

ORDINANCE NO. 20-05-24

ORDINANCE AUTHORIZING THE CITY OF NOBLESVILLE,
INDIANA TO FUND ITS “TAXABLE ECONOMIC
DEVELOPMENT REVENUE NOTE, SERIES 2024” AND
APPROVING AND AUTHORIZING OTHER ACTIONS IN
RESPECT THERETO

WHEREAS, this ordinance is an ordinance of the Common Council of the City of Noblesville, Indiana (“Council” and “City”, respectively) authorizing the funding of its City of Noblesville, Indiana Taxable Economic Development Revenue Note, Series 2024 (“Series 2024 Note”) in an amount not to exceed Three Hundred Seventy Thousand Dollars (\$370,000) (“Loan”) and approving and authorizing other actions in respect thereto;

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose;

WHEREAS, pursuant to the Act, the City is authorized to make loans for the purpose of financing, reimbursing or refinancing all or a portion of the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City;

WHEREAS, Justus Construction, LLC or an affiliate or permitted assignee thereof (the “Borrower”) has informed the City that in connection with its Promenade Trails senior housing project generally located at State Road 32 and Mill Creek Road it will be widening the roadway along Mill Creek Road and Promenade Trail in accordance with City standards (the “Project”);

WHEREAS, the City intends to make the Loan for the purpose of financing or reimbursing the Borrower for the costs of the Project in an amount not to exceed Three Hundred Seventy Thousand Dollars (\$370,000);

WHEREAS, the Project will be located in, serving or benefitting the Noblesville – Justus Senior Housing Economic Development Area and the Noblesville Consolidated Economic Development Area (collectively, the “Areas”) and the allocation areas located therein (collectively, the “Allocation Areas”) as established by the City of Noblesville Redevelopment Commission (the “Redevelopment Commission”);

WHEREAS, the City of Noblesville Economic Development Commission (the “Commission”) has rendered its Project Report regarding the issuance and funding of the Series 2024 Note from the City to the Borrower to finance the Project and the Project Report has been or will be submitted to the City of Noblesville Plan Commission;

WHEREAS, the Commission conducted a public hearing and adopted a resolution and Project Report, which resolution and Project Report have been transmitted hereto, finding that the financing of the Project complies with the purposes and provisions of Indiana Code 36-7-11.9 and -12 and that such financing will be of benefit to the health and welfare of the City and its citizens;

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by the Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Council the forgivable loan agreement between the City and the Borrower (including the form of the Series 2024 Note) (the "Loan Agreement");

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance or reimburse the Project by issuing and funding the Series 2024 Note;

WHEREAS, the City intends to fund the Series 2024 Note and make the Loan consistent with the terms of this ordinance and pursuant to the Loan Agreement;

WHEREAS, no member of the Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the notes authorized herein, which pecuniary interest has not been fully disclosed to the Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16;

WHEREAS, there has been submitted to the Commission for its approval forms of the Series 2024 Note and the Loan Agreement (collectively, the "Financing Documents") and a form of this proposed ordinance, which were incorporated by reference in the Commission's resolution adopted on May 20, 2024, which resolution has been transmitted to the Council;

WHEREAS, prior to the making of the Loan to be evidenced by the Borrower's Series 2024 Note, the Redevelopment Commission will pledge TIF Revenues, junior and subordinate to any Outstanding Obligations (each as defined in the Loan Agreement), on hand, or to be on hand, to the funding of the Series 2024 Note pursuant to the Loan Agreement;

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the Council hereby finds and determines that the financing and reimbursement approved by the Commission for the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance and reimburse a portion of the costs of the Project will require making the Loan and delivering the Series 2024 Note;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF NOBLESVILLE, INDIANA, THAT:

Section 1. It is hereby found, determined, ratified and confirmed that the financing and reimbursement of the Project, the making of the Loan to the Borrower to be evidenced by the Borrower's Series 2024 Note complies with the purposes and provisions of Indiana Code 36-7-

11.9 and -12 (collectively, the “Act”) and: (i) will result in the diversification of industry, the creation of business opportunities and the creation of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful actions as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

Section 2. The substantially final forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Council and kept on file by the Clerk. In accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk for public inspection.

Section 3. The Project costs will be financed or reimbursed from the Loan. The City shall fund the Loan from TIF Revenues on hand, or to be on hand, junior and subordinate to the Outstanding Obligations and pledged by the Redevelopment Commission to the City in the maximum amount not to exceed Three Hundred Seventy Thousand Dollars (\$370,000). The Series 2024 Note shall mature no later than December 31, 2025, unless forgiven as provided in the Loan Agreement. So long as the Condition to Forgiveness (as defined in the Loan Agreement) set forth in Section 2.2(i) of the Loan Agreement has been met, payment on the Loan shall be forgiven. The Series 2024 Note shall not accrue interest. The Series 2024 Note shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

Section 4. The Mayor and the Controller are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transactions contemplated by the Financing Documents and this ordinance, and their execution is hereby confirmed on behalf of the City. The Mayor and the Controller are authorized to arrange for the delivery of such Series 2024 Note to the Borrower, payment for which will be made in the manner set forth in the respective Financing Documents. The Mayor and the Controller may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor and the Controller without further approval of this Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

Section 5. The provisions of this ordinance and the Financing Documents shall constitute a contract binding between the City and the Borrower.

Section 6. The Mayor and the Controller, or any other officer having responsibility with respect to the making of the Loan, including the City’s Director of Economic Development, as evidenced by the Series 2024 Note, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Series 2024 Note, setting forth

the facts, estimates and circumstances and reasonable expectations pertaining to the use of the Loan as of the funding date thereof.

Section 7. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the City, including without limitation the Commission or Redevelopment Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation the Commission or Redevelopment Commission, either directly or through the City, or otherwise, for the payment for or to the City of any sum that may remain due and unpaid by the City upon any of such Series 2024 Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of any sum that may remain due and unpaid upon the Series 2024 Note hereby secured shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Documents and the issuance and funding of the Series 2024 Note.



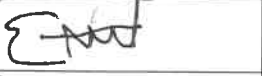

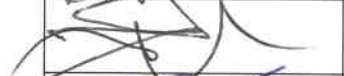




Section 8. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

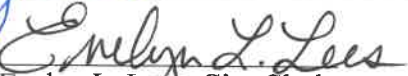
Section 9. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

Section 10. The Mayor and the Controller and any other officer of the City, as well as the City's Director of Economic Development, are hereby authorized and directed, in the name and on behalf of the City, to execute and deliver such further documents and to take such further actions as such person deems necessary or desirable to effect the purposes of this ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.


Section 11. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.


Approved on this 28th day of May, 2024 by the Common Council of the City of Noblesville, Indiana:

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

ATTEST: 
Evelyn L. Lees, City Clerk

Presented by me to the Mayor of the City of Noblesville, Indiana, this 29th day of May, 2024 at 8:11 A.M.


Evelyn L. Lees, City Clerk

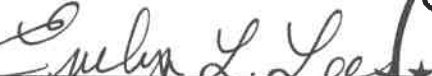

Chris Jensen, Mayor

MAYOR'S APPROVAL

5-29-24
Date

MAYOR'S VETO

Chris Jensen, Mayor

ATTEST: 
Evelyn L. Lees, City Clerk



FORGIVABLE LOAN AGREEMENT

BETWEEN

JUSTUS CONSTRUCTION, LLC

AND

CITY OF NOBLESVILLE, INDIANA

Dated as of June 1, 2024

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS AND EXHIBITS	3
Section 1.1. Terms Defined.....	3
Section 1.2. Rules of Interpretation.....	5
Section 1.3. Exhibits.	5
ARTICLE II. REPRESENTATIONS; LOAN OF TAX INCREMENT	6
Section 2.1. Representations by City.	6
Section 2.2. Representations by Borrower.....	6
Section 2.3. Series 2024 Note.....	7
ARTICLE III. PARTICULAR COVENANTS OF THE BORROWER.....	8
Section 3.1. Forgiveness of Payment of Loan.	8
Section 3.2. RESERVED.	8
Section 3.3. Continuing Existence and Qualification..	8
Section 3.4. Assignment, Sale or Other Disposition of Project..	8
Section 3.5. Indemnity..	8
Section 3.6. Issuance of Substitute Notes.	9
Section 3.7. Payment of Expenses of Loan.....	9
Section 3.8. Reserved.....	9
Section 3.9. Other Amounts Payable by the Redevelopment Commission.	9
Section 3.10. Completion of Project.	9
Section 3.11. Sale, Substitution, or Lease of the Facilities; Assignment of Loan Agreement. 9	9
ARTICLE IV. EVENTS OF DEFAULT AND REMEDIES THEREFOR.....	11
Section 4.1. Events of Default.....	11
Section 4.2. Remedies Cumulative.	11
Section 4.3. Delay or Omission Not a Waiver.	12
Section 4.4. Waiver of Extension, Appraisalment or Stay Laws..	12
Section 4.5. Remedies Subject to Provisions of Law.....	12
Section 4.6. Rights of the City.	12
Section 4.7. Waiver of Events of Default.	Error! Bookmark not defined.
Section 4.8. Limitation of Liability.....	12
Section 4.9. Force Majeure.	13
ARTICLE V. IMMUNITY	14
Section 5.1. Immunity.....	14
ARTICLE VI. SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT ..	15

Section 6.1.	Supplements and Amendments to this Loan Agreement.....	15
ARTICLE VII.	DEFEASANCE.....	16
Section 7.1.	Defeasance.. ..	16
ARTICLE VIII.	MISCELLANEOUS PROVISIONS.....	17
Section 8.1.	Termination by Borrower.....	17
Section 8.2.	Dispute Resolution.. ..	17
Section 8.3.	Confidentiality.. ..	17
Section 8.4.	Information Security.	17
Section 8.5.	Loan Agreement for Benefit of Parties Hereto.. ..	17
Section 8.6.	Severability.	17
Section 8.7.	Limitation on Interest.....	18
Section 8.8.	Addresses for Notice and Demands.	18
Section 8.9.	Successors and Assigns.....	18
Section 8.10.	Counterparts.	18
Section 8.11.	Governing Law.....	19
Section 8.12.	Third-Party Beneficiary.	19

FORGIVABLE LOAN AGREEMENT

This is a FORGIVABLE LOAN AGREEMENT dated as of June 1, 2024 (the “Loan Agreement”) between JUSTUS CONSTRUCTION, LLC, a limited liability company duly organized and existing under the laws of the State of Indiana (the “Borrower”), and the CITY OF NOBLESVILLE, INDIANA (the “City”), a political subdivision and municipal corporation duly organized and validly existing under the laws of the State of Indiana.

PRELIMINARY STATEMENT

Indiana Code, Title 36, Article 7, Chapters 11.9, 12 and 14, as in effect on the date the first series of the Series 2024 Note is funded (collectively, “Act”), have been enacted by the General Assembly of Indiana.

The Act provides that a political subdivision may make direct loans to users or developers for the cost of acquisition, construction, or installation of economic development facilities, including infrastructure improvements, with such loans to be secured by the pledge of secured or unsecured debt obligations of the users or developers, for diversification of economic development and promotion of job opportunities in or near the City.

The City of Noblesville Redevelopment Commission (“Redevelopment Commission”) has established the Noblesville – Justus Senior Housing Economic Development Area and the Noblesville Consolidated Economic Development Area (collectively, the “Areas”).

The Redevelopment Commission has approved the economic development plans (collectively, the “Plans”) for the Areas which Plans contained specific recommendations for economic development of the Areas, and the Redevelopment Commission has established tax allocation areas in accordance with IC 36-7-14-39 for the Areas (collectively, the “Allocation Areas”) for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Areas.

The City, upon finding that the Project (as hereinafter defined) and the proposed financing thereof will create additional employment opportunities in the City; will benefit the health, safety, morals, and general welfare of the citizens of the City and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing.

In order to encourage economic development and promote significant opportunities for gainful employment, the City intends to fund a loan to the Borrower in the amount of \$357,325.72 (the “Loan”), to be evidenced by the Borrower’s Taxable Economic Development Revenue Note, Series 2024 pursuant to the provisions of this Loan Agreement, to finance the cost of the Project in, serving or benefitting the Area.

This Loan Agreement provides for the payment of the Series 2024 Note by the Borrower and further provides for the Borrower’s repayment obligation to be evidenced by the Series 2024 Note, substantially in the form attached hereto as Exhibit A.

Subject to the further provisions of this Loan Agreement including Section 3.1, the Loan will be payable solely out of the payments to be made by the Borrower on the Series 2024 Note.

In consideration of the premises, the Loan, the acceptance of the Series 2024 Note by the City, and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the Borrower has executed and delivered this Loan Agreement.

This Loan Agreement is executed upon the express condition that if the Borrower shall pay or cause to be paid all indebtedness hereunder (unless the Series 2024 Note is forgiven pursuant to Section 3.1 hereof) and shall keep, perform and observe all and singular the covenants and promises expressed in the Series 2024 Note, any other Notes (as hereinafter defined) and this Loan Agreement to be kept, performed and observed by the Borrower, then this Loan Agreement and the rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

The Borrower and the City hereby covenant and agree as follows:

ARTICLE I.

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Loan Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“Act” means, collectively, Indiana Code 36-7-11.9, 12 and 14, as in effect on the date the first series of the Series 2024 Note is funded.

“Allocation Areas” means the respective allocation areas established for the Areas by the Redevelopment Commission in accordance with Indiana Code 36-7-14-39.

“Areas” means, collectively, the Noblesville – Justus Senior Housing Economic Development Area and the Noblesville Consolidated Economic Development Area.

“Authorized Representative” means any officer of the Borrower or any other person certified by an officer of the Borrower to be the Borrower’s Authorized Representative.

“Authorizing Resolution” means Resolution No. _____ adopted by the Redevelopment Commission on May 16, 2024, authorizing the use of TIF Revenues on hand, or to be on hand, to fund the Series 2024 Note.

“Borrower” means Justus Construction, LLC, a limited liability company duly organized and existing under the laws of the State of Indiana and authorized to do business under the laws of the State of Indiana, or any successors and/or assigns thereto permitted under Section 3.3 hereof.

“Business Day” means any day other than a Saturday, Sunday or holiday, on which commercial banks in the City are open for conducting substantially all of its banking activities.

“City” means the City of Noblesville, Indiana.

“Commission” means the City of Noblesville Economic Development Commission.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state, and, without limitation, may include legal counsel for either the City or the Borrower.

“Loan” means the loan by the City to the Borrower.

“Note” or “Notes” means the Series 2024 Note, and any other note executed by the Borrower in connection with the Series 2024 Note, and any notes issued in exchange therefor pursuant (and subject) to Section 3.7 hereof.

“Note Counsel” means a nationally recognized firm of municipal bond attorneys acceptable to the City and the Borrower.

“Outstanding Obligations” means obligations of the Redevelopment Commission payable from TIF Revenues which shall be senior to the obligation of the Redevelopment Commission to fund the Series 2024 Note.

“Project” means the widening by the Borrower of the roadway along Mill Creek Road and Promenade Trail in accordance with City standards in connection with the Borrower’s Promenade Trails senior housing project generally located at State Road 32 and Mill Creek Road to be used for economic development purposes.

“Project Costs” with respect to the Project shall mean any and all costs permitted by the Act including, but not limited to:

(i) the “Note Issuance Costs,” namely the reasonable costs, fees and expenses incurred or to be incurred by the City in connection with the Loan, the reasonable fees and disbursements of Note Counsel, the reasonable fees of disbursements of the City’s municipal advisor, application fees and expenses, publication costs, the filing and recording fees in connection with any necessary filings or recordings or to perfect the lien thereof, the out-of-pocket costs of the City, the reasonable fees and disbursements of Counsel to the City, the costs of preparing or printing the Series 2024 Note and the documentation supporting the Loan, the costs of reproducing documents and any other costs of a similar nature reasonably incurred;

(ii) expenses directly related to the acquisition of the Project;

(iii) the cost of insurance of all kinds that may be required or necessary in connection with the acquisition of the Project;

(iv) all costs and expenses which City or Borrower shall be required to pay, under the terms of any contract or contracts for the acquisition of the Project; and

(v) any sums required to reimburse the City or Borrower for advances made by either of them subsequent to the date the Series 2024 Note is funded for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Project.

“Redevelopment Commission” means the City of Noblesville Redevelopment Commission.

“Series 2024 Note” means the Note of the Borrower in the maturity amount of \$357,325.72 in substantially the form attached hereto as Exhibit A, which will be issued and delivered by the Borrower to the City to evidence the Loan and any Note issued in exchange for the Series 2024 Note pursuant to Section 3.7 hereof. As set forth in Section 2.2(i) hereof, the Series 2024 Note will be drawn in the amount of up to \$357,325.72.

“State” means the State of Indiana.

“TIF Revenues” means all property tax proceeds attributable to the assessed valuation of real property within the Allocation Areas as of each assessment date in excess of the base assessed value as described in IC 36-7-14-39(b)(1). The incremental assessed value is multiplied by the then current property tax rate (per \$100 assessed value).

“Written Request” means a request in writing from an authorized representative of the party making the request.

Section 1.2. Rules of Interpretation. For all purposes of this Loan Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) “This Loan Agreement” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) The terms defined elsewhere in this Loan Agreement shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Loan Agreement.

Exhibit A. Form of Series 2024 Note

(End of Article I)

ARTICLE II.

REPRESENTATIONS; LOAN OF TIF REVENUES

Section 2.1. Representations by City. The City represents and warrants that:

(a) The City is a political subdivision duly organized and validly existing under the laws of the State. Under the provisions of the Act, the City has been authorized by action of its governing body to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder.

(b) The City agrees to make the Loan for the purpose of financing the Project for the benefit of the Borrower, to benefit the health, safety, morals and general welfare of the citizens of the City, increase economic well-being of the State, promote job opportunities and attract major new businesses.

Section 2.2. Representations by Borrower. Borrower represents and warrants that:

(a) The Borrower is a limited liability company duly organized under the laws of the State of Indiana and in good standing and authorized to do business under the laws of the State, is not in violation of any provision of its Articles of Organization and Operating Agreement, has not received notice and has no reasonable grounds to believe that it is in violation of any laws in any manner material to its ability to perform its obligations under this Loan Agreement and the Series 2024 Note, has power to enter into and to perform its obligations under this Loan Agreement and the Series 2024 Note, and has duly authorized the execution and delivery of this Loan Agreement and the Series 2024 Note by appropriate corporate action.

(b) The Borrower anticipates the costs of the Project to be \$357,325.72 and the Borrower is securing the Project for the purpose of economic development.

(c) All of the proceeds from the Series 2024 Note (including any income earned on the investment of such proceeds) provided to the Borrower will be used solely for Project Costs.

(d) The Borrower intends to operate or cause the Project to be operated as an economic development facility under the Act until the expiration or earlier termination of this Loan Agreement as provided herein, unless the Borrower has sold or otherwise transferred the Project to a Surviving Corporation (as hereinafter defined) in accordance with Section 3.3 or assigned this Loan Agreement in accordance with Section 3.11 of this Loan Agreement.

(e) Neither the execution and delivery of this Loan Agreement, the consummation of the transactions contemplated hereby including execution and delivery of the Series 2024 Note nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, will contravene the Borrower's Articles of Incorporation, By-Laws, or any law or any governmental rule, regulation or order presently binding on the Borrower or conflicts with or results in a breach of the terms, conditions or provisions of any agreement or instrument to which Borrower is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any liens, charges, or encumbrances whatsoever upon any of the property or assets of Borrower under the terms of any instrument or agreement.

(f) The execution, delivery and performance by the Borrower of this Loan Agreement and the Series 2024 Note do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(g) Assuming the due authorization, execution and delivery thereof by the other parties thereto, this Loan Agreement and the Series 2024 Note have been duly executed and delivered by the Borrower and constitute the legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(h) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Loan Agreement or the Series 2024 Note.

(i) The Series 2024 Note can be drawn by the Borrower in the amount of up to \$357,325.72 solely for Project Costs. With respect to taking a draw on the Series 2024 Note, the Borrower shall provide written notice to the City of its intent to make such draw and the City shall fund such draw within five (5) business days of notice with payment on such draw being made to or on behalf of the Borrower as it shall instruct the City. The Borrower's obligation on the Series 2024 Note shall be entirely forgiven on the maturity date of the Series 2024 Note which is December 31, 2025; provided, however, that such forgiveness is subject to the following condition: the Borrower shall have completed the Project and the City shall have approved and accepted the Project as completed to its standards (the "Condition to Forgiveness"). In the event during the term of the Series 2024 Note the Borrower shall be determined by the City to have failed the Condition to Forgiveness, upon written notice from the City to the Borrower that such a failure has occurred, the Series 2024 Note shall be immediately due in full and no longer subject to forgiveness. The City reserves the right to forgive the Loan in its sole discretion prior to its maturity date if the Condition to Forgiveness has been satisfied up to the date of such forgiveness.

Section 2.3. Series 2024 Note. Concurrently with the execution and delivery hereof, the City is authorizing the Loan to the Borrower and will fund the Loan at such time or times as the representation in Section 2.2(i) has been met with respect to executing a real estate purchase agreement and completing the due diligence for the purchase of the Project. The Loan is being evidenced by the execution and delivery by the Borrower of the Series 2024 Note substantially in the form attached hereto as Exhibit A.

(End of Article II)

ARTICLE III.

PARTICULAR COVENANTS OF THE BORROWER

Section 3.1. Forgiveness of Payment of Loan. The Loan shall be deemed forgiven on its maturity date, December 31, 2025, provided the Condition to Forgiveness as set forth in Section 2.2(i) has been met. If the Condition to Forgiveness has not been satisfied during the term of the Loan, the Loan shall not be forgiven. The City reserves the right to forgive the Loan in its sole discretion prior to its maturity date if the Condition to Forgiveness has been satisfied up to the date of such forgiveness. The City shall fund the Loan upon the Borrower having executed a real estate purchase agreement and completed the due diligence for the purchase of the Project as set forth in Section 2.2(i).

Section 3.2. RESERVED.

Section 3.3. Continuing Existence and Qualification. The Borrower covenants that so long as any Note is outstanding, it (a) will maintain in good standing its corporate existence and qualification to do business in the State, and (b) will not (1) dissolve or otherwise dispose of all or substantially all of its assets and (2) consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Borrower may, without violating its agreement contained in this Section, consolidate with or merge into another corporation or other entity, or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another corporation or entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity (such corporation being hereinafter called the "Surviving Corporation") (if other than the Borrower) expressly accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the Surviving Corporation had originally executed this Loan Agreement, and the Surviving Corporation is an Indiana corporation or is a foreign corporation or partnership, trust or other person or entity organized under the laws of one of the states of the United States and is qualified to do business in the State of Indiana as a foreign corporation or partnership, trust or other person or entity.

Section 3.4. Assignment, Sale or Other Disposition of Project. Any sale, lease or other disposition of the Project or any portion thereof is subject to the conditions of Section 3.11 hereof.

Section 3.5. Indemnity. The Borrower will pay, protect, defend, indemnify and save the City, the Commission and the Redevelopment Commission harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the City), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to the Project, provided, that the liability of Borrower under this Section 3.5 shall be limited to the amount of the Loan actually received by Borrower as of the date of the alleged breach of the terms of this Loan Agreement. If any proceeding is instituted for which indemnity may be sought under this Section 3.5, the party that may seek such indemnity shall notify the Borrower and the City in writing in a timely manner to allow the Borrower to defend any action or claim in such proceeding.

Section 3.6. Issuance of Substitute Notes. Upon the surrender of any Note, the Borrower will execute and deliver to the holder thereof a new Note dated the date of the Note being surrendered but with appropriate notations thereon to reflect payments of principal already paid on such Note; provided, however, that there shall never be outstanding at any one time more than one Note of any one series.

Section 3.7. Payment of Expenses of Loan. The Note Issuance Costs (as defined under "Project Costs" in Article I hereof) will be paid by the Borrower on the date the Loan is funded.

Section 3.8. Reserved.

Section 3.9. Other Amounts Payable by the Redevelopment Commission. The Redevelopment Commission covenants and agrees to pay the following:

(a) All reasonable out-of-pocket costs incident to the payment of the Series 2024 Note as the same become due and payable.

(b) An amount sufficient to reimburse the City and Commission for all expenses reasonably incurred by the City under this Loan Agreement and in connection with the performance of its obligations under this Loan Agreement.

(c) All reasonable expenses incurred in connection with the enforcement of any rights under this Loan Agreement by the City.

Payments hereunder by the Redevelopment Commission shall be junior and subordinate to the Outstanding Obligations. For the avoidance of doubt and as set forth in Section 3.7, Note Issuance Costs shall be payable by the Borrower.

Section 3.10. Completion of Project. The Borrower agrees that it will use reasonable efforts to cause to be made, executed, acknowledged and delivered any contracts, orders, receipts, writings and instructions with any other persons, firms, corporations or partnerships and in general do all things which may be requisite or proper, all for completing of the Project, to the extent permitted by law, on or before December 1, 2025.

If the moneys comprising the Loan should not be sufficient to pay in full the costs of the Project, the Borrower agrees, for the benefit of the City and to fulfill the purposes of the Act, to use commercially reasonable efforts to cause the completion of the Project and to pay or cause to be paid that portion of the costs therefor as may be in excess of the moneys available therefor. The City does not make any warranty, either express or implied, that the moneys will be available for payment of the costs of the Project, will be sufficient to pay all the costs which will be incurred in that connection. The Borrower shall not be entitled to any reimbursement therefor from the City, nor shall it be entitled to any diminution in or abatement or postponement of the amounts payable hereunder or under the Series 2024 Note.

Section 3.11. Sale, Substitution, or Lease of the Project; Assignment of Loan Agreement. The Borrower, subject to the written consent of the City (which consent shall not be unreasonably withheld, conditioned or delayed), may sell, lease or transfer or otherwise dispose of the Project or any portion thereof only if the sale, lease or transfer or other disposition shall not relieve the

Borrower from liability from the performance of all of the obligations of this Loan Agreement, except as permitted by Section 3.4 hereof, unless the transferee accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the transferee had originally executed this Loan Agreement. Notwithstanding the foregoing, Borrower may assign this Loan Agreement to an Affiliate (as defined below) or in connection with any merger, reorganization, sale of all or substantially all of our assets or any similar transaction. This Loan Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns. 'Affiliate' as used herein means any entity that directly or indirectly controls, is controlled by, or is under common control with Borrower.

(End of Article III)

ARTICLE IV.

EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 4.1. Events of Default. (a) The occurrence and continuance of any of the following events shall constitute an “event of default” hereunder:

(i) Failure of the Borrower to observe and perform any covenant, condition or provision of this Loan Agreement for a period of one-hundred twenty (120) days after written notice, specifying such failure and requesting that it be remedied, given to the Borrower by the City, unless (i) the nature of the default is such that it cannot be remedied within the one-hundred twenty (120) day period, (ii) the Borrower institutes corrective action within the one-hundred twenty (120) day period and (iii) the Borrower diligently pursues such action until the default is remedied.

(ii) Failure of the City to fund all or any portion of the Loan in accordance with this Loan Agreement for a period of fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the City by the Borrower, unless (i) the City institutes corrective action within the fifteen (15) day period and (ii) the City diligently pursues such action until the default is remedied provided such remedy shall occur no less than sixty (60) days after notice is received.

(b) Subject to the further provisions of this Article IV, during the occurrence and continuance of any event of default hereunder, the City or Borrower, as the case may be, shall have the rights and remedies hereinafter set forth in addition to any other remedies herein or by law provided:

(i) Right to Bring Suit, Etc. The City or Borrower, with or without entry, personally or by attorney, may proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in the Series 2024 Note or this Loan Agreement, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the City or Borrower shall deem most effectual to protect and enforce any of its rights or duties hereunder; provided, however that all reasonable costs incurred by the City or Borrower under this Article shall be paid to the City or Borrower by the Borrower or City, respectively, on demand.

(ii) Waiver of Events of Default. If after any event of default occurs and prior to the City or Borrower exercising any of the remedies provided in this Loan Agreement, the Borrower or City, as the case may be, will have completely cured such default or the City or Borrower has waived such default, then in every case such default will be waived, rescinded and annulled by the City or Borrower by written notice given to the Borrower or City. No such waiver, annulment or rescission will affect any subsequent default or impair any right or remedy consequent thereon.

Section 4.2. Remedies Cumulative. No remedy herein conferred upon or reserved to the City or Borrower is intended to be exclusive of any other remedy or remedies provided herein. The

remedies set forth in this Section are the sole and exclusive remedies of the City against Borrower under this Loan Agreement.

Section 4.3. Delay or Omission Not a Waiver. No delay or omission of the City or Borrower to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein.

Section 4.4. Waiver of Extension, Appraisal or Stay Laws. To the extent permitted by law, neither the Borrower nor the City will during the continuance of any event of default hereunder insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Loan Agreement; and the Borrower and City hereby expressly waive all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted to the City or Borrower, respectively, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 4.5. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

Section 4.6. Rights of the City. If there shall be pending proceedings for the bankruptcy or for the reorganization of the Borrower under the United States Bankruptcy Code or any other applicable law, or in case a receiver, trustee, or custodian shall have been appointed for the property of the Borrower, or in the case of any other similar judicial proceedings relative to the Borrower, or to the creditors or property of the Borrower, the City shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the City allowed in such judicial proceedings relative to the Borrower, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the City, and to pay to the City any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it to the date of such distribution.

Section 4.7. Waiver of Events of Default. If after any event of default shall have occurred under this Loan Agreement and prior to the City or Borrower exercising any of the remedies provided in this Article, the Borrower or City, as the case may be, shall have completely cured such default, such default may be waived at the discretion of the City or Borrower and, if so waived, shall be rescinded and annulled by the City or Borrower by written notice given to the Borrower or City, respectively.

Section 4.8. Limitation of Liability. The City agrees and acknowledges that Borrower's representations, warranties, covenants, agreements and performance obligations under this Loan Agreement are limited to and apply exclusively to the operations of Borrower at the Project site and any determination as to whether Borrower is in default of this Loan Agreement will be limited to Borrower's operations at the Project site.

Section 4.9. Force Majeure. A party will not be deemed to be in default or otherwise in violation of any term of this Loan Agreement to the extent such party's action, inaction or omission is the result of Force Majeure Event (as defined below). The City and Borrower agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Loan Agreement. A force majeure event pauses a party's performance obligation for the duration of the event but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its affiliates and prevents a party from performing its obligations under this Loan Agreement, including without limitation, any act of God; pandemic; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Project or over a party's operations.

(End of Article IV)

ORDINANCE NO. 20-05-24

ORDINANCE AUTHORIZING THE CITY OF NOBLESVILLE,
INDIANA TO FUND ITS “TAXABLE ECONOMIC
DEVELOPMENT REVENUE NOTE, SERIES 2024” AND
APPROVING AND AUTHORIZING OTHER ACTIONS IN
RESPECT THERETO

WHEREAS, this ordinance is an ordinance of the Common Council of the City of Noblesville, Indiana (“Council” and “City”, respectively) authorizing the funding of its City of Noblesville, Indiana Taxable Economic Development Revenue Note, Series 2024 (“Series 2024 Note”) in an amount not to exceed Three Hundred Seventy Thousand Dollars (\$370,000) (“Loan”) and approving and authorizing other actions in respect thereto;

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose;

WHEREAS, pursuant to the Act, the City is authorized to make loans for the purpose of financing, reimbursing or refinancing all or a portion of the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City;

WHEREAS, Justus Construction, LLC or an affiliate or permitted assignee thereof (the “Borrower”) has informed the City that in connection with its Promenade Trails senior housing project generally located at State Road 32 and Mill Creek Road it will be widening the roadway along Mill Creek Road and Promenade Trail in accordance with City standards (the “Project”);

WHEREAS, the City intends to make the Loan for the purpose of financing or reimbursing the Borrower for the costs of the Project in an amount not to exceed Three Hundred Seventy Thousand Dollars (\$370,000);

WHEREAS, the Project will be located in, serving or benefitting the Noblesville – Justus Senior Housing Economic Development Area and the Noblesville Consolidated Economic Development Area (collectively, the “Areas”) and the allocation areas located therein (collectively, the “Allocation Areas”) as established by the City of Noblesville Redevelopment Commission (the “Redevelopment Commission”);

WHEREAS, the City of Noblesville Economic Development Commission (the “Commission”) has rendered its Project Report regarding the issuance and funding of the Series 2024 Note from the City to the Borrower to finance the Project and the Project Report has been or will be submitted to the City of Noblesville Plan Commission;

WHEREAS, the Commission conducted a public hearing and adopted a resolution and Project Report, which resolution and Project Report have been transmitted hereto, finding that the financing of the Project complies with the purposes and provisions of Indiana Code 36-7-11.9 and -12 and that such financing will be of benefit to the health and welfare of the City and its citizens;

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by the Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Council the forgivable loan agreement between the City and the Borrower (including the form of the Series 2024 Note) (the "Loan Agreement");

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance or reimburse the Project by issuing and funding the Series 2024 Note;

WHEREAS, the City intends to fund the Series 2024 Note and make the Loan consistent with the terms of this ordinance and pursuant to the Loan Agreement;

WHEREAS, no member of the Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the notes authorized herein, which pecuniary interest has not been fully disclosed to the Council and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16;

WHEREAS, there has been submitted to the Commission for its approval forms of the Series 2024 Note and the Loan Agreement (collectively, the "Financing Documents") and a form of this proposed ordinance, which were incorporated by reference in the Commission's resolution adopted on May 20, 2024, which resolution has been transmitted to the Council;

WHEREAS, prior to the making of the Loan to be evidenced by the Borrower's Series 2024 Note, the Redevelopment Commission will pledge TIF Revenues, junior and subordinate to any Outstanding Obligations (each as defined in the Loan Agreement), on hand, or to be on hand, to the funding of the Series 2024 Note pursuant to the Loan Agreement;

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the Council hereby finds and determines that the financing and reimbursement approved by the Commission for the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance and reimburse a portion of the costs of the Project will require making the Loan and delivering the Series 2024 Note;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF NOBLESVILLE, INDIANA, THAT:

Section 1. It is hereby found, determined, ratified and confirmed that the financing and reimbursement of the Project, the making of the Loan to the Borrower to be evidenced by the Borrower's Series 2024 Note complies with the purposes and provisions of Indiana Code 36-7-

11.9 and -12 (collectively, the “Act”) and: (i) will result in the diversification of industry, the creation of business opportunities and the creation of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful actions as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

Section 2. The substantially final forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Council and kept on file by the Clerk. In accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk for public inspection.

Section 3. The Project costs will be financed or reimbursed from the Loan. The City shall fund the Loan from TIF Revenues on hand, or to be on hand, junior and subordinate to the Outstanding Obligations and pledged by the Redevelopment Commission to the City in the maximum amount not to exceed Three Hundred Seventy Thousand Dollars (\$370,000). The Series 2024 Note shall mature no later than December 31, 2025, unless forgiven as provided in the Loan Agreement. So long as the Condition to Forgiveness (as defined in the Loan Agreement) set forth in Section 2.2(i) of the Loan Agreement has been met, payment on the Loan shall be forgiven. The Series 2024 Note shall not accrue interest. The Series 2024 Note shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City.

Section 4. The Mayor and the Controller are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transactions contemplated by the Financing Documents and this ordinance, and their execution is hereby confirmed on behalf of the City. The Mayor and the Controller are authorized to arrange for the delivery of such Series 2024 Note to the Borrower, payment for which will be made in the manner set forth in the respective Financing Documents. The Mayor and the Controller may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor and the Controller without further approval of this Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

Section 5. The provisions of this ordinance and the Financing Documents shall constitute a contract binding between the City and the Borrower.

Section 6. The Mayor and the Controller, or any other officer having responsibility with respect to the making of the Loan, including the City’s Director of Economic Development, as evidenced by the Series 2024 Note, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Series 2024 Note, setting forth

the facts, estimates and circumstances and reasonable expectations pertaining to the use of the Loan as of the funding date thereof.

Section 7. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Financing Documents or under any judgment obtained against the City, including without limitation the Commission or Redevelopment Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation the Commission or Redevelopment Commission, either directly or through the City, or otherwise, for the payment for or to the City of any sum that may remain due and unpaid by the City upon any of such Series 2024 Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of any sum that may remain due and unpaid upon the Series 2024 Note hereby secured shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Documents and the issuance and funding of the Series 2024 Note.










Section 8. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

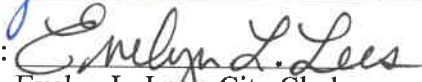
Section 9. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

Section 10. The Mayor and the Controller and any other officer of the City, as well as the City's Director of Economic Development, are hereby authorized and directed, in the name and on behalf of the City, to execute and deliver such further documents and to take such further actions as such person deems necessary or desirable to effect the purposes of this ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

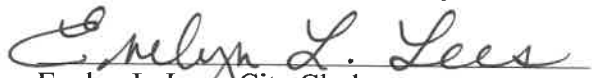
Section 11. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Approved on this 28th day of May, 2024 by the Common Council of the City of Noblesville, Indiana:

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

ATTEST: 
Evelyn L. Lees, City Clerk

Presented by me to the Mayor of the City of Noblesville, Indiana, this 29th day of May, 2024 at 8:11 A.M.


Evelyn L. Lees, City Clerk

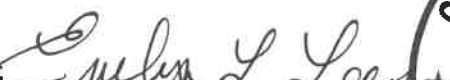

Chris Jensen, Mayor

MAYOR'S APPROVAL

5-29-24
Date

MAYOR'S VETO

Chris Jensen, Mayor

ATTEST: 
Evelyn L. Lees, City Clerk



FORGIVABLE LOAN AGREEMENT

BETWEEN

JUSTUS CONSTRUCTION, LLC

AND

CITY OF NOBLESVILLE, INDIANA

Dated as of June 1, 2024

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS AND EXHIBITS	3
Section 1.1. Terms Defined.....	3
Section 1.2. Rules of Interpretation.....	5
Section 1.3. Exhibits.	5
ARTICLE II. REPRESENTATIONS; LOAN OF TAX INCREMENT	6
Section 2.1. Representations by City.	6
Section 2.2. Representations by Borrower.....	6
Section 2.3. Series 2024 Note..	7
ARTICLE III. PARTICULAR COVENANTS OF THE BORROWER.....	8
Section 3.1. Forgiveness of Payment of Loan.	8
Section 3.2. RESERVED.	8
Section 3.3. Continuing Existence and Qualification..	8
Section 3.4. Assignment, Sale or Other Disposition of Project..	8
Section 3.5. Indemnity..	8
Section 3.6. Issuance of Substitute Notes.	9
Section 3.7. Payment of Expenses of Loan.....	9
Section 3.8. Reserved.....	9
Section 3.9. Other Amounts Payable by the Redevelopment Commission.	9
Section 3.10. Completion of Project.	9
Section 3.11. Sale, Substitution, or Lease of the Facilities; Assignment of Loan Agreement. 9	9
ARTICLE IV. EVENTS OF DEFAULT AND REMEDIES THEREFOR.....	11
Section 4.1. Events of Default.....	11
Section 4.2. Remedies Cumulative.	11
Section 4.3. Delay or Omission Not a Waiver.	12
Section 4.4. Waiver of Extension, Appraisalment or Stay Laws..	12
Section 4.5. Remedies Subject to Provisions of Law.....	12
Section 4.6. Rights of the City.	12
Section 4.7. Waiver of Events of Default.	Error! Bookmark not defined.
Section 4.8. Limitation of Liability.....	12
Section 4.9. Force Majeure.	13
ARTICLE V. IMMUNITY	14
Section 5.1. Immunity.....	14
ARTICLE VI. SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT ..	15

Section 6.1.	Supplements and Amendments to this Loan Agreement.	15
ARTICLE VII.	DEFEASANCE.....	16
Section 7.1.	Defeasance..	16
ARTICLE VIII.	MISCELLANEOUS PROVISIONS	17
Section 8.1.	Termination by Borrower.....	17
Section 8.2.	Dispute Resolution..	17
Section 8.3.	Confidentiality..	17
Section 8.4.	Information Security.	17
Section 8.5.	Loan Agreement for Benefit of Parties Hereto..	17
Section 8.6.	Severability.	17
Section 8.7.	Limitation on Interest.....	18
Section 8.8.	Addresses for Notice and Demands.	18
Section 8.9.	Successors and Assigns.....	18
Section 8.10.	Counterparts.	18
Section 8.11.	Governing Law.....	19
Section 8.12.	Third-Party Beneficiary.	19

FORGIVABLE LOAN AGREEMENT

This is a FORGIVABLE LOAN AGREEMENT dated as of June 1, 2024 (the “Loan Agreement”) between JUSTUS CONSTRUCTION, LLC, a limited liability company duly organized and existing under the laws of the State of Indiana (the “Borrower”), and the CITY OF NOBLESVILLE, INDIANA (the “City”), a political subdivision and municipal corporation duly organized and validly existing under the laws of the State of Indiana.

PRELIMINARY STATEMENT

Indiana Code, Title 36, Article 7, Chapters 11.9, 12 and 14, as in effect on the date the first series of the Series 2024 Note is funded (collectively, “Act”), have been enacted by the General Assembly of Indiana.

The Act provides that a political subdivision may make direct loans to users or developers for the cost of acquisition, construction, or installation of economic development facilities, including infrastructure improvements, with such loans to be secured by the pledge of secured or unsecured debt obligations of the users or developers, for diversification of economic development and promotion of job opportunities in or near the City.

The City of Noblesville Redevelopment Commission (“Redevelopment Commission”) has established the Noblesville – Justus Senior Housing Economic Development Area and the Noblesville Consolidated Economic Development Area (collectively, the “Areas”).

The Redevelopment Commission has approved the economic development plans (collectively, the “Plans”) for the Areas which Plans contained specific recommendations for economic development of the Areas, and the Redevelopment Commission has established tax allocation areas in accordance with IC 36-7-14-39 for the Areas (collectively, the “Allocation Areas”) for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Areas.

The City, upon finding that the Project (as hereinafter defined) and the proposed financing thereof will create additional employment opportunities in the City; will benefit the health, safety, morals, and general welfare of the citizens of the City and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing.

In order to encourage economic development and promote significant opportunities for gainful employment, the City intends to fund a loan to the Borrower in the amount of \$357,325.72 (the “Loan”), to be evidenced by the Borrower’s Taxable Economic Development Revenue Note, Series 2024 pursuant to the provisions of this Loan Agreement, to finance the cost of the Project in, serving or benefitting the Area.

This Loan Agreement provides for the payment of the Series 2024 Note by the Borrower and further provides for the Borrower’s repayment obligation to be evidenced by the Series 2024 Note, substantially in the form attached hereto as Exhibit A.

Subject to the further provisions of this Loan Agreement including Section 3.1, the Loan will be payable solely out of the payments to be made by the Borrower on the Series 2024 Note.

In consideration of the premises, the Loan, the acceptance of the Series 2024 Note by the City, and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the Borrower has executed and delivered this Loan Agreement.

This Loan Agreement is executed upon the express condition that if the Borrower shall pay or cause to be paid all indebtedness hereunder (unless the Series 2024 Note is forgiven pursuant to Section 3.1 hereof) and shall keep, perform and observe all and singular the covenants and promises expressed in the Series 2024 Note, any other Notes (as hereinafter defined) and this Loan Agreement to be kept, performed and observed by the Borrower, then this Loan Agreement and the rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

The Borrower and the City hereby covenant and agree as follows:

ARTICLE I.

DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Loan Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“Act” means, collectively, Indiana Code 36-7-11.9, 12 and 14, as in effect on the date the first series of the Series 2024 Note is funded.

“Allocation Areas” means the respective allocation areas established for the Areas by the Redevelopment Commission in accordance with Indiana Code 36-7-14-39.

“Areas” means, collectively, the Noblesville – Justus Senior Housing Economic Development Area and the Noblesville Consolidated Economic Development Area.

“Authorized Representative” means any officer of the Borrower or any other person certified by an officer of the Borrower to be the Borrower’s Authorized Representative.

“Authorizing Resolution” means Resolution No. _____ adopted by the Redevelopment Commission on May 16, 2024, authorizing the use of TIF Revenues on hand, or to be on hand, to fund the Series 2024 Note.

“Borrower” means Justus Construction, LLC, a limited liability company duly organized and existing under the laws of the State of Indiana and authorized to do business under the laws of the State of Indiana, or any successors and/or assigns thereto permitted under Section 3.3 hereof.

“Business Day” means any day other than a Saturday, Sunday or holiday, on which commercial banks in the City are open for conducting substantially all of its banking activities.

“City” means the City of Noblesville, Indiana.

“Commission” means the City of Noblesville Economic Development Commission.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state, and, without limitation, may include legal counsel for either the City or the Borrower.

“Loan” means the loan by the City to the Borrower.

“Note” or “Notes” means the Series 2024 Note, and any other note executed by the Borrower in connection with the Series 2024 Note, and any notes issued in exchange therefor pursuant (and subject) to Section 3.7 hereof.

“Note Counsel” means a nationally recognized firm of municipal bond attorneys acceptable to the City and the Borrower.

“Outstanding Obligations” means obligations of the Redevelopment Commission payable from TIF Revenues which shall be senior to the obligation of the Redevelopment Commission to fund the Series 2024 Note.

“Project” means the widening by the Borrower of the roadway along Mill Creek Road and Promenade Trail in accordance with City standards in connection with the Borrower’s Promenade Trails senior housing project generally located at State Road 32 and Mill Creek Road to be used for economic development purposes.

“Project Costs” with respect to the Project shall mean any and all costs permitted by the Act including, but not limited to:

(i) the “Note Issuance Costs,” namely the reasonable costs, fees and expenses incurred or to be incurred by the City in connection with the Loan, the reasonable fees and disbursements of Note Counsel, the reasonable fees of disbursements of the City’s municipal advisor, application fees and expenses, publication costs, the filing and recording fees in connection with any necessary filings or recordings or to perfect the lien thereof, the out-of-pocket costs of the City, the reasonable fees and disbursements of Counsel to the City, the costs of preparing or printing the Series 2024 Note and the documentation supporting the Loan, the costs of reproducing documents and any other costs of a similar nature reasonably incurred;

(ii) expenses directly related to the acquisition of the Project;

(iii) the cost of insurance of all kinds that may be required or necessary in connection with the acquisition of the Project;

(iv) all costs and expenses which City or Borrower shall be required to pay, under the terms of any contract or contracts for the acquisition of the Project; and

(v) any sums required to reimburse the City or Borrower for advances made by either of them subsequent to the date the Series 2024 Note is funded for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Project.

“Redevelopment Commission” means the City of Noblesville Redevelopment Commission.

“Series 2024 Note” means the Note of the Borrower in the maturity amount of \$357,325.72 in substantially the form attached hereto as Exhibit A, which will be issued and delivered by the Borrower to the City to evidence the Loan and any Note issued in exchange for the Series 2024 Note pursuant to Section 3.7 hereof. As set forth in Section 2.2(i) hereof, the Series 2024 Note will be drawn in the amount of up to \$357,325.72.

“State” means the State of Indiana.

“TIF Revenues” means all property tax proceeds attributable to the assessed valuation of real property within the Allocation Areas as of each assessment date in excess of the base assessed value as described in IC 36-7-14-39(b)(1). The incremental assessed value is multiplied by the then current property tax rate (per \$100 assessed value).

“Written Request” means a request in writing from an authorized representative of the party making the request.

Section 1.2. Rules of Interpretation. For all purposes of this Loan Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) “This Loan Agreement” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) The terms defined elsewhere in this Loan Agreement shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Loan Agreement.

Exhibit A. Form of Series 2024 Note

(End of Article I)

ARTICLE II.

REPRESENTATIONS; LOAN OF TIF REVENUES

Section 2.1. Representations by City. The City represents and warrants that:

(a) The City is a political subdivision duly organized and validly existing under the laws of the State. Under the provisions of the Act, the City has been authorized by action of its governing body to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder.

(b) The City agrees to make the Loan for the purpose of financing the Project for the benefit of the Borrower, to benefit the health, safety, morals and general welfare of the citizens of the City, increase economic well-being of the State, promote job opportunities and attract major new businesses.

Section 2.2. Representations by Borrower. Borrower represents and warrants that:

(a) The Borrower is a limited liability company duly organized under the laws of the State of Indiana and in good standing and authorized to do business under the laws of the State, is not in violation of any provision of its Articles of Organization and Operating Agreement, has not received notice and has no reasonable grounds to believe that it is in violation of any laws in any manner material to its ability to perform its obligations under this Loan Agreement and the Series 2024 Note, has power to enter into and to perform its obligations under this Loan Agreement and the Series 2024 Note, and has duly authorized the execution and delivery of this Loan Agreement and the Series 2024 Note by appropriate corporate action.

(b) The Borrower anticipates the costs of the Project to be \$357,325.72 and the Borrower is securing the Project for the purpose of economic development.

(c) All of the proceeds from the Series 2024 Note (including any income earned on the investment of such proceeds) provided to the Borrower will be used solely for Project Costs.

(d) The Borrower intends to operate or cause the Project to be operated as an economic development facility under the Act until the expiration or earlier termination of this Loan Agreement as provided herein, unless the Borrower has sold or otherwise transferred the Project to a Surviving Corporation (as hereinafter defined) in accordance with Section 3.3 or assigned this Loan Agreement in accordance with Section 3.11 of this Loan Agreement.

(e) Neither the execution and delivery of this Loan Agreement, the consummation of the transactions contemplated hereby including execution and delivery of the Series 2024 Note nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, will contravene the Borrower's Articles of Incorporation, By-Laws, or any law or any governmental rule, regulation or order presently binding on the Borrower or conflicts with or results in a breach of the terms, conditions or provisions of any agreement or instrument to which Borrower is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any liens, charges, or encumbrances whatsoever upon any of the property or assets of Borrower under the terms of any instrument or agreement.

(f) The execution, delivery and performance by the Borrower of this Loan Agreement and the Series 2024 Note do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(g) Assuming the due authorization, execution and delivery thereof by the other parties thereto, this Loan Agreement and the Series 2024 Note have been duly executed and delivered by the Borrower and constitute the legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(h) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Loan Agreement or the Series 2024 Note.

(i) The Series 2024 Note can be drawn by the Borrower in the amount of up to \$357,325.72 solely for Project Costs. With respect to taking a draw on the Series 2024 Note, the Borrower shall provide written notice to the City of its intent to make such draw and the City shall fund such draw within five (5) business days of notice with payment on such draw being made to or on behalf of the Borrower as it shall instruct the City. The Borrower's obligation on the Series 2024 Note shall be entirely forgiven on the maturity date of the Series 2024 Note which is December 31, 2025; provided, however, that such forgiveness is subject to the following condition: the Borrower shall have completed the Project and the City shall have approved and accepted the Project as completed to its standards (the "Condition to Forgiveness"). In the event during the term of the Series 2024 Note the Borrower shall be determined by the City to have failed the Condition to Forgiveness, upon written notice from the City to the Borrower that such a failure has occurred, the Series 2024 Note shall be immediately due in full and no longer subject to forgiveness. The City reserves the right to forgive the Loan in its sole discretion prior to its maturity date if the Condition to Forgiveness has been satisfied up to the date of such forgiveness.

Section 2.3. Series 2024 Note. Concurrently with the execution and delivery hereof, the City is authorizing the Loan to the Borrower and will fund the Loan at such time or times as the representation in Section 2.2(i) has been met with respect to executing a real estate purchase agreement and completing the due diligence for the purchase of the Project. The Loan is being evidenced by the execution and delivery by the Borrower of the Series 2024 Note substantially in the form attached hereto as Exhibit A.

(End of Article II)

ARTICLE III.

PARTICULAR COVENANTS OF THE BORROWER

Section 3.1. Forgiveness of Payment of Loan. The Loan shall be deemed forgiven on its maturity date, December 31, 2025, provided the Condition to Forgiveness as set forth in Section 2.2(i) has been met. If the Condition to Forgiveness has not been satisfied during the term of the Loan, the Loan shall not be forgiven. The City reserves the right to forgive the Loan in its sole discretion prior to its maturity date if the Condition to Forgiveness has been satisfied up to the date of such forgiveness. The City shall fund the Loan upon the Borrower having executed a real estate purchase agreement and completed the due diligence for the purchase of the Project as set forth in Section 2.2(i).

Section 3.2. RESERVED.

Section 3.3. Continuing Existence and Qualification. The Borrower covenants that so long as any Note is outstanding, it (a) will maintain in good standing its corporate existence and qualification to do business in the State, and (b) will not (1) dissolve or otherwise dispose of all or substantially all of its assets and (2) consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Borrower may, without violating its agreement contained in this Section, consolidate with or merge into another corporation or other entity, or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another corporation or entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity (such corporation being hereinafter called the "Surviving Corporation") (if other than the Borrower) expressly accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the Surviving Corporation had originally executed this Loan Agreement, and the Surviving Corporation is an Indiana corporation or is a foreign corporation or partnership, trust or other person or entity organized under the laws of one of the states of the United States and is qualified to do business in the State of Indiana as a foreign corporation or partnership, trust or other person or entity.

Section 3.4. Assignment, Sale or Other Disposition of Project. Any sale, lease or other disposition of the Project or any portion thereof is subject to the conditions of Section 3.11 hereof.

Section 3.5. Indemnity. The Borrower will pay, protect, defend, indemnify and save the City, the Commission and the Redevelopment Commission harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the City), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to the Project, provided, that the liability of Borrower under this Section 3.5 shall be limited to the amount of the Loan actually received by Borrower as of the date of the alleged breach of the terms of this Loan Agreement. If any proceeding is instituted for which indemnity may be sought under this Section 3.5, the party that may seek such indemnity shall notify the Borrower and the City in writing in a timely manner to allow the Borrower to defend any action or claim in such proceeding.

Section 3.6. Issuance of Substitute Notes. Upon the surrender of any Note, the Borrower will execute and deliver to the holder thereof a new Note dated the date of the Note being surrendered but with appropriate notations thereon to reflect payments of principal already paid on such Note; provided, however, that there shall never be outstanding at any one time more than one Note of any one series.

Section 3.7. Payment of Expenses of Loan. The Note Issuance Costs (as defined under "Project Costs" in Article I hereof) will be paid by the Borrower on the date the Loan is funded.

Section 3.8. Reserved.

Section 3.9. Other Amounts Payable by the Redevelopment Commission. The Redevelopment Commission covenants and agrees to pay the following:

(a) All reasonable out-of-pocket costs incident to the payment of the Series 2024 Note as the same become due and payable.

(b) An amount sufficient to reimburse the City and Commission for all expenses reasonably incurred by the City under this Loan Agreement and in connection with the performance of its obligations under this Loan Agreement.

(c) All reasonable expenses incurred in connection with the enforcement of any rights under this Loan Agreement by the City.

Payments hereunder by the Redevelopment Commission shall be junior and subordinate to the Outstanding Obligations. For the avoidance of doubt and as set forth in Section 3.7, Note Issuance Costs shall be payable by the Borrower.

Section 3.10. Completion of Project. The Borrower agrees that it will use reasonable efforts to cause to be made, executed, acknowledged and delivered any contracts, orders, receipts, writings and instructions with any other persons, firms, corporations or partnerships and in general do all things which may be requisite or proper, all for completing of the Project, to the extent permitted by law, on or before December 1, 2025.

If the moneys comprising the Loan should not be sufficient to pay in full the costs of the Project, the Borrower agrees, for the benefit of the City and to fulfill the purposes of the Act, to use commercially reasonable efforts to cause the completion of the Project and to pay or cause to be paid that portion of the costs therefor as may be in excess of the moneys available therefor. The City does not make any warranty, either express or implied, that the moneys will be available for payment of the costs of the Project, will be sufficient to pay all the costs which will be incurred in that connection. The Borrower shall not be entitled to any reimbursement therefor from the City, nor shall it be entitled to any diminution in or abatement or postponement of the amounts payable hereunder or under the Series 2024 Note.

Section 3.11. Sale, Substitution, or Lease of the Project; Assignment of Loan Agreement. The Borrower, subject to the written consent of the City (which consent shall not be unreasonably withheld, conditioned or delayed), may sell, lease or transfer or otherwise dispose of the Project or any portion thereof only if the sale, lease or transfer or other disposition shall not relieve the

Borrower from liability from the performance of all of the obligations of this Loan Agreement, except as permitted by Section 3.4 hereof, unless the transferee accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the transferee had originally executed this Loan Agreement. Notwithstanding the foregoing, Borrower may assign this Loan Agreement to an Affiliate (as defined below) or in connection with any merger, reorganization, sale of all or substantially all of our assets or any similar transaction. This Loan Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns. 'Affiliate' as used herein means any entity that directly or indirectly controls, is controlled by, or is under common control with Borrower.

(End of Article III)

ARTICLE IV.

EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 4.1. Events of Default. (a) The occurrence and continuance of any of the following events shall constitute an “event of default” hereunder:

(i) Failure of the Borrower to observe and perform any covenant, condition or provision of this Loan Agreement for a period of one-hundred twenty (120) days after written notice, specifying such failure and requesting that it be remedied, given to the Borrower by the City, unless (i) the nature of the default is such that it cannot be remedied within the one-hundred twenty (120) day period, (ii) the Borrower institutes corrective action within the one-hundred twenty (120) day period and (iii) the Borrower diligently pursues such action until the default is remedied.

(ii) Failure of the City to fund all or any portion of the Loan in accordance with this Loan Agreement for a period of fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the City by the Borrower, unless (i) the City institutes corrective action within the fifteen (15) day period and (ii) the City diligently pursues such action until the default is remedied provided such remedy shall occur no less than sixty (60) days after notice is received.

(b) Subject to the further provisions of this Article IV, during the occurrence and continuance of any event of default hereunder, the City or Borrower, as the case may be, shall have the rights and remedies hereinafter set forth in addition to any other remedies herein or by law provided:

(i) Right to Bring Suit, Etc. The City or Borrower, with or without entry, personally or by attorney, may proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in the Series 2024 Note or this Loan Agreement, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the City or Borrower shall deem most effectual to protect and enforce any of its rights or duties hereunder; provided, however that all reasonable costs incurred by the City or Borrower under this Article shall be paid to the City or Borrower by the Borrower or City, respectively, on demand.

(ii) Waiver of Events of Default. If after any event of default occurs and prior to the City or Borrower exercising any of the remedies provided in this Loan Agreement, the Borrower or City, as the case may be, will have completely cured such default or the City or Borrower has waived such default, then in every case such default will be waived, rescinded and annulled by the City or Borrower by written notice given to the Borrower or City. No such waiver, annulment or rescission will affect any subsequent default or impair any right or remedy consequent thereon.

Section 4.2. Remedies Cumulative. No remedy herein conferred upon or reserved to the City or Borrower is intended to be exclusive of any other remedy or remedies provided herein. The

remedies set forth in this Section are the sole and exclusive remedies of the City against Borrower under this Loan Agreement.

Section 4.3. Delay or Omission Not a Waiver. No delay or omission of the City or Borrower to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein.

Section 4.4. Waiver of Extension, Appraisal or Stay Laws. To the extent permitted by law, neither the Borrower nor the City will during the continuance of any event of default hereunder insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Loan Agreement; and the Borrower and City hereby expressly waive all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted to the City or Borrower, respectively, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 4.5. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

Section 4.6. Rights of the City. If there shall be pending proceedings for the bankruptcy or for the reorganization of the Borrower under the United States Bankruptcy Code or any other applicable law, or in case a receiver, trustee, or custodian shall have been appointed for the property of the Borrower, or in the case of any other similar judicial proceedings relative to the Borrower, or to the creditors or property of the Borrower, the City shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the City allowed in such judicial proceedings relative to the Borrower, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the City, and to pay to the City any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it to the date of such distribution.

Section 4.7. Waiver of Events of Default. If after any event of default shall have occurred under this Loan Agreement and prior to the City or Borrower exercising any of the remedies provided in this Article, the Borrower or City, as the case may be, shall have completely cured such default, such default may be waived at the discretion of the City or Borrower and, if so waived, shall be rescinded and annulled by the City or Borrower by written notice given to the Borrower or City, respectively.

Section 4.8. Limitation of Liability. The City agrees and acknowledges that Borrower's representations, warranties, covenants, agreements and performance obligations under this Loan Agreement are limited to and apply exclusively to the operations of Borrower at the Project site and any determination as to whether Borrower is in default of this Loan Agreement will be limited to Borrower's operations at the Project site.

Section 4.9. Force Majeure. A party will not be deemed to be in default or otherwise in violation of any term of this Loan Agreement to the extent such party's action, inaction or omission is the result of Force Majeure Event (as defined below). The City and Borrower agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Loan Agreement. A force majeure event pauses a party's performance obligation for the duration of the event but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its affiliates and prevents a party from performing its obligations under this Loan Agreement, including without limitation, any act of God; pandemic; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Project or over a party's operations.

(End of Article IV)

ARTICLE V.

IMMUNITY

Section 5.1. Immunity. No covenant or agreement contained in this Loan Agreement shall be deemed to be a covenant or agreement of any member of the City, the Commission or the Redevelopment Commission or of any officer or employee of the City, the Commission, the Redevelopment Commission or their legislative and fiscal bodies in his or her individual capacity, and neither the members of the City, the Commission, the Redevelopment Commission nor any officer or employee of the City executing the Loan Agreement shall be liable personally on the Loan or be subject to any personal liability or accountability by reason of the Loan.

(End of Article V)

ARTICLE VI.

SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT

Section 6.1. Supplements and Amendments to this Loan Agreement. The Borrower and the City may from time to time enter into such supplements and amendments to this Loan Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VI)

ARTICLE VII.

DEFEASANCE

Section 7.1. Defeasance. If the Loan is funded and repayment of the Series 2024 Note is forgiven pursuant to the terms of this Loan Agreement, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Borrower, and the estate, right, title and interest of the City therein shall thereupon cease, terminate and become void; and this Loan Agreement, and the covenants of the Borrower contained herein, shall be discharged and the City in such case on demand of the Borrower and at its cost and expense, shall execute and deliver to the Borrower a proper instrument or proper instruments acknowledging the satisfaction and termination of this Loan Agreement, and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to the Borrower, all property, including money, then held by the City together with the Series 2024 Note marked paid or cancelled.

(End of Article VII)

ARTICLE VIII.

MISCELLANEOUS PROVISIONS

Section 8.1. Termination by Borrower. Borrower has the right to terminate this Loan Agreement for any reason or no reason by delivering notice to the City at least 5 business days prior to the desired termination date. Notwithstanding the foregoing, any obligations of the Borrower under the Series 2024 Note shall remain outstanding unless forgiven as herein provided.

Section 8.2. Dispute Resolution. The Borrower and the City (“Parties”) shall use their best efforts to resolve quickly and informally any disputes that could impede performance of the Parties’ obligations under this Loan Agreement. If the Parties are not able to resolve a dispute through such informal efforts, the dispute shall be resolved by mediation in accordance with the Indiana Rules of Dispute Resolution. Such mediation shall be a condition precedent to a Party commencing litigation against the other Party. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana, without giving effect to its conflict of law rules. Any litigation commenced by a Party related to or arising out of this Agreement must be filed in the state courts of Hamilton County, Indiana. The Parties further consent to the personal jurisdiction by said courts over it and hereby expressly waive, in the case of any such action, any defenses thereto based on jurisdictions, venue or forum non conveniens.

Section 8.3. Confidentiality. Borrower acknowledges that portions of this Loan Agreement and the materials, communications, data and information related to this Loan Agreement may constitute public records subject to disclosure under the State’s public records laws and agrees that the City may disclose such portions of this Loan Agreement and the materials, communications, data and information related to this Loan Agreement as required by law, provided that the City gives Borrower prior written notice sufficient (in no event less than 7 calendar days) to allow Borrower to review any request for public record and make a recommendation to the City concerning its response to any request for public records related to this Loan Agreement.

Section 8.4. Information Security. The City agrees to use reasonable physical and technical measures to maintain the security of all electronic and tangible records relating to this Loan Agreement.

Section 8.5. Loan Agreement for Benefit of Parties Hereto. Nothing in this Loan Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns and the holder of the Series 2024 Note, any right, remedy or claim under or by reason of this Loan Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Loan Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns and the holder of the Series 2024 Note.

Section 8.6. Severability. If any one or more of the provisions contained in this Loan Agreement or in the Series 2024 Note shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein, shall not in any way be affected or impaired thereby.

Section 8.7. Limitation on Interest. No provisions of this Loan Agreement or of the Series 2024 Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Series 2024 Note provided for, or shall be adjudicated to be so provided for herein or in the Series 2024 Note, neither the Borrower nor its successors or assigns shall be obligated to pay such interest in excess of the amount permitted by law, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any provisions of this Loan Agreement and the Note inconsistent with this provision.

Section 8.8. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The City and the Borrower may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, demands certificates and communications to each of them shall be addressed as follows:

To the City: City of Noblesville, Indiana
16 South 10th Street
Noblesville, IN 46060
Attention: Andrew Murray, Economic Development
Director

To the Redevelopment Commission: City of Noblesville Redevelopment Commission
16 South 10th Street
Noblesville, IN 46060
Attention: Andrew Murray, Economic Development
Director

To the Borrower: Justus Construction, LLC
1398 North Shadeland
Indianapolis, IN 46219
Attention: President

Section 8.9. Successors and Assigns. Whenever in this Loan Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Loan Agreement contained by or on behalf of the Borrower, or by or on behalf of the City, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

Section 8.10. Counterparts. This Loan Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Loan Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 8.11. Governing Law. It is the intention of the parties hereto that this Loan Agreement and the rights and obligations of the parties hereunder and the Series 2024 Note and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State of Indiana.

Section 8.12. Third-Party Beneficiary. The parties hereto acknowledge and agree that the terms of this Loan Agreement may be enforced by the Redevelopment Commission. The Redevelopment Commission shall be deemed to be a third-party beneficiary of this Loan Agreement. Except as provided in the foregoing sentence and as specifically set forth herein, nothing in this Loan Agreement is intended to confer any rights or remedies under or by reason of this Loan Agreement on any person or entity other than the parties hereto and their successors and permitted assigns.

(End of Article VIII)

IN WITNESS WHEREOF, the City has caused this Loan Agreement to be executed in its name by its authorized officers and has caused its corporate seal to be hereunto affixed, and the Borrower has caused this Loan Agreement to be executed in their names, all as of the date first above written.

JUSTUS CONSTRUCTION, LLC

By: _____

Printed: _____

Title: _____

CITY OF NOBLESVILLE, INDIANA

By: _____
Chris Jensen, Mayor

(SEAL)

ATTEST:

By: _____
Jeffrey L. Spalding, Controller

ACKNOWLEDGED BY THE CITY OF
NOBLESVILLE REDEVELOPMENT
COMMISSION, as Third-Party Beneficiary

By: _____
Jack Martin, President

Attest:

By: _____
Christi Crosser, Secretary

EXHIBIT A

FORM OF JUSTUS CONSTRUCTION, LLC
BORROWER SERIES 2024 NOTE

Original Principal: \$357,325.72
Maturity Date: December 31, 2025
Interest Rate: 0%

FOR VALUE RECEIVED, the undersigned, JUSTUS CONSTRUCTION, LLC (the “Borrower”), a nonprofit corporation organized and existing under the laws of the State of Indiana and authorized to do business under the laws of the State of Indiana, hereby promises to pay to the order of the City of Noblesville, Indiana (the “City”), in immediately available funds, the amounts due under the Forgivable Loan Agreement, dated as of June 1, 2024, between the City and Borrower (the “Loan Agreement”), upon maturity, unless this Series 2024 Note is forgiven pursuant to the Loan Agreement, at such place as the City may direct, in immediately available funds the principal sum of \$357,325.72.

In certain events and in the manner set forth in the Loan Agreement, payments due under this Series 2024 Note are entitled to forgiveness.

This Series 2024 Note is issued pursuant to the Loan Agreement, and is entitled to the benefits, and is subject to the conditions thereof. The Borrower’s obligations under this Series 2024 Note are subject in all respects to the further provisions of the Loan Agreement.

This Note is the Note referred to in the Loan Agreement and is subject to, and is executed in accordance with, all of the terms, conditions and provisions thereof, including those respecting prepayments.

In any case where the date of payment hereunder shall not be on a Business Day (as defined in the Loan Agreement), then such payment shall be made on the next succeeding Business Day with the same force and effect as if made on the date of payment hereunder.

All terms used in this Note which are defined in the Loan Agreement shall have the meanings assigned to them in the Loan Agreement.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and attested by its duly authorized officers or representatives.

Dated: _____, 2024.

JUSTUS CONSTRUCTION, LLC

By: _____
Printed: _____
Title: _____