

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") entered into on the dates set out herein, by and between the City of Noblesville, Hamilton County, Indiana, ("the City"), by its Board of Public Works and Safety and Common Council; and Terry Lee Crossing, LLC ("the Landowner").

WITNESS THAT:

WHEREAS, the Landowner is the owner of two (2) parcels of real estate located south and east of the intersection of State Road 32 and State Road 37, within the City of Noblesville, which real estate consists of Hamilton County Tax Parcel 11-11-05-00-00-001.000 containing 55.012 acres more or less, and Hamilton County Tax Parcel 11-07-32-00-00-024.000 containing 8.07 acres more or less (jointly, "the Real Estate"); and,

WHEREAS, all of the Real Estate is located within the Stony Creek Economic Development Area and the City, acting through its Redevelopment Commission has the authority to collect Tax Increment from the Area and use it for the purposes set out in Indiana Code 36-7-14; and,

WHEREAS, notwithstanding the fact that the Real Estate is located at one of the busiest intersections in the City, there are numerous geological, drainage, and other development issues which make the Real Estate extremely difficult and expensive to adapt for development; and,

WHEREAS, the Landowner and the City are desirous of entering into an Agreement to facilitate the development of the Real Estate in order to increase the tax base of the City; to attract new jobs to the City; and generally enhance economic development within the City; and,

WHEREAS, it is of mutual benefit of the City and the Landowner to enter into this Agreement for the reasons set out above.

IT IS THEREBY AGREED by and between the parties as follows:

SECTION I. DEFINITIONS. The terms in this Agreement are defined as follows:

Section 1.01. Access Projects. The Access Projects shall include the following:

- (a) The construction of dedicated lanes to restrict turns into, and out of the Real Estate as a right-in/right-out intersection at the existing intersection of State Road 37 and Cherry Street;
- (b) The construction of a dedicated improvement to permit a left-in lane for southbound State Road 37 into the Real Estate at Cherry Street;
- (c) The construction of dedicated lanes to restrict turns into and out of the Real Estate as a right-in/right-out intersection at State Road 32 and the northeast corner of Lot 1 of the Real Estate;
- (d) The construction of the Cherry Street Extension as defined below;
- (e) The payment of all design and permitting costs for the above improvements.

Section 1.02. Cherry Street Extension. Cherry Street Extension shall include the extension of Cherry Street from the State Road 37 right of way, east onto the Landowner's Real Estate a distance of approximately four hundred feet (400').

Section 1.03. Cumberland Road Vacation. Cumberland Road Vacation means the vacation process initiated and completed by the City to vacate the portion of Cumberland Road located on Lot 3 that will be replaced by the Frontage Road extending

from Cherry Street and connecting to Presley Drive and more specifically depicted on Exhibit C which is attached hereto and incorporated herein.

Section 1.04 Dealership. The Dealership shall include the construction of a new automobile sales and service dealership on Lot 1 of the Landowner's Real Estate, which shall include a new and used car sales facility, service facility and other improvements on approximately seven (7) acres.

Section 1.05. Drainage Project. The Drainage Project, shall include all plans, specifications, engineering, permits, and construction and/or reconstruction or remediation of the regulated drain, including arms, which run through the Real Estate, detention ponds as are necessary to develop the Real Estate, the Access Projects, and Presley Drive; the design and approval of a master drainage project for the development of all of the Real Estate; and dedication of the land for all detention, mitigation, and drainage improvements described in the Master Drainage Plan.

Section 1.06. Eastern Development. The Eastern Development, shall include Lots 5, 6, 7, and 8 located along Presley Drive as shown on the Site Plan attached as Exhibit A.

Section 1.07. Excess Tax Increment. Excess Tax Increment means the amount of Tax Increment collected by the City from the Real Estate and Hanlon Real Estate, in property tax collection years 2016 through 2025, which is greater than Four Hundred Seventy Thousand Dollars (\$470,000) per year, or Two Hundred Thirty-five Thousand Dollars (\$235,000) semi-annually.

Section 1.08. Frontage Road. The Frontage Road shall consist of a road or any part of a road shown on the Site Plan which shall run southerly from the Cherry Street Extension and connect to the former right of way of Cumberland Road on the Landowner's west boundary to the southwest corner of the Landowner's Real Estate. The Frontage Road shall then go east, along the southern boundary of the Landowner's Real Estate to Presley Drive.

Section 1.09. Hanlon Real Estate. Hanlon Real Estate means the two (2) parcels of land located along the far east boundary of the Real Estate known as Hamilton County Tax Parcels 11-11-05-00-00-001.002 and 11-11-05-00-00-001.001, and shown on Exhibit B.

Section 1.10. Lots. "Lots" shall refer to the numbered lots shown on the Site Plan.

Section 1.11. Noble Real Estate. Noble Real Estate means the three (3) parcels of land owned by Noble Industries, Inc., located north and east of the Real Estate known as Hamilton County Tax Parcels 10-07-32-00-00-018.000, 10-07-32-00-00-019.000, and 10-07-32-00-00-017.001, and shown on Exhibit B.

Section 1.12. Phase II Development. Phase II Development shall constitute the construction of buildings on Lots 2, 3, and 4 of the Site Plan including a sit down restaurant, without drive-thru services, a bank, or such other comparable uses approved by the City, which Development is anticipated by the Landowner to generate approximately One Hundred Twenty Thousand Dollars (\$120,000) in annual Tax Increment.

Section 1.13. Presley Drive Project. The Presley Drive Project shall include the design, permitting, and construction of Presley Drive as a three (3) lane road, including trails, from Pleasant Street to State Road 32, including a round-a-bout intersection at Pleasant Street and Presley Drive; a round-a-bout intersection at State Road 32 and Presley Drive; the extension of sanitary sewers along Presley Drive; and all costs of design and permits for the Presley Drive Project.

Section 1.14. Site Plan. The Site Plan means a conceptual Site Plan prepared by Structurepoint which is attached hereto and incorporated herein as Exhibit A to this Agreement.

Section 1.15. Tax Increment. Tax Increment means the real property taxes generated from all, or a designated part, of the Real Estate, arising out of the increase in the assessed value resulting from the construction of taxable improvements on a parcel of the Real Estate.

SECTION II.

Section 2.01. The Access Project. The City shall design and obtain all necessary permits from INDOT for the Access Project. The City shall manage and pay the costs to construct the Access Project.

Section 2.02. The Landowner shall dedicate without cost all right of way for the Access Projects to INDOT, or the City, as applicable. The dedication shall occur sixty (60) days after final approval of this Agreement or thirty (30) days after dedication documents are presented to the Landowner by the City, whichever is later. All improvements within the dedicated right of way for the Access Projects shall be maintained by INDOT or the City.

Section 2.03. The Access Project shall be substantially complete and available for use on or before July 1, 2014, or sixty (60) days prior to the anticipated opening of the Landowner's Dealership, whichever last occurs.

Section 2.04. The costs of the Access Project shall be paid by the City from either cash or the proceeds of a Tax Increment bond issued by the City, and shall include the costs of all fees paid for by the City for engineering and design costs to outside consultants; all costs paid for studies necessary to obtain permits from INDOT; and construction inspection costs.

SECTION III. THE DRAINAGE PROJECT.

Section 3.01. The Landowner shall pay the costs to design, permit, and construct the Drainage Project.

Section 3.02. The City shall pay for part of the excavation, construction, construction inspection, reconstruction, and remediation costs of the Drainage Project, including but not limited to the compacting and removal of excess dirt necessary to complete the drainage project ("Eligible Drainage Costs"). The amount of the City's payment of Eligible Drainage Costs prior to 2016, shall equal One Million Five Hundred Thousand (\$1,500,000) LESS the actual costs incurred by the City for the Access Project described in Section 2.04 above, but in no event shall the City's initial contribution to the Eligible Drainage Costs be less than One Million One Hundred Fifty Thousand Dollars (\$1,150,000).

Section 3.03. The City's share of the Eligible Drainage Costs shall be paid from cash or a Tax Increment bond issued by the City. The City shall either 1) reimburse the Landowner; or 2) directly pay the Landowner's contractor for such costs. The Landowner shall designate, in writing, whether to pay the costs directly or reimburse the Landowner. The City's payments shall equal ninety percent (90%) of the invoices as approved by the City Engineer, with ten percent (10%) of the invoiced amount being retained and paid after the Drainage Project is complete, inspected, and accepted.

Section 3.04. The City shall not pay any cost of any part of the Drainage Project which is constructed, or partially constructed, without the issuance to the Landowner, or its designated contractor, of all permits necessary for the work, including, but not limited to, permits from the Indiana Department of Natural Resources, the Indiana Department of Environmental Management, Army Corps of Engineers, and/or the Hamilton County Drainage Board.

Section 3.05. The payments for the Drainage Project shall be paid by the Clerk-Treasurer of the City to Landowner and/or contractors of the Landowner upon presentation of a Certificate for Payment in the form of Exhibit D, approved by the Landowner's designated representative and the City Engineer, which approval shall not be unreasonably withheld. All requests for payment of Eligible Drainage Costs shall include invoices, lien waivers, form W-9s, and such other documentation traditional for approval of payment of claims for public works projects. The parties acknowledge that the Eligible Drainage Costs paid by the City limited by Section 3.02 and 3.06 and may not fully fund all of the costs incurred by the Landowner for the Drainage Project.

Section 3.06. In the event the Eligible Drainage Costs incurred by the Landowner are greater than the amount defined in Section 3.02 above, the City agrees to reimburse the Landowner for all or part of the balance of Eligible Drainage Costs as described in this Section. The repayment of those costs shall be paid as follows:

- (a) During the construction of the Drainage Project, the Landowner shall provide the City proof of all Eligible Drainage Costs as set out in Section 3.05 above.
- (b) Upon completion and acceptance of the Drainage Project, the Landowner and the City shall prepare an Addendum to this Agreement to be approved by the designated representatives of the Landowner and the Mayor and City Engineer on behalf of the City, which Addendum shall include the agreed Eligible Drainage Costs incurred by the Landowner; LESS the amount of Eligible Drainage Costs paid by the City pursuant to Section 3.02 above.
- (c) If there are unpaid or unreimbursed Eligible Drainage Costs at the completion of the Drainage Project, the City shall pay the remainder of the Eligible Drainage Costs, without interest, as set out in Section VI.

Section 3.07. The Landowner, its contractors, subcontractors, and successors in title to all or part of the Real Estate:

- (a) Shall not, upon completion of Presley Drive, authorize or permit any of the soil excavated from the Real Estate to be placed on any right of way to

be used and dedicated to the City, without the consent of the City, which consent shall not be unreasonably withheld if there is a sound engineering purpose for the placement;

- (b) Shall designate a location on the Real Estate for the City and its contractors to waste all soil excavated as pipe and trench spoils of the City, to construct the sanitary sewer to be built under Presley Drive;
- (c) For all Lots contiguous to Presley Drive, dirt shall not be stacked, deposited, or stored above the elevations shown on the City's preliminary grading plans for subgrade of Presley Drive after completion of Presley Drive without prior written consent of the City. Said plans shall be prepared by the City and available to the Landowner by July 31, 2013.

Section 3.08. Upon completion of Presley Drive, no stockpile of excavated material shall remain on any portion of the development site for storage of waste dirt material except as temporarily necessary for construction of the development or any portion of the development. The excess dirt shall be spread at final grade or removed within thirty (30) days after completion of such construction.

SECTION IV. THE PRESLEY DRIVE PROJECT.

Section 4.01. The City shall design, permit, construct, and acquire right of way from third parties for the Presley Drive Project. The City shall pay the costs of the Presley Drive Project from road impact fees, sewer fees, cash, and the proceeds of a Tax Increment bond. The City may also enter into one or more agreements with INDOT to pay part of the costs of the Presley Drive Project.

Section 4.02. The Landowner shall dedicate, without costs, a seventy (70') foot right of way for Presley Drive through the Real Estate at the approximate location show on the Site Plan. The dedication shall occur sixty (60) days after final approval of this Agreement or thirty (30) days after dedication documents are presented to the Landowner by the City, whichever is later. All improvements within the dedicated right of way for the Presley Drive Project shall be maintained by INDOT or the City.

Section 4.03. The City shall begin construction of Presley Drive during the 2014 construction season, if the Dealership has foundations in place by or before February 1, 2014. The Presley Drive Project shall be substantially complete and available for use by January 1, 2015, unless there are delays by INDOT, or the construction of the Dealership, which would delay the beginning of the Presley Drive Project.

SECTION V. THE FRONTAGE ROAD.

Section 5.01. The Landowner may, at any time, design and construct all, or part, of the Frontage Road. The Frontage Road plans shall be reviewed by the City prior to construction and shall be constructed as a two (2) lane standard with curbs and gutters. Construction of curb cuts shall be constructed for each lot along the Frontage Road as the lots are developed. The Frontage Road shall be designed and built to City standards, and inspected by the City Engineering Department. The City shall pay the costs of the construction of the multi-use path along the east-west portion of the Frontage Road. The Landowner shall dedicate a total of sixty (60') feet of right of way for the future Midland

Trail and the Frontage Road, along the Landowner's southern property line from Presley Drive to the Landowner's west property line. The Landowner shall dedicate a forty (40') foot right of way for the future Midland Trail from Presley Drive to the Landowner's east property line. Said dedication shall be included in the Developer's plat. Upon initiation of construction of the Frontage Road along Lot 3, the City will cause the Cumberland Road Vacation.

Section 5.02. The City agrees to accept the dedication of the Frontage Road after completion and final inspection by the City. Upon dedication by the Landowner and acceptance by the City, the City shall maintain the Frontage Road.

Section 5.03. The City will pay to the Landowner's contractors and/or reimburse the Landowner part of the costs of construction and construction inspection of the Frontage Road or any part of the Frontage Road ("Eligible Frontage Road Costs"). The payment(s) of the Eligible Frontage Road Costs shall equal the lesser of:

- (a) The annual Tax Increment from the Phase II Development and Lot 4 times ten (10);
- (b) One Million Two Hundred Thousand Dollars (\$1,200,000); or
- (c) The cost of the Frontage Road including, construction, and construction inspection costs.

Section 5.04. The reimbursement of the Eligible Frontage Road Costs of the Frontage Road shall not be payable by the City until the buildings on Lots 2, 3 or 4, have received a Certificate of Occupancy and the Tax Increment from the lot or lots has been estimated by the Hamilton County Assessor.

Section 5.05. The City's share of the Eligible Frontage Road Costs shall be paid from cash or a Tax Increment bond issued by the City. The City shall either 1) reimburse the Landowner; or 2) directly pay the developer's contractor for such costs if the costs are due under Section 5.04. The Landowner shall designate, in writing, whether to pay the costs directly or reimburse the Landowner. The City's payments shall equal ninety percent (90%) of the invoices as approved by the City Engineer, with ten percent (10%) of the invoiced amount being retained and paid after the applicable part of the Frontage Road Project is complete, inspected, and accepted.

Section 5.06. The Eligible Frontage Road Costs shall be paid by the Clerk-Treasurer of the City to Landowner, and/or contractors of the Landowner, upon presentation of a Request for Payment in the form of Exhibit D, approved by the Landowner's designated representative and shall include invoices, lien waivers, form W-9s, and such other documentation traditional for approval of payment of claims for public works projects. The parties acknowledge that the Frontage Road costs paid by the City are not intended to fully fund all of the Frontage Road costs incurred by the Landowner.

Section 5.07. In the event the Eligible Frontage Road costs incurred by the Landowner are greater than the amount defined in Section 5.03 above, the City agrees to reimburse the Landowner for all or part of the balance of Eligible Frontage Road Costs as described in this Section 5.07. The repayment of those costs shall be paid as follows:

- (a) During the construction of the Frontage Road, the Landowner shall provide the City proof of all Eligible Frontage Road Costs as set out in Section 5.03 above.

- (b) Upon completion and acceptance of the Frontage Road or any portion of the Frontage Road, the Landowner and the City shall prepare an Addendum to this Agreement to be approved by the designated representatives of the Landowner and the Mayor and City Engineer on behalf of the City, which Addendum shall include the agreed Eligible Frontage Road Costs incurred by the Landowner; LESS the amount of Eligible Frontage Road Costs paid by the City pursuant to Section 5.03 above.
- (c) If there are unpaid or unreimbursed Eligible Frontage Road Costs at the completion of all or any part of the Frontage Road, the City shall pay the remainder of the Eligible Frontage Road Costs, without interest, as set out in Section VI.

SECTION VI. EXCESS PROJECT COSTS

Section 6.01. The Excess Project Costs shall equal the total of:

- (a) The amount of unreimbursed Eligible Drainage Costs described in Section 3.02, which remain unpaid under Section 3.02 of this Agreement;
- (b) Twenty-five Thousand Dollars (\$25,000) toward drainage design costs;
and
- (c) The amount of unreimbursed Eligible Frontage Road Costs described in Section 5.03, which have not been reimbursed to the Landowner.

Section 6.02. The Excess Project Costs (if any) which are described above shall be paid to the Landowner from fifty percent (50%) of the Excess Tax Increment collected from the Real Estate and Hanlon Real Estate in property tax collection years 2016 through 2025. After taxes collected in 2025, all Excess Increment will be available to the City or the Noblesville Redevelopment Commission. Any remaining unreimbursed Eligible Drainage Costs after 2025, shall be the expense of the Landowner.

Section 6.03. The payment of Excess Project Costs shall be paid from Excess Tax Increment as defined in Section 1.07. Said payments shall be payable on February 1st and July 1st of each year beginning July 1, 2016 until February 1, 2026, or until all Excess Project Costs are reimbursed in full, whichever is earlier.

Section 6.04. In the event the Landowner, its contractors, subcontractors, fail to remove any excess dirt stored or stockpiled in violation of Section 3.07 above, the City after giving the Landowner at least ninety (90) days to remove the excess dirt, may remove the excess dirt and deduct the cost of the removal thereof from the payments for Excess Project Costs owed to the Landowner.

SECTION VII. SEWER FEES AND IMPACT FEES.

The Landowner and its successors in interest to all, or any part, of the Real Estate shall pay all sewer tap on and availability charges, and road impact fees as applicable to similar development within the City.

SECTION VIII. SANITARY SEWER SERVICE.

Section 8.01. Subject to payment of all applicable fees, the Landowner shall be permitted to connect to and use the existing sanitary sewer ("the Sewer") which presently runs through and is adjacent to Lots 1, 2, 3 and 4.

Section 8.02. The Landowner may relocate and construct a replacement of all or part of the Sewer, if necessary, to develop Lots 1, 2, 3 and 4. Such relocation shall be constructed to City specifications and will be equal, or smaller in diameter than the existing Sewer, and be located to continue to serve the upstream users of the Sewer, if necessary. If any, or part, of this section of Sewer must be relocated as part of the Drainage Project, those costs shall be added to the Eligible Drainage Costs.

Section 8.03. If the Landowner requires relocation of the Sewer, the Landowner shall pay the costs of any relocation and dedicate an exclusive sanitary sewer easement to the City to allow maintenance of the existing and/or replacement Sewer.

Section 8.04. Landowner acknowledges and agrees that the existing Sewer is in the City's exclusive easement for maintenance and/or replacement of the Sewer.

SECTION IX. DEDICATION OF EASEMENTS.

In the event the Landowner has not sold all or a portion of Lot 6 to Noble Industries Inc., one of its owners, or a related company prior to January 2, 2014, the Landowner shall dedicate a sixty (60) foot drive way and utility easement to the City along the north boundary of the Real Estate. The Easement shall be contiguous to the entire Noble Real Estate southern boundary and connect to the right of way of the Presley Drive Project.

SECTION X. PLANNING AND ZONING.

Section 10.01. Pursuant to the implementation of a Planned Development which, in accordance with approval by necessary bodies may include various development waivers and stipulations, the City agrees that the property within the Real Estate and the development thereof shall be subject to the Planned Business zoning district standards of the City, excluding the following uses: Temporary Shelters; Church, Temple, Place of Worship; Penal or Correctional Facility; Adult Cabaret; Adult Media Store; Adult Motion Picture Theater; Sex Shop; Laundry/Dry Cleaners with On-Site Plant; Restaurant with Drive-Thru; and Supply Yard.

Section 10.02. The City shall also approve the reduction of building and other setbacks on the west side of the Real Estate as depicted on Exhibit A, which approval shall be subject to concurrence by INDOT.

SECTION XI. GUARANTY OF TAX INCREMENT REVENUES.

Section 11.01. In order to induce the City to use Tax Increment and other funds, to pay the costs described in Section II, III, and IV above, the Landowner agrees to make payments to the City ("Guaranty Payments") as described in this Section. The total maximum annual Guarantee Payments shall be Three Hundred Forty Thousand Dollars (\$340,000) beginning with taxes assessed in 2015, payable in 2016. Landowner's obligation for the Guaranty Payments shall end by or before November 2029.

Section 11.02. The Guaranty Amount for Lot 1 shall be One Hundred Forty Thousand Dollars (\$140,000) for Tax Increment resulting from real property taxes assessed March 1, 2015, payable in 2016, and thereafter.

Section 11.03. The Guaranty Amount for Lots 5, 6, 7 and 8 and the Hanlon Real Estate shall be Two Hundred Thousand Dollars (\$200,000) for Tax Increment resulting from real property taxes assessed March 1, 2015, payable in 2016, and thereafter. However, (a) once the total Tax Increment for Lots 5, 6, 7 and 8 and the Hanlon Real Estate exceeds Two Hundred Thousand Dollars (\$200,000) or (b) Landowner conveys Lot 6 to Noble Industries, Inc. or a related entity, all liability for the Two Hundred Thousand Dollars (\$200,000) Guaranty Amount for Lots 5, 6, 7 and 8 and the Hanlon Real Estate shall end, Landowner shall not be liable for Two Hundred Thousand Dollars (\$200,000) of the Guarantee Payments and the City shall prepare and record a release of the statutory liens described in Section 11.06. Landowner shall not be released from the Two Hundred Thousand Dollars (\$200,000) of Guarantee Payments if the Tax Increment from the Eastern Development does not exceed Two Hundred Thousand Dollars (\$200,000) and Lot 6 is transferred to an entity other than Noble Industries, Inc. or one of its related entities.

Section 11.04. Subject to Section 11.03 (release of \$200,000 of Guarantee Payments if Lot 6 is transferred to Noble Industries or one of its related entities), if the assessed value from Lots 1, 5, 6, 7 and 8 and the Hanlon Real Estate does not generate Tax Increment at least equal to the total Guarantee Amounts described in Section 11.01 and 11.02 beginning with real property taxes payable in 2016, the Landowner shall pay the differences between the Guarantee Payments and the Tax Increment from the Real Estate described in this subsection ("the Deficiency Amount"). Landowner's obligation to pay the Deficiency Amount shall terminate on or before November 2029.

Section 11.05. The amount of the Deficiency Amount shall be calculated in January of 2017, and thereafter, for the prior year by the City's financial advisor or the Clerk-Treasurer. The calculation and notice for payment shall be mailed to the Landowner.

Section 11.06 Statutory Lien. Subject to Section 11.03 (release of \$200,000 of Guarantee Payments if Lot 6 is transferred to Noble Industries or one of its related entities) and as permitted by IC 36-7-25-6, the duty of the Landowner to make the Guaranty Payments described above shall constitute a lien against the Real Estate in the same priority as the real estate property tax lien and shall be treated in the same manner as property taxes for purposes of IC 6-1.1-22-13. The City shall execute a release in recordable form, expressly releasing the statutory lien upon the following:

- (a) If there is building permit issued for a Lot within the Real Estate, the lien shall be released for that Lot.
- (b) If the total Tax Increment generated from the Real Estate, or expected to be generated from the Real Estate based on building permits issued, and the improvements to be built upon the Real Estate, exceed the Guarantee Amount, the lien shall be released for all of the Real Estate.

Section 11.07. The Clerk-Treasurer shall notify the City and the Landowner of any Deficiency Amount due and payable by the Landowner. The Deficiency Amount shall be deposited in the City's existing statutory allocation fund for the Area ("Allocation Fund"). The calculation of the Deficiency Payment shall be in the form set forth in Exhibit E.

Section 11.08. Payment of Deficiency Amount. (a) Upon receipt of the notice described in Section 11.07, the Landowner shall pay the Deficiency Amount to the Clerk-Treasurer on or before the immediately succeeding January 20. If notice is not received by January 5, the Deficiency Amount shall be due within ten business days of receipt of said notice. The obligation of the Landowner to pay each Deficiency Amount shall be absolute, unconditional and irrevocable and shall not be subject to diminution by set-off, counterclaim, abatement or otherwise.

Section 11.09. Tax Phase-In. The City shall not approve a tax phase-in ("Abatement") for real property taxes for Lots 1, 5, 6, 7 and 8 unless either:

- (a) The Landowner consents to tax phase-in;
- (b) The Tax Increment collected from Lots 1, 5, 6, 7 and 8 and the Hanlon Real Estate will exceed the Guarantee Amount after the approval of the phase-in; or,
- (c) The City waives payment by the Landowner of the part of the Guarantee Amount equal to the amount of the phase-in.

SECTION XII. REPRESENTATIONS OF THE PARTIES.

Section 12.01. The City has the authority to execute, deliver and perform this Agreement, and agree to follow the provisions of this Agreement.

Section 12.02. Landowner Covenants, Warranties and Representations. (a) The Landowner is an Indiana Limited Liability Corporation duly qualified to do business in the State of Indiana and has the authority to execute, deliver and perform this Agreement.

This Agreement is duly authorized, has been validly executed and delivered, and is legal, valid, binding and enforceable against the Landowner in accordance with its terms.

Section 12.03. Appeal Rights. The Landowner or its successor in title to the Real Estate will pay all property tax bills for the Real Estate owned by the Landowner before the tax bills are delinquent. The Landowner and its successors in title shall have the right to contest or appeal such tax or assessment only if the TIF generated in the prior year for Lots 1, 4, 5, 6, 7 and 8 is equal to, or exceeds, the Guaranty Amount.

Section 12.04. The Landowner expressly acknowledges that this Agreement touches and concerns the Real Estate; will be recorded on or after May 15, 2014; and is intended to be and shall be a covenant running with the Real Estate, binding upon and enforceable against the Landowner, its successors and assigns and all persons claiming an interest in the Real Estate under or through the Landowner.

Section 12.05. The Landowner expressly agrees that its obligations to pay the Guaranty Payments listed above, and each payment of a Deficiency Amount by the Landowner under this Agreement includes its obligation to pay costs of collection, including all expenses which may be paid or incurred by or on behalf of the City in connection with the enforcement of the failure of the Landowner, to make payments required hereunder or perform any other duty under this Agreement. This obligation may include, but not be limited to, the costs to obtain a judgment or foreclosure of any lien for unpaid property taxes or amounts due under this Agreement, such as reasonable

attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all title searches, policies and examinations and similar data and assurances with respect to title as the City reasonably may deem necessary to prosecute such suit.

SECTION XIII. DEFAULTS AND REMEDIES.

The Landowner's failure to pay when due any Deficiency Amount or Guaranty Payment, which are required under this Agreement, shall constitute an event of default by the Landowner under this Agreement. Both parties shall have ten (10) days after mailing a Notice of Default by the other party to cure any default or defect in this Agreement, other than the payment of taxes which must be timely paid pursuant to statute. The City may pursue any available remedy at law or in equity to enforce payment of such Deficiency Amounts and Guaranty Payment by the Landowner.

- (a) The City may place a property tax lien in the amount of any unpaid Deficiency Amount or Guaranty Payment on the Real Estate to the extent permitted by law.
- (b) The remedies of the City under this Agreement are cumulative and the exercise of any one or more of the remedies shall not be construed as a waiver of any of the other remedies of such party unless specifically so provided.
- (c) All payments due by the Landowner hereunder shall be due without relief from valuation and appraisal laws and subject to collection fees and reasonable attorneys' fees and expenses in the event of default.

- (d) Landowner waives presentment for payment, protest, notice of protest and notice of nonpayment of the Deficiency Amount due under this Agreement.

SECTION XIV. AMENDMENTS.

This Agreement may be amended only after the adoption of a resolution of the Common Council of the City approving the amendment, as provided by law, and upon the execution of the amendment by the Landowner, or its successors in title.

SECTION XV. NO OTHER AGREEMENTS.

Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter of this Agreement and is a full integration of the agreement of the Parties.

SECTION XVI. MUTUAL ASSISTANCE.

The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement. The Parties have entered into this Agreement in reliance upon their respective representations and agreements herein and the performance by the Parties of their respective obligations hereunder, both as of the date hereof and as of the date of issuance and sale of the Bonds issued by the City to finance the project, and the opinions of counsel to the City and the Landowner.

SECTION XVII. ADDITIONAL DOCUMENTS.

Within sixty (60) days of approval of this Agreement by the Noblesville Common Council, the parties shall exchange the following documents, in each case satisfactory in form and substance to the Parties and their counsel:

- (a) The opinion of the City Attorney, addressed to the City and the Landowners as to the enforceability of this Agreement against the City in accordance with its terms;
- (b) The opinion of Jennifer C. Messer, CHURCH, CHURCH HITTLE ANTRIM, Counsel to the Landowner, addressed to the City, as to the enforceability of this Agreement against the Landowner, in form and substance satisfactory to the City Attorney;
- (c) A certificate of the City as to due authorization, validity, binding nature and enforceability of this Agreement against the City;
- (d) A certificate of the Landowner as to due authorization, validity, binding nature and enforceability of this Agreement against the Landowner, including a copy of the Corporate Resolution authorizing the Landowner's approval of this Agreement;
- (e) Such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel, City Attorney or Counsel to the Landowner, may reasonably request to evidence compliance by the City, and the Landowner with legal requirements, the truth and accuracy, of the

representations contained herein and the due performance or satisfaction by the City, and the Landowner at or prior to such time, of all agreements then to be performed and all conditions then to be satisfied.

SECTION XVIII. DISCLAIMER.

Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the Parties, or by third persons, to create any relationship of third party beneficiary, of principal or agent, of limited or general partnership, of joint venture, or of any association or relationship involving the City.

SECTION XIX. NOTICES.

All notices, certificates, approvals, consents or other communications desired or required to be given under this Agreement shall be in writing and shall be sufficiently given on the day of personal delivery by messenger or courier service, or on the second day following the day on which the same shall have been mailed by registered or certified mail, postage and fees prepaid, return receipt requested addressed as follows:

If to the City: Mayor of the City of Noblesville
Noblesville City Hall
16 South 10th Street
Noblesville, IN 46060

with copies to:

City Attorney: Mr. Michael A. Howard
Attorney at Law
694 Logan Street
Noblesville, IN 46060

If to the Landowner: Terry Lee Crossing LLC,
Attn: Terry Lee
8693 East US Highway 36,
Avon, IN 46123

with copies to:
David Day
Jennifer C. Messer
CHURCH, CHURCH HITTLE ANTRIM
10765 Lantern Road, Suite 201
Fishers, IN 46037

The Parties by notice given under this Agreement, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent.

SECTION XX. MISCELLANEOUS.

Section 20.01. Headings. The paragraph headings and references are for the convenience of the Parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

Section 20.02. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 20.03. Successors and Assignees. The terms and conditions of this Agreement are to apply to and bind the successors and assigns of the City and the successors and assigns of the Landowner. However, the City may not assign this Agreement to any party without the prior written consent of the Landowner, and the

Landowner may not assign this Agreement to any party without the prior written consent of the City.

Section 20.04. Severability. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of the Agreement shall be construed as if such invalid part were never included herein and the Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

Section 20.05. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Indiana. Any action to enforce or remedy a breach of this Agreement shall be brought in or venued to a court of competent jurisdiction in the State of Indiana, and the Parties, on their behalf and on behalf of their successors and assigns, consent to personal jurisdiction in the State of Indiana.

Section 20.06. Confidentiality. Subject to the requirements of applicable law (including, if applicable, laws governing public records and public meetings), the City and its respective agents will take all reasonable steps to maintain the confidentiality of all proprietary financial and other information provided by the Landowner pursuant to this Agreement.

Section 20.07. Preparation of the Agreement. Both parties acknowledge that they have been represented by counsel during the preparation of this Agreement and have had an opportunity to review all of the provisions of this Agreement with counsel. Therefore, this Agreement shall be constructed as having been prepared by counsel for both parties.

IN WITNESS WHEREOF, the City and the Landowner have caused this Agreement to be executed on the dates set out below.

ALL OF WHICH IS AGREED by the Common Council of the City of Noblesville this 10th day of September 2013.

COMMON COUNCIL OF THE CITY OF NOBLESVILLE

Aye

Nay

_____	Brian Ayer	<u>[Signature]</u>
_____	Mark Boice	<u>[Signature]</u>
_____	Roy Johnson	_____
<u>[Signature]</u>	Greg O'Connor	_____
_____	Steve Wood	<u>[Signature]</u>
<u>[Signature]</u>	Rick L. Taylor	_____
<u>[Signature]</u>	Jeff Zeckel	_____

APPROVED and signed by the Mayor of the City of Noblesville, Hamilton County, Indiana, this 10th day of Sept, 2013.

ATTEST:

[Signature]
John Ditslear, Mayor

[Signature]
Janet Jaros, Clerk-Treasurer
City of Noblesville, Indiana

TERRY LEE CROSSING, LLC

Dated: August 9, 2013

By: Terry Lee

Printed: Terry Lee

Title: Owner

ATTEST:

By: Mike Cooke

Printed: Mike Cooke

Title: CFO

STATE OF INDIANA)
) SS:
COUNTY OF)

Before me, a Notary Public in and for this County and State, personally appeared Terry Lee, the Owner and Mike Cooke, the CFO of Terry Lee Crossing, LLC, who executed this Agreement on behalf of said limited liability company.

Witness my hand and Notarial Seal this 9th day of August, 2013.



Signature: Marlana Renea Blackburn

Printed: Marlana Renea Blackburn
NOTARY PUBLIC

My Commission Expires:

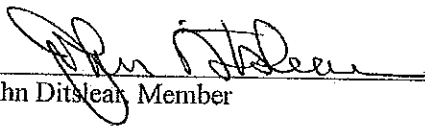
11/08/2020

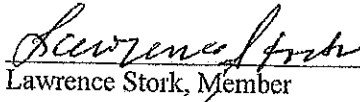
My County of Residence:

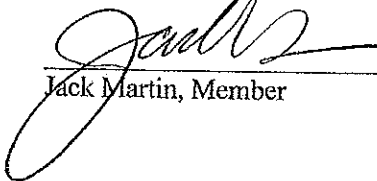
Hendricks

ALL OF WHICH IS AGREED by the Board of Public Works and Safety of the City of
Noblesville this 24 day of Sept, 2013.

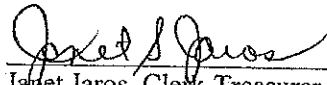
BOARD OF PUBLIC WORKS AND SAFETY
OF THE CITY OF NOBLESVILLE


John Ditslear, Member


Lawrence Stork, Member


Jack Martin, Member

ATTEST:


Janet Jaros, Clerk-Treasurer

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Subscribed and sworn to before me, a Notary Public this 24th day of September, 2013, personally appeared the within named John Ditslear, Lawrence Stork and Jack Martin as members of the Board of Public Works and Safety of the City of Noblesville, and Janet Jaros, as Clerk -Treasurer of the City of Noblesville and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

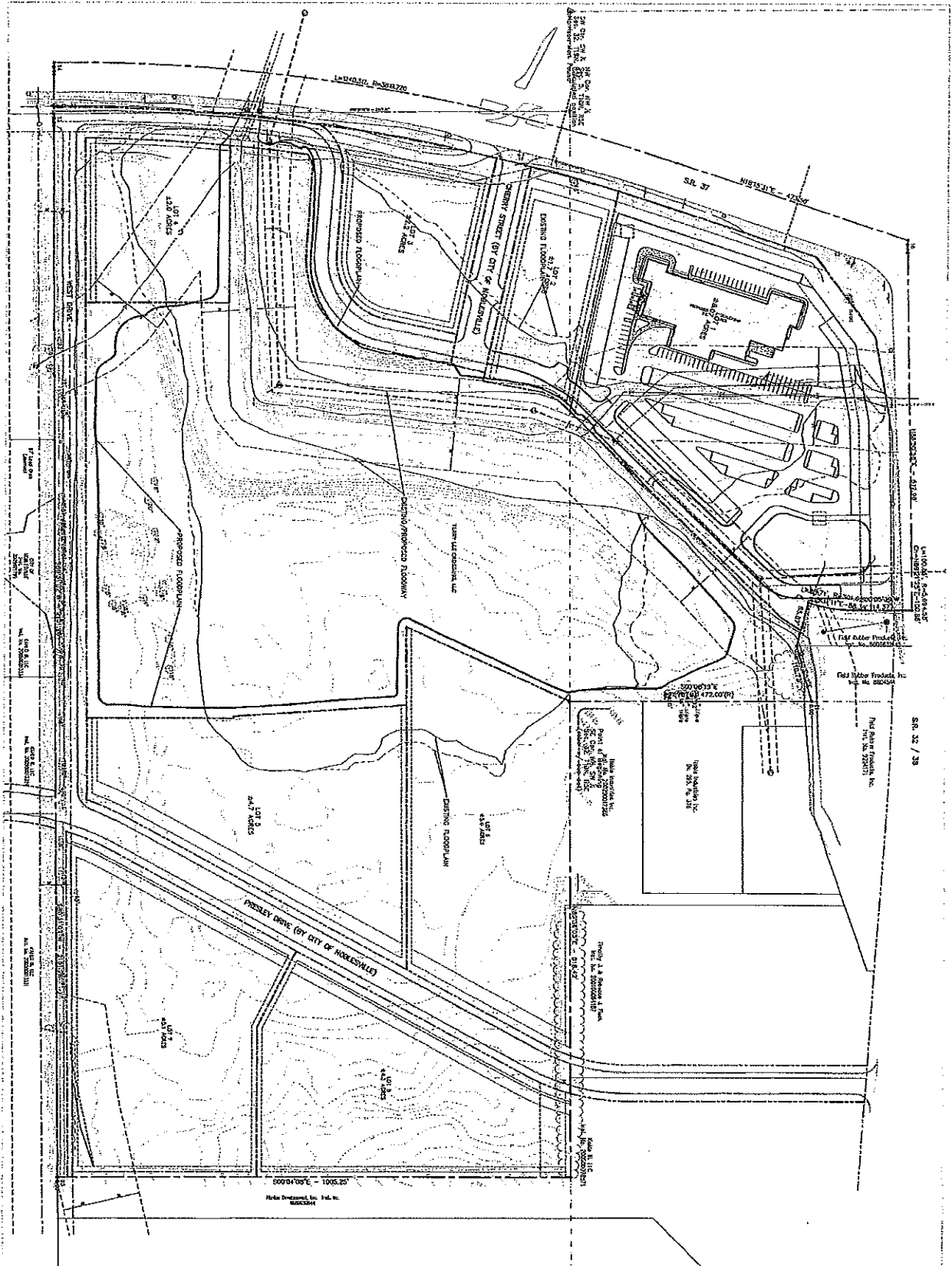
Evelyn L. Lees
Notary Public,
Residing in Hamilton County, IN

My Commission Expires:

1-11-2020

This instrument was prepared by Michael A. Howard, Attorney at Law, 694 Logan Street, Noblesville, Indiana, 46060, 773-4212.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in the document. Michael A. Howard



EX SHEET NO.	FLOODPLAIN EXHIBIT	PREPARED FOR: TERRY LEE HYUNDAI S.R. 37 & S.R.32, S.R.38 NOBLESVILLE, INDIANA	PREPARED BY: TERRY LEE CROSSING 8693 E. U.S. HIGHWAY 38 AVON, INDIANA	APPROVED FOR CONSTRUCTION	STRUCTUREPOINT INC.	PROJECT LOCATION 8693 E. U.S. HIGHWAY 38 AVON, INDIANA 46101 TEL: 317.271.2200 FAX: 317.271.2200 WWW.STRUCTUREPOINT.COM
	DATE: 6/2/11 DRAWN BY: J. BOHANNON CHECKED BY: J. BOHANNON APPROVED BY: J. BOHANNON					