

**RESOLUTION NUMBER 08-27**

**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 EAGLETOWN CROSSING, LLC,  
FOR THE EAGLETOWN 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 Eagletown Economic Development Area (the “Area”) and has approved an economic development plan (the “Plan”) providing specific recommendations for economic development of the Area, including road, infrastructure and drainage improvements and related improvements and equipment serving the Area as further described in the Plan (the “Project”); and

**WHEREAS**, in order to provide for the orderly development of the Project, the Commission and the City have negotiated a development agreement (the “Development Agreement”) with Eagletown Crossing, 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 23<sup>rd</sup> 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

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Bob Horkay

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Bob Horkay

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Ken Kingshill

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Ken Kingshill

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Ken Kingshill

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Bob Smith

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Thomas Smith

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Thomas Smith

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Rob Stokes

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Rob Stokes

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Rob Stokes

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Melody Sweat

\_\_\_\_\_  
Melody Sweat

\_\_\_\_\_  
Melody Sweat

ATTEST:

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Clerk-Treasurer, Cindy Gossard

This resolution prepared by:

Brian J. Zaiger, Attorney at Law  
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317-238-6266

John R. Kirkwood, Attorney at Law  
KRIEG DEVAULT LLP  
12800 North Meridian St., Suite 300  
Carmel, IN 46032  
317-238-6238

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I hereby certify that RESOLUTION 08-27 was delivered to the Mayor of Westfield on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, at \_\_\_\_\_ m.

\_\_\_\_\_  
Cindy Gossard, Clerk-Treasurer

I hereby APPROVE Resolution 08-27  
this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
J. Andrew Cook, Mayor

I hereby VETO Resolution 08-27  
this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
J. Andrew Cook, Mayor

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

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DEVELOPMENT AGREEMENT

among

CITY OF WESTFIELD, INDIANA

and

WESTFIELD REDEVELOPMENT COMMISSION

and

EAGLETOWN CROSSING, LLC

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Regarding

EAGLETOWN PROJECT

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June \_\_, 2008

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## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the “**Agreement**”) made this \_\_\_\_ day of June, 2008, by and between the City of Westfield, Indiana, a municipal corporation (“**Westfield**”), the 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 Eagletown Crossing, 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 and a Confirmatory 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 (Eagletown 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-1** 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.

**“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.

**“Authorized Developer Representative”** means Ralph L. Wilfong, II, 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 (Eagletown 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 to be 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. 14-2008 adopted by the Redevelopment Commission on June 12, 2008, confirming all prior actions of the Redevelopment Commission in connection with the creation of the Economic Development Area and the Allocation Area.

**“County”** means Hamilton County in the State of Indiana.

**“Credit” or “Credits”** means a credit of a Road Impact Fee imposed by Westfield within the Eagletown Project Site.

**“Declaratory Resolution”** means Resolution No. 10-2008 adopted by the Redevelopment Commission on May 14, 2008, as amended by Resolution No. 15-2008 adopted by the Redevelopment Commission on June 12, 2008, 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 Eagletown Crossing, 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 Public Improvements”** shall mean those Public ROW Improvements described in A through H of **Exhibit D** hereto.

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

**“Developer Account”** means the account created in the Allocation Fund 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.

**“Eagletown Project”** means the acquisition, construction, installation and equipping of planned unit developments 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 comprising the Eagletown PUD, the Towne Road Crossing PUD, Maple Knoll PUD and the Oak Ridge PUD as described in **Exhibit A-2 and Exhibit B** hereto.

**“Eagletown Project Site”** means the real property described on **Exhibit A-2** hereto, which is the site of the Eagletown Project within the Allocation Area.

**“Eagletown 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.

**“Economic Development Area”** means the Eagletown Economic Development Area that was designated by the Declaratory Resolution as an “economic development area” pursuant to Indiana Code 36-7-14-41 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.

**“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.

**“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.

**“Phase I”** means Phase I of the Public ROW Improvements as described in **Exhibit D**.

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

**“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.

**“Road Impact Fee Area”** means the road and street infrastructure impact zone described in Westfield Ordinance 06-15, as amended from time to time, pursuant to Indiana Code 36-7-4-1300 through -1399.

**“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 Developer Public Improvements.

**“Taxing District Share”** means an amount equal to 25% of the Tax Increment generated in the Allocation 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-1**, 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 Eagletown Crossing, 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 with respect to those parcels described in **Exhibit A-1**, May 12, 2038, being the date of expiration of that portion of the Allocation Area and with respect to the parcels described in **Exhibit A-2** hereto (if and when they become a part of the Economic Development Area), the date which is 30 years following the date the Declaratory Resolution is amended to include such parcels (or 25 years following the date the Declaratory Resolution is so amended, if such amendment occurs after June 30, 2008).

**“TIF Project”** means:

(i) the Public ROW Improvements and such other improvements directly serving or benefiting the Eagletown Project as agreed to from time to time by the Developer, the Redevelopment Commission and Westfield.

(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 (i) with respect to the Eagletown PUB, Ordinance No. 07-07 adopted by the Westfield Council on August 13, 2007, (ii) with respect to the Towne Road Crossing PUD, Ordinance No. 07-26 adopted by the Westfield Council on December 10, 2007, (iii) with respect to the Maple Knoll PUD, Ordinance No. 04-02 adopted by the Westfield Council on February 9, 2004, and (iv) with respect to the Oak Ridge PUD, Ordinance No. 07-34 adopted by the Westfield Council on December 10, 2007, 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 EAGLETOWN PROJECT AND DEVELOPER PUBLIC IMPROVEMENTS**

#### **Section 3.01. Acquisition of Eagletown Project Site; TIF Project; Funding.**

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

(b) **TIF Project Funding.** The Developer intends to provide funding for Phase I of the TIF Project by purchasing the Developer Bonds or causing a related party or to purchase the Developer Bonds. Phases II through IV as shown on **Exhibit D** will be funded as determined by the Redevelopment Commission and Westfield, as they are not directly a part of the Eagletown Project.

(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 Phase I of 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 Phase I of 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 LLP 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 Phase I of the TIF Project.** Subject to this Agreement and Applicable Laws, Developer, Westfield and the Redevelopment Commission will plan, design, acquire and construct the Developer Public Improvements consisting of Phase I of the TIF Project as described in **Exhibit D** hereto, with an estimated completion date of December 31, 2012 at an estimated cost of \$15,800,000. The estimated completion date is subject to the Force Majeure provisions hereof. Westfield and the Redevelopment Commission acknowledge and agree that the Developer Public Improvements must be completed by the Redevelopment Commission to accommodate and permit the Developer's acquisition and construction of the Eagletown Project. 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 Eagletown Project is delayed by Westfield's or the Redevelopment Commission's inability or failure to complete the TIF Improvements as contemplated by this Agreement.

(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 Phase I of the TIF Project in accordance with the Public Improvements Procedure attached hereto as **Exhibit C** hereto.

(f) **Acquisition of Right-of-Way Within the Eagletown Project Site.** Subject to this Agreement, Applicable Laws and receipt of required Governmental Approvals, the Developer intends to acquire that portion of the Eagletown Project Site necessary to complete the construction of A, B, C, D, H, U and V of the Public ROW Improvements 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 to acquire and provide such easements or right of way needed to construct the Public ROW Improvements

described in A, B, C, D, H, U and V, of **Exhibit D** hereto, to the extent that Westfield or the Redevelopment Commission either owns or can acquire without unreasonable expense or delay the property necessary to grant or convey such easement or right of way to the Developer. Any such expense incurred by Westfield or the Redevelopment Commission shall be a Reimbursable Project Cost; provided, however, that neither Westfield nor the Redevelopment Commission shall be under any obligation to acquire and provide such easements or right of way unless there shall be sufficient Bond proceeds available to fund such acquisition.

(g) **Acquisition of Eagletown 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 Eagletown Project. Any material revision to the development plan resulting in a material change of the Eagletown Project shall be submitted to the Redevelopment Commission for approval of such change.

(h) **Dedication of Right of Way.** As a condition to the acquisition and construction of any of the Developer Public Improvements, the Developer shall convey by warranty deed or grant easements in, those portions of the Eagletown Project Site, necessary for such acquisition and construction of the Developer Public Improvements. The Developer shall make such conveyances and grants as and when required to complete the acquisition and construction of the Developer Public 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.** 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 Developer Public Improvements. The Developer agrees to use commercially reasonable efforts to obtain all such necessary permits and approvals pertaining to Phase I of the TIF Project.

(c) **Other Permits and Approvals.** The parties will cooperate with each other to obtain all other permits necessary for the construction of Phase I of the TIF Project, including permits and approvals from the Hamilton County Highway Department, the Hamilton County Surveyor's Office, the Indiana Department of Natural Resources and the Corp of Army Engineers.

### **Section 3.03. Eagletown Project Site Plan.**

(a) **Approval.** The Eagletown 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 Eagletown 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 Eagletown 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 Eagletown 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 Eagletown 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 Eagletown Project.**

(a) **Construction of Eagletown Project.** The Developer intends to enter into, or cause to be entered into, one or more contracts to plan, design, acquire and construct the Eagletown Project. For such purpose, the Developer may enter into contracts with related parties. The Developer intends to plan, design, acquire, construct and equip the Eagletown Project in multiple phases. 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 Eagletown Project and permit Westfield and the Redevelopment Commission to review and inspect such completed phase.

(b) **Sale of Portions of Eagletown 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 of Eagletown 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 Eagletown 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 Eagletown 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 the Eagletown Project.** The Developer shall keep Westfield informed as to the progress of the Eagletown Project. The Developer shall report at

least once each calendar quarter, or as needed, to Westfield and the Redevelopment Commission, including the Westfield Council, and provide information as requested, except that the information required to be provided pursuant to Section 3.04(c) 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 Eagletown 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 Eagletown Project is of significant public interest to the officials of and citizens of Westfield and shall cooperate with Westfield to ensure that the Eagletown Project is developed in a timely and commercially reasonable manner, consistent with Applicable Laws and financial and other market conditions.

### **Section 3.06. Scope and Modifications.**

(a) **Modifications prior to Substantial Completion.** During the progress of the Eagletown Project, the Developer may make such reasonable changes, including modification of the construction schedule, modification of the areas in which the Eagletown 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 Eagletown 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 Eagletown 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 Eagletown Project, the Eagletown Project Site may be regraded, reconfigured, redeveloped or otherwise modified, improvements within the Eagletown Project Site may be reconfigured, expanded, contracted, remodeled, reconstructed, replaced or otherwise modified, and new improvements may be added to the Eagletown 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 Eagletown Project Site during the construction of the Eagletown 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 Eagletown 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 (3) architectural renderings for the Eagletown Project to the Redevelopment Commission for display at various Westfield government buildings during the development of the Eagletown 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 Eagletown Project Site (other than the sites of the TIF Improvements). If, in connection with the development of the Eagletown 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 Eagletown 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 Eagletown 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 Eagletown Project and (b) complying with all Applicable Laws.

**Section 3.15. Construction of Developer Public Improvements.**

(a) The Developer, Westfield and the Redevelopment Commission will cooperate regarding the planning, design, acquisition, construction and completion of the Developer Public 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 Developer Public 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

Developer Public 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 Developer Public 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 Developer Public 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 Developer Public 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 Developer Public Improvements are subject to the prior written approval of the Developer.

### **Section 3.16. Completion of Developer Public Improvements.**

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

(b) Westfield and the Developer shall, within thirty (30) days following receipt of each Certificate of Substantial Completion of Developer Public 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 Developer Public Improvements and to verify conformance of the improvements with Applicable Laws. The certificates shall be deemed verified and the Certificate of Substantial Completion of Developer Public 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 Developer Public Improvements, Westfield or the Developer furnishes the Redevelopment Commission with specific written objections to the status of the Developer Public 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 30, 2008, Westfield and the Redevelopment Commission will take all actions reasonably required to:

- (i) Create (and approve the creation of) the Eagletown Economic Development Area and Allocation Area;
- (ii) Adopt the Bond Resolution; and
- (iii) Appropriate the Bond proceeds.

**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. If the Developer pays any costs of the Phase I 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 Phase I 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 thirty (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 A through H of **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.

(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 30, 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 30, 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 by the Redevelopment Commission 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 \$10,900,00 to pay for the Developer Public 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 Eagletown 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 Developer 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 Developer Account or the Tax Increment realized from the Developer 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 Economic Development 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 Economic Development 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 or otherwise, 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 Developer 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. Road Impact Fee Credit.** A road and street infrastructure impact zone has been established by Westfield pursuant to Ordinance 06-15 to provide funds for the payment of the cost of constructing road improvements in the Road Impact Fee Area pursuant to Indiana Code 36-7-4-1300 through -1399. Section 40-34 of Westfield Ordinance 06-15 provides for a credit against Road Impact Fees for any entity that constructs road improvements in the Road Impact Fee Area for amounts up to the cost of construction of such road improvements (the "Road Impact Fee Credit"). Pursuant to Section 40-34 of Westfield Ordinance 05-15, Westfield agrees that it shall grant Road Impact Fee Credits in an amount equal to the costs of the design, inspection, construction and dedication of road, bridge and drainage improvements for (a) the construction of Towne Road, from its current terminus at Little Eagle Creek Avenue north to its intersection with SR 32, as shown in the Towne Road Crossing PUD, and (b) the extension of

Springmill Road to connect onto Six Points Road, as shown in the Eagletown PUD (together the “Road Impact Fee Projects”) as more specifically described on **Exhibit J** hereto. Upon completion of a Road Impact Fee Project, the Redevelopment Commission shall convey to the Developer Road Impact Fee Credits in an amount equivalent to One Hundred Percent (100%) of the certified costs expended by the Developer to complete the Road Impact Fee Projects. The Redevelopment Commission hereby agrees to deposit all Road Impact Fees assessed within the Economic Development Area in an interest-bearing account held by Westfield (the “Eagletown Road Impact Fee Account”). At any time sufficient funds exist in the Eagletown Road Impact Fee Account, the Developer may exchange for cash, in amounts no less than Fifty Thousand Dollars (\$50,000) its Road Impact Fee Credits. Developer may transfer its Road Impact Fee Credits to any party. Westfield agrees to issue a credit equal to \$1,000,000 against road Impact Fees due with respect to the Eagletown Project to Developer to be transferred by Developer to the first commercial tenant of a size greater than One Hundred and Fifty Thousand square feet (150,000 sq. ft.) located within the Area.

**Section 4.13. 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 4.14. 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 Developer Public Improvements required to develop Phase I of the TIF 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; 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 Eagletown Crossing, LLC, Ralph L. Wilfong, II, and/or assigns of Developer 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 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 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  
[RESERVED]**

**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 Phase I of the TIF Project and (ii) payment in full of the Developer Bonds or replacement of the Developer Bonds with Investor Bonds as contemplated 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. Developer may assign its obligation under this Agreement, wholly or in part, to a third party with the consent of Westfield and the Redevelopment Commission.

**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 Developer Public 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 December 31, 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 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 30, 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 affectively 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 from moneys on deposit in the Developer Account.

**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 contact 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 (BJZ)  
(317) 238-6238 (JRK)

To the Developer: Eagletown Crossing, LLC  
17830 Casey Road  
Westfield, Indiana 46074  
Attention: Ralph L. Wilfong, II  
Telephone: (317) 867-0033

With a copy to: Kathryn M. Kunz  
Lewis & Kappes, P.C.  
One American Square, Suite 2500  
Indianapolis, Indiana 46282  
Telephone: (317) 639-1210

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, Indiana, 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 Eagletown Project is dependent upon the Developer securing financing, and that the issuance of the Bonds and the construction of the Developer Public Improvements is a part of the overall financing of the Eagletown Project and, therefore, Westfield and the Redevelopment Commission agree to cooperate with the Developer

and those with which it is working as they attempt to secure and maintain financing of the Eagletown 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

EAGLETOWN CROSSING, LLC  
an Indiana limited liability company

By: \_\_\_\_\_  
Ralph L. Wilfong, II, Managing Member

KD\_1406319\_3.DOC

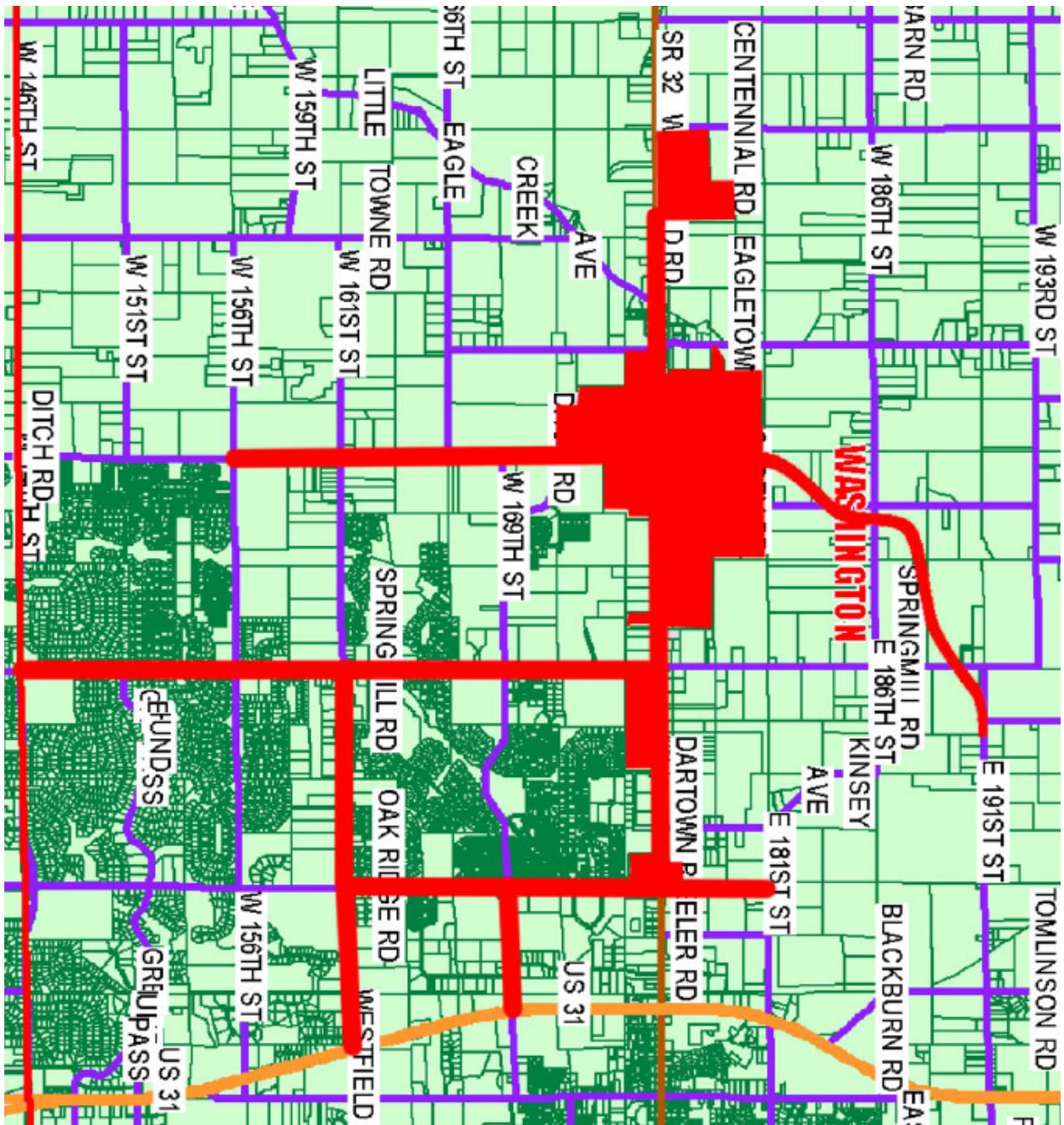
**EXHIBIT A-1**

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

<b>No.</b>	<b>Parcel No.</b>	<b>Owner of Record</b>
1	08-05-32-00-00-018.000	Parks, Lyman S & Cleo I
2	08-05-32-00-00-017.00A	Wilfong, Ralph L II
3	08-05-32-00-00-017.000	Wilfong, Ralph L II
4	08-05-32-00-00-011.000	Moore, Alice G Trustee of Alice G Moore Trust
5	08-05-32-00-00-015.00A	Wilfong Land Companies LLC
6	08-05-32-00-00-015.000	Wilfong Land Companies LLC
7	08-05-32-00-00-012.000	Moore, Alice G Trustee of Alice G Moore Trust
8	08-05-32-00-00-013.A01	Wilfong Land Companies LLC
9	08-05-32-00-00-013.001	Wilfong Land Companies LLC
10	08-05-33-00-00-014.003	Wilfong Development Company LLP
11	08-05-33-00-00-012.000	Beery Family LLC
12	08-05-33-00-00-011.00A	Beery Family LLC
13	08-05-33-00-00-011.000	Beery Family LLC
14	08-05-33-00-00-009.00A	Beery Family LLC
15	08-05-33-00-00-011.A01	Beery, Jack Lee Sr
16	08-05-33-00-00-011.001	Beery, Jack Lee Sr
17	08-05-33-00-00-010.00A	Beery, Jack Lee Sr
18	08-05-33-00-00-010.000	Beery, Jack Lee Sr
19	08-05-33-00-00-011.001	Beery, Jack Lee Sr
20	08-05-33-00-00-009.000	Beery Family LLC
21	08-05-33-00-00-009.20A	Eagletown Crossing LLC
22	08-05-33-00-00-009.002	Eagletown Crossing LLC
23	08-05-33-00-00-009.10A	Eagletown Crossing LLC
24	08-05-33-00-00-009.001	Eagletown Crossing LLC
25	08-05-33-00-00-007.002	Wilfong, Paul L
26	08-05-33-00-00-007.003	Eagletown Crossing LLC

27	08-05-33-00-00-007.000	Casey Casey & Hunt LLC
28	08-05-33-00-00-007.001	Casey Casey & Hunt LLC
29	08-05-33-00-00-008.00A	Eagletown Crossing LLC
30	08-05-33-00-00-008.000	Eagletown Crossing LLC
31	08-05-34-00-00-025.004	Wilfong, Paul L
32	08-05-34-00-00-025.005	Eagletown Crossing LLC
33	08-05-34-00-00-025.000	Casey Casey & Hunt LLC
34	08-05-34-00-00-025.002	Casey Casey & Hunt LLC
35	08-05-34-00-00-024.00A	Eagletown Crossing LLC
36	08-05-34-00-00-024.000	Eagletown Crossing LLC
37	08-05-34-00-00-025.003	Eagletown Crossing LLC
38	08-05-34-00-00-025.001	Wilfong, Paul L
39	08-05-34-00-00-023.001	Casey Casey & Hunt LLC
40	08-05-34-00-00-023.003	Casey Casey & Hunt LLC
41	08-05-34-00-00-023.00A	Casey Casey & Hunt LLC
42	08-05-34-00-00-023.000	Casey Casey & Hunt LLC
43	08-05-34-00-00-023.A04	Wilfong Development Company LLP
44	08-05-34-00-00-023.004	Wilfong Development Company LLP
45	08-05-34-00-00-023.A02	Wilfong Development Company LLP
46	08-05-34-00-00-023.002	Wilfong Development Company LLP
47	08-05-34-00-00-022.A01	Wilfong Development Company LLP
48	08-05-34-00-00-022.001	Wilfong Development Company LLP
49	08-05-34-00-00-022.00A	Casey Casey & Hunt LLC
50	08-05-34-00-00-022.000	Casey Casey & Hunt LLC
51	08-05-34-00-00-021.A11	Wilfong, Ralph L II Charitable Remainder Unitrust
52	08-05-34-00-00-021.A01	Wilfong, Ralph L II Charitable Remainder Unitrust
53	08-05-34-00-00-021.001	Wilfong, Ralph L II Charitable Remainder Unitrust
54	08-09-04-00-00-	Ackerson Family Farms LLC

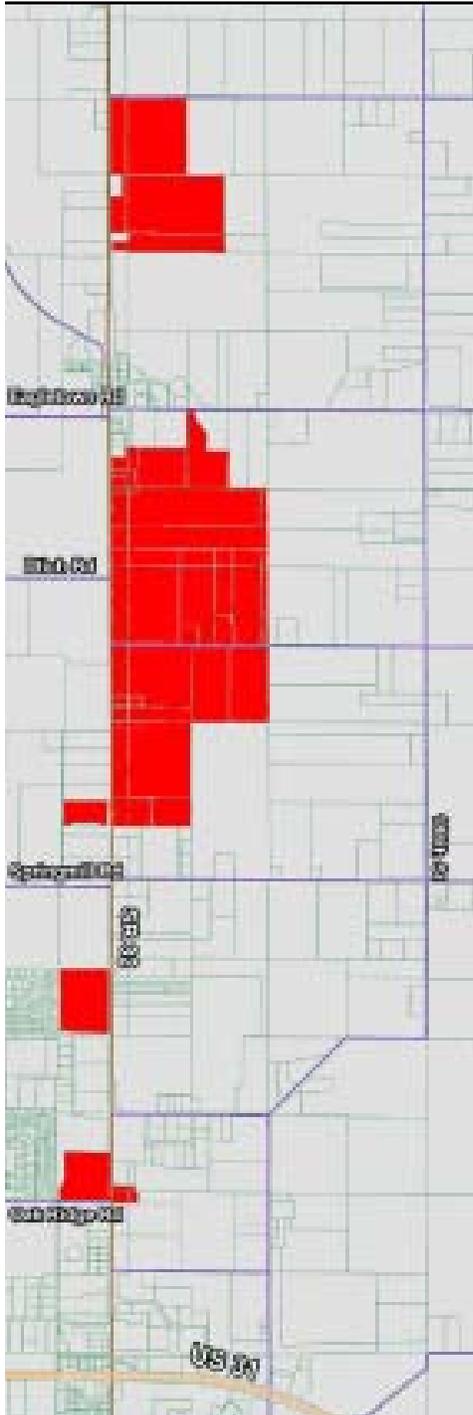
	010.000	
55	08-09-03-00-00-001.000	Ackerson Family Farms LLC
56	08-09-03-00-00-008.001	R L Wilfong Land Corp
57	08-09-02-00-00-001.000	Thomas, James G & Sandra K
58	09-09-02-00-00-003.000	Westfield Investment Co L P
59	08-05-35-00-00-013.A02	FMH Family Limited Partnership
60	08-05-35-00-00-016.000	FMH Family Limited Partnership
61	09-09-02-00-00-004.001	Westfield Investment Co L P
62	08-05-35-00-00-013.001	Wilfong, Ralph L II Charitable Remainder Unitrust
63	08-05-35-00-00-014.000	Wilfong, Ralph L II Charitable Remainder Unitrust
64	08-05-36-00-00-044.001	Wilfong, Ralph L II Charitable Remainder Unitrust
65	08-05-36-00-00-043.000	Wilfong, Ralph L II Charitable Remainder Unitrust
--	Right-of-Way	SR 32, from Oakridge Road west to Centennial Road.
--	Right-of-Way	Oakridge Road, from 161st Street north to 181st Street.
--	Right-of-Way	161st Street, from Springmill Road east to US 31.
--	Right-of-Way	169th Street, from Oakridge Road east to US 31.
--	Right-of-Way	Springmill Road, from SR 32 south to 146th Street.
--	Right-of-Way	Ditch Road, from SR 32 south to 156th Street.
--	Right-of-Way	Extension of Ditch Road to 191st Street



Map of the Economic Development Area and Allocation Area

**EXHIBIT A-2**

**DESCRIPTION OF EAGLETOWN PROJECT SITE**



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## **EXHIBIT B**

### **DESCRIPTION OF EAGLETOWN PROJECT**

Acquisition, construction, installation and equipping of multiple planned unit developments on the Project Site, consisting of multi-family housing units, attached and detached 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 **490** acres.

Capital investment in the Project is projected to total \$600,000,000.

## EXHIBIT C

### PUBLIC IMPROVEMENTS PROCEDURE

**[Tentative, subject to change pending final negotiations between Developer, represented by Jose Kreutz; 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 Improvements. Developer, Westfield and Redevelopment Commission have appointed authorized representatives to act on for them, as follows:

Developer	Jose Kreutz
Westfield	Bruce Hauk
Redevelopment Commission	Bruce Hauk

1. Developer and Westfield will select a consulting engineer to prepare plans and specifications for the Developer Public Improvements and any improvements Developer desires to plan, design, acquire and construct in conjunction with the Developer Public Improvements (the “**Developer Improvements**”).
2. Developer will engage the consulting engineer to prepare the plans and specification and bid packages for the Developer Public 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 Public 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 the Redevelopment Commission fifteen (15) days after submittal to assure conformance with Westfield’s construction standards.
4. Advertisement for bid for the Developer Public 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 Developer Public Improvements, taking into account the integrated nature of the Developer Public Improvements and the Developer Public 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 thirty (30) days following submittal.

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

The Public ROW Improvements are generally described as follows:

Project ID: **A**

Phase: **1**

Project Name: Road Connectivity and Pedestrian Access Enhancements Springmill Road to Ditch Road

Narrative: Construct speed change lanes along the north side of SR 32, including turn lane. Install traffic signal(s) and construct curb cuts within SR 32 right-of-way as warranted by the Eagletown PUD. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, traffic signal hardware, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend south and north along Ditch Road (north along extended Ditch Road) and west on SR 32 west of Ditch Road a sufficient length to provide proper tie-in.

Anticipated Cost: \$1,325,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs and insurance.

Project ID: **B**

Phase: **1**

Project Name: Extension of Ditch Road from SR 32 to 186<sup>th</sup> Street

Narrative: Construct two-lane parkway, with landscaped median, and including speed change lanes at all street intersections. Connect onto the SR 32 curb cut at south end and construct two-lane roundabout at 186<sup>th</sup> Street. Connect 186<sup>th</sup> Street and Casey Road at roundabout. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, landscaping, pedestrian cross-overs, signage, pavement markings. Improvements shall extend east and west on 186<sup>th</sup> Street and north along Casey Road a sufficient length to provide proper tie-in.

Anticipated Cost: \$3,422,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **C**  
Phase: **1**  
Project Name: City Park and Recreation Area  
Narrative: Construct public park and recreation area, including landscaping, parking, ball fields, gazebo, picnic shelter, trails and/or fitness facility.  
Anticipated Cost: \$600,000.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, and insurance.

Project ID: **D**  
Phase: **1**  
Project Name: Relocation and Improvements to the Washington Township Drain  
Narrative: Construct storm sewers, open swales and lake system in replacement of Washington Township Drain. Improvements shall include earthwork to fill in Washington Township Drain, connections onto field tiles and erosion control.  
Anticipated Cost: \$1,903,000.00  
Soft Costs Included: Design, permit and bond fees, wetland and environmental mitigation, survey, construction staking, inspection, testing, bidding costs, and insurance.

Project ID: **E**  
Phase: **1**  
Project Name: Improvements to Oakridge Road from SR 32 to 169<sup>th</sup> Street  
Narrative: Construct two-lane parkway, with landscaped median, and including speed change lanes at all street intersections. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend east and west along all street intersections a sufficient length to provide proper tie-in.  
Anticipated Cost: \$1,600,000.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **F**  
Phase: **1**  
Project Name: Intersection Improvements at Oakridge Road and 161<sup>st</sup> Street  
Narrative: Construct two-lane roundabout, with landscaped median. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along Oakridge Road and 161<sup>st</sup> Street a sufficient length to provide proper tie-in.  
Anticipated Cost: \$1,600,000.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **G**  
Phase: **1**  
Project Name: Oakridge Road and SR 32 Gateway Sign.  
Narrative: Construct marketing sign identifying commercial business park along Oakridge Road north of SR 32. Project includes marketing.  
Anticipated Cost: \$120,000.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **H**  
Phase: **1**  
Project Name: Extension of Oakridge Road from SR 32 North 600 feet.  
Narrative: Construct two-lane road from SR 32 North a distance of 600 feet. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall include SR 32 curb cut, turning radius improvements and traffic signal modifications at SR 32 .  
Anticipated Cost: \$258,300.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **I**  
Phase: **2**  
Project Name: Improvements to Springmill Road from 146<sup>th</sup> Street to 156<sup>th</sup> Street  
Narrative: Construct road improvements including speed change lanes at all street intersections and landscaping.. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along 146<sup>th</sup> Street a sufficient length to provide proper tie-in.  
Anticipated Cost: \$3,400,000.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **J**  
Phase: **2**  
Project Name: Intersection Improvements at Springmill Road and 156th Street  
Narrative: Construct two-lane roundabout, with landscaped median. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings.

Improvements shall extend along 156<sup>th</sup> Street a sufficient length to provide proper tie-in.

Anticipated Cost: \$1,700,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **K**

Phase: **2**

Project Name: Improvements to Springmill Road from 156<sup>th</sup> Street to 161<sup>st</sup> Street

Narrative: Construct road improvements including speed change lanes at all street intersections and landscaping.. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along 161<sup>st</sup> Street a sufficient length to provide proper tie-in.

Anticipated Cost: \$1,800,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **L**

Phase: **2**

Project Name: Improvements to Springmill Road from 161st Street to 169<sup>th</sup> Street

Narrative: Construct road improvements including speed change lanes at all street intersections and landscaping.. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along 169th Street a sufficient length to provide proper tie-in.

Anticipated Cost: \$3,900,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **M**

Phase: **3**

Project Name: Intersection Improvements at Springmill Road and 169th Street

Narrative: Construct two-lane roundabout, with landscaped median. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along 169<sup>th</sup> Street a sufficient length to provide proper tie-in.

Anticipated Cost: \$2,200,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **N**  
Phase: **3**  
Project Name: Improvements to Springmill Road from 169<sup>th</sup> Street to SR 32  
Narrative: Construct road improvements including speed change lanes at all street intersections and landscaping.. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along SR 32 a sufficient length to provide proper tie-in.  
Anticipated Cost: \$1,800,000.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **O**  
Phase: **3**  
Project Name: Improvements to 161<sup>st</sup> Street from US 31 to Oakridge Road  
Narrative: Construct road improvements including speed change lanes at all street intersections and landscaping.. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along 161<sup>st</sup> Street and US 31 a sufficient length to provide proper tie-in.  
Anticipated Cost: \$2,500,000.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **P**  
Phase: **3**  
Project Name: Improvements to 161<sup>st</sup> Street from Oakridge Road to Springmill Road  
Narrative: Construct road improvements including speed change lanes at all street intersections and landscaping.. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along Oakridge Road and Springmill Road a sufficient length to provide proper tie-in.  
Anticipated Cost: \$2,500,000.00  
Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **Q**  
Phase: **3**  
Project Name: Improvements to 169<sup>st</sup> Street from US 31 to Oakridge Road  
Narrative: Construct road improvements including speed change lanes at all street intersections and landscaping.. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil

stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along Oakridge Road and US 31 a sufficient length to provide proper tie-in.

Anticipated Cost: \$1,600,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **R**

Phase: **4**

Project Name: Extension of Oakridge Road from 600 feet North of SR 32 North to 181<sup>st</sup> Street.

Narrative: Construct two-lane road from 600 feet North of SR 32 North to 181<sup>st</sup> Street.. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along 181<sup>st</sup> Street a sufficient length to provide proper tie-in.

Anticipated Cost: \$1,829,200.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **S**

Phase: **4**

Project Name: Intersection Improvements at Ditch Road and 156th Street

Narrative: Construct two-lane roundabout, with landscaped median. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along all roads a sufficient length to provide proper tie-in.

Anticipated Cost: \$1,042,500.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: **T**

Phase: **4**

Project Name: Intersection Improvements at Ditch Road and 161st Street

Narrative: Construct two-lane roundabout, with landscaped median. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend along all roads a sufficient length to provide proper tie-in.

Anticipated Cost: \$1,042,500.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: U

Phase: 4

Project Name: Road Connectivity and Pedestrian Access Enhancements, Ditch Road to Eagletown Road

Narrative: Construct speed change lanes along the north side of SR 32, including turn lane. Install traffic signal(s) and construct curb cuts within SR 32 right-of-way as warranted by the Eagletown PUD. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, traffic signal hardware, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend south and north along Eagletown Road and west on SR 32 west of Eagletown Road a sufficient length to provide proper tie-in.

Anticipated Cost: \$663,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs and insurance.

Project ID: V

Phase: 4

Project Name: Extension of Ditch Road from 186<sup>th</sup> Street to 191<sup>st</sup> Street/Horton Road

Narrative: Construct two-lane parkway, with landscaped median, and including speed change lanes at all street intersections. Connect 191st Street and Horton Road at roundabout. Improvements shall include all necessary earthwork, drainage improvements, erosion control, maintenance of traffic, soil stabilization, utility relocation, pavement, curbs, multi-use paths, pedestrian cross-overs, signage, pavement markings. Improvements shall extend east and west on 191st Street and north along Horton Road a sufficient length to provide proper tie-in.

Anticipated Cost: \$2,920,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

Project ID: W

Phase: 4

Project Name: Extension of City Fiber Optics Network

Narrative: Construct Fiber Optic facilities and related improvements.

Anticipated Cost: \$2,000,000.00

Soft Costs Included: Design, permit and bond fees, survey, construction staking, inspection, testing, bidding costs, right-of-way acquisition and insurance.

## **B. Scope of The Public ROW Improvements**

It is agreed that all costs and fees related to the preparation of schedules, engineering plans and specifications for the acquisition, construction and installation of materials needed to complete the Public ROW Improvements shall be considered a Bond Reimbursable Expense. Specifically, the following items are to be funded:

- 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).
- 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. Erosion control, landscaping, including seeding, irrigation, dust control, water quality improvements and wetland mitigation areas.
- f. Utility relocation and location, as appropriate.
- g. All public utility relocation and conduits for utility services, including natural gas, electricity and telecommunications, including telephone, data transmission and broadband/internet services.

## II. Phasing

The Parties agree that the Public ROW Improvements identified in Phase 1 of this Exhibit shall be completed first. Phases 2, 3 and 4 shall be completed as expeditiously as possible in accordance with the creation of Increment contemplated by this Agreement.

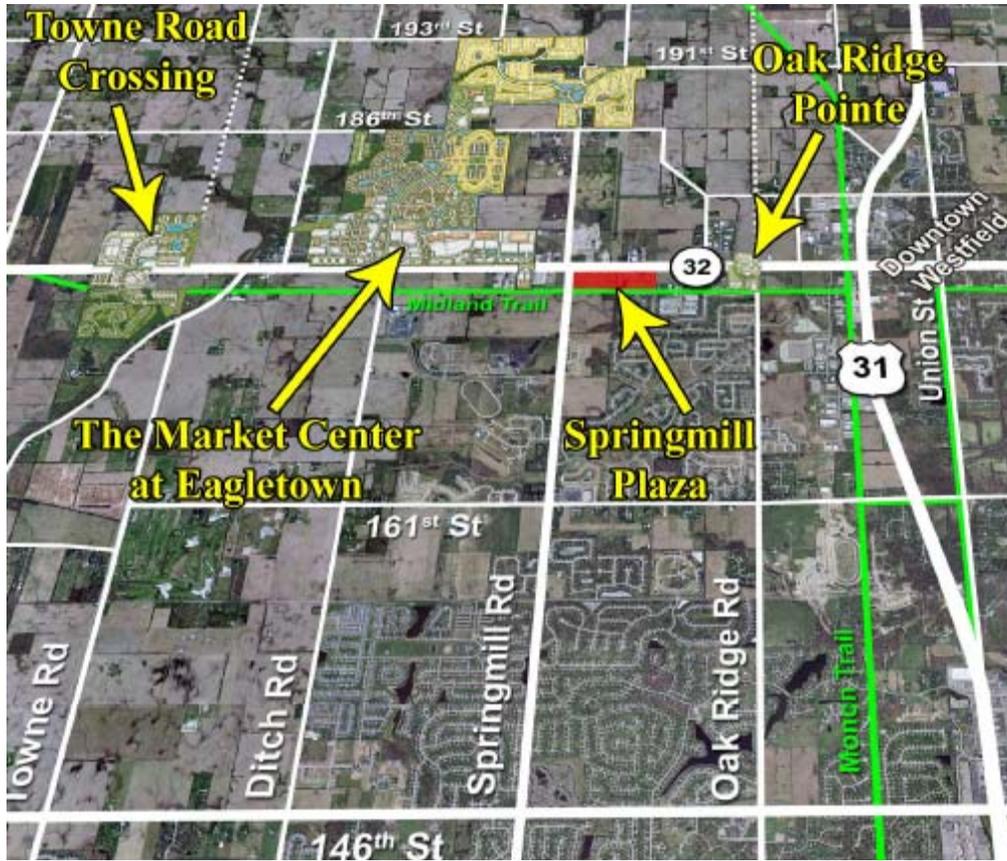
## **EXHIBIT E**

### **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**

**EAGLETOWN PROJECT SITE PLAN**



**EXHIBIT G**

**TERM SHEET for  
DEVELOPER BONDS**

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

Term Sheet

Issuer	City of Westfield Redevelopment District
Developer	Eagletown Crossing, LLC
Bond Purchaser	To be determined (“ <b>TBD</b> ”) [Developer or Lender]
Security	<ol style="list-style-type: none"><li>1. Bond resolution</li><li>2. Pledge of tax increment by Redevelopment Commission (Sole source of payment for bonds)</li><li>3. Bond purchase agreement</li><li>4. Pledge resolution</li><li>5. Capitalized interest for not less than ____ years</li></ol>
Principal Amount	Calculated pursuant to Section 4.05 of Economic Development Agreement
Date	Date of issuance (TBD)
Final Maturity	[August 1, 20__]
Principal Payment Dates	[August 1, commencing August 1, 20__]
Interest Payment Dates	[February 1 and August 1, commencing TBD]
Interest	Tax-exempt
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	_____
Adviser to Developer	_____
Special Counsel to Bond Purchaser	If applicable, TBD

**EXHIBIT H**

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

**CERTIFICATE OF SUBSTANTIAL COMPLETION OF  
DEVELOPER PUBLIC IMPROVEMENTS**

The undersigned, Westfield Redevelopment Commission (the “**Commission**”) pursuant to that certain Development Agreement dated May \_\_, 2008, between the Commission, Eagletown Crossing, 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 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 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 thirty (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

EAGLETOWN CROSSING, LLC  
an Indiana limited liability company

By: \_\_\_\_\_  
Ralph L. Wilfong, II, 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 May \_\_, 2008 (the “**Agreement**”), between the Westfield Redevelopment Commission (the “**Commission**”), City of Westfield, Indiana (“**Westfield**”) and Eagletown Crossing, 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 \_\_\_\_\_, 20\_\_.

WESTFIELD REDEVELOPMENT COMMISSION

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF WESTFIELD, INDIANA

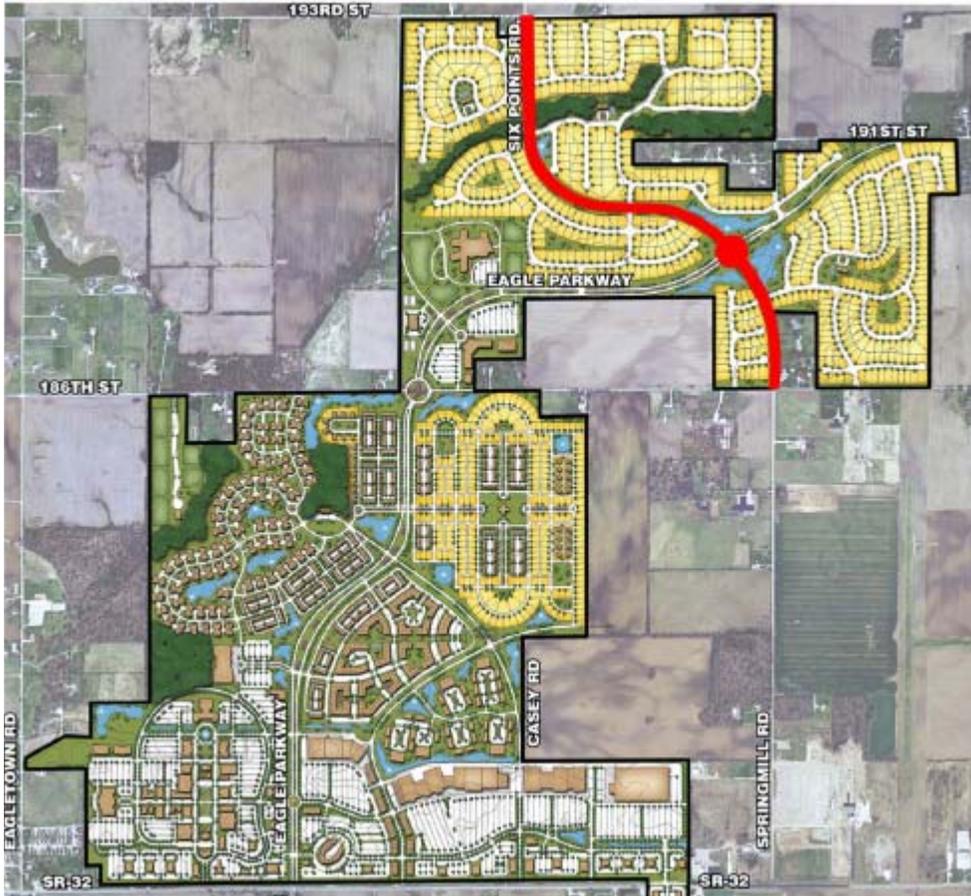
By: \_\_\_\_\_  
Clerk-Treasurer

## Schedule 1

**EXHIBIT J**



Map Identifying Extension of Towne Road from Little Eagle Creek Avenue to SR 32



Map Identifying Extension of Springmill Road from 186<sup>th</sup> Street to 193<sup>rd</sup> Street