BLOCK 137 PROJECT
DEVELOPMENT AGREEMENT

By and between:

Lake Oswego Redevelopment Agency

and

Evergreen Group LLC

August 13, 2013
TABLE OF CONTENTS

TABLE OF CONTENTS........................................................................................................i

EXHIBIT LIST....................................................................................................................ii

RECITALS............................................................................................................................1

AGREEMENT.......................................................................................................................2

SECTION 1 DEFINED TERMS ............................................................................................2

SECTION 2 DESCRIPTION OF PROJECT........................................................................2
  2.1 In General.......................................................................................................................2
  2.2 Residential Component...............................................................................................3
  2.3 Retail Component ........................................................................................................3
  2.4 Parking Component......................................................................................................3

SECTION 3 PROJECT FUNDING AND FINANCING PLAN .............................................4
  3.1 Description of Funding and Financing Plan .................................................................4
  3.2 Amendments to the Funding and Financing Plan .........................................................4
  3.3 LORA Construction Payment ...................................................................................4
  3.4 LORA Payment of Fees and Charges .........................................................................5

SECTION 4 PROJECT SCHEDULE...................................................................................5
  4.1 Description of Project Schedule ..................................................................................5
  4.2 Effect of Project Schedule ..........................................................................................5

SECTION 5 BASIC OBLIGATIONS AND PROJECT CONTINGENCIES .......................6
  5.1 Property Control ..........................................................................................................6
  5.2 Construction ................................................................................................................7
  5.3 Funding .........................................................................................................................7
  5.4 Project Contingencies ..................................................................................................7

SECTION 6 OTHER OBLIGATIONS APPLYING TO PROJECT ......................................9
  6.1 Design Processes .........................................................................................................9
  6.2 Parking in the Project ..................................................................................................11
  6.3 Utilities; Stormwater Management .............................................................................11
  6.4 Transportation Improvements .....................................................................................11
  6.5 Permits and Land Use Approvals ................................................................................11
  6.6 Uses .............................................................................................................................11
  6.7 Prevailing Wage Determination ..................................................................................13
  6.8 No LORA Control over Construction .........................................................................13
  6.9 Construction Reports and Meetings ............................................................................14
  6.10 Performance and Payment Bonds .............................................................................14
  6.11 Liens ............................................................................................................................14
  6.12 Indemnity for Construction Liability .........................................................................15
  6.13 Insurance during Construction ................................................................................15
  6.14 Art in the Project .......................................................................................................15
# TABLE OF CONTENTS

6.15  Access to Pedestrian Corridor........................................................................................................15

SECTION 7 ASSIGNMENT OF AGREEMENT RIGHTS AND OBLIGATIONS .............16
7.1  Assignment by Developer..................................................................................................................16

SECTION 8 SALES OF PROPERTY...........................................................................................................16

SECTION 9 TERM AND TERMINATION..................................................................................................17
9.1  Effective Date ..................................................................................................................................17
9.2  Termination......................................................................................................................................17

SECTION 10 DEFAULT; CURE.................................................................................................................17
10.1  Default by Developer.......................................................................................................................17
10.2  Default by LORA.............................................................................................................................18
10.3  Dispute Resolution...........................................................................................................................18

SECTION 11 REMEDIES..........................................................................................................................19
11.1  Remedies for Developer Default ....................................................................................................19
11.2  Remedies for LORA Default...........................................................................................................19
11.3  Exclusivity of Remedies....................................................................................................................19

SECTION 12 MISCELLANEOUS PROVISIONS......................................................................................19
12.1  Good Faith and Fair Dealing............................................................................................................20
12.2  Inspection of Records; Confidentiality.............................................................................................20
12.3  Conflict of Interests..........................................................................................................................21
12.4  Discrimination................................................................................................................................21
12.5  Equal Employment Opportunity.....................................................................................................21
12.6  Governing Law; Venue; Jurisdiction.................................................................................................21
12.7  No Benefit to Third Parties..............................................................................................................21
12.8  Notices ............................................................................................................................................21
12.9  Time is of the Essence ......................................................................................................................22
12.10 Non-waiver ....................................................................................................................................22
12.11 Non-waiver of Government Rights..................................................................................................23
12.12 Survival; Covenants Running with the Land....................................................................................23
12.13 Partial Invalidity..............................................................................................................................23
12.14 Calculation of Time..........................................................................................................................23
12.15 Headings, Table of Contents..........................................................................................................24
12.16 Counterparts....................................................................................................................................24
12.17 Legal Purpose...................................................................................................................................24
12.18 Amendments................................................................................................................................24
12.19 Approvals....................................................................................................................................24
12.20 Attorneys’ Fees...............................................................................................................................25
12.21 Successors and Assigns....................................................................................................................25
12.22 Interpretation of Agreement; Status of Parties................................................................................25
12.23 Future Assurances...........................................................................................................................25
12.24 Capacity to Execute; Mutual Representations................................................................................25
12.25 Exhibits............................................................................................................................................26
TABLE OF CONTENTS

12.26 Mortgagee Protection..................................................................................................................26
12.27 Memorandum of Development Agreement; Owner Acceptance.............................................27
## EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit Description</th>
<th>First Referenced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A – Legal Description of Parcels</td>
<td>Recital A</td>
</tr>
<tr>
<td>Exhibit B – Site Map of Project and Property</td>
<td>Recital A</td>
</tr>
<tr>
<td>Exhibit C – Glossary of Terms</td>
<td>Section 1</td>
</tr>
<tr>
<td>Exhibit D – Conceptual Floor Plans</td>
<td>Section 2.2</td>
</tr>
<tr>
<td>Exhibit E – INTENTIONALLY DELETED</td>
<td></td>
</tr>
<tr>
<td>Exhibit F-1 – Public Parking Lease – Key Terms</td>
<td>Section 2.4</td>
</tr>
<tr>
<td>Exhibit F-2 – Parking Management Agreement – Key Terms</td>
<td>Section 2.4</td>
</tr>
<tr>
<td>Exhibit G – Project Schedule</td>
<td>Section 4.1</td>
</tr>
<tr>
<td>Exhibit H – Memorandum of Development Agreement</td>
<td>Section 12.27</td>
</tr>
</tbody>
</table>
BLOCK 137 PROJECT
DEVELOPMENT AGREEMENT

EFFECTIVE: ____________, 2013

DATE:

BETWEEN: Lake Oswego Redevelopment Agency,
the duly authorized and acting urban renewal agency of
the City of Lake Oswego, Oregon

(“LORA”)

AND: Evergreen Group LLC,
an Oregon limited liability company

(“Developer”)

RECITALS

A. Wizer Properties LLC (“Owner”) owns certain real property and
improvements located in downtown Lake Oswego, Oregon (“City”) that are described in this
Block 137 Project Development Agreement (“Agreement”) as the “Property,” and which is
legally described in Exhibit A and depicted on Exhibit B. Developer wishes to construct a
significant mixed-use project on the Property. The development to occur on the Property is
referred to in this Agreement as the “Project.”

B. Developer and Owner have agreed to an acceptable arrangement for the
acquisition, development and operation of the Property.

C. LORA is the duly authorized and acting urban renewal agency for the
City. In furtherance of the objectives of the Oregon Revised Statutes, Chapter 457, LORA has
undertaken a program for the clearance and reconstruction of blighted areas in the City. As a part
of the urban renewal program, LORA is charged to implement the East End Redevelopment
Plan, approved by the City Council on September 19, 1986, as amended from time to time
thereafter and last amended January 17, 2013 (which plan, as amended is referred to in this
Agreement as the “Urban Renewal Plan”). LORA has the authority to assist private
redevelopment in support of the urban renewal projects. Redevelopment of Block 137 is a
project in the Urban Renewal Plan.

D. Owner and Developer have approached LORA to explore opportunities
for public financial participation in the Project in return for specified public benefits.

E. LORA and Developer desire the Project (i) transform the Property into a
vibrant, sustainable mixed-use development that will include multi-story, multi-family buildings,
and commercial and retail uses with residential parking and public parking and (ii) create a
unique destination place within the downtown area of the City.
F. The Project would complete the redevelopment of a key parcel in the
downtown core with a development type, density and structured parking costing in excess of
what private equity and debt can accept based on current market conditions.

G. The Parties desire to make certain mutual provisions for the construction,
maintenance and operation of the structured parking to be built on Block 137.

H. The purpose of this Agreement is to memorialize LORA’s and
Developer’s understanding of their respective roles and commitments in the development of the
Project, including a strategy for funding the construction of housing, commercial, parking and
infrastructure improvements.

I. The Parties understand and agree that LORA will not support the Project
as set forth in this Agreement without a commitment by Developer to meet its obligations under
this Agreement as to the Project. The Parties also understand and agree that Developer will not
develop the Property as envisioned in this Agreement unless LORA takes the actions to support
the Project, and certain other conditions are met, as set forth in this Agreement.

J. The community benefits of the Project include the Public Parking,
addition of new housing options in downtown, new quality downtown retail, creation of jobs,
revitalization of a significant block in downtown, opportunities for additional public art,
increased property tax revenue, and Construction Excise Tax revenue to the Lake Oswego
schools.

K. Each of LORA and Developer may be referred to herein as a "Party" and,
LORA and Developer may be collectively referred to herein as the “Parties.”

NOW, THEREFORE, in consideration of the mutual benefits to be realized by the
Parties’ performance pursuant to the Agreement, the Parties agree as follows.

AGREEMENT

SECTION 1 DEFINED TERMS

Words that are capitalized, and which are not the first word of a sentence, are
defined terms. A defined term has the meaning given it when it is first defined in this
Agreement. Some defined terms are first defined in the text of this Agreement and some are first
defined in Exhibit C, which is a glossary of all defined terms. Defined terms may be used
together and the combined defined term has the meaning of the combined defined terms. A
defined term that is a noun may be used in its verb or adjective form and vice-versa. If there is
any difference between the definition of a defined term in the text of this Agreement and the
definition of that term in Exhibit C, the definition in the text controls. Defined terms may be
used in the singular or the plural.

SECTION 2 DESCRIPTION OF PROJECT

2.1 In General
2.1.1 The “Project” includes three components to be built on the Property, as described in Sections 2.2 through 2.4 below and as shown in concept on Exhibit B.

2.1.2 Each of the components and their unique development challenges and opportunities are described generally in Sections 2.2 through 2.4 below. The descriptions are necessarily general, and may be subject to change as allowed within the terms of this Agreement as the Project is further refined and its design completed. Additional special characteristics of a component, and in some cases of all components, are described in later sections of the Agreement, particularly in Section 6. Developer will proceed with the Project as soon as practicable after all of the Project Contingencies (as set forth in later sections of this Agreement), have been satisfied or waived by the benefitted Party.

2.2 Residential Component

The “Residential Component” will be comprised of a maximum of two hundred twenty-eight (228) market rate housing units to be developed in what is anticipated to be three four (4) or five (5) story buildings. The Residential Component is located as shown in the Conceptual Floor Plans attached to this Agreement as Exhibit D.

2.3 Retail Component

The “Retail Component” will be comprised of between 27,000 and 28,000 square feet of ground floor retail space. The Retail Component is located as shown in the Conceptual Floor Plans attached to this Agreement as Exhibit D.

2.4 Parking Component

The “Parking Component” will be comprised of approximately 457 parking spaces to be developed in the Project and is located as shown in the Conceptual Floor Plans attached to this Agreement as Exhibit D. The Parking Component will include no fewer than one hundred thirty-five (135) parking spaces for the Retail Component. Developer shall lease one hundred thirty-five (135) spaces of the Retail Component parking to the City (“Public Parking”) pursuant to the terms of a lease to be negotiated between Developer and the City (the “City Parking Lease”). The remainder of the parking spaces in the Parking Component will be additional Retail Component spaces over and above the 135 leased spaces, if any, and parking spaces allocated to the Residential Component. The Parties have agreed that the terms and conditions set forth on Exhibit F-1 attached hereto shall be included in the City Parking Lease. The Public Parking will be managed pursuant to a parking management agreement to be negotiated between Developer and the City (the “Parking Management Agreement”). The Parties have agreed that the terms and conditions set forth on Exhibit F-2 attached hereto shall be included in the Parking Management Agreement. The Parking Component may be referred to in this Agreement as the “Parking Facility”. The Parties will work diligently and in good faith to agree on the terms of the City Parking Lease and the Parking Management Agreement within one hundred twenty (120) days of the Effective Date.
SECTION 3  PROJECT FUNDING AND FINANCING PLAN

3.1 Description of Funding and Financing Plan

The Parties have agreed to the following Funding and Financing Plan for the Project based on the Developer’s project budget. The following Funding and Financing Plan sets out the sources and uses of the public and private investment, as estimated as of the Effective Date.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Project Costs:</td>
<td>$92,600,000.00</td>
</tr>
<tr>
<td>LORA Construction Payment:</td>
<td>$749,000.00</td>
</tr>
<tr>
<td>LORA Permit Payments:</td>
<td>$4,700,000.00*</td>
</tr>
<tr>
<td>Balance of Costs (&quot;Private Investment&quot;):</td>
<td>$60,500,000.00</td>
</tr>
<tr>
<td>Debt:</td>
<td>$60,500,000.00</td>
</tr>
<tr>
<td>Private Equity:</td>
<td>$26,651,000.00</td>
</tr>
</tbody>
</table>

* Permit Payment Cap is $5,200,000.00.

All amounts shown as the “Private Investment” in the Funding and Financing Plan are estimates and based on various assumptions and other matters beyond Developer’s control, including without limitation: (a) changes to the Project not currently contemplated, but within the scope of the Project descriptions in this Agreement; (b) increases and decreases in construction costs and interest rates; (c) allowed changes to the Project Schedule; and (d) costs associated with Unavoidable Delay. The Funding and Financing Plan also assumes that Oregon prevailing wage rate laws, including ORS 279C.800-870 and related regulations, do not apply to the Project.

3.2 Amendments to the Funding and Financing Plan

The public investment in the Project shall not exceed the Permit Payment Cap, plus the LORA Construction Payment, unless approved by LORA, which approval will be given or denied in LORA’s sole discretion. All other material changes to the Funding and Financing Plan shall be approved by Developer and LORA’s Project Manager, which approvals shall not be unreasonably withheld, conditioned or delayed.

3.3 LORA Construction Payment

Within ten (10) days after the City’s issuance of a Temporary Certificate of Occupancy for the final component of the Project to be constructed, and upon receiving the report required pursuant to Section 6.6.5 evidencing that more than half of the Retail Component is leased, LORA will pay to Developer $749,000 (the “LORA Construction Payment”). The Developer will direct the form of payment, either check or electronic transfer, and provide necessary information to allow LORA to efficiently make the LORA Construction Payment.
3.4 LORA Payment of Fees and Charges

LORA will pay, when due to the City, or will reimburse to the Developer if Developer has paid before Closing, the building development and permit fees that are attributable to the Project development and construction, including construction of the initial tenant improvements in the Retail Component (collectively, the “LORA Permit Payments”). The first LORA Permit Payment due on account of the Project (other than initial tenant improvements) will be paid from the escrow established to close the Developer’s construction loan at Closing and is contingent on the trust deed securing the Developer’s loan to construct the Project having been deposited into escrow and Developer’s construction lender being prepared to fund the construction loan, subject only to the first LORA Permit Payment and other ordinary construction loan closing conditions, and further contingent on satisfaction of all contingencies to Closing stated in Section 5.4. Any portion of the LORA Permit Payments that is a reimbursement to Developer for fees paid before Closing will be paid at Closing, in accordance with the immediately preceding sentence. LORA acknowledges and agrees that someone other than Developer may own the Retail Component at the time the LORA Permit Payments due on account of initial tenant improvements are required to be paid and that LORA shall still be required to make such LORA Permit Payments. The total LORA Permit Payments will not exceed the Permit Payment Cap. If for any reason the City determines a refund of System Development Charges and building permit fees attributable to the Project construction is due, the refund will be paid to LORA. Developer hereby assigns to LORA any rights or claims to a refund of the System Development Charges and building permit fees as it may have. Any refund of System Development Charges and building permit fees will reduce the total LORA Permit Payment made on a dollar for dollar basis.

SECTION 4 PROJECT SCHEDULE

4.1 Description of Project Schedule

The Parties have agreed to a schedule for the Project which is attached as Exhibit G (the “Project Schedule”). The Project Schedule includes the dates for the satisfaction of certain Project Contingencies, and a range of dates for undertaking and completing the Project.

4.2 Effect of Project Schedule

The Project Schedule is subject to modification by Developer except as follows:

4.2.1 Any Schedule extension of more than one hundred eighty (180) days is subject to LORA approval.

4.2.2 Any Schedule extension of less than 180 days is subject to the approval of the LORA Project Manager, provided however, that an extension for not more than one hundred eighty (180) days under the following circumstances is allowed without LORA or the LORA Project Manager approval, but subject to the notice requirement of Section 4.2.4:

4.2.2.1 Unavoidable Delay;
4.2.2.2 Delay in approvals or permits outside the control of Developer (including City land use, entitlement, permit and other approvals).

4.2.3 Developer’s modification to the Project Schedule allowed by Subsections 4.2.2.1 and 4.2.2.2 above shall be no greater than thirty (30) days longer than the period of the respective delay(s).

4.2.4 Any modification to the Project Schedule proposed by Developer and as a result of delays described in Sections 4.2.2.1 and 4.2.2.2 requires written notice from Developer to LORA specifying the nature of the delay, the proposed timeframe for resolution of the delay and a revised Schedule showing any corresponding adjustments to the Project Schedule. Developer’s notice shall be provided to LORA no later than thirty (30) days following commencement of the event(s) causing the delay and Developer’s awareness of such event(s).

4.2.5 Developer will provide to the LORA Project Manager a revised Schedule that reflects any Schedule modification made pursuant to Section 4.2.1 or 4.2.2 (except delays described in Sections 4.2.2.1 and 4.2.2.2) within ten (10) Business Days after LORA or LORA Project Manager approval of the modification, whichever approval is required. The revised Schedule provided under Section 4.2.4 or 4.2.5 shall be deemed to replace Exhibit G, Project Schedule, without amendment to this Agreement.

SECTION 5 BASIC OBLIGATIONS AND PROJECT CONTINGENCIES

5.1 Property Control

5.1.1 Developer currently controls the Property pursuant to an Option to Enter into Ground Lease dated December 21, 2012 (the “Option Agreement”), between Developer and Owner. Developer and Owner plan to amend the Option Agreement prior to Closing to update certain information and to ensure that the Option Agreement is consistent with this Agreement.

5.1.2 Prior to or at Closing, Developer will exercise its option to ground lease the Property and, pursuant to the terms of the Option Agreement, enter into the Ground Lease and Option to Purchase Agreement in the form attached to the Option Agreement, as may be amended prior to Closing (the “Ground Lease”). The Ground Lease will provide for the lease of the Property to Developer for a period of not less than ninety-nine (99) years. The Ground Lease, including any terms of the Option Agreement that are incorporated into the Ground Lease, shall be consistent with the terms of this Agreement to the satisfaction of the LORA Project Manager. Furthermore, the Ground Lease must include, to the satisfaction of the LORA Project Manager, an agreement by the Owner, as Lessor under the Ground Lease to execute and record at Closing a commercially reasonable subordination, nondisturbance and attornment agreement with the City (“Non-Disturbance Agreement”) acknowledging in writing that (a) the City Parking Lease is subordinate to the Ground Lease, (b) the Owner and its successors and assigns recognizes the City Parking Lease and agrees not to disturb the City Parking Lease so long as the City is not in default of the City
Parking Lease, and (c) the City agrees to attorn to the Owner as if the Owner was the original landlord under the City Parking Lease.

5.1.3 Pursuant to the terms of the Ground Lease, Developer has an option to purchase the Property following substantial completion of the Project. As of the Effective Date, Developer anticipates that it will exercise the option to purchase the Property. Developer’s exercise of its option to purchase the Property gives rise to Owner’s right to exercise an option to purchase the Retail Component and the parking spaces supporting the Retail Component, including the Public Parking pursuant to and in accordance with the terms and conditions of that certain Option to Purchase Retail Units between Developer and Owner dated December 21, 2012.

5.1.4 The Option Agreement, the Ground Lease and the Option to Purchase Retail Units comprise and are collectively referred to herein as the “Developer Ownership Documents.”

5.1.5 Prior to the transfer of any portion of the Project to a third party, Developer will create a condominium dividing the Project into condominium units. It is currently contemplated that Developer will create a commercial condominium containing four condominium units – one for the Residential Component in each of the three buildings that will comprise the Project and one for the Retail Component.

5.2 Construction

Developer shall construct the Project according to Final Construction Drawings approved by the City as the basis for issuing a building permit, which Final Construction Drawings shall be in substantial compliance with the Design Development Drawings approved by LORA according to Section 6.1 below and by the City in its regulatory capacity.

5.3 Funding

The sources of funding for the Project are set forth in the Funding and Financing Plan.

5.4 Project Contingencies

A “Project Contingency” is a circumstance or a physical improvement that must exist before Developer is obligated to construct the Project and LORA is obligated to fund the LORA Permit Payments. The Project is subject to the contingency that each Party has performed its obligations under this Agreement, the performance of which is required before the obligation to build any portion of the Project accrues. When the Project Contingencies for the Project are satisfied or waived, Developer has a right to undertake and complete the Project. The Parties shall not be obligated to perform their respective obligations unless and until the Project Contingencies set forth in this Section 5.4 are satisfied.

5.4.1 Funding and Financing
Developer and LORA shall have determined, each to its satisfaction, that the necessary funding and financing described in the Funding and Financing Plan are sufficiently committed so as to enable Developer to proceed with the Project. Specifically, Developer shall have sufficient commitment of private equity and financing on terms satisfactory to Developer. To implement this contingency, Developer shall have provided to the LORA Project Manager, or his or her designee, information regarding the amount of equity raised and a firm and binding commitment letter from a lending institution providing financing to the Project.

5.4.2 Mortgagee Non-Disturbance Agreement

The City and the Mortgagee financing the Project shall execute at Closing a commercially reasonable subordination, nondisturbance and attornment agreement acknowledging (a) that the City Parking Lease is subordinate to the Mortgage, (b) the Mortgagee, its successors and assigns, will recognize and not disturb the City Parking Lease so long as the City is not in default of the City Parking Lease, and (c) the City further agrees to attorn to the Mortgagee if Mortgagee becomes the owner of the Public Parking.

5.4.3 Property Acquisition

Developer shall have acquired or ground leased, or be prepared to acquire or ground lease the Property at Closing, and the Option Agreement shall have been amended to the LORA Project Manager’s satisfaction such that Owner acknowledges that Developer is allowed to execute the City Parking Lease, the term of which will not commence until certain improvements (as specified in the City Parking Lease) are constructed. Owner shall have transferred or ground leased or be prepared to transfer or ground lease the Property to Developer at Closing. The LORA Project Manager acknowledges and agrees that he or his designee has reviewed the existing Developer Ownership Documents and has determined that the existing Developer Ownership Documents require amendments to be consistent with this Agreement. Prior to Closing, the Developer Ownership Documents shall be amended, to the LORA Project Manager’s satisfaction, to be consistent with this Agreement. When the Developer Ownership Documents are amended prior to Closing, any and all such amendments shall be delivered to the LORA Project Manager so that the LORA Project Manager can review the same for the sole purpose of ensuring that such amendments are consistent with this Agreement and contain the provisions required by Section 5.1. If the LORA Project Manager believes that the amendments are inconsistent with this Agreement and do not contain the provisions required by Section 5.1, the LORA Project Manager shall notify Developer and specify in writing such inconsistencies or missing provisions.

5.4.4 Discretionary Land Use Approvals

Developer shall have received Final Approval of all land use approvals and entitlements required for the Project, including, without limitation, the City’s approval of the fifth (5th) story of each building within the Project, of ground floor residential units as shown on the Conceptual Floor Plans attached to this Agreement as Exhibit D, and of an exception that allows any requirement for parking spaces for the Retail Component (in excess of up to 48 spaces to be dedicated for the benefit of tenants, patrons and employees of the Retail Component) to be satisfied from the Public Parking.
5.4.5 Building Permit

The City shall be prepared to issue a building permit for the Project, subject only to the payment of applicable fees.

5.4.6 Public Parking Lease

The City and Developer shall have approved the form of the City Parking Lease, to be executed at Closing, with a memorandum of the City Parking Lease to be recorded against the Developer’s interest in the Ground Lease.

5.4.7 Parking Management Agreement

The City and Developer shall have approved the form of the Parking Management Agreement, to be executed at Closing.

5.4.8 Prevailing Wage Determination

If sought by Developer, Developer shall have received a Final Determination Letter (defined in Section 6.7 below) from the Oregon Bureau of Labor and Industries (“BOLI”), stating that the Project is not subject to ORS 279C.800-870. Developer will indemnify, defend (at LORA’s request) and hold harmless LORA, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with a determination that the Project is subject to Oregon prevailing wage rate laws.

5.4.9 No Adverse Regulations

The City shall not have adopted any ordinance, regulation, rule or requirement, after the Effective Date but before the Project Contingencies for the Project are satisfied or waived, that could, in Developer’s judgment, have a material, adverse effect on the Project.

5.4.10 Pedestrian Easement

The City, Owner and Developer shall have approved the form of the Pedestrian Easement, to be executed and recorded at Closing.

5.4.11 Use Covenants

Developer and LORA shall have approved the form of the Use Covenant described in Section 6.16, to be executed and recorded according to its terms.

SECTION 6 OTHER OBLIGATIONS APPLYING TO PROJECT

6.1 Design Processes

6.1.1 The Project will be subject to the Community Development Code provisions of the City Code.

6.1.2 Developer will diligently pursue the design work necessary to
construct the Project. Developer will cooperate and work collaboratively and openly with the LORA Project Manager to achieve a quality Project design that is functional, financially feasible, and supported by market conditions through the LORA review process described in Section 6.1.3 below, and leading to Developer submitting its final Development Review application to the City.

6.1.3 Developer and LORA have agreed to the Conceptual Floor Plans identifying the components of the Project that are the basis for entering into this Agreement (Exhibit D). Developer shall prepare Design Development Drawings for the Project generally consistent with the Conceptual Floor Plans and submit them to LORA for review and approval in accordance with the Project Schedule. Design Development Drawings will be approved, if approved, by the LORA Board prior to Developer submitting its application for Development Review to the City, which application shall incorporate the Design Development Drawings that LORA has approved. LORA will respond to Developer’s request for review or approval within ten (10) Business Days of receipt of a written request. If LORA fails to timely respond to such request, Developer may send a second notice. If Developer fails to send a second notice (and LORA failed to respond to Developer’s original request), LORA shall be deemed to have disapproved of the Design Development Drawings. If LORA fails to respond to such second request within three (3) Business Days of LORA’s receipt of same, such failure to timely respond will be deemed LORA’s approval of the Design Development Drawings. Further, LORA will not unreasonably withhold, delay or condition its approval of Design Development Drawings that, in LORA’s opinion, adequately address the following design and use objectives:

6.1.3.1 To create a quality, upscale, pedestrian friendly building, which responds to the neighborhood in scale and texture;

6.1.3.2 To conform to all City design and development standards and related ordinances;

6.1.3.3 To conform to the purposes and requirements of the Urban Renewal Plan;

6.1.3.4 To complement adjacent buildings in design and materials;

6.1.3.5 To use sustainable building design and techniques as much as commercially feasibly possible; and

6.1.3.6 To set high standards for design in downtown Lake Oswego.

6.1.4 If Developer wants to substantially change any Design Development Drawings after approval by LORA, Developer shall submit the proposed changes to LORA for approval. A substantial change shall mean any change that would have a material impact on the criteria set forth in Sections 6.1.3.1
through 6.1.3.6 above. Developer acknowledges that it may be required to secure separate City approval of such changes. Any separate City approvals shall be sought after LORA has approved the changes. LORA shall assist Developer throughout City development review and any land use process of the appropriate agencies within the City, but LORA does not represent or warrant that its assistance will guarantee approval.

6.1.5 In the event of a conflict between LORA’s proprietary review of Design Development Drawings and the City’s regulatory review of design through the City’s Development Review process as to any design element of the Project, the City’s Development Review process shall control.

6.2 Parking in the Project

Developer will provide parking for the Project as required by City Code, as follows:

6.2.1 Developer will construct a structured Parking Facility to serve the Residential and Retail Components, with an additional goal of meeting the public demand for parking in downtown Lake Oswego. LORA and Developer have determined that the Residential Component of the Project will have approximately three hundred twenty-two (322) to three hundred sixty-eight (368) parking spaces and the Retail Component will have no fewer than one hundred thirty-five (135) parking spaces, the latter of which will be part of the Public Parking garage and available to the public.

6.2.2 The Public Parking will be managed according to the Parking Management Agreement and the City Parking Lease.

6.3 Utilities; Stormwater Management

Developer will comply with City Code and with other applicable regulations in designing and constructing utility and stormwater improvements for the Project.

6.4 Transportation Improvements

Developer will comply with City Code and with other applicable regulations in designing and constructing transportation improvements, and dedicating land from the Property for such improvements, if necessary.

6.5 Permits and Land Use Approvals

Developer will be responsible for obtaining all permits, including land use approvals, building permits and any other approvals necessary to construct the Project. LORA will cooperate with Developer to facilitate reviews, but LORA’s cooperation does not guarantee City approval and does not constitute a waiver of City’s regulatory powers over the Project.

6.6 Uses
Subject to the satisfaction or waiver of any and all Project Contingencies for the Project,

6.6.1 Residential Density: Developer will build approximately 215 residential units on the Property.

6.6.2 Ground Floor Retail: The Retail Component will provide only active retail uses on the ground floor of the Project on the A Avenue and First Street block faces. Active retail uses for the Retail Component will be limited to Retail Sales and Food and Beverage Services as currently defined by City Code. The Retail Component shall have no less than 27,000 square feet and no more than 28,000 square feet of ground-level retail space in the Project.

6.6.3 Developer shall develop a tenancing strategy for its initial tenants in the Retail Component that:

6.6.3.1 Encourages a mix of retail uses that is anticipated to generate vibrant urban activity, create an urban destination and contribute to the growing “sense of place” in the downtown Lake Oswego area;

6.6.3.2 Limits occupancy by office uses, or any uses other than Retail Sales, Food and Beverage Services, to floors above street level, provided that the tenancing strategy may include sales and leasing offices for the Residential Component and lobbies serving the Residential Component, the square footage of which sales and leasing offices and lobbies is not included in the 27,000 square foot minimum for the Retail Component.

6.6.4 The LORA Project Manager, or his or her designee, may, but is not required to, review for compliance with Section 6.6.3 and comment on the initial tenancing strategy for the Retail Component. To implement this Section 6.6.4, Developer will provide the LORA Project Manager or his or her designee with a written summary of its initial tenancing strategy as soon as available, but not later than one hundred eighty (180) days before the substantial completion of the Project.

6.6.5 Developer, or the owner of the Retail Component after Project Completion if Developer is not the owner of the Retail Component, will keep the LORA Project Manager apprised of the progress of all initial leasing activity in the Retail Component. Beginning on the earlier of the date on which the Retail Component is 25% leased, and the date that is twelve (12) months prior to anticipated substantial completion of the Project as shown on the Project Schedule, Developer will provide progress reports at the LORA Project Manager’s written request (made no more frequently than once each calendar quarter) and on each of the dates associated with the leasing of 25%, 50% and 75% of the total lease space in the Retail Component; provided, however, that Developer’s failure to provide any such report shall not be a default under this Agreement unless such failure continues after written notice from the LORA Project Manager stating that Developer has fifteen (15) days to provide such report. The reports will include the name and type of business for
each tenant, the amount of space leased by the tenant, the lease commencement date and the lease term. LORA agrees that the leasing information will be submitted in confidence and, to the extent allowed by law, will remain confidential. LORA further agrees not to disclose any information from the leasing reports unless LORA receives a disclosure determination or order of the Clackamas County District Attorney or a court of competent jurisdiction that it must make a disclosure.

6.6.6 The Retail Component will be managed during the term of the City Parking Lease by a professional management firm with demonstrated experience leasing and managing retail space.

6.7 **Prevailing Wage Determination**

6.7.1 Prior to commencing construction of the Project, Developer may submit this Agreement and other required or relevant documents to the Oregon Bureau of Labor and Industries (“BOLI”) for review and to seek a determination letter from BOLI stating that Oregon prevailing wage rate laws, including ORS 279C.800-870 and related regulations, do not apply to the Project. At least five (5) Business Days prior to submittal to BOLI, Developer will submit the proposed request for review to LORA for review and approval. Said Final Determination Letter shall be deemed final upon written confirmation from BOLI that no request for reconsideration was received by BOLI and the 21-day period in which to request a contested case hearing has expired without notice to BOLI of such a request (the “Final Determination Letter”). Developer acknowledges that the Final Determination Letter is a nonbinding expression of BOLI’s current opinion in this matter which may be reversed at any time and at BOLI’s sole discretion, and LORA specifically disclaims any representation and warranty, implied or expressed, in regard to the application of prevailing wage laws to the Project.

6.7.2 If the Final Determination Letter determines that prevailing wage laws apply to the Project, Developer shall notify LORA within ten (10) days whether Developer elects to terminate this Agreement. If Developer elects to terminate, then LORA shall notify Developer within ten (10) days thereafter whether it will seek a reversal of the Final Determination Letter. If LORA elects to seek a reversal of the Final Determination Letter, then this Agreement shall not terminate. If LORA elects to seek a reversal of the Final Determination Letter and that effort is not successful then Developer shall notify LORA within ten (10) days after receipt of written notice from LORA of the same as to whether Developer elects to terminate this Agreement. In the case of a termination of this Agreement pursuant to this Section 6.7, neither Party will have a claim against the other for its costs incurred.

6.8 **No LORA Control over Construction**

Except as described in this Agreement, and as required for compliance review with any City permits, LORA or the City shall exercise no control over construction of the Project.
6.9 **Construction Reports and Meetings**

During the design and construction of the Project including during the period prior to Closing, Developer shall submit to the LORA Project Manager or his or her designee, not less frequently than quarterly a report in such form and detail as may be reasonably acceptable to both Developer and the LORA Project Manager, as to the progress of design, financing, budgets, schedules, cost estimates and upcoming approvals, and the fulfillment of conditions related to the Project. Notwithstanding the foregoing, Developer’s failure to provide any such report shall not be a default under this Agreement unless such failure continues after written notice from the LORA Project Manager stating that Developer has fifteen (15) days to provide such report.

6.10 **Performance and Payment Bonds**

If required by Developer’s first position lender, at or prior to Closing, Developer shall require the General Contractor to obtain a performance bond, payment bond, or both (as required by lender), in the amount of the Project’s budgeted hard costs, securing performance of the Construction Contract. Developer shall provide a copy of such bond(s) to LORA. If Developer’s first position lender does not require payment or performance bonds, then Developer shall obtain or shall require the General Contractor to obtain a payment and performance bond for the construction of one hundred thirty-five (135) parking spaces in the Project. LORA acknowledges and agrees that, in either event, subcontractor defaults may be insured using Subcontractor Default Insurance or “Subguard,” rather than payment and performance bonds.

6.11 **Liens**

In the event any contractor’s lien, or other statutory lien shall be filed during the term of this Agreement against the Property or any portion of the Project being constructed on the Property, by reason of labor, services or materials supplied to, or at the request of, Developer or pursuant to any construction on the Property, and a notice of intent to foreclose is recorded with respect to such lien or such lien will be an encumbrance on the Property at the time the Public Parking garage is opened to the public, then Developer shall pay and discharge such lien or claim, subject to the provisions of the following sentence. Developer shall have the right to contest the validity, amount or applicability of any such lien or claim by appropriate legal proceedings, and so long as Developer furnishes a bond or indemnity as provided below, and is prosecuting such contest in good faith, the requirement that it pay and discharge such items shall not be applicable. However, if such lien is not released prior to the commencement of foreclosure proceedings or the opening of the Public Parking garage, then Developer shall either post a bond in accordance with applicable laws, or in the alternative indemnify, against such liens or claims in amount and form satisfactory to induce a title insurance company to insure over such liens without showing any title exception by reason of such liens. Developer shall defend, indemnify, and hold LORA harmless from all loss, damage, liability, expense or claim whatsoever (including attorneys’ fees and other costs of defending against the foregoing) resulting from the assertion of any such liens or claims. In the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to Developer, Developer shall within ten (10) days thereafter cause the liens or claims to be discharged of record.
6.12 **Indemnity for Construction Liability**

Developer will indemnify, defend (at LORA’s request) and hold harmless LORA, and its successors and assigns, from and against all claims, costs, expenses, losses, damages and liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage whatsoever caused to, any person or to the property of any person during the process of the construction work or the performance of Developer’s other construction obligations under this Agreement, except to the extent caused by the acts or omissions of LORA or its employees, agents, contractors, subcontractors, licensees or invitees. The indemnity set forth in this Section 6.12 shall survive the issuance of the Temporary Certificate of Occupancy and any termination of this Agreement for a period of two (2) years.

6.13 **Insurance during Construction**

Developer shall maintain a primary comprehensive general liability insurance policy from commencement of construction through Completion. The policy shall include a combined single limit of $5,000,000 and provide coverage for bodily injury or property damage as well as contractual liability for Developer’s activities under this Agreement, which may be part of a Builder’s Risk policy. The policy shall name LORA and the City as additional insureds. A certificate of insurance will be provided to LORA before LORA makes the Permit Payment.

6.14 **Art in the Project**

In accordance with the requirements of LORA’s Percent for Art Program, from the LORA Construction Payment LORA shall pay one and one-half percent of the LORA Construction Payment ($11,235) to the City’s Public Art Trust Fund for the purpose of funding public art as part of the Project. Developer shall integrate public art into the Project if and as approved by LORA and the City pursuant to the provisions of the Percent for Art Program. Developer’s Project design will include opportunities for future placement of public art in the Project.

6.15 **Access to Pedestrian Corridor**

The Parties will work diligently and in good faith to agree on the terms of an easement to allow reasonable public access to the pedestrian corridor running east and west between First Street and Second Street (“Pedestrian Easement”) identified in Exhibit D within one hundred twenty (120) days of the Effective Date. The terms of the Pedestrian Easement will seek to balance the residential nature of the improvements along the pedestrian corridor with reasonable public access.

6.16 **Use Covenant**

The Parties will work diligently and in good faith to agree, within one hundred and twenty (120) days of the Effective Date, on the form and terms of a covenant or other mechanism to assure LORA that the covenants running with the land described in Sections 6.6.2, 6.6.6 and 12.26 (“Use Covenant”) will attach to the land upon which the Retail Component is located after substantial completion of the Project.
SECTION 7 ASSIGNMENT OF AGREEMENT RIGHTS AND OBLIGATIONS

7.1 Assignment by Developer

7.1.1 Developer is uniquely qualified to construct and manage the Project. Prior to Completion of the Project, Developer shall not partially or wholly dispose of, assign, or agree to dispose of or assign Developer’s interest in or obligations under this Agreement without the prior written approval of LORA, to be granted in LORA’s sole discretion; provided, however, that nothing in this Agreement shall prohibit Developer from assigning this Agreement to a single asset entity formed to become the lessee under the ground lease with the Owner, so long as either Patrick Kessi, Geoff Wenker, both, or an entity controlled by Patrick Kessi, Geoff Wenker, or both have day-to-day control over the development of the Project or are responsible for the development of the Project. Developer shall notify LORA of an assignment of this Agreement even if such assignment does not require LORA approval. For purposes of this Agreement, “Completion” means that the Project has received Temporary Certificates of Occupancy for the Residential Component and the Retail Component. LORA may require as absolute conditions to such approval that:

7.1.1.1 The transfer or assignment is not in violation of other provisions of this Agreement; and

7.1.1.2 Any proposed transferee or assignee shall have qualifications and financial responsibility equal to or superior to those of Developer as determined by the LORA Project Manager or his or her designee in his or her reasonable discretion, and any proposed transferee or assignee shall assume without limitation all obligations of Developer set forth in this Agreement that are applicable to the Project. No such transaction will relieve Developer of its obligations under this Agreement unless Developer obtains a written release from the LORA Project Manager or his or her designee. The foregoing notwithstanding, a Mortgagee shall not be required to assume Developer’s obligations under this Agreement during any period in which the Mortgagee does not hold title to the Property but merely a lien on title for security purposes; and

7.1.1.3 The transfer or assignment will not cause a material delay in the completion of the Project and will not change the Design Development Drawings, Final Construction Drawings or character of the Project.

The prohibition in Section 7.1.1 and in Section 8 below will not apply to any of the following: (1) any contract for the sale or lease of individual residential units or the sale or lease of any part or all of the Retail Component; (2) sale of the Property at foreclosure (or a conveyance of the Property in lieu of foreclosure) pursuant to foreclosure thereof by a Mortgagee; or (3) assignment of the obligations under this Agreement to a buyer of the Project following completion.

SECTION 8 SALES OF PROPERTY

Developer may not sell its interest in the Property to any third party prior to Completion without the consent of LORA, which may be withheld in its sole discretion.
Following Completion of the Project, Developer, without obtaining the consent of LORA, may transfer its interest in the Property or portions thereof in its sole discretion, but subject to the provisions of this Agreement that are identified in Section 12.12 as surviving Project Completion.

SECTION 9  TERM AND TERMINATION

9.1 Effective Date

This Agreement is effective when all Parties have executed the Agreement, and this Agreement shall have an effective date which is the Effective Date first set forth above. The execution will be subject to entity authorization, which in LORA’s case will include LORA Board’s approval.

9.2 Termination

This Agreement shall terminate upon the earlier of:

9.2.1 The mutual agreement of the Parties in writing; or

9.2.2 The failure of one or more conditions to Closing; or

9.2.3 A Party’s termination of the Agreement on account of another Party’s default without cure; or

9.2.4 Completion of the Project.

Termination of the Agreement shall not prejudice Owner’s or Developer’s ability to thereafter develop the Property in accordance with applicable Laws.

SECTION 10  DEFAULT; CURE

10.1 Default by Developer

The following shall constitute defaults on the part of Developer:

10.1.1 Any breach of the provisions of this Agreement whether by action or inaction, which continues and is not remedied within sixty (60) days after LORA has given written notice to Developer specifying the breach; provided that if such breach cannot with due diligence be cured within a period of sixty (60) days, Developer shall have up to one hundred eighty (180) additional days to cure such breach, and in any such event such breach shall not constitute a default so long as Developer diligently proceeds to effect such cure and such cure is accomplished within the additional 180-day period.

10.1.2 Any assignment by Developer for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor’s committee over Developer prior to the issuance of the Temporary Certificate of
Occupancy for the Project, if such assignment, adjudication or appointment is not dismissed within ninety (90) days. There shall be no cure for a breach under this Section 10.1.2.

10.2 Default by LORA

LORA shall be in default if it breaches any of the provisions of this Agreement whether by action or inaction, and such breach continues and is not remedied within sixty (60) days after Developer has given written notice specifying the breach; provided that if such breach cannot with due diligence be cured within a period of sixty (60) days, LORA shall have up to one hundred eighty (180) additional days to cure such breach, and in any such event such breach shall not constitute a default so long as LORA diligently proceeds to effect such cure and such cure is accomplished within the additional 180-day period. LORA shall have no liability of any nature whatsoever and Developer shall have no recourse against LORA for regulatory changes that are outside LORA’s control or influence, and which may take effect during the development and construction of the Project.

10.3 Dispute Resolution

10.3.1 CEO Meeting

In the case of a claimed default pursuant to Section 10.1 or 10.2 which is not cured or being cured, a non-defaulting Party may not file litigation to exercise its remedy pursuant to Section 11 of this Agreement, or initiate arbitration pursuant to Section 10.3.2, unless a non-defaulting Party gives the defaulting Party a notice requesting a meeting of the chief executive officer of Developer and the LORA Project Manager and establishing a weekday date for the meeting within not fewer than seven (7) and not more than fourteen (14) days of the date of the notice. These representatives of the Parties shall meet on the day noticed and engage in good faith discussions in an attempt to resolve the claimed event of default. The meeting may be continued until either the non-defaulting Party calling the meeting or the defaulting Party elects not to participate further. If the above process does not resolve the claimed breach, then each Party shall be entitled to initiate arbitration and/or pursue its remedies pursuant to Section 11 of this Agreement.

10.3.2 Arbitration

(a) If the Parties are unable to resolve the dispute in accordance with Section 10.3.1, then except for a dispute in which a Party seeks an injunction or specific performance, which actions are not subject to arbitration, the Parties agree to resolve the dispute by arbitration with Arbitration Service of Portland, Inc. (“ASP”) and in accordance with ASP’s rules and procedures; provided, however, that the arbitrator shall be selected using the criteria set forth in Section 10.3.2(b). The arbitration fee required to initiate the arbitration shall be shared equally by the Parties. The Parties shall attempt to agree upon the appointment of an arbitrator with qualifications set forth in this Section 10.3.2 for a period of ten (10) Business Days. If the Parties are unable to agree on an arbitrator, then each Party shall appoint one arbitrator within thirty (30) days of the initial decision to arbitrate. The two arbitrators selected by the Parties will select another arbitrator who meets the qualifications of this Section to act as
the sole arbitrator. The decision of the arbitrator shall be final, binding and conclusive upon the
Parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject
to appeal and may be confirmed or embodied in an order or judgment of any court having
jurisdiction. The arbitrator appointed pursuant to this Agreement shall have the power to order
monetary damages but shall not have the power to award consequential or punitive damages.
The fees and costs of the arbitrator shall be split by the Parties unless, in arbitration, the
arbitrator awards costs.

(b) The arbitrator shall have at least five (5) years of experience with commercial real estate development, construction, and/or the interpretation of development agreements. Additional criteria and limitations for the Dispute Resolver shall be as follows: (i) no such person shall have an ownership interest in any Party (or an affiliate of any Party) to this Agreement, or a direct or indirect financial interest in this Agreement, except for payment for services as the arbitrator; (ii) no such person shall have been employed by or retained by any of the Parties within a period of two (2) years prior to the Effective Date other than a person previously retained as an arbitrator; and (iii) no such person shall have had prior involvement in the Project of a nature which could compromise the person’s ability to resolve disputes impartially.

SECTION 11 REMEDIES

11.1 Remedies for Developer Default

If Developer shall default under the terms of this Agreement and shall not cure such default pursuant to Section 10.1, then LORA may recover from Developer all monetary damages (except for punitive, consequential or exemplary damages) and pursue all other remedies allowed at law or in equity arising out of, or related to, or caused by, the uncured default. The Parties agree that equitable remedies may include specific performance or injunctive relief in some circumstances, but no Party has agreed in advance as to the availability of any particular remedy in any particular factual circumstances.

11.2 Remedies for LORA Default

In the event of a default by LORA, which is not cured pursuant to Section 10.2, then Developer may recover from LORA monetary damages (except for punitive, consequential or exemplary damages) up to the amount of the due but unpaid portion of the LORA Permit Payment, and the LORA Construction Payment, and may pursue all other remedies allowed at law or in equity arising out of, or related to, or caused by the uncured default. The Parties agree that equitable remedies may include specific performance or injunctive relief in some circumstances, but no Party has agreed in advance as to the availability of any particular remedy in any particular factual circumstances.

11.3 Exclusivity of Remedies

The remedies stated in this Section 11 are the exclusive remedies for defaults described under this Agreement.

SECTION 12 MISCELLANEOUS PROVISIONS
12.1 Good Faith and Fair Dealing

The Parties shall have imputed to all of their duties, obligations, and acts performed under this Agreement, a standard of conduct of good faith and fair dealing.

12.2 Inspection of Records; Confidentiality

12.2.1 Inspection of Records

Each Party agrees that, upon the reasonable prior notice from another Party, it will make available to the requesting Party its records, reports and information pertaining to the Project for review, but not copying (unless agreed upon by the non-requesting Party), so as to inform the requesting Party and to enable the requesting Party to determine the other Party’s compliance with the terms of this Agreement.

12.2.2 Confidentiality

12.2.2.1 Except for published information or information ascertainable from public records, any confidential information furnished or disclosed by LORA to Developer in connection with the Project, will be held by Developer in confidence and will not be divulged to any third party, except to Developer’s advisors and consultants as may be necessary to further the development of the Project.

12.2.2.2 Developer acknowledges that confidential information provided to LORA is subject to the Oregon Public Records Law (ORS 192.410 to 192.505). The Parties acknowledge that, as a public entity, LORA must comply with and will comply with the Oregon Public Records Law.

12.2.2.3 Except for published information or information ascertainable from public records, any confidential information furnished or disclosed by Developer to LORA, will be held in confidence and will not be divulged to any third party, except for LORA’s advisors and consultants as may be necessary to further the development of the Project. If for any reason the Project fails to materialize, then each Party will return all such confidential information to the Party from whom it was obtained.

12.2.2.4 As used in this Section 12.2.2, “confidential information” shall mean Developer’s and Developer’s members’ financial information, projected Project costs and revenues, pro forma statements for the Project, correspondence and agreements with debt and equity providers, personal information of Developer’s members and of Developer’s members’ members, processes and information that is unique and proprietary to Developer, and other information that Developer and LORA agree is confidential in nature and exempt from disclosure under Oregon Public Records Law.

12.2.2.5 Developer will only submit confidential information to LORA on the condition that it will be kept confidential. Except for information that Developer and LORA may agree in the future is confidential and exempt from disclosure under the Oregon Public Records Law, LORA has considered and determined that disclosure of the confidential information would cause harm to the public interest.
12.2.2.6 In the event that LORA is served with a request for the production of confidential information provided to LORA by Developer, pursuant to ORS 192.410, et. seq., then LORA shall, at least seven (7) days before LORA would, if the request were granted, make the confidential information available to the requesting party, provide Developer with a copy of the request, so that Developer may take steps to prevent the disclosure of the confidential information.

12.3 Conflict of Interests

No official or employee of LORA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

12.4 Discrimination

Developer for itself and its successor and assigns, agrees that in performing its obligations under this Agreement, it will not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation, disability or national origin.

12.5 Equal Employment Opportunity

Developer must comply with all applicable provisions of Federal or state statutes and regulations and City ordinances concerning equal employment opportunities for persons engaged in the Project.

12.6 Governing Law; Venue; Jurisdiction

This Agreement shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Any action or suit to enforce or construe any provision of this Agreement by either party shall be brought in the Circuit Court of the State of Oregon for Clackamas County or the Federal District Court located in Multnomah County, Oregon. The Circuit Court of the State of Oregon for Clackamas County or the Federal District Court located in Multnomah County shall have exclusive jurisdiction over all lawsuits brought by any Party against any other Party with respect to the subject matter of this Agreement, and each Party hereby irrevocably consents to such exclusive jurisdiction and waives any and all objections it might otherwise have with respect thereto.

12.7 No Benefit to Third Parties

LORA and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms. There are no third-party beneficiaries of this Agreement.

12.8 Notices

All notices given under this Agreement shall be in writing and may be delivered, with all applicable postage or delivery charges prepaid, by personal delivery or messenger, by
overnight courier service, or by deposit in the United States Mail, as certified mail, return receipt requested, or by e-mail, and addressed as follows:

LORA: Lake Oswego Redevelopment Agency  
380 A Avenue  
Lake Oswego, OR  97034  
Attn: Brant Williams  
Email: bwilliams@ci.oswego.or.us

With a copy to: City Attorney  
380 A Avenue  
Lake Oswego, OR  97034  
Attn: David Powell  
Email: dpowell@ci.oswego.or.us

Developer: Evergreen Group LLC  
3330 N.W. Yeon, Suite 210  
Portland, OR  97210  
Attn: Patrick Kessi  
Email: pkessi@wk-development.com

With a copy to: Radler White Parks & Alexander LLP  
111 SW Columbia St., Suite 1100  
Portland, OR  97201  
Attn: Dina Alexander  
Email: dalexander@radlerwhite.com

Notices shall be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof; provided that notices sent by email shall deemed given on the date received if and only if delivered prior to 5:00 p.m. Pacific Time and if simultaneously sent by another means allowed hereunder. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision. Notices may be given by counsel to a Party.

12.9 Time is of the Essence

Time is of the essence in the performance of and adherence to each and every provision of this Agreement. However, if either Party fails to provide a notice, give a report, or make a payment on a date required by this Agreement, such Party shall not be deemed to have missed the deadline for such notice, report, or payment until the other Party provides a written reminder notice of the missed deadline, report, or payment and the Party who failed to provide a notice, give a report or make a payment then fails again to provide the notice, provide the report, or make the payment, as the case may be, within ten (10) days after receipt of such notice.

12.10 Non-waiver

Waiver by any Party of strict performance of any provision of this Agreement
shall not be deemed a waiver of or prejudice a Party’s right to require strict performance of the
same or any other provision in the future. A claimed waiver must be in writing and signed by the
Party granting a waiver. A waiver of one provision of this Agreement shall be a waiver of only
that provision. A waiver of a provision in one instance shall be a waiver only for that instance,
unless the waiver explicitly waives that provision for all instances.

12.11 Non-waiver of Government Rights

Subject to the terms and conditions of this Agreement, by making this Agreement, LORA is specifically not obligating itself, the City, or any other agency with respect to any police power or regulatory actions relating to development or operation of the Project, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required.

12.12 Survival; Covenants Running with the Land

12.12.1 Any covenant or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination of the Agreement but which by its terms is to survive the termination of this Agreement, shall survive the expiration or earlier termination of this Agreement and shall remain fully enforceable thereafter.

12.12.2 Sections 6.6 (except Developer’s obligation to build), and 12.26 (Mortgagee Protection) are covenants that run with the land and will survive Completion of the Project or termination of this Agreement according to their terms. Sections 3.4 (LORA Payment of Fees and Charges), 6.11 (Liens), 6.12 (Indemnity for Construction Liability), 10 (Default), 11 (Remedies), 12.2.2 (Confidentiality), and 12.20 (Attorneys’ Fees) will survive Completion of the Project or termination of this Agreement and will bind the Parties according to their terms, but are not covenants running with the land.

12.13 Partial Invalidity

If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If a material provision of this Agreement is held invalid or unenforceable such that a Party does not receive the benefit of its bargain, then the Parties shall renegotiate in good faith terms and provisions that will effectuate the spirit and intent of the Parties’ agreement herein.

12.14 Calculation of Time

Unless referred to as Business Days, all periods of time shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday, or Legal Holiday. “Business Days” shall mean Monday through Friday, and “Legal Holiday” shall mean any holiday observed by the State of Oregon.
12.15 Headings, Table of Contents

The section headings and Table of Contents are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

12.16 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and when taken together shall constitute one and the same instrument.

12.17 Legal Purpose

Developer agrees that it shall use its interest in the Project solely for lawful purposes.

12.18 Amendments

This Agreement may be modified only by a writing signed by the Parties. Provided that amendments that extend dates under the Project Schedule by more than 180 days and that increase the public investment in the Project beyond the cap set forth in Section 3.5 require LORA approval, the LORA Project Manager or his or her designee and the other Parties can approve amendments to this Agreement.

12.19 Approvals

12.19.1 Where this Agreement requires the approval(s) of LORA or the LORA Project Manager, LORA or the LORA Project Manager, as applicable, will approve or disapprove within ten (10) Business Days after receipt of the documents or other material to be approved, except where a longer or shorter time period is specifically provided in this Agreement, and except where the approval requires action by LORA Board, and in that case, the approval period shall be thirty (30) days. Failure by LORA or the LORA Project Manager, as applicable, to approve or disapprove within the applicable period of time shall be deemed disapproval; provided that, Developer may send a second notice. If Developer fails to send a second notice (and LORA or the LORA Project Manager, as applicable, failed to respond to Developer’s original request), LORA or the LORA Project Manager, as applicable, shall be deemed to have disapproved of the material to be approved. If LORA or the LORA Project Manager, as applicable, fails to respond to such second request within three (3) Business Days of LORA’s or the LORA Project Manager’s receipt of same, such failure to timely respond will be deemed LORA’s or the LORA Project Manager’s, as applicable, approval thereof. Any disapproval shall state in writing and in reasonable detail the reasons for such disapproval. Approvals will not be unreasonably withheld, except where rights of approval are expressly reserved to LORA’s or the LORA’s Project Manager’s sole discretion in this Agreement.

12.19.2 Where this Agreement requires the consent or approval of Developer, Developer shall approve or disapprove within ten (10) Business Days after receipt of the material to be approved, except when a longer period of time is
specifically provided in this Agreement. Failure by Developer to approve or
disapprove within such period of time shall be deemed disapproval. Any disapproval
shall state the reasons for such disapproval. Approvals will not be unreasonably
withheld, except where rights of approval are expressly reserved to Developer’s sole
discretion.

12.20 Attorneys’ Fees

If a suit, action, or other proceeding of any nature whatsoever (including any
proceeding under the U. S. Bankruptcy Code) is instituted in connection with any controversy
arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the
prevailing or non-defaulting party shall be entitled to recover its attorney, paralegal, accountant,
and other expert fees and all other fees, costs, and expenses actually incurred and reasonably
necessary, as determined by the court at trial or on any appeal or review, in addition to all other
amounts provided by law. In the event either Party is represented by in-house legal counsel,
attorneys’ fees as described in this section shall include the value of the services provided by in-
house counsel, which shall be calculated by applying an hourly rate commensurate with
prevailing market rates charged by attorneys in private practice in the Portland, Oregon
metropolitan area for such services.

12.21 Successors and Assigns

Subject to any applicable provisions of this Agreement, the rights, obligations,
liabilities, and remedies provided in this Agreement shall extend to the successors-in-interest of
the Parties and to the transferees and assignees of the Parties.

12.22 Interpretation of Agreement; Status of Parties

This Agreement is the result of arm’s-length negotiations among the Parties and
shall not be construed against any Party by reason of its preparation of this Agreement. Nothing
contained in this Agreement shall be construed as creating the relationship of principal and
agent, partners, joint venturers, or any other similar relationship between the Parties.

12.23 Future Assurances

Each of the Parties shall promptly execute and deliver such additional documents
and shall do such acts that are reasonably necessary, in connection with the performance of their
respective obligations under this Agreement so as to carry out the intent of this Agreement.

12.24 Capacity to Execute; Mutual Representations

The Parties each warrant and represent to the other that this Agreement constitutes
a legal, valid, and binding obligation of that Party. Without limiting the generality of the
foregoing, each Party represents that its governing authority and, in the case of LORA, its LORA
Board, has authorized the execution, delivery, and performance of this Agreement by it. The
individuals executing this Agreement warrant that they have full authority to execute this
Agreement on behalf of the entity for whom they purport to be acting. Each Party represents to
the other that neither the execution and delivery of the Agreement, nor the consummation of the
transactions contemplated hereby will: violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, government agency, or court to which it is subject or any provision of its charter or bylaws; or conflict with, result in a breach of, or constitute a default under any other agreement to which it is a party or by which it is bound. No Party needs to give any notice to, make any filing with, or obtain the consent of any other entity or person to consummate the transaction contemplated by this Agreement.

12.25 Exhibits

The Exhibits attached to this Agreement are an integral part of this Agreement and are fully incorporated into this Agreement where they are referenced in the text of this Agreement.

12.26 Mortgagee Protection

12.26.1 Mortgagee Not Obligated To Construct. Notwithstanding any of the provisions of the Agreement, a Mortgagee or its designee for purposes of acquiring title at foreclosure shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; provided, however, that nothing in this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those users or improvements provided in or permitted by this Agreement.

12.26.2 Copy of Notice of Default to Mortgagee. If LORA delivers a notice or demand to Developer with respect to Developer’s breach of this Agreement, LORA shall at the same time send a copy of such notice or demand to each Mortgagee with a lien of record, at the last address of such holder shown in the real property records where the Project is located. Failure of LORA to send a copy of such notice or demand to a Mortgagee shall not prevent or limit in any way LORA’s rights and remedies under this Agreement.

12.26.3 Mortgagee’s Options to Cure Defaults. After Developer’s default of this Agreement and if Developer fails to cure or remedy said default within the required time period, then each Mortgagee shall have thirty (30) days after passage of the latest date for Developer’s cure or remedy of the default or longer if the default cannot reasonably be cured within such 30-day period and Mortgagee is diligently pursuing such cure or remedy, to cure or remedy the default itself, if cure or remedy thereof is permitted by this Agreement. If a Mortgagee does cure or remedy the default, the Mortgagee may add the cost thereof to the Mortgage debt and the lien of its Mortgage, if permitted by its loan documents. If the default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the improvements, provided that the Mortgagee notifies LORA in writing of its intention to complete the Project, and completes the Project in accordance with Section 12.26.1
above.

12.26.4 Amendments Requested by Mortgagee. LORA shall execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Developer secured by a security interest in all or any part of the Property or the Project, provided that such proposed amendments or other agreements do not materially and adversely affect the rights of LORA under this Agreement.

12.27 Memorandum of Development Agreement; Owner Acceptance

The Parties agree to execute, deliver and record at Closing a Memorandum of this Agreement in the form attached as Exhibit H against the Developer’s interest in the Property. Developer shall cause the Owner to simultaneously execute the Memorandum thereby accepting the Agreement as an encumbrance on the Owner’s fee interest in the Property from the date of Closing until the date that construction of one hundred thirty-five (135) parking spaces on the Property is substantially complete at which time the City Parking Lease will be effective.

(Remainder of Page Intentionally Left Blank;
Signature Page Follows.)
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates shown below.

LORA:

By: ________________________________
Print Name: __________________________
Its: ________________________________

Approved as to form:
LORA Attorney

By: ________________________________
Print Name: __________________________
Its: ________________________________

Developer: EVERGREEN GROUP LLC,
By: W&K Evergreen LLC, its Manager
  By: PHK Enterprises LLC, its Co-Manager

By: ________________________________
  Patrick Kessi, Member

By: ________________________________
EXHIBIT A

LEGAL DESCRIPTIONS OF PARCELS

All of Block 137, Extension of the Oregon Iron & Steel Company’s First Addition to Lake Oswego, recorded as Plat No. 93, in the County of Clackamas and State of Oregon,

TOGETHER WITH all of that certain unnamed alleyway now vacated running Northerly and Southerly through said Block.
EXHIBIT B – SITE PLAN
EXHIBIT C
GLOSSARY OF DEFINED TERMS

The following terms have the designated meanings in this Agreement:

1. “Agreement” has the meaning set forth in Recital A of this Agreement.

2. “BOLI” is defined as Oregon Bureau of Labor and Industries set forth in the Section 5.4.7 of this Agreement.

3. “Business Days” has the meaning set forth in Section 12.14 of this Agreement.


5. “City Parking Lease” has the meaning set forth in Section 2.4 of this Agreement.

6. “City” has the meaning set forth in Recital A of this Agreement.

7. “Closing” means the date on which the Developer closes its debt financing for construction of the Project.

8. “Completion” has the meaning set forth in Section 7.1.1.

9. “Conceptual Floor Plans” means the conceptual plans prepared by Zimmer Gunsel Frasca, LLP and Ankrom Moisan Associated Architects Inc. attached to this Agreement as Exhibit D.

10. “Design Development Drawings” means the drawings and other documents prepared by the Developer’s architect or architects that include all required elements for the Developer’s final City Development Review application.

11. “Developer” is defined as Evergreen Group LLC set forth in the introductory language of this Agreement.

12. “Developer Ownership Documents” has the meaning set forth in Section 5.1.4.

13. “Effective Date” has the meaning set forth at the top of page 1 of this Agreement.

14. “Final Approval” means final approval by the City or another governmental body or bodies with jurisdiction over the Project and the expiration of any and all applicable
appeal periods without an appeal being filed.

15. “Final Construction Drawings” means working drawings and specifications setting forth in detail the requirements for materials, equipment, systems, standards and workmanship for the construction of the Project.

16. “Final Determination Letter” has the meaning set forth in Section 6.7 of this Agreement.

17. “Funding and Financing Plan” has the meaning set forth in Section 3.1 of this Agreement.

18. “General Contractor” means the general contractor retained by Developer or the ground lessee of the Property to construct the Project.

19. “Ground Lease” has the meaning set forth in Section 5.1.2 of this Agreement.

20. “Legal Holiday” has the meaning set forth in Section 12.14 of this Agreement.

21. “LORA” is defined as the Lake Oswego Redevelopment Agency, as set forth in the introductory language of this Agreement.

22. “LORA Board” means the Board of the Lake Oswego Redevelopment Agency.

23. “LORA Construction Payment” has the meaning set forth in Section 3.3 of this Agreement.

24. “LORA Permit Payments” has the meaning set for in Section 3.4 of this Agreement.

25. “LORA Project Manager” means Brant Williams or his designee.

26. “Manager” has the meaning set forth in Exhibit F-2 to this Agreement.

27. “Mortgage” means a mortgage, deed of trust or master lease against the Property (or any portion thereof), including a leasehold mortgage or trust deed, to finance the Project recorded in the real property records of Clackamas County, Oregon.

28. “Mortgagee” means the holder of any Mortgage, including a master lease and trust deed, together with any successor or assignee of such holder. The term “Mortgagee” shall include any Mortgagee as owner of the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or any insurer or guarantor of any obligation or condition secured by a Mortgage but shall not include (a) any other person
or entity who thereafter obtains title to the Property from or through a Mortgagee or (b) any other purchaser at foreclosure sale.

29. “**Non-Disturbance Agreement**” has the meaning set forth in Section 5.1.2 of this Agreement.

30. “**Option Agreement**” has the meaning set forth in Section 5.1.1 of this Agreement.

31. “**Owner**” means Wizer Properties LLC.

32. “**Parking Component**” has the meaning set forth in Section 2.4 of this Agreement.

33. “**Parking Facility**” has the meaning set forth in Section 2.4 of this Agreement.

34. “**Parking Management Agreement**” has the meaning set forth in Section 2.4 of this Agreement.

35. “**Party**” and “**Parties**” have the meanings set forth in Recital K of this Agreement.

36. “**Pedestrian Easement**” has the meaning set forth in Section 6.15 of this Agreement.

37. “**Permit Payment Cap**” is the cap on the total amount of the LORA Permit Payments as set forth in Section 3.1 of this Agreement.

38. “**Private Investment**” has the meaning set forth in Section 3.1 of this Agreement.

39. “**Project**” has the meaning set forth in Section 2.1.1.

40. “**Project Contingencies**” has the meaning set forth in Section 5.4 of this Agreement.

41. “**Project Schedule**” has the meaning set forth in Section 4.1 of this Agreement.

42. “**Property**” has the meaning set forth in Recital A of this Agreement.

43. “**Public Parking**” has the meaning set forth in Section 2.4 of this Agreement.

44. “**Residential Component**” has the meaning set forth in Section 2.2 of this Agreement.
45. “Retail Component” has the meaning set forth in Section 2.3 of this Agreement.

46. “Temporary Certificate of Occupancy” means a temporary certificate of occupancy issued by the City and allowing occupancy.

47. “Unavoidable Delay” means a condition that is unforeseeable, beyond a Party’s reasonable control, including, without limitation, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, epidemics, quarantines, blockages, embargoes, labor disputes, strikes, malicious mischief, explosions, unforeseen environmental conditions, and adverse market conditions on the scale of the Great Recession or Great Depression.

48. “Urban Renewal Plan” has the meaning set forth in Recital C of this Agreement.

49. “Use Covenant” has the meaning set forth in Section 6.16 of this Agreement.
EXHIBIT E
INTENTIONALLY DELETED
EXHIBIT F-1

CITY PARKING LEASE – KEY TERMS

Required terms:

1. Developer, as Ground Lessee, will initially sublease the Public Parking to the City at Closing. If Developer exercises its option to purchase the Property at completion of Project construction, the initial sublease for the City Parking will become a lease of the Public Parking. Thereafter the City Lease will encumber the Public Parking and any party acquiring the Public Parking will acquire the Public Parking subject to the City Parking Lease.

2. Owner of the Public Parking will lease the Public Parking to the City for the nominal rent of One Dollar ($1.00).

3. Term of the lease is 75 years, plus two ten year renewal terms at City’s election.

4. City will have the benefit of any easements granted to the Retail Component owner and will be burdened with any easements granted by Retail Component owner.

5. Given LORA’s and the City’s status as public entities, the Public Parking is exempt from real property taxation under current law. If the Public Parking becomes taxable, the Retail Component owner will pay any real property taxes. If the Public Parking becomes taxable the Retail Component owner may charge a reasonable amount for parking in order to cover property taxes attributable to the Public Parking.

6. City will be responsible for parking enforcement, other than towing, in the Public Parking garage. The owner of the Retail Component will not pay the City for its enforcement services. City will conduct enforcement activities according to the terms of the Parking Management Agreement.

7. If not covered in the Parking Management Agreement, the City Parking Lease will also provide for the following:
   a. Who is responsible to perform and pay for repair and maintenance of the Public Parking; and
   b. Who is responsible to maintain property and liability insurance for the Public Parking.

   The City shall not be responsible for any of the foregoing costs and expenses.

8. Lease subordination provisions will be included.

9. The lease shall prohibit the City from subletting any portion of the leased premises and from assigning the lease or any portion thereof, except to a City agency or body or to an entity, association or alliance created by the City specifically to manage parking garages
owned or leased by the City.

10. A Memorandum of the Lease will be recorded.
EXHIBIT F-2
PARKING MANAGEMENT AGREEMENT – KEY TERMS

Required terms:

1. The Public Parking will consist of 135 parking spaces. A reasonable number of these parking spaces (which, in keeping with ratios at Lakeview Village, will not exceed 48 spaces) will be dedicated for the benefit of tenants, patrons and employees of the Retail Component between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. The balance of the parking spaces will be dedicated for use by the general public.

2. The primary purpose of having the Public Parking in the Project is to encourage a vibrant downtown and strong retail environment. The parties believe that the Public Parking will and should encourage the general public to support retailers, restaurants and otherwise conduct business at the Project, Lakeview Village and in the downtown Lake Oswego core.

3. Parking shall be free to all users; however, if paid parking becomes the norm for the downtown Lake Oswego area, the City and the owner of the Retail Component (“Owner”), who shall be the manager of the Public Parking (“Manager”), may mutually establish a parking fee, the proceeds of which, after deduction of all expenses and taxes, shall be divided equally.

4. Given LORA’s and the City’s status as public entities, the Public Parking is exempt from real property taxation under current law. If the Public Parking becomes taxable, Owner will pay any real property taxes. Manager may charge a reasonable amount for parking in order to cover property taxes attributable to the Public Parking, if the Public Parking becomes taxable.

5. The City will not require more retail parking than that required and approved through the City’s regulatory processes, and this requirement may be fulfilled from the 135 parking spaces.

6. Time limits for general public parking will be established, which are anticipated to be three (3) hours and which the Manager and the City Manager may mutually agree to increase or decrease from time to time.

7. The Manager and the City Manager may mutually agree to increase or decrease the hours and days in which the dedicated parking spaces will be dedicated for the benefit of tenants, patrons and employees.

8. Those coming to the Project to visit residents will be directed to the visitor parking to be constructed as part of the Residential Component.

9. Owner reserves the right to locate mechanical system facilities, storage, and trash receptacles in the Public Parking.
10. The City shall pay no management fee to Manager.

11. Owner may appoint a qualified administrator to oversee operations in the Public Parking who shall have full authority to act for and on behalf of Owner.

12. Manager and personnel shall operate the Public Parking in a professional manner.

13. Manager will be responsible for maintaining and repairing the Public Parking, including capital repairs, replacements and additions. Manager will also be responsible for paying for utilities associated with the Public Parking and for towing.

14. The Parking Management Agreement will require Owner to carry specified amounts of liability and property insurance.

15. At a minimum, Manager shall keep the Public Parking open:
   a. 7 a.m. - 10 p.m., Monday-Thursday (excluding Holidays);
   b. 7 a.m. - Midnight, Fridays and Saturdays; and
   c. 7 a.m. - 10 p.m., Sundays and Holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas).

16. The condominium documents will provide for necessary and appropriate easements among the condominium unit owners (e.g., for pedestrian and vehicular ingress and egress).

17. Owner or Manager will install and Manager will maintain (a) signs indicating the availability of the Public Parking to the public, (b) directional signage to assist vehicular and pedestrian traffic with ingress to and egress from the Public Parking garage, and (c) signage indicating time limits, reserved spaces and other special use provisions applicable in the Public Parking component of the Project.

18. The Parking Management Agreement will provide the City with the right to manage, operate and maintain the Public Parking if Manager fails to do so and to bill the costs associated with such management, operation and maintenance to Owner. Costs shall not exceed the costs customarily incurred for non-attended parking facilities in the Portland metropolitan area.

19. The Parking Management Agreement will give the City reasonable rights to inspect (a) the Public Parking and (b) the Manager’s books and records related to the operations and maintenance of the Public Parking.

20. The Parking Management Agreement will provide a mechanism for the parties to reconsider in the future whether or not the number of spaces dedicated for the tenants, patrons and employees of the Retail Component is sufficient in light of then-existing conditions, including parking usage by the general public.
21. Owner may not assign this Agreement without the prior written consent of the City; provided, however, that Owner may transfer its rights and obligations to a new owner of the Retail Component or may enter into a contract with a professional parking management company without the consent of the City.

22. The length of the term of the Parking Management Agreement will be the same as the term of the City Parking Lease.
## EXHIBIT G

### PROJECT SCHEDULE

<table>
<thead>
<tr>
<th>Task</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developer and City approve form of City Parking Lease</td>
<td></td>
</tr>
<tr>
<td>Developer and City approve form of Parking Management Agreement</td>
<td></td>
</tr>
<tr>
<td>Developer and City approve form of Pedestrian Easement</td>
<td>Within 120 days of Effective Date</td>
</tr>
<tr>
<td>Developer submits Design Development Drawings to LORA</td>
<td>8/16/13</td>
</tr>
<tr>
<td>LORA responds to Developer request for review and approval of Design</td>
<td>8/29/13</td>
</tr>
<tr>
<td>Development Drawings</td>
<td></td>
</tr>
<tr>
<td>Developer submits City Development Review application</td>
<td>9/30/13</td>
</tr>
<tr>
<td>Construction Finance Closing occurs</td>
<td>9/15/14</td>
</tr>
<tr>
<td>LORA Permit Payments Paid</td>
<td>9/15/14</td>
</tr>
<tr>
<td>Construction Commences</td>
<td>9/16/14</td>
</tr>
<tr>
<td>City issues Temporary Certificate of Occupancy for final component of</td>
<td>9/16/16</td>
</tr>
<tr>
<td>Project; Construction “Complete”</td>
<td></td>
</tr>
<tr>
<td>LORA pays LORA Construction Payment within 10 days of Temporary</td>
<td>Anticipated to be 9/26/16</td>
</tr>
<tr>
<td>Certificate of Occupancy and upon notice that more than half the Retail Component is leased</td>
<td></td>
</tr>
<tr>
<td>Developer and City execute City Parking Lease</td>
<td>9/15/14</td>
</tr>
<tr>
<td>Developer and City execute Parking Management Agreement</td>
<td>9/15/14</td>
</tr>
<tr>
<td>Developer and City execute Pedestrian Easement</td>
<td>9/15/14</td>
</tr>
</tbody>
</table>
EXHIBIT H
FORM OF MEMORANDUM OF AGREEMENT

After recording return to:
Evergreen Group LLC
3330 N.W. Yeon, Suite 210
Portland, OR 97210

Memorandum of Block 137 Project Development Agreement

THIS MEMORANDUM OF BLOCK 137 PROJECT DEVELOPMENT AGREEMENT ("Memorandum") shall serve as notice to all persons that the LAKE OSWEGO REDEVELOPMENT AGENCY, the duly authorized and acting urban renewal agency of the City of Lake Oswego, Oregon ("LORA"), and EVERGREEN GROUP LLC, an Oregon limited liability company ("Developer"), entered into a BLOCK 137 PROJECT DEVELOPMENT AGREEMENT, dated as of __________, 2013 ("Agreement") relating to the real property ("Property") located in Clackamas County, Oregon described in Attachment A to this Memorandum.

The parties to the Agreement are:
Lake Oswego Redevelopment Agency
380 A Avenue
Lake Oswego, OR 97034

and

Evergreen Group LLC
3330 N.W. Yeon
Suite 210
Portland, OR 97210

Among other things, the Agreement requires Developer upon the satisfaction of certain conditions, to complete certain private improvements on the Property all as more particularly set forth in the Agreement (the "Project"). Sections 6.6 (Uses, except Developer’s obligation to build), and 12.26. (Mortgagee Protection) are covenants that run with the land and will survive Completion of the Project or termination of the Agreement according to their terms. Sections 3.4 (LORA Permit Payment), 6.11 (Liens), 6.12 (Indemnity for Construction Liens), 10 (Default), 11 (Remedies), 12.2.2 (Confidentiality), and 12.20 (Attorneys’ Fees) will survive Completion of the Project or termination of the Agreement and will bind the Parties according to their terms but are not covenants running with the land.

LORA and Developer execute this Memorandum to acknowledge being bound by the Agreement, to give notice of the Agreement to third parties and to encumber Developer’s interest in the Property as described in the Agreement.

LAKE OSWEGO REDEVELOPMENT AGENCY:

By: ______________________________
Date: __________________________

[Signatures continue on next page]
EVERGREEN GROUP LLC:

By: W&K Evergreen LLC, its Manager
By: PHK Enterprises LLC, its Co-Manager

By: _____________________________
    Patrick Kessi, Member

Date: ____________________________

STATE OF OREGON
  )
  ) ss.
COUNTY OF CLACKAMAS

This instrument was acknowledged before me on __________________, 2014, by
________________, ________________, of the LAKE OSWEGO REDEVELOPMENT AGENCY.

______________________________
Notary Public for
My commission expires: __________

STATE OF __________
  )
  ) ss.
COUNTY OF __________

This instrument was acknowledged before me on __________________, 2014, by
________________, _____________________, as the duly authorized representative of EVERGREEN
GROUP LLC.

______________________________
Notary Public for
My commission expires: __________

Wizer Properties LLC, as Owner pursuant to the Agreement, hereby acknowledges and accepts the
Agreement as an encumbrance on its interest in the Property until construction of 135 parking spaces on
the Property is substantially complete, at which time the City Parking Lease will be effective.

WIZER PROPERTIES LLC, an Oregon limited liability company

By: ______________________________

Its: ________________________________

[Acknowledgment on next page]
STATE OF __________  
COUNTY OF __________

This instrument was acknowledged before me on _____________, 2014, by
__________________, ________________________, as the duly authorized representative of WIZER
PROPERTIES LLC.

__________________________  
Notary Public for
My commission expires: ____________