

PROJECT AGREEMENT

This Project Agreement (the "Agreement") is executed this ____ day of September, 2011, by and between 6280 LLC (the "Developer"), and the City of Indianapolis Department of Metropolitan Development, on behalf of the Metropolitan Development Commission of Marion County, Indiana, acting as the redevelopment commission of the City of Indianapolis, Indiana, under Indiana Code §36-7-15.1, for and on behalf of the redevelopment district referred to in Indiana Code §36-3-1-6(c)(3) ("DMD").

1. Defined Terms.

Allocated Development Costs shall mean the portion of the Budgeted Development Costs allocated to the Public Garage pursuant to Subsection 8(g), which amount shall be increased annually by the CPI Multiplier.

Allocated Land Costs shall mean the portion of the Budgeted Land Costs allocated to the Public Garage pursuant to Subsection 8(g), which amount shall be increased annually by the CPI Multiplier.

Books and Records shall mean books and records with respect to the maintenance, repair, replacement, management, and operation of the Public Garage, including, without limitation: (a) copies of all contracts and agreements with respect thereto; and (b) customary supporting records and receipts.

Budget shall mean the budget for: (a) Land Costs; (b) Development Costs; and (c) construction of the Project; which budget shall include such line items as reasonably are required by DMD.

Budgeted Development Costs shall mean the total Development Costs, as determined based upon the approved Budget.

Budgeted Land Costs shall mean the total Land Costs, as determined based upon the approved Budget.

Budgeted Project Costs shall mean the total Project Costs, as determined based upon the approved Budget.

CFO Certification shall mean a certification from the CFO of Keystone with respect to the net worth and liquidity of Keystone that reasonably is satisfactory to DMD.

Change Order shall mean a change order executed by DMD and Developer finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved by DMD; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

Change Order Request shall mean a written request for a change to the Final Plans.

City shall mean the City of Indianapolis, Indiana.

Claims shall mean claims, liabilities, damages, losses, costs, and expenses (including, without limitation, attorneys' fees).

Closing shall mean the: (a) closing with respect to the acquisition by Developer of the Project Site; provided that, so long as the Guaranty and the CFO Certification are provided at the Closing, the Closing may mean the closing with respect to the acquisition by Developer of only the Marathon Site; (b) deposit by DMD of a portion of the DMD Purchase Price into the Project Account; and (c) making of a portion of the Initial Disbursement.

Closing Date shall mean the date of the Closing.

Commercial Premises shall mean commercial space located in all or a portion of the first floor of the structured parking facility comprising the Project.

Construction Contract shall mean the construction contract for construction of the Project in accordance

with the Final Plans.

Construction Drawings shall mean construction drawings with respect to the construction of the Project in accordance with the Design Development Documents, which drawings shall be consistent with the Design Development Documents, and the Construction Schedule.

Construction Lender shall mean the lender providing Developer with the Construction Loan.

Construction Loan shall mean a construction loan that is obtained by Developer in connection with the construction of the Project.

Construction Schedule shall mean a detailed schedule for construction of the Project in accordance with the Final Plans.

CP Maintenance Agreement shall mean an agreement pursuant to which Developer, as owner of the Commercial Premises, shall: (a) keep and maintain the Commercial Premises in a good, safe, sightly, and structurally sound condition; and (b) maintain customary insurance with respect to the Commercial Premises.

CPI shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. Cities Average, All Items (Base Year 1982-84=100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or, if no longer published, such similar replacement index issued by the Department of Labor.

CPI Multiplier shall mean an amount equal to 1.0 plus the percentage increase in the CPI during the period: (a) beginning on the last day of the calendar year in which the Public Garage Opening occurs; and (b) ending on the date of the exercise of the Garage Option.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite reasonably diligent efforts, then the 30 day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30 day period; and (b) diligently pursues such remedy to completion.

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

Developer Funds shall mean: (a) funds from equity provided by Developer (if any); and (b) the proceeds of the Construction Loan.

Development Costs shall mean, with respect to the Project: (a) architectural, design, and engineering costs incurred by Developer; (b) costs to obtain the Required Permits; and (c) such other costs as are identified on Exhibit D, to the extent actually incurred by Developer.

Disbursing Agent shall mean either: (a) the Construction Lender; or (b) such other person or entity that jointly is selected by Developer and DMD from time to time; which Construction Lender or other person or entity shall disburse funds from the Project Account in accordance with the terms and conditions of the Disbursement Agreement.

Disbursement Agreement shall mean an escrow agreement to be executed by and among Developer, DMD, and the Disbursing Agent pursuant to which the Disbursing Agent shall disburse funds from the Project Account.

DMD Purchase Price shall mean \$6,350,000.00. The DMD Purchase Price shall be the amount payable by DMD in exchange for: (a) the execution by Developer of the IMPD Lease (stated alternatively, as prepayment

of rent for the first ten years of the term of the IMPD Lease); (b) the grant by Developer of the Public Parking Covenant; and (c) the grant by Developer of the Garage Option.

Due Diligence Period shall mean the period: (a) commencing on the Execution Date; and (b) ending on the Closing Date.

Environmental Assessment shall mean: (a) a Phase One Environmental Assessment of the Project Site; and (b) if recommended by such Phase One Environmental Assessment, a Phase Two Environmental Assessment of the Project Site.

Event of Default shall have the meaning set forth in Subsection 13(a).

Execution Date shall mean the date on which this Agreement is executed.

Final Documents and Drawings shall mean final Schematic Design Drawings, final Design Development Documents, the final Construction Schedule, the final Construction Drawings, and the final Budget, as each is finalized and approved or reviewed by DMD pursuant to Section 8.

Final Inspection shall mean an inspection by the Inspecting Architect of the Project after substantial completion thereof (excluding the interior build-out).

Final Plans shall mean the aggregated Final Documents and Drawings.

Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; and (iii) utility or energy shortages or acts or omissions of public utility providers).

Garage Acquisition Price shall mean an amount equal to \$1.00 plus: (a) the Transaction Cost; plus (b) the Allocated Land Costs; and plus (c) the Allocated Development Costs. If: (a) DMD exercises the Garage Option during the term of any permanent loan or other financing that Developer obtains after the expiration or other termination of the Construction Loan; and (b) as a result thereof, there is a prepayment fee or penalty due under the documents evidencing such permanent loan or other financing; then the Garage Acquisition Price shall be increased by the amount of such prepayment fee or penalty. Notwithstanding anything to the contrary set forth herein, in connection with obtaining any permanent loan or other financing, Developer shall use commercially reasonable efforts to minimize the amount of any prepayment fee or penalty and/or cause any such prepayment fee or penalty to be inapplicable in the case of an exercise by DMD of the Garage Option.

Garage Option shall mean the option of DMD to purchase the Public Garage for the Garage Acquisition Price if and in the event that a residential permit program is put into place for the area commonly known as "Broad Ripple". The Garage Option shall terminate and be of no further force or effect on the date that is five years after the Execution Date.

Garage Option Agreement shall mean an agreement to be executed by and between Developer and DMD with respect to the grant and exercise of the Garage Option. The Garage Option Agreement shall: (a) be consistent with the definition of Garage Option; (b) set forth the specifics with respect to the how to exercise the Garage Option; (c) provide that DMD may exercise the Garage Option for any reason on the Option Trigger Date; (d) provide that, if DMD exercises the Garage Option, then Developer shall have a period of 90 days within which to convey the Public Garage to DMD; (e) provide that the Garage Option shall terminate and be of no further force or effect on the date that is five years after the Execution Date, even if the Trigger Date has not yet occurred; and (f) contemplate the execution of declarations for stacking and support, maintenance, access, and use (including requiring that there be allocated: (i) a commercially reasonable number of Private Spaces serving the Commercial Premises; and (ii) commercially reasonable loading and delivery areas serving the Commercial Premises) in connection with the conveyance of the Public Garage to DMD.

Guaranty shall mean a guaranty from Keystone, which guaranty shall: (a) guaranty reimbursement to DMD of the amount of the Initial Disbursement actually disbursed to or for, or for the account of, Developer if Developer does not close on the acquisition of the Marco's Site on or before the applicable date set forth in the Plan Schedule; and (b) be in form and substance reasonably acceptable to DMD. The guaranty shall provide that, if DMD makes a call on the guaranty due to failure to timely close on the acquisition of the Marco's Site, then Developer shall have the right to elect to redesign the Project to be constructed only on the Marathon Site, in which case Keystone shall not be obligated to reimburse to DMD the amount of the Initial Disbursement; provided that, if Developer elects to redesign the Project, then: (a) the redesigned Public Garage shall continue to have approximately 350 parking spaces, with the final number of parking spaces to be determined through the Plan Refinement Process and set forth in the Final Plans; (b) the redesigned Project shall be reasonably similar in nature to that shown on the plans and drawings previously approved by the Broad Ripple Village Association; and (c) Developer shall: (i) proceed through the Plan Refinement Process; and (ii) be obligated to obtain all Required Permits with respect to the redesigned Project. If Developer: (a) exercises its right to redesign the Public Garage; but (b) is unable to complete the Final Plans, redesign the Project so that it is reasonably similar in nature to that shown on the plans and drawings previously approved by the Broad Ripple Village Association, and/or obtain all of the Required Permits, then the call by DMD on the guaranty shall stand, and Keystone shall be obligated to reimburse to DMD the amount of the Initial Disbursement actually disbursed to or for, or for the account of, Developer. If: (a) there is a call on the Guaranty, and Keystone is required to make a payment under the Guaranty as a result of such call; and (b) all or any portion of the Project Site is conveyed to DMD pursuant to Subsection 6(c); then the payment made by Keystone under the Guaranty shall be reduced by the amount of the Land Costs actually incurred by Developer for the portion of the Project Site that is conveyed to DMD.

IMPD Lease shall mean a lease for space in the Commercial Premises, pursuant to which lease a police substation shall be operated on the Project Site. The IMPD Lease shall: (a) provide that Developer shall build-out the space, providing to tenant a turn-key premises; (b) be for a term of not less than ten years; (c) provide for: (i) prepaid rent during the first ten years of the term in the amount specified in the lease, which rent is being prepaid by DMD as part of the DMD Purchase Price; accordingly, due to such prepayment, no further payment of rent shall be required during the first ten years of the term; and (ii) market rent for that portion of the term that continues after the expiration of the first ten years; and (d) require the tenant to pay its pro rata share of operating expenses at all times during the term. Notwithstanding the foregoing, the IMPD Lease shall be structured in such a manner that the only approvals required in connection therewith are the approvals of DMD and the tenant.

Initial Disbursement shall mean the disbursement of the first \$3,175,000.00 of funds from the Project Account (representing ½ of the DMD Purchase Price), which disbursement shall be used to fund Project Costs that are approved by DMD in the exercise of its reasonable discretion.

Inspecting Architect shall mean an architect designated by DMD as its inspecting architect.

Keystone shall mean Keystone Group LLC.

Land Costs shall mean: (a) the purchase price paid by Developer to acquire all or any portion of the Project Site; and (b) such other costs as are identified on Exhibit E, to the extent actually incurred by Developer.

Latent Defect shall mean those material defects in the construction of the Project that: (a) are not discovered; and (b) reasonably are not discoverable; by the Inspecting Architect during a Permitted Inspection or the Final Inspection.

Laws shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental rules, regulations, guidelines, orders, and/or decrees.

Marco's Site shall mean that portion of the Project Site that is delineated as the "Marco's Site" on Exhibit A.

Marathon Site shall mean that portion of the Project Site that is delineated as the "Marathon Site" on

Exhibit A.

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

Non-Compliance Notice shall mean a written notice from DMD that identifies Material Defects with respect to the Project discovered by the Inspecting Architect during a Permitted Inspection or the Final Inspection.

Option Trigger Date shall mean the date that is two years after the date on which a residential permit program is put into place for the area commonly known as "Broad Ripple".

Owner's Policy shall mean an owner's policy of title insurance for the Project Site, issued by the Title Insurer in conformity with the final form of the Title Commitment. The definition of Owner's Policy shall include, either as part of the owner's policy or as a separate policy of insurance, coverage insuring the interest of DMD in the Public Parking Covenant, subject only to such exceptions as reasonably are acceptable to DMD; provided that the obligation of Developer to provide the coverage insuring the interest of DMD in the Public Parking Covenant shall be subject to the reasonable, commercial availability of such coverage. The Survey shall establish the precise legal description of the Project Site for purposes of the Owner's Policy.

Parking Expert shall mean a person with at least five years of experience, in an executive capacity, managing multiple parking garages in central Indiana, which person is not: (a) a director, officer, shareholder, manager, member, employee, or contractor of: (i) DMD, the City, the City's Capital Improvements Board, or any other City affiliate; or (ii) Developer or any Developer affiliate; or (b) a director, officer, shareholder, manager, member, employee, or contractor of a contractor of: (i) DMD, the City, the City's Capital Improvements Board, or any other City affiliate; or (ii) Developer or any Developer affiliate.

Parking Expert Panel shall mean a panel of three Parking Expert: (a) one of which is appointed by DMD; (b) one of which is appointed by Developer; and (c) one of which is appointed jointly by the Parking Experts appointed by DMD and Developer.

Parking Management Agreement shall mean an agreement to be executed by and between Developer and the Parking Manager that addresses the following with respect to the Public Garage: (a) use and operation; (b) routine and capital maintenance and repair; (c) insurance and utilities; (d) parking rates; (e) setting the fee payable to the Parking Manager; (f) the maintenance of Books and Records, together with reporting requirements and rights in favor of DMD with respect to review and audit; (g) allocation of a commercially reasonable number of Private Spaces; and (h) allocation of commercially reasonable loading and delivery areas serving the Commercial Premises. The Parking Management Agreement shall provide that: (a) if the Parking Manager is not a parking operator with significant experience managing and operating parking garages, then Parking Manager shall hire such an operator to manage the day to day operation of the Public Garage; and (b) if DMD exercises the Garage Option, then the Parking Management Agreement shall remain in effect so long as the Parking Manager is an entity affiliated with the owner of the Commercial Premises (and regardless of whether the Parking Manager has hired a parking operator to manage the day to day operation of the Public Garage).

Parking Manager shall mean an entity chosen by, and affiliated with, Developer.

Permitted Change shall mean any change proposed by Developer to the Final Plans, so long as such change: (a) is not inconsistent with the Schematic Design Drawings approved by DMD; (b) does not result in the Final Plans containing structurally flawed elements; (c) does not reduce the number of the parking spaces in the Public Garage; (d) does not result in an increase in the cost to construct the portion of the Project comprised of the Public Garage; and (e) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule.

Permitted Exceptions shall mean exceptions to title reflected in the Title Commitment that do not prohibit or materially interfere with the construction or use of the Project in accordance with the terms and conditions of this Agreement.

Permitted Inspection shall mean an inspection by the Inspecting Architect of any item or component of the Project when reasonably deemed to be necessary or appropriate by DMD and/or the Inspecting Architect.

Plan Refinement Process shall mean the process set forth in Section 8 for completion of the Final Plans.

Plan Schedule shall mean the schedule in accordance with which Developer shall: (a) prepare and provide to DMD the Schematic Design Drawings, the Design Development Documents, the Construction Schedules, the Construction Drawings, the Budget, and the Construction Contract; and (b) acquire the Marco's Site, if Developer does not acquire the entirety of the Project Site at the Closing; which schedule is attached hereto as Exhibit B.

Private Spaces shall mean those parking spaces located in the Public Garage that are allocated exclusively to use by owners and employees of, and/or visitors to, the Commercial Premises. At all times there shall be a commercially reasonable number of Private Spaces, and the allocation of such Private Spaces shall be made pursuant to, and in accordance with, the Parking Management Agreement.

Project shall mean a structured parking facility and related improvements to be constructed on the Project Site, which structured parking facility shall consist of three levels containing: (a) approximately 350 parking spaces; provided that the final number of parking spaces shall be determined through the Plan Refinement Process and set forth in the Final Plans; and (b) first floor commercial space. The Project is comprised of the Public Garage and the Commercial Premises.

Project Account shall mean an escrow account maintained with the Disbursing Agent: (a) into which the DMD Purchase Price shall be deposited upon the execution of this Agreement; and (b) from which disbursements shall be made by the Disbursing Agent to Developer pursuant to the Disbursement Agreement to fund the Project Costs.

Project Costs shall mean the Land Costs, the Development Costs, and the costs and expenses incurred by Developer to construct the Project.

Project Site shall mean that certain real estate located generally at the corner of College Avenue and Westfield/Broad Ripple Avenue in the City, as generally depicted on Exhibit A. The Project Site is comprised of the Marco's Site and the Marathon Site.

Public Garage shall mean the portion of the Project comprised of the structured parking facility.

Public Garage Opening shall mean the opening of the Public Garage for parking by the general public.

Public Garage Revenue shall mean all revenue, receipts, and other income of any nature received in connection with the management, operation, and use of the Public Garage.

Public Parking Covenant shall mean a license, contractual right, or restrictive covenant granted by Developer in favor of DMD pursuant to which parking in the Public Garage shall be made available to the general public; provided that: (a) DMD shall elect whether the foregoing is a license, contractual right, or restrictive covenant; and (b) if DMD elects to have the foregoing be a license or contractual right, then DMD shall have the right at a later date to convert such license or contractual right into a restrictive covenant.

Public Parking Covenant Agreement shall mean an agreement to be executed by and between Developer and DMD with respect to the grant of the Public Parking Covenant.

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the

construction and use of the Project.

Schematic Design Drawings shall mean detailed schematic design drawings for the Project, which schematic design drawings shall be consistent with the Laws.

Second Disbursement shall mean the second disbursement of funds from the Project Account, which disbursement shall be used to fund Project Costs.

Substantial Completion Date shall mean the date on which Developer delivers to DMD a copy of an architect's certificate of substantial completion indicating that the Project (excluding the interior build-out of the Commercial Premises) has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Inspection, which "punch-list" items do not materially affect the ability of the Project to be used for the purposes required by this agreement.

Survey shall mean an ALTA survey of the Project Site, certified as of a current date.

Title Commitment shall mean: (a) a commitment for an owner's policy of title insurance with respect to the Project Site that: (i) is issued by the Title Insurer; and (ii) commits to insure: (A) marketable, indefeasible fee simple title to the Project Site in the name of Developer; and (B) the interest of DMD in the Public Parking Covenant; provided that: (1) Developer may elect to obtain a separate title commitment with respect to insuring the interest of DMD in the Public Parking Covenant; and (ii) the obligation of Developer to provide a commitment to insure the interest of DMD in the Public Parking Covenant shall be subject to the reasonable, commercial availability of such insurance; together with (b) copies of all documents referenced in Schedule B of such title commitment.

Title Insurer shall mean a title insurance company selected by Developer and reasonably approved by DMD.

Transaction Cost shall mean the amount of \$10,000.00.

2. General Obligations. Each of the following general obligations is subject to the terms and conditions of this Agreement.

(a) **Project.** Developer shall: (i) acquire the Project Site; and (ii) design and construct the Project.

(b) **Purchase Price Deposit.** On the Closing Date, DMD shall deposit \$1,900,000.00 of the DMD Purchase Price into the Project Account for disbursement in accordance with the Disbursement Agreement. On or before September 16, DMD shall deposit the remaining \$4,450,000.00 of the DMD Purchase Price into the Project Account for disbursement in accordance with the Disbursement Agreement. Once DMD deposits the DMD Purchase Price into the Project Account, DMD shall not have any right to withdraw any amount of the DMD Purchase Price that remains in the Project Account except in the case of an ongoing Event of Default. The foregoing shall not have any effect on the making of: (i) a portion of the Initial Disbursement at the Closing; and (ii) the remainder of the Initial Disbursement after DMD deposits the remaining \$4,450,000.00 of the DMD Purchase Price into the Project Account; and, as provided in Subsection 10(b)(ii), the Initial Disbursement shall occur: (i) in part at the Closing; and (ii) in part after the deposit of the remainder of the DMD Purchase Price is deposited into the Project Account; regardless of whether the parties have executed the Disbursement Agreement.

(c) **DMD Purchase.** In exchange for the payment by DMD of the DMD Purchase Price, Developer shall: (i) enter into the IMPD Lease; (ii) grant the Public Parking Covenant; and (iii) grant the Garage Option.

(d) **Maintenance.** Developer shall execute the CP Maintenance Agreement.

(e) Intersection. DMD confirms that it currently is planned that streetscape work and infrastructure improvements will be completed in the area comprising the intersection of College Avenue and Westfield/Broad Ripple Avenue. As the nature of such streetscape work and infrastructure improvements is finalized, DMD shall provide such information to Developer. Thereafter, DMD shall exercise commercially reasonable efforts to ensure that the planned streetscape work and infrastructure improvements are completed, and that such completion is at the cost and expense of DMD or another agency of the City.

(f) No Discrimination. In connection with the performance of its obligations under this Agreement (including, without limitation, its construction obligations), Developer shall not discriminate against any contractor, subcontractor, or other party with respect to: (i) hire; (ii) terms, conditions, or privileges of employment; or (iii) or any matter directly or indirectly related to hire or employment; because of race, age, color, religion, gender, sexual orientation, disability, national origin, or ancestry.

3. Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur: (a) on September 2, 2011; and (b) at the office of the Title Insurer, or at such other place as DMD and Developer mutually agree.

4. Closing Documents. At the Closing, the documents and instruments set forth in this Section shall be executed and/or delivered.

(a) A confirmation by DMD of the representations and warranties set forth in Subsection 7(a)

(b) A confirmation by Developer of the representations and warranties set forth in Subsection 7(b).

(c) If Developer is only closing on the acquisition of the Marathon Site, the Guaranty and the CFO Certification.

(d) The Owner's Policy; provided that, if the Public Parking Covenant Agreement is not executed in connection with the Closing, then Developer shall obtain the portion of the Owner's Policy comprised of coverage insuring the interest of DMD in the Public Parking Covenant at such time as the Public Parking Covenant Agreement is executed. DMD agrees that the obligation of Developer to provide coverage insuring the interest of DMD in the Public Parking Covenant shall be subject to the reasonable, commercial availability of such coverage.

(e) Copies of such resolutions, consents, authorizations, and other evidence as either party or the Title Insurer reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or DMD, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or DMD of its obligations hereunder and under the foregoing documents, have been authorized by Developer or DMD, respectively.

(f) Such other customary documents and instruments as Developer, DMD, or the Title Insurer reasonably may request in connection with the Closing.

5. Conditions to Developer Obligations. The obligations of Developer with respect to proceeding with the Closing shall be subject to the satisfaction or waiver in writing, within the Due Diligence Period or such other period as is specified by the terms and conditions of this Section, of the conditions set forth in this Section.

- (a) Title. Developer shall have obtained the Title Commitment.
- (b) Survey. Developer shall have obtained the Survey.
- (c) Environmental Assessment. Developer shall have obtained the Environmental Assessment.
- (d) Title Review. Developer shall have determined that the Title Insurer shall insure marketable, indefeasible fee simple title to the Project Site in the name of Developer, free of all exceptions other than the Permitted Exceptions.
- (e) Survey Review. Developer shall have determined that the Survey does not disclose any condition that prohibits or materially interferes with the construction or use of the Project in accordance with the terms and conditions of this Agreement.
- (f) Environmental Condition. Developer shall have determined that there: (i) is no contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws, to the extent that such Laws apply to use of the Project as a parking garage and/or for commercial use (as opposed to for residential purposes); and (ii) are no wetlands on the Project Site.
- (g) Soil Condition. Developer shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions with respect to the soil of the Project Site that would materially interfere with the construction and use of the Project in accordance with the terms and conditions of this Agreement.
- (h) Required Permits. Developer shall have obtained, or determined that it shall be able to obtain, all Required Permits.
- (i) Utility Availability. Developer shall have determined that gas, electricity, telephone, water, storm and sanitary sewer, and other utility services in adjoining public rights-of-way or properly granted and recorded utility easements are serving or will serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement.
- (j) Title. Either: (i) Developer shall be satisfied that it will be able to obtain fee simple title to the entirety of the Project Site on the Closing Date; or (ii) if Developer will be closing only on the acquisition of the Marathon Site at the Closing, then: (A) DMD has agreed to the form and substance of the Guaranty and the CFO Certification; and (B) Developer either has entered into, or is satisfied that it will be able to enter into, an agreement to purchase the Marco's Site.
- (k) No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by DMD that DMD has failed to cure within the Cure Period; and (ii) all of the representations and warranties set forth in Subsection 7(a) shall be true and accurate in all respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer either may elect to: (a) waive in writing satisfaction of the conditions and to proceed to Closing; or (b) terminate this Agreement by a written notice to DMD; provided that, with respect to breaches of this Agreement by DMD, Developer shall have the rights and remedies set

forth in Section 13. If: (a) one of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied; and (b) Developer fails to terminate this Agreement as permitted in this Section prior to the expiration of the period that is specified for satisfaction of such condition; then such unsatisfied condition automatically shall be deemed to be waived by Developer. Notwithstanding anything to the contrary set forth herein, Developer shall work diligently and in good faith to satisfy the conditions set forth in this Section.

6. Conditions to DMD Obligations.

(a) Closing. The obligations of DMD with respect to proceeding with the Closing shall be subject to the satisfaction or waiver in writing, within the Due Diligence Period or such other period as is specified by the terms and conditions of this Subsection, of the conditions set forth in this Subsection.

(i) Title. Developer shall have provided the Title Commitment to DMD.

(ii) Survey. Developer shall have provided the Survey to DMD.

(iii) Environmental Assessment. Developer shall have provided the Environmental Assessment to DMD.

(iv) Title Review. DMD shall have determined that the Title Insurer shall insure: (A) marketable, indefeasible fee simple title to the Project Site in the name of Developer, free of all exceptions other than the Permitted Exceptions; and (B) the interest of DMD in the Public Parking Covenant, subject only to such exceptions as reasonably are acceptable to DMD; provided that, if there is not reasonable, commercially available insurance that would cover the interest of DMD in the Parking Public Covenant, then obtaining such insurance shall not be a condition to the obligation of DMD to proceed with the Closing (and the lack of such insurance shall not be grounds upon which DMD may terminate this Agreement).

(v) Survey Review. DMD shall have determined that the Survey does not disclose any condition that prohibits or materially interferes with the construction or use of the Project in accordance with the terms and conditions of this Agreement.

(vi) Environmental Condition. DMD shall have determined that there: (A) is no contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws, to the extent that such Laws apply to use of the Project as a parking garage and/or for commercial use (as opposed to for residential purposes); and (B) are no wetlands on the Project Site.

(vii) Soil Condition. DMD shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions with respect to the soil of the Project Site that would materially interfere with the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(viii) Title. Either: (A) DMD shall be satisfied that Developer will be able to obtain fee simple title to the entirety of the Project Site on the Closing Date; or (B) if Developer will be closing only on the acquisition of the Marathon Site at the Closing, then DMD: (1) has agreed to the form and substance of the Guaranty and the CFO Certification; (2) is satisfied that the Guaranty and the CFO Certification will be executed and delivered at the

Closing; and (3) either has determined that Developer has entered into, or is satisfied that Developer will be able to enter into, an agreement to purchase the Marco's Site.

(ix) Financial Ability. Developer shall have established that, taking into account payment by DMD of the DMD Purchase Price, Developer it has the financial wherewithal to acquire the Project Site and construct the Project, as evidenced by equity and loan commitments reasonably acceptable to counsel for DMD.

(x) No Breach. As of the Closing Date: (A) there shall be no breach of this Agreement by Developer that Developer has failed to cure within the Cure Period; and (B) all of the representations and warranties set forth in Subsection 7(b) shall be true and accurate in all respects.

(b) Second Disbursement. The obligations of DMD with respect to proceeding with the Second Disbursement shall be subject to the satisfaction or waiver in writing of the conditions set forth in this Subsection on or before the date that is 60 days after the Execution Date.

(i) Loan Closing. Developer shall have closed on the Construction Loan.

(ii) Police Lease. Developer and the Indianapolis Metropolitan Police Department shall have agreed on the form and substance of the IMPD Lease.

(iii) Disbursement Agreement. Developer and DMD shall have selected the Disbursing Agent. Developer, DMD, and the Disbursing Agent shall have agreed on the form and substance of the Disbursement Agreement.

(iv) Garage Option. Developer and DMD shall have agreed on the form and substance of the Garage Option Agreement.

(v) Parking Covenant. Developer and DMD shall have agreed on the form and substance of the Public Parking Covenant Agreement.

(vi) Parking Management. Developer, DMD, and the Parking Manager shall have agreed on the form and substance of the Parking Management Agreement.

(vii) CP Maintenance. Developer and DMD shall have agreed on the form and substance of the CP Maintenance Agreement.

(viii) No Breach. As of the date of the Second Disbursement: (A) there shall be no breach of this Agreement by Developer that Developer has failed to cure within the Cure Period; and (B) all of the representations and warranties set forth in Subsection 7(b) shall be true and accurate in all respects.

(c) No Satisfaction.

(i) If one or more of the conditions set forth in Subsection 6(a) is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, DMD either may elect to: (A) waive in writing satisfaction of the conditions and to proceed to Closing; or (B) terminate this Agreement by a

written notice to Developer; provided that, if DMD does not terminate this Agreement, then such unsatisfied conditions shall be deemed to be waived by DMD.

(ii) If one or more of the conditions set forth in Subsection 6(b) is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, DMD either may elect to: (A) waive in writing satisfaction of the conditions and to proceed with the Second Disbursement; or (B) require, by delivery of written notice, that Developer convey to DMD the Project Site, together with all information with respect to the Project Site and/or the Project in the possession of Developer or its affiliates (including, without limitation, all designs, plans, and specifications), after which conveyance this Agreement shall terminate; provided that, if DMD does not elect to require such conveyance and subsequent termination of this Agreement, then such unsatisfied conditions shall be deemed to be waived by DMD.

(iii) Notwithstanding clauses (i) and (ii), with respect to breaches of this Agreement by Developer, DMD shall have the rights and remedies set forth in Section 13.

(iv) Notwithstanding anything to the contrary set forth herein, DMD shall work diligently and in good faith to satisfy the conditions set forth in this Subsection.

7. Representations and Warranties.

(a) DMD. DMD represents and warrants to Developer that: (i) DMD shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) DMD has the power to enter into this Agreement and to perform its obligations hereunder; (iii) DMD has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; (iv) this Agreement is the legal, valid, and binding obligation of DMD; and (v) DMD shall work diligently and in good faith to satisfy the conditions set forth in Section 6.

(b) Developer. Developer represents and warrants to DMD that: (i) Developer shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) Developer has the power to enter into this Agreement and to perform its obligations hereunder; (iii) Developer has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; (iv) this Agreement is the legal, valid, and binding obligation of Developer; and (v) Developer shall work diligently and in good faith to: (A) satisfy the conditions set forth in Section 5; and (B) facilitate the satisfaction of the conditions set forth in Subsection 6(b).

8. Construction.

(a) Schematic Design Drawings. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit the Schematic Design Drawings to DMD for its review and approval. Within ten days after DMD receives the Schematic Design Drawings, DMD shall deliver to Developer written notice that it approves or rejects the Schematic Design Drawings; provided that, if DMD rejects all or any part of the Schematic Design Drawings, then such notice shall: (i) specify the part or parts that DMD is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the Schematic Design Drawings, the Schematic Design Drawings shall be final, subject to modifications by Change Orders.

(b) Further Documents/Drawings. In accordance with the Plan Schedule, Developer,

at its cost and expense, shall submit the Design Development Documents, the Construction Schedule, and the Construction Drawings to DMD for its review, each of which upon submission shall be final, subject to modifications by Change Orders.

(c) Budget. In accordance with the Plan Schedule, Developer shall submit the Budget to DMD for its review and approval. Within ten business days after DMD receives the Budget, DMD shall deliver to Developer written notice that it approves or rejects the Budget; provided that, if DMD rejects all or any part of the Budget, then such notice shall: (i) specify the part or parts that DMD is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the Budget, the Budget shall be final, subject to modifications by Change Orders.

(d) Final Plans. Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified by Change Orders.

(e) Change Orders. If Developer desires to make any changes to the Final Plans, then Developer shall submit a Change Order Request to DMD for review and approval. Within ten days after DMD receives the Change Order Request, DMD shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) DMD shall not withhold its approval unreasonably; and (ii) if DMD rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that DMD is rejecting; and (B) include the specific basis for such rejection. If DMD approves a Change Order Request, then DMD and Developer shall execute a Change Order. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of DMD with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer; provided that, with respect to a Permitted Change, Developer shall submit a Change Order Request to DMD for its review.

(f) Construction. Prior to commencing construction of the Project, Developer, at its cost and expense, shall obtain and submit to DMD for its review the Required Permits. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders); and (iii) in compliance with the Laws.

(g) Allocation. At such time as the Budget has been approved, the parties shall: (i) determine the Budgeted Development Costs and the Budgeted Land Costs; and (ii) allocate the Budgeted Development Costs and the Budgeted Land Costs between: (A) the Public Garage; and (B) the Commercial Premises; pursuant to an allocation set forth on, or determined pursuant to the terms and conditions of, Exhibit F.

(h) Business Enterprise. Developer, in connection with the construction of the Project, shall use diligent, good faith, commercially reasonable efforts to meet the following minority business enterprise, women business enterprise, and veteran business enterprise participation and work force utilization goals:

(i) 15% minority business enterprise owned and work force utilization participation, as certified by the State of Indiana or the City;

(ii) 8% women business enterprise owned and work force utilization participation, as certified by the State of Indiana or the City; and

- (iii) 3% veterans business enterprise owned and work force utilization participation.

Developer and DMD intend for the construction of the Project to generate approximately 125 permanent, full-time commercial jobs (or full-time commercial job equivalents).

9. Inspection.

(a) **Inspection.** Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, DMD may perform a Permitted Inspection. Within three days after a Permitted Inspection, DMD shall inform Developer orally if it intends to deliver a Non-Compliance Notice; provided that DMD shall deliver the Non-Compliance Notice within five business days after such oral notice. If DMD timely delivers a Non-Compliance Notice, then, as soon as is practicable, Developer shall correct all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or deemed to have been accepted, by DMD. Notwithstanding anything to the contrary set forth herein, all items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by DMD.

(b) **Final Inspection.** If Developer delivers to DMD a written request for a Final Inspection, then, on or before the later of the date that is five business days after: (i) receipt of such request; or (ii) the Substantial Completion Date; DMD shall: (i) conduct (or waive its right to conduct) the Final Inspection; and; and (ii) deliver a Non-Compliance Notice (if applicable) to Developer; provided that: (i) upon receipt of a Non-Compliance Notice, Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice; and (ii) all items or components of the Project with respect to which no Material Defects are identified in a timely Non-Compliance Notice shall be deemed to be accepted by DMD. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to this Subsection; DMD shall have no further inspection rights. Within five business days after DMD conducts (or waives its right to conduct) the Final Inspection, Developer and DMD shall identify the "punch-list" items, and Developer shall complete all "punch-list" items within 60 days after the "punch-list" items are identified.

(c) **Latent Defects.** Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by DMD pursuant to this Section shall be applicable with respect to any Latent Defects. An acceptance, or deemed acceptance, by DMD pursuant to this Section shall not mean that DMD has accepted, or Developer has been relieved of, responsibility for: (i) compliance with the Laws; (ii) the proper application of construction means or methods; or (iii) correcting any portion of the Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project.

(d) **General.** In the case of a Permitted Inspection, DMD shall: (i) comply with all health and safety rules of which DMD has been informed that have been established for personnel present on the construction site; and (ii) coordinate the inspections so that the inspections do not materially interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, DMD during any Permitted Inspection.

10. Project Account Disbursements.

(a) **General.** Unless expressly waived by DMD in writing, disbursement of funds from the Project Account shall occur only after the applicable requirements: (i) of the Construction Lender in connection with disbursement of the proceeds of its loan; and (ii) set forth in the Disbursement Agreement; have been satisfied in full. At such time as each of the

Construction Lender and the Disbursing Agent determines that it has received all items required for a disbursement, the Disbursing Agent shall have the authority to disburse funds from the Project Account in accordance with the disbursement request and the terms and conditions of the Disbursement Agreement; provided that, except and to the extent provided to the contrary in the Disbursement Agreement, disbursements shall not be made more frequently than monthly.

(b) Initial Disbursement.

(i) \$1,900,000.00 of the Initial Disbursement shall be disbursed at the Closing to pay Project Costs that are evidenced by supporting information reasonably satisfactory to DMD. The remaining \$1,275,000.00 of the Initial Disbursement shall be disbursed to pay Project Costs that are evidenced by supporting information reasonably satisfactory to DMD promptly after DMD deposits the remaining \$4,450,000.00 of the DMD Purchase Price into the Project Account; provided that, if the actual amount of the Project Costs incurred by Developer, and approved by DMD in the exercise of its reasonable discretion for payment with funds from the Initial Disbursement, as of the date on which DMD deposits the remaining \$4,450,000.00 of the DMD Purchase Price into the Project Account are less than \$3,175,000.00, then the difference between: (A) \$3,175,000.00; and (B) the actual amount of the Project Costs incurred by Developer, and approved by DMD in the exercise of its reasonable discretion for payment with funds from the Initial Disbursement, as of the date on which DMD deposits the remaining \$4,450,000.00 of the DMD Purchase Price into the Project Account; shall: (A) be held in the Project Account and disbursed as DMD: (1) is provided with reasonably satisfactory supporting information with respect to additional Project Costs incurred by Developer; and (2) approves payment of such Project Costs with funds from the Initial Disbursement; and (B) constitute a part of the Initial Disbursement (as opposed to constituting part of the Second Disbursement or a subsequent disbursement), notwithstanding that it is disbursed subsequent to the disbursements made at the Closing and after the date on which DMD deposits the remaining \$4,450,000.00 of the DMD Purchase Price into the Project Account.

(ii) The Initial Disbursement shall occur: (A) in part at the Closing; and (B) in part after the deposit of the remaining \$4,450,000.00 of the DMD Purchase Price into the Project Account; regardless of whether the parties have executed the Disbursement Agreement, and, if the Disbursement Agreement has not been executed, then the Initial Disbursement (including any part of the Initial Disbursement made subsequent to the Closing or subsequent to the date on which DMD deposits the remaining \$4,450,000.00 of the DMD Purchase Price into the Project Account) shall be governed by the terms and conditions of this Subsection.

(c) Second Disbursement. The following shall be executed and/or obtained in connection with the Second Disbursement: (i) the Disbursement Agreement (if not executed in connection with the Closing); (ii) the Public Parking Covenant Agreement (if not executed in connection with the Closing), together with the portion of the Owner's Policy comprised of coverage insuring the interest of DMD in the Public Parking Covenant (if not provided in connection with the Closing); (iii) The Parking Management Agreement; (iv) The Garage Option Agreement; (v) the IMPD Lease; and (vi) the CP Maintenance Agreement.

(d) Order of Funds. Except to the extent provided to the contrary in the Disbursement Agreement, from and after the date on which the full amount of the Initial Disbursement has been disbursed to pay Project Costs, all subsequent disbursements of funds from the Project

Agreement (including the Second Disbursement) shall be prorata with use of the remaining Developer Funds to pay Project Costs. Accordingly, each time that a request for disbursement of funds from the Project Account is received, the amount to which Developer shall be entitled shall be determined by multiplying: (i) the amount of the invoices to be paid with funds from such disbursement; by (ii) a fraction: (A) the numerator of which is 6,350,000.00; and (B) the denominator of which is the total amount of the Developer Funds. To the extent that such invoices are not satisfied in full after application of the funds that are disbursed from the Project Account, such invoices shall be paid out of Developer Funds.

(e) **Funds in Balance.** If, in the reasonable opinion of DMD, it appears that the remaining undisbursed funds on deposit in the Project Account, together with the remaining Developer Funds, are insufficient to: (i) complete the Project in accordance with the Final Plans and the terms and conditions of this Agreement; and (ii) pay all of the Project Costs shown on the Budget; then: (i) Developer and DMD shall work together cooperative, equitably, and in good faith to reach an agreement with respect to the deposit of additional funds into the Project Account to fill the shortfall; and (ii) the Disbursing Agent shall not disburse any further funds from the Project Account until such time as Developer and DMD have reached the agreement contemplated in the previous clause and there has been deposited into the Project Account the amount necessary to fill the shortfall.

11. Insurance. During construction of the Project, Developer shall maintain the policies of insurance described on Exhibit C. Each such policy shall: (a) be written by a company reasonably acceptable to DMD; and (b) provide that it shall not be modified or canceled without written notice to DMD at least 30 days in advance. The policy of general liability insurance required by this Section to be maintained by Developer shall name DMD as an additional insured. Developer shall deliver to DMD certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

12. Public Garage Rates.

(a) **Obligation.** Except as provided in Subsection 12(e), Developer shall be obligated to charge market rates for parking in the Public Garage.

(b) **Proposed Rates.** Developer shall submit to DMD a schedule of proposed rates for the Public Garage: (i) initially, prior to the date of the Public Garage Opening; and (ii) thereafter, prior to changing the rates to park in the Public Garage. The proposed rates submitted by Developer shall represent Developer's good faith determination of market rates for parking in the Public Garage.

(c) **Challenge Right.** DMD shall have a period of 45 days within which to challenge Developer's determination that the rates set forth on such schedule are market rates for parking in the Public Garage; provided that: (i) to challenge such determination, DMD shall deliver written notice to Developer; and (ii) pending the outcome of such challenge, Developer may charge the rates set forth on the submitted schedule.

(d) **DMD Challenge.** If DMD timely delivers written notice of a rate challenge to Developer, then, for a period of 30 days thereafter, DMD and Developer shall work cooperatively and in good faith to agree upon the market rate for parking in the Public Garage. If DMD and Developer, working cooperatively and in good faith, are unable to agree upon the market rate within such 30-day period, then, within five business days after the expiration of such 30-day period, Developer and DMD jointly shall appoint a Parking Expert to determine the market rates for the Public Garage. If Developer and DMD are unable to agree upon a single Parking Expert within such five business day period, then, within ten business days after the expiration of such five business day period, a Parking Expert Panel shall be convened to determine the market rates for the Public Garage. The determination of the market rates for the Public Garage that is made by the Parking Expert or the Parking Expert Panel, as applicable, shall be binding upon DMD and Developer.

(e) DMD Rates.

(i) After the market rates for the Public Garage have been determined, DMD, by delivery of written notice to Developer, may require Developer to charge less than market rates during certain, or at all, times.

(ii) If DMD exercises its rights under this Subsection, then: (A) the rates mandated by DMD shall remain in effect for a period of not less than one year; (B) with respect to the period during which the rates mandated by DMD remain in effect, DMD shall reimburse Developer for the difference between: (1) the Public Garage Revenue that actually would have been received had Developer been permitted to charge market rates for parking in the Public Garage; and (2) the actual Public Garage Revenue; and (C) DMD shall pay any reimbursements owed under this Subsection within 30 days after receipt of a written invoice, together with supporting information reasonably satisfactory to DMD; provided that Developer shall not submit such invoices more frequently than monthly.

(iii) If DMD exercises its rights under this Subsection, then at any time after the rates mandated by DMD have been in effect for one year, Developer may elect to return the rates for parking in the Public Garage to market rates by delivery of written notice to DMD pursuant to and in accordance with Subsection 12(b). If Developer elects to return the rates for parking in the Public Garage to market rates as permitted by this Subsection, then: (A) in accordance with such proposed change, the terms and conditions of Subsections 12(c) and 12(d) shall apply; and (B) after determination of the market rates, the rights of DMD under this Subsection again shall apply.

13. Defaults and Remedies.

(a) Events of Default. It shall be an "Event of Default" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it: (i) with respect to the obligation to pay money, if such failure is not cured within ten days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured within the Cure Period.

(b) Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 12% per annum.

(c) No Remedy Exclusive. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from

time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

14. Mutual Indemnification.

(a) DMD. DMD shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with: (i) the negligence or wilful misconduct of DMD or any party acting by, under, through, or on behalf of DMD; or (ii) the breach by DMD of any term or condition of this Agreement.

(b) Developer. Developer shall indemnify and hold harmless DMD from and against any and all Claims arising from or connected with: (i) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or wilful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement.

(c) Survival. Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the termination of this Agreement.

15. Assignment. Neither DMD nor Developer shall assign this Agreement without the prior written consent of the other party. Notwithstanding any assignment permitted under this Section, DMD or Developer, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release DMD or Developer, as the case may be, from such performance. Notwithstanding the foregoing, DMD may designate and/or delegate all or a portion of its rights and obligations hereunder (including, without limitation, funding obligations) to the Indianapolis Department of Public Works.

16. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; (b) sent by national overnight delivery service, with confirmation of receipt; or (c) sent by e-mail, with a contemporaneous follow-up copy delivered in accordance with clause (a) or (b) above; in any case addressed as follows: to DMD at 2042 City County Building, 200 E. Washington Street, Indianapolis, Indiana 46204, Attn: Director, e-mail: _____, with a copy to: Karl P. Haas, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204, e-mail: kph@wshlaw.com; and to Developer at 47 South Pennsylvania Street, 10th Floor, Indianapolis, Indiana 46204, Attn: Ersal Ozdemir, e-mail: ersal@keystone-corp.com, with a copy to Brian C. Bosma, Esq., Kroger Gardis & Regas, LLP, 111 Monument Circle, Suite 900, Indianapolis, Indiana 46204-5125, e-mail: bcb@kgirlaw.com. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

17. Authority. Each undersigned person executing this Agreement on behalf of DMD and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of DMD and Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by DMD and Developer, respectively.

18. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition

of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

19. Miscellaneous. Subject to Section 15, this Agreement shall inure to the benefit of, and be binding upon, Developer and DMD, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and DMD with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and DMD. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

[Signature Page to Follow]

IN WITNESS WHEREOF, DMD and Developer have executed this Project Agreement as of the date set forth above.

6280 LLC

By: 

Printed: David W. Pomplun

Title: as Agent

CITY OF INDIANAPOLIS DEPARTMENT
OF METROPOLITAN DEVELOPMENT,
on behalf of the Metropolitan
Development Commission of Marion
County, Indiana, acting as the
redevelopment commission of the City of
Indianapolis, Indiana, under Indiana Code
§36-7-15.1, for and on behalf of the
redevelopment district referred to in
Indiana Code §36-3-1-6(c)(3) ("DMD")

By: 

Maury Plambeck, Director

Acknowledgment

Indianapolis Department of Public Works acknowledges that, pursuant to Section 15, DMD may designate and/or delegate to it all or a portion of DMD's rights and obligations hereunder (including, without limitation, funding obligations).

INDIANAPOLIS DEPARTMENT OF
PUBLIC WORKS

By: 

Printed: David Sherman

Title: Director of DPW

EXHIBIT E
Costs Included in Land Costs

1. Attorneys' fees allocable to the acquisition of the Project Site
2. Recording Fees
3. sales commissions
4. Costs and expenses incurred to perform due diligence with respect to the Project Site, including:
 - (a) environmental investigation
 - (b) soil tests (structural)
 - (c) architectural and/or engineering plans
 - (d) survey
 - (e) title work (including the policy required to be provided to DMD)
5. Costs to close the acquisition of the Project Site (including insured closing costs)
6. Costs to demolish existing structures on the Project Site
7. Costs to relocate Marco's Pizza from its current premises on the Marco's Site (including costs of the space into which Marco's Pizza is relocated during the construction of the Project, and the costs to move Marco's Pizza back into the Project after completion of construction)

EXHIBIT F
Allocation of Budgeted Development Costs and Budgeted Land Costs

Taking into account the square footage of the parking area of the Parking Garage relative to the square footage of the Commercial Premises, Developer and DMD have agreed that each of the Budgeted Land Costs and the Budgeted Development Costs shall be allocated: (a) 80% to the Public Garage; and (b) 20% to the Commercial Space.

INDEX TO EXHIBITS

Exhibit A	Project Site (include delineation of Marco's Site and Marathon Site)
Exhibit B	Plan Schedule
Exhibit C	Required Insurance (Developer)
Exhibit D	Additional costs that constitute Development Costs
Exhibit E	Additional costs that constitute Land Costs
Exhibit F	Method for allocating Budgeted Development Costs and Budgeted Land Costs between the Public Garage and the Commercial Premises