

PROJECT AGREEMENT

This Project Agreement (the “**Agreement**”) is executed as of the ___ day of _____, 2018, by and between **The Levinson Noblesville, LLC**, an Indiana limited liability company (“**Developer**”), **City of Noblesville, Indiana** (“**City**”), **Noblesville Community Development Corporation** (“**CDC**”), and **City of Noblesville Redevelopment Commission** (“**RDC**”) on the following terms and conditions:

Recitals

A. City Bodies desire to foster economic development and provide additional public parking within Noblesville, Indiana;

B. To foster economic development and incent growth, the City has created a comprehensive master plan for the City, and specifically, its downtown, City core (the “**Master Plan**”);

C. The Master Plan was first adopted in 2014 and has since been updated and revised;

D. In response to and consistent with the City’s Master Plan, Developer submitted a proposal to City Bodies for the development of the Project Site, and Developer and City Bodies discussed certain incentives to assist Developer in the construction of the Project on the Project Site;

E. Developer expects that the development cost for the Project will be no less than Twenty-Four Million Three Hundred Thirty-Four Thousand Six Hundred Seventy-Three and 00/100 Dollars (\$24,334,673.00) and has requested certain economic development assistance from City;

F. City Bodies have determined that the completion of the Project is consistent with the City’s Master Plan and is in the best interests of the citizens of Noblesville, Indiana, and, therefore, City Bodies desire to induce Developer to complete the Project;

G. 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;

H. It is further acknowledged that (i) CDC owns or will own the Public Land; and (ii) Developer, on or before Closing, shall acquire the Development Land;

I. At Closing and in the following order, (i) Developer shall acquire the Development Land, if not previously acquired; (ii) CDC shall convey the Public Land to Developer pursuant to the Public Land Deed; (iii) the Plat shall be approved; (iv) Developer and the City shall approve the form of the Garage Condominium Unit Deed; and (v) CDC shall lease the Garage Condominium Unit to Developer and RDC pursuant to the Garage Lease; all for purposes of Developer constructing the Project and RDC making the RDC Payments to fund the economic development incentives described herein; and

J. Developer desires to develop, acquire, and lease (as applicable) the Project Site, to accept such incentives, and to construct the Project in accordance with the terms hereof.

Agreement

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

1. **Defined Terms.**

Ancillary Agreements shall mean all instruments and agreements referenced or contemplated herein, including, without limitation, the Garage Lease, the Funding Agreement, the Declaration, the Developer Obligations Agreement, the Multi-Party Agreement, the Public Land Deed, the Garage Condominium Unit Deed, and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement and the Closing.

Assessments shall mean all general and special governmental and utility assessments.

Bond Proceeds shall mean the net proceeds of the Bonds in the total amount of Fifteen Million Four Hundred Seventy-Three Thousand Two Hundred Seventy Three and 00/100 Dollars (\$15,473,273.00) to be disbursed to Developer in a commercially reasonable manner of which Thirteen Million Two Hundred Thousand Seven Hundred Eighty-Seven and 00/100 Dollars (\$13,200,787.00) shall be to design and construct the Garage, and related improvements, and Two Million Two Hundred Seventy-Two Thousand Four Hundred Eighty-Six and 00/100 Dollars (\$2,272,486.00) shall be to design and construct the Mixed-Use Building, all as more specifically set forth in the Funding Agreement. The Bond Proceeds amount disbursed to the Developer may be increased by an additional amount necessary to cover costs to relocate, move, or improve gas, electricity, telephone, cable, water, storm and sanitary sewer, and any other utilities (“Utilities”) that are necessary for the construction, service and use of the Project, as approved by the City, unless the City determines to cover such costs from other sources as provided in Section 8(q) of this Agreement.

Bonds shall mean one or more series of bonds, or bond anticipation notes, to be issued under Ind. Code § 36-7-12 for the Project (and, if the City elects in its sole discretion, other projects). Developer shall not be obligated to guaranty the Bonds, and the Bonds shall be payable solely by the RDC Payments.

Capital Improvements shall mean capital improvements, as defined by Generally Accepted Accounting Principles (GAAP), for the Garage.

Catch-Up Plan shall mean a plan pursuant to which Developer will: (a) avoid falling further behind the dates set forth in the Construction Schedule for construction of the Project; and (b) complete the Project in accordance with (and in no event more than ninety (90) days after) the applicable dates set forth in the Construction Schedule.

Certified Costs shall mean a certified accounting of the total actual Project Costs incurred minus the actual Excluded Costs, pursuant to AIA Form G703, as of the date that is one hundred twenty (120) days after closeout of the Construction Contract, as “closeout” is defined in the Construction

Contract (the “Closeout”), with all reasonable and underlying supporting documentation including a breakdown of such costs between the Mixed-Use Building and the Garage.

Change Order shall mean a change order executed by City (or its designee) and Developer 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); provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

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

City Body or City Bodies shall mean individually or collectively, the City, CDC and/or RDC, as applicable.

City Fees shall mean applicable local fees assessed by the City and associated with the Project, including but not limited to impact fees, improvement location fees, building permit fees, sign permit fees, variance requests and inspection fees.

City Parking Spaces shall mean all parking spaces in the Garage except the Mixed-Use Building Parking Spaces. The City shall have sole authority over the City Parking Spaces and may elect to, among other things, charge for use of the City Parking Spaces, limit duration of use of the City Parking Spaces, grant and record easements to other entities to use the City Parking Spaces. The use of the City Parking Spaces shall be governed by the Garage Lease and the Declaration.

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: (a) if not yet acquired, Developer’s acquisition of the Development Land; (b) CDC’s conveyance to Developer of the Public Land; (c) approval of the Plat (and recordation, if possible with the contemplated horizontal property regime); and (c) Developer’s and City’s agreement to the form of the Garage Condominium Unit Deed.

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with a commercial real estate closing.

Closing Date shall mean the date of the Closing.

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: (i) in the case of Developer, (1) marketable fee simple title to the Mixed-Use Condominium Units in the name of Developer; and (2) a valid leasehold estate in the Garage Condominium Unit in the name of Developer; and (ii) in the case of CDC, marketable fee simple title to the Garage Condominium Unit.

Construction Contract shall mean a guaranteed maximum price construction contract with the General Contractor for the construction of the Project for approximately _____ and 00/100 Dollars (\$_____.00). The Construction Contract shall be (a) subject to the reasonable approval of City; and (b) terminable by the City,

without recourse or liability to any City Bodies, on ten (10) days' notice in the event the City exercises its remedies under **Sections 17(a), 17(b), 17(c), or 17(d)(ii)(2) or (3)**.

Construction Drawings shall mean construction drawings with respect to the construction of the Project, which drawings shall be consistent with the Design Development Documents, the Schematic Design Drawings, and the Construction Schedule approved by City.

Construction Schedule shall mean a schedule for construction of the Project in accordance with the Final Documents and Drawings, which schedule shall reflect Substantial Completion of the Project by Developer within thirty (30) months after Closing.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

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 ninety (90) days after the date of the default. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under **Section 17**, any specific cure periods for such defaults being expressly set forth in **Section 17**, and a Cure Period shall not be applicable to a default under an Ancillary Agreement, any specific cure periods for such defaults being expressly set forth in such Ancillary Agreement.

Current Year Taxes shall mean the Real Estate Taxes assessed for, and first becoming a lien against, the Project Site during the year in which the Closing occurs.

Declaration shall mean the "Declaration of Covenants and Easements" described in **Section 15(a)**. The Declaration shall, among other things, address the following with respect to the Garage: (i) use and operation; (ii) the City's (a) routine and capital maintenance and repair; (b) signage; and (c) insurance and utilities; (iii) terms, conditions, hours, and procedures for the shared public and private use of the Garage; and (iv) charges for the Parking Spaces and the means and methodology for collection and allocation of parking revenues; and (vii) such other terms as may be agreed upon by the parties. With respect to Closing, a form of the Declaration shall be provided, and the Declaration shall be finalized following completion of condominiumization.

Design Development Documents shall mean detailed design development documents for the Project, which documents shall be consistent with the Schematic Design Drawings and the Laws.

Developer Obligations Agreement shall mean the "Developer Obligations Agreement and Consent to Real Property Tax Lien" described in **Section 15(b)**.

Development Land shall mean the parcels identified by the following parcel identification nos. which shall be acquired by Developer at or prior to Closing and the deeds to such land recorded at or prior to Closing and conveyance of the Public Land: 11-07-31-17-07-030.001;

11-07-31-17-07-032.000; 11-07-31-17-07-031.000; and 11-07-31-17-07-030.000 as depicted on **Exhibit C**.

Diligence Period shall mean the period: (a) commencing on the Execution Date; and (b) ending on the date that is sixty (90) days after the Execution Date.

Divestiture Payment shall mean in the case of the exercise of the Power of Termination as a result of (a) a default by Developer under **Section 17(a)** or **17(b)**, an amount equal to (i) the amount of the proceeds of the Project Loan disbursed pursuant to the terms and conditions of the Project Loan Documents; plus (ii) unpaid, accrued interest on the Project Loan at the regular (non-default) rate of interest.

Escrow Agent shall mean an FDIC insured bank mutually acceptable to City and Developer.

Event of Default shall have the meaning set forth in **Subsection 16(a)**.

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

Executive Director shall mean the Director of Economic Development for the City of Noblesville.

Excluded Costs shall mean the costs associated with construction interest, non-residential tenant improvements and non-residential shell build out. For purposes of calculating the Certified Costs, the amount of Excluded Costs shall be the actual Excluded Costs incurred.

Final Documents and Drawings shall mean the final Schematic Design Drawings, the final Design Development Documents, the final Construction Schedule, the Project Budget, and the final Construction Drawings, as each is finalized and approved or reviewed by City in accordance with the Plan Refinement Process described in **Section 10**.

Final Inspection shall mean an inspection of the Project after Substantial Completion thereof.

Force Majeure shall mean, with respect to Developer or City Bodies any cause that is not within the reasonable control of Developer or City Bodies, respectively (including, without limitation: (a) unusually inclement weather; (b) the unusual unavailability of materials, equipment, services, or labor; and (c) utility or energy shortages or acts or omissions of public utility providers); provided that a party's failure to anticipate normal and customary delays due to weather or normal and customary delays in obtaining Required Permits shall not be deemed Force Majeure.

Funding Agreement shall mean an agreement pursuant to which the Bond Proceeds in the amount of Fifteen Million Four Hundred Seventy-Three Thousand Two Hundred Seventy-Three and 00/100 Dollars (\$15,473,273.00) shall be disbursed to Developer in a commercially reasonable manner of which Thirteen Million Two Hundred Thousand Seven Hundred Eighty-Seven and 00/100 Dollars (\$13,200,787.00) shall be to design and construct the Garage, and related improvements, and Two Million Two Hundred Seventy-Two Thousand Four Hundred Eighty-Six and 00/100 Dollars (\$2,272,486.00) shall be to design and construct the Mixed-Use Building. The Funding Agreement may also provide for the disbursement of Bond Proceeds to the Developer of the amount necessary to cover costs to relocate, move, or improve the Utilities that are necessary

for the construction, service and use of the Project, as approved by the City, if the City determines to cover such costs from proceeds of the Bonds as provided in Section 8(q) of this Agreement. Developer shall be responsible for all costs to design and construct the Project in excess of the Bond Proceeds. The Funding Agreement also shall include the following: (i) an amount that equals Twenty-Four Million Three Hundred Thirty-Four Thousand Six Hundred Seventy-Three and 00/100 Dollars (\$24,334,673.00), which is the Schematic Design Preliminary Estimated Project Cost (the “Base Costs”); and (ii) a provision for reducing the Bond Proceeds by \$0.50 for each \$1.00 (“Reduction Amount”) that the Certified Costs are less than the Base Costs.

Garage shall mean: (a) the parking facility containing approximately three hundred thirty-seven (337) total parking spaces, to be constructed by Developer and connected to the Mixed-Use Building; (b) garage entrances and exits, ramps, elevators, stairwells, elevator lobbies, and all related facilities; and (c) all facades, exterior walls, roofs, foundations and other structural and aesthetic components thereof.

Garage Condominium Unit shall mean that certain condominium unit within which the Garage is to be constructed, which unit is identified by a property identification number separate and distinct from the Mixed-Use Condominium Unit.

Garage Condominium Unit Deed shall mean a limited warranty deed by which Developer shall convey its interest in the Garage Condominium Unit to CDC, together with all improvements thereon, which deed shall be subject only to (a) the Permitted Exceptions; and (b) matters created or consented to by City Bodies or its successor or contemplated herein.

Garage Lease shall mean the lease by and among CDC, RDC, and Developer pursuant to which CDC shall lease the Garage Condominium Unit and the Garage to Developer for the Lease Term, and which lease shall: (a) be subject only to the Permitted Exceptions; and (b) include (i) an environmental indemnity from Developer; (ii) rights similar to those set forth in the Power of Termination; and (iii) such other terms as are consistent with this Agreement and the Ancillary Agreements. City Bodies shall be responsible for all management, maintenance, operation, insurance, repair and reconstruction of the Garage (including all responsibilities under the Declaration). The rental payments under the Garage Lease shall be the sole liability and obligation of City Bodies. The Garage Lease shall be further subject to the terms and conditions of the Declaration to be executed on or before Closing.

General Contractor shall mean the general contractor that is: (a) selected by Developer to construct the Project; and (b) reasonably acceptable to City; with experience in constructing or managing projects similar to the Project. Primary sub-contractors shall be approved in advance by City, which approval shall not be unreasonably withheld.

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

Latent Defect shall mean a Material Defect that: (a) is not discovered, and reasonably is not discoverable, by City or Inspector during a Permitted Inspection and/or the Final Inspection; and (b) has a material and adverse effect on the use, operation, structure, or longevity of the Project.

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

Lease Term shall be the term of the Garage Lease which shall be equal to the repayment term of the Bonds (or any bonds issued to refinance the original Bonds), but in no event shall the term be greater than twenty-five (25) years.

Material Defect 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; or (c) has not been performed materially in accordance with the terms and conditions of this Agreement.

Mixed-Use Building shall mean the mixed-use building connected to the Garage to be constructed by Developer, and such building shall consist of three (3) stories above the Garage that incorporates: (a) approximately 83 residential units (at least ten (10) of which shall be dedicated to workforce housing based upon 80% area median income (“AMI”)); and (b) non-residential uses (e.g., office, retail, amenity uses) on the first floor adjacent to Ninth (9th) Street and Eighth (8th) Street.

Mixed-Use Building Parking Spaces shall mean the parking spaces dedicated exclusively to the Mixed-Use Building in the Garage subject to the Parking Spaces Easement. The number, location and use of the Mixed-Use Parking Spaces shall be governed by the Parking Spaces Easement included in the Declaration, with the Mixed-Use Parking Spaces being reserved spaces consistent with the terms of the Declaration.

Mixed-Use Condominium Units shall mean those certain condominium units depicted on **Exhibit B** within which the Mixed-Use Building are to be constructed, which units are identified by a property identification number separate and distinct from the the Garage Condominium Unit.

Multi-Party Agreement shall mean an agreement by and among City, Developer, and the Project Lender pursuant to which (a) the Project Lender agrees to give to City: (i) notices of defaults by Developer under the Project Loan Documents; (ii) the right (but not obligation) to cure defaults by Developer under the Project Loan Documents; (iii) the right to purchase the Loan in the event of a default by Developer under this Agreement, the Garage Lease, or the Project Loan Documents if such default is not cured within the Cure Period or other applicable cure period for an amount equal to: (A) the proceeds of the Project Loan disbursed pursuant to the terms and conditions of the Project Loan Documents; and (B) unpaid, accrued interest on the Project Loan at the regular (non-default) rate of interest; (b) provides for the release of the Project Loan in the event of the exercise of the Power of Termination and upon payment of the Divestiture Payment under **Section 17(a)** or **17(b)**; and (c) provides the City the right to keep the Project Loan in place if City exercises its right under **Section 17(c)** to complete the Project for and on behalf of Developer, including the right to obtain draws up to the maximum principal amount of the Project Loan pursuant to draw requests delivered by City to the Project Lender (with carbon copies to Developer). The Multi-Party Agreement shall be in form and substance reasonably acceptable to City, Developer, and Project Lender.

Non-Compliance Notice shall mean a written notice from City to Developer that identifies Material Defects with respect to the Project discovered by City or the Inspector during a Permitted Inspection and/or the Final Inspection.

Parking Spaces Easement shall mean the easement set forth in the Declaration, which easement shall provide for the Mixed-Use Building Parking Spaces and the City Parking Spaces and shall: (a) be subject to the Permitted Exceptions; and (b) include (i) an environmental indemnity in favor of Developer; (ii) rights similar to those set forth in the Power of Termination; (iii) provisions that Developer shall be entitled to enforce its rights to the Parking Spaces hereunder to the extent permitted by Laws; and (iv) such other terms as are consistent with this Agreement, the Declaration, and all other Ancillary Agreements, where applicable.

Participation Agreement shall mean an agreement between the Developer and one or more City Bodies, pursuant to which Developer agrees to make an annual payment to the City Body designated therein for the longer of either (i) twenty (20) years or (ii) until the Bonds, or any bonds issued to refinance the Bonds, have finally matured and are no longer outstanding, which payments shall be based upon the profitability of the Project as calculated in the manner and payable to the City as set forth in the Participation Agreement. Specifically, the Participation Agreement shall set forth the method and timing for such payments which shall ensure the City receives twenty and four-tenths (20.4%) of all net operating income in excess of the Participation Net Operating Income as further defined in the Participation Agreement.

Participation Net Operating Income shall mean the base amount of net operating income as set forth in the Participation Agreement whereby Developer shall make annual payments to the City Body designated in the Participation Agreement based on profits in excess of the Participation Net Operating Income.

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 affect the exterior appearance of the Project, the location of any entrance to the Garage, or the location, size, or number of Parking Spaces; (b) is not inconsistent with the Schematic Design Drawings approved by City; (c) is not inconsistent with the Design Development Documents approved by City; (d) is in conformity with each of the Site Plan, the Required Permits, and the Laws; (e) does not result in the Final Documents and Drawings containing structurally flawed elements; (f) is in conformity with the Garage Lease and does not require any consent under or modification to the Garage Lease; (g) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule; and (h) does not result in an increase in the Project Budget.

Permitted Exceptions shall mean: (a) the lien of Current Year Taxes and Assessments not delinquent; (b) any exceptions to title reflected in the Commitment at the time of Closing; (c) this Agreement, together with any Ancillary Agreements including, without limitation, the Declaration and the Developer Obligations Agreement (d) reservations of the Power of Termination; and (e) such other matters as are accepted by Developer or CDC (as applicable) in writing or which Developer or CDC (as applicable) is deemed to have waived pursuant to the terms and conditions of this Agreement.

Permitted Inspection shall mean, as applicable, an inspection by the Inspector of any item or component of the Project when reasonably deemed to be necessary or appropriate by any City Bodies and/or the Inspector.

Plan Review Panel shall mean a 3-member plan review panel comprised of the Executive Director, a Council appointee, Planning Director, and such other parties as may hereafter be designated by the City to replace one or more of the Plan Review Panel members.

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 which Plat shall describe units for each of the Garage Condominium Unit and the Mixed-Use Condominium Units which lots shall ultimately be established as separate condominium units pursuant to Indiana's horizontal property regime act, Ind. Code § 32-25 *et. seq.* The parties acknowledge that the final parcels as platted may vary from the current boundaries of the parcels and when recorded shall show the owner of the Mixed-Use Condominium Units as Developer and the Garage Condominium Unit as the CDC

Power of Termination shall mean an exception in the Public Land Deed permitting CDC or RDC, as applicable, to re-enter the Public Land and, upon payment of the Divestiture Payment, divest Developer of title thereto and to cause title to the Public Land to re-vest in CDC or RDC, as applicable, in the event of a default described in **Sections 17(a) or 17(b)**, which re-vesting shall be free and clear of all matters other than those to which title was subject upon CDC's or RDC's delivery of the Public Land Deed to Developer together with Developer's obligation to transfer the entire Mixed-Use Condominium Units to City in the event of a default described in **Sections 17(a) or 17(b)**. The Power of Termination shall lapse and expire by its own terms upon Substantial Completion of the Project. Upon lapse and expiration of the Power of Termination, the applicable City Body, upon Developer's written request, shall execute and deliver an affidavit releasing such right in recordable form. The Power of Termination shall be described in a summary of the Project Agreement recorded in the Office of the Hamilton County Recorder.

Prohibited Uses shall mean those prohibited uses for the Mixed-Use Building as set forth in **Exhibit G**.

Project shall mean the Garage, the Mixed-Use Building, and related improvements to be constructed on the Project Site in connection therewith, all in accordance with the Final Documents and Drawings and as generally shown on the Site Plan.

Project Appreciation shall mean the difference between (a) the proceeds of a sale, transfer, refinance, or conveyance of the Project (net of all reasonable and customary expenses incurred by Developer from the transaction) and (b) the Project Cost multiplied by 1.2 (for example: \$10M Project Cost x 1.2 = \$12M).

Project Budget shall mean a detailed budget for the construction of the Project in accordance with the Final Documents and Drawings for each component of the Garage and the Mixed-Use Building, which shall be prepared when the Construction Drawings approximately are 85%-100% complete and shall be approved by the City, which approval shall not be withheld, conditioned or delayed unreasonably.

Project Costs shall mean Project Hard Costs and Project Soft Costs incurred in connection with construction of the Project.

Project Hard Costs shall mean costs incurred in connection with construction of the Project, including costs to acquire the Development Land, which costs are customarily known as “hard costs”.

Project Lender shall mean the financial institution which is not affiliated with Developer making the Project Loan, and any successor or assignee thereof.

Project Loan shall mean a construction loan to Developer closed at Closing, the proceeds of which, along with the Bond Proceeds, shall be used to Fund Project Costs. The Project Loan shall be separate from the Funding Agreement.

Project Loan Documents shall mean the documents evidencing or securing the Project Loan.

Project Site shall mean: (a) the Mixed-Use Condominium Units; and (b) the Garage Condominium Unit; all as generally depicted on **Exhibit K**.

Project Soft Costs shall mean costs incurred in connection with the Project and in addition to the Project Hard Costs, which costs are customarily known as “soft costs”.

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

Public Land shall mean, whether owned by the City, CDC or RDC, the parcels identified by the following parcel identification nos.: 11-07-31-17-07-033.000; 11-07-31-17-07-035.000; 11-07-31-17-07-029.000; 11-07-31-17-07-034.000 and the adjacent north-south alley/ROW all as depicted on **Exhibit D**.

Public Land Deed shall mean limited warranty deeds by which CDC shall convey its interest in the Public Land to Developer, which deeds shall be subject to the Permitted Exceptions and reserve the Power of Termination.

Public Right-of-Way shall mean the right-of-way depicted on **Exhibit J** which right-of-way shall be vacated by the City and subsequently included on the Plat as part of the Garage Condominium Unit.

RDC Payments shall mean the payments due from RDC to CDC under the Garage Lease.

Real Estate Taxes shall mean all real estate taxes levied on, against, or with respect to the Project Site.

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

Schematic Design Drawings shall mean detailed schematic design drawings for the Project that are consistent with the Site Plan and the Laws which final schematic drawings are approved by City Bodies and Developer and included on **Exhibit A**.

Schematic Design Preliminary Estimated Project Costs shall mean the amount of Twenty-Four Million Three Hundred Thirty-Four Thousand Six Hundred Seventy-Three and 00/100 Dollars

(\$24,334,673.00), which amount includes the total preliminary budget for Project Hard Costs and Project Soft Costs.

Site Plan shall mean the site plan attached hereto as **Exhibit K**.

Substantial Completion shall mean with respect to the Project, the later of the date: (i) that Developer receives the final certificate of occupancy for the Garage; and (ii) the date that the Developer's architect certifies, per AIA Form G704, that the construction of the Mixed-Use Building is substantially complete in compliance with all Laws, this Agreement, and the Required Permits subject only to tenant improvements, certificates of occupancy for individual tenant spaces, and minor punchlist items that do not interfere with the use or operation thereof.

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.

Title Defects shall mean conditions or defects disclosed in the Commitment or the Survey that, in the reasonable determination of Developer or CDC, as applicable, materially and adversely 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 the Closing shall not be a Title Defect nor shall Developer, City, or any City Bodies have any obligation to cure any Title Defects.

Title Insurer shall mean Gina Longere, First American Title Insurance Company.

2. **City's Obligations.** Subject to **Section 7**, City, CDC or RDC, as applicable, shall: (a) in connection with Developer, jointly submit the Plat for final approval and recordation; (b) cause to be conveyed to Developer fee simple title to the Public Land; (c) accept fee simple title to the Garage Condominium Unit; (d) cause CDC to lease the Garage and Garage Condominium Unit to Developer and RDC pursuant to the Garage Lease; (e) execute and perform (or cause the applicable City Bodies thereto to execute and perform) the Ancillary Agreements; (f) issue the Bonds in accordance with the terms and conditions of **Exhibit M** and make available the Bond Proceeds to Developer pursuant to the Funding Agreement within twenty-one (21) days of Closing, for the purposes set forth in this Agreement; (g) cause the Project Site to be zoned for the construction and use of the Project in accordance with the Design Development Documents; (h) perform routine capital maintenance and repair of the Garage, including without limitation providing signage and maintaining insurance and utilities (all as specifically set forth in the Declaration); and (i) issue the City's permits necessary to develop the Project Site and construct the Project, including, whenever possible, coordinating with the Developer to lower Project costs by issuing interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving final approval of less critical activities (e.g., review and approval of the ILP and foundation release permits to allow overall site work and foundation installation for the Garage to be expedited and reserving for later review streetscape improvements and other improvements to be constructed later in the construction phasing) to the extent allowed by the Laws.

3. **Developer's Obligations.** Subject to **Section 6**, Developer shall: (a) acquire the Development Land at or prior to Closing; (b) in connection with City, jointly submit the Plat for final approval and recordation; (c) convey the Garage Condominium Unit to the CDC pursuant to the Garage Condominium Unit Deed; (d) accept fee simple title to the Public Land owned by the

CDC pursuant to the Public Land Deed; (e) lease the Garage Condominium Unit and Garage from CDC pursuant to the Garage Lease; (f) make the payments required by the Developer Obligations Agreement; (g) obtain the Project Loan; (h) construct and complete the Project in accordance with the Final Documents and Drawings and this Agreement; (i) obtain all Required Permits; (j) execute and perform the Ancillary Agreements; (k) maintain, repair and replace the Project in good condition and repair; in each case subject to the terms and conditions of this Agreement and the Ancillary Agreements; (l) deliver to City, within one hundred eighty (180) days after the Closeout of the Construction Contract, a statement of the Certified Costs; (m) perform its other obligations set forth herein; and (n) grant to the City, at no cost, any additional right-of-way shown on the Plat that is within the Development Land.

4. **Closing.**

(a) **Closing.** Subject to the terms and conditions of this Agreement, Closing shall occur: (i) on or before the date that is thirty (30) days after the conditions in **Sections 6 and 7** have been satisfied or waived, but in no event later than February 1, 2019, and (ii) either at the office of the Title Insurer or at such other place as City and Developer mutually may agree. In the event of the termination of this Agreement on or before Closing due to a failure to satisfy any condition in **Section 6 or 7**, each party shall bear their own costs in connection with negotiation and performance of this Agreement.

(b) **Closing Deliveries.** At the Closing:

(i) Developer shall deliver to Closing Agent (A) limited warranty deeds, if any, to any portion of the Development Land not yet recorded to show Developer as fee simple owner; and (B) all Project Loan Documents needed to close the Project Loan.

(ii) Developer and City shall each pay one-half of the Closing Costs by wire transfer of immediately available funds. City shall pay (A) for the title insurance premiums charged for the owner's or leasehold policies of title insurance (as applicable) on the Garage Lease and the Garage Condominium Unit. Developer shall pay (A) the cost of the Survey and the Plat and (B) the cost for the owner's policy of title insurance on the Mixed-Use Condominium Units in an amount determined by Developer. Developer and City Bodies, as the case may be, shall pay for any other title insurance premiums each desires for insurance in excess of the amounts the other party is obligated to provide, lender's policies, endorsement fees, search fees, costs, and expenses charged for other than the owner's policies of title insurance. Each party shall be responsible for its own legal fees incurred in connection with this Agreement and the Closing.

(iii) Developer and/or the applicable City Bodies shall execute and deliver the following:

(A) a form of the Garage Condominium Unit Deed conveying to CDC fee simple title to the Garage Condominium Unit which deed shall be finalized and recorded after the Garage is completed and the condominium declaration is recorded;

(B) the Public Land Deed conveying to Developer fee simple title to the Public Land;

- (D) a vendor's affidavit from each of the CDC, RDC and Developer, as applicable, in form and substance such that the Title Insurer agrees to delete the standard exceptions for non-survey matters;
- (E) an affidavit that each Building Corp, RDC and Developer, as applicable, is not a "foreign person", in form and substance required by the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder;
- (F) a certification by Developer that all of the representations and warranties set forth in **Subsection 8(b)** remain true and accurate in all respects as of the Closing Date;
- (G) the executed Construction Contract;
- (H) the Ancillary Agreements (except that for Closing, a form of the Declaration shall be provided);
- (I) an original of this Project Agreement, and, at City's option, a recordable memorandum of this Project Agreement; in either case, to be recorded in the chain of title for the Project Site;
- (J) the Project Loan Documents, including the Multi-Party Agreement;
- (K) such other customary documents or instruments as required to be delivered in connection with the issuance of the Bonds;
- (L) copies of such resolutions, consents of members, partners, officers, and/or shareholders and other evidence as RDC, City, CDC, Developer, or the Title Insurer reasonably may request, establishing that: (1) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action; and (2) the execution and delivery of such documents to effect the intent of this Agreement, have, in each case, been properly authorized by the signatories thereto;
- (M) such other customary documents or instruments as City, RDC, CDC, Developer or the Title Insurer may request in connection with the Closing (including, for example, a Sales Disclosure Form and a closing statement);
- (N) certificates of insurance policies required pursuant to **Section 13**; and
- (O) Taxes. As long as Developer owns the Mixed-Use Condominium Units, Developer assumes and agrees to pay all Real Estate Taxes and Assessments becoming a lien against the Mixed-Use Condominium Units whenever assessed, due, or payable. If a City Body owns the Garage Condominium Unit, City Bodies assume and agree to pay Real Estate Taxes and Assessments becoming a lien against the Garage Condominium Unit whenever assessed, due, or payable.

5. **Property Inspections/Due Diligence.**

- (a) Developer and its agents, employees, and contractors have the right to enter upon the portions of the Public Land owned by a City Body at reasonable times to conduct such

Property Inspections as it deems necessary or appropriate, and City (or a City Body) and its agents, employees, and contractors have the right to enter upon the Development Land at reasonable times to conduct such Property Inspections as it deems necessary or appropriate.

(b) Developer agrees that, in connection with the Property Inspections, it shall: (i) maintain insurance with customary coverages naming City Bodies as additional insureds; (ii) promptly repair any damage to the Public Land resulting from the Property Inspections if the Closing does not occur; (iii) indemnify and hold harmless City Bodies from and against any and all Claims arising or incurred as a result of, or in connection with, Developer's Property Inspections; provided that the foregoing indemnity shall not cover Claims arising or incurred as a result of, or in connection with: (1) negligence or intentional misconduct of a City Body; or (2) any existing adverse physical condition of the Public Land that is not exacerbated by Developer; and (iv) provide to City (or its designee), promptly after receipt thereof, true, correct, and complete copies of all results of, and reports received in connection with, the Property Inspections. City agrees that, in connection with the Property Inspections, it shall: (i) maintain insurance with customary coverages naming Developer as additional insureds; (ii) promptly repair any damage to the Project Site resulting from the Property Inspections if the Closing does not occur; (iii) to the extent permitted by law, indemnify and hold harmless Developer from and against any and all Claims arising or incurred as a result of, or in connection with, the Property Inspections; provided that the foregoing indemnity shall not cover Claims arising or incurred as a result of, or in connection with: (1) negligence or intentional misconduct of Developer; or (2) any existing adverse physical condition of the Project Site which is not exacerbated by City; and (iv) provide to Developer (or its designee), promptly after receipt thereof, true, correct, and complete copies of all results of, and reports received in connection with, the Property Inspections.

(c) The obligations of Developer and City under this **Section 5** shall survive: (i) the Closing; and (ii) if applicable, the termination of this Agreement.

6. **Conditions to Developer Obligations.** The obligations of Developer with respect to the Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section:

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

(b) **Survey.** Within forty-five (45) days after the Execution Date, Developer shall have obtained the Survey.

(c) **Title Conditions.** As of expiration of the Diligence Period, Developer shall have determined that the Title Insurer shall: (i) insure, for its fair market value, as applicable, marketable, fee simple title to and/or leasehold estate in the Project Site in the name of Developer, free of all Title Defects, other than those Title Defects that City commits to cure or remove at or before the Closing but subject to the Permitted Exceptions and such other matters as Developer is deemed to have waived pursuant to the terms and conditions of this

Agreement; and (ii) issue such endorsements as Developer reasonably deems to be necessary or appropriate.

(d) Survey Conditions. On the Closing Date, Developer shall have 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 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; and (v) otherwise reasonably is acceptable to Developer. The Survey shall establish the legal description of: (A) the Mixed-Use Condominium Units; and (B) the Garage Condominium Unit, to the extent possible prior to condominiumization.

(e) Environmental Condition. As of expiration of the Diligence Period, Developer shall have determined that there: (i) 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; (ii) are no underground storage tanks located on the Project Site; and (iii) are no wetlands on the Project Site.

(f) Physical Condition. As of expiration of the Diligence Period, Developer 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. As of expiration of the Diligence Period, Developer 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 Developer in its reasonable discretion.

(h) Utility Availability. As of expiration of the Diligence Period, Developer 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. As of the expiration of the Diligence Period, Developer shall have (A) obtained; or (B) determined that it shall be able to obtain; all Required Permits.

(j) Final Developer Plans. As of the Closing Date, the Final Documents and Drawings shall have been completed and approved pursuant to the Plan Refinement Process.

(k) Financial Ability. As of the expiration of the Closing Date, Developer, at its sole and absolute discretion, shall have determined that it has adequate funds (Project Loan proceeds, Bond Proceeds, and/or cash on hand) to construct the Project.

(l) Ancillary Agreements. As of the Closing Date: (i) City (or the applicable City Bodies) and Developer, 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) Bond Proceeds. As of the Closing Date, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary and prudent to authorize the Bonds; and (ii) demonstrated that such Bonds shall be issued within thirty (30) days after Closing and the Bond Proceeds shall be made available to Developer within seven (7) days of the Bonds being issued; and, as of the Closing Date, Developer, at its sole and absolute discretion, shall have determined that the proceeds of the Bonds shall be available to Developer for the purposes set forth in this Agreement.

(n) Financing Documents. As of the Closing Date, Project Lender and the applicable City Bodies shall have approved the form and substance of the Multi-Party Agreement, Project Loan Documents, and any additional documents relating to the Project Loan. On the Closing Date, the Project Loan shall be closed, and in connection therewith, the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating thereto shall be fully executed by all parties thereto.

(o) Plat. As part of Closing, the Plat shall have received approval from the Transfer and Mapping Department of the Office of the Auditor of Hamilton County, Indiana; provided, however, that such approval can be obtained prior to condominiumization of the parcels.

(p) Public Land. At Closing, CDC shall convey the Public Land to Developer.

(q) No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by City Bodies that the applicable City Body has failed to cure within the Cure Period; and (ii) all of the representations in **Section 8(a)** shall be true and accurate in all other respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, as determined by Developer in its sole and absolute discretion, then, as its sole and exclusive remedy, Developer either may elect to: (i) waive in writing satisfaction of the conditions and to proceed to the Closing; or (ii) terminate this Agreement by a written notice to City; provided that, with respect to any unsatisfied condition resulting from another party's breach of this Agreement, Developer shall have the rights and remedies set forth in **Section 16**. Notwithstanding anything to the contrary set forth herein, (1) Developer shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if Developer 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; Developer shall be deemed to have waived such condition.

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

- (a) Required Permits. As of the expiration of the Diligence Period, City Bodies shall: (i) have determined that Developer shall have: (A) obtained; or (B) determined that Developer shall be able to obtain; all Required Permits; and (ii) the Survey is acceptable to the City; and (iii) there are no exceptions or matters of record reflected in the Commitment or Survey which would have a materially adverse effect on the Project or the City Bodies' ability to perform hereunder or under any Ancillary Agreements.
- (b) Final Developer Plans. As of the Closing Date, the Schematic Design Documents shall have been completed and approved by City.
- (c) Construction Contracts. Prior to the execution thereof, final copies of the Construction Contracts (for the Garage portion, only) shall be approved by the Executive Director.
- (d) Financial Ability. As of the Closing Date, Developer shall have demonstrated to City, exercising commercially reasonable discretion, that Developer has adequate funds (Project Loan proceeds, Bond Proceeds, and/or cash on hand) to construct the Project.
- (e) Title Conditions. As of expiration of the Diligence Period, City shall have determined that the Title Insurer shall: (i) insure, for its fair market value, marketable, fee simple title in the Garage Condominium Unit in the name of CDC, free of all Title Defects, other than those Title Defects that Developer commits to cure or remove at or before the Closing but subject to the Permitted Exceptions and such other matters as City is deemed to have waived pursuant to the terms and conditions of this Agreement; and (ii) issue such endorsements as City reasonably deems to be necessary or appropriate.
- (f) Survey Conditions. On the Closing Date, City shall have determined that the Survey, upon recordation of the Plat and completion of condominiumization: (i) describes the perimeter of the Garage Condominium Unit as a single parcel without material gaps, gores, or overlaps; (ii) shows no material encroachments thereto; (iii) shows no Title Defects thereto; (iv) establishes that no part of the Garage Condominium Unit is located within: (1) a "flood hazard zone", as shown on the applicable Federal Insurance Rate Map; or (2) a "floodway" or "flood plain", as shown on the applicable Flood Control District Map; and (v) otherwise reasonably is acceptable to City.
- (g) Environmental Condition. As of expiration of the Diligence Period, City shall have determined that there: (i) is no contamination or pollution of the Garage Condominium Unit, or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws; (ii) are no underground storage tanks located on the Garage Condominium Unit; and (iii) are no wetlands on the Garage Condominium Unit.
- (h) Physical Condition. As of expiration of the Diligence Period, City shall have determined that no test, inspection, examination, study, or investigation of the Garage Condominium Unit establishes that there are conditions that would interfere materially with the construction and use of the Garage, in accordance with the terms and conditions of this Agreement.

- (i) Ancillary Agreements. As of the Closing Date: (i) City (or the applicable City Bodies) and Developer, 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. The execution of the Developer's Obligation Agreement is a condition precedent to the effectiveness of this Agreement. In the event the Developer's Obligation Agreement is not executed on or before Closing, this Agreement shall be null and void.
- (j) Bond Proceeds. As of the Closing Date, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary and prudent to authorize the Bonds; and (ii) demonstrated that such Bonds shall be issued within 30 days after Closing and the proceeds available to Developer within seven (7) days of the Bonds being issued; and, as of the Closing Date, Developer, exercising commercially reasonable discretion, shall have determined that the proceeds of the Bonds shall be no less than the Bond Proceeds and available for Developer for the purposes set forth in this Agreement.
- (k) Financing Documents. As of the Closing Date, Project Lender and the applicable City Bodies shall have approved the form and substance of the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating to the Project Loan. On the Closing Date, the Project Loan shall be closed and, in connection therewith, the Multi-Party Agreement, the Project Loan Documents, and any additional documents relating thereto shall be fully executed by all parties thereto.
- (l) Procedures. As of the Closing Date, the applicable City Bodies shall have completed all procedures required by Laws to undertake the obligations contemplated hereunder; and all requisite public bodies shall have approved the transaction.
- (m) Plat. As part of Closing, the Plat shall have received approval from the Transfer and Mapping Department of the Office of the Auditor of Hamilton County, Indiana and be recorded, if possible prior to condominiumization. The Plat shall establish the precise legal description of: (A) the Mixed-Use Condominium Units; (B) the Public Right-of-Way; and (C) the Garage Condominium Unit; for purposes of title insurance and closing documents.
- (n) Garage Condominium Unit. The form of the Garage Condominium Unit Deed shall be sufficient to convey the Garage Condominium Unit to CDC after the Garage is completed and the condominium declaration is recorded.
- (o) Compliance. This Agreement and compliance with the terms hereof are not in violation of any applicable Laws and no claims or causes of action asserting any violation of Laws shall have been asserted or threatened by any third party.
- (p) No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by Developer that Developer has failed to cure within the Cure Period; and (ii) all of the representations and warranties set forth in Subsection 9(b) shall be true and accurate in all respects.

(q) Utility Relocation. Unless the City shall determine at the time of issuance of the Bonds to provide funds to the Developer to cover the costs to relocate, move, or improve Utilities that are necessary for the construction, service and use of the Project, as approved by the City, the City shall be responsible for such costs out of sources available to the City other than the proceeds of the Bonds. In any event, the City shall cause to be relocated the Utilities, and all Utilities shall be provided by the City at adequate pressures, and in sufficient quantities and volumes, in accordance with the Final Documents and Drawings. City and Developer may enter into a separate agreement for the construction and/or relocation of the Utilities.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, City either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement by a written notice to Developer; provided that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Developer, City and/or the applicable City Body shall have all of the rights and remedies set forth in **Sections 16 and/or 17**, as applicable. Notwithstanding anything to the contrary set forth herein, (1) City shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if City 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; City shall be deemed to have waived such condition.

8. **Representations and Warranties.**

(a) City Bodies. Each City Body represents and warrants to Developer that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) City is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) CDC is a nonprofit corporation organized and existing under the laws of the State of Indiana; (iv) RDC is the governing body of the City of Noblesville Redevelopment Department organized and existing under the laws of the State of Indiana; (v) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (vi) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (vii) this Agreement is the legal, valid, and binding obligation of it; and (viii) it has not engaged or dealt with any real estate broker or agent in connection with the Project, Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of a City Body.

(b) Developer. Developer represents and warrants to each City Body that: (i) Developer is an Indiana limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) Developer shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) Developer has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) Developer duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of Developer; (vi) neither

Developer nor any party affiliated with Developer has engaged or dealt with any real estate broker or agent in connection with the Project, Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this sale by, through, or as a result of, the acts or omissions of Developer or any party affiliated with Developer; and (vii) Developer, for itself, agrees that during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Developer will state, in all solicitations or advertisements for employees placed by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) E-Verify. All terms defined in IND. CODE § 22-5-1.7 et seq. are adopted and incorporated into this Section. Pursuant to IND. CODE § 22-5-1.7 et seq., Developer covenants to enroll in and verify the work eligibility status of all of its employees using the E-Verify program, if it has not already done so as of the Execution Date. Within ten (10) days after the Execution Date, Developer shall execute an affidavit affirming that: (a) it is enrolled and is participating in the E-Verify program; and (b) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Developer shall provide City with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Developer and delivered to City's authorized representative.

9. **Project Site and Temporary Parking.** City and Developer each acknowledge that a portion of the Public Land is currently used for public parking. City (or the applicable City Body) and Developer hereby agree to work together during the Diligence Period to identify if, how, and where temporary parking can be provided to the public until the Garage is constructed and open to the public, which temporary parking or portion thereof may be located on the Project Site.

10. **Developer Design, Construction and Marketing.**

(a) Schematic Design Drawings. City has approved the Schematic Design Drawings listed on **Exhibit A**.

(b) Design Development Documents. In accordance with the City's zoning and planning procedures, Developer, at its cost and expense, shall submit to City for its review, if requested or required, the Design Development Documents for the Project.

(c) Construction Drawings. In accordance with the City's zoning and planning procedures, Developer, at its cost and expense, shall submit to City for its review the Construction Drawings for the Project.

(d) Change Orders. If Developer desires to make any changes to the Final Documents and Drawings, then Developer shall submit a Change Order Request to City for review and approval (the "Plan Refinement Process"). Within ten (10) days after City receives the Change Order Request, City shall deliver to 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 City approves a Change Order Request, then City and 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 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 Developer. Changes to the Final Documents and Drawings which are not identified in a Change Order approved by 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.

(e) Permits. Developer acknowledges that any plan review by the City is in addition to, and not in lieu of, any plan review or Required Permits required under applicable Laws, and it shall not be deemed a warranty or representation of any kind by any City Bodies that the Schematic Design Drawings, the Design Development Documents, or the Construction Drawings comply with, or are approved under, applicable Laws. Prior to commencing construction of the Project, Developer shall obtain Required Permits with respect to the Project that are available prior to commencement and shall obtain the remainder of the Required Permits upon availability. City shall use reasonable efforts to assist Developer in its efforts to obtain the Required Permits. Developer acknowledges that City Bodies cannot (and do not) guarantee that Developer will be able to obtain the Required Permits.

(f) Construction. Prior to commencing construction of the Project, Developer shall provide the Construction Contract to City for its review and approval which approval shall not be unreasonably withheld. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Documents and Drawings (as modified by any Change Orders); and (iii) in compliance with the Laws.

(g) Review Panel. Consistent with the Laws and notwithstanding anything to the contrary set forth herein, City, at its option, may delegate all or any part of its review, approval, or rejection obligations pursuant to this Section to the Plan Review Panel.

(h) Marketing Plans. The Developer shall submit all marketing plans for the Project to the City for its review on or before one hundred eighty (180) days after the date of this Agreement. Unless objected to by the City by written notice to the Developer within thirty (30) days of receipt, the development marketing plans for the Project shall be deemed approved. The City shall not unreasonably withhold its consent to such marketing plans. In the event the City should have any reasonable objections to the development marketing plans, the Developer and City agree to work in good faith to reach a mutually agreeable development marketing plan. The marketing plans shall be available for public disbursement on or around ten (10) days after approval by the City.

(i) Fee Waiver. If assessed or chargeable by the City Bodies, the City shall waive: City Fees related to (a) the initial construction of the Project and (b) for first generation tenants; provided that during any continuing Event of Default by Developer hereunder or under any Ancillary Agreements, City shall be entitled to either suspend or terminate any

further waiver of the foregoing fees. It is further agreed that City has not waived and does not hereby waive any re-inspection fees customarily charged by any City Parties.

11. **Garage.** Prior to commencing construction of the Garage, Developer shall provide the Garage Construction Contract to City for its review and approval which approval shall not be unreasonably withheld. Developer shall construct the Garage: (i) in a good and workmanlike manner; (ii) in accordance with the Garage portion of the Final Documents and Drawings (as modified by any Change Orders); and (iii) in compliance with the Laws.

12. **Inspection/Completion.**

(a) **Permitted Inspection.** Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, City may perform a Permitted Inspection. Within seven (7) business days after a Permitted Inspection, City may deliver to Developer a Non-Compliance Notice. If City timely delivers a Non-Compliance Notice, then Developer shall correct, or cause to be corrected, as soon as is 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 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 City, subject to Latent Defects.

(b) **[Intentionally Omitted].**

(c) **Final Inspection.** If Developer delivers to City a written request for a Final Inspection, then, on or before the later of the date that is ten (10) business days after: (i) receipt of such request; or (ii) the date specified in such request as the substantial completion date; City shall: (1) conduct the Final Inspection; and (2) deliver a Non-Compliance Notice (if applicable) to Developer; provided that: (y) upon receipt of a Non-Compliance Notice, Developer shall correct, or cause to be corrected, as soon as is 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 or punchlist items are identified in a timely Non-Compliance Notice shall be deemed to be accepted by City, subject to Latent Defects. All Material Defects and punchlist items shall be promptly completed; and, upon correction of all Material Defects and punchlist identified in the Non-Compliance Notice, the applicable work shall be deemed completed (subject to **Section 12(e)**). 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 except to ensure compliance by Developer with the Required Permits and as permitted by the Laws.

(d) **Failure to Cure.** If Developer fails to cure any item in a Non-Compliance Notice or any Latent Defect identified in writing by City, in each case, within thirty (30) days of the receipt of such notice, then 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 \$1,000 per day from Developer for each day after the expiration of such 30-day period that any

items in any (i) Non-Compliance Notice remain incomplete; or (ii) other notice of any Latent Defect remain incomplete; provided that, if such Material Defect or Latent Defect 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 Developer to remedy such Material Defect or Latent Defect (not to exceed sixty (60) days) so long as Developer commences to remedy such Material Defect or Latent Defect within the thirty (30) day period and thereafter continuously and diligently pursues such remedy to completion. The foregoing shall accrue interest at twelve percent (12%) per annum from the date due until paid and shall be in addition to any other remedies available hereunder.

(e) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by City pursuant to this Section shall be applicable with respect to any Latent Defects. An acceptance, or deemed acceptance, by City pursuant to this Section shall not mean that City has accepted, or the other party has been relieved of, responsibility for: (i) compliance with the Laws; (ii) the proper application of construction means or methods; or (iii) correcting any portion of the Project if it later is determined that any portion of the Project is inconsistent with the Final Documents and Drawings.

(f) General; Testing. In the case of a Permitted Inspection or the Final Inspection, 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. City and Developer each shall have the right to accompany, and/or have its construction manager accompany, the inspecting party during any Permitted Inspection and/or the Final Inspection. Notwithstanding anything to the contrary set forth herein, to the extent City, in the exercise of its reasonable discretion, requires any sampling or testing (e.g., concrete testing) as part of a Permitted Inspection and/or Final Inspection: (i) the deadline for City's issuance of a Non-Compliance Notice shall be deemed extended to five (5) business days following City's receipt of a complete and final set of such test or sample results; and (ii) the applicable dates in the Construction Schedule shall likewise be extended.

(g) No Waiver of Police Power. The foregoing rights in favor of City shall be addition to, and not in lieu of, any rights and remedies City may have under this Agreement or applicable Laws; and nothing set forth herein shall be deemed to waive any authority, right, remedy, or power vested in any City Bodies under applicable Laws.

(h) Information Review. Upon Executive Director's request, Developer agrees to permit the Executive Director to review and inspect copies of any and all (i) Project Loan draw requests (as well as any revised draw requests); and (ii) any inspections and reports related to the Project.

13. Insurance. During the construction of the Project, Developer shall maintain the policies of insurance described on Exhibit N. 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 City at least thirty (30) days in advance. The policy of general liability insurance

required by this Section to be maintained by Developer shall name City Bodies as additional insureds. Developer shall deliver to City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies. Other required coverages may be specified in the Ancillary Agreements.

14. **Intentionally Omitted.**

15. **Certain Ancillary Agreements.**

(a) **Declaration.** Pursuant to the Declaration, City Bodies and/or Developer, as applicable, shall make, create, or reserve easements for: (i) vertical and horizontal support with respect to Garage and the Mixed-Use Building; (ii) vehicular access, ingress, and egress; (iii) parking (including, without limitation, that the Declaration shall address the use of the Parking Spaces); (iv) use of vertical transportation facilities (such as stairs and elevators); (v) pedestrian access; (vi) venting, utility, drainage, and communications facilities; (vii) subsurface retention under the Garage, if any; (viii) basic maintenance obligations, including the obligation of the respective owners to maintain the Garage and the Mixed-Use Building in a structurally sound condition such that they provide the support that they are intended and designed to provide; and (ix) such necessary utility easements across each parcel to the extent not addressed by the Plat; provided that the Declaration also may include such other easements as the parties may deem to be necessary or appropriate. The Declaration shall further set forth that Developer declares, creates, makes, and grants the following permanent, perpetual, non-transferable, non-exclusive easements to City for the benefit of the general public:

(1) **Vehicular Access.** Easements in favor of City, for the benefit of the general public, for vehicular access, ingress, and egress on, over, across, and through the Garage and Garage entrances and exits, as more specifically set forth in the Declaration.

(2) **Public Parking.** Easements in favor of City, for the benefit of the general public, to park vehicles in City's designated Parking Spaces, as more specifically set forth in the Declaration.

(3) **Pedestrian Access.** Easements in favor of City, for the benefit of the general public, for pedestrian access, ingress, and egress on, over, across, and through the Garage, Garage entrances and exits, and Garage commons areas, elevators, stairwells and common facilities; from and to the public streets, Mixed-Use Building, or other access ways adjacent to the Garage, as more specifically set forth in the Declaration.

The Declaration shall also include provisions requiring the City to:

- (1) manage and operate the Garage;
- (2) provide routine and capital maintenance and repair;
- (3) provide insurance and utilities;

(4) provide for the proration of the costs expenses associated with the management, maintenance, operation and repair of the Garage ; and

(5) provide that: (i) all of the Mixed-Use Parking Spaces in the Garage shall, at no cost to Developer, be reserved exclusively for use by the employees, guests, and invitees of the tenants of the Mixed-Use Building as depicted on the attached **Exhibit H** and (ii) the City Parking Spaces, as depicted on the attached **Exhibit H**, shall be available for public parking at all times determined by the City; and (iii) that no fees or charges shall be charged by Developer for public parking in the Garage without City's advance written consent. The City shall have the right to assign (provide easements) or license and record such assignment (easements) or license for the City Parking Spaces and to charge for public parking in the Garage as set forth in the Declaration. City shall have no obligation to monitor or enforce the exclusive use of the Parking Spaces by the employees, guests and invitees or the other tenants of the Mixed-Use Building during normal business hours.

(b) Developer Obligations Agreement. Beginning in the calendar year following the first January 1 after Substantial Completion of the Project and continuing through each calendar year of the Lease Term (prorated for the last calendar year of the Lease Term), Developer agrees to make payments of Real Estate Taxes on the Mixed-Use Condominium Units in the amounts not less than those set forth on **Exhibit O** hereto. Developer and City shall enter into the Developer Obligations Agreement which shall: (i) provide that so long as the amounts set forth on **Exhibit O** are greater than the amount of the Real Estate Taxes actually assessed and paid on the Mixed-Use Condominium Units for the same period, then, Developer shall pay to the RDC, in addition to its payment of Real Estate Taxes, an amount equal to: (A) the amounts set forth on **Exhibit O**; minus (B) the amount of the Real Estate Taxes actually assessed and paid on the Mixed-Use Condominium Units, as the case may be, for such same period; (ii) be for a term equal in length to the Garage Lease Term; (iii) provide that the payments due by Developer thereunder are secured by a lien against the Mixed-Use Condominium Units that is similar in type to a lien for real estate taxes (including that such lien shall have the same priority as a lien for real estate taxes); and (iv) be recorded and run with the Mixed-Use Condominium Units. City and Developer shall: (i) agree on the form and substance of the Developer Obligations Agreement on or before the Closing; and (ii) execute and record the Developer Obligations Agreement (or a memorandum thereof) at the Closing. Nothing in this Agreement or the Developer Obligations Agreement shall be deemed to release Developer from any obligation to pay Real Estate Taxes or Assessments on the Mixed-Use Condominium Units regardless of when payable or assessed.

(c) Retail/Office Tenants. Developer, for and on behalf of itself and any successor owner of the Mixed-Use Building, agrees that the Mixed-Use Building shall not be leased or used for the Prohibited Uses. The Prohibited Uses include those uses identified in **Exhibit G**.

(d) Participation Agreement. Pursuant to the Participation Agreement, Developer agrees to make annual payments to the City Body designated therein for the longer of either (i) twenty (20) years or (ii) until the Bonds, or any bonds issued to refinance the

Bonds (provided, however, such payments shall not be for more than twenty-five (25) years), have finally matured and are no longer outstanding, which payments shall be based upon the profitability of the Project as calculated in the manner and payable to the City as set forth in the Participation Agreement.

16. **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 or any of the Ancillary Agreements to be performed or observed by it, if such default or failure 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, together with interest at the rate of 12% per annum. Notwithstanding anything to the contrary set forth herein, City shall exercise its rights under this Subsection subject to the terms of the Multi-Party Agreement.

(c) **No Remedy Exclusive; Limitation.** 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 the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages as a consequence of an Event of Default by such party. In the event either party hereto employs an attorney in connection with Claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys’ fees, incurred in connection with such Claims. The term “prevailing party” as used in this Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other’s breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

17. **Special Remedies.**

(a) **No Commencement.** Subject to the terms and conditions of **Section 22**, if Developer has not commenced construction of the Project within ninety (90) days after the Closing Date, then, at any time until Developer commences construction of the Project, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement and all Ancillary Agreements; and (ii) re-enter the Project Site and exercise its Power of Termination and cause title to the Mixed-Use Condominium Units to vest in CDC; and (iii) unilaterally terminate the Ancillary Documents, including, without limitation, Developer's interest in and under the Garage Lease and Developer's leasehold estate in the Garage and Garage Condominium Unit pursuant to the Garage Lease; in each case, without any liability or obligation to Developer or Project Lender. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to Developer of written notice delivered at any time after such ninety (90) day period but prior to commencement of construction. Such notice shall be accompanied by the Divestiture Payment and such notice may be recorded by CDC contemporaneously with, or at any time after, its delivery to Developer. Upon delivery of such notice and payment to Project Lender of the Divestiture Payment, Developer shall surrender possession of the Mixed-Use Condominium Units to CDC and title to, and all estates of Developer in, the Garage Lease shall terminate, and the Mixed-Use Condominium Units and Developer's leasehold estate in the Garage Condominium Unit shall automatically, and without further action, re-vest in CDC Any such re-vesting shall be free and clear of the Project Loan and any and all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than existing immediately prior to CDC's or RDC's delivery of the Public Land Deed to Developer, and Project Lender shall immediately execute releases of any mortgages, assignments of leases and rents, and any other instruments encumbering the Mixed-Use Condominium Units whether or not such instruments are deemed released and/or extinguished by operation of law. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 17(a)**, or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. No consent from, or notice to, Project Lender or any cure right in favor of Project Lender shall be required in connection with the exercise of such right. For purposes of this **Section 17(a)**, "commencement of construction" shall mean material and substantial work on the Project Site related to the construction of the Project pursuant to Required Permits such as demolition of the existing buildings together with, installation of footings, foundations, and infrastructure and shall not be deemed to occur as a result of mere excavation work. The foregoing terms shall be incorporated into the Garage Lease, the Multi-Party Agreement and the Public Land Deed. Further, such terms shall encumber the entire Mixed-Use Condominium Units notwithstanding whether such language has been incorporated into each individual deed for parcels comprising the Mixed-Use Condominium Units prior to the Plat's recordation.

(b) **Work Stop.** Subject to the terms and conditions of **Section 22**, and after construction has begun, if (i) the Project is not completed (as determined in accordance

with **Section 12(c)**) within thirty (30) months of the Closing Date; or (ii) all construction work of a material nature ceases with respect to the Project for a period of at least sixty (60) consecutive days or for more than a total of ninety (90) days during any one hundred eighty (180) day period, then, at any time until construction work of a material nature resumes and is continuing, City may elect, in addition to any other legal and equitable remedies available to City, to (i) unilaterally terminate this Agreement and all Ancillary Agreements; (ii) re-enter the Project Site and exercise its Power of Termination and cause title to the Mixed-Use Condominium Units to vest in CDC; and (iii) terminate the Ancillary Documents, including, without limitation, the Garage Lease and Developer's leasehold estate in the Garage and the Garage Condominium Unit pursuant to the Garage Lease; in each case, without any liability or obligation to Developer or Project Lender. Subject to the foregoing, the Power of Termination and foregoing rights shall be deemed exercised upon delivery to (A) Developer of written notice (1) at any time after the expiration of the 24th month in the case of clause (i) of the preceding sentence (but prior to Substantial Completion of the Project); or (2) prior to material resumption of the construction work in the case of clause (ii) of the preceding sentence; and (B) Project Lender of the Divestiture Payment. Such notice together with evidence of remittance of the Divestiture Payment to Project Lender may be recorded by CDC contemporaneously with, or at any time after, its delivery of such notice and payment to Developer and Project Lender. Upon delivery of such notice, Developer shall surrender possession of the Mixed-Use Condominium Units and the Garage to CDC and title to, and all estates of Developer in, the Garage Lease shall terminate, and the Mixed-Use Condominium Units and Developer's leasehold estate in the Garage Condominium Unit and the Garage shall automatically, and without further action, vest in CDC. Any such vesting of shall be free and clear of the Project Loan and any and all encumbrances, liens, mortgages, easements, agreements, and other matters of record other than existing immediately prior to CDC's delivery of the Public Land Deed to Developer, and Project Lender shall immediately execute releases of any mortgages, assignments of leases and rents, and any other instruments encumbering the Mixed-Use Condominium Units whether or not such instruments are deemed released and/or extinguished by operation of law. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 17(b)**, or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder. No consent from, or notice to, Project Lender or any cure right in favor of Project Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Garage Lease, the Multi-Party Agreement, the Garage Condominium Unit Deed, and the Public Land Deed. Further, such terms shall encumber the entire Mixed-Use Condominium Units notwithstanding whether such language has been incorporated into each individual deed for parcels comprising the Mixed-Use Condominium Units prior to the Plat's recordation.

(c) Right of Reconveyance. In lieu of exercising the Power of Termination as a result of a default under **Section 17(a) or 17(b)**, City may alternatively elect to require Developer to re-convey the Mixed-Use Condominium Units to a City Body and relinquish its estate in and to the Garage and the Garage Condominium Unit in accordance with the terms and

conditions of this Subsection, in which case City and Developer shall close the reconveyance within fifteen (15) days after such election. At the closing of such reconveyance Developer shall execute and deliver closing documents to City (or its nominee) that are substantially the same in form and substance as those received by Developer in connection with its acquisition of the Mixed-Use Condominium Units (including, without limitation, that the deed shall be subject only to: (A) the exceptions to which Developer's title or leasehold estate were subject when it took title or its leasehold interest; (B) any easements, declarations, or other agreements contemplated by this Agreement to be executed, if such documents have been executed prior to the date of such closing; (C) current Real Estate Taxes and Assessments not delinquent; (D) and utility easements granted by Developer; and/or (E) such other exceptions as reasonably are acceptable to City). Developer shall be responsible for all real estate taxes and assessments, assessed, due and/or payable prior to the reconveyance and for all costs of reconveyance and to satisfy any liens and encumbrances on its leasehold estate in and to the Garage Condominium Unit and the Garage and on the Mixed-Use Condominium Units, including, without limitation the Project Loan. Developer shall also execute and deliver to City any documents necessary or requested to formally terminate the Garage Lease. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 17(c)**, or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence of continuation of any violation or violations hereunder. No consent from, or notice to, Project Lender or any cure right in favor of Project Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Garage Lease, the Multi-Party Agreement, and the Public Land Deed. Further, such terms shall encumber the entire Mixed-Use Condominium Units notwithstanding whether such language has been incorporated into each individual deed for parcels comprising the Mixed-Use Condominium Units prior to the Plat's recordation.

(d) Delay. Subject to the terms and conditions of **Section 22**, if, after Developer has commenced construction of the Project, Developer falls sixty (60) or more days behind the applicable dates set forth in the Construction Schedule, then:

(i) City, by delivery of written notice to Developer, may require Developer to submit, within fifteen (15) days, a Catch-Up Plan for City's approval, which approval shall not be withheld unreasonably. At such time as City has approved a Catch-Up Plan, Developer shall implement, and diligently pursue the application of, such Catch-Up Plan.

(ii) If Developer: (A) fails to timely submit a Catch-Up Plan; (B) submits a Catch-Up Plan that is rejected by City; (C) fails to implement an approved Catch-Up Plan; (D) implements an approved Catch-Up Plan, but fails to diligently pursue the application thereof; or (E) 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 Construction Schedule; then City may:

- (1) develop a reasonable Catch-Up Plan and require Developer to implement, and diligently pursue the application of, such Catch-Up Plan;
- (2) complete the Project for and on behalf of Developer with the proceeds of the Project Loan; or
- (3) purchase the Project Loan pursuant to the terms and conditions of the Multi-Party Agreement;

provided that, if City elects either the option in clause (2) or the option in clause (3), then Developer shall be obligated to pay to City (or to reimburse City for) all costs of completing the Project that are in excess of the amount disbursed for such purpose to the City from the Bond Proceeds, and the proceeds of the Project Loan. Notwithstanding the foregoing, if City rejects a Catch-Up Plan, City shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection; then Developer shall revise and resubmit the Catch-Up Plan to City within fourteen (14) days of such notice, and the parties shall work in good faith to develop a reasonable Catch-Up Plan.

Developer 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). Developer's liability for such costs and expenses shall survive termination of this Agreement. Nothing in this **Section 17(d)** shall prevent or preclude City from exercising its rights under **Section 17(b)**. No delay or failure by City Bodies to enforce any of the covenants, conditions, reservations and rights contained in this **Section 17(d)**, or to invoke any available remedy with respect to an Event of Default by Developer shall under any circumstances be deemed or held to be a waiver by City Bodies of the right to do so thereafter, or an estoppel of City Bodies to assert any right available to it upon the occurrence, recurrence or continuation of any violation or violations hereunder. No consent from, or notice to, Project Lender or any cure right in favor of Project Lender shall be required in connection with the exercise of such right. The foregoing terms shall be incorporated into the Multi-Party Agreement.

(e) Injunctive Remedies. If an Event of Default occurs, City shall be entitled to seek specific performance or injunctive relief and in each case Developer hereby waives any claim or defense that City or any City Bodies have an adequate remedy at law.

(f) No Limitation. Notwithstanding anything to the contrary set forth herein, the rights and remedies set forth in this **Section 17** 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.

18. **Mutual Indemnification**.

(a) City. To the extent permitted by applicable Laws, City shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with the breach by City of any term or condition of this Agreement.

(b) Developer. Developer shall indemnify and hold harmless City Bodies from and against any and all Claims arising from or connected with: (i) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; (iv) Developer suffering or causing the filing of any mechanic's or materialmen's lien against the Project Site, Project, or any adjacent property owned by City Bodies; or (v) the breach by Developer of any term or condition of this Agreement or any Ancillary Agreement.

Notwithstanding anything to the contrary set forth herein, Developer's obligations under this Section shall survive the termination of this Agreement.

19. **Assignment/Sale or Disposition of Project.**

(a) Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. Prior to Substantial Completion of the Project, no party hereto shall assign this Agreement without the prior written approval of the other parties; provided that: (a) without the prior written approval of Developer, City Bodies may assign this Agreement to another agency or instrumentality of City that legally is able to perform the respective obligations hereunder; and (b) without the prior written approval of City, Developer may: (i) assign this Agreement to any entity in which Developer maintains a controlling interest; and (ii) execute and deliver the Project Loan Documents, including, without limitation, a collateral assignment of this Agreement. Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Developer, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Bodies or Developer, as the case may be, from such performance; provided that, if any City Bodies assigns this Agreement to another agency or instrumentality of City that: (a) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder; and (b) expressly assumes all such obligations in writing; then the applicable City Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

(b) The Developer covenants and agrees that, notwithstanding anything contained in this Agreement to the contrary, for a period commencing five (5) years from the date of Substantial Completion of the Project it shall not sell or otherwise dispose of any of its interest in the Project without the prior written consent of the City, which consent shall not be unreasonably withheld. In the event of any such sale or other disposition of the Project during such period, City shall receive twenty and four-tenths percent (20.4%) of (i) any Project Appreciation, (ii) minus any amounts paid under the Participation Agreement to the City Body designated therein, (iii) provided such amount shall not in any event exceed the amount necessary to fully defease the Bonds (or any bonds issued to refinance the Bonds).

20. **Notice.** Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to City 16 S 10th St, Noblesville, IN 46060, Attn: John Ditslear, Mayor, with a copies to: Dennis Otten, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, IN 46204; and to Developer at 8937 Technology Drive, Fishers, IN 46038 c/o Rebar Development, Shelby M. Bowen, with a copy to the Hageman Group, Attention Tom Dickey, 12821 E New Market St Suite 200, Carmel, IN 46032; and, Jennifer Messer (via email) at jennifercmesserlaw@gmail.com. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

21. **Authority.** Each undersigned person executing this Agreement on behalf of City, Building Corp, RDC and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of City, CDC, RDC and Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by City, CDC, RDC and Developer, respectively; provided, however, City's, CDC's and RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which City, CDC and RDC agree to undertake with diligence and in good faith.

22. **Force Majeure.** Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

23. **Merger.** All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

24. **Indiana Tort Claims/Indemnification.** Notwithstanding anything to the contrary contained herein, Developer hereby acknowledges and agrees that City's financial exposure for certain claims is limited by the Indiana Tort Claims Act, and City's obligation to indemnify and save Developer, its agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fees and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Ind. Code § 34-13-3-4, as amended.

24. **Miscellaneous.** Subject to **Section 19**, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Developer, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the

laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Developer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer may have to: (i) assert the doctrine of “forum non conveniens”; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by City, CDC, RDC and Developer. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Developer, City, CDC and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Project Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[signatures on following pages]

IN WITNESS WHEREOF, City, CDC, RDC, and Developer have executed this Project Agreement as of the day and year first written above.

“CITY”

CITY OF NOBLESVILLE, INDIANA

By: _____
John Ditslear, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me to be the Mayor of the **City of Noblesville, Indiana**, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said City.

WITNESS my hand and notarial seal this ____day of _____, 2018.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“CDC”

NOBLESVILLE COMMUNITY
DEVELOPMENT CORPORATION

By: _____
_____, President

ATTEST:

By: _____
_____, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared _____ and _____, the President and Secretary, respectively, of **Noblesville Community Development Corporation**, an Indiana nonprofit corporation, who having been duly sworn acknowledged the execution of the foregoing Project Agreement for and on behalf of said entity.

Witness my hand and Notarial Seal this ____ day of _____, 2018.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“RDC”

**NOBLESVILLE REDEVELOPMENT
COMMISSION**

By: _____
_____, President

ATTEST:

By: _____
_____, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared _____ and _____, the President and Secretary, respectively, of **Noblesville Redevelopment Commission**, who having been duly sworn acknowledged the execution of the foregoing Project Agreement for and on behalf of said commission.

Witness my hand and Notarial Seal this ____ day of _____, 2018.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

“DEVELOPER”

THE LEVINSON NOBLESVILLE, LLC

By: _____

(Printed Name)

Its: _____

(Title)

STATE OF INDIANA)

) SS:

COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ personally known to me to be the _____, of **The Levinson Noblesville, LLC**, an Indiana limited liability company, and acknowledged the execution of the foregoing Project Agreement for and on behalf of said limited liability company.

WITNESS my hand and notarial seal this ____ day of _____, 2018.

Written Signature

Printed Signature

NOTARY PUBLIC

My Commission Expires:

My County of Residence is:

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. _____

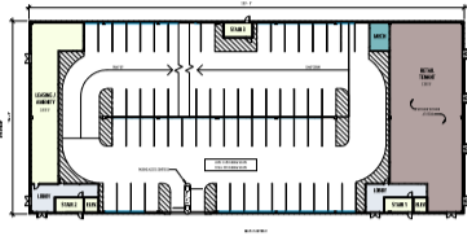
This instrument prepared by _____

INDEX TO EXHIBITS

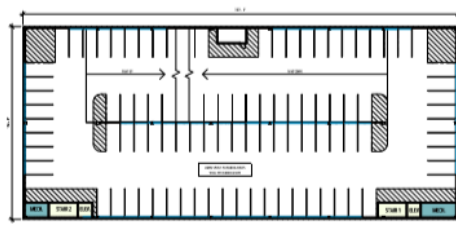
Exhibit A	Schematic Design Drawings
Exhibit B	Depiction and/or description of Mixed-Use Condominium Units, Garage Condominium Unit, Public Land
Exhibit C	Development Land
Exhibit D	Public Land
Exhibit E	Omitted
Exhibit F	Omitted
Exhibit G	Prohibited Uses
Exhibit H	Omitted
Exhibit I	Omitted
Exhibit J	Public Right-of-Way
Exhibit K	Site Plan
Exhibit L	Omitted
Exhibit M	Description of Bonds
Exhibit N	Required Insurance Policies (Developer)
Exhibit O	Real Estate Tax Minimums

EXHIBIT A

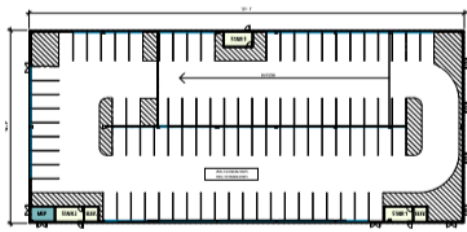
Schematic Design Drawings



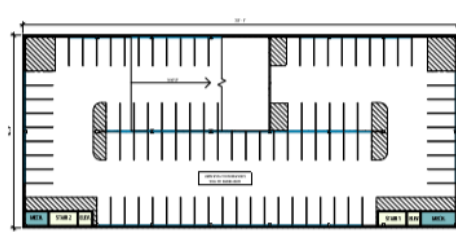
01 MIXED-USE MOVED-USE | LEVEL 0, CORRIDOR



06 MIXED-USE MOVED-USE | LEVEL 0, CORRIDOR 1



02 MIXED-USE MOVED-USE | LEVEL 0, CORRIDOR



07 MIXED-USE MOVED-USE | LEVEL 0, CORRIDOR 2



03 MIXED-USE MOVED-USE | LEVEL 2, CORRIDOR



04 MIXED-USE MOVED-USE | LEVEL 2, CORRIDOR



05 MIXED-USE MOVED-USE | LEVEL 2, CORRIDOR



EXHIBIT B

**Depiction and/or description of Mixed-Use Condominium Units, Garage Condominium
Unit and Public Land**

EXHIBIT C
Development Land

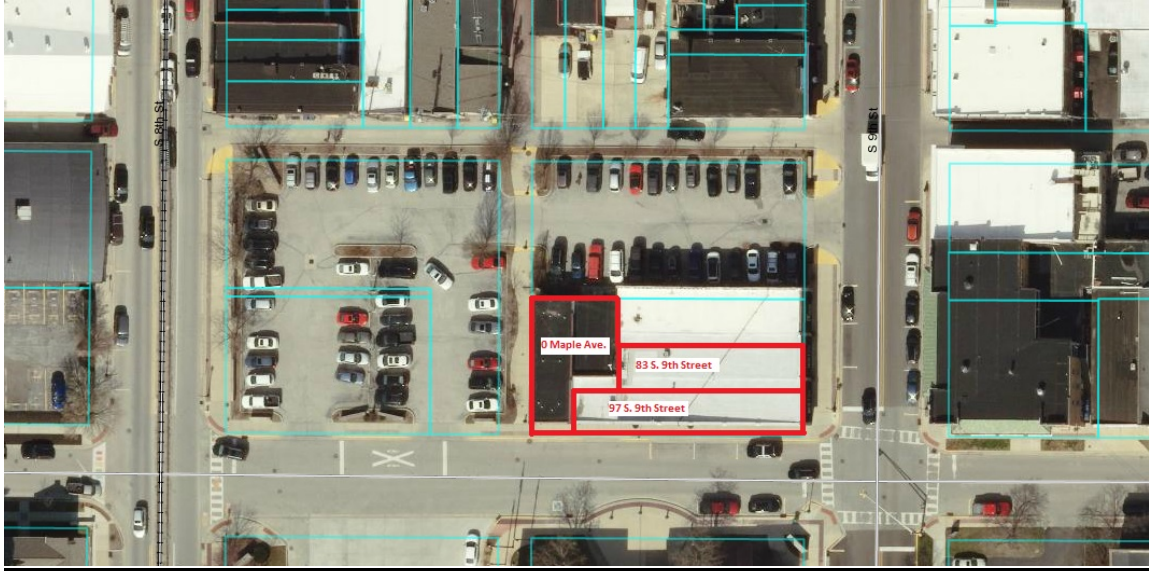


EXHIBIT D

Public Land



EXHIBIT E

OMITTED

EXHIBIT F

Omitted

EXHIBIT G
Prohibited Uses

Tattoo parlor

Piercing studio

Nail salon (specifically not including nail services that are part of a high-end day spa or other similar use)

Massage parlor (specifically not including massage services that are part of a high-end day spa or other similar use)

Alternative financial services (e.g., refund anticipation loan lenders, title loan businesses, short-term loan providers, cash for precious metal stores and pawn shops)

Sexually-oriented business

Tobacco shop, head or other smoke shop

Second hand or government surplus store

EXHIBIT H
OMITTED

EXHIBIT I

EXHIBIT J

Public Right-of-Way



EXHIBIT K
Site Plan

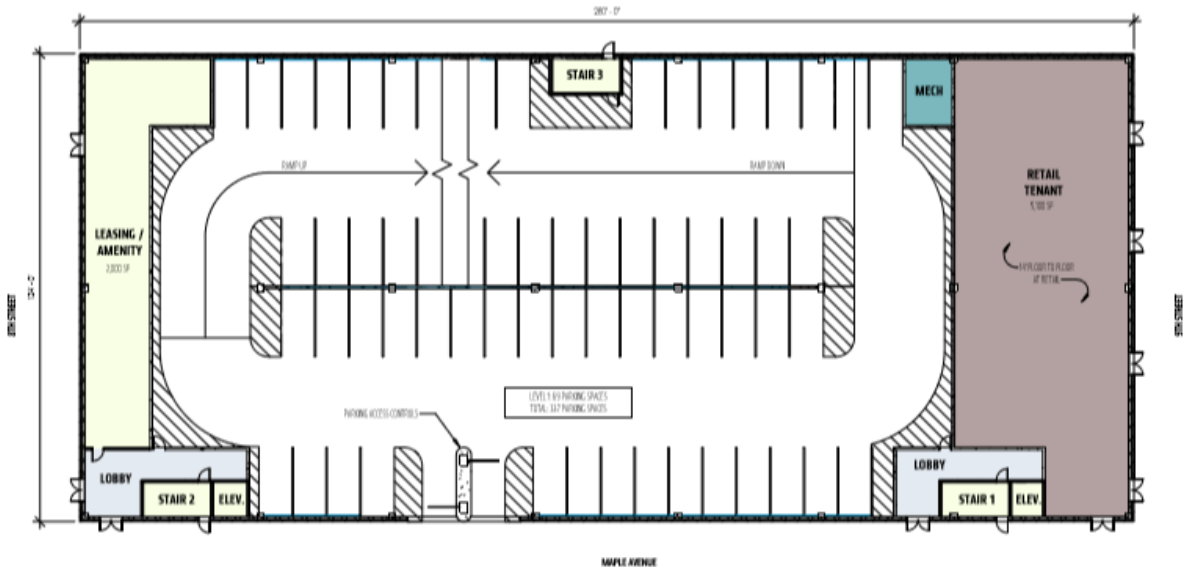


EXHIBIT L

[omitted]

EXHIBIT M
Description of Bonds

EXHIBIT N
Required Insurance Policies (Developer)

EXHIBIT O
Real Estate Tax Minimums

For purposes of Section 15(b) of this Project Agreement and the Developer Obligations Agreement, the minimum taxpayer obligation shall be calculated as follows:

- (a) the minimum annual amount paid by Developer shall be _____ and 00/100 Dollars (\$_____.00) (“Tax Amount”), beginning in the next calendar year following the first January 1 after Substantial Completion of the Project and continuing through each calendar year of the Lease Term (prorated for the last calendar year of the Garage Lease Term).

Further, Developer acknowledges and agrees that this Real Estate Tax Minimum sets forth Developer’s minimum tax obligation and is not indicative of or relevant to the real estate taxes that may be assessed on the Project. Accordingly, Developer agrees that this Real Estate Tax Minimum or the information contained herein shall not be used in any appeal of a tax assessment, whether by Developer or a successor in interest.