

**RESOLUTION NO. RC-9-24**  
**A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT**  
**(Hazel Dell Apartments, LLC)**

WHEREAS, the City of Noblesville, Indiana (the “City”) desires to enter into agreements with private entities to encourage investment and foster economic development within the City;

WHEREAS, Hazel Dell Apartments, LLC is a privately held, limited liability company, an Indiana corporation, all organized and existing under the laws of the State of Indiana (the “Developer”);

WHEREAS, the Common Council of the City (the “Council”) has been advised by the Mayor, City administration and others of a proposed economic development agreement by and between the City and the Developer, the substantially final form of which agreement is attached hereto as Exhibit A and incorporated herein by reference (the “Project Agreement”);

WHEREAS, pursuant to the Project Agreement, the Developer has proposed to develop a mixed-use development including 284 market rate apartments, not more than 150 for sale townhome units, and 30,000 square feet of commercial/retail space located in the City in the Noble West development (the “Project”);

WHEREAS, the Developer intends to make or cause to be made a minimum capital investment of not less than Forty Million Dollars (\$40,000,000) in connection with the Project;

WHEREAS, the Developer has advised the City that, without the assistance of the City and the provision of the economic development incentives described in the Project Agreement, the Project will not move forward;

WHEREAS, the Council has reviewed the Project Agreement and considered the information provided to it by the Mayor, City administration and others relating to the proposed Project and therefore finds that the terms of the Project Agreement are consistent with the provisions of Indiana law and plan for development of the City, will serve to foster and encourage economic growth of the City and will be of public benefit to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF NOBLESVILLE, HAMILTON COUNTY, INDIANA, AS FOLLOWS:






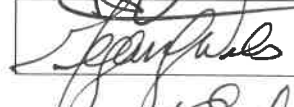

Section 1. The Project Agreement, in substantially final form attached hereto as Exhibit A, is hereby approved and the Mayor of the City is hereby authorized to execute said Project Agreement on behalf of the City. The Mayor of the City is hereby authorized and empowered to approve any such amendments, additions, deletions or changes to the Project Agreement as he deems necessary or advisable, with the advice of counsel, and his approval shall be signified by his execution of the Project Agreement.

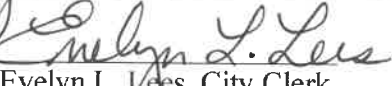
Section 2. The Mayor, the Controller and the Clerk of the City, and such other staff members, service providers and firms as they may direct are hereby authorized and directed to take

any and all other actions on behalf of the City as may be necessary or appropriate to carry out the purposes of this resolution.

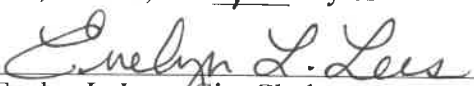
Section 3. This resolution shall be in full force and effect after its passage and execution by the Mayor.

Approved on this 9<sup>th</sup> day of April, 2024 by the Common Council of the City of Noblesville, Indiana:

AYE		NAY	ABSTAIN
	Mark Boice		
	Michael J. Davis		
	Evan Elliott		
	David M. Johnson		
	Darren Peterson		
	Pete Schwartz		
	Aaron Smith		
	Todd Thurston		
	Megan G. Wiles		

ATTEST:   
Evelyn L. Lees, City Clerk

Presented by me to the Mayor of the City of Noblesville, Indiana, this 9<sup>th</sup> day of April, 2024 at 9:10 P.M.

  
Evelyn L. Lees, City Clerk

  
Chris Jensen, Mayor

MAYOR'S APPROVAL

4-9-24  
Date

MAYOR'S VETO

Chris Jensen, Mayor

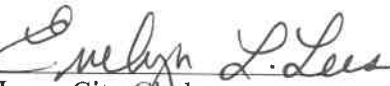
ATTEST:   
Evelyn L. Lees, City Clerk



EXHIBIT A

Project Agreement

## **ECONOMIC DEVELOPMENT AGREEMENT**

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and among the City of Noblesville, Indiana (the “City”), the Noblesville Redevelopment Commission (the “Redevelopment Commission” and, together with the City, the “City Bodies”), and Hazel Dell Apartments, LLC, an Indiana limited liability company (the “Company” or the “Developer”).

### **W I T N E S S E T H:**

WHEREAS, the Redevelopment Commission desires to foster economic development and redevelopment within the City; and

WHEREAS, the Company has approached the Redevelopment Commission regarding the construction and equipping of certain economic development facilities, as more particularly described in Part I of Exhibit A attached hereto (collectively, the “Project”) on certain parcels of real property located within the City (the “Project Site”) (see Exhibit B attached hereto for a legal description); and

WHEREAS, the Company has requested certain economic development assistance from the City with respect to the funding of Eligible Costs for the portion of the Apartment Component (as hereinafter defined) described in Part II of Exhibit A hereto; and

WHEREAS, the City Bodies have determined that the completion of the Project is in the best interests of the citizens of the City, and, therefore, the City Bodies desire to take certain steps in order to induce the Company to complete the Project; and

WHEREAS, to stimulate and induce the development of the Project Site and the completion of the Project, the City Bodies have agreed, subject to further proceedings as required by law, to provide the economic development incentives described herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

### **ARTICLE I. DEFINITIONS**

The capitalized words and phrases used in this Agreement shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of such words and phrases):

“Act” means collectively, Indiana Code 36-7-11.9 and 12.

“Allocation Area” means the area, as further described on Exhibit E, to be designated by the Redevelopment Commission under Indiana Code 36-7-14-39 as an area for the purpose of the allocation and distribution of property taxes on real property to be used in the manner provided in Indiana Code 36-7-14-39, which shall be known as the “Noble West Allocation Area.”

“Ancillary Agreements” shall mean all instruments and agreements to be entered into by the Company referenced or contemplated herein, including, without limitation, the Loan Agreement and the Taxpayer Agreement.

“Bond Counsel” means Barnes & Thornburg LLP.

“Bond Proceeds” shall mean the proceeds of the Bonds in the aggregate principal amount not to exceed Six Million Seven Hundred Thousand Dollars (\$6,700,000) to be loaned to the Company for application to the Eligible Costs of the portion of the Apartment Component described in Part II of Exhibit A hereto.

“Bonds” shall mean one or more series of bonds or notes to be issued under the Act, the proceeds of which shall be applied to the Eligible Costs.

“Change Order” shall mean a change order between the City and Developer that is approved in writing by City (or its designee) finalizing the inclusion into the Final Documents and Drawings of a change proposed in a Change Order Request by Developer that is approved by City (or its designee).

“Change Order Request” shall mean a written request for a change to the Final Documents and Drawings.

“Claims” shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys’ fees); provided that in no event shall Claims include consequential or punitive damages.

“Closing” shall mean the closing with respect to the Bonds which shall not be earlier than the closing for the construction loan for the Apartment Component.

“Closing Date” shall mean the date of the Closing.

“Completion Date” shall mean with respect to each of the Projects the earlier of the date (i) the applicable Project passes Final Inspection or (ii) the certificate of occupancy or local equivalent is issued, such date not being later than thirty-six (36) months from the date the applicable Project closes on construction financing for the applicable Project; provided, however, with respect to the Townhome Component Project, the thirty-six (36) month period shall be extended to the extent determined by the Townhome Component Developer to be reasonably prudent to meet the then current market absorption rates (“Market Absorption Delays”).

“Construction Drawings” shall mean construction drawings for the: (a) exterior of the buildings and other structures; and (b) sidewalks, patios, and other exterior elements; in each case comprising, or constituting a part of, the Project, which drawings shall be consistent with the Design Development Documents and the Laws.

“Construction Schedule” shall mean a schedule for construction of the Project in accordance with the Final Documents and Drawings.

“Council” means the Noblesville Common Council.

“Cure Period” shall mean a period of: (a) ten (10) days after written notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than one hundred eighty (180) days. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under an Ancillary Agreement, which shall be subject to any specific cure periods for such defaults expressly set forth in such Ancillary Agreement.

“Design Development Documents” shall mean detailed design development documents for the: (a) exterior of the buildings and other structures; and (b) sidewalks, patios, and other exterior elements; in each case comprising, or constituting a part of, the Project, which documents shall be consistent with the Site Plan and the Laws.

“Eligible Costs” shall mean the following categorical costs of providing for “economic development facilities” as defined and set forth in the Act:

- (i) Issuance Costs;
- (ii) the “Capitalized Interest Costs”, namely a portion of the interest on the Bonds from the date of their original delivery through and including the anticipated period of construction of the portion of the Project financed by the Bonds, plus one year thereafter, in accordance with the Act;
- (iii) all costs and expenses which the Company shall be required to pay, or advance under the terms of any contract or contracts (including the architectural and engineering, development services with respect thereto), for the construction of the portion of the Apartment Component described in Part II of Exhibit A hereto; and
- (iv) any sums required to reimburse the Company for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the portion of the Apartment Component described in Part II of Exhibit A hereto.

“Execution Date” shall mean the date set forth in the first paragraph of this Agreement.

“Final Documents and Drawings” shall mean the final Design Development Documents and the final Construction Drawings, as each is finalized and approved or reviewed by City pursuant to this Agreement.

“Final Inspection” shall mean an inspection of the Project after substantial completion thereof in a manner consistent with the Laws, including Indiana Administrative Code 675 and City regulations and ordinances.

“Inspector” shall mean such party designated by City as its inspector.

“Issuance Costs” shall mean reasonable costs, fees and expenses incurred or to be incurred by the City in connection with the issuance and sale of the Bonds, including placement or other financing fees (including applicable counsel fees), attorney’s fees, financial advisor fees, professional fees, the fees and disbursements of bond counsel, fees of the City’s municipal or financial advisor, the acceptance fee of a Trustee, if any, and the first year of the Trustee’s fees hereunder, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under a Trust Indenture, if any, or to perfect the lien thereof, the out-of-pocket costs of the City, the costs of preparing or printing the Bonds and the documentation supporting the issuance of the Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred in connection with the issuance and delivery of the Bonds, this Agreement or the Ancillary Agreements, but shall not include any of the foregoing costs, fees and expenses incurred or to be incurred by the Company.

“Laws” shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees.

“Loan Agreement” shall mean the agreement between the Company and the City funding the loan of the Bond Proceeds.

“Material Defects” shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Documents and Drawings, other than Permitted Changes; or (c) has not been performed materially in accordance with the terms and conditions of this Agreement.

“Non-Compliance Notice” shall mean a written notice from City to the Company that identifies Material Defects with respect to the Project discovered by the Inspector during the Final Inspection.

“Permitted Change” shall mean any change to that portion of the Final Documents and Drawings consisting of the final Construction Drawings, so long as such change: (a) does not substantially affect the exterior appearance of the Project or the location, size, or number of parking spaces; (b) is not substantially inconsistent with the Construction Drawings approved by City; (c) is not substantially inconsistent with the Design Development Documents approved by City; and (d) is in substantial conformity with each of the Site Plan, the Required Permits, and the Laws.

“Plan Refinement Process” means the process to establish the Final Documents and Drawings as specified in Section 4.04.

“Plat” shall mean the plat of the Project Site that has received approval of the City on or before Closing and is ultimately recorded in the Office of the Recorder of Hamilton County, Indiana.

“Pledged TIF Revenues” means 83% of the Tax Increment for a period of twenty-five (25) years following the issuance of the Bonds.

“Prohibited Uses” shall mean those prohibited uses for the Project as set forth in Exhibit G.

“Property Inspection” shall mean surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments.

“Required Permits” shall mean all permits, licenses, approvals, and consents required by the Laws for construction and use of the Project.

“Site Plan” shall mean the site plan attached hereto as Exhibit C.

“Survey” shall mean an ALTA survey of the Project Site certified as of a current date by a reputable licensed surveyor; which Survey shall show that the Project Site is suitable for development of the Project as contemplated in this Agreement.

“Tax Increment” means all real property tax proceeds attributable to the assessed valuation with the Allocation Area as of each assessment date in excess of the base assessed value as described in Indiana Code 36-7-14-39(b)(1).

“Taxpayer Agreement” shall mean the agreement described in Section 5.01 hereof.

“Title Commitment” shall mean a title insurance commitment for an owner’s policy of title insurance that: (a) is issued by the title insurer; and (b) commits to insure marketable fee simple title to the Project Site in the name of the Company.

“Title Defects” shall mean conditions or defects disclosed in the Title Commitment or the Survey that, in the sole determination of the Company, will interfere with the construction and/or use of the Project; provided that the lien of any mortgage or other security instruments to be released at or before Closing shall not be a Title Defect.

“Trust Indenture” means the Trust Indenture, dated as of the first day of the month in which the Bonds are issued, between the City and a trustee to be chosen by the City.

## **ARTICLE II. RECITALS**

2.01 Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 2.01.

## **ARTICLE III. MUTUAL ASSISTANCE**

3.01 Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the City Bodies, the adoption of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms,

provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

#### **ARTICLE IV. DEVELOPMENT AND PROJECT**

##### **4.01 Project.**

(a) The Project shall consist of the improvements described in Exhibit A hereto. The Project shall be constructed substantially in accordance with the Site Plan attached as Exhibit C and the architectural renderings attached as Exhibit D, which Site Plan and architectural renderings are considered preliminary and shall be subject to modification as described in subsection 4.01(b) hereof. Based upon the information provided by the Company, the Apartment Component's projected tax increment is included in Exhibit H attached hereto. Developer shall serve as master developer for the Project and shall be entitled (subject to the City's approval, which approval shall not be unreasonably withheld) to designate one or more third-party developers (each, a "Component Project Developer") to develop Component Projects (as defined in Exhibit A) in compliance with subsection 4.01(c) hereof. The City acknowledges that Developer and Component Project Developer may elect to enter into a separate development agreement to formalize their respective rights and obligations regarding the relevant Component Project and other matters relating to the Project (subject to the City's approval, which approval shall not be unreasonably withheld). The City further acknowledges that in no event shall any failure or default with regard to either the Townhome Component Project or the Commercial/Retail Component Project by either the Company or any Component Project Developer impact the Bonds or the pledge of Pledged TIF Revenues to the payment of such Bonds.

(b) Upon consideration of market and other external factors, Developer, in consultation with the City, may modify or substitute alternate uses and configurations in the Site Plan; provided, however, the prior approval of the City, not to be unreasonably withheld, shall be a condition to such substitution or modification, and provided that the substitution or modification (i) does not reduce the total minimum investment by the Company set forth herein and the projected assessed value of the Apartment Component and (ii) complies with applicable zoning laws and approval requirements.

(c) The City will consider the following factors in evaluating a potential Component Project Developer: financial strength, reputation, experience, and any other factors the City deems necessary to ensure successful completion of the applicable Component Project. The City approves Lennar Corporation or an affiliate thereof as the Component Project Developer for the Townhome Component and NW Partners or an affiliate thereof as the Component Project Developer of the Commercial/Retail Component.

(d) The Company shall establish the scope, timing and budget/construction costs of the work to be funded with the Bond Proceeds in consultation with the City Bodies, and subject to the approval of the City Bodies, which approval shall not be unreasonably withheld.

(e) The Project shall be constructed in accordance with the Final Documents and Drawings, subject to modifications permitted pursuant to this Agreement.

(f) With respect to the Apartment Component, the Developer commits to an increased density of trees in buffer yards along Edenshall Lane at 75% greater than required by the Noble West-2023 PD Multifamily Amendment Ordinance. The Apartment Component will contain amenities for apartment residents including a resort-style pool, clubhouse with interior amenities and co-working areas, exercise facilities, and an exterior pickleball court. The apartment residential buildings will include access-controlled interior hallways and elevators.

(g) The Company shall ensure that at least ten percent (10%) of the market rate apartment units within the Apartment Component Project shall be dedicated to workforce housing based upon 80% of the area median income for Hamilton County as determined annually by the U.S. Department of Housing and Urban Development. Dedication to workforce housing shall be evidenced by rents for said 10% of units that are at or below 30% of the 80% of area median income level.

(h) No portion of the Project shall be used for any of the Prohibited Uses.

(i) Where the context requires, the term "Project" when used herein shall apply to each Component Project separately. Each approved Component Project Developer shall execute an acknowledgement of the foregoing and an assumption of the Company's obligations pursuant to this Agreement insofar as they relate to the applicable Component Project. Such acknowledgement and assumption shall be in form and substance satisfactory to the City Bodies and the Company. A default by a Component Project Developer in the performance of its assumed obligations pursuant to this Agreement or of its obligations pursuant to any Taxpayer Agreement shall not be deemed a default by the Company or any other Component Project Developer.

(j) The Company and City acknowledge and agree that the Company does not own and will have no obligation to acquire Edenshall Lane or any portion of the trail depicted on Exhibit I (collectively the "Dedication Areas"). Company, at no cost or expense to Company, agrees to use commercially reasonable efforts to cause the existing owners of the Dedication Areas to dedicate the Dedication Areas for public use; provided, however, the failure to dedicate the Dedication Areas for public use shall not result in a breach or default of Company under this Agreement or provide the City Bodies with any rights of termination.

4.02 Subject to Section 4.06, the Company shall complete the Apartment Component by no later than thirty-six (36) months following the Closing Date. In connection with the Apartment Component, the Company shall invest, and/or cause to be invested in the Apartment Component, not less than Forty Million Dollars (\$40,000,000) and reasonably expects the Apartment Component to result in the creation of approximately six (6) permanent jobs with an estimated annual payroll of Four Hundred Fifty Thousand Dollars (\$450,000). During the construction phase of the Apartment Component, it is estimated that approximately eighty-five (85) full time equivalent general contracting and construction related jobs with an annual payroll of Five Million Five Hundred Twenty-Five Thousand Dollars (\$5,525,000) will be created.

4.03 Project Site. The Company has acquired, or shall cause to be acquired, and shall improve the Project Site described in Exhibit B attached hereto, subject to the performance by the City Bodies of their respective obligations under this Agreement, by constructing the Project on such Project Site, as more particularly described in Section 4.01 hereof.

4.04 Project Description and Project Plan Refinement Process. The Project shall consist of the items and/or parameters set forth in Exhibit A attached hereto. The Company shall commence construction of the Apartment Component Project within sixty (60) days of the Closing Date, and shall complete construction and equipping of the Project within thirty-six (36) months of the Closing Date, subject to permitted delays provided for in Section 4.06 hereof. In addition to the City's policies and procedures under the Laws, the following process shall be considered the Plan Refinement Process for the Project. The Company shall submit to the City for its review the Design Development Documents. Within thirty (30) days after receipt of the Design Development Documents, the City shall deliver to the Company written notice either: (A) confirming that such Design Development Documents are acceptable; or (B) objecting to such Design Development Documents, specifying the part or parts to which the City objects and including the specific basis for such objection. Upon confirmation that the Design Development Documents are acceptable, or if the City fails to respond within the time period provided above, such Design Development Documents shall be deemed to be final and, accordingly: (i) shall become part of the Final Documents and Drawings for the Project; and (ii) shall be subject to modification only by Change Orders and/or Permitted Changes. Following approval of the Design Development Documents, the Company shall submit to the City for its review the Construction Drawings for each trade or other discrete aspect of construction of the Project. Within thirty (30) days after the City receives the Construction Drawings, the City shall deliver to the Company written notice either: (i) confirming that such Construction Drawings are acceptable; or (ii) objecting to such Construction Drawings, specifying the part or parts to which the City objects and including the specific basis for such objection. Upon confirmation that the Construction Drawings conform to the corresponding approved Design Development Documents, or if the City fails to respond within the time period provided above, such Construction Drawings shall be deemed to be final and, accordingly: (i) shall become part of the Final Documents and Drawings for the Project; and (ii) shall be subject to modification only by Change Orders and/or Permitted Changes. If, at any stage of the Plan Refinement Process described in this Section 4.04, the City objects to or rejects, as applicable, all or any portion of the Design Development Documents or the Construction Drawings, then, the Company shall endeavor in good faith to address such objection to the City's reasonable satisfaction within twenty (20) days after the Company receives notice of such objection and resubmit the relevant documents to the City. Within twenty (20) business days after the City receives such resubmissions, the City shall deliver to the Company written notice of its confirmation, objection, approval, or rejection, as applicable, in accordance with this section. This process shall continue until such time as the Design Development Documents and the Construction Drawings are confirmed or approved, as applicable, by the City, at which time each of the foregoing shall be final and, accordingly: (i) shall become part of the Final Documents and Drawings for the Project; and (ii) shall be subject to modification only by Change Orders and/or Permitted Changes.

4.05 Change Orders. If the Developer desires to make any changes to the Final Documents and Drawings, then the Developer shall submit a Change Order Request to the City for review and approval. The Developer agrees that it shall not perform any such work until the Change Order has been approved and executed by the City and the Developer. Within ten (10) days after City receives the Change Order Request, City shall deliver to the Developer written notice that it approves or rejects the Change Order Request; provided, that: (i) City shall not withhold its approval unreasonably; and (ii) if City rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that City is rejecting; and (B) include the specific basis for such rejection. If the City approves a Change Order Request, then the City and the

Developer shall execute a Change Order. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of the City with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by the Developer. Changes to the Final Documents and Drawings which are not identified in a Change Order approved by the City, other than Permitted Changes in a Change Order submitted to the City for review in accordance with the foregoing, shall not be deemed a Permitted Change and shall constitute a default hereunder.

4.06 Permitted Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, or damage to work in progress by reason of fire or other casualty, a material worsening of the existing pandemic or the occurrence of any new epidemic or pandemic with material economic consequences or similar causes beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which the Company or any of the City Bodies is entitled to delay its performance under this Agreement and (ii) the Company or such City Body anticipates that such permitted delay will cause a delay in its performance under this Agreement, then the Company or such City Body, as the case may be, agrees to provide written notice to the other parties of this Agreement of the nature and the anticipated length of such delay.

4.07 Inspection of the Project.

(a) Authorized Inspection. Any duly authorized representative of the City, including the City's Inspector, shall have access to and the right to walk through the Project. The Inspector shall have the right to perform a Permitted Inspection on the Project. The Company will reasonably cooperate with the City in connection with any such walk-through or Permitted Inspection. Upon reasonable written notice delivered to the Developer, which notice shall specify the portion of the construction to be subject to the Permitted Inspection or walked through, the inspector may perform a Permitted Inspection, and the City may otherwise walk through the Project. Within seven (7) business days after a Permitted Inspection, the City may deliver to the Developer a Non-Compliance Notice. If the City timely delivers a Non-Compliance Notice, then the Developer shall correct, or cause to be corrected, as soon as is reasonably practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or deemed to have been accepted, by the City. Notwithstanding anything to the contrary set forth herein, all items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by the City.

(b) Final Inspection. If the Company delivers to the City a written request for a Final Inspection, then, on or before the later of the date that is five (5) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; the City shall: (1) conduct the Final Inspection; and (2) deliver a Non-Compliance Notice (if applicable) to the Company; provided, that: (y) upon receipt of a Non-Compliance Notice, the Company shall correct, or cause to be corrected, as soon as is reasonably practicable, all Material

Defects identified in the Non-Compliance Notice; and (z) all then-completed items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by the City. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this Subsection; City shall have no further inspection rights with respect to the Project pursuant to this Section 4.07(b). The failure of the City to conduct the Final Inspection within the required timeframe shall be deemed a waiver of its right to conduct such inspection and its determination that no Material Defects exist.

(c) Failure to Cure. If the applicable Component Project Developer fails to cure or take substantial steps to cure any item in a Non-Compliance Notice, in each case, within forty-five (45) days of the receipt of such notice, then the City, in addition to any other right or remedy provided herein (and regardless of any Cure Period provided herein), shall be entitled to the sum of \$300 per day from the applicable Component Project Developer for each day after the expiration of such forty-five (45) day period that any items in any Non-Compliance Notice remain incomplete; provided that, if such Material Defect is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the forty-five (45) day cure period shall be extended as may be reasonably necessary for the Component Project Developer to remedy such Material Defect, so long as the Component Project Developer commences to remedy such Material Defect within the forty-five (45) day period and thereafter continuously and diligently pursues such remedy to completion.

(d) Certification. An acceptance, or deemed acceptance, by the City pursuant to Section 4.07(b) shall mean that the City has fully and finally accepted the Project as being: (i) in compliance with the Laws; (ii) constructed with the proper application of construction means or methods, and the City shall be deemed to have waived any further right to assert Material Defects. Within twenty (20) business days after receipt of a written request from the Company, the City shall certify to any lender of the Company or purchaser of the Project the status of the Final Inspection and whether any Material Defects identified in any Non-Compliance Notice, if any, have been remedied.

4.08 General: Testing. In the case of Inspections, the parties shall: (i) comply with all health and safety rules of which such party has been informed that have been established for personnel present on the construction site; and (ii) coordinate the Inspections so that the Inspections do not interfere with the performance of construction. The City and the Company each shall have the right to accompany and/or have its construction manager accompany, the Inspector during any Permitted Inspection and/or the Final Inspection. Notwithstanding anything to the contrary set forth herein, to the extent the City, in the exercise of its reasonable discretion, requires any sampling or testing (e.g., soil bearing capacity testing, concrete testing, vibration monitoring) as part of a Permitted Inspection and/or Final Inspection: (i) the deadline for the City's issuance of a Non-Compliance Notice shall be deemed extended to five (5) business days following the City's receipt of a complete and final set of such test or sample results; and (ii) the Completion Date shall likewise be extended.

4.09 Insurance. During construction of the Project, the Company shall maintain the policies of insurance described on Exhibit F. Each such policy shall: (a) be written by a company reasonably acceptable to City; and (b) provide that it shall not be modified or canceled without

written notice to the City at least thirty (30) days in advance. The policy of general liability insurance shall name the City Bodies as additional insureds. The Company shall deliver to the City certificates of the insurance policies required by this Section 4.09, executed by the insurance company or the general agency writing such policies.

4.10 Project Standards, Etc. In addition to generally applicable requirements relating to local review and approval of the Project, the Redevelopment Commission shall have the right to review and approve detailed plans for the Project, including aspects of the Project relating to construction material and quality and esthetic standards. The City shall provide the Company with requirements required to be met with respect to construction quality and esthetics. Other generally applicable City review requirements will remain fully applicable.

## **ARTICLE V. ECONOMIC DEVELOPMENT INCENTIVES**

5.01 Taxable Economic Development Revenue Bonds. The Redevelopment Commission, and the Council shall each, subject to further proceedings required by law, including the completion of necessary proceedings for the annexation of the Project Site, cause the issuance of, in one or more series, economic development revenue bonds pursuant to IC 36-7-12 (the "Bonds"), in an amount that generates gross proceeds not to exceed Six Million Seven Hundred Thousand Dollars (\$6,700,000). The interest rate on the bonds shall not exceed the lesser of (a) eight percent (8%) per annum or (b) the Company's cost of funds. The Company (or an affiliate thereof) shall purchase the Bonds, and the Bonds shall not be issued until promptly after the Company's closing on its construction loan for the Apartment Component, presently expected to be no later than December 31, 2025. The Company, as purchaser of the Bonds, shall (i) expressly agree that non-payment of the principal or interest on the Bonds due to insufficiency of Pledged TIF Revenues shall not be deemed to be a default under the Bonds and (ii) covenant that it will not sell, convey, pledge or otherwise transfer the Bonds without prior compliance with applicable state and federal securities laws. The proceeds of the Bonds shall be loaned to the Company and shall be used for the payment (or reimbursement to the Company of the prior payment) of the Eligible Costs of the Apartment Component set forth in Part II of Exhibit A, pursuant to a draw process that requires the approval of the City Parties. The Company may obtain the disbursement of proceeds of the Bonds by submitting a Disbursement Request (as such term is defined in the Trust Indenture) to the City and Trustee in accordance with the terms and conditions of the Trust Indenture, which shall be subject to City and Redevelopment Commission approval. If the Company (or its affiliate) purchases the Bonds, the purchaser shall receive credit against the purchase price in the same principal amount as the Eligible Costs not to exceed \$6,700,000, which the Trustee shall record upon receipt by the Trustee of the approved Disbursement Request. Subject to the approval of Disbursement Requests, proceeds of the Bonds may be "deemed" disbursed with respect to reimbursements to Company for previously incurred and paid costs for the Project so long as the Company or an affiliate thereof shall be the purchaser of the Bonds. The Developer shall provide a taxpayer agreement to guarantee the stream of Tax Increment projected for the Apartment Component (the "Taxpayer Agreement"), as preliminarily set forth in Exhibit H, which guarantee shall constitute a lien on the Apartment Component equivalent to a property tax lien equal in priority to the property tax lien granted to the State of Indiana under IC 6-1.1-22-13, as permitted by IC 36-7-25-6.

The principal amount of the Bond issue shall be based on assumptions that include without limitation the following:

(a) 17% of the annual Tax Increment in each year during the term of the Bonds shall be retained by the Redevelopment Commission for such use as the Redevelopment Commission shall determine in its sole discretion and shall not be available to offset promissory note payments and shall not be pledged to the payment of the Bonds.

(b) The Pledged TIF Revenues in each year of the term of the Bonds shall be pledged to the payment of the Bonds. Any Pledged TIF Revenues in excess of the debt service due on the Bonds shall be used to partially redeem outstanding principal of the Bonds.

(c) The Bonds shall mature not later than a date twenty-five (25) years after their date of issuance.

(d) The Bond payments shall be based on a 100% coverage ratio of projected Pledged TIF Revenues (set forth in Exhibit H hereof) to Bond payments in each bond year, plus \$5,000 per year for Trustee and related miscellaneous expenses. The projected Pledged TIF Revenues shall assume no growth in Pledged TIF Revenues.

(e) All of the City's reasonable costs (including professional costs) relating to the negotiation of the incentive and the issuance of the Bonds shall be paid from the Bond proceeds.

(f) The City shall be satisfied that the amount of the projected Pledged TIF Revenues is reasonable and that the process for calculating such Pledged TIF Revenues is fair and reasonable.

(g) Any portion of the principal and interest due on the Bonds that remains unpaid due to a shortfall in Pledged TIF Revenues shall not be deemed defeased or otherwise satisfied and shall continue to be due and owing until the earlier of: (1) full payment by the City; or (2) the maturity date of the Bonds. Interest shall not accrue on the interest that remains unpaid beyond the applicable debt service payment date. After the final maturity date, all Bonds shall be deemed to be paid and no longer outstanding for all purposes of the Trust Indenture, all obligations of the City under the Trust Indenture shall terminate, and under no circumstances shall any payments be due on any Bonds after the final maturity date.

## **ARTICLE VI. CONDITIONS TO CLOSING**

6.01 Company's Conditions to Closing. The obligations of the Company with respect to Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 6.01:

(a) Title. Within thirty (30) days after the Execution Date, the Company shall have obtained the Title Commitment.

- (b) Survey. Within forty-five (45) days after the Execution Date, the Company shall have obtained the Survey.
- (c) Permits. The Company shall have completed and filed all necessary documentation to secure all Required Permits and approvals for construction and installation of the Project.
- (d) Title and Survey Conditions. On or before Closing, the Company shall have determined that there are no exceptions or matters of record reflected in the Title Commitment that would constitute Title Defects and shall have also determined that, upon recordation of the Plat, the Survey: (i) describes the perimeter of the Project Site as a single parcel without gaps, gores, or overlaps; (ii) shows no encroachments thereto; (iii) shows no Title Defects thereto; (iv) establishes that no part of the Project Site upon which building improvements are to be constructed is located within: (A) a “flood hazard zone”, as shown on the applicable Federal Insurance Rate Map; or (B) a “floodway” or “flood plain”, as shown on the applicable Flood Control District Map, unless otherwise agreed to by the Company; and (v) otherwise reasonably is acceptable to the Company. The Company shall be responsible, at its cost, for obtaining the policy of title insurance contemplated pursuant to the Title Commitment, together with any endorsements that it deems to be necessary or appropriate.
- (e) Environmental Condition. Prior to Closing, the Company, at its expense, shall have determined that: (i) there is no contamination or pollution of the Project Site, or any groundwater thereunder, by any hazardous waste, material, or substance in violation of any Laws; and (ii) there are no underground storage tanks located on the Project Site. To the extent deemed necessary or appropriate by the Company, the Company shall have obtained a comfort letter issued by the Indiana Department of Environmental Management through the Indiana Brownfields Program (“IDEM”) confirming, among other things, IDEM’s opinion that the Company meets the requirements to be considered a bona fide prospective purchaser of the Project Site. The Company shall provide the City with all Property Inspection reports prepared for the Project Site.
- (f) Physical Condition. Prior to Closing, the Company, at its expense, shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project, in accordance with the terms and conditions of this Agreement.
- (g) Zoning. Prior to Closing, the Company shall have determined that: (i) the zoning of the Project Site is proper and appropriate for the construction of the Project and use of the Project in accordance with the terms and conditions of this Agreement; and (ii) the Project Site is subject only to commitments and restrictions that are acceptable to the Company in its reasonable discretion.

- (h) Utility Availability. Prior to Closing, the Company, at its expense, shall have determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement.
- (i) Required Permits. Prior to Closing, the Company shall have: (i) obtained; or (ii) determined that it shall be able to obtain, all Required Permits.
- (j) Final Construction Plans. Prior to Closing, final construction plans shall have been completed and approved by the City.
- (k) Financial Ability. Prior to Closing, the Company shall demonstrate to the reasonable satisfaction of the City Bodies that the Company has adequate funds (construction loan proceeds, Bond Proceeds, and/or cash on hand) to construct the Apartment Component.
- (l) Ancillary Agreements. Prior to Closing: (i) the applicable City Bodies and the Company, each exercising commercially reasonable discretion, shall have approved the form and substance of all Ancillary Agreements; and (ii) all other parties to the Ancillary Agreements shall have approved the form and substance of all Ancillary Agreements.
- (m) Project Site. The Company shall have closed on the acquisition of the Project Site.
- (n) No Breach. As of the Closing Date, there shall be no breach of this Agreement by the City Bodies that the City Bodies have failed to cure within the Cure Period.

If one or more of the conditions set forth in this Section 6.01 is not, or cannot be, timely and completely satisfied, as determined by the Company in its sole and absolute discretion, then, as its sole and exclusive remedy, the Company either may elect to: (i) waive in writing satisfaction of the conditions and to proceed to Closing; or (ii) terminate this Agreement by a written notice to City provided that, with respect to breaches of this Agreement by City, the Company shall have all of the rights and remedies set forth in this Agreement. Notwithstanding anything to the contrary set forth herein, (1) the Company shall work diligently and in good faith to satisfy the conditions set forth in this Section 6.01; and (2) if the Company fails to terminate this Agreement for any unsatisfied condition on or before the earlier of (i) the Closing Date; or (ii) two (2) business days after the applicable deadline set forth in each of the foregoing subsections (a) or (b) the Company shall be deemed to have waived such condition.

6.02 City's Conditions to Closing. The obligations of the City with respect to Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 6.02:

- (a) Financial Ability. Prior to Closing, the Company must demonstrate to the reasonable satisfaction of the City Bodies that the Company has adequate funds (construction proceeds, Bond Proceeds, and/or cash on hand) to construct the Apartment Component.

6.03 Closing. Subject to the terms and conditions of this Agreement, Closing shall occur on or before December 31, 2025, with (i) the Closing Date and (ii) the location of the Closing to be established mutually by the City and the Company.

## **ARTICLE VII. AUTHORITY**

7.01 Actions. Each of the City Bodies represents and warrants that it has taken or will take (subject to further proceedings required by law and the Company's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable each of the respective City Bodies to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

7.02 Powers. The City Bodies represent and warrant that each has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

7.03 Future Actions. The parties acknowledge that the agreements of the City Bodies under this Agreement are subject to future actions by such bodies, and by the bodies of the City, and compliance with statutory procedures required by Law, including public notice and public hearing requirements. The City Bodies agree to use their best efforts to complete such statutory procedures, and to coordinate with the governing bodies of the City to complete such statutory procedures, and to take the final actions required to implement such agreements.

## **ARTICLE VIII. GENERAL PROVISIONS**

8.01 Indemnity; No Joint Venture or Partnership. The Company covenants and agrees at its expense to pay and to indemnify and save the City Bodies, and their officers and agents (the "Indemnitees") harmless of, from and against, any and all Claims resulting directly or indirectly from the Company's (and/or any affiliate's thereof) Project activities with respect to work performed on the Project Site unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the City Bodies, or other Indemnitees. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the City Bodies and the Company or any affiliate thereof. To the extent permitted by law, the City Bodies shall indemnify and hold harmless the Company from and against any and all Claims, to the extent arising from or connected with the negligence or willful misconduct of the City Bodies or any party acting by, under, through, or on behalf of any of the City Bodies in connection with any Inspection.

8.02 Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations

described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

8.03 Costs. In the event the Bonds fail to close, the Company shall pay City's fees, including reasonable attorneys' fees, financial advisory fees and any other fees deemed reasonable and applicable.

8.04 Retail/Office Tenants. The Company, for and on behalf of itself and any successor owner of the Project, agrees that the Project shall not be leased or used for the Prohibited Uses. The Company shall record and/or cause to be recorded a deed restriction against the Project Site that is consistent herewith and which shall constitute a covenant running with the land. For as long as the Bonds remain outstanding, the Company shall inform the City of all commercial tenants of the Project prior to such tenants taking occupancy.

8.05 Default

(a) Events of Default. It shall be an Event of Default if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it after notice from the other party, and such default is not cured within the applicable Cure Period.

(b) General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at Law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses.

(c) No Remedy Exclusive. Except as provided to the contrary in this Agreement, no right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at Law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Agreement or by Law.

(d) Termination. Notwithstanding any other provision, if Company has not completed Project within eighteen (18) months after the applicable Completion Date, the City shall have the right to terminate this Agreement with respect to the applicable Component Project and shall have no further responsibilities hereunder with respect to the applicable Component Project.

8.06 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of each of the City Bodies approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

8.07 Delay. Subject to permitted delays described in Section 4.06 and/or Market Absorption Delays with respect to the Townhome Component Project, if the Company has commenced construction of the Project, Company falls one hundred twenty (120) or more days behind the Completion Date, then:

(a) City, by delivery of written notice to the Company, may require the Company to submit, within thirty (30) days, a Catch-Up Plan for City's written approval, which approval shall not be unreasonably withheld. At such time as City has approved a Catch-Up Plan, Company shall implement, and diligently pursue the application of, such Catch-Up Plan.

(b) If the Company: (i) fails to timely submit a Catch-Up Plan; (ii) submits a Catch-Up Plan that is rejected by the City; (iii) fails to implement an approved Catch-Up Plan; or (iv) implements an approved Catch-Up Plan, but fails to diligently pursue the application thereof; or (v) implements an approved Catch-Up Plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the Catch-Up Plan, again falls sixty (60) or more days behind the applicable dates set forth in the Catch-up Plan; then City may develop a reasonable Catch-Up Plan and require the Company to implement, and diligently pursue the application of, such Catch-Up Plan.

The Company shall be responsible for all costs and expenses to prepare and implement a Catch-Up Plan (including the reasonable costs and expenses incurred by City pursuant to this Subsection). The Company's liability for such costs and expenses shall survive termination of this Agreement. No delay or failure by the Local Government Bodies to enforce any of the covenants, conditions, reservations and rights contained in this Section 8.07, or to invoke any available remedy with respect to an Event of Default by the Company shall under any circumstances be deemed or held to be a waiver by the Local Government Bodies of the right to do so thereafter, or an estoppel of the Local Government Bodies to assert any right available to them upon the occurrence, recurrence or continuation of any violation or violations hereunder.

(c) Injunctive Remedies. If an Event of Default occurs, the Local Government Bodies shall be entitled to see specific performance or injunctive relief and in each case Company hereby waives any claim or defense that the Local Government Bodies have an adequate remedy at law.

(d) No Limitation. Notwithstanding anything to the contrary set forth herein, the rights and remedies set forth in this Section 8.07 are not exclusive and shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity.

8.08 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties. To the Extent

8.09 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

8.10 Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

8.11 Venue. The parties agree that if any litigation arises out of this Agreement that such litigation shall be brought in a court of competent jurisdiction in Hamilton County, Indiana. The Company and the City Bodies hereby waive, to the extent permitted under applicable Law: (a) the right to a trial by jury; and (b) any right the Company or the City Bodies may have to: (i) assert the doctrine of “forum non conveniens”; or (ii) object to venue.

8.12 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Company:

Hazel Dell Apartments, LLC  
Attn.: Jim Thomas  
10 W. Carmel Drive, Suite 200  
Carmel, Indiana 46032  
Email: [jthomas@cityscaperesidential.com](mailto:jthomas@cityscaperesidential.com)

With a copy to:

Heather James, Esq.  
One American Square, Suite 2900  
Indianapolis, Indiana 46282  
Email: [Heather.James@icemiller.com](mailto:Heather.James@icemiller.com)

To the City Bodies:

Noblesville Redevelopment Commission  
Attn.: Director, Andrew Murray  
16 S. 10<sup>th</sup> Street  
Noblesville, IN 46060  
Email: [amurray@noblesville.in.us](mailto:amurray@noblesville.in.us)

With a copy to:

Jonathan Hughes, Esq.  
111 Monument Circle  
Suite 2700  
Indianapolis, IN 46204  
Email: [jhughes@boselaw.com](mailto:jhughes@boselaw.com)

or at such other addresses as the parties may indicate in writing to the others in writing. Any notice required or permitted to be given to a party under this Agreement, shall be deemed given when (i) hand delivered, with evidence of receipt of such delivery, (ii) deposited into Federal Express or other similar type of overnight carrier service, (iii) two (2) business days after mailed by U.S. Certified or Registered Mail, postage prepaid, or (iv) upon the receipt of an electronic email transmission, followed by delivery by one of the other means identified in (i)-(iii).

8.13 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

8.14 Assignment. Subject to Section 4.01, until the Project is completed, the rights and obligations contained in this Agreement may not be assigned by the Company or any affiliate thereof without the express prior written consent of each of the City Bodies; provided, however, that the Company may transfer all or a portion of its rights and obligations hereunder to an affiliate of the Company upon notice to but without the consent of the City Bodies, but any such transfer to an affiliate of the Company shall not have the effect of releasing the Company and/or its assignees from the Company's obligations hereunder. Upon completion of the Project, the Company shall be entitled to assign this Agreement to any purchaser of the Project without City's prior written consent; provided such purchaser shall be required to assume all obligations of the Company under this Agreement arising after such purchase. Upon such assumption, the Company shall be released from all obligations pursuant to this Agreement arising after the date the purchaser assumes this Agreement. With respect to any assignment of this Agreement prior to the Apartment Component Completion Date, Company shall demonstrate to the City that the new purchaser and associated affiliates of the Project have comparable financial strength and reputation as the Company, including its affiliates.

8.15 No Third-Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

8.16 Conflict with Expense Reimbursement Agreement. In the event of a conflict between a provision in this Agreement and a provision in the Expense Reimbursement Agreement, dated \_\_\_\_\_, 2024, between the City and the Developer (the "Expense Reimbursement Agreement"), the provisions of the Expense Reimbursement Agreement shall control.

8.17 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and each of the City Bodies have approved or ratified this Agreement at public meetings.

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF NOBLESVILLE, INDIANA

By: \_\_\_\_\_  
Chris Jensen, Mayor

NOBLESVILLE REDEVELOPMENT  
COMMISSION

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

HAZEL DELL APARTMENTS, LLC

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **DESCRIPTION OF PROJECT**

#### **Part I – Project**

The Project is an approximately \$78MM mixed use development, including approximately: (a) not more than 150 townhome units (for sale) the "Townhome Component"; (b) 30,000 square feet of commercial/retail space (the "Commercial/Retail Component"); and (c) not more than 284 market rate apartment units, 10% of which will be set aside for workforce housing (the "Apartment Component") (the Townhome Component, the Commercial/Retail Component, and the Apartment Component, each a "Component Project" and, collectively, the "Component Projects").

#### **Part II – Eligible Costs**

Proceeds of the Bonds (net of Issuance Costs and capitalized interest, if any) may be applied solely to those Eligible Costs consisting of the costs relating to site development, construction of buildings, drainage and drain construction and reconstruction, landscaping, drainage, utilities, roads and road improvements, erosion control, infrastructure, trails and sidewalks, demolition and clearing, green spaces and structures, trails, walks, trailhead (e.g., spur, signage, art), parking, and related engineering and design costs but no developer profit, developer fees or similar type fees.

## **EXHIBIT B**

### **LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY**

The Land referred to herein below is situated in the County of Hamilton, State of Indiana, and is described as follows

A part of the Southwest Quarter and a part of the Northwest Quarter of Section 15, Township 18 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, described as follows: Commencing at the Southwest corner of the Southwest Quarter of Section 15, Township 18 North, Range 4 East; thence North 00 degrees 00 minutes 00 seconds (Assumed Bearing) 2,622.39 feet along the West line of said Southwest Quarter to its point of intersection with Southwesterly extension of the Northwestern boundary of the 14.87 acre tract of land described in Exhibit A of the warranty deed recorded as Instrument Number 200400012796 by the Recorder of Hamilton County, Indiana; thence North 66 degrees 18 minutes 54 seconds East 76.44 feet along the Southwesterly extension of the Northwestern boundary of said 14.87 acre tract of land to a point being 70.00 feet East (By perpendicular measure) of the West line of Northwest Quarter of Section 15, Township 18 North, Range 4 East and to the point of beginning of this description; thence North 66 degrees 18 minutes 54 seconds East 368.49 feet along the Southwesterly extension of the Northwestern boundary of said 14.87 acre tract of land to the terminus of the Northwestern boundary of said 14.87 acre tract of land on the approximate centerline of the Kirkendall Drain, the following Twelve (12) courses are along the Western boundary of said 14.87 acre tract of land which meanders said centerline; 1) thence South 54 degrees 28 minutes 16 seconds East 49.04 feet; 2) thence South 79 degrees 50 minutes 33 seconds East 96.80 feet; 3) thence North 67 degrees 19 minutes 12 seconds East 69.37 feet; 4) thence North 88 degrees 19 minutes 15 seconds East 253.37 feet; 5) thence South 62 degrees 25 minutes 03 seconds East 183.11 feet; 6) thence South 34 degrees 18 minutes 28 seconds East 51.60 feet; 7) thence South 35 degrees 01 minute 21 seconds East 66.32 feet; 8) thence South 42 degrees 35 minutes 08 seconds East 91.34 feet; 9) thence South 07 degrees 39 minutes 21 seconds East 102.72 feet; 10) thence South 18 degrees 32 minutes 45 seconds West 72.01 feet; 11) thence South 84 degrees 16 minutes 10 seconds East 62.42 feet; 12) thence South 02 degrees 22 minutes 20 seconds East 72.78 feet (computed, 72.54 feet deeded) to the Southwestern corner of said 14.87 acre tract of land and to the Northwestern corner of the 14.80 acre tract of land described in Exhibit A of the warranty deed recorded as Instrument Number 200300110451 by said recorder, the following Six (6) courses are along the Western boundary of said 14.80 acre tract of land which meanders the centerline of the Kirkendall Drain; 1) thence South 02 degrees 31 minutes 09 seconds East 86.71 feet; 2) thence South 62 degrees 09 minutes 23 seconds East 51.86 feet; 3) thence South 30 degrees 24 minutes 58 seconds East 44.15 feet; 4) thence South 00 degrees 11 minutes 46 seconds West 95.58 feet; 5) thence South 16 degrees 16 minutes 35 seconds East 140.35 feet; 6) thence South 25 degrees 03 minutes 05 seconds East 16.77 feet to the currently (November 2006) proposed Northern right-of-way line for 148th Street (30-foot half right-of-way), the following Five (5) courses are along said proposed Northern right-of-way line; 1) thence South 52 degrees 13 minutes 32 seconds West 39.12 feet to the point of curvature of a curve to the right, said point of curvature being South 37 degrees 46 minutes 28 seconds East 969.99 feet from the radius point of said curve; 2) thence Southwesterly 211.02 feet along said curve to its point of tangency, said point of tangency being South 25 degrees

18 minutes 36 seconds East 969.99 feet from the radius point of said curve; 3) thence South 64 degrees 41 minutes 24 seconds West 603.99 feet to the point of curvature of a curve to the right, said point of curvature being South 25 degrees 18 minutes 36 seconds East 1,170.00 feet from the radius point of said curve; 4) thence Southwesterly and Westerly 513.29 feet along said curve to its point of tangency, said point of tangency being South 00 degrees 10 minutes 25 seconds East 1,170.00 feet from the radius point of said curve; 5) thence South 89 degrees 49 minutes 23 seconds West 2.12 feet to a point being 70.00 feet from (Measured perpendicularly in an Easterly direction) the West line of said Southwest Quarter; thence North 00 degrees 00 minutes 00 seconds 1,259.87 feet parallel with the West line of said Southwest Quarter; thence North 00 degrees 10 minutes 04 seconds West 0.57 feet parallel with the West line of said Northwest Quarter to the point of beginning containing 31.066 acres, more or less.

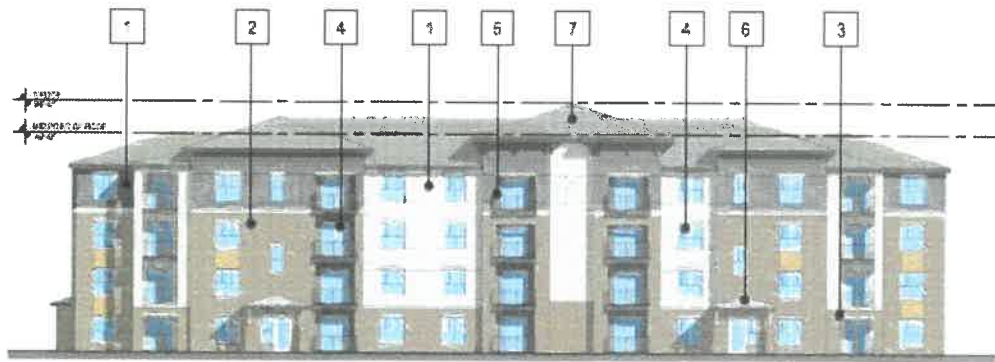
**EXHIBIT C**

**SITE PLAN**



## EXHIBIT D

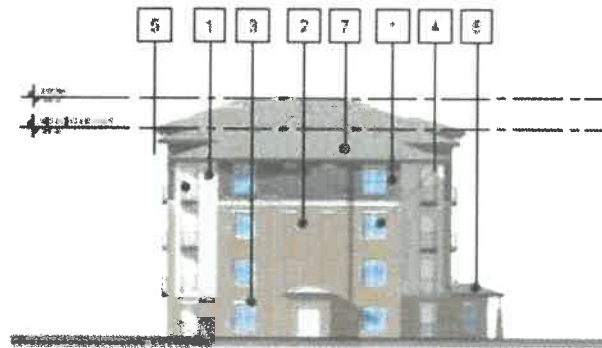
### PROJECT DESIGN RENDERINGS



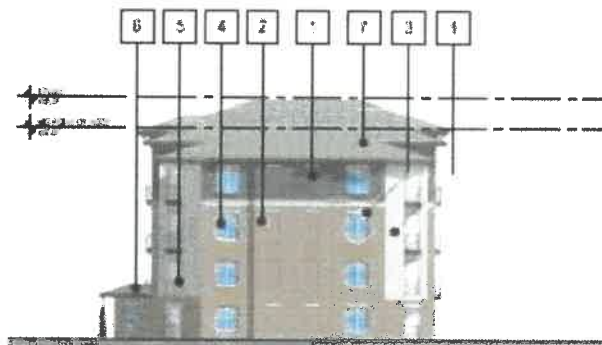
FRONT ELEVATION	SCALE: 1" = 30'	1
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REAR (PARKING) ELEVATION	SCALE: 1" = 30'	2
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LEFT SIDE ELEVATION	SCALE: 1" = 10'	1
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RIGHT SIDE ELEVATION	SCALE: 1" = 10'	2
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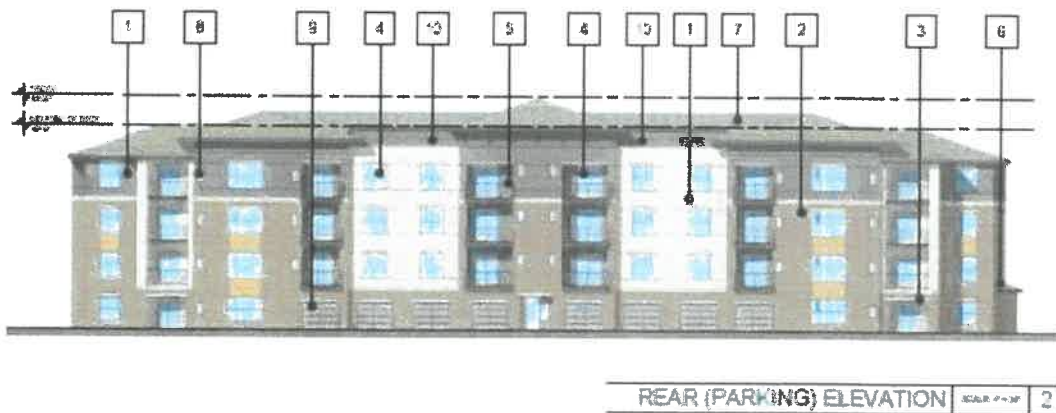
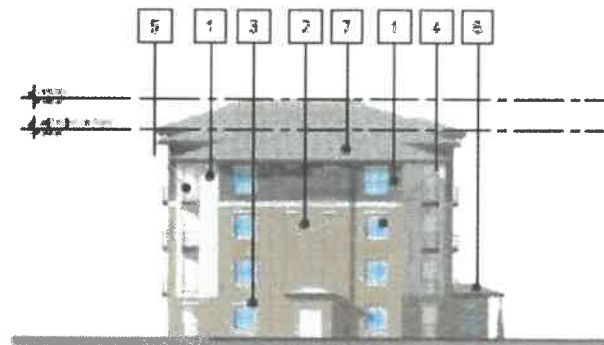
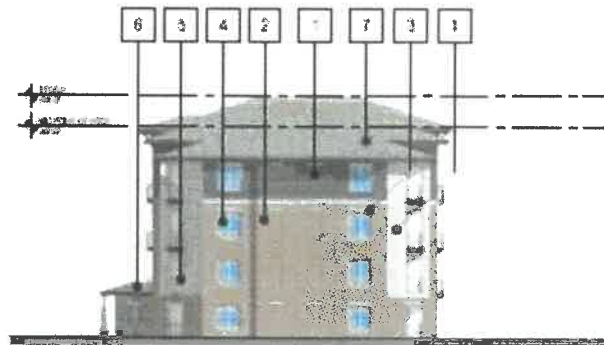


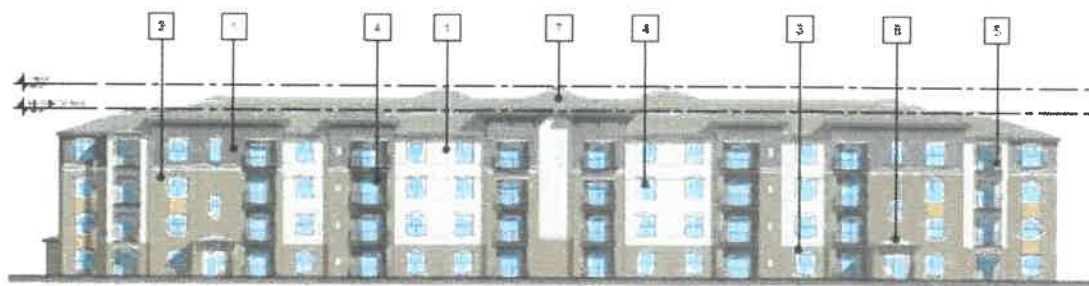
Exhibit D



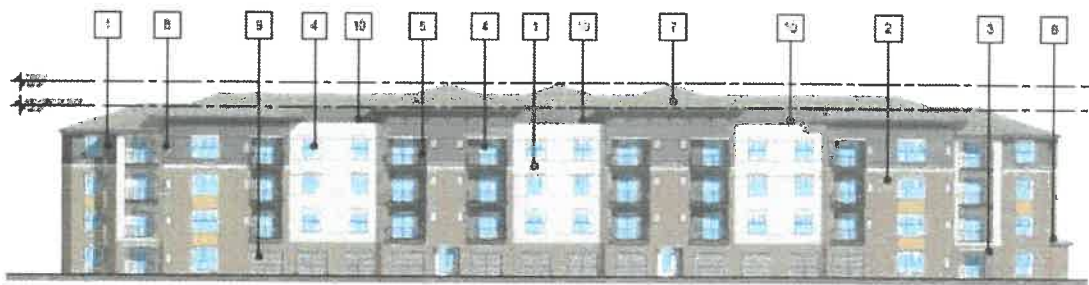
LEFT SIDE ELEVATION	SCALE 1" = 10'	1
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RIGHT SIDE ELEVATION	SCALE 1" = 10'	2
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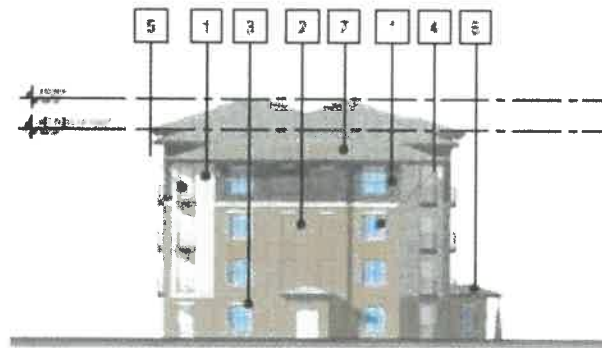


FRONT ELEVATION SCALE: 1/8" = 1'-0" 1

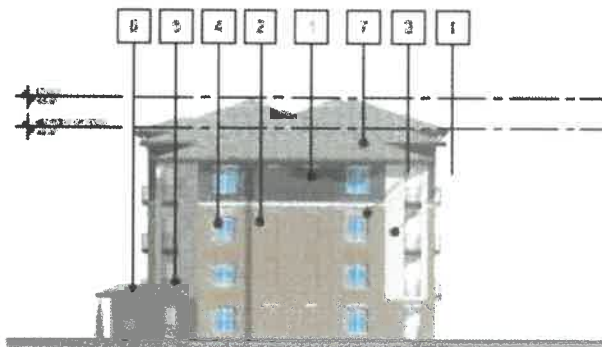


REAR (PARKING) ELEVATION SCALE: 1/8" = 1'-0" 2

Exhibit D



LEFT SIDE ELEVATION	SCALE: 1" = 30'	1
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RIGHT SIDE ELEVATION	SCALE: 1" = 30'	2
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**EXHIBIT E**  
**ALLOCATION AREA**



Exhibit E -1

## **EXHIBIT F**

### **DEVELOPER INSURANCE REQUIREMENTS**

The Company shall obtain and maintain and require any general contractor to obtain and maintain the below listed policies of insurance written by a company reasonably acceptable to the City and for which certificates of insurance shall be provided to the City prior to commencement of any work on the Project. City shall be named as an additional insured on the Company's, and its general contractor's Commercial General Liability policies of insurance.

1. Workers Compensation insurance coverage in accordance with statutory requirements.
2. Employers Liability Insurance with limits of not less than \$1,000,000.00 each accident; \$1,000,000.00 Disease each employee; and \$1,000,000.00 Disease Policy Limit.
3. Commercial General Liability Insurance on ISO form GCO001 10 01 (or a substitute form providing equivalent coverage) and general contractor shall provide the Company with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG203 7 10 01 (or substitute forms providing equivalent coverage) naming the City of Noblesville as an Additional Insured thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City of Noblesville per the follows:
  - i. \$1,000,000.00 Each Occurrence (BI & PD Combined Single Limit);
  - ii. \$2,000,000.00 General Occurrence (subject to per project general aggregate provision); and
  - iii. \$1,000,000.00 Personal Injury Liability to include coverage for employee-related claims.
4. Business Automobile Liability Insurance: Written in the amount of not less than \$1,000,000.00 each accident to include the City of Noblesville as an additional insured.
5. Umbrella Liability: \$5,000,000.00.
6. Professional Liability: If the contract is the subject of any professional services or design work, the party rendering those services must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed for a minimum limit of \$2,000,000.00.

The general contractor shall obtain from each of its insurers a waiver of subrogation on the General Liability, Automobile and Workers Compensation policies in favor of the City of Noblesville with respect to losses arising out of or in connection with the Project.

## EXHIBIT G

### PROHIBITED USES – RETAIL/OFFICE SPACE

1. Tattoo parlor
2. Piercing studio
3. Nail salon (specifically not including nail services that are part of a high-end day spa or other similar use)
4. Massage parlor (specifically not including massage services that are part of a high-end day spa or other similar use)
5. Refund anticipation loan lenders, title loan businesses, short-term loan providers, cash for precious metal stores and pawn shops
6. Sexually-oriented business
7. Adult entertainment business, including retail; night club or cabaret; adult novelty shop or business (including bookstore or video store specializing in adult or sexually explicit material)
8. Discotheque or otherwise for musical/dance reviews or topless/nude shows
9. Tobacco shop, cigar lounge, hookah, head or other smoke shop
10. A facility for the sale or use of paraphernalia used for the ingestion or use of illicit or recreational drugs
11. Weapon dealers
12. Tavern, bar, nightclub, or other similar use the primary purpose of which is serving alcohol, excluding any restaurant having entertainment or serving alcohol so long as it generates the majority of its revenues from other than alcoholic beverages and devoting a majority of its customer area to sit down food and beverage service
13. Store the principal business of which is the sale of alcoholic beverages for consumption off premises
14. Gambling facility
15. Billiard or Pool Hall
16. Second hand or government surplus store
17. Mattress store
18. Non-profit or institutional use by any entity which is exempt from property taxation and causes any portion of the Property Location to be exempt from property taxes
19. Retail telecommunications store
20. A store selling or advertising primarily “dollar” merchandise
21. Flea market, consignment or used good store selling primarily distressed or damaged merchandise
22. Laundromat or dry cleaning processing plant
23. Animal clinic or pet stores
24. Businesses that emit noxious odors
25. Stand-alone fast-food restaurants
26. Businesses that may adversely affect the health, safety or community morals of the City

# EXHIBIT H

## PROJECTED TAX INCREMENT & PLEDGED TIF REVENUES

CITY OF NOBLESVILLE

**\$6,780,000 TAXABLE ECONOMIC DEVELOPMENT TAX INCREMENT REVENUE BONDS, SERIES 2024**

*(Cityscape Affinity Project)*

ASSUMED DATING AND DATE OF DELIVERY: DECEMBER 1, 2024

(24.7 YEAR TERM/22 YEARS P&I)

Date	Principal Reduction	Principal	Unamort. Coupon	Interest	Period Total	Hand Year Total	Pledged TIF (\$55.5)	Excess Pledged TIF
2/1/2025	\$ 6,780,000		\$ 0.000%	\$ 89,333.33	A \$ 89,333.33	\$ 89,333.33		
8/1/2025	6,780,000		\$ 0.000%	268,000.00	A 268,000.00			
2/1/2026	6,780,000		\$ 0.000%	268,000.00	A 268,000.00	536,000.00		
8/1/2026	6,780,000		\$ 0.000%	268,000.00	A 268,000.00		82,378	82,378
2/1/2027	6,780,000		\$ 0.000%	268,000.00	A 268,000.00	536,000.00	82,378	82,378
8/1/2027	6,780,000		\$ 0.000%	268,000.00	268,000.00		247,137	(24,668)
2/1/2028	6,780,000	\$ 15,150	\$ 0.000%	268,000.00	523,000.00	591,000.00	247,137	(72,868)
8/1/2028	6,645,000	60,000	\$ 0.000%	265,800.00	325,800.00		329,510	3,710
2/1/2029	6,585,000	65,000	\$ 0.000%	263,400.00	328,400.00	654,200.00	329,510	1,110
8/1/2029	6,529,000	65,000	\$ 0.000%	263,800.00	325,800.00		329,510	3,710
2/1/2030	6,455,000	65,000	\$ 0.000%	258,200.00	323,200.00	649,600.00	329,510	6,210
8/1/2030	6,390,000	70,000	\$ 0.000%	255,600.00	325,600.00		329,510	3,910
2/1/2031	6,320,000	75,000	\$ 0.000%	252,800.00	327,800.00	653,400.00	329,510	1,710
8/1/2031	6,245,000	75,000	\$ 0.000%	249,800.00	324,800.00		329,510	4,710
2/1/2032	6,170,000	80,000	\$ 0.000%	246,800.00	326,800.00	651,600.00	329,510	2,710
8/1/2032	6,090,000	80,000	\$ 0.000%	243,800.00	323,600.00		329,510	5,910
2/1/2033	6,010,000	85,000	\$ 0.000%	240,400.00	325,400.00	649,000.00	329,510	4,110
8/1/2033	5,925,000	90,000	\$ 0.000%	237,600.00	327,000.00		329,510	2,510
2/1/2034	5,835,000	90,000	\$ 0.000%	233,400.00	323,400.00	650,400.00	329,510	6,110
8/1/2034	5,745,000	95,000	\$ 0.000%	229,800.00	324,800.00		329,510	4,710
2/1/2035	5,650,000	100,000	\$ 0.000%	226,000.00	326,000.00	650,800.00	329,510	3,510
8/1/2035	5,550,000	105,000	\$ 0.000%	222,800.00	327,000.00		329,510	2,510
2/1/2036	5,445,000	110,000	\$ 0.000%	217,400.00	327,000.00	654,800.00	329,510	1,710
8/1/2036	5,335,000	115,000	\$ 0.000%	213,400.00	326,400.00		329,510	1,110
2/1/2037	5,220,000	115,000	\$ 0.000%	208,800.00	323,600.00	652,200.00	329,510	5,710
8/1/2037	5,105,000	120,000	\$ 0.000%	204,200.00	324,200.00		329,510	5,310
2/1/2038	4,985,000	125,000	\$ 0.000%	199,400.00	324,400.00	648,600.00	329,510	5,110
8/1/2038	4,860,000	130,000	\$ 0.000%	194,400.00	324,400.00		329,510	5,110
2/1/2039	4,730,000	140,000	\$ 0.000%	189,200.00	329,200.00	653,600.00	329,510	260
8/1/2039	4,590,000	145,000	\$ 0.000%	183,600.00	326,800.00		329,510	360
2/1/2040	4,445,000	150,000	\$ 0.000%	177,800.00	327,800.00	650,400.00	329,510	1,710
8/1/2040	4,295,000	155,000	\$ 0.000%	171,800.00	326,800.00		329,510	2,710
2/1/2041	4,140,000	160,000	\$ 0.000%	165,800.00	325,600.00	652,400.00	329,510	3,910
8/1/2041	3,980,000	170,000	\$ 0.000%	159,200.00	329,200.00		329,510	300
2/1/2042	3,810,000	175,000	\$ 0.000%	152,400.00	327,400.00	656,600.00	329,510	2,100
8/1/2042	3,635,000	180,000	\$ 0.000%	145,400.00	325,400.00		329,510	4,110
2/1/2043	3,455,000	190,000	\$ 0.000%	138,200.00	328,200.00	653,600.00	329,510	1,310
8/1/2043	3,265,000	195,000	\$ 0.000%	130,800.00	325,600.00		329,510	3,910
2/1/2044	3,070,000	205,000	\$ 0.000%	122,800.00	327,800.00	653,400.00	329,510	1,710
8/1/2044	2,865,000	210,000	\$ 0.000%	114,600.00	324,600.00		329,510	4,910
2/1/2045	2,655,000	220,000	\$ 0.000%	106,200.00	326,200.00	650,800.00	329,510	3,100
8/1/2045	2,435,000	230,000	\$ 0.000%	97,400.00	327,400.00		329,510	2,100
2/1/2046	2,205,000	240,000	\$ 0.000%	88,200.00	328,200.00	655,600.00	329,510	1,510
8/1/2046	1,965,000	250,000	\$ 0.000%	78,600.00	328,600.00		329,510	910
2/1/2047	1,715,000	260,000	\$ 0.000%	68,600.00	328,000.00	657,200.00	329,510	910
8/1/2047	1,455,000	270,000	\$ 0.000%	58,200.00	328,200.00		329,510	1,310
2/1/2048	1,185,000	280,000	\$ 0.000%	47,400.00	327,400.00	655,600.00	329,510	2,110
8/1/2048	905,000	290,000	\$ 0.000%	36,200.00	326,200.00		329,510	3,310
2/1/2049	615,000	300,000	\$ 0.000%	24,600.00	324,600.00	650,800.00	329,510	4,910
8/1/2049	315,000	315,000	\$ 0.000%	13,000.00	327,600.00	327,600.00	329,510	1,910
TOTALS	\$ 6,780,000		\$ 0.000%	\$ 9,482,933.33	\$ 15,789,933.33	\$ 15,789,933.33		

A- Capitalized Interest

## **EXHIBIT I**

### **THE DEDICATION AREAS**

#### **Edenshall Lane**



#### **Trail**

