RESOLUTION NUMBER 08-07

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 PTI WESTFIELD, LLC FOR THE LANTERN COMMONS 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 the Lantern Commons Economic Development Area (the "Area") as an economic development area under the Act and has approved an economic development plan (the "Plan") providing specific recommendations for economic development of the Area, including road, infrastructure and drainage improvements to the Area and related improvements and equipment serving the Area as further described in the Plan (the "Project"); and

WHEREAS, in order to provide for orderly development of the Project, the Commission and the City have negotiated a development agreement (the "Development Agreement") with PTI Westfield, 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 10th DAY OF MARCH, 2008, BY THE WESTFIELD CITY COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD CITY COUNCIL
Hamilton County, Indiana

WESTFIELD CITY COUNCIL

Voting For	Voting Against	Abstain
_____	_____	_____
John Dippel	John Dippel	John Dippel
_____	_____	_____
Bob Horkay	Bob Horkay	Bob Horkay
_____	_____	_____
Ken Kingshill	Ken Kingshill	Ken Kingshill
_____	_____	_____
Bob Smith	Bob Smith	Bob Smith
_____	_____	_____
Thomas Smith	Thomas Smith	Thomas Smith
_____	_____	_____
Rob Stokes	Rob Stokes	Rob Stokes
_____	_____	_____
Melody Sweat	Melody Sweat	Melody Sweat

ATTEST:

_____

Clerk-Treasurer, Cindy Gossard

This resolution prepared by:

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I hereby certify that RESOLUTION 08-07 was delivered to the Mayor of Westfield

on the _____ day of _____, 2008, at _____ ____ m.

_____
Cindy Gossard, Clerk-Treasurer

I hereby APPROVE RESOLUTION 08-07

this _____ day of _____, 2008.

_____
J. Andrew Cook, Mayor

I hereby VETO RESOLUTION 08-07

this _____ day of _____, 2008.

_____
J. Andrew Cook, Mayor

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

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

AMONG

CITY OF WESTFIELD, INDIANA

WESTFIELD REDEVELOPMENT COMMISSION

AND

PTI WESTFIELD, LLC

Regarding:

LANTERN COMMONS PROJECT

DATED _____, 2008

4625814

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AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "**Agreement**") made as of this _____, 2008 by and between the City of Westfield, Indiana, a municipal corporation ("**Westfield**"), Westfield Redevelopment Commission (the "**Redevelopment Commission**"), in its capacity as the governing body of Westfield, Indiana Department of Redevelopment and the Redevelopment District of the City of Westfield, Indiana (the "**District**"), and PTI Westfield, LLC (the "**Developer**"), a Delaware limited liability company, its successors and assigns. All capitalized terms 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 Economic Development Area;

D. The Developer has acquired the Project Site located in the Economic Development Area and has submitted to Westfield and the Redevelopment Commission a proposal for the development of such real estate and the Redevelopment Commission has approved such proposal, as more specifically hereinafter set forth;

E. The Redevelopment Commission, Westfield and the Developer have entered into a Development Agreement dated as of December 21, 2007 (the "**Original Agreement**") relating to the development of the Project by the Developer and the funding by the Redevelopment Commission and Westfield of certain costs of the Project from Tax Increment generated within the East Side Economic Development Area established pursuant to the RDC Act and which includes numerous properties including the Project Site;

F. In order to more effectively implement the intent of the Original Agreement, the Redevelopment Commission and Westfield have established a new Economic Development Area pursuant to the RDC Act with boundaries co-terminus with the Project Site and the Redevelopment Commission, Westfield and the Developer are desirous of amending and restating the Original Agreement to reflect the new Economic Development Area and as set forth herein;

G. The Redevelopment Commission, pursuant to a Declaratory Resolution and a Confirmatory Resolution has taken or will take such actions as shall be reasonably 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;

H. The Developer has acquired the Project Site within the Allocation Area and intends to acquire and construct the Project, including the TIF Project, thereon.

I. 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 (Lantern Commons Project) as set forth in **Article IV** hereof;

J. 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 Lantern Commons Economic Development Area;

K. The Redevelopment Commission has adopted a Bond Resolution which authorizes the issuance and delivery of the Bonds as provided herein;

L. Pursuant to the provisions of Section 36-7-14-39.5 of the RDC Act, the Redevelopment Commission has recommended and the City Council has adopted Resolution No. __-2008 which provides that the Additional Property Tax Credit described in subsection (c) of Section 36-7-14-39.5 of the RDC Act does not apply in the Allocation Area for property taxes first due and payable in the Allocation Area in any year following the year in which the resolution is adopted because granting such Tax Credit would adversely affect the interests of the holders of the Bonds or Westfield and the Redevelopment Commission's contractual obligations under this Agreement in a way that would create a reasonable expectation that the Bonds or contractual obligations under this Agreement would not be paid when due;

L. 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.

"Additional Property Tax Credit" means the Additional Property Tax Credit described in subsection (c) of Section 36-7-14-39.5 of the RDC Act which is available pursuant to such provision in an Allocation Area unless waived by Westfield on recommendation of the Redevelopment Commission.

"**Agreement**" means this Amended and Restated Development Agreement by and between 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.

"Annual Debt Service" means at any given time of determination an amount equal to the total Principal Requirement and Interest Requirement on the Bonds then Outstanding in the then current Bond Year by reason of Stated Maturities.

"**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.

"**Approved Investor**" means a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended (the "**Securities Act**") or 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.

"Authorized Developer Representative" means Barry Herring or Peter Borzak, 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 or 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 (Lantern Commons Project) to be issued by the District pursuant to the Bond Resolution for the purpose of financing the Reimbursable Redevelopment Costs, including the Developer Bonds and the Investor Bonds.

"**Bond Resolution**" means the Resolution No. 4-2008 adopted by the Redevelopment Commission on February 13, 2008 authorizing the issuance of the Bonds.

"Bond Year" means that twelve-calendar month (calculated on the basis of twelve 30-day months) period beginning on February 1 of any year and ending on January 31 of such year; provided, that the first Bond Year shall commence on the date of issuance of a series of Bonds and end on the next succeeding January 31.

"**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 and the Bond Resolution into which net proceeds of the Bonds shall be deposited to pay Reimbursable Project Costs and other costs of Public ROW Improvements.

"Certificate of Reimbursable Project Costs" means a document, substantially in the form of **Exhibit K** attached hereto and incorporated by reference herein, provided by the Developer to Westfield evidencing Reimbursable Project Costs incurred by the Developer.

"Certificate of Substantial Completion" means a document substantially in the form of **Exhibit I** attached hereto and incorporated by reference herein, delivered by the Developer to Westfield and the Commission in accordance with this Agreement and evidencing the Developer's satisfaction of all obligations and covenants to construct the TIF Project (excluding the Public ROW Improvements) or a functional portion thereof.

"Certificate of Substantial Completion of Certain Public ROW Improvements" means a document substantially in the form of **Exhibit J** attached hereto and incorporated by reference herein, delivered by the Commission to Westfield and the Developer in accordance with this Agreement and evidencing the satisfaction of all obligations and covenants to construct the Public ROW Improvements or a functional portion thereof.

"**Confirmatory Resolution**" means Resolution No. 3-2008 adopted by the Redevelopment Commission on February 13, 2008, confirming all prior actions of the Redevelopment Commission in connection with the creation of the Economic Development Area and the Allocation Area.

"Construction Plans" means plans, drawings, specifications, and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections, submitted by Developer and, to the extent required pursuant to the zoning code, subdivision code or building code of Westfield, including an ordinance of Westfield containing utility and infrastructure standards and specifications, approved by Westfield in accordance with this Agreement.

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

"Debt Service Reserve" means a "Debt Service Reserve" to secure Investor Bonds which shall be funded as described in the Bond Resolution.

"**Declaratory Resolution**" means Resolution No. 2-2008 adopted by the Redevelopment Commission on January 7, 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 PTI Westfield, LLC, a Delaware 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 Lenders pursuant to the provisions of **Section 4.05** hereof.

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

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

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

"**Economic Development Area**" means the Lantern Commons Economic Development Area that has been 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**.

"Effective Date" means _____, 2008.

"**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.

"**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 presently in effect or hereafter created, issued and/or adopted, pertaining to protection of the environment, health or safety of persons, natural resources, conservation, wildlife, waste management, and pollution (including, without limitation, regulation of releases and disposals to air, land, water and ground water), including, without limitation, 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., 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., Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., National Environmental Policy Act of 1975, 42 U.S.C. §§ 4321 et seq., Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 7401 et seq., 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 but not limited to the laws and regulations governed by the State) or code and replacements of any of the same rules, regulations, guidance documents and publications promulgated thereunder.

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

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

"**Expansion Project Site**" means the real property described on **Exhibit A-3** hereto and which is the site of the Expansion Project and constitutes a portion of the real property located in the East Side Economic Development Area that has been designated as an "economic development area" pursuant to Indiana Code 36-7-14-41.

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

"Governmental Approvals" means all plat approvals, re-zonings, 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 not limited to, 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, but not limited to, 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.

"Interest Requirement" means for any Investors Bonds and for any Bond Year the aggregate amount of interest on such Investor Bonds having a Stated Maturity during such Bond Year.

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

"**Lenders**" means any bank, financial institution or other entity providing financing for the Project.

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

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

"Prime Rate" means the rate per annum equal to the prime rate of interest as published in the Money Rates section of the Wall Street Journal, Midwest Edition, changing when and as said prime rate changes.

"Principal Requirement" means for any Bond Year and for any Investor Bonds the aggregate principal amount of such Investor Bonds having a Stated Maturity during such Bond Year.

"**Project**" means the acquisition, construction, installation and equipping of a retail and commercial center to be constructed by the Developer, as described in **Exhibit B** hereto, and including the TIF Project.

"**Project Site**" means the real property described on **Exhibit A-2** hereto and which is the site of the Project and constitutes the real property located in the Allocation Area.

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

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

"**Public ROW Improvements**" means 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, which improvements are more particularly described in **Exhibit D** hereto, and 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.

"**RDC Act**" means Indiana Code 36-7-14 and 36-7-25, et seq., 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 G** attached hereto and incorporated by reference herein, which are eligible for reimbursement to the Developer from Tax Increment under the RDC Act in accordance with this Agreement.

"Related Party" means any individual, partnership, corporation, limited liability company, association, trust, unincorporated organization or any other entity or organization, ("**Person**") indirectly controlling or controlled by, or under direct or indirect common control with, another Person, in that such Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the other Person, whether through the ownership of voting securities, common directors, Paying Agents or officers, by contract or otherwise; provided that, in any event for purposes of this definition, any Person that owns, directly or indirectly, five percent (5%) or more of the securities having the ordinary voting power for the election of directors or governing body of a corporation or five percent (5%) or more of the partnership, membership or other ownership interest of any other Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person.

"**State**" means the State of Indiana.

"Stated Maturity" means each date on which principal is to become due on any Bonds, by maturity or mandatory sinking fund redemption, and each date on which interest is to become due on any Bonds.

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

"Taxing District Share" means an amount equal to 25% of the Tax Increment generated in the Allocation Area and deposited into the Taxing District Account.

"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 from assessed valuation in the Allocation Area in excess of the assessed valuation described in Indiana Code 36-7-14-39(b)(2) which are collected and deposited into the Allocation Fund.

"TIF Consultant Report" means a report of the firm of Peckham Guyton Albers & Viets, Inc., St. Louis, Missouri 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 Bond Year.

"TIF Expiration Date" means January 7, 2038.

"TIF Project" means the Public ROW Improvements and the other improvements directly serving or benefiting the Project, which improvements are more particularly described in **Exhibit G** hereto.

"Underwriter" means the underwriter for the Investor Bonds which shall be the firm of Wachovia Securities or such other investment banking firm or other financial entity designated by the Developer and approved by the Redevelopment Commission, which approval shall not be unreasonably withheld.

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

"Westfield's 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 governing body of Westfield.

"Work" means all work necessary to prepare the Project Site and to construct the TIF Project as described in **Exhibit G** attached hereto, including, but not limited to: (1) construction of the Public ROW Improvements; (2) site costs, including site preparation, construction of utility extensions and stormwater detention and drainage facilities; (3) construction of road improvements; and (4) all other work reasonably necessary to effectuate the intent of this Agreement.

"Zoning Ordinance" means Ordinance No. 07-36 adopted by the Westfield Council on December 17, 2007, subject to amendment, variance and modification in accordance with the provisions of 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) **Amended and Restated Development Agreement.** This "Amended and Restated 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.

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, THE REDEVELOPMENT COMMISSION AND THE DEVELOPER

Section 2.01. Representations and Warrants of the 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 Delaware.

(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, (a) conflict with or result in a violation of (i) its Operating Agreement; (ii) any judgment, order, writ, injunction, decree, applicable to and known to the Developer; or (iii) Applicable Laws; or (b) 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 best knowledge of the Developer 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 Warrants 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 the provisions of 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 of Westfield 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; (iii) the valid exercise of the constitutional powers of Westfield and the Redevelopment Commission, the State and the United States of America; and (iv) public policy 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 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 provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement.

Section 2.03. Representations and Warrants of the 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; (iii) the valid exercise of the constitutional powers of Westfield and the Redevelopment Commission, the State and the United States of America; and (iv) public policy 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 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 provisions of this Agreement or which purports to affect the legality, validity and enforceability of this Agreement.

ARTICLE III
PROJECT

Section 3.01. Construction of the Project.

(a) Subject to the provisions of this Agreement, the provisions of the Zoning Ordinance and Applicable Laws, Westfield hereby approves the Developer's acquisition of the Project Site, performance of the Work, and acquisition, construction and equipping of the Project, including the TIF Project.

(b) The Developer shall provide funding or obtain financing for the TIF Project including the Public ROW Improvements.

(c) The Developer agrees to pay the reasonable out of pocket expenses incurred by Westfield in connection with the TIF Project, including the preparation of this Agreement and the initial issuance of Developer Bonds and the Investor Bonds. All sums advanced shall constitute Reimbursable Project Costs to be reimbursed to the Developer from the proceeds of Bonds issued as provided herein.

(d) The Developer shall acquire and construct the TIF Project (excluding the Public ROW Improvements) in accordance with the Project Timeline attached hereto as **Exhibit F**, subject to extension by Force Majeure or further extension by approval of the Authorized Westfield Representative. The performance schedule of the Developer set forth in the Project Timeline is premised on the Developer receiving timely approval by Westfield of rezoning of the Project Site to a zoning category appropriate for the construction and uses desirable for the Project and the timely review and issuance by Westfield of all Governmental Approvals within its control.

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

(f) The Developer has acquired the Project Site in accordance with the Project Timeline. In the event the Developer shall, after the date of this Agreement, determine that there are other additional parcels or interests in real estate which the Developer, in its sole judgment, believes are necessary or desirable for the Project, the Developer shall make reasonable efforts to acquire by negotiation such other additional parcels or interests. With respect to such property, the Developer shall obtain all title commitments, inspections, tests, surveys and reports, hire and retain all experts, professionals, including attorneys or engineers and staff, and cause to be paid, pay or advance all costs as may be necessary for such acquisition(s) and at the request of the Developer, Westfield and the Redevelopment Commission shall, subject to Applicable Laws and receipt of required Governmental Approvals, use reasonable efforts to assist the Developer in such acquisition, including the exercise of the powers of condemnation, to the extent legally available.

(g) Westfield shall vacate the streets, roadways or alleys located within the Allocation Area which are not needed pursuant to the Project Site Plan (collectively, the "**Westfield**

Property") and shall convey all its interests in any Westfield Property to the Developer at no cost. Notwithstanding the foregoing, Westfield shall not be required to vacate any streets, roadways or alleys which, in Westfield's determination, are required for access to property or that are required for public safety purposes. In connection with any such transfer, Westfield covenants and agrees to do all things reasonably necessary to permit the Developer to obtain a title insurance policy in connection with its acquisition of any Westfield Property.

Section 3.02. Governmental Approvals.

(a) Westfield agrees to cooperate with the Developer and to expeditiously process and timely consider all applications for Governmental Approvals as received, all in accordance with Applicable Laws and this Agreement.

(b) The parties specifically agree to use their best efforts to cooperate with each other to obtain all necessary permits and approvals by the Indiana Department of Transportation and/or the Indiana Department of Environmental Management.

Section 3.03. Project Site Plan.

(a) The Project Site Plan is hereby approved in substantially the form attached hereto as **Exhibit H** hereto or as otherwise approved and/or amended by the Plan Commission in accordance with Applicable Laws. Subject to obtaining any required Governmental Approvals, the Developer may make changes to the Project Site Plan or any aspect thereof as site conditions or other issues of feasibility may dictate or as may be required to meet the reasonable requests of prospective tenants or as may be necessary or desirable in the determination 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) The Project Site Plan shall also be deemed to be modified from time to time to reflect changes to the locations and configurations of the improvements which comprise the Project to the extent such changes are made in connection with the processing and approval of a concept plan, a site/improvement plan or other Governmental Approvals for the Project.

Section 3.04. Construction of the TIF Project.

(a) Developer may enter into one or more construction contracts to complete the Work including contracts with subsidiaries of or entities that are a Related Party to the Developer for the portions of the Project not constituting Public ROW Improvements.

(b) The Construction Plans and all construction practices and procedures with respect to the Work must be in conformity with all Applicable Laws, subject to any variances and other Governmental Approvals.

Section 3.05. Construction Management; Review and Inspections.

(a) **Developer to Control Construction Generally.** Except as otherwise expressly provided herein, the Developer shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, and construction of the Project (excepting those portions of the Project constituting Public ROW Improvements), provided that the same shall, in any event, conform to and comply with the terms and conditions of this Agreement, and all Applicable Laws, subject to any variances and other Governmental Approvals.

(b) **Review and Inspection of the Project**. The Developer shall keep Westfield reasonably informed as to the progress of the construction and development of the Project. Westfield may conduct such periodic inspections of the Work through Westfield building inspector as may be generally provided in the building code of Westfield. In addition, the Developer shall allow the authorized representatives of Westfield reasonable access to the Work site from time to time upon one (1) Business Day's written or telephonic notice prior to the completion of the Work for inspection thereof, provided that the Developer shall be entitled, at its option, to designate a representative to meet with such representatives and accompany such representatives on any occasion of such access. Developer shall also allow Westfield and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as Westfield determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

Section 3.06. Scope and Modifications.

(a) **Modifications prior to Substantial Completion.** During the progress of the Project, the Developer may make such reasonable changes, including, without limitation, modification of the construction schedule, modification of the areas in which the Project is to be performed or on which buildings or other improvements are to be situated, expansion or deletion of items, revisions to the locations and configurations of improvements, revisions to the areas and scope of the Project, and any and all such other changes as site conditions or orderly development may dictate or as may be required to meet any reasonable requests of prospective tenants or purchasers of any portion of the Project Site or as may be necessary or desirable, in the discretion of the Developer, to enhance the economic viability of the Project and as may be in furtherance of the general objectives this Agreement; provided, however, that any such modifications shall comply with Applicable Laws, subject to any variances and other required Governmental Approvals.

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

Section 3.07. Certificate of Substantial Completion.

(a) The Developer shall furnish to Westfield a Certificate of Substantial Completion on completion of the TIF Project.

(b) Westfield shall, within 30 days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the project architect's certificate of substantial completion accompanying the Certificate of Substantial Completion. The certificates shall be deemed verified and the Certificate of Substantial Completion shall be deemed accepted by Westfield unless, prior to the end of such 30-day period after delivery to Westfield of the Certificate of Substantial Completion, Westfield furnishes the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail.

(c) Upon acceptance of the Certificate of Substantial Completion by Westfield or upon the lapse of 30 days after delivery thereof to Westfield without any written objections by Westfield, the Developer may record the Certificate of Substantial Completion with the County Recorder, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to perform the Work. Each Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit I** hereto and incorporated by reference herein.

Section 3.08. Maintenance of the Project Site. The Developer shall remain in compliance with all provisions of Westfield's Code relating to maintenance and appearance of the Project Site during the construction of the Project or any portion thereof. Upon completion of the Project, the Developer or its successor(s) in interest, as owner or owners of the affected portion(s) of the Project, shall maintain or cause to be maintained the buildings and improvements which it owns in compliance with all provisions of Westfield's Code relating to maintenance and appearance.

Section 3.09. Cooperation Between Developer, Westfield and the Redevelopment Commission. The Developer acknowledges and agrees that Westfield and the Redevelopment Commission are providing substantial assistance and benefit to the Project by the execution and delivery of this Agreement and the issuance of the Bonds for the purpose of financing the Reimbursable Project Costs. Westfield and the Redevelopment Commission acknowledge and agree to the right of the Developer to develop, acquire, lease, construct, equip and operate the Project in accordance with Applicable Laws, without undue interference from or disruption by Westfield or the Redevelopment Commission, as a commercial venture subject, however, to the terms and conditions of this Agreement. The Developer further acknowledges and agrees that the Project is of significant public interest to the officials of and citizens of Westfield and shall cooperate to ensure that the Project is developed in a timely manner, consistent with Applicable Laws as set forth herein.

Section 3.10. Liability for Areas Affected by Work. Neither Westfield nor the Redevelopment Commission shall be liable or responsible for (i) any damage to the owner/occupant of any land or area that results from construction of the TIF Project (excepting

for any Public ROW Improvements to be constructed by the Redevelopment Commission) and (ii) the performance of Work (excepting for any Public ROW Improvements to be constructed by the Redevelopment Commission), and the Developer agrees to indemnify and hold harmless Westfield and the Redevelopment Commission from any such damages, claims or demands including the fees, expenses and reasonable attorney's fees of Westfield or the Redevelopment Commission incurred in connection therewith.

Section 3.11. Project Documents. The Developer shall maintain at the Project Site one (1) set of all plans, specifications, drawings, addenda, written amendments, shop drawings, change orders, work directive changes, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction, relating to the performance of the work or construction of the TIF Project or any component thereof, which documents shall be available to the Redevelopment Commission and Westfield as may reasonably be required. The Developer will provide three (3) architectural renderings for the Project to the Redevelopment Commission for display at various Westfield government buildings during the construction of the Project. Upon completion of the construction of the Project, a copy of all "as built" and recorded drawings shall be delivered to the Redevelopment Commission.

Section 3.12. Drug Free Work Place. The Developer agrees to undertake reasonable efforts at all times to provide and maintain a drug free workplace at the Project Site.

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

Section 3.14. Permits and Compliance with Applicable Laws. The Developer shall be responsible for (a) giving all necessary notices to and obtaining all necessary permits, approvals, consents and authorizations of the proper governmental authorities having jurisdiction over the construction of the Project and (b) complying with all Applicable Laws bearing on the construction of the Project and shall notify the Authorized Redevelopment Commission Representative of any of the plans and specifications for construction that are at variance therewith.

Section 3.15. Public ROW Improvements.

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

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

(c) Westfield, the Redevelopment Commission and the Developer acknowledge that the RDC Act requires that contracts for work and labor to be provided in connection with the

Public ROW Improvements are subject to the provisions of 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. Westfield and the Redevelopment Commission will cooperate with and assist the Developer in connection with satisfaction of such requirements.

(d) The Developer agrees to advance all costs of the Public ROW Improvements as necessary to complete the Public ROW Improvements. All sums advanced under this Section shall constitute Reimbursable Project Costs to be reimbursed to the Developer as provided herein.

Section 3.16. Dedication of Public ROW Improvements to Westfield.

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

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

(c) Subject to the foregoing, upon substantial completion and delivery of maintenance warranties pursuant to Applicable Laws, Westfield shall accept dedication of those Public ROW Improvements intended for dedication to Westfield (maintenance of which shall be assumed by Westfield) in accordance with the ordinances and regulations of Westfield, and cooperate with the Developer in causing any other appropriate public entity to accept dedication of those other Public ROW Improvements intended for dedication to such other public entities.

Section 3.17. Acquisition of portions of TIF Project by Redevelopment Commission.

The Developer shall acquire, construct and install real property, rights-of-way and improvements constituting such portions of the TIF Project that do not constitute Public ROW Improvements and it is the intent of the parties hereto that the Developer shall be reimbursed for the actual costs (including related soft costs) incurred by the Developer as Reimbursable Project Costs through this issuance of Bonds as provided in **Article IV** hereof. Westfield, the Redevelopment Commission and the Developer shall cooperate to cause the acquisition of such portions of the TIF Project that do not constitute Public ROW Improvements by the Redevelopment Commission in accordance with the requirements of Applicable Laws.

ARTICLE IV
BONDS AND OTHER INCENTIVES

Section 4.01. Issuance of Bonds. Subject to **Section 4.13** hereof, the Redevelopment Commission agrees to take all reasonable steps to issue the Bonds and to pledge the Tax Increment deposited in the Allocation Fund as security for the Bonds as herein provided. 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 Tax Increment deposited in the Allocation Fund will be based upon the application and interpretation of those laws and administrative regulations to the real property and improvements thereto located within the Allocation Area. Neither Westfield nor the Redevelopment Commission makes any representation as to the amount of Bonds (and the debt service thereon) that may be supported by the Tax Increment deposited in the Allocation Fund and for such purposes will reply upon the advice of Peckham Guyton Albers & Viets, Inc., the Developer's financial advisors and 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 Tax Increment deposited in the Allocation Fund and pledged to the Bonds as herein provided.

Section 4.02. Obligation to Reimburse Developer.

(a) The Redevelopment Commission agrees to reimburse the Developer from proceeds of the Bonds for verified Reimbursable Project Costs incurred by the Developer pursuant to this Agreement.

(b) Upon the incurring of Reimbursable Project Costs, the Developer may deliver to the Authorized Redevelopment Commission Representative a Certificate of Reimbursable Project Costs in substantially the same form as **Exhibit K** attached hereto. Each Certificate shall be accompanied by itemized invoices, receipts or other information evidencing the amount requested. The Authorized Redevelopment Commission Representative shall approve or disapprove of each Certificate within 30 days of the submittal thereof. If the Authorized Redevelopment Commission Representative disapproves any Certificate, it shall state in writing the reasons therefor and provide the Developer a reasonable opportunity to clarify or correct the Certificate. If the Authorized Redevelopment Commission Representative fails to approve or disapprove any Certificate within 30 days of the submittal thereof, the Certificate shall be deemed approved. Each approved Certificate shall evidence advances by the Developer of Reimbursable Project Costs ("**Construction Advances**"). Construction Advances shall be issued no more than once every calendar month until all such Construction Advances have been advanced. Upon the approval by the Authorized Redevelopment Commission Representative of a Certificate of Reimbursable Project Costs, either (i) the Redevelopment Commission Representative shall promptly issue Developer Bonds or (ii) the Authorized Redevelopment Commission Representative shall endorse the Developer Bonds in the amount of such Certificate, or submit the Certificate to the Paying Agent with instructions to reimburse the Developer for such Construction Advances or pay the party designated by the Developer for such Construction Advances from the Capital Fund established pursuant to the Bond Ordinance.

Section 4.03. Reimbursable Project Costs.

(a) The parties agree that each of the categories of costs set forth in **Exhibit G** hereto constitute Reimbursable Project Costs which are eligible for reimbursement in accordance with the RDC Act and this Agreement. The amounts set forth in **Exhibit G** are estimates and the Developer shall not be limited in the amount of reimbursement to the estimates shown, but shall be entitled to reimbursement based on the actual costs incurred by the Developer, plus related soft cost, subject to the provisions of Applicable Law.

(b) The Developer shall be entitled to reimbursement for Reimbursable Project Costs from any of the categories set forth on **Exhibit G** and the parties agree to cooperate to identify additional categories of costs of the Project which constitute Reimbursable Project Costs under the RDC Act so as to allow the Developer to be reimbursed the maximum amount of Project funding from Developer Bonds and Investor Bonds which can be paid from the Developer Share.

Section 4.04. Obligations Limited to Allocation Fund and Bond Proceeds. Notwithstanding any other provision of this Agreement, the Redevelopment Commission's obligations hereunder to repay Developer for Reimbursable Project Costs are payable only from the Allocation Fund and from the proceeds of the Bonds and from no other source.

Section 4.05. Developer Bonds. The Developer, Westfield and the Redevelopment Commission acknowledge and agree that the Developer Bonds are intended to be issued concurrently with or immediately following the execution and delivery of this Agreement and in conjunction with satisfaction of the requirements of **Section 4.13** hereof and that the repayment of the Developer Bonds is intended to be provided from the proceeds of the issuance of the Investor Bonds. Notwithstanding the foregoing, in the event the conditions to issuance of the Investor Bonds have not been met, the Developer Bonds shall remain outstanding and shall be secured solely by a pledge of Tax Increment deposited into the Developer Account of the Allocation Fund. The Developer Bonds shall be issued as taxable bonds.

(a) **Timing; Form; Terms.** Westfield and the Redevelopment Commission agree to issue and deliver the Developer Bonds in a principal amount equal to the Reimbursable Project Costs incurred by the Developer not to exceed $12,510,000 or such greater principal amount which can be repaid from the Developer Share as provided in **Section 4.03 (b)** hereof and the Developer Bonds shall be in substantially the form and shall have the terms as set forth in the Bond Resolution and shall bear interest at a variable rate equal to the Prime Rate plus two percent (2%) per annum.

(b) **Maturity Date; Source of Repayment.** All Developer Bonds shall have a stated maturity of the TIF Expiration Date. Developer Bonds shall be secured by a pledge of the Developer's Share of the Tax Increment generated by the Allocation Area.

(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 portion of the Tax Increment as described in this section or from the proceeds of Investor Bonds issued by Westfield in accordance with this Agreement.

(d) **Registered Owner.** Developer Bonds shall be registered as directed by the Developer in the name of the Developer, a Related Party to the Developer, or the Developer's Lender (and shall be fully transferable to any such entity).

(e) **Amount of Allowable Draws of Developer Bonds.** Westfield and the Redevelopment Commission have received a TIF Consultant Report, estimating (based upon the Construction Plans and other data available) the principal amount of Investor Bonds reasonably projected to be issued. The maximum principal amount of the Developer Bonds does not exceed such projected amount less an allowance for Debt Service Reserve and costs of issuance of Investor Bonds.

Section 4.06. Investor Bonds.

(a) **Timing; Form; Terms.** Subject to **Section 4.13** hereof and at the earliest practical time and at 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, fund the Reimbursable Project Costs, if any, and fund a Debt Services Reserve. The Investor Bonds shall be issued in one or more series and shall in each Bond Year have total Principal Requirements and Interest Requirements which do not exceed the projected Developer Share of Tax Increment for such Bond Year as shown by a TIF Consultant Report. It is expected that the Investor Bonds shall be issued as tax-exempt bonds.

(b) **Maturity; Source of Repayment.** Each series of Investor Bonds shall have a stated maturity not later than the TIF Expiration Date. Investor Bonds shall be secured by a pledge of all Tax Increment deposited into the Allocation Fund and by a Debt Service Reserve.

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

(d) **Cooperation in the Issuance of Investor Bonds**. The Developer, Westfield and the Redevelopment Commission agree to 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. The Developer will not be required to disclose to the general public or any investor the rent payable under any such lease or any proprietary or confidential financial information pertaining to the Developer, but upon the execution of a confidentiality agreement acceptable to the Developer, the Developer will provide such information to the financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations.

(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 deposited from time to time in the Allocation Fund or from the proceeds of refunding Investor Bonds issued in accordance with this Agreement. Although amounts in both the Developer Account and the Taxing District Account of the Allocation Fund are pledged as

security for the Investor Bonds, no amounts contained in the Taxing District Account will be utilized for payment of the debt service on the Investor Bonds until all amounts contained in the Developer Account have been first applied to pay such debt service in their entirety.

Section 4.07. No Other Bonds or Uses of Tax Increment in the Allocation Fund. So long as the Developer or its successors or assigns holds any of the Developer Bonds initially issued hereunder, Westfield and the Redevelopment Commission shall not issue any other indebtedness or obligations secured by the Allocation Fund or the Tax Increment realized from the Allocation Area (other than Investor Bonds to refund and refinance, and redeem and pay in full, Developer Bonds initially issued hereunder and still outstanding), and Westfield and the Redevelopment Commission shall not use or apply any Tax Increment deposited in the Allocation Fund (or deposited in the Capital Fund established under the Bond Resolution) to pay any costs other than the Reimbursable Project Costs as are expressly authorized for payment in this Agreement. Notwithstanding anything herein to the contrary, any moneys remaining in the Taxing District Account following the deposit to the Bond and Interest Fund of all semi-annual principal and interest payments for each Bond Year may be applied by the Redevelopment Commission as provided in Indiana Code 36-7-14-39(b)(3) or for other permissible uses of the Redevelopment Commission.

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 Hamilton County Assessor's calculation of the total assessed value of all taxable property within the Allocation Area for the base year, determined pursuant to the RDC Act.

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 and subaccounts and 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."

(b) There shall be deposited into the Allocation Fund all Tax Increment from the Allocation Area, but only until such time as the Bonds are paid in full. 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 agree for the term of this Agreement to 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 agree to 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.

(d) Westfield and the Redevelopment Commission agree additionally that during the term of this Agreement Westfield and the Redevelopment Commission shall not further encumber or pledge, on a superior or parity lien basis, any portion of the Tax Increment required to be deposited into the Allocation Fund or take any action inconsistent with the terms and intent of this Agreement.

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 the Paying Agent on behalf of Westfield) first from the Developer Account and then from the Taxing District 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 fees and expenses owing to the Paying Agent;

(iii) Payment of interest or principal becoming due and payable on Investor Bonds on each payment date;

(iv) Payment of interest or principal becoming due and payable on Developer Bonds on each payment date;

(v) Payment by redemption of principal on the Investor Bonds;

(vi) Payment by redemption of principal on the Developer Bonds.

Section 4.11. Cooperation in Determining Tax Increment.

(a) Westfield, the Redevelopment Commission and the Developer (or its successors in interest as owner or owners of any portion of the Project Site) agree to cooperate and take all reasonable actions necessary to cause the Tax Increment for the Allocation Area to be paid into the Allocation Fund, including Westfield and the Redevelopment Commission's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

(b) So long as Bonds are outstanding, the Developer shall cause the agreements in this Section to be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user of the Project Site were originally a party to and bound by this Agreement.

(c) Additionally, while and so long as this Agreement shall remain an obligation of the parties, if there shall be Bonds outstanding, the Developer agrees that it should not request any tax abatement in the Allocation Area.

Section 4.12. Other Project Assistance. In addition to the issuance of the Bonds and the use of a portion of proceeds thereof to finance the Reimbursable Project Costs, Westfield agrees to the following:

(a) Waiver of all "*traffic impact fees*" imposed pursuant to Westfield Code with respect to the Project.

(b) Waiver of all "*sanitary sewer and water availability and connection tap fees*" imposed pursuant to Westfield Code with respect to the Project.

Section 4.13. Conditions Precedent to Redevelopment Commission's Obligations. Notwithstanding any other provision of this Agreement, Westfield 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 acquired the Project Site simultaneously with the issuance of the Developer Bonds;

(ii) The Developer may not submit a Certificate of Reimbursable Project Costs for endorsement of the Developer Bonds until the Developer has commitments for financing (construction or otherwise) required for the construction and development of the TIF Project.

(b) With respect to the issuance of Investor Bonds:

(i) Delivery to Westfield and the Redevelopment Commission of a TIF Consultant Report certifying that the annual amount of Tax Increment projected to be deposited to the credit of the Allocation Fund for each Bond Year of the Investor Bonds outstanding and proposed to be issued, shall be equal to at least 125% of Annual Net Debt Service for each such respective Bond Year.

(ii) The TIF Consultant Report shall be based on projected Tax Increment with respect to the following: (i) portions of the Project Site that which have been sold for development and construction by the purchasers thereof, and (ii) portions of the Project which are being constructed by the Developer and have signed tenant leases for not less than 70% of the commercial space.

Section 4.14. Covenant Regarding Waiver of Additional Property Tax Credit. The Redevelopment Commission and Westfield covenant and agree that the City Council of Westfield shall not repeal, amend or modify Resolution No. __-2008 or repeal or reduce the waiver of the Additional Property Tax Credit pursuant to the provisions thereof to the extent such repeal or reduction would adversely affect the interests of the holders of the Bonds or the rights of the Developer hereunder.

ARTICLE V
EXPANSION PROJECT

The Developer is desirous of acquiring the Expansion Project Site for purposes of developing the Expansion Project. Following or in conjunction with the acquisition of the Expansion Project Site (or any portion thereof) the Developer may submit to Westfield and the Redevelopment Commission the following with respect to the Expansion Project for their approval, which approval shall not be unreasonably withheld, conditioned or delayed:

Exhibit A-3	Description of Expansion Project Site
Exhibit B	Description of Expansion Project
Exhibit D	Description of the Public ROW Improvements
Exhibit E	Environmental Disclosure
Exhibit F	Project Timeline
Exhibit G	Description of TIF Project and Reimbursable Project Costs
Exhibit H	Project Site Plan

At the Developer's request and on approval of the foregoing by Westfield and the Redevelopment Commission, the Developer shall be designated the Developer of the Expansion Project pursuant to this Agreement, all provisions of this Agreement shall be applicable thereto by substituting the exhibits as set forth in the preceding sentence and substituting the following terms:

"Expansion Project" for "Project"
"Expansion Project Site" for "Project Site"
"Expansion Area" for "Allocation Area"
"Expansion Account" for "Allocation Fund"

At the request of the Developer, Westfield and the Redevelopment Commission shall execute a separate "Development Agreement" with respect to the Expansion Project as described above.

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 on the TIF Expiration Date; provided that this Agreement may terminate sooner upon the completion of the Project, the payment of all Reimbursable Project Costs, and the retirement in full of all Bonds.

ARTICLE VII
DEVELOPER'S INDEMNIFICATION OBLIGATIONS

Section 7.01. 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 7.02. General Indemnification.

(a) The Developer shall hold harmless, indemnify and defend Westfield and the Redevelopment Commission and its governing body members, officers, agents, employees and independent contractors 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 Project during construction thereof, except for matters arising out of the negligence or willful misconduct of Westfield and the Redevelopment Commission and its governing body members, officers, agents, employees and independent contractors.

(b) 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 and the Redevelopment Commission and its governing body members, officers, agents, attorneys, employees and independent contractors.

(c) 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.

(d) 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 the Paying Agent or any representative of the 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.

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, the Redevelopment Commission and the Developer.

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 the 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 to which Westfield and the Redevelopment Commission may be subject.

Section 8.03. Successors and Assigns.

(a) This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns.

(b) Until substantial completion of the TIF Project, the fee title to the Project may not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer under this Agreement may not be assigned in whole or in part without the prior written approval of Westfield, which approval shall not be unreasonably withheld or delayed, upon a reasonable demonstration by the Developer of the proposed assignee's experience and financial capability to undertake and complete such portions of the Work with respect to the portion of the TIF Project to be assigned, all in accordance with this Agreement. Notwithstanding anything herein to the contrary, Westfield hereby approves, and no prior consent shall be required in connection with, (a) the right of the Developer to encumber or collaterally assign its interest in the Project Site or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the costs of the Project, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or Paying Agent or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; (b) the right of the Developer to assign the Developer's rights, duties and obligations under this Agreement to a Related Party; or (c) the right of the Developer to sell or lease individual portions of the Project Site in the ordinary course of the development of the Project. Subject to the foregoing, all or any part of the Project or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after development of the Project, whereupon the party disposing of its interest in the Project or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement).

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 fails to deposit, hold, segregate and apply the Tax Increment as herein provided or fails to acquire and construct the Public ROW Improvements in accordance with the Public Improvements Procedure;

(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 acquire and construct the TIF Project in accordance with the Project Timeline, 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: (i) 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; and (ii) notwithstanding the occurrence of an Event of Default, all outstanding Developer Bonds (or Construction Advances, as the case may be) shall remain outstanding and the Developer may continue to submit Certificates of Reimbursable Costs in connection with the Developer's funding of the TIF Project, including the Public ROW Improvements, and the Authorized Redevelopment Commission Representative shall continue to endorse the Developer Bonds or reimburse such Construction Advances in accordance with **Section 4.03** hereof and thereafter, Westfield and the Redevelopment Commission shall use diligent efforts to sell Investor Bonds to refund Developer Bonds in the same manner as provided in **Section 4.05**.

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

(a) 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 times for performance of obligations hereunder (including the Project Timeline) shall be extended, in the event of any delay caused by force majeure, including, without limitation, for purposes of this Agreement, legal proceedings (including, but not limited to, 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. 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 application of the Developer to Westfield Council and upon finding by Westfield Council that the requested delay is reasonably justified, does not materially affect the ultimate completion of the Project, and does not materially and adversely affect the Investor Bonds.

Section 8.06. Actions Contesting the Validity and Enforceability of the 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 any moneys in the Allocation Fund of the Allocation Fund.

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

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

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

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

The addresses and fax numbers for notices are:

To Westfield:

City of Westfield
130 Penn Street
Westfield, Indiana 46074
Attention: President, Westfield Council
Phone: (317) 896-5570

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

With a copy to:

Brian J. Zaiger
Krieg DeVault, LLP
12800 North Meridian Street
Suite 200
Carmel, Indiana 46032
Phone: (317) 238-6266

To the Developer:

PTI Westfield, LLC
c/o Pine Tree Commercial Realty
40 Skokie Boulevard
Suite 610
Northbrook, Illinois 60062
Attention: Barry E. Herring and Peter Borzak
Phone: (847) 574-3320

With a copy to: Rhonda C. Thomas
Thompson Coburn Fagel Haber
55 East Monroe Street
40th Floor
Chicago, Illinois 60603
Phone: (312) 580-2202

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 the expiration, termination or breach of this Agreement by either party, the agreements contained in **Article IV** shall survive such expiration, termination or breach until payment in full of the Bonds or the TIF Expiration Date whichever occurs first.

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 the 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; provided however, that in connection with any proceeding relating to an Event of Default such costs and expenses, including reasonable attorneys' fees and expenses, shall be paid by the defaulting party.

Section 8.15. Severability. If and in the event 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 the other, or eliminates a material benefit to a party, and (ii) the effect of either of the foregoing is to deprive the 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 either party hereto, at any time, to require the performance by the other of an term of this Agreement, shall in any way affect the right of either party to enforce such terms, nor shall any waiver by either party of any term hereof by taken or held to be a waiver of any other provision of this Agreement. No waiver of any term or

provision of this Agreement shall be effective unless the same is in writing, signed by the parties hereto.

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 hereby agrees and consents to be subject to the exclusive personal and subject matter jurisdiction of the Circuit or Superior Court of Hamilton County, in connection with any claim, cause of action or other dispute by either of them against the other 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 either party, each 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 the other party, the other party agrees that it will not unreasonably refuse to state its satisfaction with such action. Any dispute over the reasonableness of either party withholding or conditioning its consent or satisfaction shall be resolved pursuant to this article of this Agreement.

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
AMENDED AND RESTATED DEVELOPMENT AGREEMENT

CITY OF WESTFIELD, INDIANA

By: _____
Mayor

ATTEST:

_____
Clerk-Treasurer

SIGNATURE PAGE OF THE WESTFIELD REDEVELOPMENT COMMISSION
TO THE
AMENDED AND RESTATED DEVELOPMENT AGREEMENT

WESTFIELD REDEVELOPMENT COMMISSION

By: _____
Vice President

ATTEST:

By: _____
Acting Secretary

SIGNATURE PAGE OF DEVELOPER
TO THE
AMENDED AND RESTATED DEVELOPMENT AGREEMENT

PTI WESTFIELD, LLC,
a Delaware limited liability company

By: Pine Tree Inland Development I, LLC, a Delaware limited liability company, its Manager

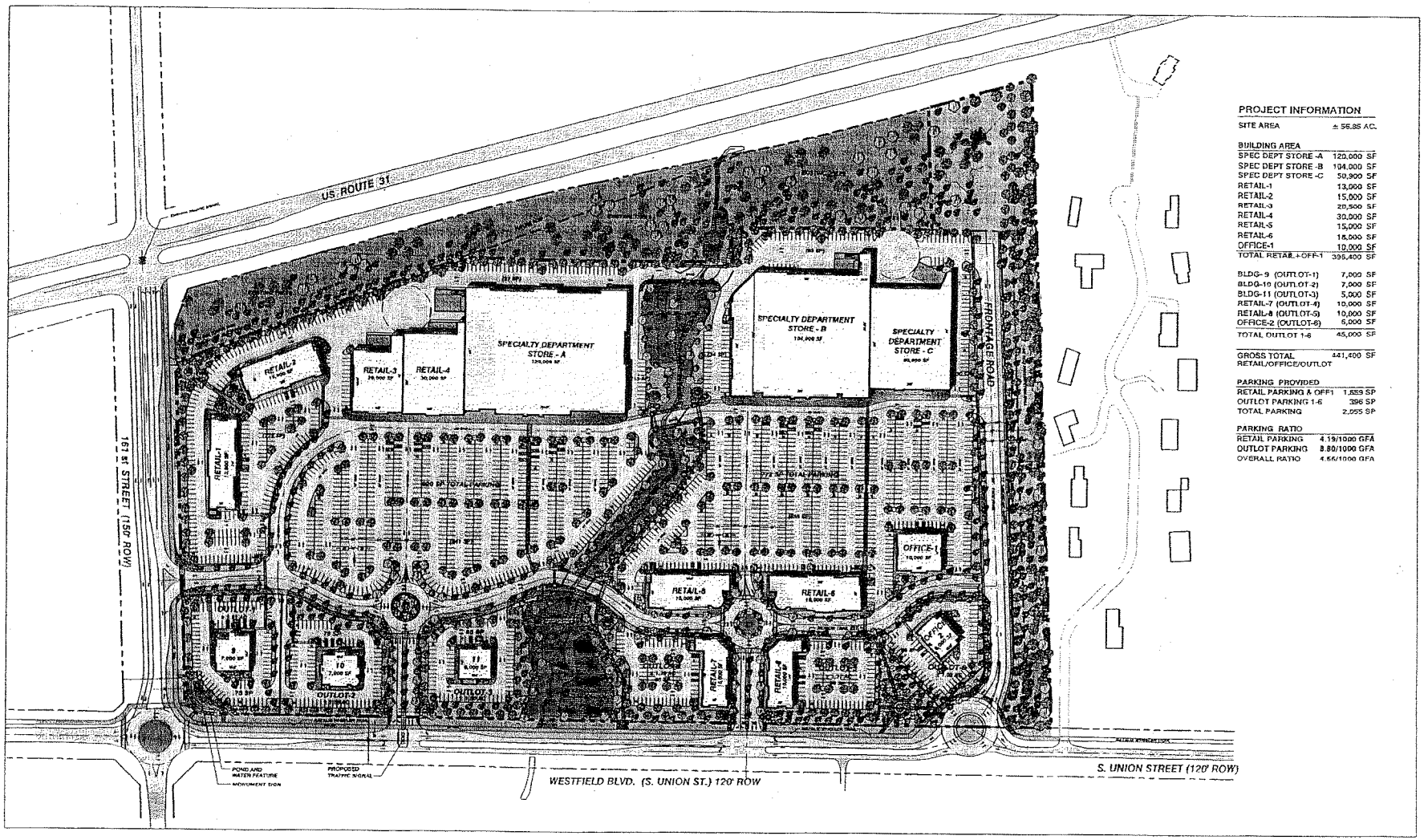
By: Pine Tree Institutional Realty, LLC, a Delaware limited liability company, its Manager

By: _____
Peter N. Borzak, a Manager

EXHIBIT A-1

Description of Lantern Commons Economic Development Area & Map

Parcel 1: 09-09-12-00-00-010.000 (Approx. 13.6 acres)
Parcel 2: 09-09-12-00-00-011.000 (Approx. 8.0 acres)
Parcel 3: 09-09-12-00-00-012.000 (Approx. 2.4 acres)
Parcel 4: 09-09-12-00-00-013.000 (Approx. 39.64 acres)



PROJECT INFORMATION

SITE AREA	± 56.85 AC.

BUILDING AREA

SPEC DEPT STORE -A	120,000 SF
SPEC DEPT STORE -B	194,000 SF
SPEC DEPT STORE -C	50,900 SF
RETAIL-1	13,000 SF
RETAIL-2	15,000 SF
RETAIL-3	20,500 SF
RETAIL-4	30,000 SF
RETAIL-5	15,000 SF
RETAIL-6	15,000 SF
OFFICE-1	10,000 SF
TOTAL RETAIL+OFF-1	396,400 SF
BLDG- 9 (OUTLOT-1)	7,000 SF
BLDG-10 (OUTLOT-2)	7,000 SF
BLDG-11 (OUTLOT-3)	5,000 SF
RETAIL-7 (OUTLOT-4)	10,000 SF
RETAIL-8 (OUTLOT-5)	10,000 SF
OFFICE-2 (OUTLOT-6)	6,000 SF
TOTAL OUTLOT 1-6	45,000 SF
GROSS TOTAL RETAIL/OFFICE/OUTLOT	441,400 SF

PARKING PROVIDED

RETAIL PARKING & OFF1	1,659 SP
OUTLOT PARKING 1-6	396 SP
TOTAL PARKING	2,055 SP

PARKING RATIO

RETAIL PARKING	4.19/1000 GFA
OUTLOT PARKING	8.80/1000 GFA
OVERALL RATIO	4.66/1000 GFA

GreenbergFarrow
3455 Salt Creek Lane, Suite 100
Arlington Heights, Illinois 60005
t 847 788 9200 f 847 788 9536

LANTERN COMMONS
WESTFIELD, INDIANA
(NEC) US RT. 31 & 161st STREET
20070071.2

SITE PLAN
SCALE: 1" = 100' DATE: 12/03/07
50 0 50 100 200 300

CALDERA DEVELOPMENT INC.
PINETREE

EXHIBIT A-2

RESERVED

EXHIBIT A-3

DESCRIPTION OF EXPANSION PROJECT SITE

Woodside Drive Parcels:
(Address, Name, Parcel # and Legal)

16535 US 31 N. (Yang) 09120201001000
Woodside Estates Block 1 Lot 1 S 12 T 18 R 03

1404 Woodside (Yang) 09120201002000
Woodside Estates Block 2 Lot 10 S T 18 R 03

1405 Woodside (Yang) 09120201019000
Woodside Estates Block 2 Lot 9 S 12 T 18 R 03

1412 Woodside (Wright) 09120201003000
Woodside Estates Block 2 Lot 11 S 12 T 18 R 03

1413 Woodside (Pucci) 09120201018000
Woodside Estates Block 2 Lot 8 S 12 T 18 R 03

1416 Woodside (Bruce) 09120201004000
Woodside Estates Block 2 Lot 12 S 12 T 18 R 03

1417 Woodside (Patterson) 09120201017000
Woodside Estates Block 2 Lot 7 S 12 T 18 R 03

1502 Woodside (Blackford) 09120201005000
Woodside Estates Block 2 Lot 13 S 12 T 18 R 03

1505 Woodside (Beck) 0912020101500
Woodside Estates Block 2 Lot 6 S 12 T 18 R 03
Woodside (Beck) 09120201016000
Woodside Estates Block Lot B S 12 T 18 R 03

1512 Woodside (English) 09120201006000
Woodside Estates Block 2 Lot 14 S 12 T 18 R 03

1515 Woodside (Waller) 09120201014000
Woodside Estates Block 2 Lot 5 S 12 T 18 R 03

1524 Woodside (Hampton) 09120201007000
Woodside Estates Block 2 Lot 15 S 12 T 18 R 03

EXHIBIT A-3 - Continued

DESCRIPTION OF EXPANSION PROJECT SITE

1527 Woodside (Janak) 09120201013000
Woodside Estates Block 2 Lot 4 S 12 T 18 R 03

1530 Woodside (Hinshaw) 09120201008000
Woodside Estates Block 2 Lot 16 S 12 T 18 R 03

1601 Woodside (Callen) 09120201012000
Woodside Estates Block 2 Lot 3 S 12 T 18 R 03

1602 Woodside (Wheeler) 09120201009000
Woodside Estates Block 2 Lot 17 S 112 T 18 R 03

1614 Woodside (Hoover) 09120201010001
Block Lot S 12 T 18 R 03
Woodside (Hoover) 09120201011000
Woodside Estates Block Lot A S 12 T 18 R 03
Woodside (Hoover) 09120201010000
Block Lot S 12 T 18 R 03

EXHIBIT B

DESCRIPTION OF PROJECT

The sale of outlots or parcels for development and construction by the purchasers thereof of commercial and retail space and the construction by the Developer of space for lease to retail and commercial tenants all totaling approximately 350,000 square feet of commercial space and related site improvements and amenities.

EXHIBIT C

PUBLIC IMPROVEMENTS PROCEDURE

[FINAL PROCEDURE TO BE AGREED TO BY LEE PEARSON AND BRUCE HAUK TO REFLECT THE FOLLOWING]

The following is an overview of the procedure regarding the construction of the Public ROW Improvements.

The Developer, Westfield and the Redevelopment Commission will each appoint an authorized representative to act on their behalf in connection with the construction of the Public ROW Improvements as follows:

Developer: Lee Pearson - DR
Redevelopment Commission: President, VP or Secretary -RCR
Westfield: Mayor or Bruce Hauk - WR

- Pine Tree and Westfield shall select an Engineer to prepare Plans & Specifications for both the private and Public ROW Improvements
- Pine Tree shall engage the engineer to prepare the plans and specification and bid package for the Public ROW Improvements - contract documents will identify DR as contract administrator - it is anticipated that the Public ROW Improvements will be jointly bid with the private improvements
- Above will be submitted to RCR and WR for their review and approval 15 days after submittal of conformance with Westfield's construction standards
- Advertisement for bid for Public ROW Improvements shall be made in the name of the Redevelopment Commission
- DR will review bids and will make recommendation of lowest and best bid based on the lowest qualified cost of the Public ROW Improvements taking into account the integrated nature of the Public ROW Improvements with the Developer's adjacent Project and considerations of quality as well as price
- Above will be submitted to RCR and WR for their review and RCR's award of bid within 30 days following submittal
- DR will act as on site supervisor of construction of the Public ROW Improvements
- Public ROW Improvements contractor shall have commenced construction of the Public ROW Improvements within 10 days of receipt of a notice to proceed at the direction of the Developer
- Developer shall have delivered notice to proceed to the Public ROW Improvements contractor within 18 months after the acquisition of the Project Site
- Payment requests will be submitted to DR for review and approval within 10 days following submittal
- DR approved payment requests will be submitted to RCR for approval within 10 days following submittal

- DR will advance funds for payment (Under the Agreement deemed to be a purchase of Developer Bonds and deposit of funds in the Capital Fund)
- RCR will approve endorsement of Developer Bonds in the amount of payment in accordance with the timeframe set forth in the Agreement (Under the Agreement deemed a payment of the costs of the Public ROW Improvements from the Capital Fund)

EXHIBIT D

DESCRIPTION OF PUBLIC ROW IMPROVEMENTS

161st Street: Acquisition of real estate and additional right of way and construction thereon of upgrades, improvements and signage.

Union Street: Acquisition of real estate and additional right of way and construction thereon of upgrades, improvements and signage.

Sanitary sewer improvements

EXHIBIT E

ENVIRONMENTAL DISCLOSURE

[Copies of environmental assessments shall be provided to Westfield as received by the Developer]

EXHIBIT F

PROJECT TIMELINE

The Developer shall commence and complete each of its obligations under the Agreement with respect to the acquisition, construction and completion of the TIF Project (excluding the Public ROW Improvements which shall be constructed in accordance with the timeline set forth in the Public Improvements Procedure in Exhibit C), in accordance with the following schedule:

Activity	**Time for Performance**
Developer shall have filed all documents required for re-zoning	Completed
Developer shall have the Project Site within the Allocation Area under option	Completed
Developer shall have acquired the Project Site within the Allocation Area	Completed December 21, 2007
Developer shall have filed all documents required for approval of the Project Site Plan	On or before 180 days following December 21, 2007
Construction of the TIF Project (excluding the Public ROW Improvements) shall be Substantially Complete and the Developer shall have completed construction of the remaining TIF Project	Within 36 months after the acquisition of the Project Site
First phase of the Project is substantially complete to include construction of approximately 200,000 sq. ft of commercial space	Within 36 months after the acquisition of the Project Site
Project is substantially complete to include construction of a total of approximately 350,000 sq. ft of commercial space	Within 60 months after the acquisition of the Project Site

EXHIBIT G

DESCRIPTION OF TIF PROJECT AND REIMBURSABLE PROJECT COSTS

Description of the TIF Project

1. Public ROW Improvements (See Exhibit D).

2. Frontage Road as provided in the Zoning Ordinance.

3. Tree Preservation Area consisting as shown on the Project Site Plan to be set aside for tree preservation and open space.

4. Pedestrian trail as provided in the Zoning Ordinance.

5. Contribution to Westfield for Bridge Construction.

6. Wetland Improvements including on site stream and wetlands areas, related open space, walkways, bridges and public amenities and to the extent permissible under the RDC Act the wetlands mitigation.

7. Such other costs of the Project that are eligible for reimbursement from Tax Increment or the Bonds as identified by the Developer and approved by the Authorized Westfield Representative and the Authorized Redevelopment Commission Representative (which approval shall not be unreasonably withheld). It is the goal of the parties to this Agreement to identify costs of the Project which constitute Reimbursable Project Costs under the RDC Act so as to allow the Developer to be reimbursed the maximum amount of Project funding from Developer Bonds and Investor Bonds which can be paid from the Developer Share.

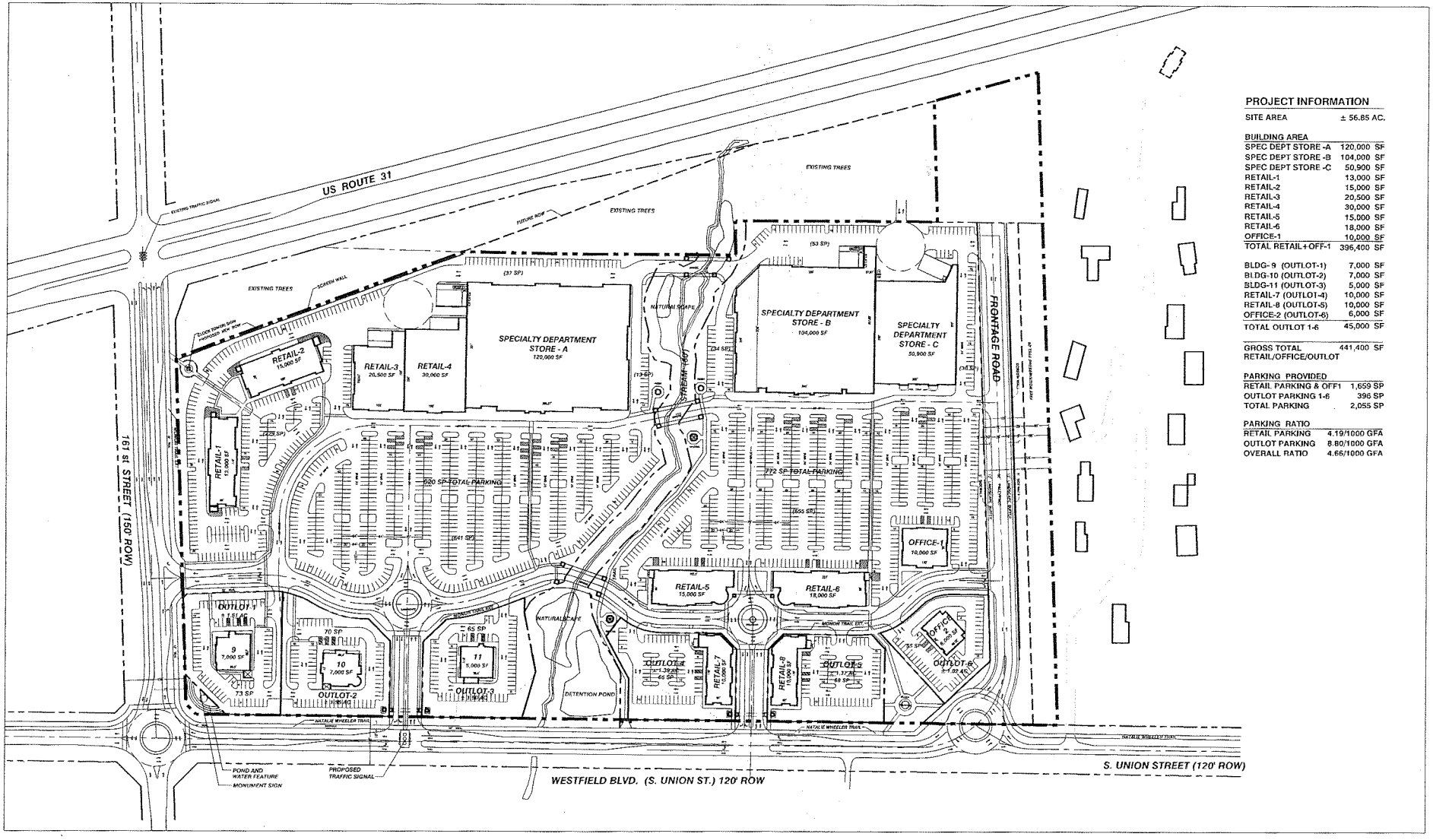
Reimbursable Project Costs

Hard Costs	Estimated	*Soft Costs*	Estimated
		Legal	$ 300,000
Public ROW Improvements			
161st Street		*Title*	$ 20,000
Land	$ 392,020		
Construction	$ 2,346,280	*Survey*	$ 30,000
Union Street		*Testing*	$ 30,000
Land	$ 734,288		
Construction	$ 2,504,571	*Civil Engineering*	$ 250,000
		Insurance	$ 25,000
Other TIF Improvements			
Frontage Road		*Permits*	$ 25,000
Land	$ 895,317		
Construction	$ 1,610,488		
		Financing Costs	$ 500,000
Tree Preservation Area			
Land	$ 683,471		
Monon Trail - On Site			
ROW	$ 267,014		
Construction	$ 145,530		
Bridge Constr. Contribution	$ 80,000		
Sanitary Utility	$ 575,726		
Wetland Improvements	$ 638,566		
Contingency (10%)	$ 1,087,327		
Total Hard Costs	***$11,960,598***	***Total Soft Costs***	***$ 1,430,000***
Total Hard & Soft Costs	***$13,390,598***		

EXHIBIT H

PROJECT SITE PLAN

[See Attached]



PROJECT INFORMATION

SITE AREA	± 56.85 AC.
BUILDING AREA	
SPEC DEPT STORE -A	120,000 SF
SPEC DEPT STORE -B	104,000 SF
SPEC DEPT STORE -C	50,900 SF
RETAIL-1	13,000 SF
RETAIL-2	15,000 SF
RETAIL-3	20,500 SF
RETAIL-4	30,000 SF
RETAIL-5	15,000 SF
RETAIL-6	18,000 SF
OFFICE-1	10,000 SF
TOTAL RETAIL+OFF-1	396,400 SF
BLDG- 9 (OUTLOT-1)	7,000 SF
BLDG-10 (OUTLOT-2)	7,000 SF
BLDG-11 (OUTLOT-3)	5,000 SF
RETAIL-7 (OUTLOT-4)	10,000 SF
RETAIL-8 (OUTLOT-5)	10,000 SF
OFFICE-2 (OUTLOT-6)	6,000 SF
TOTAL OUTLOT 1-6	45,000 SF
GROSS TOTAL RETAIL/OFFICE/OUTLOT	441,400 SF
PARKING PROVIDED	
RETAIL PARKING & OFF1	1,659 SP
OUTLOT PARKING 1-6	396 SP
TOTAL PARKING	2,055 SP
PARKING RATIO	
RETAIL PARKING	4.19/1000 GFA
OUTLOT PARKING	8.80/1000 GFA
OVERALL RATIO	4.66/1000 GFA

GreenbergFarrow
3455 Salt Creek Lane, Suite 100
Arlington Heights, Illinois 60005
t: 847 788 9200 f: 847 788 9536

LANTERN COMMONS

WESTFIELD, INDIANA
(NEC) US RT. 31 & 161st STREET
20070071.2

SITE PLAN

SCALE: 1" = 100' DATE: 12/03/07

50 0 50 100 200 300

CALDERA DEVELOPMENT INC

PINETREE COMMERCIAL REALTY, LLC

EXHIBIT I

FORM OF
CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION OF PROJECT

OF

PTI WESTFIELD, LLC

The undersigned, PTI WESTFIELD, LLC (the "**Developer**"), pursuant to that certain Amended and Restated Development Agreement dated as of _____, 2008, between the City of Westfield, Indiana (**"Westfield"**), the Westfield Redevelopment Commission, and the Developer (the "**Agreement**"), hereby certifies to Westfield 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 the Work for TIF Project (as that term is defined in the Agreement), has been substantially completed in accordance with the Agreement.

2. Such Work has been performed in a workmanlike manner and in accordance with the Construction Plans and the Agreement.

3. This Certificate of Substantial Completion is being issued by the Developer to Westfield in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to the Work.

4. Westfield's acceptance (below) or Westfield's failure to object in writing to this Certificate within 30 days of the date of delivery of this Certificate to Westfield (which written objection, if any, must be delivered to the Developer prior to the end of such 30 day period), and the recordation of this Certificate with the Hamilton County Recorder, shall evidence the satisfaction of the Developer's agreements and covenants to perform the Work.

This Certificate shall be recorded in the office of the Hamilton County Recorder. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

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

PTI WESTFIELD, LLC,
a Delaware limited liability company

By: Pine Tree Inland Development I, LLC, a Delaware limited liability company, its Manager

By: Pine Tree Institutional Realty, LLC, a Delaware limited liability company, its Manager

By: _____
Authorized Developer Representative

ACCEPTED:

CITY OF WESTFIELD, INDIANA

By: _____

ATTEST:

_____
Clerk-Treasurer

(Insert Notary Form(s) and Legal Description)

EXHIBIT J

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION OF PUBLIC ROW IMPROVEMENTS

CERTIFICATE OF SUBSTANTIAL COMPLETION OF PUBLIC ROW IMPROVEMENTS

The undersigned, Westfield Redevelopment Commission (the "**Commission**") pursuant to that certain Amended and Restated Development Agreement dated as of _____, 2008, between the Commission, PTI Westfield, 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 of the Work defined as Public ROW Improvements, has been substantially completed in accordance with the Agreement:

[Insert description of portion of Public ROW Improvements which have been completed]

_____

_____

_____

2. Such Work has been performed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).

3. Lien waivers for applicable portions of the Work 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 such Public ROW Improvements.

5. Westfield's and the Developer's acceptance (below) or failure to object in writing to this Certificate within 30 days of the date of delivery of this Certificate to Westfield (which written objection, if any, must be delivered to the Commission prior to the end of such 30 day period), and the recordation of this Certificate with the Hamilton County Recorder, shall evidence the satisfaction of the agreements and covenants to perform the Work with respect to such Public ROW Improvements. This Certificate shall be recorded in the office of the Hamilton County Recorder. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

6. Westfield shall promptly accept dedication of those Public ROW Improvements intended for dedication to Westfield in accordance with the ordinances and regulations of Westfield, and cooperate with the Developer and the Commission in causing Hamilton County, the State or other appropriate public entity to accept dedication of those other Public ROW

Improvements intended for dedication to such other public entities. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

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

WESTFIELD REDEVELOPMENT COMMISSION

By: _____

ACCEPTED:

CITY OF WESTFIELD, INDIANA

By: _____

ATTEST:

_____
Clerk-Treasurer

PTI WESTFIELD, LLC,
a Delaware limited liability company

By: Pine Tree Inland Development I, LLC, a Delaware limited liability company, its Manager

By: Pine Tree Institutional Realty, LLC, a Delaware limited liability company, its Manager

By:_____
Authorized Developer Representative

(Insert Notary Form(s) and Legal Description)

EXHIBIT K

FORM OF
CERTIFICATE OF REIMBURSABLE PROJECT COSTS

Certificate of Reimbursable Project Costs

TO: City of Westfield, Indiana

Attention:

Re: Amended and Restated Development Agreement dated as of _____, 2008 (the **"Agreement"**), between the Westfield Redevelopment Commission (the **"Commission"),** City of Westfield, Indiana (**"Westfield"**) and PTI WESTFIELD, 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** 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** has not previously been paid or reimbursed from money derived from the Allocation Fund or any money derived from the Capital Fund established pursuant to the Agreement, 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 Developer 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 _____, _____.

PTI WESTFIELD, LLC,
a Delaware limited liability company

By: Pine Tree Inland Development I, LLC, a Delaware limited liability company, its Manager

By: Pine Tree Institutional Realty, LLC, a Delaware limited liability company, its Manager

By:_____
Authorized Developer Representative

Approved for Payment this _____ day of _____, _____:

CITY OF WESTFIELD, INDIANA

By::_____

Title:_____

.....

SCHEDULE 1