Common Council Agenda Item

Cover Sheet

MEETING DATE: April 14, 2020

☐ Previously Discussed Ordinance

☐ Proposed Development Presentation

☐ New Ordinance for Discussion

☒ Miscellaneous

☐ Transfer

ITEM or ORDINANCE #: **1**

PRESENTED BY: Andrew Murray

☒ Information Attached

☐ Bring Paperwork from Previous Meeting

☐ Verbal

☐ No Paperwork at Time of Packets

RESOLUTION NO. RC-17-20

A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT

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

WHEREAS, Xanderco, LLC is a privately held, limited liability company organized and existing under the laws of the State of Indiana ("Developer");

WHEREAS, the Common Council of the City of Noblesville, Indiana (the "Council") has been advised by the Mayor, City administration and others of a proposed project agreement by and between the City, the Developer, and the Noblesville Redevelopment Commission (the "RDC"), the substantially final form of which agreement is attached hereto as Exhibit A and incorporated herein by reference (the "Economic Development Agreement" or "EDA"),

WHEREAS, pursuant to the EDA, the Developer has proposed to redevelop real estate located in the City, into a mixed use commercial, retail, and residential development called the Lofts on Tenth (the "Project"). The Developer intends to make a capital investment of approximately Four Million Four Hundred Thousand Dollars ($4,400,000) and expects that the development costs for the Project will be no less than Seven Million Seven Hundred Thousand Dollars ($7,700,000)

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

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

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Noblesville, Hamilton County, Indiana as follows:

Section 1. The EDA, in substantially final form attached hereto as Exhibit A, is hereby approved and the Mayor is hereby authorized to execute said EDA and any such amendments, additions, deletions and changes to the EDA as he deems necessary or advisable, with the advice of counsel.

Section 2. The Mayor, the Controller, the Clerk and such other staff members, service providers and firms as they may direct are hereby authorized and directed to take any and all other actions on behalf of the City as may be necessary or appropriate to carry out the purposes of this resolution.

Section 3. This Resolution shall be in full force and effect upon passage.

[Remainder of Page Intentionally Left Blank]

Approved on this _______ day of ________________, 2020 by the Common Council of the City of Noblesville, Indiana:

AYE		NAY	ABSTAIN
	Brian Ayer		
	Mark Boice		
	Michael J. Davis		
	Wil Hampton		
	Gregory P. O'Connor		
	Darren Peterson		
	Pete Schwartz		
	Aaron Smith		
	Megan G. Wiles		

ATTEST: _______________________

Evelyn L. Lees, City Clerk

Presented by me to the Mayor of the City of Noblesville, Indiana, this _____ day of ________________, 2020 at _____ __.M.

____

Evelyn L. Lees, City Clerk

MAYOR'S APPROVAL

_____________________________ ___________________

Chris Jensen, Mayor Date

MAYOR'S VETO

_____________________________ ___________________

Chris Jensen, Mayor Date

ATTEST: _______________________ Evelyn L. Lees, City Clerk

EXHIBIT A

Economic Development Agreement

ECONOMIC DEVELOPMENT AGREEMENT

(Lofts on Tenth Project)

This Economic Development Agreement ("Agreement") is entered into this ___ day of ___________, 2020, by and among the **CITY OF NOBLESVILLE, INDIANA** (the "City"), the **CITY OF NOBLESVILLE REDEVELOPMENT COMMISSION** (the "Noblesville Redevelopment Commission" and together with the City, collectively the "Local Government Bodies"), and **XANDERCO, LLC** (the "Developer"), a limited liability company organized and existing under the laws of the State of Indiana.

RECITALS

WHEREAS, this Agreement is being entered into by the Local Government Bodies and the Developer in furtherance of that certain Memorandum of Understanding Regarding an Economic Development Agreement dated February 18, 2020 (the "Memorandum of Understanding"); and

WHEREAS, the Developer has proposed to develop all of the real estate described in **Exhibit A** attached hereto and incorporated herein by reference (the "Project Site"), which is located in the City, into a mixed use commercial, retail, and residential development as more particularly described in **Exhibit B** and called the Lofts on Tenth (the "Project"); and

WHEREAS, the Developer has proposed the Project to develop and redevelop the Project Site and, as part of the Project, intends to make a capital investment of approximately Four Million Four Hundred Thousand Dollars ($4,400,000); and

WHEREAS, the Developer expects that the development costs for the Project will be no less than Seven Million Seven Hundred Thousand Dollars ($7,700,000); and

WHEREAS, the Developer has previously requested certain economic development assistance from the City to complete the Project; and

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

WHEREAS, to stimulate and induce the development and completion of the Project, the Local Government Bodies have agreed, subject to further proceedings as required by Law, to use their best efforts to take certain other actions all as described herein; and

WHEREAS, the Local Government Bodies have determined to enter into this Agreement in order to formalize the terms and provisions of the economic development incentives to be provided to the Developer and to memorialize each party's related rights and obligations with respect thereto; and

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

AGREEMENT

ARTICLE I

DEFINITIONS

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

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

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

"Ancillary Agreements" shall mean all instruments and agreements referenced or contemplated herein, including, without limitation, the Grant or Loan Agreement, the Financing Agreement, the Participation Agreement, and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement.

"Bond Counsel" means Krieg DeVault LLP.

"Catch-Up Plan" shall mean a plan pursuant to which Developer will complete the Project in accordance with (and in no event more than sixty (60) days after)the Completion Date.

"Change Order" shall mean a change order between the City and Developer that is approved in writing by City (or its designee) finalizing the inclusion into the Final Documents and Drawings of a change that is not a Permitted Change proposed in a Change Order Request by Developer that is approved by City (or its designee).

"Change Order Request" shall mean a written request for a change that is not a Permitted Change to the Final Documents and Drawings.

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

"Closing" shall mean the closing with respect to the Obligations, Grant or Forgivable Loan, and Project Loan.

"Closing Date" shall mean the date of the Closing.

"Completion Date" shall mean the earlier of the date (i) the Project passes Final Inspection or (ii) the certificate of occupancy is issued, such date not being later than June 30, 2022.

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

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

"Council" means the Noblesville Common Council.

"Cure Period" shall mean a period of: (a) ten (10) days after written notice of such default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of the default. Notwithstanding the foregoing, a Cure Period shall not be applicable to a default under Section 9.04, any specific cure periods for such defaults being expressly set forth in Section 9.04, and a Cure Period shall not be applicable to a default under an Ancillary Agreement, and any specific cure periods for such defaults being expressly set forth in such Ancillary Agreement.

"Deficient Amount" shall have the meaning set forth in Section 6.04.

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

"Design Documents" means, collectively, the Construction Drawings and the Design Development Documents.

"Developer Investment" means, a capital investment by the Developer of no less than Four Million Four Hundred Thousand Dollars ($4,400,000).

"Economic Development Area" means the Tenth Street Economic Development Area as set forth in **Exhibit D**.

"Event of Default" shall have the meaning set forth in Section 9.03.

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

"Final Documents and Drawings" shall mean the final Design Development Documents, 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 4.03.

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

Financing Agreement" means the agreement between the Developer and the City funding the Obligations, in accordance with the Act.

"Force Majeure" shall have the meaning set forth in Section 9.17.

"Grant or Loan" shall mean the grant or loan from the City in an amount not to exceed One Million Dollars ($1,000,000).

"**Grant or Loan Agreement**" shall mean the agreement between the Developer and the City funding the Grant or Loan.

"Inspections" shall mean the Permitted Inspection and Final Inspection.

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

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

"Latent Defects" shall mean a material defect in workmanship or materials; that: (a) is not discovered, and reasonably is not discoverable, by 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.

"**Local Government Bodies**" shall mean, collectively, the City and the Redevelopment Commission.

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

"Mixed-Use Building" shall mean an approximate 31,700 square foot, mixed-use commercial, retail, and residential building to be constructed by Developer, with such building consisting of: (a) approximately 23 residential units; and (b) approximately 8,500 square feet of retail/office space.

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

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

“Obligation Proceeds” shall mean the proceeds of the Obligations in the aggregate principal amount not to exceed Two Million Three Hundred Thousand Dollars ($2,300,000) to be disbursed to Developer for application on the Project Costs, as more specifically set forth in the Financing Agreement.

“Participation Agreement” shall mean an agreement between the Developer and one or more of the Local Government Bodies, pursuant to which Developer agrees to make payments to the Local Government Bodies designated therein until the Obligations 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 ten percent (10%) of 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 substantially affect the exterior appearance of the Project or the location, size, or number of parking spaces; (b) is not substantially inconsistent with the Construction Drawings approved by City; (c) is not substantially inconsistent with the Design Development Documents approved by City; (d) is in substantial conformity with each of the Site Plan, the Required Permits, and the Laws; and (e) does not make it unlikely, impracticable, or impossible for Developer to complete the Project according by the Completion Date.

“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 the Inspector in a manner consistent with the Law, including Indiana Administrative Code 675 and City regulations and ordinances.

“Plan Refinement Process” means the process to amend the Final Documents and Drawings as specified in Section 4.03.

“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.

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

"Project" shall mean, collectively, (i) the construction of the Mixed-Use Building, together with all necessary appurtenances, related improvements and equipment, to be located at the Project Site in the City, in accordance with the Final Documents and Drawings, and as generally shown on the Site Plan.

"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 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 the following categorical costs of providing for "economic development facilities" as defined and set forth in the Act:

(i) Issuance Costs, not to exceed One Hundred Thousand Dollars ($100,000.00);

(ii) the "Capitalized Interest Costs", namely a portion of the interest on the Obligations from the date of their original delivery through and including the anticipated period of construction of the portion of the Project financed by Obligations, plus one year thereafter, in accordance with the Act;

(iii) all costs and expenses which Developer shall be required to pay, or advance under the terms of any contract or contracts (including the architectural and engineering, development services with respect thereto), for the construction of the Project; and

(iv) any sums required to reimburse the Developer for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the Project.

"Project Design Renderings" shall mean detailed design drawings for the Project that are consistent with the Site Plan and the Laws, which final design plans are approved by the Local Government Bodies and Developer and included on **Exhibit C**.

"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 third-party construction loan to Developer closed at Closing, the proceeds of which, along with the Obligations, shall be used to Fund Project Costs. The Project Loan shall be separate from the Financing Agreement.

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

"Project Site" shall mean the real property located in Noblesville, Indiana as specified on **Exhibit A**.

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

"Real Estate" means the real property purchased by the Developer located at 298 N 10th Street, Noblesville, Indiana and 1037 Wayne Street, Noblesville Indiana, as more particularly described in the Memorandum of Understanding.

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

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

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

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

"TIF Pledge" means the pledge of TIF Revenues by the Redevelopment Commission to the payment of the principal of and interest on the Obligations.

"TIF Revenues" means the Tax Increment received by the Redevelopment Commission, minus trustee fees or such other fees related to monitoring the receipt, collection and application of Tax Increment.

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

"Title Defects" shall mean conditions or defects disclosed in the Title Commitment or the Survey that, in the reasonable determination of Developer or City, 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 Closing shall not be a Title Defect.

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

ARTICLE II

RECITALS

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

ARTICLE III

MUTUAL ASSISTANCE

The parties agree, subject to further proceedings required by Law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Local Government Bodies, their best efforts to hold certain public hearings and adopt certain ordinances and resolutions) as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE IV

THE PROJECT

4.01 Project. Subject to the performance by the Local Government Bodies of their respective obligations under this Agreement and the closing of financing satisfactory to the Developer and the City, the Developer shall: (a) acquire the portion of the Project Site not presently owned by Developer; (b) improve the Project Site as described in **Exhibits A and B** attached hereto and shall construct the Project as more particularly described in Section 4.02 hereof; (c) submit the Plat for final approval and recordation; (d) obtain the Project Loan; (e) construct and complete the Project in accordance with the Final Documents and Drawings and this Agreement; (f) obtain all Required Permits; (g) execute and perform the Ancillary Agreements; and (h) perform its other obligations set forth in this Agreement; and (h) grant to the City, at no cost, any additional easements and right-of-way within the Project Site that the City identifies by the Closing.

4.02 Project Description and Development. Upon execution of this Agreement, the Developer shall promptly apply for the Project Loan. Developer commits the exterior design of all new construction on the Project Site will be constructed in accordance with the Project Design Renderings approved by the City as set forth in **Exhibit C**, attached hereto. In accordance with the City's zoning and planning procedures, Developer shall submit to City for its review and approval, the Design Documents for the Project. Approval of the Design Documents shall not be unreasonably withheld by the City. Once the City has approved the Final Documents and Drawings, if Developer desires to materially modify the Final Documents and Drawings (other than a Permitted Change) it must receive written approval from City in accordance with Section 4.03 and City ordinance and procedure.

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

4.04 Permits. Developer acknowledges that any plan review by the City is in addition to, and not in lieu of, any required plan review or Required Permits under applicable Laws, and it shall not be deemed a warranty or representation of any kind by any of the Local Government Bodies that the Project Design Renderings, 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 construction 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 the Local Government Bodies cannot (and do not) guarantee that Developer will be able to obtain the Required Permits. City will waive any costs and fees associated with any City Required Permits with exception to required inspection fees published by the City's Planning Department.

4.05 Commencement of Project. The Developer shall commence construction of the Project not later than sixty (60) days following the Closing Date. Developer shall construct the Project: (i) in good and workmanlike manner; (ii) in accordance with the Final Documents and Drawings; (iii) by the Completion Date, subject only to permitted delays as provided for in this Agreement; and (iv) in compliance with the Laws.

4.06 Inspection of the Project.

(a) Authorized Inspection. Any duly authorized representative of the City, including the City's Inspector, shall have access to and the right to walk through the Project. The Inspector shall have the right to perform a Permitted Inspection on the Project. The Developer will reasonable cooperate with the City in connection with any such walk-through or Permitted Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be subject to the Permitted Inspection or walked through, the inspector may perform a Permitted Inspection and the City may otherwise walk through the Project.. Within seven (7) business days after a Permitted Inspection, 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) 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 punch list 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 punch list items shall be promptly completed; and, upon correction of all Material Defects and punch list identified in the Non-Compliance Notice, the applicable work shall be deemed completed (subject to Section 4.06(d)). 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.

(c) Failure to Cure. If Developer fails to cure or take substantial steps 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 thirty (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 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.

(d) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by City pursuant to this Section 4.06 shall be applicable with respect to any Latent Defects. An acceptance, or deemed acceptance, by City pursuant to this Section 4.06 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..

4.07 General; Testing. In the case of a Inspections, the parties shall: (i) comply with all health and safety rules of which such party has been informed that have been established for personnel present on the construction site; and (ii) coordinate the Inspections so that the Inspections do not interfere with the performance of construction. City and Developer each shall have the right to accompany, and/or have its construction manager accompany, the Inspector during any Permitted Inspection and/or the Final Inspection. Notwithstanding anything to the contrary set forth herein, to the extent City, in the exercise of its reasonable discretion, requires any sampling or testing (e.g., soil bearing capacity testing, concrete testing, vibration monitoring) as part of a Permitted Inspection and/or Final Inspection: (i) the deadline for 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 Completion Date shall likewise be extended.

4.08 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 of the Local Government Bodies under applicable Laws.

4.09 Insurance. During construction of the Project, Developer shall maintain the policies of insurance described on **Exhibit E**. 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 shall name the Local Government Bodies as additional insureds. Developer shall deliver to City certificates of the insurance policies required by this Section 4.09, executed by the insurance company or the general agency writing such policies.

ARTICLE V

CONDITIONS TO CLOSING

5.01 Developer's Conditions to Closing. The obligations of Developer with respect to Closing are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 5.01:

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

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

(c) Permits/Title/Survey. Developer shall complete and file all necessary documentation to secure all Required Permits and approvals for construction and installation of the Project, including providing a Survey that is acceptable to the City demonstrating that there are no exceptions or matters of record reflected in the Title Commitment or Survey which would have a materially adverse effect on the Project or the ability to perform hereunder or under any Ancillary Agreement for the Project. Developer shall be responsible, at its cost, for obtaining the policy of title insurance contemplated pursuant to the Title Commitment, together with any endorsements that it deems to be necessary or appropriate.

(d) Survey Conditions. On or before Closing, 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.

(e) Environmental Condition. Prior to Closing, Developer, at its expense, shall have determined that: (i) there is no contamination or pollution of the Project Site, or any groundwater thereunder, by any hazardous waste, material, or substance in violation of any Laws; and (ii) there are no underground storage tanks located on the Project Site. Developer shall provide the City with all Property Inspection reports prepared for the Project Site.

(f) Physical Condition. Prior to Closing, Developer, at its expense, shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project, in accordance with the terms and conditions of this Agreement.

(g) Zoning. Prior to Closing, 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. Prior to Closing, Developer, at its expense, shall have determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are: (i) in adjoining public rights-of-way or properly granted utility easements; and (ii) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(i) Required Permits. Prior to Closing, Developer shall: (A) obtain; or (B) determine that it shall be able to obtain; all Required Permits.

(j) Final Developer Plans. Prior to Closing, the Final Documents and Drawings shall have been completed and approved by the City.

(k) Financial Ability. Prior to Closing, Developer shall demonstrate to the City, exercising commercially reasonable discretion, that Developer has adequate funds (Project Loan proceeds, Obligation Proceeds, and/or cash on hand) to construct the Project.

(l) Ancillary Agreements. Prior to Closing: (i) the applicable Local Government 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) Obligation Proceeds. As of the Closing Date, the Local Government Bodies, using their best efforts, shall have: (i) taken all action necessary and prudent to authorize the Obligations; and (ii) demonstrate that such Obligation Proceeds shall be made available in accordance with Section 6.04 of this Agreement.

(n) Financing Documents. Prior to Closing, Project Lender and the applicable Local Government Bodies shall have approved the form and substance of the Project Loan Documents, Grant or Loan Agreement, and any additional documents relating to the Project

Loan and Grant or Loan. At Closing, the Project Loan and Grant or Loan shall be closed, and in connection therewith, the Project Loan Documents and Grant or Loan Agreement, and any additional documents relating thereto shall be fully executed by all parties thereto.

(o) No Breach. As of the Closing Date, there shall be no breach of this Agreement by the Local Government Bodies that the Local Government Bodies have failed to cure within the Cure Period.

If one or more of the conditions set forth in this Section 5.01 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 Closing; or (ii) terminate this Agreement by a written notice to City provided that, with respect to breaches of this Agreement by City, the Developer shall have all of the rights and remedies set forth in this Agreement. 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 5.01; 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 (a) or (b) Developer shall be deemed to have waived such condition.

5.02 Local Government Bodies' Conditions to Closing. The obligations of the Local Government Bodies with respect to Closing shall be subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 5.02:

(a) all of the Developer's requirements of Section 5.01 have been satisfied or waived by both the Developer and the Local Government Bodies;

(b) the Economic Development Area has been established;

(c) the Allocation Area has been established;

(d) the Obligations have been authorized by the appropriate actions of the Local Government Bodies;

(e) the TIF Pledge has been approved by the Redevelopment Commission;

(f) the Grant or Loan Agreement has been finalized between the City and the Developer;

(g) the Participation Agreement has been finalized between the City and the Developer;

(h) the Developer has provided the Construction Schedule; and

(i) 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 this Agreement shall be true and accurate in all respects.

If one or more of the conditions set forth in this Section 5.02 is not, or cannot be, timely and completely satisfied, then the City either may elect to: (i) waive in writing satisfaction of the conditions and proceed to Closing; or (ii) terminate this Agreement by a written notice to Developer; provided that, with respect to breaches of this Agreement by Developer, the City shall have all of the rights and remedies set forth in this Agreement. If: (i) one of the conditions set forth in this Section 5.02 is not, or cannot be, timely and completely satisfied; and (ii) the City fails to terminate this Agreement as permitted in this Section 5.02; then such unsatisfied condition automatically shall be deemed to be waived by the City. Notwithstanding anything to the contrary set forth herein, the City shall work diligently and in good faith to satisfy the conditions set forth in this Section 5.02.

5.03 Closing. Subject to the terms and conditions of this Agreement, Closing shall occur on or before [__________], 2020, with (i) the Closing Date; and (ii) the location of the Closing; to be established mutually by the City and Developer.

ARTICLE VI

PUBLIC PARTICIPATION AND CONDITIONS PRECEDENT

6.01 Zoning. The City reasonably expects that the Project Site will need to be rezoned for the Project. The City shall, subject to further proceedings required by Law, assist in the support of any rezoning or variances required to complete the Project, including parking variances.

6.02 Waiver of Fees. The City agrees to waive, to the extent permitted, and subject to further proceedings required by Law, local fees assessed by the City and associated with the Project, including improvement location fees, building permits, sign permit fees, and zoning approval fees.

6.03 Grant or Loan. The City shall use its best efforts to provide a grant or a loan, no earlier than August 1, 2020 and no later than October 1, 2020, in an amount not to exceed One Million Dollars ($1,000,000) to fund or reimburse the following costs of the Project: (1) acquisition of the Real Estate; (2) demolition of the existing structures and improvements on the Project Site; and (3) road impact, park impact, and sewer fees (the "Grant or Loan"). The Grant or Loan shall not be subject to repayment upon the Developer's fulfillment of certain Project requirements specified in this Section 6.03. In order for the Grant or Loan to be forgiven by the City, at a minimum, the Developer shall (a) acquire the Project Site; (b) demolish the existing structures on the Project Site; (c) clean up any and all environmental conditions at the Project Site to the satisfaction of the City; (d) construct the Project in substantial compliance with the Final Documents and Drawings (subject to any approved Change Orders or Permitted Changes); and (e) receive a final certificate to occupy the Project from the City. The specific terms and conditions for the Grant or Loan and forgiveness timeline shall be included in a Grant or Loan Agreement, dated as of the Closing Date and in accordance with the Act. To the extent permitted by the Project Lender in its sole discretion, the Grant or Loan shall be secured by a first mortgage on the Project Site and Mixed-Use Buildings and shall be personally guaranteed by Darren and Monica Peck and Blake Anderson as specified in the Grant or Loan Agreement and related documents.

6.04 Taxable Economic Development Revenue Bonds or Notes. The City shall, subject to further proceedings required by Law, and upon the advice of its financial advisor and Bond Counsel, use its best efforts to cause the issuance of the Obligations, in an aggregate principal amount not to exceed Two Million Three Hundred Thousand Dollars ($2,300,000), pursuant to a

Trust Indenture, for a period no longer than twenty-five (25) years after the date of issuance, and which shall bear a fixed per annum interest rate not in excess of six percent (6.0%), with such interest payable on February 1 and August 1 and as further provided in the Financing Agreement and Trust Indenture. The Obligation Proceeds shall be made available to Developer to pay Project Costs after Developer sufficiently demonstrates to the City that sixty percent (60%) of the Developer Investment has been spent on the Project. The Obligations will be payable solely from the TIF Revenues and, to the extent TIF Revenues are insufficient to repay the Obligations (the "Deficient Amount"), it shall not be an event of default under the terms of the Obligations. In the event the Obligations are purchased by a third-party lender or underwriter, the Developer shall pay the Deficient Amount to the holder of the Obligations. The City shall employ Krieg DeVault LLP as its Bond Counsel and O.W. Krohn & Associates, LLP as its financial advisor in connection with the issuance of the Obligations. The Developer shall pay the Issuance Costs, which are not to exceed One Hundred Thousand Dollars ($100,000.00), on the date of delivery of the Obligations on the Closing Date. The Developer or the Developer's bank shall purchase the Obligations.

6.05 Creation of Economic Development Area and TIF Pledge. The Local Government Bodies shall each, subject to further proceedings required by Law, use their best efforts to create Economic Development Area, pursuant to Ind. Code 36-7-14, and the Lofts on Tenth Allocation Area, pursuant to Ind. Code 36-7-14, the boundaries of each of which are coterminous with the Project Site. It is currently contemplated that the Project and resulting increases in assessed valuation of the real property will generate Tax Increment revenues within the Allocation Area. The Local Government Bodies shall, subject to further proceedings required by Law, use their best efforts to cause the approval of the TIF Pledge, thereby providing for repayment of the Obligations with TIF Revenues and also reducing the Developer's obligations to pay the Deficient Amount if the Obligations are purchased by a third-party lender, but cannot and do not guarantee the outcome of such proceedings.

6.06 Participation Agreement. The City and the Developer agree to share profits from the Project pursuant to a Participation Agreement (the "Participation Agreement"), dated as of the Closing Date, the terms of which shall be negotiated prior to the Closing Date. At a minimum Developer shall agree to make annual payments to the Local Government Bodies designated therein until the Obligations (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.

6.07 Star Bricks. The City agrees to donate not more than 6,000 star brick from its then currently available inventory to support the Project.

ARTICLE VII

ADDITIONAL REPRESENTATIONS, WARRANTIES COVENANTS, AND CONSENTS OF THE DEVELOPER

7.01 Authority. Developer represents and warrants to the Local Government Bodies 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) 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; and (vii) Developer agrees that it shall provide the City with monthly progress and meeting reports on the Project. 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.

7.02 Compliance with Law. Developer agrees to comply in all material respects with all applicable Laws related to the construction, development and use of the Project Site and the Project.

7.03 Costs. Subject to Section 9.12, in the event the Obligations fail to close, each party shall pay its own costs.

7.04 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 F**.

7.05 Taxes. As long as Developer owns the Project Site and Mixed-Use Building, Developer assumes and agrees to pay all real estate taxes and assessments becoming a lien against the Project Site and Mixed-Use Building whenever assessed, due and payable. Developer hereby waives its right to appeal the real estate taxes and assessments during the period that the Obligations remain outstanding.

7.06 E-Verify. All terms defined in Ind. Code § 22-5-1.7 *et seq.* are adopted and incorporated into this Section 7.06. To the extent that Developer hires employees, 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 it decision to hire employees, 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.

ARTICLE VIII

AUTHORITY

8.01 Actions. The Local Government Bodies represent and warrant that they have taken or will use best efforts to take (subject to the Developer's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable the Local Government Bodies to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on their part to be kept and performed as provided by the terms and provisions hereof.

8.02 Powers. The Local Government Bodies represent and warrant that they have full constitutional and lawful right, power and authority, under currently applicable Laws, to execute and deliver and perform their respective obligations under this Agreement, subject to Section 8.03 hereof.

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

ARTICLE IX

GENERAL PROVISIONS

9.01 No Agency, Partnership or Joint Venture. Nothing contained in this Agreement nor any act of the Local Government Bodies and the Developer, or any other person, shall be deemed or construed by any person to create any relationship of third-party beneficiary, or if principal and agent, limited or general partnership, or joint venture between the Local Government Bodies on the one hand and the Developer on the other.

9.02 Enforcement. No entity other than Developer shall have the right to enforce the obligations of the Local Government Bodies under this Agreement; provided, however, that Developer may assign its right to enforce the obligations of the Local Government Bodies under this Agreement to any affiliate of the Developer and only to investors or lenders of the Developer with the written consent of the Local Government Bodies.

9.03 Default.

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

(b) General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at Law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of fifteen percent (15%) per annum.

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

(d) Termination by Local Government Bodies. Subject to the Cure Period, the Local Government Bodies reserve the right to cancel their commitments and terminate their obligations under this Agreement upon the failure by Developer to comply with any of Developer's obligations contained herein.

9.04 Delay. Subject to the conditions of Section 9.17, if, after Developer has commenced construction of the Project, Developer falls sixty (60) or more days behind the Completion Date, then:

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

(b) If Developer: (i) fails to timely submit a Catch-Up Plan; (ii) submits a Catch-Up Plan that is rejected by City; (iii) fails to implement an approved Catch-Up Plan; or (iv) implements an approved Catch-Up Plan, but fails to diligently pursue the application thereof; or (v) implements an approved Catch-Up Plan and diligently pursues the application thereof, but, after completing all of the terms and conditions of the Catch-Up Plan, again falls sixty (60) or more days behind the applicable dates set forth in the Catch-up Plan; then City may develop a reasonable Catch-Up Plan and require Developer to implement, and diligently pursue the application of, such 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. No delay or failure by the Local Government Bodies to enforce any of the covenants, conditions, reservations and rights contained in this Section 9.04, 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 the Local Government Bodies of the right to do so thereafter, or an estoppel of the Local Government Bodies to assert any right available to them upon the occurrence, recurrence of continuation of any violation or violations hereunder.

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

(d) No Limitation. Notwithstanding anything to the contrary set forth herein, the rights and remedies set forth in this Section 9.04 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.

9.05 Indemnification. Developer shall indemnify and hold harmless the Local Government Bodies from and against any and all Claims arising from or connected with: (i) the performance of any tests, inspections, examinations, studies, or investigations on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (ii) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (iii) 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; (iv) 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; or (v) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer. Notwithstanding anything to the contrary set forth herein, Developer's obligations under this Section 9.05 shall survive the termination of this Agreement.

9.06 Notices. All notices and Change Order Requests required to be given under this Agreement shall be in writing, and shall be hand delivered, mailed by certified mail, return receipt requested, or deposited with a nationally recognized overnight delivery service, properly addressed to the party to be notified, at the address set forth below:

To the City:

City of Noblesville, Indiana
16 S 10th Street
Noblesville, IN 46060
Attention: Lindsey Bennett, Esq., City Attorney

With a copy to:

Krieg DeVault LLP
12800 North Meridian Street, Suite 300
Carmel, IN 46032-5407
Attn: M. Catherine Fanello, Esq.
Robert S. Schein, Esq.

To the Redevelopment Commission:

City of Noblesville Redevelopment Commission
16 S 10th Street
Noblesville, IN 46060
Attention: Andrew Murray,
Assistant Economic Development Director

To Developer:

XANDERCO, LLC
2078 Greenfield Pike
Noblesville, IN 46060
Attention: Darren Peck.

With a copy to:

Church Church Hittle + Antrim
2 North 9th Street
Noblesville, Indiana 46060
Attn: Eric M. Douthit Esq

Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

9.07 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.08 Amendment. This Agreement may be amended only in writing signed by each of the parties.

9.09 Assignment. Upon Closing, this Agreement shall run with the Project Site and shall be binding on successors in title to the Project Site. The Local Government Bodies may, without the prior written approval of Developer, assign this Agreement to another agency or instrumentality of City that legally is able to perform the respective obligations hereunder. The Developer shall be permitted to, with the written consent of the City: (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 9.09, the applicable Local Government Bodies or Developer, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the Local Government Bodies shall not release the Developer from such performance; provided that, if any of the Local Government 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 Local

Government Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption.

9.10 Indiana Law. This Agreement and all Exhibits attached hereto shall be construed in accordance with the laws of the State of Indiana.

9.11 Venue. The parties agree that if any litigation arises out of this Agreement that such litigation shall be brought in a court of competent jurisdiction in Hamilton County, Indiana. Developer hereby 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.

9.12 Costs and Attorneys' Fees. In addition to any other relief to which a party to this Agreement shall be entitled, in the event it is determined by a court of competent jurisdiction that either party has not substantially complied with the terms of this Agreement without sufficient cause, the prevailing party shall be entitled to recover from the other party the costs and reasonable attorneys' fees incurred by the prevailing party in seeking: (a) compliance with this Agreement; (b) enforcement of this Agreement; or (c) relief from the other party's failure to substantially comply with any provision of this Agreement.

9.13 Waiver. No delay or failure by Developer or the Local Government Bodies to exercise any right hereunder, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

9.14 Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

9.15 Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the Local Government Bodies have approved or ratified this Agreement at public meetings, as required under Indiana law.

9.16 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original for all purposes and each of which shall constitute one and the same.

9.17 Force Majeure. Notwithstanding anything to the contrary set forth herein, no party shall be liable for any failure to perform its obligations to the extent a delay in performing such obligations is due to acts of nature (including fire, flood, earthquake, storm, or other natural disaster, but not including weather conditions which could be reasonably anticipated), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, nationwide declared emergency concerning a pandemic, blockage, embargo, labor dispute, strike, lockout or interruption or failure of power sources; provided, however, no obligation shall be delayed under this Section 9.17 unless notice of the event giving rise to the delay is provided to the other party within ten (10) days of the event first occurring. In such circumstances, the other party's failure to perform its obligations shall be excused for the period of days that such performance is delayed or prevented due to the Force Majeure event, and the deadlines for such observation, performance and satisfaction of its obligations under this Agreement, as applicable, shall be extended for the same period. The parties acknowledge that on or about March 11, 2020 the World Health Organization declared a novel (new) Coronavirus Disease 2019 ("COVID-19") a pandemic, and on March 13, 2020, the President of the United States declared COVID-19 to be a national emergency. The Governor of the State of Indiana declared a public health emergency in the State of Indiana and has since issued a number of Executive Orders that address certain directives in response to the COVID-19 epidemic. At the time of execution of this Agreement, neither the State of Indiana nor the City have prohibited activity that would include the work contemplated in this Agreement. To the extent that the State of Indiana or the City would issue an order that would prevent such work from being performed, the parties further acknowledge that any and all timelines shall be suspended and tolled until thirty (30) days after the State of Indiana or the City withdraw any such order that prohibits the Developer from performing the work on the Project. To the extent COVID-19 impacts the Project, Developer shall notify the City with the specifics of the impact and request the City consent to a proposed reasonable remedy plan or amendment to the Agreement. Such notice will include the issue which has caused difficulty, the impact of such difficulty, and the proposed remedy and time frame for the implementation of the remedy. The City will grant consent at its sole discretion.

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

(*Signature page follows*)

SIGNATURE PAGE TO
ECONOMIC DEVELOPMENT AGREEMENT
(Lofts on Tenth Project)

DEVELOPER:

XANDERCO, LLC
an Indiana limited liability company

Date: _________________

By: ____

Printed: _____________________________________

Title: _______________________________________

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, the undersigned Notary Public in and for said County and State, personally appeared ____________________, ____________________ of Xanderco, LLC, an Indiana limited liability company, who acknowledged the execution of the above and foregoing instrument on behalf of said company and who, having been first duly sworn by me upon his/her oath, stated that all of the representations contained therein are true to the best of his/her belief and knowledge.

Witness my hand and Notarial Seal this ____ day of ___________, 20___.

My County of Residence:

____
Notary Public

____
My Commission Expires:

____
Printed

____

<u>LOCAL GOVERNMENT BODIES</u>:

CITY OF NOBLESVILLE, INDIANA

Date: ________________ By: ____

Christopher Jensen, Mayor

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, the undersigned Notary Public in and for said County and State, personally appeared Christopher Jensen, Mayor of the City of Noblesville, Indiana, who acknowledged the execution of the above and foregoing instrument on behalf of said City and who, having been first duly sworn by me upon his oath, stated that all of the representations contained therein are true to the best of his belief and knowledge.

Witness my hand and Notarial Seal this ____ day of ___________, 20___.

My County of Residence:

____
Notary Public

____
My Commission Expires:

____
Printed

____

NOBLESVILLE REDEVELOPMENT COMMISSION

Date: ________________ By: _______________________________________

Printed: ____________________________, President

ATTEST:

By: _________________________

Printed: ________________, Secretary

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, the undersigned Notary Public in and for said County and State, personally appeared ____________________ and __________________, the President and Secretary respectively, of the Noblesville Redevelopment Commission, who acknowledged the execution of the above and foregoing instrument on behalf of said entity and who, having been first duly sworn by me upon his/her oath, stated that all of the representations contained therein are true to the best of his/her belief and knowledge.

Witness my hand and Notarial Seal this ____ day of ___________, 20___.

My County of Residence:

____
Notary Public

____
My Commission Expires:

____
Printed

____

INDEX TO EXHIBITS

<u>Exhibit A</u>

Legal Description and Map of Project Site

Lots 5, 6, 7 and 8, Square 5 in the Original Plat of Noblesville, Hamilton County, Indiana. Parcel numbers include 11-07-31-13-06-001.000, 11-07-31-13-06-003.000, 11-07-31-13-06-016.000, 11-07-31-13-06-015.000 and 11-07-31-13-06-014.000

Exhibit B

Project Description

The acquisition, construction and development of an approximate 31,700 square foot, mixed-use, multi-story development consisting of approximately 23 apartment living units and approximately 7 commercial retail spaces. The Site Plan for the Project is depicted below.

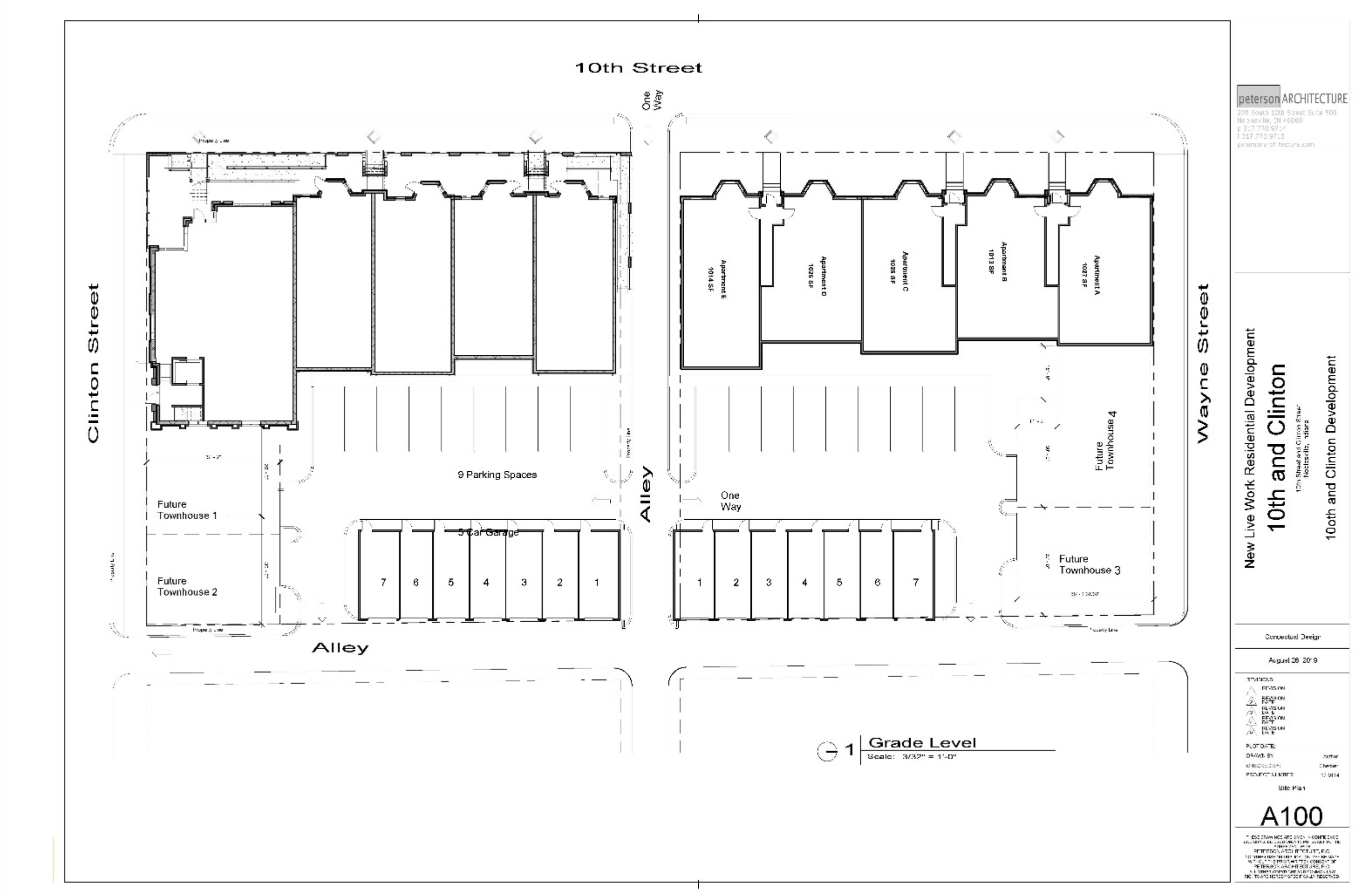

Exhibit C

Project Design Renderings

Exhibit D

Economic Development Area

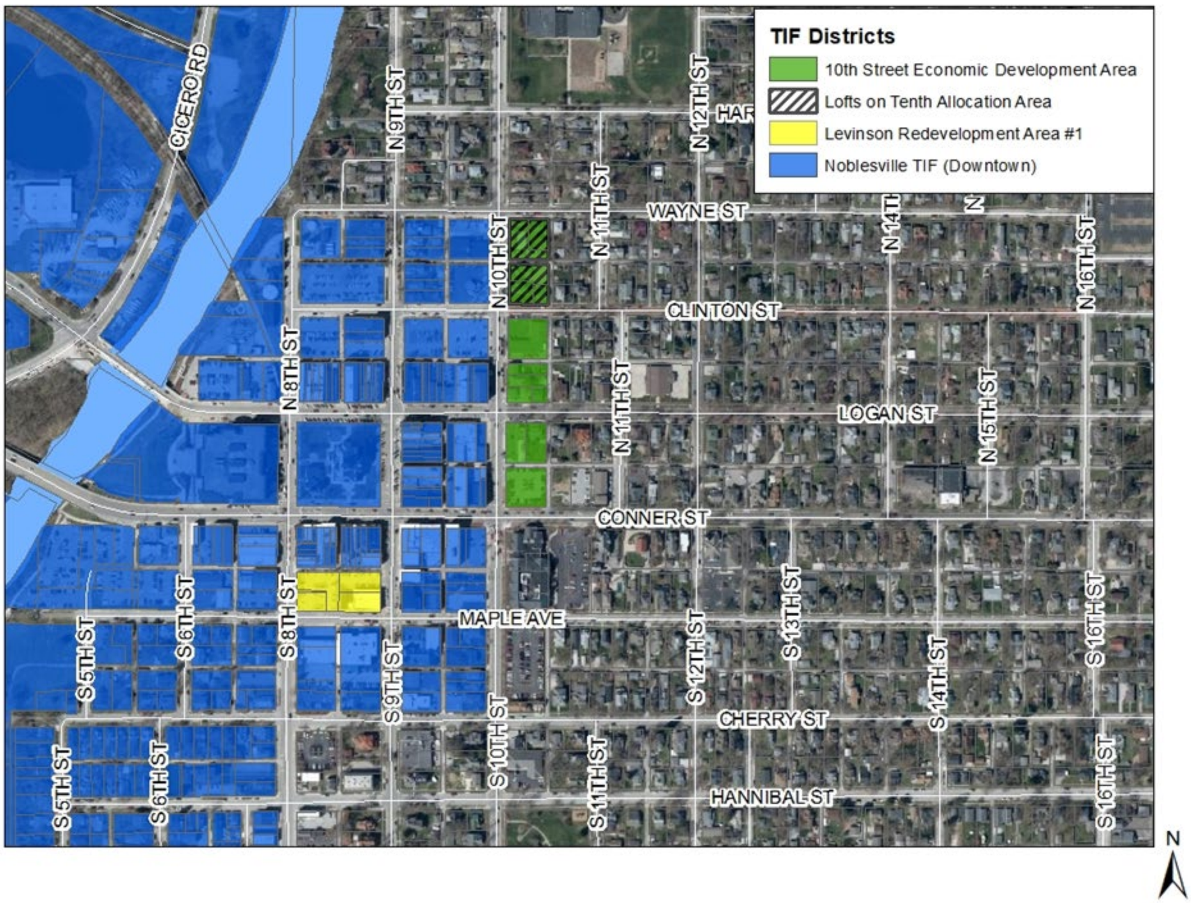

Exhibit E

Developer's Insurance Requirements

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

1. Workers Compensation insurance coverage in accordance with statutory requirements.

2. Employers Liability Insurance with limits of not less than $1,000,000.00 each accident; $1,000,000.00 Disease each employee; and $1,000,000.00 Disease Policy Limit.

3. Commercial General Liability Insurance on ISO form GCO001 10 01 (or a substitute form providing equivalent coverage) and general contractor and subcontractor(s) shall provide the Developer with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG203 7 10 01 (or substitute forms providing equivalent coverage) naming the City of Noblesville as an Additional Insured thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City of Noblesville per the follows:

    i. $1,000,000.00 Each Occurrence (BI & PD Combined Single Limit);

    ii. $2,000,000.00 General Occurrence (subject to per project general aggregate provision); and

    iii. $1,000,000.00 Personal Injury Liability to include coverage for employee-related claims.

4. Business Automobile Liability Insurance: Written in the amount of not less than $1,000,000.00 each accident to include the City of Noblesville as an additional insured.

5. Umbrella Liability: $5,000,000.00.

6. Professional Liability: If the contract is the subject of any professional services or design work, the party rendering those services must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed for a minimum limit of $2,000,000.00.

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

Exhibit F

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 G

Proposed Allocation Area

Parcels:

11-07-31-13-06-001.000
11-07-31-13-06-003.000
11-07-31-13-06-016.000
11-07-31-13-06-015.000
11-07-31-13-06-014.000

Map: SEE BELOW