	46074	15658 Bridgewater Club Blvd	IN	46038
09-09-01-02-04-010 000	Fisher, Thomas D & Lois K	141 Union St	Westfield	46074	19402 Justin Morgan Dr	IN	46074
08-10-06-00-00-013 002	McDonough, Charles F	119 Union St	Westfield	46074	119 Union St	IN	46074
08-10-06-00-00-013 000	Peacock Carey LLC	17365 Carey Rd	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-014 000	Peacock Carey LLC	17485 Carey Rd	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-013 104	Peacock Carey Shops LLC	O Carey Rd	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-013 102	Peacock Carey Shops LLC	O Carey Rd	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-011 001	Peacock Carey LLC	O S R 32 E	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-013 000	Peacock Carey LLC	17455 Carey Rd	Westfield	46074	836 64th St E	IN	46220
09-09-01-02-04-007 000	Weiss, David L & Bedy C	103 Union St	Westfield	46074	832 181st St E	IN	46074
09-09-01-02-04-009 000	McDonough, Charles F	119 Union St	Westfield	46074	119 Union St	IN	46074
08-10-06-00-00-013 104	Peacock Carey Shops LLC	O Carey Rd	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-004 000	Flynn & Zinkan & Baker Holdings LLC	O S R 32 E	Westfield	46074	5332 Temple Ave N	IN	46220
09-09-01-02-04-001 000	LBM Properties LLC	O Main St	Westfield	46074	10586 Greensboro Dr	IN	46074
08-10-06-00-00-004 001	Jenkins Management Inc	O 17 Main St	Westfield	46074	5332 Temple Ave N	IN	46038
08-10-06-00-00-004 001	Flynn & Zinkan & Baker Holdings LLC	O 17 Main St	Westfield	46074	5332 Temple Ave N	IN	46038
08-10-06-00-00-002 000	LBM Properties LLC	137 Main St	Westfield	46074	16568 Greensboro Dr	IN	46220
08-10-06-00-00-002 000	Peacock Carey LLC	O Nostreet	Westfield	46074	836 64th St E	IN	46220
09-09-01-02-04-005 000	H & N Realty LLC	125 Main St	Westfield	46074	1011 Kendall Ct	IN	46074
09-09-01-02-04-006 000	Peacock Carey LLC	3205 S R 32 E	Westfield	46074	836 64th St E	IN	46220
09-09-01-02-04-005 000	Weiss, David L & Bedy C	O Main St	Westfield	46074	832 181st St E	IN	46074
09-09-01-02-04-011 000	Town Of Westfield	O Jersey St	Westfield	46074	130 Penn St	IN	46074
08-10-05-00-00-003 000	Flynn & Zinkan & Baker Holdings LLC	O S R 32 E	Westfield	46074	5332 Temple Ave N	IN	46220
09-09-01-02-09-002 001	Dougherty, William P & Kay L	O Nostreet	Westfield	46074	10311 206th St E	IN	46062
08-10-06-00-00-013 004	Peacock Carey LLC	17404 Carey Rd	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-015 000	Peacock Carey LLC	17404 Carey Rd	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-013 001	Peacock Carey LLC	4343 151st St E	CARMEL	46033	3535 161st St E	IN	46220
08-10-17-00-00-010 000	Throgmorton Henke Development Company LLP	O Nostreet	Westfield	46074	4745 Kessler Blvd	IN	46038
09-09-01-02-09-002 000	Vanniper, Guernsey Jr	3101 S R 32 E	Westfield	46074	914 Kessler Blvd	IN	46220
08-10-06-00-00-010 000	Frazier Real Estate Services LLC	O S R 32 E	Westfield	46074	836 64th St E	IN	46220
08-10-06-00-00-011 101	Peacock Carey NAT LLC	3703 S R 32 E	Westfield	46074	1328 Dublin Rd Ste 300	OH	43215
08-10-05-00-00-004 201	Trendent Foods LTD LLC	3663 S R 32 E	Westfield	46074	O Box 1919	TX	75307
08-10-05-00-00-004 101	J.P. Morgan Chase Bank	3663 S R 32 E	Westfield	46074	532 Temple Ave N	IN	46033
08-10-05-00-00-004 001	ZEB Capital Company LLC	3463 S R 32 E	Westfield	46074	38 E Main St	IN	46033
08-10-05-00-00-004 001	Frazier Real Estate Services LLC	3463 S R 32 E	Westfield	46074	38 E Main St	IN	46033
08-10-16-00-00-014 223	National Bank of Indianapolis	148th St E	CARMEL	46033	107 Pennsylvania St N Ste 700	IN	46204

08-10-05-00-00-004.601	Flynn & Zinkan & Barker Holdings LLC	17501 Gunther Blvd	WESTFIELD	46074	11843 Kemper Springs Dr	OH	45240
08-10-05-00-00-004.000	Flynn & Zinkan & Barker Holdings LLC	0 S R 32 E	WESTFIELD	46074	5332 Temple Ave N	IN	46220
09-09-01-02-08-003.000	Boyer, Patsy L	137 Baldwin Ct	Westfield	46074	137 Baldwin Ct	IN	46074
08-10-06-00-00-013.202	Peacock Carey Shoes LLC	0 Carey Rd	WESTFIELD	46074	836 64th St E	MI	46220
08-10-05-00-00-004.501	Rainbow Rascais Westfield LLC	17457 Gunther Blvd	WESTFIELD	46074	17500 Eleven Mile Rd W	MI	48076-4728
08-10-05-00-00-004.501	Flynn & Zinkan & Barker Holdings LLC	0 S R 32 E	WESTFIELD	46074	5332 Temple Ave N	IN	46220
08-10-06-00-00-013.005	TPR Associates LTD	0 S R 32 E	WESTFIELD	46074	855 Anakais Rd E	IL	60089
08-10-17-00-00-014.000	Throgmartin Henke Development LLP	4211 151st St E	CARMEL	46033	3535 161st St E	IN	46033
09-09-01-02-05-002.000	Vannipster, Guernsey Jr	0 Nostreet	Westfield	46074	6746 Kessler N	IN	46208
08-10-05-00-00-012.001	Peacock Carey Shoes LLC	0 Carey Rd	WESTFIELD	46074	836 64th St E	MI	46220
08-10-06-00-00-014.000	Peacock Carey Shoes LLC	0 Carey Rd	WESTFIELD	46074	836 64th St E	MI	46220
08-10-05-00-00-004.401	Westfield L&L LLC	17549 Gunther Blvd	WESTFIELD	46074	105 Exchange St W	MI	49456
08-10-05-00-00-004.001	Flynn & Zinkan & Barker Holdings LLC	0 Gunther Blvd	WESTFIELD	46074	5332 Temple Ave N	IN	46220
09-09-01-02-08-001.000	Nigh, Mark T & Marcia	319 Union St	Westfield	46074	3517 Tangier Ter	FL	34239
08-10-17-00-00-006.103	Gray Road Property LLC	0 Gray Rd N	NOBLESVILLE	46062	104 Wilmot Rd	IN	60015
08-10-17-00-00-014.001	Throgmartin Henke Development LLP	0 Nostreet	Carmel	46033	3535 161st St E	IN	46033
08-10-05-00-00-001.000	Flynn & Zinkan & Barker Holdings LLC	17577 Carey Rd	WESTFIELD	46074	5332 Temple Ave N	IN	46220
08-10-18-00-00-014.123	Cool Creek Village LLC	2736 146th St E	CARMEL	46033	901 Wabash Ave Ste 300	IN	47807
08-10-05-00-00-008.005	Indiana Members Credit Union	S R 32	Noblesville	46062	5103 Madison Ave	IN	46227
08-10-17-00-00-006.003	Throgmartin Henke Development LLP	0 Gray Rd N	NOBLESVILLE	46074	3535 161st St E	IN	46033
08-10-05-00-00-004.002	Kroger Limited Partnership 1	3553 S R 32 E	WESTFIELD	46074	5960 Castleway W Dr	IN	46250
08-10-17-00-00-015.000	Throgmartin Henke Development LLP	4005 151st St E	Carmel	46033	3535 161st St E	IN	46033
08-10-17-00-00-006.303	KRK Bridgewater LLC	14807 Gray Rd	NOBLESVILLE	46062	30 Meridian St S Ste 1100	IN	46204
08-10-05-00-00-004.004	FZB Capital Company LLC	17417 Carey Rd	WESTFIELD	46074	5332 Temple Ave N	IN	46220
08-10-17-00-00-006.203	KRK Bridgewater LLC	0 Gray Rd N	NOBLESVILLE	46062	30 Meridian St S Ste 1100	IN	46204
08-10-18-00-00-014.303	Cool Creek Village LLC	2700 146th St E	CARMEL	46033	901 Wabash Ave Ste 300	IN	47807
08-10-06-00-00-008.000	Clark, Eleanor	0 S R 32	WESTFIELD	46074	1186 Evans Ave	IN	46060
08-10-17-00-00-025.000	Throgmartin Henke Development LLP	0 146th St E	Carmel	46033	3535 161st St E	IN	46033
08-10-17-00-00-009.001	Throgmartin Henke Development LLP	4211 151st St E	Carmel	46033	3535 161st St E	IN	46033
08-10-01-00-00-008.000	Throgmartin Henke Development LLP	441 146th St E	CARMEL	46033	3535 161st St E	IN	46033
08-09-01-00-00-008.000	Uly Inman, W Gerald	441 Union St	Westfield	46074	17830 Carey Rd	IN	46074
08-10-17-00-00-023.001	Throgmartin Henke Development LLP	0 Gray Rd N	Noblesville	46033	3535 161st St E	IN	46033
08-10-17-00-00-023.000	Throgmartin Henke Development LLP	3304 146th St E	Carmel	46033	3535 161st St E	IN	46033
08-10-17-00-00-016.000	Throgmartin Henke Development LLP	15004 Setters RD	Carmel	46033	3535 161st St E	IN	46033
08-10-17-00-00-006.000	Throgmartin Henke Development LLP	0 151st St E	NOBLESVILLE	46033	3535 161st St E	IN	46033
08-10-17-00-00-026.000	Throgmartin Henke Development LLP	0 151st St E	Carmel	46033	3535 161st St E	IN	46033
08-10-17-00-00-024.000	Throgmartin Henke Development LLP	14835 Carey RD	Carmel	46033	3535 161st St E	IN	46033
09-09-01-00-00-013.000	Habig Brothers, Lynn Habig, Steven J Habig & Frank J Habig LLC	0 US 31	Westfield	46074	8002 Meridian St N	IN	46260
09-09-01-00-00-009.000	Mag Seven LLC	17335 U S 31	Westfield	46074	PO Box 297	IN	46074
09-09-01-00-00-009.000	Hapak Family LLC	0 US 31	Westfield	46074	502 Round Hill Rd	IN	46260
09-06-18-00-00-014.001	Davis, Kris S	3007 S R 38 E	WESTFIELD	46074	3007 S R 38 E	IN	46074
08-06-19-00-00-016.000	Summer, Thomas 1/2 int & Hilda B Summer 1/2 int	0 202nd St E	WESTFIELD	46074	P O Box 2020	IN	46061
08-06-19-00-00-017.000	Summer, Thomas 1/2 int & Hilda B Summer 1/2 int	0 US 31	Westfield	46074	P O Box 2020	IN	46061

ESEDA TIF Amendment 3 Aurora

Legend

-  ESEDA - Amend 3 All
-  Parcels
-  ESEDA TIF ROW

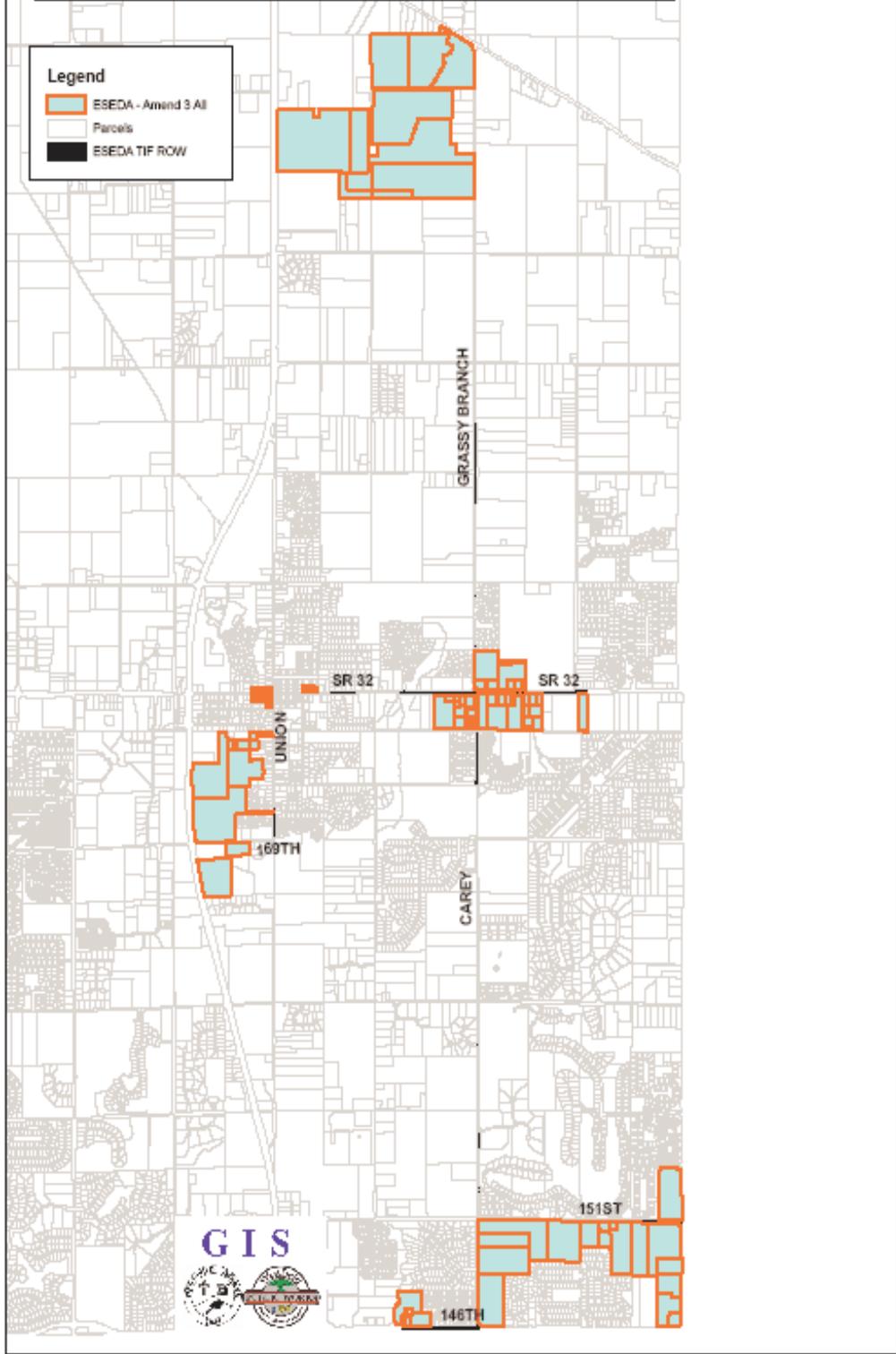


EXHIBIT A-2

**DESCRIPTION OF AURORA SUB-AREA AND
PROJECT SITE**

09-06-19-00-00-004.000	Aurora Investments, LLC
09-06-19-00-01-001.105	CR White Aurora, LLC
09-06-19-00-00-004.001	Gooding Investments, LLC
09-06-19-00-01-001.005	Henry Joe Walker
09-06-19-00-01-001.004	Land Owners, LLC
09-06-19-00-01-001.104	Land Owners, LLC
09-06-19-00-01-001.206	Land Owners, LLC
09-06-19-00-01-001.006	Land Owners, LLC
08-06-18-00-00-014.001	Kris <u>S.</u> Davis
08-06-19-00-01-017.000	Thomas and Hilda <u>B.</u> Sumner
08-06-19-00-00-016.000	Thomas and Hilda <u>B.</u> Sumner

Parcel numbers are of record on _____, 2008.

Land Owners, LLC ~~and~~, Henry Joe Walker and CR White Aurora, LLC Tracts

Instruments 200000017014 and 200000017016
(Approximately 154.55 acres)

Part of the Northeast Quarter, part of the Southwest Quarter and part of the Southeast Quarter of Section 19, Township 19 North, Range 4 East, Second Principal Meridian, Washington Township, Hamilton County, Indiana, described as follows:

Commencing at the Northeast corner of the Southeast Quarter of Section 19, Township 19 North, Range 4 East, Second Principal Meridian, Washington Township, Hamilton County, Indiana; thence South 00 degrees 00 minutes 19 seconds East (Indiana State Plane Coordinate System-East Zone NAD 83) a distance of 237.40 feet on the East line of said Southeast Quarter to the Southeast corner of the real estate described in Deed Book 310, page 449 in the Office of the Recorder, Hamilton County, Indiana, said corner being the POINT OF BEGINNING; thence continuing South 00 degrees 00 minutes 19 seconds East 1101.42 feet on the East line of said Southeast Quarter to the Southeast corner of the North Half of said Southeast Quarter; thence North 89 degrees 50 minutes 20 seconds West 2671.16 feet on the South line of the North Half of said Southeast Quarter to the Southwest corner of the North Half of said Southeast Quarter; thence North 89 degrees 54 minutes 35 seconds West 825.00 feet on the South line of the North Half of the Southwest Quarter of said Section 19 to the Southwest corner of Tract "C" as recorded in Deed Book 345, page 360 in the Office of the Recorder, Hamilton County, Indiana; the following twelve (12 courses are on the perimeter of the real estate described in said Deed Book 345, Page 360; 1) thence North 00 degrees 00 minutes 29 seconds East 635.25 feet; 2) thence South 89 degrees 54 minutes 35 seconds East 734.25 feet; 3) thence North 00 degrees 00

minutes 29 seconds East 417.56 feet; 4) thence South 89 degrees 54 minutes 43 seconds East 238.00 feet; 5) thence North 00 degrees (10 minutes 29 seconds East 284.87 feet; 6) thence North 89 degrees 51 minutes 38 seconds West 147.25 feet; 7) thence North 00 degrees 00 minutes 08 seconds West 1334.75 feet; 8) thence South 89 degrees 53 minutes 10 seconds East 2079.90 feet; 9) thence South 01 degrees 28 minutes seconds West 1336.02 feet; 10) thence South 89 degrees 51 minutes 38 seconds East 129.97 feet; 11) thence South 00 degrees 06 minutes 14 seconds East 233.82 feet; 12) thence South 89 degrees 26 minutes 46 seconds East 495.09 feet to the POINT OF BEGINNING, containing 154.55 acres, more of less.

Thomas Sumner and Hilda B. Sumner Tract

Deed Book 329, P919
(Approximately 81.5 acres)

An undivided one-half interest in and to the following described real estate, located in Hamilton County, Indiana:

Forty-seven and three-fourths (47-3/4) acres off the south side of the northwest quarter of section nineteen (19), township nineteen (19) north, range four (4) east. Also, the north half of the southwest quarter of said section 19, containing 74.3 acres, more or less, except beginning at the southwest corner of said north half of said southwest quarter and run north 659 feet, thence east 148.75 rods, thence south 38 1/2 rods, thence west 148.62 rods to the place of beginning, containing 36.74 acres, more or less.

Also, except a strip of land five and one-half (5-1/2) rods wide off the entire east end of the above two tracts, remaining after the aforesaid exception, containing 3.2 acres, more or less.

Also, except a cemetery lot described as follows: Beginning 78 rods east of the northwest corner of the first described tract and run south 9-3/4 rods; east 10 rods; north 9-3/4 rods; west 10 rods to the place of beginning, containing 0.61 acres, more or less. Containing after said exceptions eighty-one and one-half (81-1/2) acres, more or less.

KellyKris S. Davis MacDonald Tract

Instrument No. 200300010181
(Approximately 0.79 acres)

A part of the East half of the Southeast Quarter of section 18, Township 19 North, Range 4 East, Described as follows:

Begin at a point on south line of said Southeast Quarter 409.0 feet East of the Southwest corner of the East half of the Southeast Quarter of section 18, Township 19 North, range 4 East half, thence north parallel with west line of said east 242.0 feet to a point in r/w of state road #38, thence southeasterly in r/w of said state road where it intersects the south of said quarter section 858.0 feet east of the southwest corner of said east half, thence west on said south line 449.0 feet to iron stake or place of beginning, in Hamilton county, Indiana; except: a part of the east half of

the southeast quarter of section 18, township 19 north, range 4 east in Hamilton county, state of Indiana, described as follows: begin at a point on the south line of said southeast quarter 409.00 feet east of the southwest corner of the east half of the southeast quarter of section 18, township 19, north, range 4 east in said county and state, thence north parallel with the west line of said east half 242.6 feet to a point in the right of way of state road number 38, thence southeasterly in said right of way 66.0 feet to a point, thence divert to the right or southwesterly 223.0 feet to the place of beginning.

Aurora Investments, LLC, Gooding Investments, LLC and Gooding Investments CR White Aurora, LLC Tracts

Instruments 199909955120 and 200300110042
(Approximately 80.70 acres)

Part of the Northeast Quarter of Section 19, Township 19 North, Range 4 East, 2nd P.M., Washington Township, Hamilton County, Indiana, described as follows:

BEGINNING at the Northwest. corner of the Northeast Quarter of Section 19, Township 19 North, Range 4 East, 2nd P.M., Washington Township, Hamilton County, Indiana; thence South 89 degrees 54 minutes 41 seconds East (Indiana State Plane Coordinates-East Zone NAD 83) a distance of 2248.54 feet on the North line of said Northeast Quarter to the Centerline of State Highway 38; thence South 60 degrees 52 minutes 07 seconds East 481.49 feet to the East line of said Northeast Quarter, thence South 00 degrees 02 minutes 34 seconds East 1102.19 feet on the East line of said Northeast Quarter to the Southeast corner of the North Half of said Northeast Quarter; thence North 89 degrees 53 minutes 20 seconds West 2669.90 feet on the south line of the North Half of said Northeast Quarter to the Southwest corner of the North Half of said Northeast Quarter, thence North 00 degrees 00 minutes 08 seconds West 1334.75 feet on the West line of said Northeast Quarter to the BEGINNING POINT, containing 80.70 acres, more or less.

[Add Map(s)]

EXHIBIT A-3

**DESCRIPTION OF EXPANSION SUB-AREA AND
EXPANSION PROJECT SITE**

08-06-18-00-00-014.001
08-06-19-00-01-017.000
08-06-19-00-00-016.000

Kris Davis
Thomas and Hilda Sumner
Thomas and Hilda Sumner

Parcel numbers are of record on _____, 2008.

[Add Map(s)]

EXHIBIT B

DESCRIPTION OF PROJECT

Acquisition, construction, installation and equipping of a planned unit development on the Project Site, consisting of multi-family housing units, attached single-family dwellings, office uses, retail uses, light industrial uses, as well as a path network and public spaces, to be undertaken by the Developer.

The initial Project Site comprises approximately [315] acres. Once the Project Expansion Site is annexed into the City and incorporated into the Aurora Sub-Area, the Project Site will comprise approximately [397.5] acres.

Capital investment in the Project is projected to total \$300,000,000.

The Developer intends to construct the Project in three phases as contemplated by **Exhibit D** and the depiction attached thereto.

EXHIBIT C

PUBLIC IMPROVEMENTS PROCEDURE

[Tentative, subject to change pending final negotiations between Developer, represented by Chris R. White; Westfield, represented by Bruce Hauk; and Redevelopment Commission, represented by the Executive Secretary.]

This **Exhibit C** outlines the planning, design, acquisition and construction of the Public ROW Improvements. Developer, Westfield and Redevelopment Commission have appointed authorized representatives to act on for them, as follows:

Developer	Chris R. White
Westfield	Bruce Hauk
Redevelopment Commission	Bruce Hauk

1. Developer and Westfield will select a consulting engineer to prepare plans and specifications for the Public ROW Improvements and any improvements Developer desires to plan, design, acquire and construct in conjunction with the Public ROW Improvements (the "**Developer Improvements**").
2. Developer will engage the consulting engineer to prepare the plans and specification and bid packages for the Public ROW Improvements; contract documents will identify the Redevelopment Commission as the contract administrator. Developer, Westfield and Redevelopment Commission anticipate that the Public ROW Improvements will be bid jointly with the Developer Improvements.
3. The plans and specifications and bid packages for the Public ROW Improvements as contemplated by paragraph 2 of this **Exhibit C** will be submitted to Westfield and Redevelopment Commission for their review and approval by Redevelopment Commission 15 days after submittal to assure conformance with Westfield's construction standards.
4. Advertisement for bid for the Public ROW Improvements will be made in Redevelopment Commission's name.
5. Developer and Redevelopment Commission will review bids and make recommendations of lowest and best bid based on the lowest qualified cost of the Public ROW Improvements, taking into account the integrated nature of the Public ROW Improvements and the Developer Improvements with Developer's adjacent Project and considerations of quality as well as price.
6. The bids and recommendations contemplated by paragraph 5 of this **Exhibit C** will be submitted to Redevelopment Commission and Westfield for their review,

followed by the Redevelopment Commission's award of bids within 30 days following submittal.

7. Redevelopment Commission, at the request of the Developer will deliver notice to proceed to the contractor(s) within 30 days of award of bids.
8. The contractor(s) for the Public ROW Improvements will commence construction of the Public ROW Improvements within ten days of receipt of a notice to proceed as directed by Developer.
9. Payment requests will be submitted to Redevelopment Commission for review and approval within ten days following submittal by the contractor(s).
10. Payment requests will be approved by Redevelopment Commission within thirty days following submittal.

EXHIBIT D

DESCRIPTION OF PUBLIC ROW IMPROVEMENTS

The Public ROW Improvements are generally described in this **Exhibit D**. The Public ROW Improvements are to be completed in phases in support of the Developer's initial development plans for the Project.

I. General

A. Road and Street Improvements

All road and street improvements in, serving or benefiting the Aurora Allocation Area, together with all off-site utility improvements excepting any such improvements located within the State of Indiana right-of-way:

1. **202nd/203rd Street** (hereinafter referred to as “**Aurora Parkway**”).

a. Plan, design, engineer, acquire and construct Aurora Parkway *from* State Road 38 *to* the intersection with the new frontage road (East or Union Street) (hereinafter referred to as the “**New Frontage Road**”), as a boulevard with two lanes in each direction for the first and second phases of the road and street and related improvements and a boulevard with one 14-foot lane in each direction for the third phase of the road and street and related improvements; and

b. Plan, design, engineer, resurface and widen Aurora Parkway west *from* the intersection with the New Frontage Road *to* U.S. 31 and any other improvements required by the County, Westfield or the Redevelopment Commission in connection with the foregoing, which required improvements may be made to Aurora Parkway or the New Frontage Road.

2. **Grassy Branch Road.** Plan, design, engineer, acquire and construct the realignment of Grassy Branch Road into Aurora Parkway as a boulevard with two lanes in each direction.

3. **New Frontage Road.** Plan, design, engineer, acquire and construct the New Frontage Road *from* 202nd Street south to the south property line of the proposed Business Parke as a boulevard section with one 14-foot lane in each direction.

B. Additional Requirements; Additional Improvements

1. **Additional Requirements.** Improvements described above under “Road and Street Improvements” include all:

a. Planning, designing, engineering and surveying services and construction staking, permitting (including fees), testing, inspection, accounting and legal fees and right-of-way acquisition costs (including surveying and legal fees) for real property situated outside the Aurora Allocation Area.

b. Asphalt, stone, curbing, SSD, lime stabilization and associated earthwork, and multi-use paths with-in the right-of-way.

c. Traffic control devices, including controls, markings, signage signalization.

d. Drainage improvements, including storm sewers, associated earthwork and detention ponds.

e. Gravity sanitary sewers.

f. Water main improvements (pipe size to be from eight to twelve inches in diameter, as appropriate).

g. Erosion control, landscaping, including seeding, and water quality improvements.

h. Utility relocation and location, as appropriate.

2. **Additional Improvements.** These improvements include the planning, designing, engineering, acquisition and construction of:

a. Three small detention ponds outlined on the proposed project site plan for the Aurora Project.

b. All off-site legal drain improvements to the east of the Aurora Project Site for drainage.

c. All gravity sanitary sewers along the streets listed above, on-site lift stations, on-site and off-site force mains and easements.

d. All water main connections (to existing water tower).

e. All utility relocation outside of existing of right-of-way and conduits for utility services, including natural gas, electricity and telecommunications, including telephone, data transmission and broadband/internet services.

II. Phasing

A. Phase One

Improvements to Grassy Branch Road and Aurora Parkway *from* State Road 38 *to* the east edge of the Commerce Park property line on the south side of Aurora Parkway, together with all off-site sanitary sewer, storm sewer, water and other utilities and on-site improvements associated with these road and street improvements.

Estimated Cost of Phase One ~~{Insert Detail of Costs}~~ ————— \$4,300,000
\$4,200,000

B. ~~B.~~ Phase Two

Improvements to Aurora Parkway *from* the termination of the Phase One work *to* the west edge of the Public Park property line on the north side of Aurora Parkway, together with all off-site sanitary sewer, storm sewer, water and other utilities and on-site improvements associated with these road and street improvements.

Estimated Cost of Phase Two ~~{Insert Detail of Costs}~~
\$600,000

C. ~~C.~~ Phase Three

Improvements to (1) Aurora Parkway *from* the end of Phase Two *to* the west edge of the New Frontage Road, (2) the existing 202nd Street from the New Frontage Road to U.S. 31[, **including improvements to U.S. 31 for turn lanes**], and (3) New Frontage Road *from* the existing 202nd Street *to* the south edge of the Project Site on the west side of the New Frontage Road, together with all off-site sanitary sewer, storm sewer, water and other utilities and on-site improvements associated with these road and street improvements.

Estimated Cost of Phase Three ~~{Insert Detail of Costs}~~ ————— \$1,100,000
\$1,200,000

[See Detailed Cost Analysis on Next Page]

PROJECT: AURORA AT WESTFIELD

COST ANALYSIS LAST UPDATED 2-27-08

DESCRIPTION	TIF BUDGET	TIF PHASE 1	TIF PAHSE 2	TIF PHASE 3	TOTAL
PAVEMENT	1,200,000.00	660,000.00	132,000.00	350,000.00	1,142,000.00
PATHS- SIDEWALKS	175,000.00	106,000.00	36,000.00	28,500.00	170,500.00
CURBS	220,000.00	136,000.00	20,000.00	57,000.00	213,000.00
EARTHWORK	750,000.00	490,000.00	140,000.00	90,000.00	720,000.00
EROSION CONTROL	100,000.00	60,000.00	15,000.00	25,000.00	100,000.00
LIME STABILIZATION	135,000.00	75,000.00	17,500.00	42,000.00	134,500.00
LANDSCAPING	50,000.00	35,000.00	5,000.00	10,000.00	50,000.00
STORM SEWER AND SSD	725,000.00	432,000.00	68,000.00	215,000.00	715,000.00
SANITARY SEWER	1,325,000.00	1,200,000.00	33,000.00	88,000.00	1,321,000.00
WATER MAIN	750,000.00	543,000.00	37,500.00	153,000.00	733,500.00
UTILITY AND INTERNET	100,000.00	80,000.00	5,000.00	15,000.00	100,000.00
SIGNAGE AND TRAFFIC	70,000.00	50,000.00	5,000.00	15,000.00	70,000.00
ENTRY WALLS AND STRU					
ENG-SURVEY-INSPECTION	200,000.00	125,000.00	25,000.00	50,000.00	200,000.00
R/W AND EASEMENTS	100,000.00	100,000.00	-	-	100,000.00
LEGAL AND ADMIN	100,000.00	80,000.00	10,000.00	10,000.00	100,000.00
TOTAL :	6,000,000.00	4,172,000.00	549,000.00	1,148,500.00	5,869,500.00
BUDGET:	6,000,000.00	4,200,000.00	600,000.00	1,200,000.00	6,000,000.00

EXHIBIT E

REIMBURSABLE PROJECT COSTS

All costs and expenses for and in connection with the Public ROW Improvements described on **Exhibit D** hereto, together with all legal and administrative expenses.

EXHIBIT F

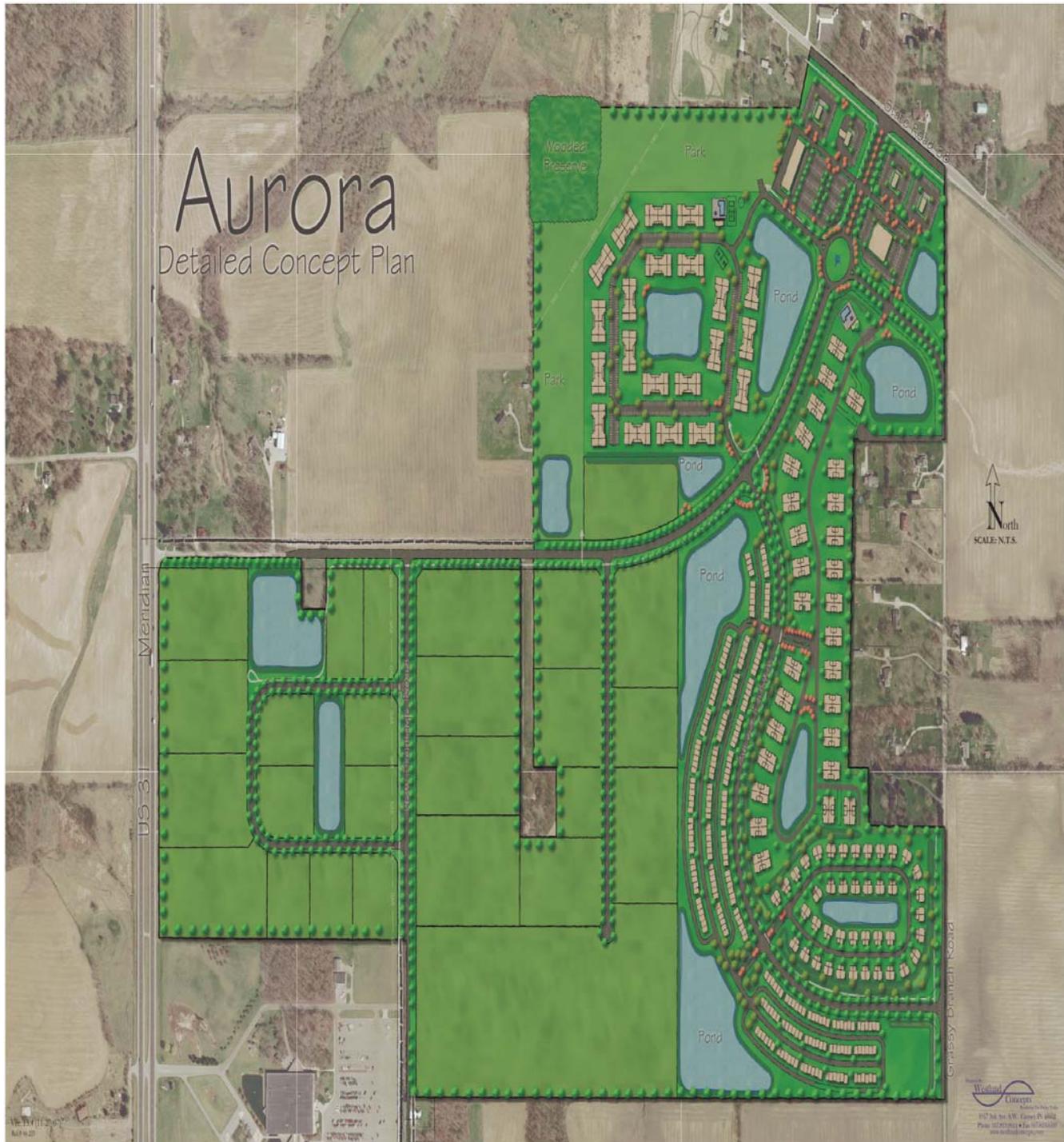
PROJECT SITE PLAN

(Preliminary, Subject to Change)

[See Attached]

Aurora

Detailed Concept Plan



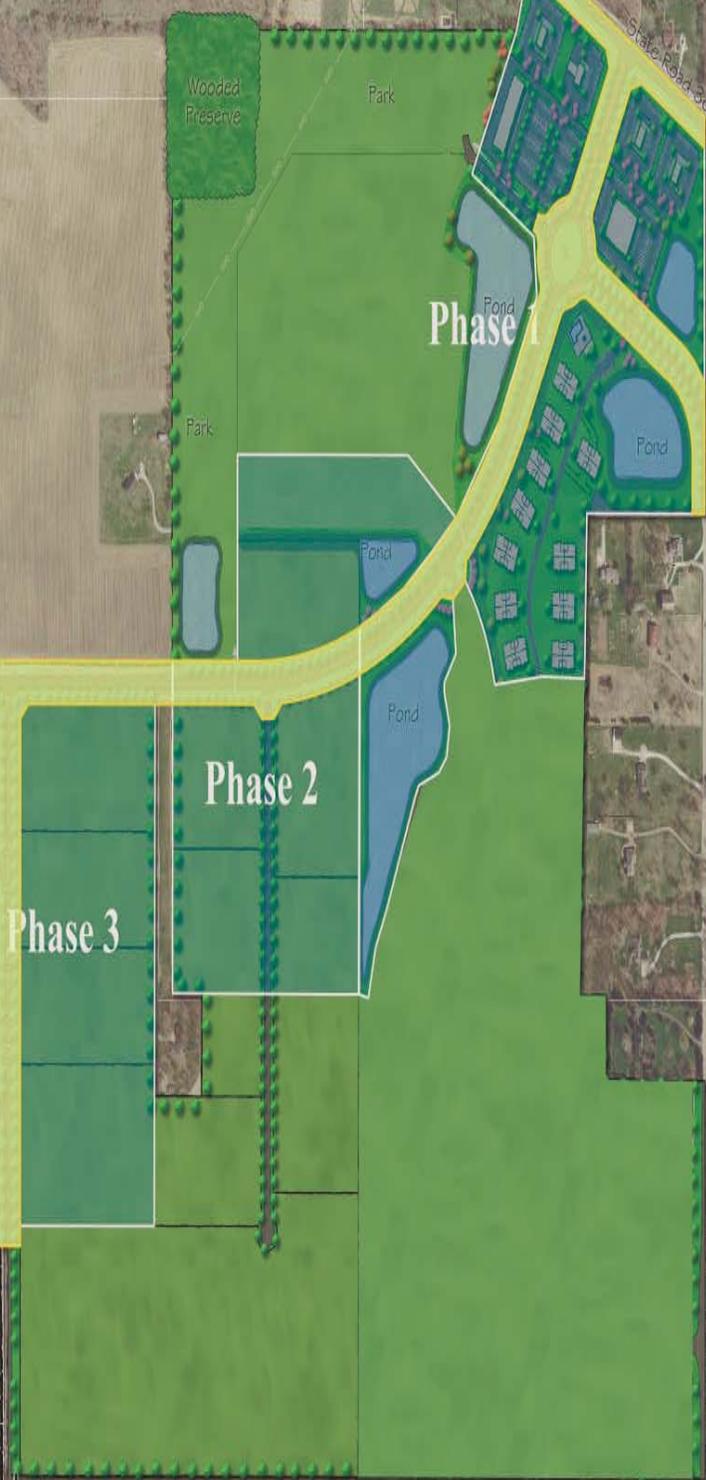
Aurora

TIF Exhibit

Tif Improvement Area 

US 31
Mendham

State Road 38



Grassy Branch Road



EXHIBIT G

**TERM SHEET for
DEVELOPER BONDS**

Westfield Redevelopment District
[Tax-Exempt]
Tax Increment Revenue Bonds (Aurora Project)

Term Sheet

Issuer	City of Westfield Redevelopment District
Developer	CR White Aurora, LLC
Bond Purchaser	To be determined (" TBD ") [Developer or Lender]
Security	<ol style="list-style-type: none">1. Bond resolution2. Pledge of tax increment by Redevelopment Commission (Sole source of payment for bonds)3. Bond purchase agreement4. Pledge resolution5. Capitalized interest for not less than three years
Principal Amount	Calculated pursuant to Section 4.05 of Economic Development Agreement
Date	Date of issuance (TBD)
Final Maturity	August 1, [2033]
Principal Payment Dates	August 1, commencing August 1, [2010]
Interest Payment Dates	February 1 and August 1, commencing TBD
Interest	Tax-exempt <u>and bank qualified</u>
Interest Rate(s)	[Fixed; not to exceed ____%]; Delayed Interest Rate is the Fixed Interest Rate plus ____ percent
Optional Redemption/ Prepayment	At Issuer's option, on seven days' prior written notice, as directed by the Developer, from moneys provided by the Developer

Mandatory Redemption/ Prepayment	Annually, from "excess" Tax Increment
Use of Proceeds	See "Principal Amount" above
Authorized Denomination(s); Draw Bond	\$100,000 and \$1 increments thereafter; but Developer Bonds will be issued initially as a single "draw" bond
Additional Bonds (Parity)	Only with consent of the Developer <i>and</i> the Bond Purchaser for bonds secured by Developer Share
Additional Obligations (Parity)	Only with consent of the Developer <i>and</i> the Bond Purchaser for obligations secured by Developer Share
Investment Letter	To be executed by the Bond Purchaser
Trustee and Paying Agent	TBD
City Attorney	Brian J. Zaiger, who will provide customary legal opinions
Bond Counsel to City of Westfield	Krieg DeVault LLP, which will provide customary legal opinions
Financial Adviser to City of Westfield	O.W. Krohn & Associates, which will provide the TIF Consultant Report
Special Counsel to Developer	Baker & Daniels LLP
Adviser to Developer	Northstar Land Entitlement and Development Services
Special Counsel to Bond Purchaser	If applicable, TBD

EXHIBIT H

**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION OF
PUBLIC ROW IMPROVEMENTS**

**CERTIFICATE OF SUBSTANTIAL COMPLETION OF
PUBLIC ROW IMPROVEMENTS**

The undersigned, Westfield Redevelopment Commission (the "**Commission**") pursuant to that certain Development Agreement dated April __, 2008, between the Commission, CR White Aurora, LLC (the "**Developer**"), and the City of Westfield, Indiana ("**Westfield**") (the "**Agreement**"), hereby certifies to the Developer as follows (Capitalized terms, not otherwise defined herein, shall have the meanings as set forth in the Agreement):

1. That as of _____, _____, the construction, renovation, repairing, equipping and constructing of a functional portion (the "Improvement") of the Public ROW Improvements, has been substantially completed in accordance with the Agreement:

[Insert description of portion of the Improvement which has been completed]

2. The Improvement was completed in a workmanlike manner and in accordance with the construction plans approved by Westfield and the Developer.

3. Lien waivers for applicable portions of the Public ROW Improvements have been obtained.

4. This Certificate of Substantial Completion is being issued in accordance with the Agreement to evidence the satisfaction of all obligations and covenants with respect to the Improvement.

5. Westfield's and the Developer's acceptance (below) or failure to object in writing to this Certificate within 30 days of the date of delivery of this Certificate to Westfield (which written objection, if any, must be delivered to the Commission prior to the end of such 30-day period).

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day
of _____, _____.

WESTFIELD REDEVELOPMENT COMMISSION

By: _____

Its: _____

ACCEPTED:

CITY OF WESTFIELD, INDIANA

By: _____

ATTEST:

Clerk-Treasurer

CR WHITE AURORA, LLC
an Indiana limited liability company

By: _____
Chris R. White, Managing Member

EXHIBIT I
FORM OF
CERTIFICATE OF REIMBURSABLE PROJECT COSTS

Certificate of Reimbursable Project Costs

TO: City of Westfield, Indiana
130 Penn Street
Westfield, Indiana 46074

Attention: _____

Re: Development Agreement dated April __, 2008 (the "**Agreement**"), between the Westfield Redevelopment Commission (the "**Commission**"), City of Westfield, Indiana ("**Westfield**") and CR WHITE AURORA, LLC (the "**Developer**")

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement. In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto is (a) eligible for reimbursement under the RDC Act, and (b) a Reimbursable Project Cost under the Agreement.
2. Each item listed on **Schedule 1** hereto was incurred in connection with the construction of the Project and have been have been paid by the Developer.
3. Each item listed on **Schedule 1** hereto has not previously been paid or reimbursed from money derived from the Capital Fund established pursuant to the Agreement and the Bond Resolution, and no part thereof has been included in any other certificate previously filed with Westfield.
4. There has not been filed with or served upon the Commission any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the portion of the work for which this certificate relates have been issued and are in full force and effect.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Project Site Plan and the Agreement.

Dated this ____ day of _____, ____.

WESTFIELD REDEVELOPMENT COMMISSION

By: _____

Its: _____

ATTEST:

Approved for Payment this ____ day of _____, ____:

CITY OF WESTFIELD, INDIANA

By: _____
Clerk-Treasurer

Schedule 1

Document comparison done by DeltaView on Wednesday, June 04, 2008 8:37:33 AM

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