



Common Council

Agenda Item

Cover Sheet

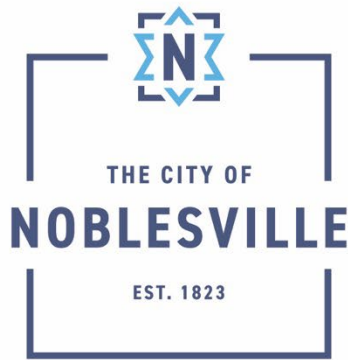
MEETING DATE: October 29, 2024

- Previously Discussed Ordinance
- Proposed Development Presentation
- New Ordinance for Discussion
- Miscellaneous
- Transfer

ITEM or ORDINANCE: #64-10-24

PRESENTED BY: Sarah Reed

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets



TO: Noblesville Common Council; Noblesville Council Finance Committee
FROM: Sarah Reed, Community Development Director
SUBJECT: Economic Development Agreement – Kittles Furniture
DATE: October 22, 2024

I. ORDINANCE 64-10-24

The Noblesville Common Council will be presented with an Ordinance that would approve the forms of economic development agreements (“EDA”) and authorizing the funding of its Taxable Economic Development Revenue Note, Series 2024 with Kittles Properties LLC (“Kittles”).

Overview: The proposed project has two components.

First, Kittles is currently leasing 93,500 sq ft of warehouse space at Campus Center on the NE Corner of 146th Street and Promise Road with Carter Jackson. This portion of the project brought 45 jobs on day one with an average wage of \$52,300.00. It also included \$1M in moving, racking, new cabling, IT and other personal property equipment.

The second portion is the development by Kittles of a new showroom on real estate within Saxony, which is located at the SW corner of 141st Street and Cabela Parkway. The capital investment is \$18-\$20M, with 15-16 FTE jobs with an average wage of \$61,500 (before benefits). The new showroom will be 50,000 sq ft and this new location will be in addition to their other Indiana locations.

- a. **City Participation.** The City of Noblesville (the “City”) participation includes:
- i. **Notes.** The City will issue taxable notes in an amount sufficient to deposit not to exceed of One Million Dollars (\$1,000,000) to construct a portion of the public infrastructure component of the Project (the “Notes”) more particularly described below including cost of issuance.
 - ii. **Infrastructure.** With the construction of this new showroom, Kittles will be installing infrastructure that will provide additional (more regional) drainage and public road infrastructure that will assist in the development of an adjacent parcel to the south. This will have a preliminary construction value estimated at \$5-\$10M.



- b. **Procedural:** This Project EDA is scheduled to be considered before the Council Finance Committee on October 24, 2024. The EDA is proposed to be introduced on October 29, 2024 and approved on November 12, 2024.
- c. **Staff Comments:**
- i. **Action:** Committee sends favorable support of the EDA and recommends placement of the EDA on the October 29, 2024 Council meeting for introduction.
 - ii. If you have questions regarding this business item, please contact Sarah Reed at 317-750-3429 (mobile) or sreed@noblesville.in.gov.

ORDINANCE NO. 64-10-24

ORDINANCE AUTHORIZING THE CITY OF NOBLESVILLE,
INDIANA TO FUND ITS “TAXABLE ECONOMIC
DEVELOPMENT REVENUE NOTE, SERIES 2024 (KITTLER
PROPERTIES PROJECT)” 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 Taxable Economic Development Revenue Note, Series 2024 (“Kittles Properties Project”) in an amount not to exceed One Million Dollars (\$1,000,000) (“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, Kittles Properties LLC or an affiliate or permitted assignee thereof (the “Borrower”) has informed the City that in connection with the construction by the Borrower of a new state-of-the art furniture and design center generally located at East 141st Street and Cabela Parkway, it is necessary to construct and install certain public improvements consisting primarily of storm water improvements and road improvements (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 Dollars One Million Dollars (\$1,000,000);

WHEREAS, the Project will be located in, serving or benefitting the Noblesville Consolidated Economic Development Area (the “Area”) and the consolidated allocation area located therein (the “Allocation Area”) 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”) and the Economic Development Agreement relating to the Project among the City, the Redevelopment Commission and the Borrower (the “Economic Development 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, the Loan Agreement and the Economic Development Agreement (collectively, the “Financing Documents”) and a form of this proposed ordinance, which were incorporated by reference in the Commission’s resolution adopted on October 23, 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 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 One Million Dollars (\$1,000,000). The Series 2024 Note shall mature no later than December 31, 2035 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 ____ day of _____, 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 ____ day of _____, 2024 at _____.M.

 Evelyn L. Lees, City Clerk

MAYOR'S APPROVAL

 Chris Jensen, Mayor

 Date

MAYOR'S VETO

 Chris Jensen, Mayor

 Date

ATTEST: _____
 Evelyn L. Lees, City Clerk

FORGIVABLE LOAN AGREEMENT

BETWEEN

KITTLES PROPERTIES LLC

AND

CITY OF NOBLESVILLE, INDIANA

Dated as of _____ 1, 2024

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FORGIVABLE LOAN AGREEMENT

This is a FORGIVABLE LOAN AGREEMENT dated as of _____ 1, 2024 (the “Loan Agreement”) between KITTLES PROPERTIES 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 Consolidated Economic Development Area (the “Area”).

The Redevelopment Commission has approved an economic development plan (as amended to the date hereof, the “Plan”) for the Area which Plan contained specific recommendations for economic development of the Area, and the Redevelopment Commission has established a consolidated tax allocation area in accordance with Indiana Code 36-7-14-39 for the Area (the “Allocation Area”) for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Area.

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 \$ _____ (the “Loan”), to be evidenced by the Borrower’s Taxable Economic Development Revenue Note, Series 2024 (Kittles Properties Project) 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 Series 2024 Note is funded.

“Allocation Area” means the consolidated allocation area established for the Area by the Redevelopment Commission in accordance with Indiana Code 36-7-14-39.

“Area” means 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. 2024-____ adopted by the Redevelopment Commission on _____, 2024, authorizing the use of TIF Revenues on hand, or to be on hand, to fund the Series 2024 Note.

“Borrower” means Kittles Properties 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.

“Disbursement Request” means mean the form of request attached as Exhibit B, which Disbursement Request shall: (i) be prepared by Borrower; and (ii) be accompanied by: (1) a description of the work therein, (2) a summary of the expenses included in such Disbursement Request, and (3) all related invoices, lien releases, and/or other information reasonably necessary to establish the accuracy of the information set forth in the request and certification.

“Economic Development Agreement” means the Economic Development Agreement by and among the City, the Redevelopment Commission, the Borrower and _____, dated as of _____, 2024 relating to the Project and the Loan herein authorized.

“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 construction and installation by the Borrower of certain public improvements consisting primarily of storm water improvements and road improvements in accordance with City’s adopted standards in connection with the construction by the Borrower of its new state-of-the art furniture and design center to be generally located at East 141st Street and Cabela Parkway and 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 construction and 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 construction and 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 \$ _____ 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 \$ _____.

“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 \$_____ 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 Organization, Operating Agreement, 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 \$ _____ 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 pursuant a Disbursement Request and the City shall fund such draw within fifteen (15) business days of notice with payment on such draw being made to or on behalf of the Borrower as it shall instruct the City in the Disbursement Request. The Borrower shall submit to the City with each Disbursement Request invoices supporting each Disbursement Request for Project Costs. 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, 2035; provided, however, that such forgiveness is subject to the following condition: the Borrower shall have completed the Project, the City shall have approved and accepted the Project as completed to its adopted standards and the Borrower shall not be in default under any material provisions of the Economic Development Agreement (collectively, 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. For the avoidance of doubt, the provisions set forth herein are supplemental to and in addition to any rights the City may have under the terms of the Economic Development Agreement in the event the Borrower shall have defaulted under the terms thereof.

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 draw requests are submitted by the Borrower in accordance with Section 2.2(i). 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, 2035, 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 at such time or times as draw requests are submitted by the Borrower in accordance with 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 from funds on hand of the Borrower.

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 June 30, 2026.

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, Appraisement 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: Amy Smith, Economic Development Manager

To the Redevelopment Commission: City of Noblesville Redevelopment Commission
16 South 10th Street
Noblesville, IN 46060
Attention: Amy Smith, Economic Development Manager

To the Borrower: Kittles Properties LLC
8600 Allisonville Road
Indianapolis, IN 46250
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.

KITTLES PROPERTIES 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 TAXABLE ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2024
(KITTLES PROPERTIES PROJECT)

Original Principal: \$ _____
Maturity Date: December 31, 2035
Interest Rate: 0%

FOR VALUE RECEIVED, the undersigned, KITTLES PROPERTIES LLC (the “Borrower”), 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, 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 _____ 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 original principal sum of \$ _____.

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.

KITTLES PROPERTIES LLC

By: _____
Printed: _____
Title: _____

EXHIBIT B

FORM OF DISBURSEMENT REQUEST

CONSTRUCTION DISBURSEMENT REQUEST

Disbursement No.: _____

Date: _____

Disbursement Amount: \$ _____

_____ (“Owner”) hereby requests the disbursement of funds in the Disbursement Amount stated above and certifies that such amount is in accordance with the attached invoices and other documentation provided in support of this Request.

This Construction Disbursement Request shall also constitute a representation and affirmation to City that the following information is accurate in all respects:

- 1) Description of the work performed:
- 2) Summary of expenses:
- 3) Attach all invoices and related documentation.
- 4) If outside vendors are to receive payment, complete Schedule I.

“Owner”

By: _____

Printed: _____

Title: _____

Schedule I

[Narrative summary of expenses included in the Construction Disbursement Request]

Vendor

Amount

**ECONOMIC DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF
NOBLESVILLE, CITY OF NOBLESVILLE REDEVELOPMENT COMMISSION,
KITTLES PROPERTIES, LLC AND _____**

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2024 ("Effective Date") by and among the City of Noblesville, Hamilton County, Indiana ("City"), the City of Noblesville Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq.* ("Commission"), Kittles Properties LLC, an Indiana limited liability company ("Developer"), and _____, Inc., an Indiana corporation ("Owner" and together with Developer, the "Company"), as follows:

RECITALS

WHEREAS, headquartered in central-Indiana for more than nine (9) decades, Kittle's Furniture Store ("Kittle's Furniture") is a mainstay of the Indiana furniture business that provides furniture and custom design services throughout the Midwest;

WHEREAS, Kittle's Furniture is the sister company of Company;

WHEREAS, Company desires to design and construct a state-of-the art furniture and design center that includes a Kittle's Furniture that will be more than 58,000 sq. feet in size and will culminate in an investment approaching \$20 Million in Noblesville (the "Design Center Project");

WHEREAS, the Design Center Project will be located on the Site (as defined in Section 3), and will employ approximately fifteen (15) full time employees ("FTEs") at the Site who are paid, on average, \$61,500, annually;

WHEREAS, additionally, Company plans to lease warehouse space at property generally known as 11500 E. 146th Street, Noblesville, Indiana (the "Warehouse Site") where Company will operate its Kittle's distribution center (the "Distribution Center");

WHEREAS, Company will invest approximately \$1 Million in improvements to the Warehouse Site and personal property serving the Distribution Center;

WHEREAS, moreover, the Distribution Center will result in employment of not less than forty-five (45) full time employees ("FTEs"), that, on average, are paid a salary of \$52,300.00, annually at the Distribution Center;

WHEREAS, in addition, Company's stormwater improvements near the Site will cause the 6.64 acres (inclusive of the retention pond) immediately adjacent and south of the Site to be developable (the "Stormwater Improvements");

WHEREAS, Company has agreed to complete the Design Center Project and operate its Distribution Center at the Warehouse Site, if City and Commission, as applicable, satisfy the obligations included in Section 5 herein;

WHEREAS, in fact, Company is in the process of filing with City's Technical Advisory Committee, so that Company can expedite development and construction of the Design Center Project, upon approval of this Agreement; and

WHEREAS, each of City and Commission has determined that it is in the best interest of City to induce Company to satisfy in full the Company Obligations (as defined in Section 4), including, among others, the completion of the Design Center Project.

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

Section 1. Recitals. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.

Section 2. Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent of this Agreement.

Section 3. Definitions.

- A. "City" shall have the meaning set forth in the preamble.
- B. "City Bodies" shall mean, jointly, City and Commission.
- C. "City Fees" shall mean impact fees, park impact fees, variance or re-zoning fees, stormwater permit fees, improvement location fees, building permit fees and all applicable local fees if assessed by City and directly related to Design Center Project.
- D. "City Obligations" shall mean the obligations of Commission and City, as applicable, and set forth in Section 5.
- E. "Commercial Property Forgivable Loan" has the meaning set forth in the Section 5.
- F. "Commission" shall have the meaning set forth in the preamble.
- G. "Company" shall have the meaning set forth in the preamble.
- H. "Company Obligations" shall have the meaning set forth in Section 4.
- I. "Concept Plan" shall mean documents attached as Exhibit A, which Concept Plan is illustrative of the Design Center Project and may change, from time to time, throughout City's standard review process.
- J. "Cure Period" shall mean a period of: (a) ten (10) days after written notice of an event of default in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the event of default; provided that, if such Event of Default is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the event of

default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period or implements an approved plan to remedy the default; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than sixty (60) days after the date of the default, unless otherwise agreed by the parties.

- K. **“Design Center Project”** shall have the meaning set forth in the Recitals.
- L. **“Developer”** shall have the meaning set forth in the preamble.
- M. **“Disbursement Request”** shall mean the form of request attached as Exhibit B, which Disbursement Request shall: (i) be prepared by Company; and (ii) be accompanied by: (1) a description of the work therein, (2) a summary of the expenses included in such Disbursement Request, and (3) all related invoices, lien releases, and/or other information reasonably necessary to establish the accuracy of the information set forth in the request and certification.
- N. **“Effective Date”** shall have the meaning set forth in the preamble.
- O. **“Employment Commitment”** shall have the meaning set forth in Section 4(A).
- P. **“FTE(s)”** shall have the meaning set forth in the Recitals.
- Q. **“Investment Commitment”** shall have the meaning set forth in the Section 4(B).
- R. **“Laws”** all applicable laws, statutes, and/or ordinances and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees including without limitation City’s Unified Development Ordinance, and the Americans with Disabilities Act, as amended.
- S. **“Property”** shall mean the property depicted on Exhibit C.
- T. **“Public Improvements”** shall mean the improvements generally described in Exhibit D and related installments and improvements in furtherance of stormwater improvements and the shared public access way serving the Property.
- U. **“Reimbursement Amount”** shall have the meaning set forth in Section 6(B).
- V. **“Required Permits”** shall mean all permits, licenses, approvals, and consents required by the Laws for construction and use of the Design Center Project and Distribution Center.
- W. **“Site”** shall mean a portion of the Property located within the Saxony Corporate Campus and depicted on Exhibit E (the “Site”).
- X. **“Stormwater Improvements”** shall have the meaning set forth in the Recitals.
- Y. **“Term”** shall mean a period of time commencing on the Effective Date and continuing for five (5) years (60 months) thereafter.
- Z. **“Warehouse Site”** shall have the meaning set forth in the Recitals.

Section 4. Company’s Obligations.

In consideration and as a material inducement for Commission and City providing the incentives included in Section 5, Company shall perform or cause to be performed the following:

- A. Employment Commitment. Employ not less than (i) fifteen (15) FTEs at the Site who are paid, on average, \$61,500, annually by or before June 30, 2026, and (ii) forty-five (45) FTEs at the Distribution Center, that, on average, are paid a salary of \$52,300.00, annually by or before June 30, 2026 (jointly, the “Employment Commitment”);
- B. Investment. By or before June 30, 2026, (i) invest not less than \$17 Million designing and constructing the Design Center Project, and (ii) invest not less than \$1 Million

preparing the Warehouse Site to serve as the Distribution Center (jointly, the “Investment Commitment”);

- C. Stormwater Improvements. Construct and install the Stormwater Improvements to cause the Site and the balance of the Property to be developable; and
- D. Compliance. Utilize the Commercial Property Forgivable Loan as specifically required herein and strictly comply with all terms and provisions of this Agreement and the Laws.

(the above A through D, collectively, the “Company Obligations”).

Section 5. City’s And Commission’s Obligations.

In consideration and as a material inducement for Company satisfying in full the Company Obligations, Commission and City, as applicable, shall perform or cause to be performed the following:

- A. Forgivable Loan. Pursuant to and consistent with Ind. Code §36-7-11.9 and -12, City shall provide Company up to the maximum amount of Nine Hundred Forty-Two Thousand Two Hundred Sixty-Eight and no/100 Dollars (\$942,268.00) through a forgivable loan to be funded by the Commission to design and install the Public Improvements on or about the Property (the “Commercial Property Forgivable Loan”), which Commercial Property Forgivable Loan and any portion thereof shall be provided to Company pursuant to a Disbursement Request, and such additional amount as necessary to cover the costs and fees of counsel to the City and Commission related to this Agreement and the Commercial Property Forgivable Loan; and
- B. City Fees. Provided that Company is fully compliant with the Laws and has properly obtained the Required Permits (when required to be obtained), City shall waive or pay on Company’s behalf all City Fees related to design and construction of the Design Center.

(the above A and B, jointly, the “City Obligations”).

Section 6. Compliance Requirements & Reimbursement.

- A. Compliance Information. During the Term, City Bodies may request information from Company concerning its fulfillment of the Employment Commitment and Investment Commitment (individually or collectively, “Compliance Information”), and Company shall provide Additional Compliance Information within thirty (30) days of such request.
- B. Repayment of the Commercial Property Forgivable Loan. If, at any time during the Term, Company fails to either satisfy the Employment Commitment or commence or continue construction of the Design Center Project to ensure a completion date by June 30, 2026, (i) Company shall, within ten (10) days of written request for repayment, repay Commission an amount equal to the following: (i) with respect to the failure to satisfy the

Employment Commitment, the percentage Company fell below the Employment Commitment x the portion of the Commercial Property Forgivable Loan funded by Commission, and with respect to the failure to commence or continue construction of the Design Center Project an amount equal to that amount disbursed to the Company from the Commercial Property Forgivable Loan (in each instance, the “Reimbursement Amount”); and (ii) Company’s rights to any further payments under this Agreement shall automatically terminate. Company shall pay Commission the Reimbursement Amount within fifteen (15) days of receiving an invoice for the applicable Reimbursement Amount. If not paid in full by such due date, the Reimbursement Amount shall bear interest from the due date thereof to the date of payment at the prime rate of interest, as reported in the Wall Street Journal, plus five percent (5%) per annum. Commission shall further be entitled to its reasonable attorneys’ fees and other costs incurred in collecting the Reimbursement Amount. Company’s obligation to repay Commission pursuant this Section 6(B) shall survive termination of this Agreement. With respect to the failure to (1) commence construction, it shall be a failure to commence, if Company fails to commence within ninety (90) days of acquiring the Site, and (2) continue construction, it shall be a failure to continue construction if all construction work of a material nature ceases with respect to the Design Center Project for a period of at least one hundred twenty (120) consecutive days or for more than a total of two hundred (200) days during any three hundred sixty (360) day period, Notwithstanding the foregoing or anything included herein to the contrary, if Company has repaid the Commercial Property Forgivable Loan, no additional amount shall be owed pursuant to this Section 6(B).

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

Section 7. Default & Termination

- A. Default. It shall be a default under this Agreement if either party fails to perform or observe any term or condition of this Agreement.
- B. Termination for Default. Subject to the Cure Period, City Bodies shall be entitled to terminate this Agreement upon five (5) days’ written notice if Company is in default hereunder.
- C. Immediate Termination. City Bodies may immediately terminate this agreement upon written notice if (a) Company (i) engages in gross misconduct (notwithstanding whether

such conduct concerns the subject of this Agreement); or (ii) it becomes generally known that Company is insolvent, plans to make a general assignment for the benefit of creditors, is expected to file a voluntary petition of bankruptcy, suffers or permits the appointment of the receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, dissolved or liquidated, voluntarily or otherwise.

Section 8. Representations and Warranties.

- A. City and Commission. Each of City and Commission represents and warrants to Company that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) City is a municipal corporation organized and existing under the laws of the State of Indiana; (iii) Commission is the governing body of the City of Noblesville Redevelopment Department organized and existing under the laws of the State of Indiana; (iv) subject to completion of the applicable proceedings required by Laws, it: (1) has the power to enter into this Agreement; (2) has the power to perform its obligations hereunder; (3) has been duly authorized by proper action; (4) has the power to execute and deliver this Agreement; and (5) has the power to perform its obligations hereunder; and (vi) this Agreement is the legal, valid, and binding obligation of it.
- B. Company. Each of Owner and Developer represents and warrants to City and Commission that: (i) Developer is an Indiana limited liability company, duly existing and validly formed under the laws of the State of Indiana; (ii) Owner is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana; (iii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iv) it has the authority: (1) to enter into this Agreement; and (2) to perform its obligations hereunder; (v) it duly has been authorized by proper action: (1) to execute and deliver this Agreement; and (2) to perform its obligations hereunder; (vi) this Agreement is the legal, valid, and binding obligation of Company; (vii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. If Company has employees, Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Company has employees, Company will state, in all solicitations or advertisements for employees placed by or on behalf of Company, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin.

Section 9. Assignment. Prior to substantial completion of the Design Center, Company shall not assign this Agreement without the approval of City Bodies, and City Bodies shall not assign this Agreement without the prior written approval of Company; provided that: (i) without the prior written approval of Company, City Bodies may assign this Agreement to another agency or instrumentality of City that legally is able to perform the respective obligations hereunder; and (ii) without the prior written approval of City Bodies, Company may assign, partially or in its entirety, this Agreement to a third party controlling, controlled by or under common control with Company

and/or any subsidiary or affiliate of Company that has full power, authority, and capability to accept such assignment and perform the obligations of Company hereunder.

Section 10. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (A) delivered in person to the other party; (B) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (C) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to City and Commission at 16 South 10th Street, Noblesville, Indiana 46060, Attn: Amy Smith, Economic Development Manager, with copies to Dennis Otten, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204; and to Company at Stephen Biette, COO CFO, 8600 Allisonville Road, Indianapolis, Indiana 46250 with copies to: Jennifer C. Messer, 202 E. 71st Street, Indianapolis, Indiana 46220. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

Section 11. Force Majeure. Notwithstanding anything to the contrary set forth herein, if any party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (A) the party asserting Force Majeure shall deliver written notice to the other party; (B) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (C) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

Section 12. Merger. All prior agreements, understandings, and commitments with respect to the transaction contemplated herein are hereby superseded, terminated, and merged herein, and shall be of no further force or effect. Absent an amendment to, or modification of, this Agreement in accordance with this section, in no event shall City Bodies be obligated to perform any work, incur any expenses, or provide any incentives other than as specifically set forth in this Agreement. This Agreement may be amended or modify only by written instrument executed by City Bodies and Company. Notwithstanding the forgoing, the parties acknowledge and agree that in connection with the Commercial Property Forgivable Loan to be funded by the Commission the City and the Company will enter into a separate Forgivable Loan Agreement setting forth in more detail the specific terms and conditions of the Commercial Property Forgivable Loan. Such Forgivable Loan Agreement is separate and apart from, and is not merged into, this Agreement.

Section 13. Miscellaneous. Subject to Section 9, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Company, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Company waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Company may have to: (i) assert the doctrine of “forum non conveniens”; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by City, Commission, and Company. All Exhibits to this

Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, employment relationship or joint venture between Company, City and Commission or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in Fishers, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. Any amounts due or to be paid hereunder shall bear interest at the prime rate as published in *The Wall Street Journal* plus five percent (5%) per annum from the date due until paid.

Section 14. Exhibits.

Exhibit A	Concept Plan
Exhibit B	Disbursement Agreement
Exhibit C	Property
Exhibit D	Public Improvements
Exhibit E	Site

[signatures on following page]

City
City of Noblesville, Hamilton County, Indiana

Chris Jensen, Mayor

Commission
City of Noblesville Redevelopment Commission

_____, President

Attest: _____
_____, Secretary

Developer
Kittles Properties LLC

By: _____
_____, Managing Member

Owner

By: _____
_____, President

**EXHIBIT A
CONCEPT PLAN**



**EXHIBIT B
CONSTRUCTION DISBURSEMENT REQUEST**

Disbursement No.: _____

Date: _____

Disbursement Amount: \$ _____

_____ (“Owner”) hereby requests the disbursement of funds in the Disbursement Amount stated above and certifies that such amount is in accordance with the attached invoices and other documentation provided in support of this Request.

This Construction Disbursement Request shall also constitute a representation and affirmation to City that the following information is accurate in all respects:

- 1) Description of the work performed:

- 2) Summary of expenses:

- 3) Attach all invoices and related documentation.

- 4) If outside vendors are to receive payment, complete Schedule I.

“Owner”

By: _____

Printed: _____

Title: _____

Schedule I

[Narrative summary of expenses included in the Construction Disbursement Request]

Vendor

Amount

**EXHIBIT D
PUBLIC IMPROVEMENTS**

Public Infrastructure	8/22/2024
Item	Cost
Offsite Storm Water	
Storm Manholes	\$ 36,948
12" HDPE pipe	\$ 6,800
15" HDPE pipe	\$ -
18" HDPE pipe	\$ 13,818
24" HDPE pipe	\$ 11,036
30" HDPE pipe	\$ 28,044
End section 24-30"	\$ 6,675
BMP	\$ 78,500
Storm water pond excavation	\$ 401,625
Pond stabilization	\$ 22,600
Watermain Extension - Indiana American	
12" water main extension	\$ 92,075
Fire Hydrant	\$ 17,800
Connections & fittings main extension	\$ 7,500
Shared Public Access Road	
Asphalt Paving - Heavy Duty	\$ 76,960
Curbs	\$ 11,988
Asphalt Paving, Striping, Markings	\$ 1,500
ADA Ramps	\$ 4,920
Lime Stabilization	\$ 15,076
Erosion Control	\$ 1,850
Contingency	\$ 20,893
General Conditions/Overhead	\$ 85,661
Total of Scope of Work	\$ 942,268

