

**BLOCK 137 PROJECT  
DEVELOPMENT AGREEMENT**

**By and between:**

**Lake Oswego Redevelopment Agency**

**and**

**Evergreen Group LLC**

**August 13, 2013**

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## **EXHIBITS**

<b><u>Exhibit Description</u></b>	<b><u>First Referenced</u></b>
Exhibit A – Legal Description of Parcels	Recital A
Exhibit B – Site Map of Project and Property	Recital A
Exhibit C – Glossary of Terms	Section 1
Exhibit D – Conceptual Floor Plans	Section 2.2
Exhibit E – INTENTIONALLY DELETED	
Exhibit F-1 – Public Parking Lease – Key Terms	Section 2.4
Exhibit F-2 – Parking Management Agreement – Key Terms	Section 2.4
Exhibit G – Project Schedule	Section 4.1
Exhibit H – Memorandum of Development Agreement	Section 12.27

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**BLOCK 137 PROJECT  
DEVELOPMENT AGREEMENT**

4 EFFECTIVE \_\_\_\_\_, 2013  
5 DATE:

6 BETWEEN: **Lake Oswego Redevelopment Agency,**  
7 the duly authorized and acting urban renewal agency of  
8 the City of Lake Oswego, Oregon (“LORA”)  
9

10 AND: **Evergreen Group LLC,**  
11 an Oregon limited liability company (“Developer”)  
12

13  
**RECITALS**

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

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

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

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

33 E. LORA and Developer desire the Project (i) transform the Property into a  
34 vibrant, sustainable mixed-use development that will include multi-story, multi-family buildings,  
35 and commercial and retail uses with residential parking and public parking and (ii) create a  
36 unique destination place within the downtown area of the City.

1 F. The Project would complete the redevelopment of a key parcel in the  
2 downtown core with a development type, density and structured parking costing in excess of  
3 what private equity and debt can accept based on current market conditions.  
4

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

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

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

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

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

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

## 25 AGREEMENT

### 26 SECTION 1 DEFINED TERMS

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

### 36 SECTION 2 DESCRIPTION OF PROJECT

#### 37 2.1 In General

1                   2.1.1 The “Project” includes three components to be built on the  
2 Property, as described in Sections 2.2 through 2.4 below and as shown in concept on  
3 Exhibit B.

4                   2.1.2 Each of the components and their unique development  
5 challenges and opportunities are described generally in Sections 2.2 through 2.4  
6 below. The descriptions are necessarily general, and may be subject to change as  
7 allowed within the terms of this Agreement as the Project is further refined and its  
8 design completed. Additional special characteristics of a component, and in some  
9 cases of all components, are described in later sections of the Agreement, particularly  
10 in Section 6. Developer will proceed with the Project as soon as practicable after all  
11 of the Project Contingencies (as set forth in later sections of this Agreement), have  
12 been satisfied or waived by the benefitted Party.

13                   2.2                   Residential Component

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

18                   2.3                   Retail Component

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

22                   2.4                   Parking Component

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

1

2 SECTION 3 PROJECT FUNDING AND FINANCING PLAN

3 3.1 Description of Funding and Financing Plan

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

8	Total Project Costs:	\$ 92,600,000.00
9	LORA Construction Payment:	\$ 749,000.00
10	LORA Permit Payments:	\$ 4,700,000.00*
11	Balance of Costs (“Private Investment”):	
12	Debt:	\$ 60,500,000.00
13	Private Equity:	\$ 26,651,000.00

14

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

16

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

25 3.2 Amendments to the Funding and Financing Plan

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

31 3.3 LORA Construction Payment

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

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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;

1 4.2.2.2 Delay in approvals or permits outside the control of  
2 Developer (including City land use, entitlement, permit and other approvals).

3 4.2.3 Developer's modification to the Project Schedule allowed by  
4 Subsections 4.2.2.1 and 4.2.2.2 above shall be no greater than thirty (30) days longer than  
5 the period of the respective delay(s).

6 4.2.4 Any modification to the Project Schedule proposed by  
7 Developer and as a result of delays described in Sections 4.2.2.1 and 4.2.2.2 requires  
8 written notice from Developer to LORA specifying the nature of the delay, the proposed  
9 timeframe for resolution of the delay and a revised Schedule showing any corresponding  
10 adjustments to the Project Schedule. Developer's notice shall be provided to LORA no  
11 later than thirty (30) days following commencement of the event(s) causing the delay and  
12 Developer's awareness of such event(s).

13 4.2.5 Developer will provide to the LORA Project Manager a revised  
14 Schedule that reflects any Schedule modification made pursuant to Section 4.2.1 or 4.2.2  
15 (except delays described in Sections 4.2.2.1 and 4.2.2.2) within ten (10) Business Days  
16 after LORA or LORA Project Manager approval of the modification, whichever approval  
17 is required. The revised Schedule provided under Section 4.2.4 or 4.2.5 shall be deemed to  
18 replace Exhibit G, Project Schedule, without amendment to this Agreement.

19 **SECTION 5 BASIC OBLIGATIONS AND PROJECT CONTINGENCIES**

20 5.1 Property Control

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

26 5.1.2 Prior to or at Closing, Developer will exercise its option to  
27 ground lease the Property and, pursuant to the terms of the Option Agreement, enter  
28 into the Ground Lease and Option to Purchase Agreement in the form attached to the  
29 Option Agreement, as may be amended prior to Closing (the "Ground Lease"). The  
30 Ground Lease will provide for the lease of the Property to Developer for a period of  
31 not less than ninety-nine (99) years. The Ground Lease, including any terms of the  
32 Option Agreement that are incorporated into the Ground Lease, shall be consistent  
33 with the terms of this Agreement to the satisfaction of the LORA Project Manager.  
34 Furthermore, the Ground Lease must include, to the satisfaction of the LORA Project  
35 Manager, an agreement by the Owner, as Lessor under the Ground Lease to execute  
36 and record at Closing a commercially reasonable subordination, nondisturbance and  
37 attornment agreement with the City ("Non-Disturbance Agreement") acknowledging  
38 in writing that (a) the City Parking Lease is subordinate to the Ground Lease, (b) the  
39 Owner and its successors and assigns recognizes the City Parking Lease and agrees  
40 not to disturb the City Parking Lease so long as the City is not in default of the City

1 Parking Lease, and (c) the City agrees to attorn to the Owner as if the Owner was the  
2 original landlord under the City Parking Lease.

3 5.1.3 Pursuant to the terms of the Ground Lease, Developer has an  
4 option to purchase the Property following substantial completion of the Project. As  
5 of the Effective Date, Developer anticipates that it will exercise the option to  
6 purchase the Property. Developer's exercise of its option to purchase the Property  
7 gives rise to Owner's right to exercise an option to purchase the Retail Component  
8 and the parking spaces supporting the Retail Component, including the Public  
9 Parking pursuant to and in accordance with the terms and conditions of that certain  
10 Option to Purchase Retail Units between Developer and Owner dated December 21,  
11 2012.

12 5.1.4 The Option Agreement, the Ground Lease and the Option to  
13 Purchase Retail Units comprise and are collectively referred to herein as the  
14 "Developer Ownership Documents."

15 5.1.5 Prior to the transfer of any portion of the Project to a third  
16 party, Developer will create a condominium dividing the Project into condominium  
17 units. It is currently contemplated that Developer will create a commercial  
18 condominium containing four condominium units – one for the Residential  
19 Component in each of the three buildings that will comprise the Project and one for  
20 the Retail Component.

## 21 5.2 Construction

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

## 26 5.3 Funding

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

## 29 5.4 Project Contingencies

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

### 38 5.4.1 Funding and Financing

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

#### 8 5.4.2 Mortgagee Non-Disturbance Agreement

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

#### 15 5.4.3 Property Acquisition

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

#### 34 5.4.4 Discretionary Land Use Approvals

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



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

6 6.1.3 Developer and LORA have agreed to the Conceptual Floor  
7 Plans identifying the components of the Project that are the basis for entering into this  
8 Agreement (Exhibit D). Developer shall prepare Design Development Drawings for  
9 the Project generally consistent with the Conceptual Floor Plans and submit them to  
10 LORA for review and approval in accordance with the Project Schedule. Design  
11 Development Drawings will be approved, if approved, by the LORA Board prior to  
12 Developer submitting its application for Development Review to the City, which  
13 application shall incorporate the Design Development Drawings that LORA has  
14 approved. LORA will respond to Developer's request for review or approval within  
15 ten (10) Business Days of receipt of a written request. If LORA fails to timely  
16 respond to such request, Developer may send a second notice. If Developer fails to  
17 send a second notice (and LORA failed to respond to Developer's original request),  
18 LORA shall be deemed to have disapproved of the Design Development Drawings.  
19 If LORA fails to respond to such second request within three (3) Business Days of  
20 LORA's receipt of same, such failure to timely respond will be deemed LORA's  
21 approval of the Design Development Drawings. Further, LORA will not  
22 unreasonably withhold, delay or condition its approval of Design Development  
23 Drawings that, in LORA's opinion, adequately address the following design and use  
24 objectives:

25 6.1.3.1 To create a quality, upscale, pedestrian friendly  
26 building, which responds to the neighborhood in scale and texture;

27 6.1.3.2 To conform to all City design and development  
28 standards and related ordinances;

29 6.1.3.3 To conform to the purposes and requirements of the  
30 Urban Renewal Plan;

31 6.1.3.4 To complement adjacent buildings in design and  
32 materials;

33 6.1.3.5 To use sustainable building design and techniques  
34 as much as commercially feasibly possible; and

35 6.1.3.6 To set high standards for design in downtown Lake  
36 Oswego.

37 6.1.4 If Developer wants to substantially change any Design  
38 Development Drawings after approval by LORA, Developer shall submit the  
39 proposed changes to LORA for approval. A substantial change shall mean any  
40 change that would have a material impact on the criteria set forth in Sections 6.1.3.1

1 through 6.1.3.6 above. Developer acknowledges that it may be required to secure  
2 separate City approval of such changes. Any separate City approvals shall be sought  
3 after LORA has approved the changes. LORA shall assist Developer throughout City  
4 development review and any land use process of the appropriate agencies within the  
5 City, but LORA does not represent or warrant that its assistance will guarantee  
6 approval.

7 6.1.5 In the event of a conflict between LORA's proprietary review  
8 of Design Development Drawings and the City's regulatory review of design through  
9 the City's Development Review process as to any design element of the Project, the  
10 City's Development Review process shall control.

11 6.2 Parking in the Project

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

14 6.2.1 Developer will construct a structured Parking Facility to serve  
15 the Residential and Retail Components, with an additional goal of meeting the public  
16 demand for parking in downtown Lake Oswego. LORA and Developer have  
17 determined that the Residential Component of the Project will have approximately  
18 three hundred twenty-two (322) to three hundred sixty-eight (368) parking spaces and  
19 the Retail Component will have no fewer than one hundred thirty-five (135) parking  
20 spaces, the latter of which will be part of the Public Parking garage and available to  
21 the public.

22 6.2.2 The Public Parking will be managed according to the Parking  
23 Management Agreement and the City Parking Lease.

24 6.3 Utilities; Stormwater Management

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

27 6.4 Transportation Improvements

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

31 6.5 Permits and Land Use Approvals

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

36 6.6 Uses

1                   Subject to the satisfaction or waiver of any and all Project Contingencies for the  
2 Project,

3                   6.6.1 Residential Density: Developer will build approximately 215  
4 residential units on the Property.

5                   6.6.2 Ground Floor Retail: The Retail Component will provide only  
6 active retail uses on the ground floor of the Project on the A Avenue and First Street  
7 block faces. Active retail uses for the Retail Component will be limited to Retail  
8 Sales and Food and Beverage Services as currently defined by City Code. The Retail  
9 Component shall have no less than 27,000 square feet and no more than 28,000  
10 square feet of ground-level retail space in the Project.

11                   6.6.3 Developer shall develop a tenanting strategy for its initial  
12 tenants in the Retail Component that:

13                   6.6.3.1 Encourages a mix of retail uses that is anticipated to  
14 generate vibrant urban activity, create an urban destination and contribute to the  
15 growing “sense of place” in the downtown Lake Oswego area;

16                   6.6.3.2 Limits occupancy by office uses, or any uses other than  
17 Retail Sales, Food and Beverage Services, to floors above street level, provided that  
18 the tenanting strategy may include sales and leasing offices for the Residential  
19 Component and lobbies serving the Residential Component, the square footage of  
20 which sales and leasing offices and lobbies is not included in the 27,000 square foot  
21 minimum for the Retail Component.

22                   6.6.4 The LORA Project Manager, or his or her designee, may, but is  
23 not required to, review for compliance with Section 6.6.3 and comment on the initial  
24 tenanting strategy for the Retail Component. To implement this Section 6.6.4,  
25 Developer will provide the LORA Project Manager or his or her designee with a  
26 written summary of its initial tenanting strategy as soon as available, but not later  
27 than one hundred eighty (180) days before the substantial completion of the Project.

28                   6.6.5 Developer, or the owner of the Retail Component after Project  
29 Completion if Developer is not the owner of the Retail Component, will keep the  
30 LORA Project Manager apprised of the progress of all initial leasing activity in the  
31 Retail Component. Beginning on the earlier of the date on which the Retail  
32 Component is 25% leased, and the date that is twelve (12) months prior to anticipated  
33 substantial completion of the Project as shown on the Project Schedule, Developer  
34 will provide progress reports at the LORA Project Manager’s written request (made  
35 no more frequently than once each calendar quarter) and on each of the dates  
36 associated with the leasing of 25%, 50% and 75% of the total lease space in the Retail  
37 Component; *provided, however*, that Developer’s failure to provide any such report  
38 shall not be a default under this Agreement unless such failure continues after written  
39 notice from the LORA Project Manager stating that Developer has fifteen (15) days  
40 to provide such report. The reports will include the name and type of business for

1 each tenant, the amount of space leased by the tenant, the lease commencement date  
2 and the lease term. LORA agrees that the leasing information will be submitted in  
3 confidence and, to the extent allowed by law, will remain confidential. LORA further  
4 agrees not to disclose any information from the leasing reports unless LORA receives  
5 a disclosure determination or order of the Clackamas County District Attorney or a  
6 court of competent jurisdiction that it must make a disclosure.

7 6.6.6 The Retail Component will be managed during the term of the  
8 City Parking Lease by a professional management firm with demonstrated experience  
9 leasing and managing retail space.

10 6.7 Prevailing Wage Determination

11 6.7.1 Prior to commencing construction of the Project, Developer  
12 may submit this Agreement and other required or relevant documents to the Oregon  
13 Bureau of Labor and Industries (“BOLI”) for review and to seek a determination  
14 letter from BOLI stating that Oregon prevailing wage rate laws, including ORS  
15 279C.800-870 and related regulations, do not apply to the Project. At least five (5)  
16 Business Days prior to submittal to BOLI, Developer will submit the proposed  
17 request for review to LORA for review and approval. Said Final Determination Letter  
18 shall be deemed final upon written confirmation from BOLI that no request for  
19 reconsideration was received by BOLI and the 21-day period in which to request a  
20 contested case hearing has expired without notice to BOLI of such a request (the  
21 “Final Determination Letter”). Developer acknowledges that the Final Determination  
22 Letter is a nonbinding expression of BOLI’s current opinion in this matter which may  
23 be reversed at any time and at BOLI’s sole discretion, and LORA specifically  
24 disclaims any representation and warranty, implied or expressed, in regard to the  
25 application of prevailing wage laws to the Project.

26 6.7.2 If the Final Determination Letter determines that prevailing  
27 wage laws apply to the Project, Developer shall notify LORA within ten (10) days  
28 whether Developer elects to terminate this Agreement. If Developer elects to  
29 terminate, then LORA shall notify Developer within ten (10) days thereafter whether  
30 it will seek a reversal of the Final Determination Letter. If LORA elects to seek a  
31 reversal of the Final Determination Letter, then this Agreement shall not terminate. If  
32 LORA elects to seek a reversal of the Final Determination Letter and that effort is not  
33 successful then Developer shall notify LORA within ten (10) days after receipt of  
34 written notice from LORA of the same as to whether Developer elects to terminate  
35 this Agreement. In the case of a termination of this Agreement pursuant to this  
36 Section 6.7, neither Party will have a claim against the other for its costs incurred.

37 6.8 No LORA Control over Construction

38 Except as described in this Agreement, and as required for compliance review  
39 with any City permits, LORA or the City shall exercise no control over construction of the  
40 Project.

1                                    6.9                                    Construction Reports and Meetings

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

11                                    6.10                                    Performance and Payment Bonds

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

22  
23                                    6.11                                    Liens

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

1                    6.12                    Indemnity for Construction Liability

2                    Developer will indemnify, defend (at LORA’s request) and hold harmless LORA,  
3 and its successors and assigns, from and against all claims, costs, expenses, losses, damages and  
4 liabilities whatsoever arising from or in connection with the death of, or injury, loss or damage  
5 whatsoever caused to, any person or to the property of any person during the process of the  
6 construction work or the performance of Developer’s other construction obligations under this  
7 Agreement, except to the extent caused by the acts or omissions of LORA or its employees,  
8 agents, contractors, subcontractors, licensees or invitees. The indemnity set forth in this Section  
9 6.12 shall survive the issuance of the Temporary Certificate of Occupancy and any termination  
10 of this Agreement for a period of two (2) years.

11                    6.13                    Insurance during Construction

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

18                    6.14                    Art in the Project

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

26                    6.15                    Access to Pedestrian Corridor

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

33                    6.16                    Use Covenant

34                    The Parties will work diligently and in good faith to agree, within one hundred  
35 and twenty (120) days of the Effective Date, on the form and terms of a covenant or other  
36 mechanism to assure LORA that the covenants running with the land described in Sections 6.6.2,  
37 6.6.6 and 12.26 (“Use Covenant”) will attach to the land upon which the Retail Component is  
38 located after substantial completion of the Project.  
39

1                   SECTION 7 ASSIGNMENT OF AGREEMENT RIGHTS AND OBLIGATIONS

2                   7.1                   Assignment by Developer

3                   7.1.1 Developer is uniquely qualified to construct and manage the  
4 Project. Prior to Completion of the Project, Developer shall not partially or wholly dispose of,  
5 assign, or agree to dispose of or assign Developer’s interest in or obligations under this  
6 Agreement without the prior written approval of LORA, to be granted in LORA’s sole  
7 discretion; *provided, however*, that nothing in this Agreement shall prohibit Developer from  
8 assigning this Agreement to a single asset entity formed to become the lessee under the ground  
9 lease with the Owner, so long as either Patrick Kessi, Geoff Wenker, both, or an entity controlled  
10 by Patrick Kessi, Geoff Wenker, or both have day-to-day to control over the development of the  
11 Project or are responsible for the development of the Project. Developer shall notify LORA of  
12 an assignment of this Agreement even if such assignment does not require LORA approval. For  
13 purposes of this Agreement, “Completion” means that the Project has received Temporary  
14 Certificates of Occupancy for the Residential Component and the Retail Component. LORA  
15 may require as absolute conditions to such approval that:

16  
17                   7.1.1.1               The transfer or assignment is not in violation of  
18 other provisions of this Agreement; and

19                   7.1.1.2               Any proposed transferee or assignee shall have  
20 qualifications and financial responsibility equal to or superior to those of Developer as  
21 determined by the LORA Project Manager or his or her designee in his or her reasonable  
22 discretion, and any proposed transferee or assignee shall assume without limitation all  
23 obligations of Developer set forth in this Agreement that are applicable to the Project. No such  
24 transaction will relieve Developer of its obligations under this Agreement unless Developer  
25 obtains a written release from the LORA Project Manager or his or her designee. The foregoing  
26 notwithstanding, a Mortgagee shall not be required to assume Developer’s obligations under this  
27 Agreement during any period in which the Mortgagee does not hold title to the Property but  
28 merely a lien on title for security purposes; and

29                   7.1.1.3               The transfer or assignment will not cause a material  
30 delay in the completion of the Project and will not change the Design Development Drawings,  
31 Final Construction Drawings or character of the Project.

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

38                   SECTION 8 SALES OF PROPERTY

39                   Developer may not sell its interest in the Property to any third party prior to  
40 Completion without the consent of LORA, which may be withheld in its sole discretion.

1 Following Completion of the Project, Developer, without obtaining the consent of LORA, may  
2 transfer its interest in the Property or portions thereof in its sole discretion, but subject to the  
3 provisions of this Agreement that are identified in Section 12.12 as surviving Project  
4 Completion.

5 SECTION 9 TERM AND TERMINATION

6 9.1 Effective Date

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

11 9.2 Termination

12 This Agreement shall terminate upon the earlier of:

13 9.2.1 The mutual agreement of the Parties in writing; or

14 9.2.2 The failure of one or more conditions to Closing; or

15 9.2.3 A Party's termination of the Agreement on account of another  
16 Party's default without cure; or

17 9.2.4 Completion of the Project.

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

20 SECTION 10 DEFAULT; CURE

21 10.1 Default by Developer

22 The following shall constitute defaults on the part of Developer:

23 10.1.1 Any breach of the provisions of this Agreement whether by  
24 action or inaction, which continues and is not remedied within sixty (60) days after  
25 LORA has given written notice to Developer specifying the breach; provided that if  
26 such breach cannot with due diligence be cured within a period of sixty (60) days,  
27 Developer shall have up to one hundred eighty (180) additional days to cure such  
28 breach, and in any such event such breach shall not constitute a default so long as  
29 Developer diligently proceeds to effect such cure and such cure is accomplished  
30 within the additional 180-day period.

31 10.1.2 Any assignment by Developer for the benefit of creditors, or  
32 adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's  
33 committee over Developer prior to the issuance of the Temporary Certificate of

1 Occupancy for the Project, if such assignment, adjudication or appointment is not  
2 dismissed within ninety (90) days. There shall be no cure for a breach under this  
3 Section 10.1.2.

4 10.2 Default by LORA

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

15 10.3 Dispute Resolution

16 10.3.1 CEO Meeting

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

29 10.3.2 Arbitration

30 (a) If the Parties are unable to resolve the dispute in  
31 accordance with Section 10.3.1, then except for a dispute in which a Party seeks an injunction or  
32 specific performance, which actions are not subject to arbitration, the Parties agree to resolve the  
33 dispute by arbitration with Arbitration Service of Portland, Inc. ("ASP") and in accordance with  
34 ASP's rules and procedures; *provided, however*, that the arbitrator shall be selected using the  
35 criteria set forth in Section 10.3.2(b). The arbitration fee required to initiate the arbitration shall  
36 be shared equally by the Parties. The Parties shall attempt to agree upon the appointment of an  
37 arbitrator with qualifications set forth in this Section 10.3.2 for a period of ten (10) Business  
38 Days. If the Parties are unable to agree on an arbitrator, then each Party shall appoint one  
39 arbitrator within thirty (30) days of the initial decision to arbitrate. The two arbitrators selected  
40 by the Parties will select another arbitrator who meets the qualifications of this Section to act as

1 the sole arbitrator. The decision of the arbitrator shall be final, binding and conclusive upon the  
2 Parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject  
3 to appeal and may be confirmed or embodied in an order or judgment of any court having  
4 jurisdiction. The arbitrator appointed pursuant to this Agreement shall have the power to order  
5 monetary damages but shall not have the power to award consequential or punitive damages.  
6 The fees and costs of the arbitrator shall be split by the Parties unless, in arbitration, the  
7 arbitrator awards costs.

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

18 SECTION 11 REMEDIES

19 11.1 Remedies for Developer Default

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

27 11.2 Remedies for LORA Default

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

36 11.3 Exclusivity of Remedies

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

39 SECTION 12 MISCELLANEOUS PROVISIONS

1                   12.1                   Good Faith and Fair Dealing

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

4                   12.2                   Inspection of Records; Confidentiality

5                                   12.2.1 Inspection of Records

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

11                                   12.2.2 Confidentiality

12                                   12.2.2.1           Except for published information or information  
13 ascertainable from public records, any confidential information furnished or disclosed by LORA  
14 to Developer in connection with the Project, will be held by Developer in confidence and will  
15 not be divulged to any third party, except to Developer's advisors and consultants as may be  
16 necessary to further the development of the Project.

17                                   12.2.2.2           Developer acknowledges that confidential  
18 information provided to LORA is subject to the Oregon Public Records Law (ORS 192.410 to  
19 192.505). The Parties acknowledge that, as a public entity, LORA must comply with and will  
20 comply with the Oregon Public Records Law.

21                                   12.2.2.3           Except for published information or information  
22 ascertainable from public records, any confidential information furnished or disclosed by  
23 Developer to LORA, will be held in confidence and will not be divulged to any third party,  
24 except for LORA's advisors and consultants as may be necessary to further the development of  
25 the Project. If for any reason the Project fails to materialize, then each Party will return all such  
26 confidential information to the Party from whom it was obtained.

27                                   12.2.2.4           As used in this Section 12.2.2, "confidential  
28 information" shall mean Developer's and Developer's members' financial information, projected  
29 Project costs and revenues, pro forma statements for the Project, correspondence and agreements  
30 with debt and equity providers, personal information of Developer's members and of  
31 Developer's members' members, processes and information that is unique and proprietary to  
32 Developer, and other information that Developer and LORA agree is confidential in nature and  
33 exempt from disclosure under Oregon Public Records Law.

34                                   12.2.2.5           Developer will only submit confidential information  
35 to LORA on the condition that it will be kept confidential. Except for information that Developer  
36 and LORA may agree in the future is confidential and exempt from disclosure under the Oregon  
37 Public Records Law, LORA has considered and determined that disclosure of the confidential  
38 information would cause harm to the public interest.

1                                   12.2.2.6           In the event that LORA is served with a request for  
2 the production of confidential information provided to LORA by Developer, pursuant to ORS  
3 192.410, *et. seq.*, then LORA shall, at least seven (7) days before LORA would, if the request  
4 were granted, make the confidential information available to the requesting party, provide  
5 Developer with a copy of the request, so that Developer may take steps to prevent the disclosure  
6 of the confidential information.

7                                   12.3                                   Conflict of Interests

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

12                                   12.4                                   Discrimination

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

17                                   12.5                                   Equal Employment Opportunity.

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

21                                   12.6                                   Governing Law; Venue; Jurisdiction

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

31                                   12.7                                   No Benefit to Third Parties

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

34                                   12.8                                   Notices

35                                   All notices given under this Agreement shall be in writing and may be delivered,  
36 with all applicable postage or delivery charges prepaid, by personal delivery or messenger, by

1 overnight courier service, or by deposit in the United States Mail, as certified mail, return receipt  
2 requested, or by e-mail, and addressed as follows:

3 LORA: Lake Oswego Redevelopment Agency  
4 380 A Avenue  
5 Lake Oswego, OR 97034  
6 Attn: Brant Williams  
7 Email: [bwilliams@ci.oswego.or.us](mailto:bwilliams@ci.oswego.or.us)  
8

9 With a copy to: City Attorney  
10 380 A Avenue  
11 Lake Oswego, OR 97034  
12 Attn: David Powell  
13 Email: [dpowell@ci.oswego.or.us](mailto:dpowell@ci.oswego.or.us)  
14

15 Developer: Evergreen Group LLC  
16 3330 N.W. Yeon, Suite 210  
17 Portland, OR 97210  
18 Attn: Patrick Kessi  
19 Email: [pkessi@wk-development.com](mailto:pkessi@wk-development.com)  
20

21 With a copy to: Radler White Parks & Alexander LLP  
22 111 SW Columbia St., Suite 1100  
23 Portland, OR 97201  
24 Attn: Dina Alexander  
25 Email: [dalexander@radlerwhite.com](mailto:dalexander@radlerwhite.com)  
26

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

33 12.9 Time is of the Essence

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

41 12.10 Non-waiver

42 Waiver by any Party of strict performance of any provision of this Agreement

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

6 12.11 Non-waiver of Government Rights

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

12 12.12 Survival; Covenants Running with the Land

13 12.12.1 Any covenant or condition set forth in this Agreement, the full  
14 performance of which is not specifically required prior to the expiration or earlier  
15 termination of the Agreement but which by its terms is to survive the termination of  
16 this Agreement, shall survive the expiration or earlier termination of this Agreement  
17 and shall remain fully enforceable thereafter.

18 12.12.2 Sections 6.6 (except Developer's obligation to build), and  
19 12.26 (Mortgagee Protection) are covenants that run with the land and will survive  
20 Completion of the Project or termination of this Agreement according to their terms.  
21 Sections 3.4 (LORA Payment of Fees and Charges), 6.11 (Liens), 6.12 (Indemnity for  
22 Construction Liability), 10 (Default), 11 (Remedies), 12.2.2 (Confidentiality), and  
23 12.20 (Attorneys' Fees) will survive Completion of the Project or termination of this  
24 Agreement and will bind the Parties according to their terms, but are not covenants  
25 running with the land.

26 12.13 Partial Invalidity

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

34 12.14 Calculation of Time

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

1                    12.15                    Headings, Table of Contents

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

4                    12.16                    Counterparts

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

7                    12.17                    Legal Purpose

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

10                   12.18                   Amendments

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

16                   12.19                   Approvals

17                   12.19.1 Where this Agreement requires the approval(s) of LORA or  
18 the LORA Project Manager, LORA or the LORA Project Manager, as applicable, will  
19 approve or disapprove within ten (10) Business Days after receipt of the documents  
20 or other material to be approved, except where a longer or shorter time period is  
21 specifically provided in this Agreement, and except where the approval requires  
22 action by LORA Board, and in that case, the approval period shall be thirty (30) days.  
23 Failure by LORA or the LORA Project Manager, as applicable, to approve or  
24 disapprove within the applicable period of time shall be deemed disapproval;  
25 provided that, Developer may send a second notice. If Developer fails to send a  
26 second notice (and LORA or the LORA Project Manager, as applicable, failed to  
27 respond to Developer's original request), LORA or the LORA Project Manager, as  
28 applicable, shall be deemed to have disapproved of the material to be approved. If  
29 LORA or the LORA Project Manager, as applicable, fails to respond to such second  
30 request within three (3) Business Days of LORA's or the LORA Project Manager's  
31 receipt of same, such failure to timely respond will be deemed LORA's or the LORA  
32 Project Manager's, as applicable, approval thereof. Any disapproval shall state in  
33 writing and in reasonable detail the reasons for such disapproval. Approvals will not  
34 be unreasonably withheld, except where rights of approval are expressly reserved to  
35 LORA's or the LORA's Project Manager's sole discretion in this Agreement.

36                   12.19.2 Where this Agreement requires the consent or approval of  
37 Developer, Developer shall approve or disapprove within ten (10) Business Days  
38 after receipt of the material to be approved, except when a longer period of time is

1 specifically provided in this Agreement. Failure by Developer to approve or  
2 disapprove within such period of time shall be deemed disapproval. Any disapproval  
3 shall state the reasons for such disapproval. Approvals will not be unreasonably  
4 withheld, except where rights of approval are expressly reserved to Developer's sole  
5 discretion.

6 12.20 Attorneys' Fees

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

18 12.21 Successors and Assigns

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

22 12.22 Interpretation of Agreement; Status of Parties

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

27 12.23 Future Assurances

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

31 12.24 Capacity to Execute; Mutual Representations

32 The Parties each warrant and represent to the other that this Agreement constitutes  
33 a legal, valid, and binding obligation of that Party. Without limiting the generality of the  
34 foregoing, each Party represents that its governing authority and, in the case of LORA, its LORA  
35 Board, has authorized the execution, delivery, and performance of this Agreement by it. The  
36 individuals executing this Agreement warrant that they have full authority to execute this  
37 Agreement on behalf of the entity for whom they purport to be acting. Each Party represents to  
38 the other that neither the execution and delivery of the Agreement, nor the consummation of the

1 transactions contemplated hereby will: violate any constitution, statute, regulation, rule,  
2 injunction, judgment, order, decree, ruling, charge, or other restriction of any government,  
3 government agency, or court to which it is subject or any provision of its charter or bylaws; or  
4 conflict with, result in a breach of, or constitute a default under any other agreement to which it  
5 is a party or by which it is bound. No Party needs to give any notice to, make any filing with, or  
6 obtain the consent of any other entity or person to consummate the transaction contemplated by  
7 this Agreement.

8                   12.25                   Exhibits

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

12                   12.26                   Mortgagee Protection

13                                   12.26.1                   Mortgagee Not Obligated To Construct.  
14 Notwithstanding any of the provisions of the Agreement, a Mortgagee or its designee  
15 for purposes of acquiring title at foreclosure shall in no way be obligated by the  
16 provisions of this Agreement to construct or complete the Project or to guarantee such  
17 construction or completion; provided, however, that nothing in this Agreement shall  
18 be deemed or construed to permit or authorize any such Mortgagee to devote the  
19 Property or any part thereof to any uses, or to construct any improvements thereon,  
20 other than those users or improvements provided in or permitted by this Agreement.

21                                   12.26.2                   Copy of Notice of Default to Mortgagee. If LORA  
22 delivers a notice or demand to Developer with respect to Developer's breach of this  
23 Agreement, LORA shall at the same time send a copy of such notice or demand to  
24 each Mortgagee with a lien of record, at the last address of such holder shown in the  
25 real property records where the Project is located. Failure of LORA to send a copy of  
26 such notice or demand to a Mortgagee shall not prevent or limit in any way LORA's  
27 rights and remedies under this Agreement.

28                                   12.26.3                   Mortgagee's Options to Cure Defaults. After  
29 Developer's default of this Agreement and if Developer fails to cure or remedy said  
30 default within the required time period, then each Mortgagee shall have thirty (30)  
31 days after passage of the latest date for Developer's cure or remedy of the default or  
32 longer if the default cannot reasonably be cured within such 30-day period and  
33 Mortgagee is diligently pursuing such cure or remedy, to cure or remedy the default  
34 itself, if cure or remedy thereof is permitted by this Agreement. If a Mortgagee does  
35 cure or remedy the default, the Mortgagee may add the cost thereof to the Mortgage  
36 debt and the lien of its Mortgage, if permitted by its loan documents. If the default is  
37 with respect to construction of the Project, nothing contained in this Agreement shall  
38 be deemed to prohibit such Mortgagee, either before or after foreclosure or action in  
39 lieu thereof, from undertaking or continuing the construction or completion of the  
40 improvements, provided that the Mortgagee notifies LORA in writing of its intention  
41 to complete the Project, and completes the Project in accordance with Section 12.26.1

1 above.

2 12.26.4 Amendments Requested by Mortgagee. LORA  
3 shall execute amendments to this Agreement or separate agreements to the extent  
4 reasonably requested by a Mortgagee proposing to make a loan to Developer secured  
5 by a security interest in all or any part of the Property or the Project, provided that  
6 such proposed amendments or other agreements do not materially and adversely  
7 affect the rights of LORA under this Agreement.

8 12.27 Memorandum of Development Agreement; Owner  
9 Acceptance

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

16

17 *(Remainder of Page Intentionally Left Blank;*  
18 *Signature Page Follows.)*

19



**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 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.
4. “**City Code**” means the Lake Oswego Municipal Code.
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.

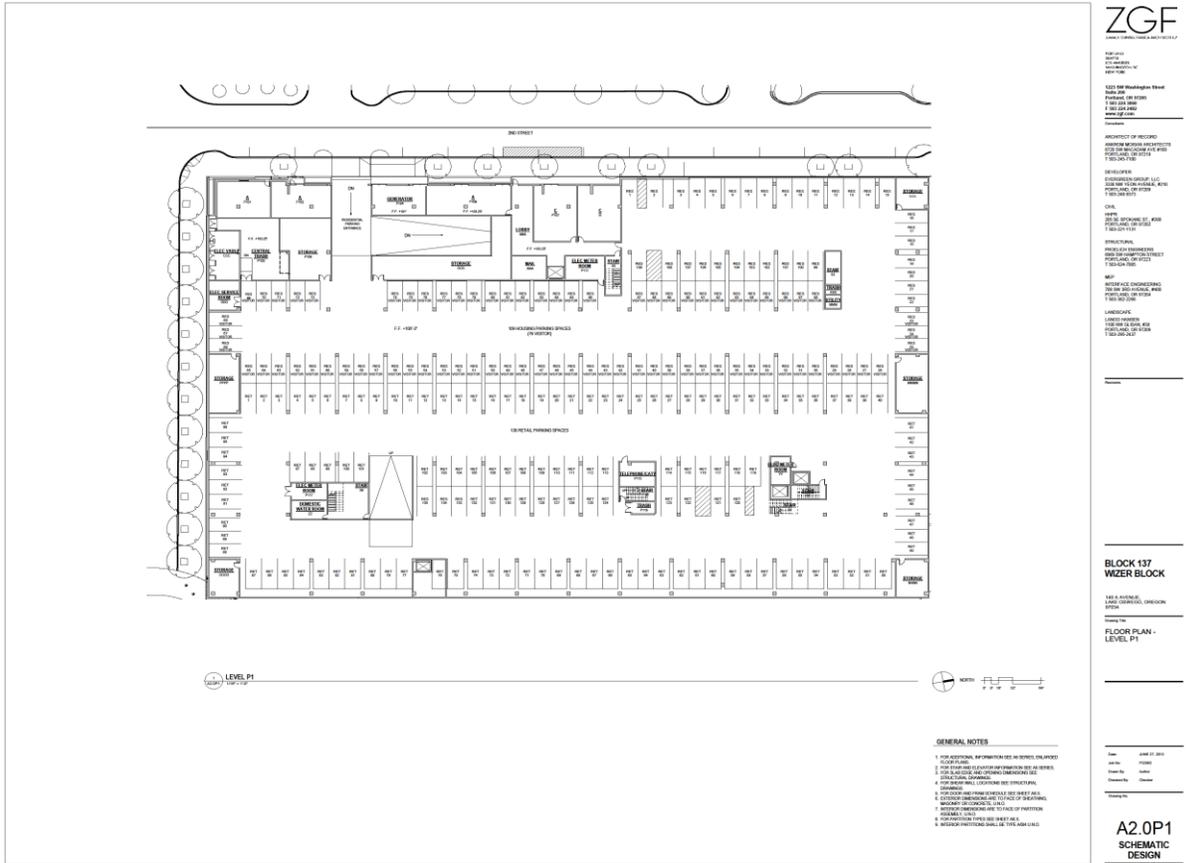
15. “**Final Construction Drawings**” means working drawings and specifications setting forth in detail the requirements for materials, equipment, systems, standards and workmanship for the construction of the Project.
16. “**Final Determination Letter**” has the meaning set forth in Section 6.7 of this 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

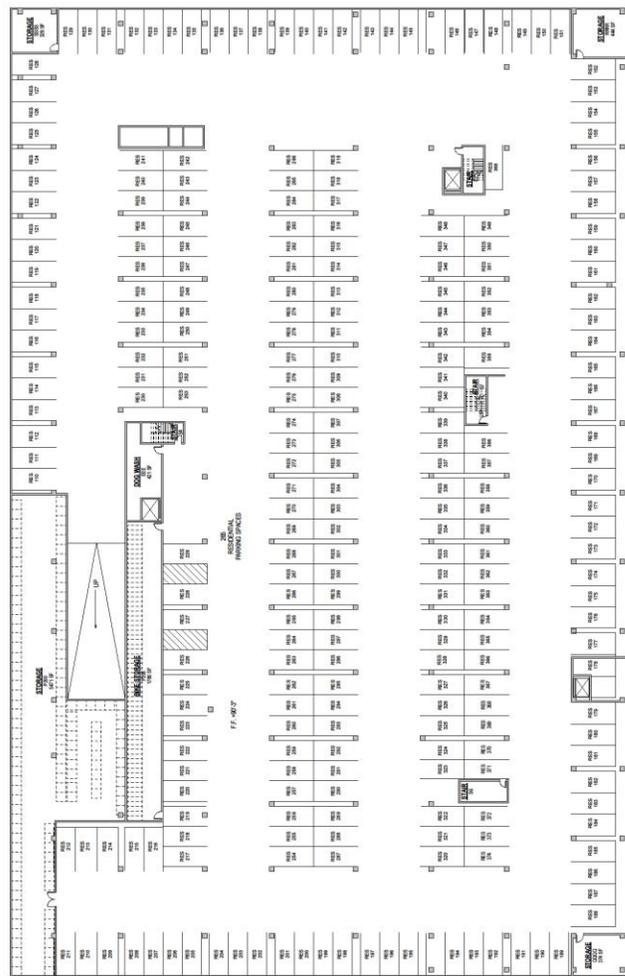
or entity who thereafter obtains title to the Property from or through a Mortgagee or (b) any other purchaser at foreclosure sale.

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.

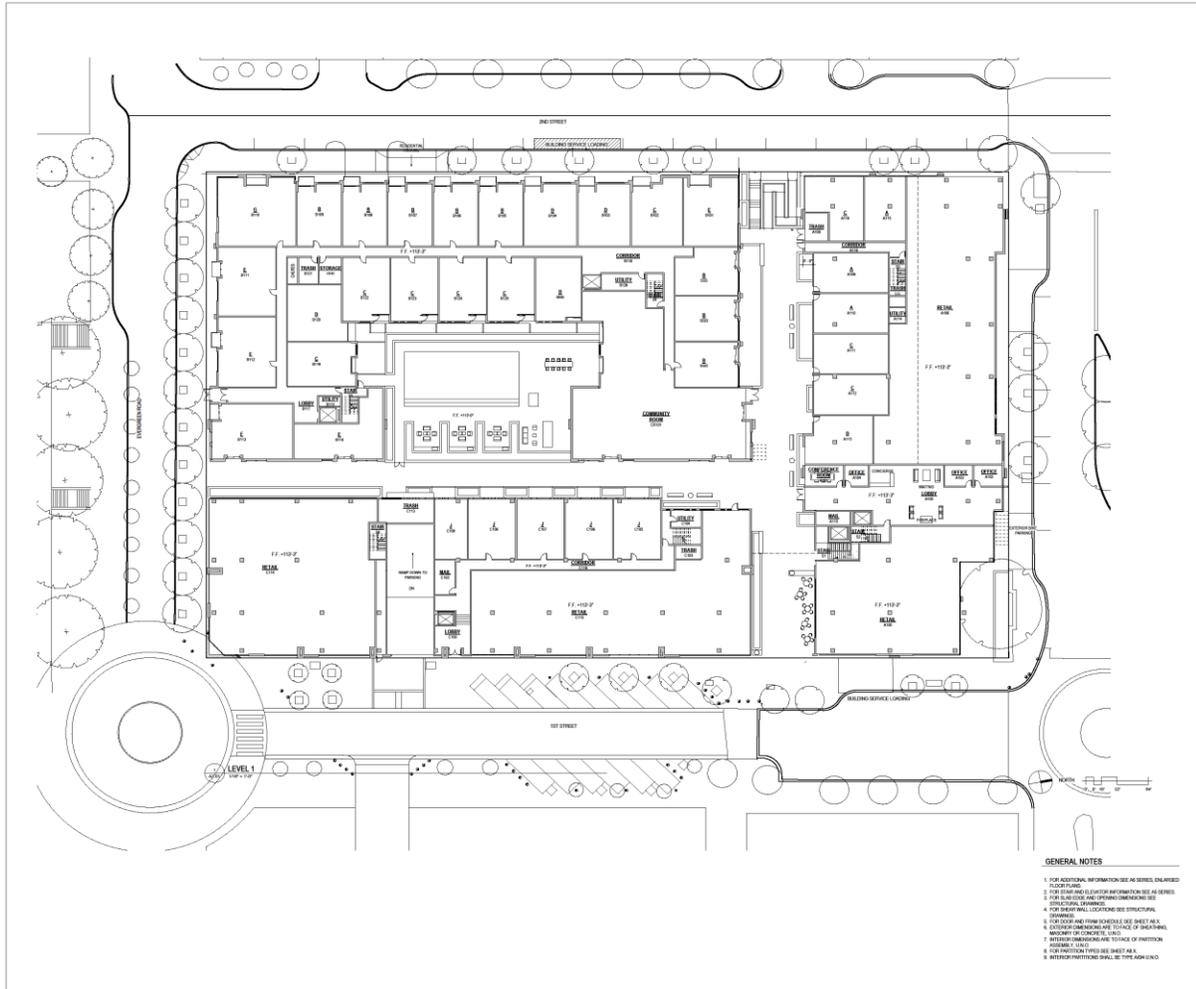
# EXHIBIT D – CONCEPTUAL DRAWINGS





- GENERAL NOTES**
1. FOR ADDITIONAL INFORMATION SEE AS BUILT DRAWINGS.
  2. FOR DIMENSIONS AND ELEVATION INFORMATION SEE AS BUILT DRAWINGS.
  3. FOR DIMENSIONS AND ELEVATION INFORMATION SEE AS BUILT DRAWINGS.
  4. DIMENSIONS SHALL GOVERN OVER ELEVATIONS.
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**ZGF**  
 ZANKER GORDON LANGRISH & ASSOCIATES

ARCHITECT OF RECORD  
 1000 NE WASHINGTON STREET  
 PORTLAND, OR 97232  
 TEL: 503.255.1000  
 FAX: 503.255.1001

CLIENT  
 UNIVERSITY OF OREGON  
 1000 NE WASHINGTON STREET  
 PORTLAND, OR 97232  
 TEL: 503.255.1000  
 FAX: 503.255.1001

CONTRACTOR  
 1000 NE WASHINGTON STREET  
 PORTLAND, OR 97232  
 TEL: 503.255.1000  
 FAX: 503.255.1001

MEP  
 1000 NE WASHINGTON STREET  
 PORTLAND, OR 97232  
 TEL: 503.255.1000  
 FAX: 503.255.1001

LANDSCAPE  
 1000 NE WASHINGTON STREET  
 PORTLAND, OR 97232  
 TEL: 503.255.1000  
 FAX: 503.255.1001

**BLOCK 137  
 WIZER BLOCK**

140 AVENUE,  
 LAKE OSWEGO, OREGON  
 97035

DATE: 08/27/2013  
 DRAWN BY: ADAM  
 CHECKED BY: DANIEL

**FLOOR PLAN -  
 LEVEL 1**

- GENERAL NOTES**
- FOR ADDITIONAL INFORMATION SEE ARCHITECT'S SCHEDULED FLOOR PLANS.
  - FOR FINISHES AND MATERIAL INFORMATION SEE ARCHITECT'S SCHEDULED FINISH SCHEDULE.
  - FOR FINISHES AND MATERIAL INFORMATION SEE ARCHITECT'S SCHEDULED FINISH SCHEDULE.
  - FOR FINISHES AND MATERIAL INFORMATION SEE ARCHITECT'S SCHEDULED FINISH SCHEDULE.
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  - FOR FINISHES AND MATERIAL INFORMATION SEE ARCHITECT'S SCHEDULED FINISH SCHEDULE.
  - FOR FINISHES AND MATERIAL INFORMATION SEE ARCHITECT'S SCHEDULED FINISH SCHEDULE.

**A2.01  
 SCHEMATIC  
 DESIGN**

ZGF

ARCHITECT OF RECORD

1225 SW Washington Street  
Suite 200  
Portland, OR 97245  
P 503.224.2000  
www.zgf.com

ARCHITECT OF RECORD  
EVERGREEN GROUP, LLC  
1300 NW 27th Avenue, #210  
Portland, OR 97229  
P 503.227.1100

ARCHITECT  
EVERGREEN GROUP, LLC  
1300 NW 27th Avenue, #210  
Portland, OR 97229  
P 503.227.1100

CIVIL  
320 SE SPANISH ST., #200  
PORTLAND, OR 97202  
P 503.221.1331

STRUCTURAL  
PROCELO ENGINEERS  
1000 NE CLATSOP STREET  
PORTLAND, OR 97232  
P 503.241.8000

MEP  
INTERFACE ENGINEERING  
200 SW 2ND AVENUE, #900  
PORTLAND, OR 97204  
P 503.302.2000

LANDSCAPE  
1000 NW CLATSOP AVE  
PORTLAND, OR 97208  
P 503.250.2027



LEVEL 2



GENERAL NOTES

1. FOR REVISIONS, SEE COMMENTS FOR REVISIONS ENCLOSED.
2. FOR REVISIONS, SEE COMMENTS FOR REVISIONS ENCLOSED.
3. FOR CLASHES AND COORDINATION, SEE THE MEETING MINUTES.
4. FOR ALL MEETINGS, SEE THE MEETING MINUTES.
5. FOR ALL MEETINGS, SEE THE MEETING MINUTES.
6. FOR ALL MEETINGS, SEE THE MEETING MINUTES.
7. FOR ALL MEETINGS, SEE THE MEETING MINUTES.
8. FOR ALL MEETINGS, SEE THE MEETING MINUTES.
9. FOR ALL MEETINGS, SEE THE MEETING MINUTES.
10. FOR ALL MEETINGS, SEE THE MEETING MINUTES.

BLOCK 137  
WIZER BLOCK

140 S AVENUE  
LAND DISTRICT, OREGON  
2014

FLOOR PLAN -  
LEVEL 2

A2.02  
SCHEMATIC  
DESIGN



LEVEL 3  
 10/15/10



- GENERAL NOTES**
1. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  2. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  3. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  4. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  5. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  6. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  7. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  8. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  9. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.
  10. FOR ADDITIONAL INFORMATION SEE ARCHITECTURAL DRAWINGS.

**BLOCK 137  
 WIZER BLOCK**

1000 10th Avenue, 4th  
 Portland, OR 97204  
 1.501.248.8272

**FLOOR PLAN -  
 LEVEL 3**

Date: 10/15/10  
 Job No.: 137  
 Project No.: 137  
 Drawing No.: 137-03

**A2.03  
 SCHEMATIC  
 DESIGN**

**ZGF**  
ARCHITECTS

1221 SW Washington Street  
 Suite 200  
 Portland, OR 97201  
 P 503.224.2822  
 www.zgf.com

ARCHITECT OF RECORD  
 ANDERSON NEUMAN ARCHITECTS  
 222 SW Washington St #10  
 Portland, OR 97201  
 T 503.242.7100

MECHANICAL  
 CHRISTENSEN GROUP, LLC  
 222 SW Washington St, 8th  
 Portland, OR 97201  
 T 503.242.7100

CIVIL  
 300 SE Spokane St, 400  
 Portland, OR 97201  
 T 503.251.1131

STRUCTURAL  
 PROTECTOR ENGINEERS  
 100 SW 10th Avenue, 10th  
 Portland, OR 97201  
 T 503.242.7100

MEP  
 PROTECTOR ENGINEERS  
 100 SW 10th Avenue, 10th  
 Portland, OR 97201  
 T 503.242.7100

LANDSCAPE  
 LANDSCAPE ARCHITECTS  
 100 SW 10th Avenue, 10th  
 Portland, OR 97201  
 T 503.242.7100



LEVEL 4  
100-100



**GENERAL NOTES**

1. FOR ADDITIONAL INFORMATION SEE ALL SHEETS DRAWING
2. FOR DIMENSIONS AND SPACING DIMENSIONS SEE
3. FOR DIMENSIONS AND SPACING DIMENSIONS SEE
4. FOR DIMENSIONS AND SPACING DIMENSIONS SEE
5. FOR DIMENSIONS AND SPACING DIMENSIONS SEE
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8. FOR DIMENSIONS AND SPACING DIMENSIONS SEE
9. FOR DIMENSIONS AND SPACING DIMENSIONS SEE
10. FOR DIMENSIONS AND SPACING DIMENSIONS SEE

**BLOCK 137  
 WEEZER BLOCK**

140 S AVENUE  
 LANE CORRIDOR, OREGON  
 97204

Project No.  
**FLOOR PLAN -  
 LEVEL 4**

Date: 04/22/2013  
 Job No.: 10000  
 Drawn By: [Name]  
 Checked By: [Name]

**A2.04  
 SCHEMATIC  
 DESIGN**

1000 3RD AVENUE, SUITE 2000  
 PORTLAND, OR 97204  
 TEL: 503.251.1000  
 FAX: 503.251.1001  
 WWW.ZGF.COM

ARCHITECT OF RECORD  
 ARCHITECTURAL PROJECTS  
 ONE 300 CALLOWAY AVE #500  
 PORTLAND, OR 97204  
 TEL: 503.251.7000

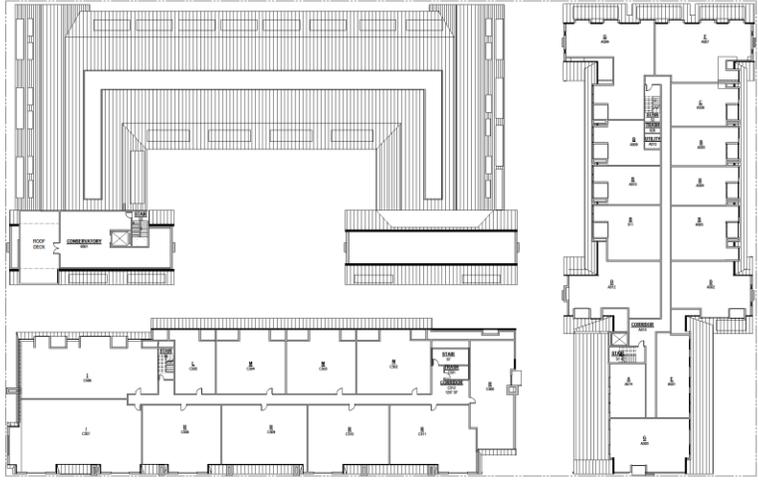
DEVELOPER  
 UNIVERSITY GROUP, LLC  
 1000 3RD AVENUE, SUITE 4000  
 PORTLAND, OR 97204  
 TEL: 503.251.1000

OWNER  
 200 2ND AVENUE, SUITE 4000  
 PORTLAND, OR 97204  
 TEL: 503.251.1000

STRUCTURAL  
 HOK/CS ENGINEERS  
 800 1/4 AVENUE, SUITE 200  
 PORTLAND, OR 97204  
 TEL: 503.251.1000

MEP  
 HOK/CS ENGINEERS  
 800 1/4 AVENUE, SUITE 200  
 PORTLAND, OR 97204  
 TEL: 503.251.1000

LANDSCAPE  
 HOK/CS ENGINEERS  
 800 1/4 AVENUE, SUITE 200  
 PORTLAND, OR 97204  
 TEL: 503.251.1000



LEVEL 5  
 100' 0" 110'



**GENERAL NOTES**

1. FOR ADDITIONAL INFORMATION SEE ARCHITECT'S EXHIBIT
2. CONSULT ARCHITECT'S EXHIBIT FOR INFORMATION RE: ALL OTHERS
3. THE SCHEDULE AND OPTIONS DIMENSIONS ARE TO BE MAINTAINED UNLESS OTHERWISE NOTED
4. THE FINISHES, MATERIALS AND SPECIFICATIONS ARE TO BE MAINTAINED UNLESS OTHERWISE NOTED
5. THE FINISHES AND MATERIALS ARE TO BE MAINTAINED UNLESS OTHERWISE NOTED
6. THE FINISHES AND MATERIALS ARE TO BE MAINTAINED UNLESS OTHERWISE NOTED
7. THE FINISHES AND MATERIALS ARE TO BE MAINTAINED UNLESS OTHERWISE NOTED
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9. THE FINISHES AND MATERIALS ARE TO BE MAINTAINED UNLESS OTHERWISE NOTED
10. THE FINISHES AND MATERIALS ARE TO BE MAINTAINED UNLESS OTHERWISE NOTED

**BLOCK 137  
 WIZER BLOCK**

100 3RD AVENUE  
 LAKE OSWEGO, OREGON  
 97030

FLOOR PLAN -  
 LEVEL 5

Date: 04/01/2013  
 Author: [Name]  
 Designer: [Name]  
 Checker: [Name]

**A2.05  
 SCHEMATIC  
 DESIGN**

ZGF

1222 SW Washington Street  
Portland, OR 97205  
T 503 224 2800  
www.zgf.com

ARCHITECT OF RECORD  
HENDERSON ARCHITECTS  
1022 SW MCGILVER AVE #100  
PORTLAND, OR 97205  
T 503 261-7100

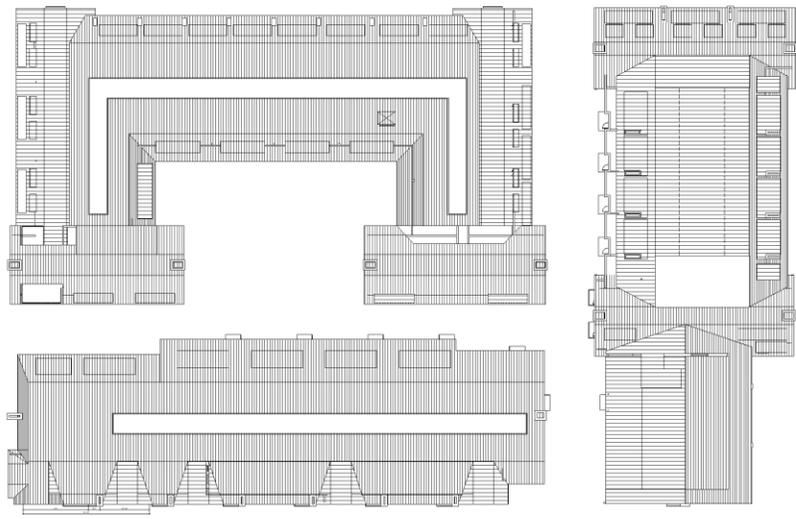
DEVELOPER  
EVERGREEN GROUP, LLC  
1000 SW TERRY AVENUE, #100  
PORTLAND, OR 97204  
T 503 261-2000

CIVIL  
MERS  
200 SW BROWN ST #100  
PORTLAND, OR 97202  
T 503 224-1128

STRUCTURAL  
TRUCKENBROCH ENGINEERS  
1000 SW WASHINGTON STREET  
PORTLAND, OR 97205  
T 503 261-7000

MEP  
INTERFACE ENGINEERING  
100 SW 2ND AVENUE, #100  
PORTLAND, OR 97204  
T 503 252-2200

LANDSCAPE  
LANDSCAPE ARCHITECTS  
100 SW 2ND AVENUE, #100  
PORTLAND, OR 97204  
T 503 252-2417



PLAN, ROOF  
100-112



- GENERAL NOTES**
1. FOR ADDITIONAL INFORMATION SEE ALL SERIES UNLARGED
  2. FOR ALL WALL SELECTIONS FOR CONCRETE SEE ALL SERIES
  3. FOR ALL CONCRETE AND CONCRETE/BRICKWORK SEE STRUCTURAL DRAWINGS
  4. FOR BRICK WALL CONFINEMENT SEE STRUCTURAL DRAWINGS
  5. FOR DOOR AND WINDOW SCHEDULES SEE SHEET A-1.1
  6. EXTERIOR FINISHES TO FACE OF PARTITION, INTERIOR FINISHES TO FACE OF PARTITION, FINISHES TO FACE
  7. FOR PARTITION TYPES SEE SHEET A-1.1
  8. INTERIOR PARTITION SHALL BE TYPE 1000 UNLESS NOTED

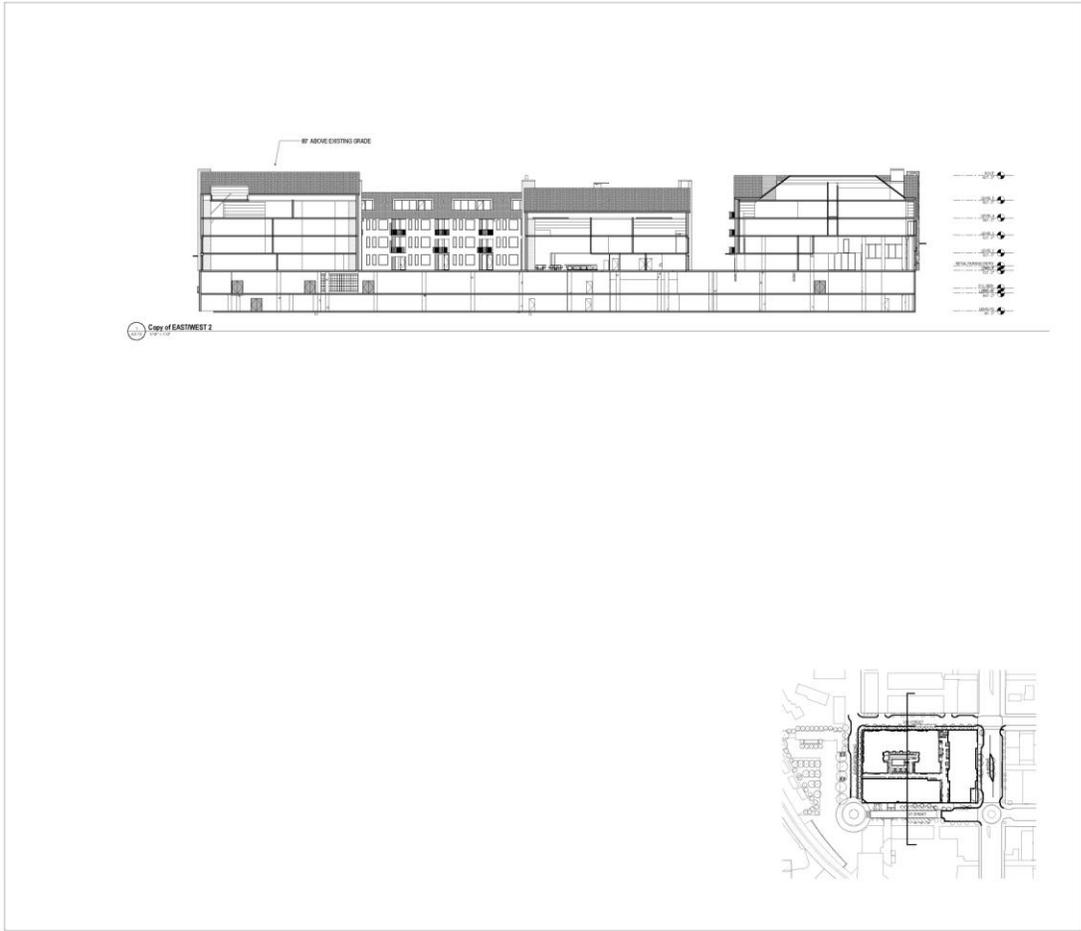
**BLOCK 137  
WIZER BLOCK**

140 AVENUE  
LAKE OSWEGO, OREGON  
97034

Roofing File  
**ROOF PLAN**

Date: JAN 27, 2014  
Job No: 1000  
Drawn By: Author  
Checked By: Designer  
Drawing No:

**A2.06  
SCHEMATIC  
DESIGN**



**ZGF**  
 ZIMMER GIESSEN ARCHITECTS OF

1000 15th Street, NW  
 Suite 1000  
 Washington, DC 20004  
 Phone: 202 462 1000  
 Fax: 202 462 1001  
 www.zgf.com

PROJECT: 003 003 Washington Street  
 Parcel: 003 003  
 1000 15th Street  
 Washington, DC 20004

ARCHITECT OF RECORD:  
 ZIMMER GIESSEN ARCHITECTS OF  
 1000 15th Street, NW  
 Suite 1000  
 Washington, DC 20004  
 Phone: 202 462 1000  
 Fax: 202 462 1001  
 www.zgf.com

**BLOCK 137  
 WIZER BLOCK**

1000 15th Street  
 Washington, DC 20004  
 Phone: 202 462 1000  
 Fax: 202 462 1001  
 www.zgf.com

**SITE SECTION**

DATE: 01/13/2011  
 ARCH: FGAU  
 CHECKED: FGAU  
 DRAWN BY: FGAU

**A3.13  
 50% SCHEMATIC  
 DESIGN**

**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**

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

**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 \_\_\_\_\_ )  
 ) ss.  
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: \_\_\_\_\_