BOARD OF PUBLIC WORKS AND SAFETY
CITY OF NOBLESVILLE

DATE: NOVEMBER 7, 2017

PREVIOUSLY DISCUSSED ITEMS

NEW ITEMS FOR DISCUSSION XXX

MISCELLANEOUS _____

ITEM# #9

SOURCE:

DOCUMENTS PREPARED BY: MICHAEL HOWARD

VERBAL:

INFORMATION ATTACHED: XXX

NO PAPERWORK AT TIME OF PACKETS:

BRING PAPERWORK FROM PREVIOUS MEETING:

COVENANT NOT TO APPEAL REAL PROPERTY TAX ASSESSMENT

Document Cross Reference Number_____

THIS COVENANT ("the Covenant") entered into and effective as of the ___ day of, November, 2017, by and among Noblesville Fieldhouse, LLC ("the Company"); the City of Noblesville, by and through its Board of Public Works and Safety ("the City").

WITNESS THAT:

WHEREAS, the Noblesville Redevelopment Commission is in the process of establishing the Finch Creek Economic Development Area located within the City, which includes an allocation area ("the Area") which boundary is co-terminus with the boundary of the Finch Creek Park and contains approximately two hundred (200) acres located west of Boden Road and south of 166th Street, as shown on the attached Exhibit A; and,

WHEREAS, the Company, the City, the Redevelopment Authority, and the Redevelopment Commission have entered into a Development Agreement dated as of the 19th day of May, 2017, ("the Development Agreement"), regarding the development of a ten (10) acre parcel of land ("the Fieldhouse Real Estate"), located within the Finch Creek Park to be used for the construction and operation of a privately owned fieldhouse to be used for recreational purposes as described in the Development Agreement ("the Fieldhouse Project"); and,

WHEREAS, the Fieldhouse Real Estate is to be conveyed by the City and/or the Redevelopment Commission to the Company; and,

WHEREAS, the Development Agreement provides for the City, or the Redevelopment Commission, acting on its behalf, to make monthly reimbursement payments to the Company for expenses incurred in the development of the Fieldhouse Real Estate; and,

WHEREAS, the tax increment generated from the Fieldhouse Real Estate, will be used by the City to pay part of the reimbursement payments to the Company as described in the Development Agreement; and,

WHEREAS, the Development Agreement provides for the execution and recording of this Covenant by the City contemporaneously with the conveyance of the Fieldhouse Real Estate by the City to the Company; and,

WHEREAS, the City Council by its Resolution No. RC-46-16, adopted on December 20, 2016, ("the Preliminary Resolution"), resolved to use tax increment generated from the Fieldhouse Project to pay and/or reimburse the Company for part of the costs of the construction and operation of the Fieldhouse Project; and,

WHEREAS, in partial consideration of the agreement of the City to reimburse the Company for part of the costs of the construction and/or operation of the Fieldhouse Project, the Company has agreed to enter into this Covenant and to impose a lien against the Fieldhouse Real Estate and the improvements thereon to secure the terms of this Covenant; and,

WHEREAS, the Parties agree this Covenant shall be binding upon the Company and its successors in title to the Fieldhouse Real Estate; and,

WHEREAS, the Covenant of the Company is permitted to be a commitment which runs with the real estate and the terms of the Covenant shall be s a lien, on parity with the property tax lien granted to the State of Indiana under Indiana Code 6-1.1-22-13, all as permitted by Indiana Code 36-7-25-6.

IT IS THEREFORE AGREED by and between the Parties as follows:

SECTION I. DEFINITIONS.

The following definitions apply to this Covenant:

a. "Company" means Noblesville Fieldhouse, LLC, and/or any related partnership, or corporation, or other entity which may be created or designated by the Company to operate the Fieldhouse Project or acquire title to the Fieldhouse Real Estate on behalf of the Company, including any successors in title to the Fieldhouse Real Estate.

b. "Company Commitments" means the representations made by the Company to induce the City to enter into the Development Agreement and this Covenant.

c. "Fieldhouse Project" means the building and other improvements to be constructed by the Company on the Fieldhouse Real Estate containing a building of approximately one hundred thirty thousand (130,000) square feet to be primarily used by the Company rental of the facilities for sports training, competition, and other recreational purposes.

d. "Fieldhouse Real Estate" means the approximately ten (10) acres of land located in the southeastern portion of the Finch Creek Park as described as Lot 3 in the Finch Creek Subdivision as per the plat thereof recorded in the Office of the Hamilton County Recorder on the 29th day of September, 2017, as Instrument No. 2017048653.

e. "Parties" means the Company and all future successors or assigns in title to the Fieldhouse Real Estate or the Fieldhouse Project; the City; the Redevelopment Authority; and the Redevelopment Commission, as their interests are set out in the Development Agreement and this Covenant.

f. "Real Estate Taxes" means all real property taxes assessed and payable against the Fieldhouse Real Estate and improvements located thereon.

g. "The Statute" means Indiana Code 36-7-25-6, as of July 1, 2016. If the Statute is amended or repealed, the rights and duties of the Company and the City shall be construed consistent with the terms of the Statute on July 1, 2016, which reads as follows:

> IC 36-7-25-6
>
> Subject to section 6.5 of this chapter, a commission may enter into an agreement with a taxpayer in an allocation area that limits the taxpayer's rights to challenge the taxpayer's assessment or property taxes or that guarantees, enhances, or otherwise further secures bonds or lease obligations of the commission. The obligation to make payments under a taxpayer agreement that guarantee, enhance, or otherwise further secure bonds or lease obligations of the commission under this section shall be treated in the same manner as property taxes for purposes of IC 6-1.1-22-13, if, and to the extent that, the taxpayer agreement provides for a property tax lien.

SECTION II. CONSIDERATION.

The Company and the City, agree to perform all of the acts described in the Development Agreement and agree the mutual covenants and commitments contained in the Development Agreement are full and adequate consideration for the Company's agreement to the terms contained in this Covenant.

SECTION III. TERM OF THIS COVENANT NOT TO APPEAL.

This Covenant shall be binding upon the Company, its mortgage holders, lien holders, and successors in title. The Company agrees and covenants not to appeal the combined assessed value of the Fieldhouse Real Estate and the Fieldhouse Project if it is below the greater of: a) an amount of assessed value which would generate real property taxes of Three Hundred Thousand Dollars ($300,000) per year; or b) the assessed value for the Fieldhouse Real Estate and Fieldhouse Project based upon cost.

This Covenant shall remain in full force and effect and apply to the payment of Real Estate Taxes by the Company, its lesses, assignees, or its successors in title to the Fieldhouse Real

Estate and Fieldhouse Project assessed from January 1, 2018 (for taxes payable in 2019), through January 1, 2037 (for taxes payable in 2038). Beginning with the assessment on January 1, 2038, for taxes payable in 2039, the terms of this Covenant shall terminate and the Fieldhouse Real Estate shall be assessed, and may be appealed pursuant to Indiana law.

SECTION IV. GRANT OF LIEN FOR SECURING THE COVENANT NOT TO APPEAL ASSESSMENTS OF REAL PROPERTY TAXES.

a. The Parties agree that all real property taxes assessed and to be paid under this Covenant are necessary to enhance the City's ability to pay the payments from the City to the Company which partially reimburse the Company for part of the costs of the Construction and operation of the Project. Therefore, in consideration of the benefits conveyed by the City to the Company, pursuant to the Development Agreement, the Company, on behalf of itself and its successors in title to the Fieldhouse Real Estate, grants to the City, and the Redevelopment Commission, a lien to secure the obligation of the Company's right to appeal the assessment of real property taxes against the Fieldhouse Real Estate below the amounts listed in Section III. The lien shall be a lien against the Fieldhouse Real Estate and the improvements thereon and the lien herein granted shall be superior to any claim of the Company, its successors and assigns, and all mortgagees, assignees, and any other person or entity claiming an interest against the Fieldhouse Real Estate, it being the intent of the Company that the lien created by this Covenant shall be treated on parity with the lien for real property taxes as included in Indiana Code 6-1.1-22-13, all of which is authorized by Indiana Code 36-7-25-6.

b. The Parties shall cause this Covenant to be recorded immediately subsequent to the recording of the Deed conveying the Fieldhouse Real Estate to the Company.

SECTION V. DEFAULT.

In the event the Company files an appeal of the assessment of the Fieldhouse Real Estate in violation of this Covenant the City may file a copy of this Covenant with the Hamilton County Assessor, in which event, the Company consents to the Hamilton County Assessor denying the appeal.

Other events of default are:

a. The failure to pay or caused to be paid any real estate taxes assessed against the Fieldhouse Real Estate.

b. The foreclosure of any lien against the Fieldhouse Real Estate or the Fieldhouse Project.

c. The initiation of any bankruptcy petition against the Company or its successors, assigns or affiliates which have title to the Fieldhouse Real Estate or the Fieldhouse Project or any other action seeking appointment of receiver or other allegation of insolvency against the owner of the Fieldhouse Real Estate or the Fieldhouse Project.

Upon occurrence of any of the above events of default, the City, and/or the Redevelopment Commission, may immediately take any and all acts to protect the City's interests, initiating a claim in the proceeding to foreclose the lien of the City, the Redevelopment Authority, and/or the Redevelopment Commission, which lien shall include the amount of unpaid real property tax payments, reasonable attorneys fees and costs of collection as authorized by Indiana Code 6-1.1-22-13(d). For purposes of this Section, an the event of a failure to timely pay or caused to be paid any real estate tax, no event of default will be deemed to have occurred if the late payment, including penalties, is made within sixty (60) days of the due date. Notwithstanding the payment necessary to satisfy the lien of the City in any foreclosure proceeding, the in rem lien of this

Covenant shall remain in full force and effect through January 1, 2028, as provided by Section III above.

SECTION VI. BINDING EFFECT.

The rights, duties, and obligations of the Company shall be binding against the Company and any successors in title to the Fieldhouse Real Estate or Fieldhouse Project.

SECTION VII. MISCELLANEOUS TERMS.

a. Severability. The invalidity or unenforceability of any term, provision, clause or portion thereof, of this Agreement shall in no way impair or affect the validity or enforceability of any other provision in this Agreement.

b. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself for any other provision.

c. Presumption. This Covenant or any section thereof shall not be construed against either party due to the fact that said Covenant or any section thereof was drafted by said party.

d. Governing Law and Venue. This Covenant shall be construed according to the laws of the State of Indiana. Any legal Action concerning this Agreement, in law or equity, shall be brought in the exclusive jurisdiction of Hamilton County, Indiana.

e. Entire Covenant. This Covenant and Development Agreement contain the entire understanding between and among the Parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. No modification of this Covenant is enforceable unless in writing and signed by both Parties.

SECTION VIII. NOTICES.

All notices, certificates, approvals, consents or other communications desired or required to be given under this Covenant shall be in writing and shall be sufficiently given on the day of personal delivery by messenger or courier service, or on the second business day following the day on which the same shall have been mailed by registered or certified mail, postage and fees prepaid, return receipt requested addressed as follows. The Parties shall notify the other of any change of address within thirty (30) days.

If to the City, the Redevelopment Commission,

City of Noblesville, Indiana
c/o Mayor
16 South 10th Street
Noblesville, IN 46060

With copies to:

Michael A. Howard, Esq.
Attorney at Law
694 Logan Street
Noblesville, IN 46060

and

City of Noblesville, Indiana
c/o Controller
16 South 10th Street
Noblesville, IN 46060

If to the Company:

Noblesville Fieldhouse, LLC
c/o Andy Card
200 E. 186th Street
Westfield, IN 46074

With a copy to:

Noblesville Fieldhouse, LLC
c/o Michael Klipsch
200 E. 186th Street
Westfield, IN 46074

SECTION IX. BINDING UPON SUCCESSORS.

All covenants and agreements herein contained shall inure to and be binding upon the Parties and all successors in title, lessees, assignees, and lien holders to the Fieldhouse Real Estate and Fieldhouse Building.

SECTION X. AUTHORITY.

The Company represents and warrants that the approval of this Covenant has been duly authorized by the appropriate action of the Board of Directors of the Company. The City represents that the approval of this Covenant is authorized and the City shall take all actions necessary to implement the terms of this Covenant.

IN WITNESS WHEREOF, the Parties have executed this Covenant on the date first above written.

NOBLESVILLE FIELDHOUSE, LLC

By: _____

Printed: _____

Title: _____

ATTEST:

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
)SS:
COUNTY OF)

Subscribed and sworn to before me, a Notary Public, this ____ day of _____, 2017, personally appeared the within named _____ as _____ and _____ as _____ of Noblesville Fieldhouse, LLC, and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

_____

My Commission Expires: Notary Public,
_____ Residing in _____ County, Indiana

ALL OF WHICH IS AGREED by the Board of Public Works and Safety of the City of Noblesville, Indiana, this 7th day of November, 2017.

BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF NOBLESVILLE

_____
John Ditslear, Member

_____
Lawrence Stork, Member

_____
Jack Martin, Member

ATTEST:

_____
Evelyn L. Lees, Clerk
City of Noblesville, Indiana

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Subscribed and sworn to before me, a Notary Public this 7th day of November, 2017, personally appeared the within named John Ditslear, Lawrence Stork, and Jack Martin as members of the Board of Public Works and Safety of the City of Noblesville and Evelyn L. Lees, Clerk for the City of Noblesville and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

_____
Notary Public,
Residing in _____ County, IN

My Commission Expires:
_____

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in the document. Michael A. Howard
This instrument prepared by: Michael A. Howard, HOWARD & ASSOCIATES, 694 Logan Street, Noblesville, Indiana 46060, (317) 773-4212.

166TH STREET
NORTH
200
0
100
200
(IN FEET)
1 inch = 200 ft.
LOT 1
LOT 2
LOT 3
WILLIAM LEHR DRAIN
BODEN ROAD

EXHIBIT A