

DEVELOPMENT AGREEMENT

This Development Agreement (“the Agreement”) is entered into on the date last executed by the parties hereto (“the Execution Date”) between Boomerang Development, LLC (“the Company”), the City of Noblesville, by and through its Common Council (“the City”), the Noblesville Economic Development Commission (“the Economic Development Commission”) and the Noblesville Redevelopment Commission (“the Redevelopment Commission”) (collectively, “the City Bodies”).

WHEREAS, since at least 2013, the City has been working to fulfill its master plan of: (1) attracting, retaining and expanding an array of businesses and industries that create jobs and wealth for the residents and support the economic vitality of the City; and (2) providing diverse housing options and developing community infrastructure and services to support the socioeconomically diverse population in coordination with land use planning and projected growth (“the Master Development Plan”);

WHEREAS, the Company is master planning approximately two hundred forty (240) ± acres of land located east of Presley Drive and on the north and south sides of State Road 32 (“the Real Estate”), as shown on Exhibit A attached hereto;

WHEREAS, the Company has submitted to the City its proposed master plan for the Real Estate (“the Project”), which includes a mix of uses, including industrial, senior multi-family, senior two-family attached, multi-family and commercial to be known as Noblesville Northeast Business Park / Crossroads, as shown on Exhibit B attached hereto;

WHEREAS, the Company estimates the Project will increase the assessed value of the Real Estate from Two Million Two Hundred Forty-Two Thousand Two Hundred Dollars (\$2,242,200)

to approximately One Hundred Fifty-seven Million Eight Hundred Fifty-eight Thousand Dollars (\$157,858,000);

WHEREAS, the Project will require a variety of regional public and other improvements as shown on Exhibit C attached hereto, that are expected to cost approximately Five Million Four Hundred Thousand Dollars (\$5,400,000);

WHEREAS, the Company expects that the investment in the Project upon full build-out will be approximately One Hundred Fifty-Seven Million Eight Hundred Fifty-eight Thousand Dollars (\$157,858,000) and has requested certain economic development assistance from City;

WHEREAS, the City Bodies have determined that the completion of the Improvements and the Project advances the goals of the Master Development Plan and is in the best interests of the citizens of Noblesville, Indiana, and, therefore, the City Bodies desire to induce the Company to complete the Improvements and the Project by entering into this Agreement;

WHEREAS, to stimulate and induce the development of the Real Estate and the completion of the Project consistent with the Master Development Plan, the City Bodies have agreed, subject to further proceedings as required by law, to provide the economic development incentives pursuant to the Master Development Plan as described in this Agreement;

WHEREAS, the Company desires to master plan the Real Estate, to accept such incentives, and to make the Improvements in accordance with the terms hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the City Bodies and the Company agree as follows:

Section 1. DEFINITIONS.

a. "Allocation Area" shall mean the economic development area, or areas, to be created by the City Bodies pursuant to Indiana Code 36-7-14 for the purpose of collecting tax increment from the increased assessed value created by the Project.

b. "Allocation Fund" shall mean the fund or funds maintained by the City for the deposit of tax increment generated by the Project.

c. "Bond Amount" means the amount of bonds ("the Bonds") to be issued by the City Bodies in the approximate amount of Six Million Three Hundred Thousand Dollars (\$6,300,000) as further described in Section 2a below.

d. "Bond Payment Amount" means the scheduled semi-annual payments to be made to the purchaser of the bonds.

e. "Bond Term" means the lesser of twenty-five (25) years or the maximum term for collection of TIF Revenues from the Allocation Area.

f. "City Bodies" means the City of Noblesville, by and through its Common Council, the Noblesville Economic Development Commission, and the Noblesville Redevelopment Commission.

g. "Company" means Boomerang Development, LLC, and any related partnership, company, corporation or other entity designated to acquire title to all or part of the Real Estate on behalf of the Company.

h. "ED Bonds" means the Economic Development Bonds to be issued by one or more of the City Bodies in an amount described in Section 2a below.

i. "ED Bond Account" means an account in the Allocation Fund to collect from semi-annual TIF revenues up to the amount of the next scheduled Bond Payment Amount.

j. "Excess TIF Account" means the account in the Allocation Fund maintained by the City to be used for the deposit of the amount of semi-annual tax increment generated within the Allocation Area, which is in excess of the next scheduled Bond Payment Amount plus any Shortfall Reimbursement Amount.

k. "Execution Date" means the last date on which all City Bodies and the Company have signed and approved this Agreement.

l. "Improvements" means the improvements and the approximate costs of the Improvements shown on Exhibit C.

m. "Development Plan" means the plan for development of the Real Estate as generally shown on Exhibit B, as modified and amended by the final Planned Development Ordinance for the Real Estate.

n. "Net Proceeds" means Five Million Four Hundred Thousand Dollars (\$5,400,000), which will be available to the Company to reimburse the Project costs.

o. "Project Costs" means the costs of all Improvements described in Exhibit C and any additional infrastructure costs incurred by the Company up to the amount of the Net Proceeds.

p. "Real Estate" means the two hundred forty (240) ± acres of land, east of Presley Drive and north and south of State Road 32, shown on Exhibit A

q. "Shortfall Payments" means the difference between any Bond Payment Amount less the amount in the Allocation Fund, which Shortfall Payments shall be paid by the Company into the Allocation Fund.

r. "Shortfall Reimbursement Amount" means the total amount of unreimbursed Shortfall Payments paid by the Company into the Allocation Fund.

s. "Surplus Funds" means any funds held by the City in the Excess TIF Account.

t. "TIF Pledge" shall mean the pledge of the Redevelopment Commission of all tax increment generated from the Allocation Area to be deposited into the Allocation Fund.

u. "TIF Revenues" shall mean all tax increment collected from the Allocation Area(s) up to the maximum period provided by law.

Section 2. THE ECONOMIC DEVELOPMENT BONDS.

a. Within one hundred twenty (120) days of the City's receipt of the Company's written notice to proceed, the City shall issue, and the Company shall purchase or arrange for the purchase of, certain taxable Bonds for a Bond Term of the lesser of twenty-five (25) years or the maximum period for collection of TIF Revenues from the Allocation Area, at a rate not to exceed six (6%) percent in the approximate amount of Six Million Three Hundred Thousand Dollars (\$6,300,000), inclusive of amounts to be paid toward capitalized interest and cost of issuance, to yield the Net Proceeds, which ED Bonds shall be issued in one or more series and may be structured as "Draw Bonds" with the principal amount being drawn incrementally as such bonds are purchased by the Company or its designee;

b. Upon the issuance of the ED Bonds pursuant to Section 2(a), the Company shall make the Improvements and the City Bodies shall make available to the Company the Net Proceeds, which proceeds shall be available to the Company to pay or reimburse the Company for the prior payment of the costs of the Improvements;

c. The City Bodies shall cause the part of the Real Estate expected to generate tax increment (TIF) to be established as one or more Allocation Areas; and

d. The City Bodies shall approve a TIF Pledge by the Redevelopment Commission of one hundred (100%) percent of the tax increment from the Allocation Areas of Area "B" and Area "C", as shown on Exhibit D, to debt service for the ED Bonds and for payment into the Excess

TIF Account for the term of the existence of the Allocation Areas or until the Bonds and the Shortfall Reimbursement Amount are paid in full, whichever first occurs.

e. The Bonds shall not be an obligation of the City or any City Body. All Bond documents shall clearly disclose that the City has no duty to make any payments toward the Bonds other than to collect and deposit TIF Revenues from the Allocations Areas into the Allocation Fund, and pay: (i) to the Bonds holder all funds in the Allocation Fund up to the amount of the next scheduled Bond Payment Amount; and (ii) to the Company all funds in the Allocation Fund remaining after payment of the next scheduled Bond Payment Amount up to the amount of the Shortfall Reimbursement Amount.

f. The City agrees to issue the ED Bonds under such terms as are acceptable to the Company, its lender, or other purchaser(s) of the Bonds, subject to the terms of this Agreement and such laws, practices, and procedures which are customary for the issuance of municipal bonds. However, the Company shall be solely responsible for the sale or placement of the Bonds and the negotiation of any terms of the Bonds, which are not in conflict with the terms of this Agreement.

e. The Company shall be solely and independently liable for all of its legal, accounting, and other costs, including its bond counsel fees. The City shall pay all of its issuance cost from ED Bond proceeds. The City shall not be liable for the payment of the ED Bonds or the interest thereon, from any City revenues or funds, except for the TIF Revenues deposited into the Allocation Fund.

Section 3. DEBT SERVICE.

a. Upon issuance of the ED Bonds, there shall be created an Issuance Cost Account and a Capitalized Interest Account for deposit of all bond proceeds in excess of the Net Proceeds made

available to the Company. The Capitalized Interest Account shall be in an amount to pay all capitalized interest on the Bonds through August of 2023. The principal and interest payments on the Bonds shall be amortized over twenty-two (22) years, or the maximum period for collection of TIF Revenues from the Allocation Area. Upon issuance of the Bonds, there shall be created the Allocation Fund to receive and hold tax increment received from the Allocation Area(s). The Allocation Fund shall include the following accounts: (1) an ED Bond Account; and (2) an Excess TIF Account.

b. At all times during the Bond Term, the tax increment received from the Allocation Area(s) shall be deposited in the ED Bond Account up to the amount equal to one hundred (100%) percent of the amount needed to meet the next occurring semi-annual Bond Payment Amount plus any amounts due to the Company for the Shortfall Reimbursement Amount. Any amount above the next Bond Payment Amount plus any Shortfall Reimbursement Amount shall be deposited into the Excess TIF Account.

c. In the event there are insufficient funds in the Capitalized Interest Fund, or the ED Bond Account to make any bond interest, or principal and interest, payment, the Company, or its designee, shall, prior to thirty (30) days before the payment, deposit into the Allocation Fund a Shortfall Payment in the amount equal to the difference between the balance in the Allocation Fund, and the next Bond Payment Amount.

d. Each January 1 and July 1 during the Bond Term, all TIF Revenues in excess of the Bond Payment Amount and Shortfall Reimbursement Amount shall be transferred to the Excess TIF Account. The Redevelopment Commission shall be entitled to one hundred (100%) percent of funds that are deposited in the Excess TIF Account, which funds shall be made available to the City to use for any permissible purpose pursuant to Ind. Code 36-7-14. The Excess TIF Account

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may be used to redeem all or part of the ED Bonds if approved by the Redevelopment Commission, the Company, and the holder of the Bonds.

e. Availability of Proceeds. Proceeds from the ED Bonds shall be available to the Company no later than April 1, 2020. After that date, the Company may submit verified draw requests for the costs incurred for completion, or partial completion of, some or all of the Improvements.

Section 4. COMPLETION OF CONSTRUCTION OF IMPROVEMENTS.

Upon the issuance of the ED Bonds pursuant to Section 2(a), all of the Improvements described in Exhibit C shall be substantially complete, available for use, and accepted by the appropriate government bodies prior to December 31, 2023, unless there are substantial delays beyond the control of the Company (the "Completion Deadline"). If the Improvements are not substantially completed on or before the Completion Deadline, then no additional proceeds from the ED Bonds shall be available to the Company after the Completion Deadline without the Noblesville City Council's approval. Both parties further acknowledge that any costs of the Improvements in excess of the Project Costs shown in Exhibit C, shall be the responsibility of the Company.

Section 5. SENIOR RESIDENTIAL USES.

The development of multi-family units in Area B and Area D shown on Exhibit B shall be operated as age restricted communities in compliance with all applicable state and federal laws, including 42 U.S.C 3607. The provisions of this Section shall be included in the Covenants and Restrictions for Area B and Area D and may be enforced by the City, the Developer, or by a Home Owners Association or other Association created by the Developer by an action in law or in equity, including, without limitation, an injunction requiring specific performance.

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Section 6. ADDITIONAL ACTIONS.

The City agrees to approve any ordinances, resolutions, and other formal acts necessary to carry out the issuance of the Bonds and the financial terms and conditions set out in this Agreement.

Section 7. MODIFICATIONS.

The Parties agree that the terms and conditions of this Agreement may be modified by mutual agreement of the parties by the same procedures necessary for approval of this Agreement.

Section 8. PLANNING AND ZONING.

The City agrees to assist the Company in expediting all zoning and land use approvals necessary to complete the construction of the Project.

Section 9. TIMING OF THE PROJECT.

The parties agree to use their best efforts to meet the deadlines included in this Agreement, but acknowledge that weather and acts of outside regulatory entities, including utilities, may delay the completion of the acts described herein. In the event of such delays, the parties agree to negotiate in good faith to reasonably extend said deadlines.

Section 10. REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE CITY.

The City hereby represents, covenants and warrants to the Company that the City Bodies have complied, or will, comply with all applicable laws necessary to execute this Agreement and agree to undertake all of the City Bodies' duties and obligations described herein.

Section 11. 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.

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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 subsequently enforce the provision, nor shall any waiver of violation or breach of a provision be a waiver of any succeeding violation or breach of that provision.

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

d. Governing Law and Venue. This Agreement 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 Agreement and Counterparts. This Agreement contains the entire understanding between and among the parties regarding the subject matter of this Agreement. No modification of this Agreement is enforceable unless in writing and signed by all parties. This Agreement may be executed in counterparts and upon execution of all counterparts shall comprise one (1) fully executed agreement.

f. Default. If one of the City Bodies or the Company breaches any material obligation hereunder and such breach continues for a period of thirty (30) days after notice thereof from the other party, then, in addition to any remedies available at law, the Company shall be entitled to specific performances of the City Body's legal obligations hereunder and the defaulting party will be responsible for all costs and expenses (including attorney's fees) related to such specific performance; it being acknowledged by the City that damages may not be an adequate remedy for a City Body's breach hereunder.

Section 12. NOTICES.

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All notices, certificates, approvals, consents or other communications desires or required to be given under this Agreement shall be in writing and shall be sufficiently given on the day of personal delivery by messenger or courier service, or on the second 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, or the Economic Development 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
Or the subsequently appointed City Attorney

And

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

If to the Company:

Boomerang Development, LLC
c/o Corby Thompson
11911 Lakeside Drive
Fishers, IN 46038

With copy to:

Steven D. Hardin, Esq.
Faegre Baker Daniels, LLP
600 East 96th Street
Indianapolis, IN 46240

Section 13. BINDING NATURE OF AGREEMENT.

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The Company has the right to assign its applicable rights and duties under this obligation to any person or party that owns some or all of the Real Estate or that is making some or all of the Improvements. This Agreement, shall be binding upon the City and the Company and any and all of their lessees, tenants, subsidiaries, and any and all successors and assigns. The City, the Redevelopment Commission, and the Economic Development Commission, subject to their statutory authority, shall be jointly and severally responsible and liable for the obligations of the City.

Section 14. COOPERATION BETWEEN PARTIES.

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The City agrees to approve the land uses generally described and shown on Exhibit B, subject to the terms of the City's Unified Development Ordinance, as may be reasonably modified by the mutual agreement of the parties. The City and Developer further agree, subject to further proceedings required by law, to use their respective best efforts to take such actions in a prompt and timely manner, including the holding of all required public hearings and/or public meetings, the adoption of all necessary ordinance and/or resolutions, and the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to use their respective best efforts to aid and assist each other in carrying out said terms, provisions and intent.

Deleted: - Approvals required by any party hereunder shall not be unreasonably withheld, conditioned or delayed, and the parties shall cooperate with each other to expeditiously complete the actions described in this Agreement.¶

Section 15. NO THIRD PARTY BENEFITS. The duties of the City parties under this

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Agreement are the sole commitments of the City, the City Bodies, and any other entity created by the City or any statute. Nothing in this Agreement shall be deemed to be for the benefit of any

person or entity, other than the Company. Nothing herein shall be deemed to create a principal or agency relationship between, or among, the parties and no third party shall be deemed to have any claim against the City or City parties arising out of this Agreement.

Section 16. TIME IS OF THE ESSENCE.

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The times for performance provided in this Agreement are essential due to the obligations and expenditures of the parties. If a time is not specified, performance shall be required promptly and with due regard to the conditions of performance of other parties in reliance thereon.

Section 17. DISPUTE RESOLUTION.

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In the event there are any disputes arising under this Agreement, those disputes shall initially be discussed in a settlement conference to be held among the Mayor of Noblesville, a member of the Noblesville City Council and two designees of the Company. If there is no resolution of the dispute at the settlement conference, then the dispute shall be submitted to mediation, pursuant to the Indiana Rules of Alternative Dispute Resolution prior to initiating litigation. In the event that the parties cannot agree on an acceptable mediator, a mediator shall be appointed by the Judge of the Circuit Court of Hamilton County.

ALL OF WHICH IS AGREED by Boomerang Development, LLC, an Indiana limited liability company, the City of Noblesville, the Noblesville Redevelopment Commission, and the Noblesville Economic Development Commission on the dates set out herein.

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BOOMERANG DEVELOPMENT, LLC

Dated: _____

By: _____
Corby Thompson, Managing Member

ATTEST:

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
)
COUNTY OF _____)

SS:

Subscribed and sworn to me, a Notary Public, this ____ day of _____, 2019, personally appeared the within named Corby Thompson as Managing Member of Boomerang Development, LLC and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

Notary Public

My commission Expires:

ALL OF WHICH IS AGREED BY THE Common Council of the City of Noblesville, Indiana, this ___ day of _____, 2019.

_____	Brian Ayer	_____
_____	Wil Hampton	_____
_____	Mark Boice	_____
_____	Christopher Jensen	_____
_____	Roy Johnson	_____
_____	Gregory P. O'Connor	_____
_____	Darren Peterson	_____
_____	Rick L. Taylor	_____
_____	Megan G. Wiles	_____

Approved and signed by the Mayor of the City of Noblesville, Hamilton County, Indiana, this ___ day of _____, 2019.

_____	_____
Evelyn L. Lees, Clerk	John Ditslear, Mayor
City of Noblesville, Indiana	City of Noblesville, Indiana

STATE OF INDIANA)
)
COUNTY OF _____)

Subscribed and sworn to me, a Notary Public, this ___ day of _____, 2019, personally appeared the within named John Ditslear, as Mayor of the City of Noblesville, and Evelyn L. Lees, as Clerk of the City of Noblesville, and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

Notary Public

My commission Expires:

APPROVED and signed by the Noblesville Economic Development Commission, this ___ day of _____, 2019.

NOBLESVILLE ECONOMIC DEVELOPMENT COMMISSION

David Johnson

Jeff Zeckel

Blair D. Carmosino

STATE OF INDIANA)
)
COUNTY OF _____)

SS:

Subscribed and sworn to me, a Notary Public, this ___ day of _____, 2019, personally appeared the within named members of the Noblesville Economic Development Commission, and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

Notary Public

My commission Expires:

APPROVED and signed by the Noblesville Redevelopment Commission, this __ day of _____, 2019.

NOBLESVILLE REDEVELOPMENT
COMMISSION

Mike Field

John Elmer

Bill Lynch

William L. Taylor

ATTEST:

Jack Martin, Secretary

STATE OF INDIANA)
)
COUNTY OF _____)

SS:

Subscribed and sworn to me, a Notary Public, this __ day of _____, 2019, personally appeared the within named members of the Noblesville Redevelopment Commission, and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

Notary Public

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

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This instrument prepared by Michael A. Howard, Attorney at Law, 694 Logan Street, Noblesville, Indiana, 46060, 773-4212.

INDEX TO EXHIBITS

Exhibit A	Depiction of the Real Estate
Exhibit B	Concept Plan
Exhibit C	Improvements
Exhibit D	Allocation Area(s)

Exhibit A
Depiction of the Real Estate

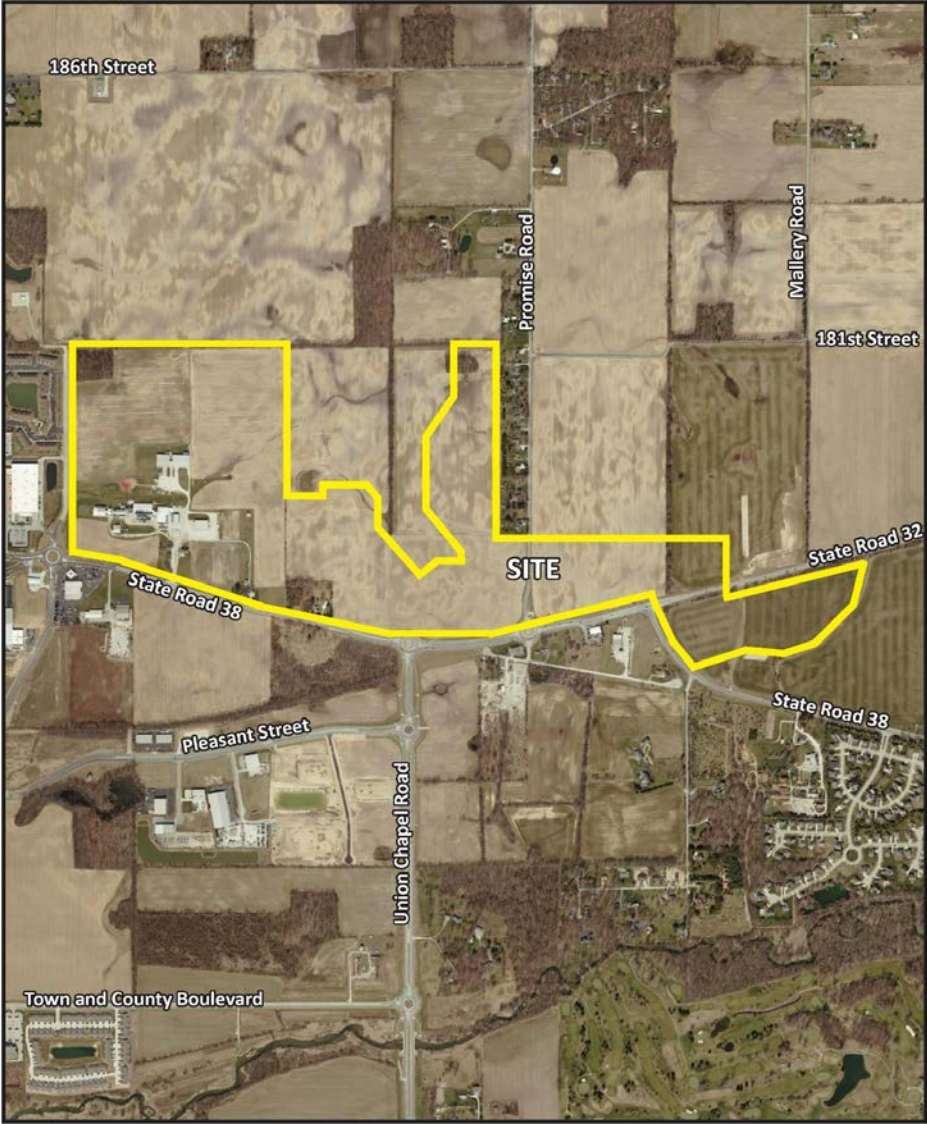
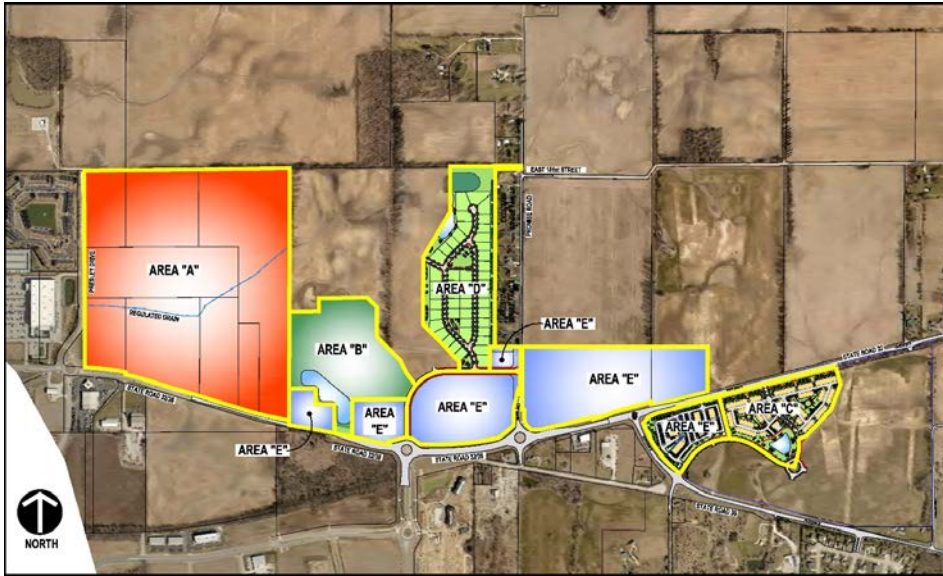


Exhibit B
Concept Plan



Area A: Industrial

Area B: Senior Multi-Family







Area C: Multi-Family

Area D: Senior Two-Family Attached

Area E: Commercial

Exhibit C
Improvements

Regional Public and Other Improvements

Improvement		Cost
• Rehab 1880s farmhouse for commercial/public use		\$400,000
• Legal drain improvements		\$1,325,000
• Sanitary sewer interceptor improvements		\$1,475,000
• Water main extension improvements		\$1,100,000
• Public thoroughfare improvements		\$800,000
• Public pathways along SR 32 and SR 38		\$300,000
TOTAL		\$5,400,000

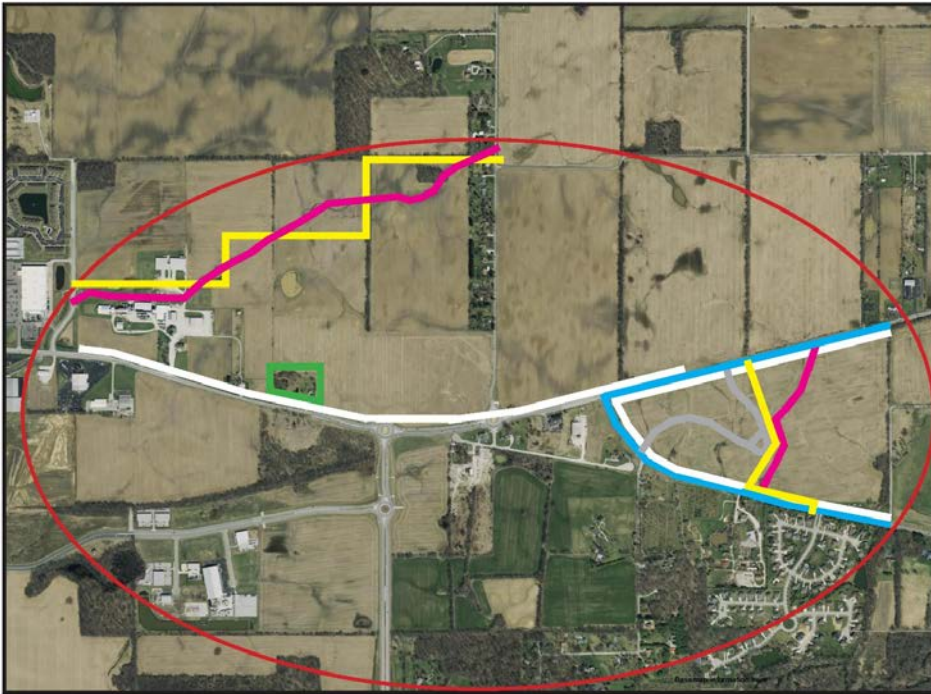


Exhibit D

Allocation Area(s)

